

# AGENDA

- Sunshine laws
  - Open meetings
  - Open records
- Ethics
- Immigration
  - E-Verify
  - SAVE
- Campaign Finance

# Sunshine Laws: Open Meetings/Open Records

# O.C.G.A. 50-14-1(a)(3)(A)

- Meeting means (ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body; at which any official business, policy, or public matter of the committee is formulated, presented, discussed or voted upon...
  - Am receiving feedback that there are few and fewer committees being created;
  - Agency created committees, particularly in the realm of reviewing RFPs and bids face some particular hurdles;
  - Will likely incentivize greater staff leadership and staff committee making.

# The new Open Meetings Act contains various exceptions from its requirements – that are framed in different ways:

1. You have gatherings or assemblies that are literally exempt from the Act altogether.  
(O.C.G.A. 50-14-3)
2. You have gatherings or assemblies that are exempt from the definition of a meeting  
(O.C.G.A. 50-14-1(a)(3)(B))
3. You have gatherings or assemblies or meetings that are subject to an executive session.  
(O.C.G.A. 50-14-1(a)(2)).

# Exempt from the definition of a meeting (O.C.G.A. 50-14-1(a)(3)(B)(i) – (v))

- Gathering of a quorum of members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of the agency ....
- Gathering of a quorum for attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training....
- Gathering of a quorum of the members of a governing body....for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices...

# Exempt from the definition of a meeting (O.C.G.A. 50-14-1(a)(3)(B)(i) – (v))

- Gathering of a quorum of members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized..
- Gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events....

# But wait....

- Any of the above “gatherings” will still run afoul of the Act if the “primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.”

# Gatherings that that may be 'closed' as an executive session....(O.C.G.A. 50-14-3(b))

Meetings when an agency is discussing or voting to:

- Authorize the settlement of a matter that may be discussed under the Attorney/Client privilege;
- Authorize negotiations to purchase, dispose of, or lease property
- Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;

# Gatherings that that may be 'closed' as an executive session....(O.C.G.A. 50-14-3(b))

- Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote;
- Enter into an option to purchase, dispose of, or lease real estate subject to approval in a subsequent public vote
- No vote in executive session on acquiring real estate or settling claims shall be binding until approved by a subsequent vote in open session where the terms of the matter are fully disclosed.

# The discussing or deliberating upon the

- Appointment
- Employment
- Compensation
- Hiring
- Disciplinary action
- Dismissal
- Periodic evaluation or rating

....of a public officer or employee

- Or interviewing the executive head of an agency  
(O.C.G.A. 50-14-3(b)(2))

# Exempt from the Act altogether:

## **O.C.G.A. 50-14-3(a)(5) – this chapter shall not apply to the following:**

- Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;

# Exempt from the Act altogether:

**O.C.G.A. 50-14-3(a)(7) and (8) – this chapter shall not apply to the following:**

- Incidental conversation unrelated to the business of the agency;
- E-mail communications among members of an agency; provided that the Open Records Act will apply to such emails

# Participation in meetings

May a member participate via teleconference or other electronic method where a quorum of the agency is physically assembled?

Under the new law, the answer is clearly yes.

Only may do so if (1) away from the jurisdiction, or (2) necessary for health reasons. (O.C.G.A. 50-14-1(g))

May only do so twice a year, absent an emergency condition or the member has a written opinion by a health care professional that reasons of health prevent the member's physical attendance. (O.C.G.A. 50-14-1(g))

# OPEN RECORDS

# Public Policy Regarding Open Records

- O.C.G.A. 50-18-70(a) provides that: “The article shall be *broadly* construed to allow for the inspection of government records.”
- O.C.G.A. 50-18-72(b) provides that: “This Code section [providing exemptions to the Act] shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.”
- O.C.G.A. 50-18-72(a) provides that: “All public records shall be open for personal inspection and copying, except those which by order of a court of this state **or by law are specifically exempted from disclosure.**”

# What is a “Public Record?”

- Georgia law does not restrict the concept of a "public record" by focusing on the content, formal approval or format of a document.
- Public record means “all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.”

