



GEORGE LEVESQUE
General Counsel

THE FLORIDA SENATE
OFFICE OF GENERAL COUNSEL

Location
302 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

Senate's Website: www.flsenate.gov

March 24, 2015

OPINION 15-01

TO: The Honorable Charles S. Dean, District 5
FROM: George T. Levesque, General Counsel
Michael Maida, Attorney
SUBJECT: Voting Conflict

You have asked for an opinion concerning a potential voting conflict over SPB 7060, a bill that would ratify Department of Environmental Protection rules relating to liners and leachate systems for construction and demolition debris disposal facilities.

For the reasons stated below, I believe you need not declare a conflict of interest and must vote on the matter should it come before you during a committee vote or in the Senate Chamber.

Facts:

You are an elected member of the Florida Senate. As part of a corporation of which you are a part-owner, you own a one-fifth stake in a Class I landfill and a one-fifth stake in a Class III landfill. One of the two landfills is classified as a construction and demolition debris disposal facility without a liner. You have also indicated that a permit was issued to the construction and demolition debris disposal facility prior to July 1, 2010.

Analysis:

Senate Rule 1.20 obligates every member to vote on each matter that comes before him or her within the Senate Chamber and in any committee meeting unless an abstention is required due to a conflict of interest as provided by Senate Rule 1.39. Stated differently, unless a member *must* abstain on a particular matter, the member *must* vote on that matter. *See also* § 112.3143(2)(a), Fla. Stat. ("A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss.").

Where a matter would personally inure to the special private gain or loss of the Senator, both an abstention and a disclosure are required. *See* Senate Rule 1.39 and § 112.3143(2)(a), Fla. Stat. Where there is no special private gain or loss to the Senator, a Senator must vote on the matter

and the Senator must disclose a conflict on any measure that the member knows would inure to the special private gain or loss of:

1. Any principal by whom the Senator or the Senator's spouse, parent, or child is retained or employed,
2. Any parent organization or subsidiary of a corporate principal by which the member is retained or employed, or
3. An immediate family member or business associate of the Senator.

See Senate Rule 1.39(2) and § 112.3143(2)(a), Fla. Stat.

SPB 7060, if enacted, would ratify Rule 62-701.730, F.A.C., entitled "Construction and Demolition Debris Disposal and Recycling," as filed for adoption with the Department of State. According to the Statement of Estimated Regulatory Cost, this new rule would effectuate section 403.707(9)(b), Florida Statutes, which directs the Florida Department of Environmental Protection to require liners and leachate collection systems at construction and demolition debris disposal facilities "that do not have a permit to... operate the disposal units prior to July 1, 2010...." *See also* § 403.707(9)(b), Fla. Stat.

The ratification of the Department of Environmental Protection's rule would impact only those particular facilities lacking liners and leachate collection systems that had not obtained a permit prior to July 1, 2010. Based upon the information you have provided, you are not a member of that class because your facility has been permitted to operate as a construction and demolition debris disposal facility prior to July 1, 2010, i.e., your facility is part of the grandfathered class. Because you are not a member of the class impacted by the bill, you are not affected in a manner contemplated by Florida Statutes or Senate Rules regarding forbidden conflicts of interests. Thus, you must vote on the matter should it come before you in a committee or in the Senate Chamber and need not disclose a conflict.

The above opinion is based upon the facts you have provided. If the situation outlined is materially different from the facts offered, or if there are additional relevant facts that have been omitted, I would need to review the new information and my opinion may change accordingly.