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CONFLICTS

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CONFLICTS OF INTEREST

CONFLICTS OF INTEREST, FINANCIAL DISCLOSURE, GIFT LAWS, POSTEMPLOYMENT RESTRICTIONS, AND MORE UNDER PART III, CHAPTER 112, FLORIDA STATUTES (CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES)

ETHICS IN GOVERNMENT TRAINING PROGRAM FOR ELECTED OFFICIALS
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I. PERSONS GOVERNED BY THE ETHICS LAWS

A. Public Officers

1. A "public officer" is defined in F.S. 112.313(1) and 112.3143(1)(a) to include persons "elected or appointed to hold office in any agency, including any person serving on an advisory body." One can be "appointed" by various means (CEO 02-15).

2. Officers and directors of nonprofit corporations organized under Ch. 617, F.S. are not public officers subject to the Code of Ethics. CEO 84-17, CEO 91-41.

3. Members of advisory board of city-operated charter school are public officers. CEO 99-2. However, in a particular context, officers and directors of nonprofit governing organization of a charter school were not found to be public officers. CEO 99-10.

B. Public Employees

1. The term employee is not defined in the Code of Ethics, but the First District Court of Appeal has applied in an ethics context the same definition of employee as is used in tort actions. Wright v. Commission on Ethics, 389 So.2d 662 (Fla. 1st DCA 1980).

2. Independent contractors are not employees and therefore are not governed by provisions in the Code that are applicable to public employees. CEO 81-48, CEO 81-61. But see this outline below regarding local government attorneys.

3. See CEO 99-10 regarding charter school employees.

C. Candidates for public office [defined in F.S. 112.312(6) to mean any person who has filed financial disclosure and qualification papers, has taken the candidates oath, and seeks to become a public officer by election] are subject to a limited number of Code provisions; and successful former candidates who have not yet taken office are subject to the gifts law contained in F.S. 112.3148.

D. Local government attorneys (see below) also are subject to a limited number of Code provisions.

II. ANTI-NEPOTISM PROHIBITION

A. The anti-nepotism law (F.S. 112.3135) prohibits a public official from appointing, employing, promoting, or advancing, or advocating the appointment, employment, promotion, or advancement of a relative. It does not prohibit two relatives from being employed within the same agency. CEO 90-62, CEO 93-1, CEO 94-26. The law addresses placement in a position in [an] agency, and thus does not address situations in which a relative is hired as an independent contractor. CEO 96-13.

B. At the State level, the law applies to all agencies (executive, legislative, and judicial), except for "an institution under the jurisdiction of the Division of Universities of the Department of Education. At the local level, the law applies to counties, cities, and any other political subdivision, except for school and community college districts. F.S. 112.3135(1)(a), (AGO 72-72, AGO 82-48). However, the Florida K-20 Education Code prohibits a district school board member from employing or appointing a "relative" (as defined in F.S. 112.3135) to work under the direct supervision of the member. F.S. 1012.23(2). The law applies to appointments made by a community redevelopment agency (CRA)

and by a city commission to the city's enterprise zone development agency. CEO 96-5, aff'd by PCA sub nom. City of Gainesville v. State Commission on Ethics, 683 So. 2d 487 (Fla. 1st DCA 1996).

C. The definition of "relative" for purposes of the anti-nepotism law is broader than the term as used in the voting conflicts law, but narrower than the term as it applies in the context of the gift law. Compare F.S. 112.312(21), 112.3135(1)(d), and 112.3143(1)(b). One's mother's sister's husband is not one's "uncle" under the anti-nepotism law. CEO 99-5. A person is not one's "sister-in-law" by virtue of marriage to one's wife's brother. CEO 96-6. One's paramour is not one's "relative." CEO 02-3.

D. The anti-nepotism law does not apply to actions other than appointment, employment, promotion, advancement, or advocacy of the same. Supervising or assigning work to a relative is not addressed or prohibited in the law. CEO 90-62, CEO 00-17. An advancement or promotion is "only an increase in grade which elevates an employee to a higher rank or position of greater personal dignity or importance . . . ." [Slaughter v. City of Jacksonville, 338 So. 2d 902 (Fla. 1st DCA 1976)]; however, see CEO 94-30 (in which the Commission found that designation of the position of chief deputy property appraiser for inclusion into the Florida Retirement System's Senior Management Service Class was an advancement or promotion) and compare CEO 94-26 (in which the Commission found that a special pay increase for a brother of the Secretary of the Department of Community Affairs was not a promotion or advancement); see also CEO 94-39 (action labeled "lateral transfer" substantively a promotion or advancement) and CEO 98-23 (sheriff's brother-in-law's promotion to deputy first class not a "promotion" or "advancement" under the law). Also, when a seemingly prohibited relationship develops after lawful employment (such as via marriage of a public official and an existing employee of the same agency), discharge of the employee is not required, as there is a "grandfathering"; but the employee cannot be advanced or promoted. CEO 94-6, CEO 91-27. However, "rehires" are not grandfathered. CEO 92-10 (county commission hiring relative of commissioner as correctional officer when commission takes over jail operations from sheriff who formerly employed the relative).

E. Under the former law, when an appointment was made by a board or commission, a relative of one of the board members could be appointed so long as the board member did not participate in the decision or advocate the appointment. City of Miami Beach v. Galbut, 626 So. 2d 192 (Fla. 1993).

F. However, an amendment to the statute after Galbut specifies that a relative of a board member cannot be appointed by the board, regardless of whether the related board member does not participate. An exception is made in municipalities of less than 35,000 population for appointments to boards not having land-planning or zoning responsibilities. This exception applies regardless of whether the related public official voted on the appointment and regardless of whether the appointment was made before the exception was adopted. Kinzer v. Commission on Ethics, 654 So. 2d 1007 (3d DCA 1995). See CEO 98-22 regarding the meaning of "land-planning or zoning responsibilities."

G. The receipt of delegated authority to hire, promote, or advance will bring one under the statute in regard to his or her relatives; but one vested with hiring/promotion/advancement authority cannot avoid the statute by attempted delegation of the authority. Morris v. Seeley, 541 So. 2d 659 (Fla. 1st DCA 1989). Merit promotions/advancements going to the highest-scoring applicant and involving no discretion have been found, in at least one instance, not to be violative of the statute. CEO 98-2 (promotions of wildlife officer sons of GFC Commission member). A county commission is not necessarily the "public official" vested with hiring/promotion/advancement authority in relation to all county positions; see CEO 93-1, in which the Commission found that the law was not violated where a county commissioner's wife was promoted in the county's solid waste department because under the county's charter the county manager held the promotion authority). Also, there is support for the position that the law does not apply in situations where a public official merely has the ability to approve or disapprove (rather than make) the hire or appointment (AGO 83-13, AGO 73-75, AGO 71-158); however, be very careful in such situations not to confuse approval/disapproval with attempted delegation of the authority to hire or appoint.

H. The law applies to paid and unpaid positions (CEO 95-12) and to reappointments (CEO

95-12).

I. Certain volunteer emergency medical, volunteer firefighting, and volunteer police services positions are exempted from the law.

J. Agencies may authorize by regulation temporary employment in the event of an emergency as defined in F.S. 252.34(3).

III. DOING BUSINESS WITH ONE'S AGENCY PROHIBITION

A. F.S. 112.313(3) contains two prohibitions, the first of which prohibits a public officer acting in an official capacity or public employee acting in an official capacity as a purchasing agent from directly or indirectly purchasing, renting, or leasing realty, goods, or services for the person's own agency from a business entity of which the person or the person's spouse or child (or any combination of them) is an officer, partner, director, proprietor, or the owner of a "material interest." Note that neither the first nor the second prohibition of F.S. 112.313(3) prohibits a public officer's or public employee's purchase of realty, goods, or services from his or her political subdivision or an agency thereof (CEO 01-16); however, such a purchase may be violative of F.S. 112.313(7)(a). Also, note that a director or officer can come within the prohibition whether or not he or she is paid or compensated; and that nonprofit corporations are "business entities." CEO 94-17.

1. "Purchasing agent" is defined in F.S. 112.312(20).

2. "Material interest" is defined in F.S. 112.312(15) to mean the direct or indirect ownership of more than 5% of the total assets or capital stock of a business entity.

3. "Indirectly" doing business does not include situations where the officer's or employee's corporation does business with a business entity that is selling to his or her agency. CEO 78-83. See also CEO 00-21 regarding a county manager's sale of land to an entity that in turn donates the land to the county; however, this opinion is of little precedent value in that it is expressly limited to its peculiar facts.

B. The second prohibition in 112.313(3) is against a public officer or employee acting in a private capacity to rent, lease, or sell any realty, goods, or services to the person's agency, or to the political subdivision served by the person, or any agency of the political subdivision.

1. "Acting in a private capacity" includes situations where one personally is involved with the sale to the agency or political subdivision (CEO 81-50 and CEO 94-3), as well as where one is an officer, director, or owner of more than a 5% interest in a business that is selling to the agency or political subdivision. CEO 81-2. The statute does not apply to a situation where one merely is an employee of a business entity and personally is uninvolved with the sale (CEO 94-3); however, see F.S. 112.313(7) below.

2. The statute applies to prevent an agency employee from being a partner in a law firm which is providing services to the agency. Howard v. Commission on Ethics, 421 So. 2d 37 (Fla. 3d DCA 1982). [But see "local government attorneys" below.]

C. Donations to one's agency do not fall within the scope of this prohibition. CEO 82-15. Neither does a real estate sale involving a public official as a real estate professional without a commission (CEO 82-50), the bringing of a lawsuit (CEO 77-14), nor the condemnation of an official's land by the official's agency (CEO 78-8). Note that the statute does not address purchases from one's agency or political subdivision; but also note the possible applicability of F.S. 112.313(7). CEO 82-50, CEO 01-16.

D. Exceptions to the prohibition:

1. F.S. 112.313(3) expressly "grandfathers" in certain existing contracts, including those entered into prior to qualification for elective office, appointment to public office, or beginning public employment. CEO 96-30. However, changes in contracts after a person assumes a public position are deemed to be new contracts not subject to this exemption (CEO 85-40 and CEO 84-43), unless the

renewals are completely nondiscretionary (CEO 82-10); but see CEO 02-14. Further, the Commission has used Section 112.316, Florida Statutes, to grandfather contracts entered into between qualification for elective office and assumption of office (CEO 95-13).

