

ETHICS TRAINING



THE FLORIDA SENATE
FEBRUARY 5 & 6

The Public Trust



“A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.”

“Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions.

Florida Constitution, Art. II, s. 8

Independence, Impartiality & Public Interest



- “It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law.
- “It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. . . . Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.”

§ 112.311, Fla. Stat.

Legislative Conduct



“Every Senator shall conduct himself or herself to justify the confidence placed in him or her by the people and, by personal example and admonition to colleagues, shall maintain the integrity and responsibility of his or her office.”

Senate Rule 1.35

“A Senator shall not accept anything that will improperly influence his or her official act, decision, or vote.”

Senate Rule 1.36

Conflicts of Interest



- Defined simply and broadly:

A Conflict of Interest is any situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

§ 112.312(8), Fla. Stat.

7 “Deadly” Conflicts of Interest



1. REPRESENT OTHERS BEFORE STATE AGENCIES

“No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals.”

Florida Constitution, Article II, § 8(e); *see also* § 112.313(9)(a)3, Fla. Stat.

7 “Deadly” Conflicts of Interest



2. SOLICITATION OR ACCEPTANCE GIFTS, SERVICES, OR FAVORS RESULTING IN UNDUE INFLUENCE

“No public officer . . . shall solicit or accept anything of value . . ., including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.”

§ 112.313(2), Fla. Stat.; *see also* Senate Rule 1.36

7 “Deadly” Conflicts of Interest



3. CONTRACT WITH ONE’S OWN AGENCY

You, your spouse, your child, or any entity in which you, your spouse or child are an officer, partner, director, or proprietor or any entity in which any of the above hold a material interest may not contract with the Legislature;
HOWEVER,
there are exceptions.

§ 112.313(3), Fla. Stat.; *see also* Senate Rule 1.37

7 “Deadly” Conflicts of Interest



4. UNAUTHORIZED COMPENSATION INTENDED TO INFLUENCE OFFICIAL ACTION

You, your spouse, or your *minor* child may not accept any compensation, payment, or thing of value where you know or should know that it is given to influence your official actions.

§ 112.313(4), Fla. Stat.; *see also* Senate Rule 1.36

7 “Deadly” Conflicts of Interest



5. MISUSE OF PUBLIC POSITION

“No public officer . . . shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.”

§ 112.313(6), Fla. Stat.; *see also* Senate Rule 1.38

7 “Deadly” Conflicts of Interest



6. MAINTAIN AN EMPLOYMENT OR CONTRACTUAL RELATIONSHIP WITH AN ENTITY WHICH IS THE SUBJECT TO THE REGULATION OF THE LEGISLATURE AND WHICH CREATES A CONTINUING OR FREQUENTLY OCCURRING CONFLICT.

Two Masters Principle: intended to prevent situations in which private economic considerations may override the faithful discharge of public responsibilities. *See Zerweck v. Commission on Ethics*, 409 So. 2d 57 (Fla. 4th DCA 1982)

§ 112.313(7), Fla. Stat.; *see also* Senate Rule 1.37

7 “Deadly” Conflicts of Interest



7. DISCLOSURE OR MISUSE OF CERTAIN INFORMATION

“A current or former public officer . . . may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.”

§ 112.313(8), Fla. Stat.; *see also* Senate Rule 1.38

Voting & Disclosure Obligations



- No member is prohibited by law from voting in an official capacity on any matter; HOWEVER,
- Senate Rule 1.39 *does* require abstention when a personal special private gain or loss is involved.
- Senate Rule 1.39 is more expansive than the requirements of § 112.3143, Fla. Stat.
- If you comply with the Senate Rule, you comply with the statute.

Voting Obligations



- “A Senator who is in the Chamber or in a committee meeting shall vote on each question . . .” unless required to abstain.

Senate Rule 1.20(2) & (3)

- Senate Rule 1.6 provides an exception for the Senate President or the temporary presiding officer.

Voting Conflicts: Abstain but Disclose



“A Senator may not vote on any matter that the Senator knows would inure to the special private gain or loss of the Senator. The Senator must disclose the nature of the interest in the matter from which the Senator is required to abstain.”