(O.C.G.A. 50-18-70(b)(2))

# Public Records – the obvious!

- Contracts
- Commissioner emails from a county computer
- Spreadsheets
- Minutes
- Comprehensive Plan(s)
- Letters
- Policies
- Regulations

# Public Records – the not so obvious!

- Commissioner emails from a private computer regarding county business
- Internet histories
- Internet cookies
- Draft documents
- Notes taken during a board meeting
- Text messages
- Settlement Agreements (even if a confidentiality clause)

# Responding to Requests

- Agency has three (3) business days to respond to a request
- If an agency estimates that the cost to produce responsive records will cost more than \$25.00, the agency shall notify the requesting party within three (3) business days of this cost estimate, and the agency may defer its search until the requesting party has confirmed its willingness to pay the estimated cost. (O.C.G.A. 50-18-71(d))

## – UNLESS –

- If the requesting party has stated in their request that they agree on the front end to be responsible for an amount in excess of the estimated search and retrieval costs. (O.C.G.A. 50-18-71(d))
- One FINAL caveat: If the agency estimates that the cost to search and assemble responsive documents will exceed \$500.00, the agency may demand advance payment prior to beginning search, retrieval, review or production.

# Ethics

# O.C.G.A § 45-10-1

## CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in government service should:

- I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.
- II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.
- III. Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.
- IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
- VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
- VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
- IX. Expose corruption wherever discovered.
- X. Uphold these principles, ever conscious that public office is a public trust.

# O.C.G.A § 45-10-3

§ 45-10-3. Code of ethics for members of boards, commissions, and authorities -- Establishment and text  
Notwithstanding any provisions of law to the contrary, each member of all boards, commissions, and authorities created by general statute shall:

- (1) Uphold the Constitution, laws, and regulations of the United States, the State of Georgia, and all governments therein and never be a party to their evasion;
- (2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;
- (3) Not engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties;
- (4) Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit;
- (5) Expose corruption wherever discovered;
- (6) Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality, or services from any person, association, or corporation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the member's official duties;
- (7) Never accept any economic opportunity under circumstances where he knows or should know that there is a substantial possibility that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties;
- (8) Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust; and
- (9) Never take any official action with regard to any matter under circumstances in which he knows or should know that he has a direct or indirect monetary interest in the subject matter of such matter or in the outcome of such official action.

# ZONING PROCEDURES LAW

## Purposes

- “to establish as state policy minimum procedures governing the exercise of [zoning powers]”
- “to assure that due process is afforded to the general public when local governments regulate the uses of property through the exercise of the zoning power.”

O.C.G.A. 36-66-2(a).

# ZONING PROCEDURES LAW

## “Zoning Decisions”

- Adoption of a zoning ordinance
- Adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance
- Adoption of an amendment to a zoning ordinance which rezones property from one classification to another
- Adoption of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality
- Grant of a permit relating to a special use of property

O.C.G.A. 36-66-3(4)

# CONFLICT OF INTEREST IN ZONING ACT

- O.C.G.A. 36-67A-1, et seq.
- Requires members of local governing bodies to disclose any financial interest and campaign contributions in their jurisdictions
- Requires applicants and opponents of rezoning applications to disclose any campaign contributions they had made within the immediately preceding two years
- Intended to minimize the improper attempts to curry favor with local elected and appointed officials to gain an advantage in zoning matters

# Immigration: E-Verify/SAVE

# Public Employers

- Must register & use federal E-Verify Program to verify the citizenship or alien status of all potential new employees.
- Governments must post on their websites their federal E-Verify Program identification number & date of authorization to use the E-Verify Program. Governments that do not have a website may publish this information annually in the official legal organ of their county.
- Registering for the E-Verify Program requires the government to enter into a memorandum of understanding with the Department of Homeland Security.
- The website for registration information is:  
<http://www.uscis.gov/portal/site/uscis>

# O.C.G.A § 13-10-90

According to O.C.G.A 13-10-90 , a public employer is defined as:

“every department, agency, or instrumentality of the state or a political subdivision of the state.”

# E-Verify:

Must also confirm E-verify is used for all contracts involving the:

- **“Physical Performance of Service”**

## **According to O.C.G.A 13-10-90, Physical Performance of Service is defined as:**

“the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property, including the construction, reconstruction, or maintenance of all or part of a public road; or any other performance of labor for a public employer under a contract or other bidding process.”

# Public Works Contracts

- Local governments are prohibited from entering into contracts for the “physical performance of service” where the contractor or any subcontractor fails to participate in the E-Verify Program.
- Must procure from contractors & subcontractors an affidavit attesting that they have registered with the E-Verify Program user identification number & date of authorization, & affirming that they are currently using the E-Verify Program & will continue to use it throughout the contract term.