2. Other express exemptions are contained in F.S. 112.313(12), as follows:

a. Advisory board members may receive a waiver in a particular instance by the appointing authority, made in a public meeting after a written disclosure is made on Commission Form 4A. F.S. 112.313(12). Note that advisory status requires a detailed examination of the attributes of the governmental body, and is not controlled by any perceived insignificance of the body (CEO 96-19, county fine arts council not advisory); and note that for purposes of the exemption in F.S. 112.313(12), but not for purposes of financial disclosure under F.S. 112.3145, that an advisory board need only be "solely advisory," irrespective of the amount of its budget or authorized expenditures (CEO 77-178).

b. At the local government level, when the business is to be transacted by rotation among all qualified suppliers, the official's business may be placed on the rotation list. "Qualified" means that reasonable, but not unduly restrictive, conditions may be placed on the suppliers by the purchasing agency, such as the ability to supply merchandise of acceptable quality or specifications. F.S. 112.313(12)(a). CEO 89-64 and CEO 92-27. The use of selection criteria that include the volume of current and prior work done with a firm does not constitute a "rotation system." CEO 96-23. See also CEO 01-15 (rotation cannot include providers from outside of the political subdivision).

c. When the business is to be transacted through a sealed, competitive bidding process, the official's business may submit a bid and be awarded the contract. F.S. 112.313(12)(b). However, the official must file a written disclosure prior to or at the time the bid is submitted (Commission Form 3A), and must not participate in the process. Contracts awarded under the Consultants' Competitive Negotiation Act (F.S. 287.055) do not constitute a sealed bidding process. CEO 81-28 and CEO 01-15. Nor do RFPs (CEO 89-48). However, while the exemption will insulate one from conflicts based upon the business between the official's public agency and the provider of goods, services, or realty to the public agency, it will not exempt conflicts arising independent of the competitively bid business. CEO 96-7.

d. Legal advertising in a newspaper, utilities service, and passage on a common carrier are exempted. F.S. 112.313(12)(c). Legal advertising means only that advertising required by law. CEO 90-57. Utilities service includes telephone service (CEO 83-7), but does not include bulk fuel oil (CEO 95-8). The exemption for passage on a common carrier applies to purchase of tickets by the agency directly from the carrier, but does not apply to purchases from a travel agency (CEO 80-1).

e. Emergency purchases are exempted, but only when made "in order to protect the health, safety, or welfare" of the citizens. F.S. 112.313(12)(d).

f. When the official's business is the only source of supply within the political subdivision, an exemption is provided, as long as disclosure is made prior to the transaction, on Commission Form 4A. F.S. 112.313(12)(e). A television station has been found, in a certain context, to be a sole source of supply. CEO 00-10. As with the rotation exemption, note that the sole source exemption is not available to State-level agencies.

g. Transactions not exceeding $500 in the aggregate in a calendar year may be made between the agency and the official's business. F.S. 112.313(12)(f).

h. A municipal, county, or district public official may be a stockholder, officer, or director of a bank acting as a depository of the agency's funds, provided that the governing body of the agency (e.g., city commission, county commission, school board, water management district board) has determined that the official has not favored that bank over other qualified banks. F.S. 112.313(12)(g), CEO 83-48, and CEO 83-81. Note that this applies only when the bank will be acting as a

depository; other banking functions, such as loans, are not encompassed by the exemption.

i. The transaction is made pursuant to F.S.1004.22 or F.S. 1004.23 and is specifically approved by the president and the chair of the university board of trustees. F.S. 112.313(12)(h).

3. When the public officer or employee has and had no influence or public responsibility in relation to the business between the agency and the private business entity with which the officer or employee is connected, the Commission has viewed F.S. 112.316 as negating the literal language of the prohibition in 112.313(3). CEO 76-38. As a result, members of subordinate boards of a city or county would not be prohibited from doing business with the city or county, so long as their board had nothing to do with the transaction. See, for example, CEO 81-66, CEO 88-17, and In re Stephen Huie, 13 FALR 1852 (Comm. on Ethics 10/26/89). Also, via F.S. 112.316, a county commissioner is not prohibited from serving as a county-funded indigent defense counsel specially appointed by the court (under a scheme set prior to his becoming a commissioner), although the statute would not legitimize the commissioner's contracting with the county as a special contract public defender (CEO 02-6).

IV. CONFLICTING EMPLOYMENT AND CONTRACTUAL RELATIONSHIPS

A. F.S. 112.313(7) prohibits a public officer or employee from having a contractual relationship or employment with an agency or a business entity that is either subject to the regulation of, or doing business with, the officer's or employee's agency.

1. "Employment" requires that one be compensated, or receive some consideration. CEO 76-21; CEO 80-29. "Employment" is not limited to a master/servant relationship, but also includes being an owner, partner, or sole proprietor of a business (CEO 84-95), and includes compensated directors of nonprofit entities (CEO 85-89). Refusal, in advance and in writing, of compensation has been held to negate the required element of compensation (CEO 00-23).

2. Whether a "contractual relationship" exists has been governed by the substantive law of contract.

a. It has not been limited to contracting parties, but has been found to include third party beneficiaries. CEO 76-85.

b. Sales of goods or realty, the provision of services for compensation, and the ownership of shares of stock (CEO 99-13) have been found to constitute contractual relationships.

c. Members (partners, shareholders, associates), but not "of counsel attorneys," of law firms have contractual relationships with each client of the firm regardless of whether a particular attorney performs or supervises work for a particular client (CEO 80-79, CEO 94-5, CEO 96-1, CEO 03-7), and proprietors of unincorporated insurance agencies have been found to hold contractual relationships with each client of the insurance agency (CEO 94-10).

d. Uncompensated service does not constitute a contractual relationship, even if travel and lodging expenses are received (CEO 93-23); however, lack of compensation is not controlling if consideration or substitutes for consideration are present, or if services under professional licensure (e.g., insurance agent licensure) are involved (CEO 95-28). Marriage does not constitute a contractual relationship between the husband and wife. CEO 90-77.

e. The holding of an office (e.g., a county/city commission seat) is not employment or a contractual relationship, even if it is a compensated position. CEO 92-39.

3. Past or possible future contractual relationships do not violate the statute; the contractual relationship or employment must exist simultaneously with the other elements of the statute. CEO 88-11.

4. A "business entity" is defined in F.S. 112.312(5). A private university is a business entity (CEO 99-11), as is a nonprofit youth center (CEO 78-18). Parent and subsidiary

corporations have been found to be separate business entities (CEO 86-12), except for situations involving holding companies or subsidiaries where the parent owns only the asset of the subsidiary (CEO 94-5, CEO 99-13, CEO 03-1).

5. "Agency" is defined at F.S. 112.312(2). The definition does not necessarily include the entire department or political subdivision of the officer or employee, but rather refers to the lowest departmental unit within which a public officer's or employee's influence might reasonably be considered to extend. CEO 93-31 and CEO 99-7. Determining the "agency" of the officer or employee can be critical to an analysis of how the statute applies. For example, the "agency" of some appointed board members has been found to be that board (CEO 90-7), while the "agency" of other board members, particularly boards with only ad hoc advisory authority, may be the unit of government they are advising (CEO 94-36, CEO 99-2, CEO 99-11). A city planning board is a separate agency from the city commission (CEO 01-16). A school board member's "agency" does not include the county value adjustment board where he or she is not one of the two school board appointees to the board and where the remaining members of the school board could be asked to substitute for the named appointees but seldom have (CEO 02-5). At the State level, one's agency may only be one's bureau (CEO 92-48) or one's district (CEO 01-7) and not the whole of an executive department. However, the whole of a water management district has been found to be the agency of a water management district engineer (CEO 96-3).

6. A business entity is "subject to the regulation of" an agency when the business' operations or modes of doing business are subject to the control or authority of the agency. CEO 74-8. Occupational licensing for revenue purposes is not "regulation." CEO 79-82. Incidental or passive governmental influence, such as the enactment of ordinances that affect a broad number of people, does not constitute "regulation." CEO 78-59. County phosphate mining ordinances have been held not to constitute "regulation" by county commissions of mining companies. CEO 00-14. The enforcement of criminal laws of general applicability does not constitute "regulation." CEO 91-22. However, an agency may be subject to the regulation of another agency, as in CEO 97-03, where the State Board of Community Colleges was found to regulate community colleges. A city building and planning department regulates licensed contractors doing business in the city (CEO 96-15), but a city commission usually does not (CEO 99-7). Annexation constitutes neither "regulation" nor "doing business." CEO 03-7.

7. A business entity is "doing business with" an agency where the parties have entered into a lease, contract, or other type of arrangement where one party would have a cause of action against the other in the event of a breach or default. CEO 86-24. A lawsuit between a business entity and an agency does not constitute "doing business" (CEO 77-14); nor does the mere donation of property to an agency (CEO 82-13). Agreements between governmental entities for the provision of services generally do not constitute "doing business" (CEO 76-2 and CEO 81-5), but the extension of a grant from one agency to another may (CEO 77-65).

8. Examples of conflicts under this prohibition include the following: city commissioner prohibited from being employed by brokerage firm if firm is selected as underwriter for one or more city bond issues (CEO 85-29); county commissioner prohibited from employment with national brokerage firm contracting with county for underwriting services for proposed bond issue (CEO 88-80); city commissioner employed by two city franchisees (Gordon v. Commission on Ethics, 609 So. 2d 125 (Fla. 4th DCA 1992)).

B. F.S. 112.313(7) also prohibits a public officer or employee from having a contractual relationship or employment that will create a "continuing or frequently recurring" conflict of interest, or that would "impede the full and faithful discharge" of public duties.

1. The statute is grounded in the principle that one cannot serve two masters. It does not require proof that the public officer or employee has failed to perform his responsibilities or has acted corruptly; the statute is entirely preventative in nature, intended to prevent situations in which private

economic considerations may override the faithful discharge of public responsibilities. It is concerned with what might happen, with the temptation to dishonor. See Zerweck v. Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982), finding the statute not unconstitutionally vague.

2. An impediment to public duty can be based on a single incident or transaction. For example, the Commission has concluded that representing a client before the board of which one is a member interferes with the full and faithful discharge of one's public duties and, where such representations are frequent, presents a continuing or frequently recurring conflict. CEO 77-126, CEO 78-86. The same conflict would exist when another member or employee of the public officer's professional firm undertakes to represent a client before the officer's board (CEO 88-40), or where a member or employee of a law firm of which the public officer is "of counsel" seeks to represent a client before the officer's board [CEO 96-1, aff'd by PCA sub nom. Korman v. State Commission on Ethics, 710 So. 2d 553 (Fla. 1st DCA 1996]. However, even though a conflict of interest would be created were a State Senator to personally represent a client before the Legislature, a conflict would not be created were another attorney of a law firm with which the Senator has an "of counsel" relationship to represent a client before the Legislature, provided certain conditions are adhered to. CEO 03-3.

