

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

ETHICS AND ELECTIONS
Senator Latvala, Chair
Senator Sobel, Vice Chair

MEETING DATE: Tuesday, January 15, 2013

TIME: 9:00 a.m.—12:00 noon

PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Latvala, Chair; Senator Sobel, Vice Chair; Senators Benacquisto, Braynon, Clemens, Diaz de la Portilla, Flores, Gardiner, Joyner, Lee, Legg, Soto, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Presentation of Legislative Priorities		Presented
	Florida Commission on Ethics Commissioner Matt Carlucci		
	Workshop on Ethics Reform		Discussed
	Other Related Meeting Documents		

Susan Horovitz Maurer

Chair

Morgan R. Bentley

Vice Chair

Matthew F. Carlucci

I. Martin Ford

Jean M. Larsen

Linda McKee Robison

Edwin Scales, III

Robert J. Sniffen

Stanley M. Weston



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"A Public Office is a Public Trust"

MEMORANDUM

TO: All Interested Persons

FROM: Virlindia Doss, Executive Director, Florida Commission on Ethics

SUBJECT: Draft of Proposed Legislation for 2013

DATE: October 29, 2012

For 2013, the Ethics Commission has recommended the Legislature make a number of changes to the Code of Ethics. This is a summary of those suggested changes and language to implement the proposals, to the extent Commission staff has developed such language.

Recovery of Fines

The problem of officials who fail to pay the automatic fines they receive for failing to make financial disclosure is well-documented. Last year, the Commission proposed amending the law to allow it to record its final orders in these matters as liens on the debtor's real property. This year, the Commission proposes expanding on that to include placing liens on personal property, and for the Department of Financial Services to assign the delinquent claims to a collections attorney, rather than a collections agency, as is currently the case.

Recovery of Fines Draft Language

Section 1. Subsection (8) is added to section 55.10, Florida Statutes, to read:

55.10 Judgments, orders, and decrees; lien of all, generally; extension of liens; transfer of liens to other security.—

(8) For purposes of this section and s. 55.202, a final order issued by the Commission on Ethics for any fine

automatically imposed pursuant to s. 112.3144(5)(e) or s. 112.3145(6)(f) shall be treated in the same manner as a judgment, order, or decree issued by a court.

Section 2. Section 55.202, Florida Statutes, is amended to read:

55.202 Judgments, orders, and decrees; lien on personal property.—

(1) A judgment lien securing the unpaid amount of any money judgment may be acquired by the holder of a judgment that is:

(a) Enforceable in this state under its laws or the laws of the United States;

(b) Entered by an issuing tribunal with respect to a support order being enforced in this state pursuant to chapter 88; or

(c) Enforceable by operation of law pursuant to s. 61.14(6).

(2) A judgment lien securing the unpaid amount of any fine described in s. 55.10(8) which is due to the Commission on Ethics may be acquired by the commission.

(3)-(2) A judgment lien may be acquired on a judgment debtor's interest in all personal property in this state subject to execution under s. 56.061, other than fixtures, money, negotiable instruments, and mortgages.

(a) A judgment lien is acquired by filing a judgment lien certificate in accordance with s. 55.203 with the Department of State after the judgment has become final and if the time to move for rehearing has lapsed, no motion for rehearing is pending, and no stay of the judgment or its enforcement is then in effect. A court may authorize, for cause shown, the filing of a judgment lien certificate before a judgment has become final when the court has authorized the issuance of a writ of execution in the same matter. A judgment lien certificate not filed in compliance with this subsection is permanently void and of no effect.

(b) For any lien, warrant, assessment, or judgment collected by the Department of Revenue, a judgment lien may be acquired by filing the judgment lien certificate information or warrant with the Department of State in accordance with subsection (6) (5).

(c) For the unpaid amount of any fine described in s. 55.10(8) which is due to the Commission on Ethics, a judgment lien may be acquired by filing a copy of the commission's final order with the Department of State.

(d)-(e) Except as provided in s. 55.208, the effective date of a judgment lien is the date, including the time of day, of

filling the judgment lien certificate or copy of the final order of the Commission on Ethics. Although no lien attaches to property, and a creditor does not become a lien creditor as to liens under chapter 679, until the debtor acquires an interest in the property, priority among competing judgment liens is determined in order of filing date and time.

(e) ~~(d)~~ Except as provided in s. 55.204(3), a judgment creditor may file only one effective judgment lien certificate based upon a particular judgment.

(4) ~~(3)~~ Except as otherwise provided in s. 55.208, the priority of a judgment lien acquired in accordance with this section or s. 55.204(3) is established at the date and time that the judgment lien certificate or final order of the Commission on Ethics is filed.

(5) ~~(4)~~ As used in ss. 55.201-55.209, the terms "holder of a judgment" and "judgment creditor" include the Department of Revenue with respect to a judgment being enforced by the Department of Revenue as the state IV-D agency.

(6) ~~(5)~~ Liens, assessments, warrants, or judgments filed pursuant to paragraph ~~(3) (b)~~ ~~(2)(b)~~ may be filed directly into the central database by the Department of Revenue, or its designee as determined by its executive director, through electronic or information data exchange programs approved by the Department of State. Such filings must contain the information set forth in s. 55.203(1).

Section 3. Subsection (1) of section 55.209, Florida Statutes, is amended to read:

55.209 Department of State; processing fees, responsibilities.—

(1) Except for liens, assessments, warrants, or judgments filed electronically as provided in s. 55.202(3) (b) ~~55.202(2)(b)~~, the Department of State shall collect the following nonrefundable processing fees for all documents filed in accordance with ss. 55.201-55.209:

(a) For any judgment lien certificate or other documents permitted to be filed, \$20.

(b) For the certification of any filed document, \$10.

(c) For copies of judgment lien documents which are produced by the Department of State, \$1 per page or part thereof. However, no charge may be collected for copies provided in an online electronic format via the Internet.

(d) For indexing a judgment lien by multiple judgment debtor names, \$5 per additional name.

(e) For each additional facing page attached to a judgment lien certificate or document permitted to be filed, \$5.

Section 4. Paragraph (h) of subsection (5) of section 112.3144, Florida Statutes, is amended to read:

112.3144 Full and public disclosure of financial interests.—

(5) Forms for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be created by the Commission on Ethics. The commission shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(h) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be assigned submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such fine to a collection attorney, who shall reduce the claim to a judgment agent as provided in s. 17.20.

Section 5. Paragraph (i) of subsection (6) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(6) Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(i) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be assigned submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such a fine to a collection attorney who shall reduce the claim to a judgment agent as provided in s. 17.20.

Investigations

Give the Commission limited authority to investigate situations without having to receive a complaint, and allow the Commission to investigate a situation when referred by the Governor, the Chief Financial Officer, a State Attorney, or FDLE. This authority could be limited, for

example, by allowing it to investigate a situation only if it has received reliable and publicly disseminated information indicating a violation of the ethics laws and only when an extraordinary majority of the Commission agree to investigate.