# What Contracts Apply?

## Limited to “Public Works Contract”

- Attorney General Opinion dated January 31, 2012 to Senator Chip Rogers
- AG defines “public works contract” as:
  - “Any Contract, to be performed on public property of the state and involving a fixed asset. This term includes a broad range of contracts, such as repair, maintenance, design, and consulting contracts and within its meaning includes all ‘construction contracts’ and ‘public works construction contracts’.”
- Err on the side of caution

# Reporting Requirements

- Must submit annual compliance reports to the State auditor by December 31<sup>st</sup> of each year.
- State must audit at least one-half of all reporting agencies each year.
- Violations must be corrected within 30 days of notice or the political subdivision will be excluded from the list of qualified local governments until compliance.
- Political subdivisions not accountable for acts of county constitutional officers.

# SAVE

## Systematic Alien Verification for Entitlements

- O.C.G.A. 50-36-1
- Must procure affidavits of citizenship/alien status from all applicants for “public benefits.”
- “Public benefits” defined as: grants, contracts, loans, professional licenses, commercial licenses, retirement, welfare, health coverage, disability, housing, postsecondary education, food assistance, & unemployment.
- Benefits excluded from statutory requirements include: short-term, noncash, in-kind emergency relief, certain immunizations, & soup kitchens.
- Georgia Attorney General by August 1<sup>st</sup> of each year must provide a detailed written report regarding what benefits are implied by the SAVE statute.

# Is a Contract a Public Benefit?

- Yes!
- Every proposed contractor for any written agreement for the provision to the government of goods and/or service must provide the affidavit.
- If a public works contract, the SAVE requirements are in addition to the E-Verify requirements.

# When is SAVE Not Applicable to Contracts?

## Government to Government Contracts

- The statutory provisions related to SAVE define an “applicant” for a public benefit as “any natural person . . . who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.” See O.C.G.A. 50-36-1(a)(3).
- NOTE: the statutory provisions related to E-Verify do not distinguish private and public contractors.

# Reporting Requirements for SAVE

- Must submit annual report by January 1<sup>st</sup> of each year to the Georgia Department of Community Affairs.
- Reports must identify each public benefit administered by the government & must list each benefit for which SAVE authorization for verification has not been received from the federal government.
- Registration for the SAVE program again requires that the local government enter into a memorandum of understanding with the Department of Homeland Security.
- Registration information website:  
<http://www.uscis.gov/portal/site/uscsi/>

# Campaign Financing:

Filings with the Georgia Government  
Transparency and Campaign Finance  
Commission (FKA State Ethics Commission)

# You must start reporting when . . .

- You file a Declaration of Intention to Accept Campaign Contributions - Form DOI
- or
- You or your committee accepts a contribution
- or
- You or your committee makes an expenditure
- or
- You formally qualify

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“Candidates and Officials” *Georgia Department of Ethics*. 2012. <http://www.slideshare.net/gacfc/2012-candidates-and-officials>

# Filing Responsibilities for Candidates

- File “Declaration of Intention to Accept Campaign Contributions” (FORM DOI). Be sure to request a PIN so reporting can be submitted electronically- you do not need to file this form if you are a public officer seeking reelection. O.C.G.A. 21-5-30(g)
- A candidate may declare intent to keep separate accounting for each election in an election cycle by filing the COOSA FORM. O.C.G.A. 21-5-43(a)(2)
- Familiarize yourself with the reporting schedule found at [www.ethics.ga.gov](http://www.ethics.ga.gov)

# Reports

- Campaign Contribution Disclosure Report - CCDR
- Personal Financial Disclosure Statement -PFD
- Two Business Day Report - TBD
- Final Report & Termination Statement

# Reporting

- All candidates must file a Campaign Contribution Disclosure Report (CCDR) form.
  - This report lists all expenditures and contributions
  - When to file? The Georgia Government Transparency and Campaign Finance Commission's website contains all reporting date information
  - Grace period for filing- 5 days (not including weekends and holidays) or 2 days if the report is due for a run-off election
- All candidates must file a Personal Financial Disclosure Statement
  - Covers the preceding calendar year
  - File once per year
  - When to file? The Georgia Government Transparency and Campaign Finance Commission's website contains all reporting date information