3. This prohibition can interface with other aspects of the Code, such as F.S. 112.313(8), regarding the temptation to disclose or use information not available to the general public and gained by reason of one's official position (CEO 92-18, deputy clerks of court developing software for sale to other clerks' offices having access to proprietary information via their public positions.)

4. The statute would prohibit a county commission candidate from entering into a binding contract containing campaign promises and a penalty clause with a political action committee. CEO 96-24 and CEO 96-25. However, statute does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where Senator is not compensated in any way by the client for his efforts as a member of the Legislature. CEO 03-11. It would prohibit a county probation officer from being employed by an entity that is providing services to probationers. CEO 96-28. It would prohibit a city mayor from contracting to promote charter schools with a subsidiary of a company doing business with the city. CEO 01-9.

5. The Commission on Ethics has wide discretion to interpret the statute, and courts must defer to its interpretation unless clearly erroneous. Velez v. Commission on Ethics, 739 So. 2d 686 (Fla. 5th DCA 1999).

C. Exemptions to the Application of 112.313(7):

1. When the agency is a special tax district created for the purpose of financing, constructing, and maintaining improvements in the district, or is a Ch. 298 F.S. water control district, employment or contracts with the business entity developing the property will not be prohibited, per se. However, the district must be created by general or special law, as opposed to local ordinance. CEO 84-4. F.S. 112.313(7)(a)1.

2. When the agency is a legislative body and the regulatory power exercised over the business entity resides in another agency or is exercised strictly through the enactment of laws or ordinances, employment and contracts with the business entity are not prohibited. CEO 91-1. F.S. 112.313(7)(a)2.

3. When legislative act or local ordinance requires or allows certain public officers or employees to engage in certain occupations or professions in order to be qualified to hold their public positions, then 112.313(7) does not prohibit the officer or employee from practicing in that occupation or profession. F.S. 112.313(7)(b). For example, in CEO 84-63, a port authority member was required to be a representative of business entities doing business with or at the port; the member's employment as vice president of a shipping company at the port was considered exempted. In Brevard County v. Commission on Ethics, 678 So. 2d 906 (Fla. 1st DCA 1996), the court affirmed CEO 95-27, an opinion concluding that

the county's firefighters would be prohibited from being employed by local ambulance companies and that F.S. 112.313(7)(b) would not allow the County to exempt its firefighters' employment from the prohibition of F.S. 112.313(7)(a). See also CEO 01-10 [Section 112.313(7)(b) not applicable to Florida Building Commission member].

4. An elected public officer may be employed by a '501(c)' tax-exempt organization that contracts with the officer's agency, as long as the officer's employment is not compensated as a result of the contract, the officer does not participate in the agency's decision to contract, and the officer abstains from voting on matters involving the officer's employer and otherwise follows the voting conflicts law. F.S. 112.313(15), CEO 97-05, and CEO 01-4. Note that this exemption only applies to 'employment'; it does not apply to 'contractual relationships' (CEO 98-11, footnote 2).

5. The exemptions contained in F.S. 112.313(12) (noted above) are applicable to exempt conflicts under 112.313(7): for advisory board members; depositories of public funds; passage on a common carrier; contracts awarded by sealed, competitive bid; emergency purchases; legal advertising; aggregated transactions not exceeding $500; at the local government level, work handled through a rotation system; sole sources of supply (for political subdivisions); and utilities service.

6. When a public officer or employee privately purchases goods or services from a business entity which is doing business with his or her agency, the transaction is exempted from 112.313(7) if the purchase is 'at a price and upon terms available to similarly situated members of the general public.' F.S. 112.313(12)(i).

7. Similarly, an officer or employee may purchase goods or services from a regulated business when the price and terms are available to similarly situated members of the public and full disclosure of the relationship is made prior to the transaction to the State agency head or local governing body (e.g., county commission). F.S. 112.313(12)(j).

8. The Commission has applied F.S. 112.316 to 'grandfather' in employment or contractual relationships with business entities doing business with the officer's or employee's agency, when the employment or contractual relationship and the business relationship with the agency predate the officer's holding office or the employee's public employment. CEO 82-10, CEO 96-31, CEO 96-32, CEO 02-14, CEO 02-19 (employee county attorney). Also, as with situations under F.S. 112.313(3), F.S. 112.316 may apply to negate conflict under F.S. 112.313(7) occasioned by matters in which a public officer or employee played and plays no material public role regarding his or her business or secondary employer. See, for example, CEO 01-12 and CEO 02-6 [county commissioner serving as county-funded, court-appointed indigent defense counsel (but not as special public defender contracting with county), under scheme set prior to his becoming a commissioner]; and see CEO 03-9 (county parks and recreation department employees providing on-site security for county parks).

V. PROHIBITION AGAINST EMPLOYEES HOLDING OFFICE

A. No person may both be an employee of a county, municipality, special taxing district, or other political subdivision and hold office as a member of the governing board, council, or commission which is his or her employer. F.S. 112.313(10).

B. However, a school teacher may take a leave of absence without pay to serve on the school board without violating this prohibition. Wright v. Commission on Ethics, 389 So. 2d 662 (Fla. 1st DCA 1980).

C. Does not prohibit simultaneous employment/office-holding for different political subdivisions. For example, a public school teacher or other school district employee is not prohibited by this provision from serving as a member of the city council of a city located within the school district. CEO 02-4.

D. A fire district commissioner's service as a district firefighter, provided he refuses in

advance and in writing his compensation (per-run payments), is not violative of the statute. CEO 00-23.

VI. RESTRICTION ON PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS

A. No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a State examining or licensing board for the profession or occupation. FS 112.313(11).

B. However, the restriction does not encompass enumerated service with a national or regional (e.g., southern states) organization or association (CEO 85-74 and CEO 83-68); and the restriction applies only to enumerated positions within a covered organization or association (CEO 90-61).

VII. MISUSE OF PUBLIC POSITION PROHIBITION

A. Public officers, public employees, and local government attorneys may not corruptly use or attempt to use their official position or any property or resource within their trust, or perform their official duties, to secure a special privilege, benefit, or exemption for themselves or another. F.S. 112.313(6).

B. "Corruptly" is defined in F.S. 112.312(9) to mean

> done with a wrongful intent and for the purpose of obtaining, or compensating, or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

C. The statute has been upheld as not being void for vagueness. Tenney v. Commission on Ethics, 395 So. 2d 1244 (Fla. 2d DCA 1981); Garner v. Commission on Ethics, 415 So. 2d 67 (Fla. 1st DCA 1982).

D. In order to have acted "corruptly," one must have acted "with reasonable notice that conduct was inconsistent with the proper performance of her public duties and would be a violation of the law or the code of ethics." Blackburn v. Commission on Ethics, 589 So.2d 431 (Fla. 1st DCA 1991). A determination that one acted corruptly must be supported by substantial competent evidence. Kinzer v. Commission on Ethics, 654 So. 2d 1007 (Fla. 3d DCA 1995). The standard of proof is clear and convincing evidence. Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997).

E. Mismanagement, "waste in government," and negligent acts are not sufficient; there must be intentional conduct to benefit oneself or another.

F. Sexual harassment (use of position to benefit oneself) can be a violation. See Bruner v. Commission on Ethics, 384 So.2d 1339 (Fla. 1st DCA 1980), and Garner v. Commission on Ethics, 415 So.2d 67 (Fla. 1st DCA 1982); also Garner v. Commission on Ethics, 439 So.2d 894 (Fla. 2d DCA 1983).

G. See CEO 02-13 regarding proper/improper use of public agency "business cards."

VIII. PROHIBITION AGAINST DISCLOSURE OR USE OF CERTAIN INFORMATION

Public officers, public employees, and local government attorneys are prohibited from disclosing or using information not available to members of the general public and gained by reason of their official position for their personal gain or benefit or for the personal gain or benefit of any other person or business entity. F.S. 112.313(8).

IX. PROHIBITION AGAINST SOLICITATION AND ACCEPTANCE OF CERTAIN GIFTS

A. Public officers, public employees, local government attorneys, and candidates for

nomination or election are prohibited from soliciting or accepting anything of value to the recipient based on any understanding that the vote, official action, or judgment of the official, employee, attorney, or candidate would be influenced thereby. F.S. 112.313(2).

B. Things of value under this provision include, but are not limited to, gifts, loans, rewards, promises of future employment, favors, and services.

C. Essentially amounts to bribery and requires a quid pro quo.

X. PROHIBITION AGAINST UNAUTHORIZED COMPENSATION/GIFTS

A. Public officers, employees, and local government attorneys, and their spouses and minor children, are prohibited from accepting any compensation, payment, or thing of value when the official knows or, with the exercise of reasonable care, should know that it is given to influence a vote or other action in which the official was expected to participate in his/her official capacity. F.S. 112.313(4).

B. The Commission has found this standard violated when a legislator received a lobbyist-paid hunting trip, when a legislator received a lobbyist-paid trip to Key West, when a mayor received free cable television service from the city's cable franchisee, and when city officials received free memberships from a country club leasing its facilities from the city. Also, this provision would be violated were an employee of the Department of Children and Family Services to receive $100 for participation in a brief survey regarding a company doing business with the Department. CEO 01-2.

C. The Third District Court of Appeal held the statute unconstitutionally vague in Barker v. Commission on Ethics, 654 So. 2d 646 (Fla. 3d DCA 1995), but the Supreme Court reversed in Commission on Ethics v. Barker, 677 So. 2d 254 (Fla. S. Ct. 1996). The First District Court of Appeal held the statute not to be unconstitutionally vague. Goin v. Commission on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995).

XI. GIFT PROHIBITIONS AND DISCLOSURES FOR "REPORTING INDIVIDUALS" AND "PROCUREMENT EMPLOYEES"

A. "Reporting Individuals" and "Procurement Employees" (RIPEs) also are subject to the detailed gift law provided in F.S. 112.3148.

1. "Reporting individuals" are defined to include persons who are required by law to file the full financial disclosure statement specified in Art. II, Sec. 8, Fla. Const. (CE Form 6), and persons required to file the limited financial disclosure statement specified in FS 112.3145 (CE Form 1). FS 112.3148(2)(d). "Procurement employees" are defined to include any employee of an officer, department, board, commission, or council of the executive branch or judicial branch of state government who 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 $1,000 in any year.

2. Local government attorneys who are RIPEs (by virtue of filing limited disclosure) generally are only the city attorney or the county attorney. Assistant city or county attorneys, attorneys for local government boards, and attorneys for special districts are not RIPEs. See CEO's 83-56, 84-5, 85-49. District School Board attorneys are not RIPEs, unless they come within a generic definition [e.g., "purchasing agent" as defined in Section 112.3145(1)(a)3., Florida Statutes (a F.S. 287.017 CATEGORY ONE purchasing agent).]