Investigative Authority Draft Language (Note that Sunshine and Public Record Law exemptions may require a separate bill):

112.324 Procedures on complaints of violations.—

(1) ~~Upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person, the~~ commission shall investigate any alleged violation of this part or any other alleged breach of the public trust within the jurisdiction of the commission as provided in s. 8(f), Art. II of the State Constitution, in accordance with procedures set forth herein:

(a) Upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person;

(b) Upon receipt of reliable and publicly disseminated information which seven members of the commission deem sufficient to indicate a breach of the public trust, provided that commission staff shall undertake no formal investigation other than collecting publicly disseminated information prior to a determination of sufficiency by the commission; or

(c) Upon receipt of a written referral of a possible violation of this part or other possible breach of the public trust from the Governor, the Chief Financial Officer, a State Attorney, or the Executive Director of the Department of Law Enforcement, which seven members of the commission deem sufficient to indicate a breach of the public trust.

Within 5 days after receipt of a complaint by the commission or after determination by the commission that the information or referral received is deemed sufficient, a copy shall be transmitted to the alleged violator.

(2) (a) The complaint and records relating to the complaint or to any preliminary investigation or the commission's determination regarding the information or the referral, as provided herein, held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Any proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint, information or referral as provided herein, or preliminary investigation, is exempt from the

provisions of s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(c) The exemptions in paragraphs (a) and (b) apply until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records and proceedings be made public, until the commission determines that it will not investigate the complaint or referral, or until the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred. The confidentiality requirements of this section shall not prohibit the commission or its staff from sharing investigative information with criminal investigative agencies. In no event shall a complaint under this part against a candidate in any general, special, or primary election be filed or any intention of filing such a complaint be disclosed on the day of any such election or within the 5 days immediately preceding the date of the election.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) A preliminary investigation shall be undertaken by the commission of each legally sufficient complaint, information, or referral over which the commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission finds no probable cause to believe that this part has been violated or that any other breach of the public trust has been committed, the commission shall dismiss the complaint or proceeding with the issuance of a public report to the complainant and the alleged violator, stating with particularity its reasons for dismissal ~~of the complaint~~. At that time, the complaint, the proceeding, and all materials relating to the complaint and proceeding shall become a matter of public record. If the commission finds from the preliminary investigation probable cause to believe that this part has been violated or that any other breach of the public trust has been committed, it shall so notify the complainant and the alleged violator in writing. Such notification and all documents made or received in the disposition of the complaint or proceeding shall then become public records. Upon request submitted to the commission in writing, any person who the commission finds probable cause to believe has violated any provision of this part or has committed any other breach of the public trust shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the probable cause notification required by this subsection. However, the commission may on its own motion, require a public hearing, may conduct such further investigation as it deems necessary, and may enter into such

stipulations and settlements as it finds to be just and in the best interest of the State. The commission is without jurisdiction to, and no respondent may voluntarily or involuntarily, enter into a stipulation or settlement which imposes any penalty, including, but not limited to, a sanction or admonition or any other penalty contained in s. 112.317. Penalties shall be imposed only by the appropriate disciplinary authority as designated in this section.

(4) If, in cases pertaining to members of the Legislature, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution, the commission shall forward a copy of the complaint, information, or referral and its findings by certified mail to the President of the Senate or the Speaker of the House of Representatives, whichever is applicable, who shall refer the matter ~~complaint~~ to the appropriate committee for investigation and action which shall be governed by the rules of its respective house. It shall be the duty of the committee to report its final action upon the matter ~~complaint~~ to the commission within 90 days of the date of transmittal to the respective house. Upon request of the committee, the commission shall submit a recommendation as to what penalty, if any, should be imposed. In the case of a member of the Legislature, the house in which the member serves shall have the power to invoke the penalty provisions of this part.

(5) If, in cases pertaining to complaints against impeachable officers, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution, and the commission finds that the violation may constitute grounds for impeachment, the commission shall forward a copy of the complaint, information, or referral and its findings by certified mail to the Speaker of the House of Representatives, who shall refer the matter ~~complaint~~ to the appropriate committee for investigation and action which shall be governed by the rules of the House of Representatives. It shall be the duty of the committee to report its final action upon the matter ~~complaint~~ to the commission within 90 days of the date of transmittal.

(6) If the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution by an impeachable officer other than the Governor, and the commission recommends public censure and reprimand, forfeiture of a portion of the officer's salary, a civil penalty, or restitution, the commission shall report its findings and recommendation of disciplinary action to the Governor, who shall have the power to invoke the penalty provisions of this part.

(7) If the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution by the Governor, and the commission recommends public censure and reprimand, forfeiture of a portion of the

Governor's salary, a civil penalty, or restitution, the commission shall report its findings and recommendation of disciplinary action to the Attorney General, who shall have the power to invoke the penalty provisions of this part.

(8) If, in cases ~~pertaining to complaints~~ other than complaints against impeachable officers or members of the Legislature, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part or of s. 8, Art. II of the State Constitution, it shall be the duty of the commission to report its findings and recommend appropriate action to the proper disciplinary official or body as follows, and such official or body shall have the power to invoke the penalty provisions of this part, including the power to order the appropriate elections official to remove a candidate from the ballot for a violation of s. 112.3145 or s. 8(a) and (i), Art. II of the State Constitution:

(a) The President of the Senate and the Speaker of the House of Representatives, jointly, in any case concerning the Public Counsel, members of the Public Service Commission, members of the Public Service Commission Nominating Council, the Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, or members of the Legislative Committee on Intergovernmental Relations.

(b) The Supreme Court, in any case concerning an employee of the judicial branch.

(c) The President of the Senate, in any case concerning an employee of the Senate; the Speaker of the House of Representatives, in any case concerning an employee of the House of Representatives; or the President and the Speaker, jointly, in any case concerning an employee of a committee of the Legislature whose members are appointed solely by the President and the Speaker or in any case concerning an employee of the Public Counsel, Public Service Commission, Auditor General, Office of Program Policy Analysis and Government Accountability, or Legislative Committee on Intergovernmental Relations.

(d) Except as otherwise provided by this part, the Governor, in the case of any other public officer, public employee, former public officer or public employee, candidate or former candidate, or person who is not a public officer or employee, other than lobbyists and lobbying firms under s. 112.3215 for violations of s. 112.3215.

(e) The President of the Senate or the Speaker of the House of Representatives, whichever is applicable, in any case concerning a former member of the Legislature who has violated a provision applicable to former members or whose violation occurred while a member of the Legislature.

(9) In addition to reporting its findings to the proper disciplinary body or official, the commission shall report these findings to the state attorney or any other appropriate official or agency having authority to initiate prosecution when violation of criminal law is indicated.

(10) Notwithstanding the foregoing procedures of this section, a sworn complaint against any member or employee of the Commission on Ethics for violation of this part or of s. 8, Art. II of the State Constitution shall be filed with the President of the Senate and the Speaker of the House of Representatives. Each presiding officer shall, after determining that there are sufficient grounds for review, appoint three members of their respective bodies to a special joint committee who shall investigate the complaint. The members shall elect a chair from among their number. If the special joint committee finds insufficient evidence to establish probable cause to believe a violation of this part or of s. 8, Art. II of the State Constitution has occurred, it shall dismiss the complaint. If, upon completion of its preliminary investigation, the committee finds sufficient evidence to establish probable cause to believe a violation has occurred, the chair thereof shall transmit such findings to the Governor who shall convene a meeting of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court to take such final action on the complaint as they shall deem appropriate, consistent with the penalty provisions of this part. Upon request of a majority of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, the special joint committee shall submit a recommendation as to what penalty, if any, should be imposed.