Senate Rule 1.39(1)

Voting Conflicts: Vote but Disclose



“When voting on any matter that the Senator 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 Senator is retained or employed; or
3. An immediate family member or business associate of the Senator, the Senator must disclose the nature of the interest of such person in the outcome of the vote.”

Senate Rule 1.39(2)

Voting Conflicts



- **What is a Special Private Gain or Loss?**
 - Will generally be economic in nature.
 - Needs to be a direct gain or loss.
 - Needs to be certain, not remote or speculative.
 - Will depend on the size of the class of persons impacted.
 - Need to know that the person will be impacted.

Voting Conflicts



- Disclosure of voting conflicts is required regardless of whether you abstain or cast your vote.
- To disclose a voting conflict in committee, you must:
 - File a memorandum with the committee or subcommittee administrative assistant within 15 days after the vote occurs.
- To disclose a voting conflict on the floor, you must:
 - File a memorandum with the Secretary within 15 days after the vote occurs.
- Every reasonable effort should be made to disclose the conflict prior to the vote, but no later than 15 days after the vote occurs.

Other Disclosures



- Annual reporting of gifts donated to the member by a governmental entity or direct support organization.
- Quarterly reporting of gifts received by the member from certain persons.
- Quarterly Client Disclosures: clients represented before the legislature or other state agencies by business partners or associates of the member.
- Disclosure of specified business interests.
- Form 6 Financial Disclosures

A Word About Financial Disclosure



- Annual reporting of financial interests required by July 1 of every year.
- \$25.00 fine per day (\$1,500.00 maximum) kicks in after September 1.
- When you leave the Legislature, do not forget to file a Form 6F with the Commission on Ethics.
- Keep a copy.
- Make sure you leave a contact address with the Secretary's Office in case of problems.
- Be concise, direct, and informative.

LOBBYING EXPENDITURES & GIFT LAWS



Two general rules:

- Rule 1: You cannot accept anything of value for free from a lobbyist or principal.
- Rule 2: If a donor is neither a lobbyist nor a principal you may accept the gift, provided it is not offered to influence your official actions, BUT if you accept and the donor is not a relative, roommate, or significant other, and the gift is valued at over \$100, you must report it, UNLESS, you pay down the value.

Section 11.045(4)(a) Florida Statutes



- “(4)(a) . . . [N]o lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.”

The Prohibition



- No lobbyist or principal shall make
AND
- No member or employee of Legislature shall knowingly accept:
- Any expenditure
- Directly or indirectly

How do I know who is a lobbyist or principal?



- There is a duty to inquire and discern who is giving the gift
- Check lobbyist and principal registration at “Online Sunshine” - www.leg.state.fl.us
- Just ask.

PROHIBITED GIFT OR EXPENDITURES: WHAT TO DO IF YOU GET ONE



- **Option One: Give it back!**
 - I advise returning it with a letter or email to create a paper trail.
- **Option Two: Pay for it!**
 - Make sure you pay equal or greater compensation.
- **Option Three: Contact the Sergeant's Office!**
 - They will give you a chain of custody form to document destruction.

PUBLIC RECORDS AND PUBLIC MEETINGS: GOVERNMENT IN THE SUNSHINE



- Florida Constitution, Art. 1, §. 24- providing a constitutional right to the citizens of Florida to inspect and copy public records and access to public meetings where official acts are taken or public business is transacted or discussed.
- Florida Constitution, Art. 3, §. 4(e)- requiring the Legislature to provide access, and in some circumstances, notice to meetings involving legislators.
- § 11.0431, Fla. Stat. – Legislative public records statute.
- Senate Rules 1.44 & 1.46 (Open Meetings), 1.45 & 2.6 (Meeting Notices), and 1.48 (Legislative Records).

The Policy and the Directive

§ 11.0431(1), Fla. Stat.



- “It is the policy of the Legislature that every person has the right to inspect and copy records of the Legislature received in connection with the official business of the Legislature and intended to perpetuate, communicate, or formalize knowledge.”
- “To that end, public records shall be open to personal inspection and copying at reasonable times except when specific public necessity justifies that public records be exempt from such inspection and copying.”

What is a Legislative Public Record?

§ 11.0431(4), Fla. Stat.



- All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.
- Public Records are not just those records kept on state equipment, but include **ALL** records, even if kept on private devices, that pertain to legislative business.
- It is not the form or the location of the public record that makes it a public record, it is the content.