3. *Based on information submitted by State and local agencies, the Commission* prepares lists of persons required to file full and limited disclosure. F.S. 112.3145(6). These lists are helpful as a starting point for information about who is a reporting individual.

B. Prohibition against RIPEs Soliciting Gifts: A RIPE is prohibited from soliciting any gift from a lobbyist who lobbies the RIPE's agency, from the partner, firm, employer, or principal of such a lobbyist, or from a political committee or committee of continuous existence as defined in the election laws (FS 106.011), if it is for the personal benefit of the RIPE, another RIPE, or a parent, spouse, child, or sibling of a RIPE. FS 112.3148(3).

1. The prohibition against solicitation is comprehensive, there is no valuation threshold, and it applies even to food and beverages.

2. The gift must be for the personal benefit of the RIPE, a family member, or one or more other RIPEs. Therefore, a RIPE cannot solicit lobbyists for contributions toward a banquet for other RIPEs. But, solicitation of a gift intended for one's agency or for a charity, for example, is not prohibited. CEO 91-52.

C. General Rule on Accepting Gifts: Subject to specific, limited exceptions, a RIPE (and any other person on behalf of the RIPE) is prohibited from knowingly accepting a gift which he or she knows or reasonably believes has a value exceeding $100: (1) directly or indirectly from a lobbyist who lobbies the RIPE's agency or from a political committee or committee of continuous existence; or (2) directly or indirectly made on behalf of the partner, firm, employer, or principal of such a lobbyist. FS 112.3148(4).

1. On the issue of knowledge, note that Commission Rule 34-13.310(4), F.A.C., provides that "reasonable inquiry" should be made of the source of the proposed gift to determine whether it is prohibited. [All further citations to Commission rules are to F.A.C. Chapter 34-13.]

2. Where the gift is given to someone other than a RIPE by one of the prohibited group of donors and is given with the intent to benefit the RIPE, the gift is considered an indirect gift to the RIPE. Rule 310(6). This rule also provides examples of what would be considered prohibited and permitted indirect gifts, as well as the factors the Commission considers in determining whether an indirect gift has been made. See CEO 99-6 (Republican party fundraiser at Disney World attended by public officers).

3. Exceptions. Aside from the exemption for gifts from relatives, there are only three express exceptions to the general rule against accepting gifts worth more than $100 from one of the prohibited group of donors:

a. When the gift is accepted on behalf of a governmental entity or a charitable organization. In this instance, the recipient may maintain custody of the gift for only the time reasonably necessary to arrange for the transfer of custody and ownership of the gift. FS 112.3148(4). These gifts need not be reported. Rule 400(2)(d). Note that Rule 320(1)(b) defines "charitable organization" to mean an organization described in s. 501(c)(3) of the Internal Revenue Code and exempt from tax under S. 501(a).

b. When the gift is from one of certain kinds of governmental entities (an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, a water management district, the Tri-County Commuter Rail Authority, the Technological Research and Development Authority, a county, a municipality, an airport authority, or a school board), provided that a public purpose can be shown for the gift. FS 112.3148(6)(a). These gifts must be reported; however, in CEO 01-14, the Commission on Ethics found that office space made available by a municipality to a Legislator for use as his district office was not a gift. Note that Rule 320(2) defines "public purpose," specifies that there must be a public purpose for the entity's having given the gift and for the RIPE's accepting the gift, and concludes that there is no public purpose for a gift involving attendance at a spectator event unless the donee has direct supervisory or regulatory authority over the event, persons participating in the event, or the entity which gave the tickets. See also CEO 91-53 (county provides telephone service to legislative delegation).

c. When the gift is from a direct-support organization (DSO) specifically

authorized by law to support a governmental entity, so long as the RIPE is an officer or employee of that governmental entity. FS 112.3148(6)(a). These gifts must be reported. See CEO 92-14 (DSO for state university).

D. Gift Disclosures for RIPEs.

1. Quarterly Gift Disclosure (CE Form 9): Each RIPE must file this form to list each gift worth over $100 accepted by the RIPE, except for gifts from relatives, gifts required to be disclosed on other forms, and gifts the RIPE is prohibited from accepting. The deadline is the last day of the calendar quarter following the calendar quarter in which the gift was received. The form need not be filed if no reportable gift was received during the calendar quarter. However, note that the Commission rule requires a RIPE to disclose a gift reportable on this form received during the time the RIPE held his or her public position, regardless of whether the position was vacated before the form is due. The form is filed with the Commission. FS 112.3148(8); Rule 400.

2. Annual Gift Disclosure (CE Form 10). Each RIPE must file this form to list each gift worth over $100 received by the RIPE: from a governmental entity, for which a public purpose can be shown; or from a direct-support organization. The deadline is July 1 of the year following the year in which the gift was received. The form is filed along with the annual financial disclosure form. The form need not be filed if no reportable gift was received. FS 112.3148(6)(d); Rule 410.

E. Gift Prohibitions for Donors

1. A lobbyist who lobbies a RIPE's agency; the partner, firm, employer, or principal of a lobbyist; another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist; and a political committee or committee of continuous existence are prohibited from giving, either directly or indirectly, a gift that has a value in excess of $100 to the RIPE or any other person on the RIPE's behalf. FS 112.3148(5)(a).

2. Exceptions to this prohibition mirror those for RIPEs: a gift worth over $100 may be given if it is intended to be transferred to a governmental entity or charitable organization; a gift worth over $100 may be given by certain governmental entities if a public purpose can be shown for the gift; a gift worth over $100 may be given by a direct-support organization to an officer or employee of the agency supported by the DSO.

F. Gift Disclosures Applicable to Donors.

1. Quarterly Gift Disclosure (CE Form 30): Each lobbyist who lobbies a RIPE's agency, or the partner, firm, employer, or principal of such a lobbyist, who makes or directs another to make a gift having a value over $25 but not over $100 to a RIPE of that agency, must file this form to report the gift. Each political committee or committee of continuous existence which makes or directs another to make a gift having a value over $25 but not over $100 to a reporting individual or procurement employee must file this form to report the gift. In addition, the donor must notify the intended recipient at the time the gift is made that the donor, or another on the donor's behalf, will report the gift. The report is filed with the Commission, except with respect to gifts to RIPES of the legislative branch (of State government), in which case the report shall be filed with the Division of Legislative Information Services in the Office of Legislative Services. FS 112.3148(5)(b); Rule 420.

a. The disclosure requirement does not apply to the following gifts: those which the donor knows will be accepted on behalf of a governmental entity or charitable organization; those from a direct support organization (DSO) to a RIPE of the agency supported by the DSO; or those from an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district, the Tri-County Commuter Rail Authority, the Technological Research and Development Authority, a county, a municipality, an airport authority, or a school board.

b. The deadline is the last day of the calendar quarter following the calendar quarter in which the gift was made. The same gift need not be reported by more than one person or entity,

and the form need not be filed if no reportable gift was made during the calendar quarter.

c. Note that the Commission rule requires the donor to disclose a gift reportable on this form, regardless of whether the donor is within the prohibited group at the time the form is due.

2. Annual Gift Statements by Governmental Entities and DSOs. No later than March 1 of each year, each governmental entity or DSO which has given a gift worth over $100 to a RIPE during the previous calendar year (where the gift is exempted) must give the RIPE a statement describing the gift, the date of the gift, and the value of the total gifts given by the entity or DSO to that RIPE during the calendar year. A governmental entity may provide a single statement covering gifts provided by the entity and any associated DSO. No form has been promulgated by the Commission for this statement. FS 112.3148(6)(c); Rule 430.

G. Gifts from Relatives:

1. Gifts solicited or accepted by a RIPE from a relative are not prohibited or reportable by either the RIPE or the relative, regardless of whether the relative is a lobbyist or the partner, employer, or principal of a lobbyist. FS 112.3148(1); Rules 300(3), 320(4), 400(2), 420(7).

2. The definition of "relative" is expansive, including not only family members such as in-laws and step-relatives, but also persons engaged to RIPEs, persons who hold themselves out as or are generally known as intending to marry or form a household with the RIPE, and any person having the same legal residence as the RIPE. See FS 112.312(21).

H. The Definition of "Gift." Although comprehensive in many respects, including what may be provided to the donee directly, indirectly, or through another, the definition of "gift" (FS 112.312(12)) contains several important exceptions. Since the definition is uniformly applicable to the prohibitions and disclosures, this has the effect of exempting transactions within an exception to the definition of gift (e.g., gifts from relatives, items received in exchange for equal or greater consideration) from being prohibited or subject to disclosure. (As the definition contains a long list of examples of what is a gift and what is not, it is not quoted here; only major concepts and exceptions are reviewed.)

1. Included in the definition are several items that might not normally be considered a gift. These include the use of real or personal (tangible and intangible) or real property; a preferential rate or terms on a debt, loan, goods, or services, which rate is not a government rate or available to similarly situated members of the general public by virtue of certain private attributes; transportation (other than transportation provided by an agency in relation to officially approved governmental business), lodging, and parking; personal and professional services; and any other service or thing having an attributable value.

2. If equal or greater consideration is given (within 90 days of receipt of the gift), it is not a gift; consideration does not include a promise to pay or otherwise provide something of value unless the promise is in writing and enforceable through the courts. F.S. 112.312(12)(a) and 112.312(12)(d). Based upon this concept, the Commission's rule specifies that salary, benefits, services, fees, or other expenses (including travel expenses when a public purpose for the travel exists) received by a RIPE from his or her public agency do not constitute gifts. However, services rendered by the RIPE on behalf of the RIPE's agency by use of official position do not count as consideration for a gift from a person or entity other than the agency. The rule provides that substantiating equal or greater consideration is the responsibility of the donee. CEO 01-13. This can be done by providing information demonstrating the fair market value of items of merchandise, supplies, raw materials, or finished goods provided by the donee to the donor. In the case of personal labor or effort for the benefit of the donor, the length of time, value of the service provided, and whether others providing similar services for the donor received a comparable gift will be reviewed by the Commission. Rule 210. CEO 01-13.

3. There is a significant exclusion for salary, benefits, services, fees, commissions,

expenses, and even gifts associated primarily with the donee's employment or business, or with the doneeÕs service as an officer or director of a corporation or organization. Rule 214 states that this means those things associated with the donee's principal employer or business occupation and unrelated to the donee's public position. EXAMPLE: Fees or even gifts received by a RIPE from a client of his or her private law practice, with no other relationship between the RIPE and the client, would not be a prohibited or reportable gift. However, in CEO 92-33 tickets from one's agency to theater performances were not considered "benefits" under the rule, unlike benefits typically associated with employment.

4. Contributions or expenditures reported under the campaign financing law, campaign-related personal services provided by volunteers, and any other contribution or expenditure by a political party are exempted.

