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OPINION 16-02

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

A handwritten signature in blue ink, appearing to be "M. Maida", is written over the name "Michael Maida, Attorney".

You have asked for an opinion concerning a potential voting conflict over Senate Bill 1192. This bill deals with, among other things, weight limits for solid waste and collection vehicles, identification and listing of all government taxes and fees on invoices, provisions regulating local government completion with solid waste collection companies, the standard by which a local government can prevent an injunction for a violation of certain statutory requirements applicable to local government competition, and lawsuits by private entities against the state for injunctive relief under certain circumstances. Further, the bill requires local governments to apply the corporate income tax rate to any revenues in excess of costs for services. Local governments must then remit those funds to the Solid Waste Management Trust Fund. The bill does not deal directly with Class I or Class III landfills, but it may dissuade local governments from offering competing waste management facilities.

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. You have indicated that at least one other local government-run waste management facility competes with a landfill owned by the corporation.

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.

Assuming, arguendo, that the bill creates a special private gain or loss, the gain or loss would be to a corporation, not you directly. Because you would not directly realize the gain or loss, you must vote on the measure. The question then turns to whether there is a special private gain or loss that would require disclosure under the Code of Ethics and Senate Rules. In this scenario, the corporation would be considered your business associate.

On its face, Senate Bill 1192 does not deal directly with Class I or Class III landfills at all, but it regulates the applicable taxes applied to local government-provided waste management facilities. Those facilities in direct competition with private facilities must remit franchise fees and other applicable taxes imposed by their state and local jurisdictions. They must also apply the corporate income tax rate to revenues in excess of collection or disposal costs. Altering the market balance in a class of this size likely effects the competitiveness of those participating in the market. As such, it cannot be said that a special private gain to your corporation would be entirely speculative.

Accordingly, because it would appear the bill presents a special private gain to a company that would be your business associate in the manner contemplated by Florida Statutes and Senate Rules, you must vote on the matter should it come before you in a committee or in the Senate Chamber, and you must 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.