What is a Legislative Public Record?

§ 11.0431(4), Fla. Stat.



- **Example of public records:**
 - Materials from an agency employee related to a bill sent to your Senate email account.
 - Text from a lobbyist on your private phone related to a legislative issue.
- **Examples of non-public records:**
 - Email sent to your Senate email account from a friend about a new restaurant to try.

Exempt and Confidential Records

§ 11.0431(2), Fla. Stat.



- All records that are exempt or confidential in the hands of any other unit of government are exempt or confidential here - § 11.0431(2)(a), Fla. Stat.
- Formal complaints against members, officers, or lobbyists (for a time) - § 11.0431(2)(b), Fla. Stat.
- Legislatively produced bill drafts and requests for bill drafts (for a time) - § 11.0431(2)(c), Fla. Stat.
- Legislatively produced drafts of a bill analysis or fiscal note (for a time) - § 11.0431(2)(d), Fla. Stat.
- Legislatively produced reapportionment or redistricting plan and request for such plan, including supporting documents (for a time) - § 11.0431(2)(e), Fla. Stat.

Exempt and Confidential Records

§ 11.0431(2), Fla. Stat.



- Records prepared for or used in executive sessions of the Senate (for a time) - § 11.0431(2)(f), Fla. Stat
- Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of witnesses or subjects; however, this does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry - § 11.0431(2)(g), Fla. Stat.
- Requests by members for an advisory opinion relating to ethics rules; however, the opinions are open to the public with the member's identifying information redacted - § 11.0431(2)(h), Fla. Stat.
- Portions of correspondence that would reveal:
 - Information exempt by law.
 - Individual's medical treatment, history or condition.
 - The identity or location of an individual if there is a likelihood that the release would jeopardize that individual.
 - Information regarding physical abuse, child abuse, spouse abuse, or elderly abuse.

Public Records: Who should keep, what to keep and how long?



- Records of vital, permanent, or archival value must be maintained. These records should be archived according to the normal schedule.
- Records without sufficient administrative, legal, or fiscal significance to warrant their retention shall be disposed of systematically.
- How long do you keep records that are not of vital, permanent or archival value? As long as you have need to communicate, perpetuate or formalize the knowledge.

Open & Noticed Meeting Requirements



- WHEN NOTICE & OPEN IS REQUIRED: All legislative committee and subcommittee meetings of each house, and joint conference committee meetings where legislation is being considered shall be open and noticed to the public.

Fla. Const. Art III, § 4(e) and Senate Rule 1.46

Open Meeting Requirements

Art. 3, s. 4(e) and Senate Rule 1.44 & 1.46



- Meetings must be open if legislative business will be discussed and the meeting includes:
 - the President of the Senate with the Governor or the Speaker of the House of Representatives; or
 - Any combination of three or more members, except for committee meetings closed by the President when dealing with matters of security, espionage, sabotage, attack, and other acts of terrorism.

Open Meeting Recommendations



- Senators are required to provide reasonable access to a member of the public if that person has requested admission.
- If it is required to be an open meeting . . .
 - The meeting should not be in areas inaccessible to the public.
 - The meeting should not be at any location that a participating Senator knows prohibits admission on the basis of race, religion, gender, national origin, physical disability, or similar classification.
 - Where space is limited, at least one representative of the print, radio and TV media should be included, if they have requested admission.

Meeting Notice Requirements

Senate Rule 1.45



- Where legislative business will be discussed, notice of the following meetings must be filed with the Secretary:
 - Meetings of the President (or a Senator designated to represent the President) with the Governor or with the Speaker (or a Representative designated to represent the Speaker);
 - Meetings of a majority of the Senators who constitute the membership of any Senate committee or subcommittee; and
 - Meetings called by the President or the President's designee of a majority of the chairs of the Senate's standing committees.

Open Meeting Requirements



- “Legislative business” is defined as issues pending before, or upon which foreseeable action is reasonably expected to be taken by, the Senate, a Senate committee, or Senate subcommittee.

Where to go for help



Office of the General Counsel
(850) 487-5237

George Levesque- General Counsel
Michael Maida - Attorney
Velma Carter – Administrative Assistant