(11) Notwithstanding the provisions of subsections (1)-(8), the commission may, at its discretion, dismiss any complaint, information, or referral at any stage of disposition should it determine that the public interest would not be served by proceeding further, in which case the commission shall issue a public report stating with particularity its reasons for the dismissal

Increase Penalties and Change Standard for Awarding Attorney's Fees against Complainants

If the consensus is that the ethics laws lack "teeth," then one approach would be to increase the range of penalties that could be assessed, and the Commission recommends increasing the maximum civil penalty from \$10,000 to \$25,000. As a way in which to address the perceived "chilling effect" on potential Complainants, created by the 1st District Court of Appeal's decision in Brown v. State, Comm'n on Ethics, 969 So. 2d 553 (Fla. 1st DCA 2007), the Commission recommends legislatively clarifying that the standard is as it had previously been construed by the Commission—that Complainants are held to the same standard applicable to media publications regarding public figures.

Increase Penalties and Change Attorney's Fee Standard Draft Language:

112.317 Penalties.—

(1) Violation of any provision of this part, including, but not limited to, any failure to file any disclosures required by this part or violation of any standard of conduct imposed by this part, or violation of any provision of s. 8, Art. II of the State Constitution, in addition to any criminal penalty or other civil penalty involved, shall, under applicable constitutional and statutory procedures, constitute grounds for, and may be punished by, one or more of the following:

(a) In the case of a public officer:

1. Impeachment.
2. Removal from office.
3. Suspension from office.
4. Public censure and reprimand.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed \$10,000 \$25,000.

7. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of which the public officer was a member or to the General Revenue Fund.

(b) In the case of an employee or a person designated as a public officer by this part who otherwise would be deemed to be an employee:

1. Dismissal from employment.
2. Suspension from employment for not more than 90 days without pay.
3. Demotion.
4. Reduction in salary level.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed \$10,000 \$25,000.

7. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency by which the public employee was employed, or of which the officer was deemed to be an employee, or to the General Revenue Fund.

8. Public censure and reprimand.

(c) In the case of a candidate who violates the provisions of this part or s. 8(a) and (i), Art. II of the State Constitution:

1. Disqualification from being on the ballot.

2. Public censure.

3. Reprimand.

4. A civil penalty not to exceed \$10,000 \$25,000.

(d) In the case of a former public officer or employee who has violated a provision applicable to former officers or employees or whose violation occurred before the officer's or employee's leaving public office or employment:

1. Public censure and reprimand.

2. A civil penalty not to exceed \$10,000 \$25,000.

3. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the

restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund.

(e) In the case of a person who is subject to the standards of this part, other than a lobbyist or lobbying firm under s. 112.3215 for a violation of s. 112.3215, but who is not a public officer or employee:

1. Public censure and reprimand.

2. A civil penalty not to exceed \$10,000 \$25,000.

3. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of the person or to the General Revenue Fund.

(2) In any case in which the commission finds a violation of this part or of s. 8, Art. II of the State Constitution and the proper disciplinary official or body under s. 112.324 imposes a civil penalty or restitution penalty, the Attorney General shall bring a civil action to recover such penalty. No defense may be raised in the civil action to enforce the civil penalty or order of restitution that could have been raised by judicial review of the administrative findings and recommendations of the commission by certiorari to the district court of appeal. The Attorney General shall collect any costs, attorney's fees, expert witness fees, or other costs of collection incurred in bringing the action.

(3) The penalties prescribed in this part shall not be construed to limit or to conflict with:

(a) The power of either house of the Legislature to discipline its own members or impeach a public officer.

(b) The power of agencies to discipline officers or employees.

(4) Any violation of this part or of s. 8, Art. II of the State Constitution by a public officer shall constitute malfeasance, misfeasance, or neglect of duty in office within the meaning of s. 7, Art. IV of the State Constitution.

(5) By order of the Governor, upon recommendation of the commission, any elected municipal officer who violates any provision of this part or of s. 8, Art. II of the State Constitution may be suspended from office and the office filled by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the Governor. The Senate may, in proceedings prescribed by law, remove from office, or reinstate, the suspended official, and for such purpose the Senate may be convened in special session by its President or by a majority of its membership.

(6) In any case in which the commission finds probable cause to believe that a complainant has committed perjury in regard to any document filed with, or any testimony given before, the commission, it shall refer such evidence to the appropriate law enforcement agency for prosecution and taxation of costs.

(7) In any case in which the commission determines that a person has filed a complaint against a public officer or employee with actual malice a malicious intent to injure the reputation of

~~such officer or employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this part, the complainant shall be liable for costs plus reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.~~

Change the Burden of Proving a Violation from "Clear and Convincing Evidence" to a "Preponderance of the Evidence"

Another way to make the ethics laws more enforceable would be to change the burden of proving a violation from "clear and convincing evidence" to a "preponderance of the evidence." The preponderance standard was used by the Commission from 1974 until the 1st District Court of Appeal ruled in Latham v. Florida Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997) that it should be the "clear and convincing" standard.

Blind Trusts

The ethics laws of many states, as well as the U.S. government, allow a public official to place private financial interests that may pose a conflict of interest with public duties into a "blind trust." This kind of trust is intended to remove temptation from the official and reduce even the appearance that public decisions are based on the official's private interests, by limiting the official's ability to control investments that may involve conflicting interests and limiting the official's ability to even know how his interests may be affected by public policy decisions.

The Ethics Commission recommends covering the Governor, Lieutenant Governor, and each Cabinet member, although the law easily could be amended to include other public officers and employees. The recommendations provide that if the requirements of establishing and maintaining the trust are followed, the public official's economic interests in the trust will not give rise to either a prohibited conflict of interest or a voting conflict of interest, under the Code of Ethics, thereby protecting the official from unwarranted accusations. The proposal would require disclosure of the assets being placed in the trust, and if the trust is revoked, of the assets remaining. It would prohibit the official from exercising any control over the trust, except for general directions regarding investment goals, requests for distributions, and directions for dealing with assets which might pose a conflict of interest, and would prohibit the official from learning about the trust's investments, except to the limited extent necessary for personal tax returns. The recommendations describe how interests in a blind trust would be reported on the

official's financial disclosure statements, limit who can serve as a trustee, prohibit the trustee from investing trust assets in businesses which the trustee knows are regulated by or doing significant business with the official's public agency, and provide for full disclosure if the blind trust is terminated. Finally, they would require that the blind trust must be approved by the Ethics Commission.

Blind Trust Draft Language:

112.3142 Qualified Blind Trusts.—

(1) LEGISLATIVE INTENT.—The Legislature finds that where a trust is created by a public official and the official does not know the identity of the financial interests held by the trust and does not control the interests held by the trust, then his or her official actions would not be influenced or appear to be influenced by private considerations. Thus, the public policy goal to be achieved through reliance on a blind trust is an actual "blindness," or lack of knowledge or control by the official with respect to the interests held in trust.

(2) As used in this section, the term:

(a) "Cabinet" member has the same meaning as in s. 20.03.
(b) "Commission" means the Commission on Ethics.
(c) "Covered public official" means the Governor, the Lieutenant Governor, and each member of the Cabinet.