5. An honorarium or expense related to an honorarium event paid to a RIPE or spouse is exempted. These are treated exclusively under the honorarium law.

6. Effective January 1, 1997, food and beverages consumed at a single sitting or event came within the definition of gift. Chapter 96-328, Laws of Florida. Therefore, a cup of coffee or a meal may be prohibited or reportable, depending on value.

I. The Definition of "Lobbyist." A "lobbyist" is defined to mean any natural person who is compensated for seeking to influence the governmental decisionmaking of a RIPE or the agency of a RIPE or for seeking to encourage the passage, defeat, or modification of any recommendation or proposal by a RIPE or the RIPE's agency; it also includes any person who did so during the preceding 12 months. FS 112.3148(1)(b); Rule 240.

1. A lobbyist is being compensated when receiving a salary, fee, or other compensation for the action taken. Rule 240. Thus, any employee of an organization, including the chief executive officer or a salesperson, who is contacting the agency as part of his or her job may be lobbying. On the other hand, an unpaid volunteer member of a nonprofit organization who seeks to influence governmental decision making will not be a lobbyist (but see 4, below, for a possible exception).

2. All types of governmental decisionmaking or recommendations are included, whether they fall in the area of procurement, policy making, investigation, adjudication, or any other area. Rule 240(3).

3. A purely informational request made to an agency and not intended in any way to directly or indirectly affect a decision, proposal, or recommendation of a RIPE or an agency does not constitute lobbying. One must have the intent to affect a decision, proposal, or recommendation and take some action that directly or indirectly furthers or communicates one's intention. Rule 240(4).

4. For agencies that have established by rule, ordinance, or law a registration or other designation process for persons seeking to influence decision making or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, a "lobbyist" includes only a person who is required to be registered or otherwise designated as a lobbyist in accordance with that process or who was so required during the preceding 12 months. FS 112.3148(2)(b). However, the local registration system must be at least as broad in defining who is a "lobbyist" as the Legislature's registration system in order to define who is a lobbyist for purposes of the gift and honoraria laws.

J. Valuation of Gifts.

1. The general rule for valuation uses the actual cost to the donor (less taxes and gratuities) rather than fair market value of the gift, but several exceptions are provided. The rule specifies that "actual cost" means the price paid by the donor which enabled the donor to provide the gift to the donee; if the donor is in the business of selling the item or service (other than personal services), the donor's actual cost includes the total costs associated with providing the items or services divided by the number of units of goods or services produced. FS 112.3148(7); Rule 500(1).

2. Personal services provided by the donor, meaning individual labor or effort performed by one person for the benefit of another, are valued at the reasonable and customary charge regularly charged for such service in the community in which the service is provided. FS 112.3148(7)(a); Rule 500(2).

3. Compensation provided by the donee to the donor is deducted from the value of the gift in determining the value of the gift. Under the Commission's rule, compensation includes only payment by the donee to the donor and excludes personal services rendered by the donee for the benefit of the donor. However, recall that services by the donee may constitute equal or greater consideration, with the result that no gift has been made. The compensation principle gives rise to the so called "$100 deductible," under which the official pays all but $100 of the value of the gift in order to be allowed to accept the gift; but see H.2 above regarding the requirement of payment within 90 days.

4. If the actual value attributable to a participant at an event cannot be determined, the total costs are prorated among all invited persons, including nonRIPEs. FS 112.3148(7)(c).

5. Transportation is valued on a round-trip basis and is a single gift, unless only one-way transportation is provided. Transportation in a private conveyance is given the same value as transportation provided in a comparable commercial conveyance. The rule specifies that this means a similar mode and class of transportation which is available commercially in the community; transportation in a private plane is valued as an unrestricted coach fare. If the donor transports more than one person in a single conveyance at the same time, the value to each person is the same as if it had been in a comparable commercial conveyance. FS 112.3148(7)(d); Rule 500(4).

6. Lodging on consecutive days is a single gift. Lodging in a private residence is valued at $29 per night (the per diem rate less the meal rate provided in FS 112.061). FS 112.3148(7)(e).

7. Where the gift received by a donee is a trip and includes payment or provision of the donee's transportation, lodging, recreational, or entertainment expenses by the donor, the value of the trip is equal to the total value of the various aspects of the trip. Rule 500(3).

8. Food and beverages consumed at a single sitting or event are considered a single gift, valued according to what was provided at that sitting or meal; other food or beverages provided on the same calendar day are considered a single gift, valued at the total provided on that day. FS 112.3148(f). If the gift is food, beverage, entertainment, etc. provided at a function for more than ten people, the value of the gift is the total value of the items provided divided by the number of persons invited, unless the items are purchased by the donor on a per person basis.

9. Tickets and admissions to events, functions, and activities are a frequent source of inquiries. Generally, the rule is that the value is the face value of the ticket or admission fee, but if the gift is an admission ticket to a charitable event and is given by the charitable organization, that portion of the cost which represents a charitable contribution is not included in valuing the gift. F.S. 112.3148(7)(k). Rule 500(5) provides a number of specific examples and principles for valuing this type of gift, especially relating to football tickets, booster fees, and seating in a skybox. Skybox tickets given by a county for professional basketball playoff games would be valued at the cost of admission to persons with similar tickets. CEO 95-36 and CEO 96-02. Multiple tickets received at one time by a RIPE to be used by the RIPE or given to others are valued by multiplying the number of tickets given times the face value of each (CEO 92-33).

10. Where the donor is required to pay additional expenses as a condition precedent to being eligible to purchase or provide the gift, and where the expenses are for the primary benefit of the donor or are of a charitable nature, those expenses are not included in determining the value of the gift. EXAMPLES: A lobbyist's golf club membership fees, for the personal benefit of the lobbyist, are not included when valuing the gift of a round of golf; and the portion of a skybox leasing fee allocated to the FSU Foundation, Inc. (expenses of a charitable nature) is not included in the value of a skybox seat. Rule

500(7) and CEO 94-43.

11. Membership dues paid to one organization during any 12 month period are considered a single gift. FS 112.3148(7)(g).

12. Unless otherwise noted, a gift is valued on a per occurrence basis, meaning each separate occasion on which a donor gives a gift to a donee.

K. Multiple donors.

1. In determining whether a gift is prohibited, the value of the gift provided to a RIPE by any one donor equals the portion of the gift's value attributable to that donor based upon the donor's contribution to the gift. The value of the portion provided by any lobbyist or other prohibited donor cannot exceed $100; if it does, the RIPE cannot accept the gift. Rules 310(5), 510(2).

2. Regardless of whether the gift is provided by multiple donors, the RIPE must disclose it if the value of the gift as a whole exceeds $100. Rule 510(1).

3. In determining whether a donor must disclose a gift ($25-$100) or provide a statement to the RIPE about the gift (over $100), the value of the gift provided by any one donor equals the portion of the gift's value attributable to that donor based upon the donor's contribution to the gift. If that value exceeds the threshold, the donor must disclose the gift or provide the statement. Rules 420(9), 430(4), 510(3).

XII. HONORARIA AND HONORARIUM EVENT-RELATED EXPENSES

A. An honorarium is defined to mean a payment of money or anything of value, directly or indirectly, to a RIPE or to any other person on the RIPE's behalf, as consideration for a speech, address, oration, or other oral presentation; or for a writing (other than a book) which is or is intended to be published. F.S. 112.3149.

1. The Commission's rule specifies that the speech or other oral presentation means a formal address, lecture, panel discussion, or other presentation which a RIPE has been invited to make to a gathering of persons, and further provides examples of documentation evidencing a genuine presentation by the RIPE, rather than a subterfuge to allow an otherwise prohibited gift. FS 112.3149(1)(a); Rule 220.

2. The term "honorarium" specifically excludes: payment for services related to outside employment; ordinary payments or salary received for services related to the RIPE's public duties; a campaign contribution reported as required by law; and the payment or provision of actual and reasonable transportation, lodging, event or meeting registration fees, and food and beverage expenses related to the honorarium event for the RIPE and spouse. FS 112.3149(1)(a). Rule 220(3) concludes that to the extent that the expenses paid or provided for exceed those that are actual and reasonable, that amount constitutes an honorarium. The rule also specifies a number of circumstances the Commission will consider in determining the reasonableness of expenses paid or provided, again in an effort to see that this exception does not allow an otherwise prohibited gift or honorarium.

B. A RIPE is prohibited from soliciting an honorarium from anyone, regardless of amount, when the subject of the speech or writing relates to the RIPE's public office or duties. FS 112.3149(2).

C. Prohibition Against Accepting or Providing Honoraria. A RIPE is prohibited from knowingly accepting an honorarium from: a lobbyist; the employer, principal, partner, or firm of a lobbyist; and a political committee or committee of continuous existence. Similarly, these persons and entities are prohibited from providing an honorarium to a RIPE. There is no $100 threshold for honoraria, as there is for gifts. As with gifts, the Commission's rule states that "reasonable inquiry" should be made by the RIPE to determine whether the honorarium is prohibited. FS 112.3149(3) & (4); Rules 620 & 630.

D. A RIPE must disclose the receipt of payment for, or the provision of, expenses related to an honorarium event from a person or entity that is prohibited from paying an honorarium to the RIPE. There is no $100 threshold for this disclosure requirement. Honoraria or honorarium event-related

expenses paid or provided by any other person or entity are not required to be disclosed. CEO 91-57. The statement (CE Form 10) is due by July 1 for expenses paid for or provided during the prior calendar year, but the form need not be filed if there is nothing to report. The form is filed along with the annual financial disclosure. FS 112.3149(6); Rule 710.

E. No later than 60 days after the honorarium event, the person or entity paying or providing a RIPE's honorarium event-related expenses must provide to the RIPE a statement listing the name and address of the person or entity, a description of the expenses provided each day, and the total value of the expenses provided for the event. This applies only to persons and entities that are prohibited from paying an honorarium to the RIPE. No form has been promulgated by the Commission for this statement. FS 112.3149(5).

XIII. LOCAL GOVERNMENT ATTORNEYS

A. "Local government attorneys" are subject to the provisions of the Code of Ethics contained in F.S. 112.313(2), (4), (5), (6), & (8). F.S. 112.313(16); CEO 02-19.

B. A "local government attorney" is defined to mean "any individual who routinely serves as the attorney for a unit of local government." "Unit of local government" includes, but is not limited to, municipalities, counties, and special districts. Expressly excluded from the definition are attorneys who render services limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding.

C. Unless the local government attorney is a full-time employee or governing board member of the unit of local government, it is not conflicting under F.S. 112.313(3) or 112.313(7) for the attorney's law firm to provide services to the governmental unit; however, the local government attorney may not refer legal work to his or her firm unless authorized by contract. Also, the firm may not represent private clients before the governmental unit. F.S. 112.313(16).

