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OPINION 16-01

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

You have asked for an opinion concerning a potential voting conflict over Senate Bills 922 and 1052. These bills deal, in part, with the Florida Department of Environmental Protection ("FDEP") and Waste Management Facilities. For the reasons stated below, I believe you need not declare a conflict of interest on either, and must vote on the matters should they come before you during a committee vote or in the Senate Chamber.

Facts:

You are an elected member of the Florida Senate. As part of a corporation of which you are a part-owner, you own a one-fifth stake in a Class I landfill and a one-fifth stake in a Class III landfill.

Analysis:

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

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

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

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

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

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

SB 922, if enacted, would establish a waste tire abatement program, eliminate Florida's waste tire grant program, recreate and modify provisions related to the solid waste landfill closure account, and create other provisions related to the FDEP and the closure and long-term care of solid waste management facilities. Any economic impact created by this bill on the private sector is currently unknown.

SB 1052, if enacted, would—among other things—provide an appropriation for fiscal year 2016-2017 of \$2,399,764 from the Solid Waste Management Trust Fund for the closure and long-term care of solid waste management facilities. The bill may create an indeterminable impact on rate payers if potable water supply systems must use more expensive treatment options in order to treat water from a Class III water body and if those costs are passed on to rate payers. It may also impact phosphate mine operators. Neither of these two situations appear to apply to you.

Based on my understanding of the bills and their impacts, it would appear that any gains or losses would be speculative at this time. In the absence of a knowable economic impact, you are unable to know that you would have a special private gain or loss in the manner contemplated by Florida Statutes or Senate Rules regarding forbidden conflicts of interests. Thus, you must vote on both matters should they come before you in a committee or in the Senate Chamber and need not disclose a conflict.

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