(3) Where a covered public official holds an economic interest in a qualified blind trust, as defined herein, he or she does not have a conflict of interest prohibited under subsection 112.313(3) or 112.313(7) or a voting conflict of interest under s. 112.3143, with regard to matters pertaining to that economic interest.

(4) Except as otherwise provided in this section, the covered public official may not attempt to influence or exercise any control over decisions regarding the management of assets in a qualified blind trust. The covered public official and each person having a beneficial interest in the qualified blind trust shall not make any effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto, except as otherwise provided in this section.

(5) Except for communications which consist solely of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication with respect to the trust between the covered public official or any person having a beneficial interest in the qualified blind trust and the trustee, unless such communication is in writing and unless it relates only:

(a) To a request for a distribution from the trust which does not specify whether the distribution shall be made in cash or in kind;

(b) To the general financial interests and needs of the covered public official or interested person (including but not

limited to, an interest in maximizing income or long-term capital gain);

(c) To the notification of the trustee of a law or regulation subsequently applicable to the covered public official which prohibits the covered official from holding an asset and which notification directs that the asset not be held by the trust; or

(d) To directions to the trustee to sell all of an asset initially placed in the trust by the covered public official which in the determination of the covered public official creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the public official.

(6) The covered public official shall report as an asset on his or her financial disclosure forms the beneficial interest in the blind trust, and its value if value is required to be disclosed. The covered public official shall report the blind trust as a primary source of income on his or her financial disclosure forms, and its amount if the amount of income is required to be disclosed. The covered public official shall not be required to report as a secondary source of income any source of income to the blind trust.

(7) In order to constitute a qualified blind trust, the trust must be established by the covered public official and meet the following requirements:

(a) The person or entity appointed as a trustee must not be:

1. The covered public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin, or the spouse of any such person;

2. A person who is an elected or appointed public officer or a public employee; or

3. A person who has been appointed to serve in an agency by the covered public official, or by a public officer or public employee supervised by the covered public official.

(b) The trust agreement which establishes the trust must:

1. Contain a clear statement of its purpose, namely, to remove from the grantor control and knowledge of investment of trust assets so that conflicts between the grantor's responsibilities as a public official and his or her private interests will be eliminated;

2. Give the trustee complete discretion to manage the trust, including but not limited to, the power to dispose of and acquire trust assets without consulting or notifying the covered public official or any person having a beneficial interest in the trust;

3. Prohibit communication between the trustee and the covered public official and any person having a beneficial interest in the trust concerning the holdings or sources of income of the trust, except amounts of cash value or net income or loss, provided that such report may not identify any asset or holding, and except as provided in this section.

4. Provide that the trust tax return is to be prepared by the trustee or his or her designee, and that any information relating thereto is not to be disclosed to the covered public official or to any other beneficiary except as provided in this section;

5. Permit the trustee to notify the covered public official of the date of disposition and value at disposition of any original investment or interests in real property to the extent required by federal tax law, so that information can be reported on the covered public official's applicable tax returns.

6. Prohibit the trustee from disclosing to the covered public official and any person having a beneficial interest in the trust any information concerning replacement assets to the trust, except for the minimum tax information that lists only the totals of taxable items from the trust and does not describe the source of individual items of income.

7. Provide that the trustee shall not invest trust assets in business entities which he or she knows are regulated by or do a significant amount of business with the covered public official's public agency.

8. Provide that the trust is not effective until it is approved by the commission.

(c) The obligations of the trustee and the official under the trust agreement must be observed by them.

(d) The trust shall contain only readily marketable assets.

(e) The trust must be approved by the commission as meeting the requirements of this section.

(8) A copy of the trust agreement must be filed with the commission no later than five business days after the agreement is executed and must include:

a. A listing of the assets placed in the trust;

b. A statement detailing the date the agreement was executed;

c. The name and address of the trustee; and

d. A separate statement signed by the trustee, under penalty of perjury, certifying that he or she will not reveal any information to the covered public official or any person having a beneficial interest in the qualified blind trust, except for information that is authorized under this section, and that, to the best of the trustee's knowledge, the submitted blind trust agreement complies with this section.

(9) If the trust is revoked while the covered public official is a public officer, or if the covered public official learns of any replacement assets that have been added to the trust, the covered public official must file an amendment to his or her most recent financial disclosure statement. The amendment must be filed no later than 60 days after the date of revocation or the addition of the replacement assets. The covered public official must disclose the previously unreported pro rata share of the trust's interests in investments or income deriving from any such investments. For purposes of this section, any replaced asset of which the covered public official learns shall thereafter be treated as though the asset were an original asset of the trust.

Voting Conflicts Law

There have been several publicized situations involving local officials participating in discussions and attempting to influence agency decisions even though they had a voting conflict that precluded them from voting on the matter. One of these officials was convicted of criminal activity arising out of this conduct. The Commission proposes the law regarding voting conflicts be changed to prohibit local officials from making any attempt to influence a decision in which they have a conflict.

In the past, the Commission reviewed a situation where the official voted on a matter that benefited the corporate "sibling" of his employer. It suggests specifically adding corporate siblings to the list of entities which would trigger a voting conflict.

The Commission also recommends that the voting conflict standard for appointed State officials (as opposed to elected State officials) should be changed to mirror the standard for local officials. This means that appointed State officials would be required to abstain from voting on matters where they have a conflict of interest, whereas now they are not prohibited from voting, and would be prohibited from making any attempt to influence a decision in which they have a conflict.

Voting Conflicts Law Draft Language:

112.3143 Voting conflicts.—

(1) As used in this section:

(a) "Principal by whom retained" means an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or master, or the parent, subsidiary, or sibling organization of one's client, employer, or master.

(b) "Public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(c) "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(2) A ~~No~~ state public officer holding an elective office is not prohibited from voting in ~~an~~ that official capacity on any matter. However, ~~any~~ state public officer when voting in an official capacity upon any measure that ~~which~~ would inure to the officer's special private gain or loss; that ~~which~~ he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained ~~or to the parent organization or subsidiary of a corporate principal by which the~~

~~officer is retained; or that which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer, the officer shall, within 15 days after the vote occurs, disclose the nature of all of his or her interests in the matter, and disclose the nature of all of the interests of his or her principals, relatives, or business associates which are known to him or her, his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.~~

(3) (a) ~~A state public officer holding an appointive position, and a No county, municipal, or other local public officer may not shall vote in an official capacity upon any measure that which would inure to his or her special private gain or loss; that which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or that which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, before prior to the vote is being taken, publicly state to the assembly the nature of all of the officer's interests interest, and all of the interests of his or her principals, relatives, or business associates which are known to him or her, in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of all of his or her interests in the matter, and disclose the nature of all of the interests of his or her principals, relatives, or business associates which are known to him or her, his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.~~

(b) ~~However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one acre, one vote basis, is not prohibited from voting, when voting in said capacity.~~

(4) ~~A state public officer holding an appointive position, and a county, municipal or other local public officer may not No appointed public officer shall participate in any matter that which would inure to the officer's special private gain or loss; that which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or that which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.~~

(5) ~~However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district~~

elected on a one-acre, one-vote basis, is not prohibited from voting in that capacity, but must make the disclosures provided for in section (3). In addition, such officer may not participate in such a measure, without first disclosing the nature of his or her interest and those of his or her principal, relative, or business associate in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(6)-(e) For purposes of this section subsection, the term "participate" means any attempt to influence the decision by oral or written communication to any officer, employee, or member of the agency, whether made by the officer or at the officer's direction.