XIV. POST OFFICE-HOLDING AND POST EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS

A. FS 112.313(9) contains a two-year prohibition on former legislators, selected exempt service employees, senior management service employees, and certain others representing persons or entities before their former agencies.

1. Usually does not apply to former career service employees. CEO 00-09. Under certain circumstances, does not apply to former career service employees subjected to an en masse transfer to selected exempt service. CEO 02-1.

2. If applicable, effects are broad due to definition of "represent" codified in FS 112.312(22).

3. To be applicable, the representation must be regarding a matter "before one's former agency" (see CEO 02-12 and CEO 03-10 regarding the scope of one's former "agency").

4. Is ameliorated by certain "grandfatherings." CEO 94-20; CEO 00-01.

5. Applies only to representations before one's former "agency," and not to representations before all of State government. CEO 00-20, CEO 00-11. Actions necessary to carry out, as opposed to actions to obtain, a contract with one's former agency apparently do not constitute "representation" within the meaning of the prohibition (CEO 00-6 and CEO 01-5); but see F.S. 112.3185 below.

6. Does not apply vicariously to other members of one's post-public-service firm. CEO 00-20.

7. Former employees are exempt if their new employment is with another agency of State (not local or regional) government.

8. Former legislators are not expressly exempted via taking State-level public employment; but in certain contexts the Commission on Ethics has constructed such an exemption. CEO 00-07.

B. Elected county, municipal, school district, and special district officers are prohibited by FS 112.313(14) from representing another person or entity for compensation before the governing body of which they were members for a two-year period after leaving office.

C. At the option of the local governing body through ordinance or resolution, appointed county, municipal, school district, and special district officers and employees of these entities may be subjected to a similar two-year prohibition, except for collective bargaining matters, under FS 112.313(13).

XV. ADDITIONAL RESTRICTIONS AT THE STATE LEVEL

A. FS 112.3185(2) prohibits certain public employees who have a role in the procurement of □contractual services□ (as set forth in Chapter 287) from simultaneously being an employee of a public agency and an employee of a person contracting with the agency.

B. FS 112.3185(3) contains a restriction, unlimited in duration, on former public employees holding employment or a contractual relationship with a business entity in connection with any contract in which the employee participated personally and substantially [see CEO 02-17 and CEO 03-8 (former State Technology Office employees) regarding the meaning of "substantial"] through decision, approval, disapproval, recommendation, rendering of advice, or investigation. Does not apply to work for a governmental entity (CEO 88-32); applies only to employment/contractual relationship □ in connection with□ the contract (CEO 01-6); and can apply to contracts coming into existence before or after one leaves public employment (CEO 00-6).

C. FS 112.3185(4) is a two-year restriction on former public employees holding employment or a contractual relationship with a business entity in connection with any contract for □contractual services□ which was within the employee□s responsibility. But see CEO 01-5 (former DBPR employee □outsourcing□ with DBPR) and B above. □Within responsibility□ is not mere incidental contact with the contract (CEO 93-2). Unlike FS 112.3185(3), cannot apply to contract not in existence until after employee leaves public employment (CEO 84-30 and CEO 00-6).

D. FS 112.3185(5) caps the amount of money (at the amount of annual salary at severance from public employment) a former public employee can be paid by his or her former agency for □contractual services□ provided to the agency during the first year after the employee vacates his or her public employment. This prohibition may be waived by the agency head for a particular contract, upon a time/cost savings to the State determination by the head. CEO 01-5. Applies to situations where a former employee (personally or through a closely-held entity) contracts with his or her former agency; does not apply to situations where one works arms length for a business entity contracting with his or her former agency [this is the type of situation addressed by FS 112.3185 (3) & (4)]; see CEO 93-2 and CEO 00-6.

E. FS 112.3185(6) contains a prohibition similar to that contained in FS 112.313(3). However, the prohibition is broader in that it applies in part to one□s □relative,□ as defined in FS 112.312(21), and not just to one□s spouse or child.

F. Regarding FS 112.3185, see, for example, CEO 86-21 (former FDOT attorney, note that definition of □contractual services□ has changed since opinion issued); CEO 87-8 (former FDOT engineer); CEO 93-2 (former FDOT public transit specialist); CEO 00-1; CEO 00-6 (FDOT selected exempt service employee); and CEO 01-5 (former DBPR employee □outsourcing□ with DBPR).

G. Also, Article II, Section 8(e), Florida Constitution, and F.S. 112.313(9)(a)3 contain term-of-office representation restrictions for legislators. This restriction applies to representation before state-level (not local) agencies. CEO 03-11.

XVI. VOTING CONFLICTS OF INTEREST

A. A voting conflict arises when the official is called upon to vote on:

> any measure which would inure to the officer's special private gain or loss; 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 which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer . . . .

F.S. 112.3143.

1. A "principal by whom the officer is retained" includes: the officer's employer (CEO 78-27); a client of the officer's legal or other professional practice (CEO 84-11, CEO 84-1, CEO 76-107, CEO 78-59, CEO 79-2, CEO 85-14, but see CEO 03-7 regarding an "of counsel" relationship); a corporation for which the officer serves as a compensated director (CEO 84-107); and clients of an official who is an insurance agent (CEO 94-10).

2. Situations where the person or entity in question has not been found to be a "principal by whom the officer is retained" include: the officer's church (CEO 90-24); the officer's landlord (CEO 87-86); a homeowner's association of which the officer is a member (CEO 84-80); a non-profit corporation of which the officer is an uncompensated director (CEO 84-50); the hospital where the officer is on the medical staff (CEO 84-3, CEO 02-16); and customers of the officer's retail store (CEO 76-209).

3. One's "relative" is defined to include only one's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. F.S. 112.3143(1)(b).

4. "Business associate" is defined to mean "any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or coowner of property." F.S. 112.312(4). In order for persons to be "business associates" they must be engaged in a common business undertaking (a "business enterprise"); it is not sufficient that they merely hold a nominal status in relation to one another; see CEO 98-9 in which the Commission found that common ownership of a houseboat used for recreational (not commercial) purposes (even via ownership of shares of stock of a for-profit corporation holding title to the houseboat) did not make the owners business associates of one another. Also, see CEO 01-17 (county commissioner member of educational/networking forum not a business associate of other forum members by virtue of forum membership).

5. A "public officer" is any person elected or appointed to hold office in an agency, including persons serving on an "advisory body." F.S. 112.3143(1)(a).

6. Note that members of school boards are subject to the voting conflicts law (F.S. 112.3143) regarding measures which would inure to the special private gain or loss of their relatives (e.g., measures to hire their relatives to school positions), even though the anti-nepotism law (F.S. 112.3135) is not applicable to school boards and school districts. CEO 87-50, AGO 72-72, AGO 82-48.

B. Voting Conflict Duties of State Public Officers

1. Unlike local public officers (dealt with below), State-level public officers are not prohibited from voting on any measure. However, if the measure is one which will inure to an elected State public officer's special private gain or loss, or to that of the various persons or entities enumerated in the statute, he or she must make a disclosure of interest via CE Form 8A within 15 days of the vote on the measure. Similar to appointed local officers, appointed State officers have requirements regarding

"participation" in certain matters that are not applicable to elected officers. FS 112.3143(2) & (4) and CE Form 8A.

C. Voting Conflict Duties of Local Public Officers

1. If there is a voting conflict under the terms of the statute, a local official holding an elective position must:

a. Abstain from voting on the measure;

b. Before the vote, publicly state to the assembly the nature of his or her interest in the matter; and

c. Within 15 days of the vote, file a memorandum of voting conflict (Commission Form 8B) with the person responsible for recording the minutes of the meeting, who incorporates the form in the minutes.

[Note that elected officials are not subject to the same limitation on their ability to "participate" in the matter as appointed officials. ("Participate" is defined in F.S. 112.3143(4)(c) to mean "any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.")]

2. Local officials holding appointive positions must follow more complex guidelines. If they do not intend to "participate" in the measure, they follow the same procedures as elected officials: make the oral declaration, abstain, and follow up with the written form within 15 days. If they do intend to "participate," they must abstain but must make their disclosure before they participate. This is accomplished by either:

a. Filing the memorandum of voting conflict (Form 8B) prior to the meeting, in which case the memorandum is to be provided immediately to the other members of the agency and is to be read publicly at the next meeting after its filing; or

b. If the disclosure has not been made prior to the meeting at which the measure will be considered or the conflict was unknown prior to the meeting, making the disclosure orally at the meeting before "participating," followed by the written memorandum (Form 8B) within 15 days after the oral disclosure, which would be provided immediately to the other members of the agency and be read at the next meeting after its filing.

D. Special Private Gain or Loss--Size of the Class of Persons Affected

1. Obviously, a measure to reduce taxes would inure to the private gain of each taxpayer, including the public officials who are to vote on the proposal. The Commission has recognized that the concept of "special" gain must relate to the number of persons affected, stating:

> [w]hether a measure inures to the *special* private gain of an officer or his principal will turn in part on the size of the class of persons who stand to benefit from the measure. Where the class of persons is large, a special gain will result only if there are circumstances unique to the officer or principal under which he stands to gain more than the other members of the class. Where the class of persons benefiting from the measure is extremely small, the possibility of special gain is much more likely. [CEO 77-129.]

2. On the one hand, where the official would be the only beneficiary of the measure, there clearly would be "special" gain. *See CEO 89-16 (citizen advisory task force member prohibited from* voting to recommend the approval of his own application to receive community development block grant funds).

3. On the other hand, the Commission advised that a city council member would not be prohibited from voting on a proposed sign ordinance where the council member owned a commercial art shop that produced signs, among other products, and other members who owned an advertising business that recommended and purchased billboard space for its clients and who owned an electrical contracting company that had contracted to do work for a sign company also could vote on the ordinance. As the ordinance would have only an indirect effect on the council members' businesses and there was no indication that the members would be affected by the ordinance to a significantly greater or lesser degree than other affected businesses, the Commission concluded that the ordinance would not inure to the "special" gain of the members. (CEO 86-59)

4. Subsequent decisions by the Commission indicate that the threshold for "special gain" occurs when the official constitutes around 1-2% of the size of the class of persons affected. The Commission has concluded that a vote on an ordinance limiting the number of wrecker businesses on a city wrecker rotation list from 18 to 11 violated the statute when the city councilman worked for one of the 11 wrecker companies. In re Thomas R. Tona, 13 FALR 1845 (Fla. Comm. on Ethics 1989). Similarly, the Commission concluded that a county commissioner had been prohibited from voting to pave the road to his residence, where his was one of 13 residences on the paved portion and he owned the majority of the land abutting one side of the paved portion of the road. In re T. Butler Walker, Comm. on Ethics Compl. No. 92-30 (1994).