# Reporting

- **Two Business Day Report (TBD)**
  - TBD report requires reporting of all contributions (including loans) of \$1,000.00 or more to be reported within two business days of receipt
  - NO grace period
- **Final Report & Termination Statement**
  - Must be filed within 10 days of the dissolution of a campaign or committee
  - Submitted along with final CCDR which identifies zero balance and zero indebtedness

# Contributions and Expenditures

- **Contribution**: A gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value. The act also classifies proceeds of a loan, advance, or other extension of credit as contributions
- **In-Kind Contribution**: Anything of value, other than money in any form, goods or services transferred to the candidate or campaign committee. Should reflect what the goods or services would have cost or the value at an arms length transaction
- **Common Source**: members of the family, members of the same firm or partnership, or employees of the same person
- **Expenditure**: a purchase, payment distribution, loan, advance, deposit, or any transfer of money or anything of value.
- **Types of Expenditures**
  - In-Kind
  - Loan Repayment
  - Refund
  - Reimbursement
  - Credit Card
  - 3rd Party
  - Deferred Payment
  - Payment on Deferred Expense
  - Investment

# Contributions and Expenditures

- Any elected public officer, upon leaving public office with excess contributions, is required to file supplemental CCDR's on June 30 and December 31 of each year until the contributions are expended at which point they need to file the final report and termination statement.
- Any unsuccessful candidate in an election is required to file CCDR's for the remainder of the election cycle, at the same times as a successful candidate, as well as the Final Report and Termination Statement.
- Any unsuccessful candidate who receives contributions following the election to retire debts incurred in the campaign for elective office is required to file a supplemental CCDR no later than December 31 of each year until such unpaid expenditures from the campaign are satisfied.

# Personal Financial Disclosure Statement

- Every public officer and every candidate for election as a public officer must file a Personal Financial Disclosure Statement covering the period of the preceding calendar year.
- Only one Personal Financial Disclosure Statement is required per calendar year.
- If a Public Officer chooses not to run for re-election, or for another public office, no Personal Financial Disclosure Statement needs be filed in the year qualifying to succeed him takes place.

# Two Business Day (TBD) Report

- The TBD Report addresses the period of time between the last report due prior to the date of any election for which the candidate is qualified and the date of the election. The TBD Report requires the disclosure of all contributions (including loans) of \$1000.00 or more and must be reported within two-business days of receipt of the contribution.
- The contribution must be reported on the next succeeding regularly scheduled Campaign Contribution Disclosure Report.
- Must be sent by facsimile or electronic transmission within two business days of receipt of contribution.
- There is no grace period for the TBD report.

# Final Report & Termination Statement

All campaigns and committees must file a termination statement within ten days of the dissolution of a campaign or committee which shall, among other things, identify the person responsible for maintaining campaign records as required by the Act. The termination statement shall be submitted with a final Campaign Contribution Disclosure Report which identifies a zero balance and zero indebtedness.

# Record Keeping

- Contributions of money received by the candidate or the candidate's campaign committee must be promptly deposited in a separate campaign depository account (separate from the personal banking account of the candidate) opened and maintained for this purpose.
- The account may be an interest bearing account and any interest earned will be deemed a contribution to the campaign committee; Interest earned is not payable to the candidate.
- The candidate or treasurer of each campaign committee must keep detailed accounts, current within not more than five (5) days after the receipt of a contribution or making of an expenditure.

# Penalties

- Penalties are associated with complaints or violations. Penalties and Late Fees are not the same thing.
- A penalty is assessed by the commission and can not be paid with campaign funds
- Not to exceed \$1,000.00 for the first occurrence of a violation
- Not to exceed \$10,000.00 for a second occurrence of a violation
- Not to exceed \$25,000.00 for each third or subsequent occurrence of a violation

# Questions?





2012 Newly Elected Commissioners Conference

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2012 Newly Elected Commissioners Conference

FOR MORE INFORMATION ON THIS TOPIC:

## COUNTY GOVERNMENT LAW

FEBRUARY 4, 2013 – ATLANTA MARRIOTT MARQUIS

MARCH 21, 2013 – UGA TIFTON CAMPUS CONFERENCE CENTER

MARCH 22, 2013 – UGA TIFTON CAMPUS CONFERENCE CENTER

APRIL 27, 2013 – SAVANNAH CIVIC CENTER