(7)-(5) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by the said officer.

Prohibit Staff Members from Acting on Behalf of an Official Who Has a Conflict

The Commission believes that there is a problem under the current law that may allow a public official who has a conflict in a matter, but who cannot personally participate in the matter, to use staff members to influence the outcome of that matter. The Commission recommends that this should be prohibited by amending Section 112.3143, Florida Statutes, which is known as the voting conflict law.

Staff Members Draft Language:

112.3143 Voting conflicts.—

(4) (c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication to any officer, employee, or member of the agency, whether made by the officer or at the officer's direction.

(5) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by the said officer.

(6) No public officer, employee of an agency, or local government attorney, knowing that a public officer has a voting conflict of interest as provided under this section, shall aid or assist that public officer to influence the decision in such a way as to benefit the officer, or his or her principal, relative, or business associate.

Appearance of Impropriety Standard

Despite the specific, good standards that have been enacted by the Legislature, the Commission is concerned that too many members of the public believe that public officials act more out of consideration of personal gain than for the public welfare. In part, this is because of a number of situations where public officials may not have violated an existing standard, but the public believes that there has been, at least, the appearance of impropriety. The Commission is wary of enacting a standard that is too vague to be applied fairly, but notes that there currently are a number of ethical standards that apply to lawyers, judges, and even members of the Public Service Commission that address actions that give the appearance of impropriety.

Attempting to address the problem of appearance of impropriety with more specificity, the Commission suggests that it is possible to create an ethical standard that prohibits knowingly acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the official's favor in the performance of official duties, or that the official is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

Appearance of Impropriety Draft Language:

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(18) No public officer or employee of an agency shall knowingly, or with reason to know, act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such

officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

Financial Disclosure

The Commission has received several inquiries about why certain State and local government officers / employees are not required to file financial disclosure. Also, many filers do not specify the method of valuing financial interests (filers have the choice of picking either percentage thresholds or dollar thresholds). Therefore, the Commission recommends that the financial disclosure law cover board members of local community redevelopment agencies and local government finance directors, and mandate specifying which disclosure thresholds are being used.

Also, all candidates for state and county offices now qualify before the July 1st deadline for financial disclosure. Previously, they qualified a week or two after July 1st, and so the law allows a candidate who also is an incumbent to file a copy of the financial disclosure form that had already been filed (with the Commission or with the Supervisor of Elections) as part of the qualifying papers. Candidates who have filed their disclosure forms when qualifying ought to be allowed to file a copy of that form as their annual financial disclosure filing.

In opinion CEO 08-09 the Commission concluded that Assistant Regional Counsel / Criminal Conflict were not required to file financial disclosure, even though they are similar to the assistant public defenders who are required to file now. There is no reason why they should not be treated the same as the public defenders and assistant public defenders.

Pursuant to Section 348.003, F.S., members of expressway authorities and transportation authorities, created pursuant to general law are required to file full disclosure, rather than limited disclosure under Section 112.3145, F.S. Therefore, Section 112.3145 should be amended to delete references to these bodies.

Financial Disclosure Draft Language:

112.3144 Full and public disclosure of financial interests.—

(2) A person who is required, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of financial interests and who has filed a full and public disclosure of financial interests for any calendar or fiscal year shall not be required to file a statement of financial interests pursuant to s. 112.3145(2) and (3) for the same year or for any part thereof notwithstanding any requirement of this part, except that a candidate for office who has filed a full and public disclosure of financial interests when qualifying as a candidate before July 1 shall file a copy of that disclosure, instead of

filing a second original disclosure, with the Commission as the annual disclosure required under this section, and a candidate who does not qualify until after the annual full and public disclosure has been filed under this section shall file a copy of his or her disclosure with the officer before whom he or she qualifies.

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires, the term:

(a) "Local officer" means:

2. Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:

a. The governing body of the political subdivision, if appointed;

~~b. An expressway authority or transportation authority established by general law;~~

b. A community college or junior college district board of trustees;

c. A board having the power to enforce local code provisions;

d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;

e. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or

f. Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

3. Any person holding one or more of the following positions: mayor; county or city manager; chief administrative employee of a county, municipality, or other political subdivision; county or municipal attorney; finance director of a county, municipality, or other political subdivision; chief county or municipal building code inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator, with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; district school superintendent; community college president; district medical examiner; or purchasing agent

having the authority to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY ONE, on behalf of any political subdivision of the state or any entity thereof.

(b) "Specified state employee" means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a criminal conflict and civil regional counsel, an assistant criminal conflict and civil regional counsel, a full-time state employee who serves as counsel or assistant counsel to any state agency, the Deputy Chief Judge of Compensation Claims, a judge of compensation claims, an administrative law judge, or a hearing officer.

(2) (a) A person seeking nomination or election to a state or local elective office shall file a statement of financial interests together with, and at the same time he or she files, qualifying papers. A candidate for office who has filed a statement of financial interests when qualifying as a candidate before July 1 shall file a copy of that statement, instead of filing a second original statement, as the annual disclosure required under this section, and a candidate who does not qualify until after the annual statement of financial interests has been filed under this section shall file a copy of his or her disclosure with the officer before whom he or she qualifies.

(3) The statement of financial interests for state officers, specified state employees, local officers, and persons seeking to qualify as candidates for state or local office shall be filed even if the reporting person holds no financial interests requiring disclosure, in which case the statement shall be marked "not applicable." Otherwise, the statement of financial interests shall include, at the filer's option, either:

[For brevity's sake, subparagraphs (3)(a) and (b) are not included here, but should appear in the bill. The following language should appear "flush left" at the end of paragraph (3).]

A person filing a statement of financial interests shall indicate on the statement whether he or she is using the method specified in paragraph (a) or the method specified in paragraph (b).

Executive Branch Lobbying Law

The provisions of the Executive Branch Lobbying Law (Sec. 112.3215, F.S.) regarding procedures and penalties for violations do not parallel those provided in the Legislative Lobbying Law (Sec. 11.045, F.S.). This appears to have been an oversight which, in the Commission's view, should be corrected.

Executive Branch Lobbying Law Draft Language:

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(8)(a) The commission shall investigate every sworn complaint that is filed with it alleging that a person covered by this section has failed to register, has failed to submit a compensation report, has made a prohibited expenditure, or has knowingly submitted false information in any report or registration required in this section.

(c) The commission shall investigate any lobbying firm, lobbyist, principal, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.

(11) Any person who is required to be registered or to provide information under this section or under rules adopted pursuant to this section and who knowingly fails to disclose any material fact that is required by this section or by rules adopted pursuant to this section, or who knowingly provides false information on any report required by this section or by rules adopted pursuant to this section, commits a noncriminal infraction, punishable by a fine not to exceed \$5,000. Such penalty is in addition to any other penalty assessed by the Governor and Cabinet pursuant to subsection (10).

Gift Law

State "procurement employees" are subject to the gift law. This broad category of State employees is identifiable based only on the employees' particular activities. It would help agencies and these employees if the statute gave a more precise definition of who is a "procurement employee" and for how long.