5. In groups of a larger size, the Commission advised in CEO 93-10 that a town council member was prohibited from voting on a measure to resolve a real property ownership dispute between the town and 43 private property owners, including the council member. In CEO 90-64, the Commission concluded that a city commissioner was prohibited from voting on a renovation project that would benefit property in which he owned an interest, where part of the cost of the project would be assessed against the property owners. There, the commissioner owned 50% of one of 55 parcels that would be affected, the parcels were owned by over 40 persons or entities, and the property's frontage was 2.7% of the total frontage upon which the assessment would be based. In CEO 92-37, the Commission advised that a city commissioner would be prohibited from voting on a measure to add to a local historic preservation district an area that included five hotel or apartment buildings owned by closely-held corporations that were owned by him and his relatives. There, the buildings constituted either 5 of 60 sites to be included or 5 of 168 sites to be included, depending on how the measure was framed. More recently, in CEO 95-4, the Commission advised that a county planning commissioner would be prohibited from voting on a comprehensive plan amendment affecting the designation of 1,200 acres of property owned by the planning commissioner, his relatives, and his business associates, where the measure would have affected a total of approximately 32,000 acres.

6. A series of other opinions involve situations where the class of persons affected was sufficiently large that no "special" gain was deemed to occur. In CEO 90-55, the Commission advised that a city mayor was not required to abstain from voting on measures involving the proposed expansion and renovation of a private club of 2,000 members. In CEO 87-18, the Commission concluded that a planning commissioner was not required to abstain from voting on a comprehensive plan amendment that would have affected 29,000 acres because his principal was leasing 300 acres of the affected area. In CEO 90-71, the Commission advised that a town commissioner was not prohibited from voting on issues relating to a project that would benefit his neighborhood and that would be assessed against the property owners in the neighborhood, when the commissioner owned 1.2% of the 83 lots that would be included in the assessment. Also, see CEO 99-12 (regarding an airport authority commissioner) and CEO 00-13 (regarding a city commissioner receiving and voting on pension benefits).

7. Other decisions involve officials whose interests are proportionately large, when compared to the other members of the class of persons affected. For example, in one case the Commission

concluded that a county commissioner should not have voted on the extension of a road along a boundary of her property, where the commissioner owned 260 acres, was one of 32 property owners along the proposed road extension, and was the fifth largest land owner along the road extension, with the next largest land owner having 20 acres. In re Jeanne McElmurray, Comm. on Ethics Compl. Nos. 87-24 & 26 (Stipulated Final Order 1988).

8. Budgets and appropriations acts are another type of measure that have a broad impact, but that may, in one aspect, inure to the gain of the voting official. In CEO 88-20, the Commission advised that a city commissioner was not prohibited from voting on the approval of a city budget that included funding for in-kind services to be provided in connection with the activities of his employer. See also CEO 89-19 and CEO 92-43 for situations that involve voting on a city's budget that contains items that the official would be prohibited from voting on if the items were considered individually.

E. Special Private Gain or Loss--Remote or Speculative

1. In some situations the Commission has concluded that any gain or loss resulting from the measure would be so remote or speculative that it could not be said to inure to the official's special gain or loss. In CEO 85-46, the Commission advised that a city commissioner could vote on a petition for annexation of property, where the commissioner's employer had sold the property, retained a mortgage, and also owned adjoining property. In CEO 93-4, a city commissioner was advised that he could vote on rent increases for a mobile home park owned by the city and located near a proposed recreational vehicle park he owned, because the possibility that he could in the future justify charging higher rent for his park if the city's park had higher rent was too speculative to conclude that the rent increases would inure to his special gain. In CEO 88-27, the Commission concluded that a city commissioner was not prohibited from voting on the rezoning of property that was being sold contingent upon rezoning, where the commissioner supported another group that was interested in purchasing the same property and the commissioner probably would have been the building contractor for that group in the event the group were to purchase the property. There, the Commission reasoned that the failure of the rezoning measure would not be the only contingency that would have to occur for the commissioner to benefit from the development of the property, as the existing owner would have to agree to sell to the group. However, the Commission noted, if the property were sold to the group, the commissioner could not vote on matters affecting the development of the property so long as he were the contractor for the development. See also CEO 00-8 and CEO 01-18.

2. Several Commission opinions have involved the impact of nearby development on a business owned by the voting official or employing the official--all of these have concluded that any gain resulting from the development was too remote and speculative to inure to the special gain of the official or employer. See CEO 85-77, CEO 85-87, CEO 86-44, CEO 89-32, and CEO 91-70. However, compare CEO 01-8.

3. Not every instance of indirect gain has been classified as too remote and speculative to constitute "special gain," however. In CEO 88-27, the Commission advised that a city commissioner should abstain from voting on the rezoning of property where his employer had contracted to purchase the property contingent upon its receiving a particular zoning designation from the city. In CEO 93-29, the Commission concluded that a city commissioner would be prohibited from voting on matters involving the city's proposed purchase of property where the commissioner and his son owned interests in the mortgage encumbering the property. The Commission also has found a violation where a city/county planning commissioner voted to rezone a parcel of property to permit a higher density, when the commissioner had assigned his contract to purchase the property to the rezoning applicant and he was owed $10,000 by the applicant as part of the assignment. In re John S. Mooshie, 15 FALR 382 (1992), affirmed, per curiam, as Mooshie v. State Commission on Ethics, 629 So. 2d 138 (Fla. 1st DCA 1993).

4. In some situations, a series of decisions are made, some of which would inure to

the special gain of the official and others of which would not, depending on the circumstances and the extent of the official's private participation in the process. Construction projects provide a good example of this. In CEO 89-45, the Commission considered a situation where a city commissioner owned a steel company that designed and bid steel packages to general contractors and developers, who generally would appear before the city commission prior to the commissioner's having submitted a bid on the proposed project. The Commission advised that if the commissioner had not submitted a proposal at the time of the vote, then any perceived gain to him would be too speculative to require him to abstain. However, if the commissioner had contacted or was in the process of negotiating with the contractor or developer, but had not yet submitted a proposal, then he would be required to abstain. See also CEO 00-5 (effect of transient rental ordinance on a grocery store not remote and speculative).

F. Special Private Gain or Loss-- Procedural or Preliminary Issues

1. Some measures are simply procedural or preliminary to the later actions that would result in actual gain or loss, and therefore do not present voting conflicts for officials who would have voting conflicts if called to vote on more substantive measures concerning the same subject. See CEO 78-74 (removing item from consent agenda, to enable it to be discussed). However, in CEO 93-10 the Commission concluded that a town council member who was prohibited from voting on a measure to resolve a real property ownership dispute between the town and private property owners, including the council member, also would be prohibited from voting on a measure to order a survey regarding the disputed property. The Commission reasoned that, since the dispute could not be resolved without a survey being done and the resolution of the dispute would inure to the special gain of the council member, the decision not to order a survey would effectively preclude the resolution of the dispute. Therefore, ordering a survey of the disputed property would not simply be preliminary to an issue where gain or loss could occur.

G. Exceptions to the Voting Conflict Rules

1. When the principal retaining the official is a public agency, the Commission has concluded that the official is not prohibited from voting on a measure inuring to the special gain of the agency and is not required to make any specific disclosures. CEO 86-86, CEO 88-20, CEO 91-20. See F.S. 112.312(2) for the definition of "agency."

2. Commissioners of community redevelopment agencies created or designated pursuant to F.S. 163.356 or 163.357, as well as officers of independent special tax districts elected on a one-acre, one-vote basis, are not prohibited from voting. F.S. 112.3143(3)(b). In CEO 86-13, the Commission advised that a CRA official may vote on matters affecting his or her interests but still would be required to publicly announce the conflict and file a voting conflict memorandum. Similarly, see CEO 87-66, regarding a community development district supervisor elected on a one-acre, one-vote basis.

3. Public officers are not prohibited from voting on matters affecting their salary, expenses, or other compensation as a public officer, as provided by law. F.S. 112.313(5). Note also that this provision specifies that local government attorneys may consider matters affecting their salary, expenses, or other compensation as the local government attorney, as provided by law.

XVII. FINANCIAL DISCLOSURE (FORM 6- "FULL" DISCLOSURE)

A. Who Must File?

1. "Full" disclosure (Commission Form 6--Full and Public Disclosure of Financial Interests) is required of persons holding and seeking elective constitutional office, and is required of other public officers, candidates, and public employees as determined by law . Art. II, Sec. 8(a) and (h), Fla. Const.

2. Elective constitutional offices include, at the State and local level, the following: Governor, Lieutenant Governor, Cabinet member, Legislator, Circuit Judge, County Judge, State Attorney,

Public Defender, Clerk of Circuit Court, Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections (CEO 82-87), County Commissioner, elected Superintendent of Schools (CEO 77-100), District School Board member, Mayor of Jacksonville, Jacksonville City Council member.

3. Appointive position holders required to file Form 6 include: Supreme Court Justices; DCA Judges; Judges of Compensation Claims; the Duval County Superintendent of Schools; and members of the Florida Housing Finance Corporation Board, the Florida Prepaid College Board, and the Florida Commission on Tourism.

B. When Is the Form Due, and Where Is It Filed?

1. Incumbents file with the Commission on Ethics in Tallahassee no later than July 1 of each year. If the form is not filed timely, the Commission sends a reminder notice, advising of a grace period until September 1st; those who ignore the grace period will face an automatic $25-per-day-late fine, up to a maximum of $1,500, and may face additional penalties if an ethics complaint is filed. F.S. 112.3144(4).

2. Candidates must file prior to or at the time they file their qualifying papers, with the officer before whom they qualify. Plante v. Smathers, 372 So. 2d 933 (Fla. 1979); F.S. 99.061(4).

3. Persons leaving public positions must file (Commission Form 6F) within 60 days of leaving, unless within the 60-day period the person takes another position requiring full disclosure. F.S. 112.3144(5).

C. What Must Be Disclosed?

1. Each asset worth more than $1,000 must be described and valued (household goods and personal effects may be reported in a lump sum--see F.S. 112.3144(3)). Art. II, Sec. 8(a) and (h), Fla. Const. The Commission has advised that an asset includes all forms of property interests that can be sold to be applied to the payment of ones debts. CEO 87-84 and CEO 78-1. The asset should be valued at fair market value, as of the date used for reporting ones net worth. Property owned solely by ones spouse need not be reported. CEO 77-158. However, the full value of property held in tenancy by the entirety (held by husband and wife) must be reported. CEO 74-27. Assets held jointly, other than in tenancy by the entirety, can be reported based on the percentage of value owned by the reporting person.