Also, in some instances a vendor currently doing business with an agency is not the principal of a lobbyist within the past 12 months, even though all would agree that the vendor should not be providing honoraria or gifts worth over \$100 to the officers and employees of that agency. The Commission recommends that vendors be specifically added to the list of prohibited donors in sec. 112.3148.

Gift Law Draft Language:

112.312 Definitions.--As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

(12) (a) "Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days, including:

[For brevity's sake, the remainder of (12) (a) is not included here, but should appear in the bill.]

(b) "Gift" does not include:

1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization.

2. Contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.

112.3148 Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.—

(2) As used in this section:

(e) "Procurement employee" means any employee of an officer, department, board, commission, ~~or council, or agency~~ of the executive branch or judicial branch of state government who has participated in the preceding 12 months participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in s. 287.012, if the cost of such services or commodities exceeds or is expected to exceed \$10,000 \$1,000 in any fiscal year.

(f) "Vendor" means a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.

(3) A reporting individual or procurement employee is prohibited from soliciting any gift from a political committee or committee of continuous existence, as defined in s. 106.011, from a vendor doing business with the reporting individual's or procurement employee's agency, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or

procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

(4) A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, from a vendor doing business with the reporting individual's or procurement employee's agency, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

(5) (a) A political committee or a committee of continuous existence, as defined in s. 106.011; a vendor doing business with the reporting individual's or procurement employee's agency; a lobbyist who lobbies a reporting individual's or procurement employee's agency; the partner, firm, employer, or principal of a lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or procurement employee or any other person on his or her behalf; however, such person may give a gift having a value in excess of \$100 to a reporting individual or procurement employee if the gift is intended to be transferred to a governmental entity or a charitable organization.

112.3149 Solicitation and disclosure of honoraria.—

(1) As used in this section:

(e) "Procurement employee" means any employee of an officer, department, board, commission, ~~or council, or agency~~ of the executive branch or judicial branch of state government who has participated in the preceding 12 months participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in s. 287.012, if the cost of such services or commodities exceeds \$10,000 \$1,000 in any fiscal year.

(f) "Vendor" means a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.

(3) A reporting individual or procurement employee is prohibited from knowingly accepting an honorarium from a

political committee or committee of continuous existence, as defined in s. 106.011, from a vendor doing business with the reporting individual's or procurement employee's agency, from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or from the employer, principal, partner, or firm of such a lobbyist.

(4) A political committee or committee of continuous existence, as defined in s. 106.011, a vendor doing business with the reporting individual's or procurement employee's agency, a lobbyist who lobbies a reporting individual's or procurement employee's agency, or the employer, principal, partner, or firm of such a lobbyist is prohibited from giving an honorarium to a reporting individual or procurement employee.

Disclosure of Conflict of Interest Involving a Sole Source of Supply

The Commission considered a case involving the exemption in Section 112.313(12)(e) when the purchase was made from a sole source of supply in the political subdivision and noted that, although Section 112.3147 states that information required to be furnished by Section 112.313 should be made on forms prescribed by the Commission, the exemptions in Section 112.313(12) do not expressly require written disclosure and therefore may not give affected persons appropriate notice that a written disclosure would be required to constitute the "full disclosure" required to qualify for the exemption. Therefore, the Commission recommends that the Legislature amend the exemptions in Section 112.313(12) to expressly state that the required disclosure be made in writing.

Sole Source Draft Language:

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be affected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

[For brevity's sake, paragraphs (a) through (j) are not included here, but should appear in the bill.]

(k) All disclosures required by this subsection shall be made in writing on forms prescribed by the commission, as provided in s. 112.3147.

Definitions

The definition of "business entity," in the Code of Ethics, currently includes corporations, firms, enterprises, or associations. The Commission proposes that the definition be amended to clarify that "limited liability companies" (LLCs) meet the definition.

The Commission recommends the definition of "candidate" in the Code of Ethics under 112.312(6), should make it clear that candidates for nonpartisan offices are covered. That statute refers to candidates who file their candidate's oath under 99.021 and should also refer to the oath under Ch. 105.

Definitions Draft Language:

112.312 Definitions.--As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

(5) "Business entity" means any corporation, company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

(6) "Candidate" means any person who has filed a statement of financial interest and qualification papers, has subscribed to the candidate's oath as required by s. 99.021 or s. 105.031, and seeks by election to become a public officer. This definition expressly excludes a committeeman or committeewoman regulated by chapter 103 and persons seeking any other office or position in a political party.

Ethics Reform

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
I. Financial Disclosure			
A. Filings			
1. Improvements to Financial Disclosure Filing		<ul style="list-style-type: none"> Permit <i>all</i> filers to use a Certified Public Accountant (CPA) to prepare financial disclosure filings; Provide a safe harbor for those who choose to have a CPA prepare their forms. 	
		Require the Commission on Ethics to review the financial disclosure filings from <i>Form 6 filers</i> .	
		Permit the cost of using a CPA to be paid from campaign accounts and/or “office accounts established by leftover campaign funds.”	
2. Online Filing System	Create a mandatory online filing system for Form 6 filers.		

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
B. Collection of Unpaid Fines			
1. Wage Garnishment	Require garnishment of wages for filers who still receive public salary or contractual payments.		
		Permit garnishment even if the person owing the fine is not receiving public salary or contractual payments.	
2. Liens	Give the Commission authority to obtain a lien against property, regardless of whether the person is still receiving public salary or contractual payments.		
		Allow for a lien against real property, personal property, or both.	
3. Statute of Limitations	Extend the statute of limitations to 20 years, which is the statute of limitations for judgments of a court.		

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
II. Blind Trusts	Permit <i>any public officer</i> to create a blind trust to avoid conflicts of interests arising from the assets placed in the blind trust.		
		Require the Commission on Ethics to approve the blind trust.	
		Require disclosure on financial disclosure forms if the trust is revoked while the officer is still in office or the officer learns of any new assets acquired by the trust.	

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
III. Voting Conflicts <i>(statutory changes, in addition to prior Senate Rule change)</i>			
A. Definitions	Define the term “special private gain or loss.”		
B. Prohibition	Prohibit state officers from voting on matters that would result in a special private gain or loss <i>to the officer</i> .		
C. Forms	Permit use of the voting conflict disclosure forms created by the Senate and House in lieu of the Commission’s disclosure form.		

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
IV. Politically Motivated Complaints	Extend the period of time for the Commission to accept complaints against a candidate.		
		Require a complaint <i>against a candidate</i> to be based upon personal information or information other than hearsay.	
V. Initiation of Investigations	Allow the Commission on Ethics limited authority to initiate investigations without a complaint being filed.		
		Permit the Commission to initiate its own investigation, by super-majority vote, of allegations of public corruption upon receipt of reliable, publicly-disseminated information.	
		Permit the Commission to initiate an investigation based upon a referral from the Governor, the Florida Department of Law Enforcement, any law enforcement agency, or a state attorney.	

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
V. Initiation of Investigations (cont.)		Limit the scope of the types of investigations that the Commission can initiate (i.e. - only misuse of public position, voting conflicts, or conflicting employment).	
		Require <i>all</i> complaints to be filed based on personal information or information other than hearsay.	
		Insert a willfulness intent element into appropriate provisions of the Code of Ethics similar to complaints filed with the Elections Commission.	

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
VI. Gifts from CCE's		Enhance enforcement of current prohibition against CCE's giving gifts of more than \$100 to reporting individuals (reimbursements).	
		Reduce \$100 limit on, or prohibit, gifts/reimbursements from a CCE to a reporting individual.	
VII. Ethics Training	<ul style="list-style-type: none"> Require a minimum of 4 hours of annual ethics training for constitutional officers; Require training on public records laws and open meetings laws; Permit completion of the training at a CLE, or by a recording of a session meeting these requirements. 		
		Codify Executive Order 11-03 to require by statute that all state and local agencies to designate an ethics officer.	

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
VIII. "Revolving Door" Provisions			
A. Executive Branch Lobbying		Limit executive branch lobbying activities by former members of the Legislature for a period of two years.	
B. Legislative Branch Lobbying		Prohibit former members of the Legislature from associating as partners, principals, or employees of firms whose primary business is lobbying the Florida Legislature within the first 2 years after leaving office.	
C. Special Privileges		Remove any special privileges a former member of the Legislature may have while a lobbyist.	
D. Forms		Require a form to be filed affirming that the former member-lobbyist is abiding by the restrictions.	

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
IX. Dual Public Employment			
A. Hiring/ Promotions	<ul style="list-style-type: none"> Prohibit Legislators and candidates for legislative office from obtaining new public employment after qualifying for legislative office; Allow the Legislator to continue public employment if he/she had the position prior to qualifying as a candidate. However, he/she could not accept promotions, raises, or any other additional compensation that is inconsistent with other similarly situated employees when the member knows, or should know, that the additional compensation is being given because of his/her office. 		
B. Exemptions	Permit a Legislator to seek a new term as a Legislator or seek a different office.		
		Make the bill effective upon becoming law; permitting <i>current</i> members to keep a job they had before election. However, they could not accept a new public job, or raises, promotions given because of their office.	

ISSUE	PROPOSED CHANGES	OPTIONS	NOTES
X. Other Issues Presented by Members or the Public			

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/13
Meeting Date

Topic ETHICS Bill Number _____ (if applicable)

Name Susan Horowitz Maurer Amendment Barcode _____ (if applicable)

Job Title Chair, COE

Address 1765 SE 7 St Phone 954-390-0100

Street Fr Lauderdale, City Fl State 33316 Zip

Speaking: For Against Information

Representing Comm on ETHICS

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

1/15/13
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic	<u>Ethics Log Pkg/FI. Ethics</u>			Bill Number	<u>—</u>	(if applicable)
Name	<u>MATT Carlucci</u>			Amendment Barcode	<u>—</u>	(if applicable)
Job Title	<u>Commission - Leg Liaison</u>			Phone	<u>—</u>	
Address	<u>1532 Alexandria Pl.</u>			E-mail	<u>—</u>	
Street	<u>Jax Fl.</u>		<u>32207</u>	City	State	Zip
Speaking:	<input checked="" type="checkbox"/> For	<input type="checkbox"/> Against	<input type="checkbox"/> Information			
Representing	<u>FIA. Commission on Ethics</u>					
Appearing at request of Chair:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Lobbyist registered with Legislature: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/13
Meeting Date

Topic ETHICS Bill Number _____
(if applicable)

Name VIRGINIA DOSS Amendment Barcode _____
(if applicable)

Job Title Exec Director FIA Comm on Ethics

Address 3600 MacLay Blvd S. Phone 850 488-7864
Street Tallahassee State FL Zip 32317
City Tallahassee State FL Zip 32317
E-mail Doss.virundt@leg.state.fl.us

Speaking: For Against Information

Representing FIA Commission on Ethics

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/13
Meeting Date

Topic ELECTION/Ethics Reform Bill Number _____
(if applicable)

Name Jim GARTH Amendment Barcode _____
(if applicable)

Job Title Chairman Citizens Empowering Gulf County - (PAC)

Address 200 55 Joseph Drive Phone 850-899-7720
Street
Pearl St Joe, FL State 32456
City State Zip

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

SENATOR Don GARTH

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/15/2013

Meeting Date

Topic Ethics workshop issues Bill Number _____
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

11/15/2013

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Money in politics/ Gift Ban

Bill Number _____
(if applicable)

Name Susan Glickman

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address PO Box 310

Phone 727-7429003

Street Indian Rocks Beach FL

State

Zip

E-mail skglickman@gmail.com

Speaking: For Against Information

33785

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

CourtSmart Tag Report

Room: KN 412

Case:

Type:

Caption: Ethics and Elections

Judge:

Started: 1/15/2013 9:08:42 AM

Ends: 1/15/2013 12:00:23 PM

Length: 02:51:42

9:08:42 AM Opening Remarks by Chair
9:12:51 AM Matt Carlucci, Commissioner, Commission on Ethics, presents Commission on Ethics Package
9:32:08 AM Virlindia Doss, Exec. Director, Commission on Ethics
9:34:04 AM Sen. Gardiner
9:35:28 AM Sen. Gardiner
9:35:31 AM Comm. Carlucci
9:36:10 AM Sen. Gardiner
9:37:17 AM Susan Maurer, Chair, Commission on Ethics
9:38:07 AM Sen. Lee
9:40:48 AM Commission on Ethics
9:42:16 AM Sen. Lee
9:43:13 AM Commissioner Carlucci
9:43:44 AM Sen. Thrasher
9:45:41 AM Sen. Thrasher - completing financial disclosure
9:45:58 AM Chair Latvala
9:46:49 AM Sen. Soto
9:46:56 AM Comm. Carlucci
9:47:43 AM Sen. Soto
9:47:49 AM Comm. Carlucci
9:49:55 AM Chair Latvala
9:52:27 AM Chair Latvala refers to the Chart
9:53:18 AM Sen. Sobel, Vice Chair
9:53:52 AM Chair
9:54:11 AM Sen. Sobel
9:54:26 AM Chair
9:55:04 AM Sen. Lee
9:56:35 AM Comm. Carlucci
9:56:55 AM Chair
9:57:21 AM Susan Maurer, Chair, Commission on Ethics
9:57:38 AM Sen. Soto
9:58:55 AM Chair
9:59:06 AM Virlindia Doss
9:59:29 AM Sen. Gardiner
9:59:59 AM Sen. Soto
10:00:47 AM Chair
10:00:51 AM Sen. Thrasher
10:01:11 AM Virlindia Doss
10:01:47 AM Chair
10:02:19 AM Sen. Diaz de la Portilla
10:03:23 AM Comm. Carlucci
10:04:36 AM Sen. Diaz de la Portilla
10:05:15 AM Virlindia Doss
10:06:12 AM Sen. Diaz de la Portilla
10:06:37 AM Comm. Carlucci
10:07:05 AM Sen. Diaz de la Portilla
10:07:58 AM Chair
10:08:10 AM Chair - discusses using CPA
10:08:17 AM Chair - online filing
10:09:04 AM Sen. Flores
10:09:37 AM Chair
10:10:54 AM Sen. Gardiner
10:11:37 AM Sen. Legg

10:12:13 AM Chair - wants COE to follow-up
10:12:52 AM Sen. Benaquisto
10:13:23 AM Chair
10:13:45 AM Sen. Lee
10:14:16 AM Chair
10:14:20 AM Sen. Flores
10:14:46 AM Chair - collection of unpaid fines
10:15:12 AM Sen. Clemens
10:15:19 AM Chair
10:15:33 AM Sen. Soto
10:16:14 AM Chair
10:16:24 AM Susan Maurer
10:16:45 AM Virlindia Doss
10:17:16 AM Chair - lien grace period
10:17:28 AM Virlindia Doss
10:17:32 AM Sen. Soto
10:17:54 AM Sen. Joyner
10:18:25 AM Chair
10:18:42 AM Chair - Wage Garnishment
10:18:55 AM Dawn Roberts, Staff Director re fines
10:19:33 AM Sen. Diaz de la Portilla
10:19:52 AM Dawn Roberts - options
10:20:28 AM Sen. Diaz de la Portilla
10:20:48 AM Chair
10:20:51 AM Sen. Clemens - fines
10:21:14 AM Chair
10:21:48 AM Sen. Clemens - suspending members with fines
10:21:56 AM Chair
10:22:19 AM Sen. Sobel
10:23:25 AM Chair - discussion on non filers
10:23:41 AM Matt Carlucci
10:25:51 AM Chair
10:26:05 AM Sen. Gardiner
10:26:40 AM Chair - garnishment of wages
10:26:45 AM Dan Carlton, Staff
10:26:58 AM Chair - Liens
10:27:26 AM Chair - real property
10:27:32 AM Sen. Soto real property
10:27:50 AM Chair - discussion of statute of limitations
10:28:23 AM Chair - discussion relating to Blind Trust
10:28:39 AM Virlindia Doss
10:28:58 AM Sen. Thrasher refers to bill filed last year
10:29:29 AM Chair
10:29:45 AM Dawn Roberts replies
10:29:59 AM Chair - discussion requiring disclosure
10:30:14 AM Sen. Flores asks for definition of blind trust
10:30:31 AM Chair
10:30:32 AM Matt Carlucci
10:30:42 AM Virlindia Doss defines blind trust
10:31:32 AM Sen. Flores
10:32:39 AM Dan Carlton, Senate Ethics and Elections Staff Attorney
10:33:03 AM Chair - stockbroker holdings
10:34:01 AM Dan Carlton discusses mutual funds
10:34:30 AM Chair - discusses managed funds
10:35:07 AM Virlindia Doss - shared stock and conflict of interest
10:35:37 AM Chair - requests staff to look into this matter
10:36:29 AM Chair - voting conflicts
10:37:44 AM Dan Carlton, EE Staff Attorney
10:38:21 AM Chair
10:38:37 AM Chair - standardize forms
10:38:51 AM Sen. Flores
10:39:02 AM Sen. Clemens

10:39:32 AM Sen. Clemens - private gain or loss
10:40:00 AM Chair
10:40:42 AM Sen. Clemens
10:40:57 AM Sen. Flores - define private gain or loss
10:42:00 AM Dan Carlton responds
10:44:37 AM Sen. Diaz de la Portilla takes the CHAIR
10:44:42 AM Dan Carlton
10:45:18 AM Chair Diaz de la Portilla - discussed politically motivated complaints
10:45:50 AM Sen. Soto
10:45:53 AM Chair Diaz de la Portilla
10:45:55 AM Dan Carlton
10:46:21 AM Matt Carlucci
10:47:46 AM Virlindia Doss
10:48:17 AM Matt Carlucci
10:49:17 AM Chair Diaz de la Portilla
10:49:52 AM Sen. Lee
10:51:02 AM Matt Carlucci - discussion relating to high profile cases
10:51:58 AM Sen. Legg
10:52:23 AM Chair Latvala - 30 days
10:52:36 AM Sen. Legg
10:54:54 AM Matt Carlucci
10:55:00 AM Virlindia Doss - confidentiality
10:55:57 AM Chair - Initiation of investigation
10:56:44 AM Sen. Thrasher
10:57:24 AM Chair
10:57:52 AM Sen. Lee - adding U.S. state attorney
10:58:41 AM Chair
10:59:24 AM Dan Carlton - discussion relating to Comm. on Ethics authority
11:00:10 AM Chair
11:00:13 AM Susan Maurer
11:00:58 AM Chair
11:01:09 AM Chair- relating to #6 - gifts from CCE's
11:02:43 AM Sen. Flores
11:03:25 AM Sen. Flores asks what is allowed
11:04:06 AM Dan Carlton discusses contributions of the gift law in Chapter 106
11:06:54 AM Sen. Gardiner
11:07:21 AM Dan Carlton
11:07:59 AM Chair
11:09:01 AM Sen. Lee
11:12:25 AM Chair
11:12:36 AM Sen. Diaz de la Portilla - should anyone receive gift from CCE's
11:13:50 AM Sen. Thrasher
11:14:14 AM Sen. Soto
11:14:22 AM Chair - distinguish difference of the purpose of CCE
11:15:51 AM Sen. Braynon
11:16:37 AM Sen. Diaz de la Portilla - definition
11:17:47 AM Chair
11:18:56 AM Sen. Sobel - how often do CCE's have to report
11:19:47 AM Chair
11:20:34 AM Sen. Flores
11:21:09 AM Chair - getting rid of meals
11:21:59 AM Sen. Diaz de la Portilla - ethics training
11:22:57 AM Chair - revolving door
11:25:22 AM Sen. Soto
11:26:29 AM Chair
11:26:37 AM Dan Carlton
11:26:58 AM Sen. Gardiner
11:27:36 AM Sen. Benaquisto- special privileges
11:28:11 AM Sen. Thrasher - Senate Rules
11:28:27 AM Sen. Soto
11:28:55 AM Chair - FL Bar
11:29:00 AM Sen. Soto

11:29:20 AM Chair
11:29:47 AM Chair - Section 9 - dual employment
11:29:58 AM Dawn Roberts
11:29:59 AM Chair - Section 9 - dual employment
11:31:32 AM Chair
11:32:20 AM Sen. Joyner - dual employment
11:32:34 AM Sen. Joyner - dual employment
11:33:31 AM Chair
11:34:21 AM Sen. Joyner
11:35:05 AM Sen. Braynon
11:36:21 AM Chair
11:36:27 AM Dan Carlton
11:37:11 AM Sen. Braynon
11:37:38 AM Sen. Soto
11:38:29 AM Dan Carlton
11:38:52 AM Chair
11:39:37 AM Jim Garth, Chairman, Citizens Improving Gulf County
11:45:22 AM Sen. Joyner
11:47:13 AM Chair
11:47:46 AM Sen. Lee
11:48:53 AM Chair
11:49:03 AM Brian Pitts, Justice to Jesus
11:53:59 AM Susan Glickman, Lobbyist representing self
11:55:29 AM (continued) Susan Glickman, Lobbyist representing self
11:56:28 AM Sen. Gardiner
11:57:06 AM Sen. Clemens
11:58:27 AM Sen. Soto
11:58:33 AM Chair
11:59:18 AM Susan Maurer, Chair, Commission on Ethics, compliments staff
11:59:52 AM Chair
11:59:54 AM Motion to rise by Sen. Thrasher