2. Each liability worth in excess of $1,000 must be described and valued (Art. II, Sec. 8(a) and (h), Fla. Const.), except for credit card and retail installment accounts, taxes owed unless reduced to a judgment, indebtedness on a life insurance policy owed to the company of issuance, contingent liabilities, and accrued income taxes on net unrealized appreciation (F.S. 112.312(14)). Valuation depends on the face amount of the debt and the basis for liability (e.g., joint or several). Liability on a promissory note only as a guarantor (CEO 86-40) or as a partner (CEO 95-1) is contingent and not reportable. Liability as a comaker of the note must be reported. CEO 89-5.

3. The net worth of the reporting person as of the close of the prior calendar year, or a more current date. Art. II, Sec. 8(a) and (h), Fla. Const.

4. Income reporting requirements can be satisfied in one of two ways:

a. Attaching a complete copy of the reporting individuals most recent income tax return (including all attachments); or

b. Reporting the name and address, and amount, of each source of income exceeding $1,000 received during the prior year, including a statement of all secondary sources of income. Secondary sources mean each source of income exceeding 10% of the gross income of a business entity of which the reporting individual owned more than a 5% interest and from which the reporting individual received more than $1,000 of gross income. Amounts of secondary income are not disclosed. Art. II, Sec. 8(h), Fla. Const.; Commission Rule Ch. 34-8, F.A.C.

5. Amendments (Commission Form 6X) to full disclosure filings are allowed; however, amendments are only potentially mitigative regarding an ethics complaint proceeding. F.S.

112.3144(6).

XVIII. FINANCIAL DISCLOSURE (FORM 1- "LIMITED" DISCLOSURE)

A. Who Must File? "State officers" (CEO 02-15), "local officers," and "specified state employees" (for example, full-time state employees serving as counsel or assistant counsel to a state agency), as defined in F.S. 112.3145(1), are required to file the "limited" financial disclosure statements (Commission Form 1--Statement of Financial Interests). Support Enforcement Hearing Officers appointed pursuant to Rule 12.491(c), Florida Family Law Rules of Procedure are not required to file (CEO 02-18). "Local officers" include the following:

1. Persons elected to office in any political subdivision, or appointed to fill a vacancy in such an office, except for the elected constitutional officers who file Form 6. F.S. 112.3144(2).

2. Candidates for such local offices. F.S. 112.3145(2)(a).

3. Members of appointed governing bodies of political subdivisions; expressway authorities or transportation authorities established by general law; community college or junior college district boards of trustees; boards having the power to enforce local code provisions; planning or zoning boards, boards of adjustment, boards of appeals, 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 (see CEO 01-11, law not applicable to members of a community land-use planning panel); and pension boards or retirement boards 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. F.S. 112.3145(1)(a)2. CEO 01-20.

4. Any 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. F.S. 112.3145(1)(a)2.

5. Persons holding any of the following positions:

mayor; county or city manager; chief administrative employee of a county, municipality, or other political subdivision; county or municipal attorney; chief county or municipal building 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 (other than those superintendents who file Form 6); community college president; district medical examiner; or purchasing agent having the authority to make any purchase exceeding $15,000 (F.S. 287.017 CATEGORY ONE purchasing agent) for any political subdivision of the state or any entity thereof. F.S. 112.3145(1)(a)3.

a. "County or municipal attorney" includes only the city or county attorney, and not assistant city or county attorneys. CEO 85-49.

b. Rather than simply reviewing an employee's title, a functional analysis of the employee's duties is required to determine if the employee is a "local officer." Thus, a city building and zoning director not having the power to grant or deny a building permit and lacking purchasing authority would not be required to file. CEO 84-61. A city public utilities department director whose responsibilities include the operation of the city's water and sewer facilities would be considered a water resources coordinator, required to file. CEO 84-70.

c. A "purchasing agent" is defined in F.S. 112.312(20) to mean "a public officer or employee having the authority to commit the expenditure of public funds through a contract for, or the purchase of, any goods, services, or interest in real property for an agency, as opposed to the authority to request or requisition a contract or purchase by another person." Thus, this category may include a number of administrative personnel whose positions are not specified otherwise. See CEO 88-62.

d. Members of health facilities authorities created pursuant to Chapter 154, Part III, Florida Statutes, are not "local officers." CEO 03-5.

B. When Is the Form Due, and Where Is It Filed?

1. Candidates for local office must at the time they file their qualifying papers, with the officer before whom they qualify. F.S. 99.061(4), 112.3145(2)(a), and 112.3145(2)(c).

2. Others must file within 30 days of their appointment or employment and annually thereafter, by July 1st, with the supervisor of elections of the county where they reside (if they are not permanent residents of any county, they file where their agency is headquartered). F.S. 112.3145(2)(c). State officers and specified State employees file with the Commission on Ethics. If the form is not filed timely, a reminder notice advising of a grace period until September 1st is sent. Those who ignore the notice and grace period will face an "automatic" $25-per-day-late fine, up to a maximum of $1,500, and may face additional penalties if an ethics complaint is filed. F.S. 112.3145(6).

3. The obligation to file accrues at the close of a calendar year in which the officer or employee holds his or her office or employment. However, persons who leave their office or employment must file Commission Form 1F within 60 days after leaving, unless another reporting position is taken within the 60-day period. F.S. 112.3145(2)(b). The form must be filed even if there is nothing to report. F.S. 112.3145(3).

C. What Must Be Disclosed (note that a disclosure option is now available; see D below)?

1. The Form 1 disclosure is considered "limited" disclosure, because it requires no disclosure of dollar amounts for income, assets, or liabilities. Disclosure thresholds are relative, based on percentages or comparisons, rather than based on absolute dollar amounts.

2. The "disclosure period" covered by the form is the taxable year, whether calendar or fiscal, immediately preceding the last day of the period during which the statement is required to be filed. F.S. 112.312(10).

3. All sources of income in excess of 5% of the reporting person's gross income received by the person in his or her name "or by any other person for his or her use or benefit." Public salary need not be reported, although it should be included when calculating the total amount of one's gross income; nor are sources belonging only to one's spouse or business partner to be reported. F.S. 112.3145(3)(a); CEO 75-19.

4. Secondary sources of income (major clients or customers of businesses owned by the reporting individual) must be disclosed. "Secondary sources" mean each source of income exceeding 10% of the gross income of a business entity of which the reporting individual owned more than a 5% interest and from which the reporting individual received more than 10% of his or her gross income, and at least $1,500. F.S. 112.3145(3)(a)2.

5. The location or description of Florida real property, except for residences and vacation homes, in which the reporting person owns directly or indirectly more than 5% of the value of the property must be disclosed. "Indirect" ownership includes ownership of a beneficial interest in a trust owning the property or in a corporation owning the property, but does not include ownership by a spouse or minor child. F.S. 112.312(13) and 112.3145(3)(a)3; CEO 83-3; CEO 76-162.

6. Intangible personal property worth more than 10% of the reporting individual's total assets must be reported. F.S. 112.3145(3)(a)3.

7. Any liability which equals more than the reporting individual's net worth must be disclosed, except for credit card and retail installment accounts, taxes owed unless reduced to a judgment, indebtedness on a life insurance policy owed to the company of issuance, contingent liabilities, and accrued income taxes on net unrealized appreciation. F.S. 112.312(14) and 112.3145(3)(a)4. Valuation depends on the face amount of the debt and the basis for liability (e.g., joint or several). Liability on a promissory note only as a guarantor (CEO 86-40) or as a partner (CEO 95-1) is contingent and not reportable. Liability as a comaker of the note would be reportable. CEO 89-5.

8. For valuation purposes, property held by husband and wife as tenancy by the entirety should be valued at full value; other joint property should be based on the percentage of ownership. CEO 82-30. Bank accounts where each joint tenant is authorized to withdraw the full amount are valued at full value. CEO 82-30.

D. However, the following disclosure option is available under F.S. 112.3135(3)(b):

1. All sources of gross income in excess of $2,500.

2. All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he or she received gross income exceeding $5,000 during the disclosure period.

3. The location or description of real property in Florida, except for residences and vacation homes, owned directly or indirectly by the reporting person, when such person owns in excess of 5 percent of the value of such real property.

4. A general description of any intangible property worth in excess of $10,000.

5. Every liability in excess of $10,000.

E. Amendments (Commission Form 1X) are allowed; however, the effect of an amendment is potentially mitigative (not curative) in an ethics complaint context. F.S. 112.3145(9).

XIX. DISCLOSURE OF SPECIFIED BUSINESS INTERESTS

A. Persons required to file Form 6 or Form 1 who are or were during the disclosure period an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process), or who own or owned more than a 5% interest in one of certain types of business entities, are required to disclose the fact as part of their Form 6 or Form 1 disclosures. F.S. 112.3145(5).

B. The only types of businesses for which this disclosure must be made are the following: state and federally chartered banks, state and federal savings and loan associations, cemetery companies, insurance companies (including insurance agencies), mortgage companies, credit unions, small loan companies, alcoholic beverage licensees, pari-mutuel wagering companies, utility companies, entities controlled by the PSC, and entities granted a franchise to operate by either a city or a county government. F.S. 112.312(19).

XX. CLIENT DISCLOSURE (QUARTERLY)

A. Who Must File?

State officers, local officers, specified state employees, and elected constitutional officers are required to report, on a quarterly basis, the names of clients represented for a fee or commission before agencies at their level of government, using Commission Form 2. F.S. 112.3145(4).

B. When Is the Form Due and Where Is It Filed?

The form should be filed only when a reportable representation is made during a calendar quarter, no later than the last day of the quarter following the quarter in which the representation is made. "Local officers" file with the supervisor of elections of the county in which the officer is principally employed or is a resident. Elected constitutional officers, state officers, and specified state employees file with the Commission on Ethics. F.S. 112.3145(4).

C. What Should Be Disclosed?

1. The names of clients and the names of the agencies before which the clients were represented by the reporting individual or by any partner or associate of a professional firm of which the reporting individual is a member, when the reporting individual has actual knowledge of the representation.

2. Although the statute requires that reportable representations be at the reporting individual's "level of government," Commission opinions have required only disclosure of representations within the political subdivision served by a given local officer. CEO 80-63, CEO 85-33.

3. Appearances in ministerial matters are not reportable. A "ministerial matter" is one involving "action that a person takes in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the action taken." F.S. 112.312(17).

4. "Representation" includes actual physical attendance on behalf of a client in an agency proceeding, letters written or documents filed on behalf of the client, and personal communications made with the officers or employees of the agency on behalf of the client. F.S. 112.312(22).

5. Under F.S. 112.3145(4), the following also do not have to be reported:

a. Appearances before any court;

b. Appearances before compensation claims judges;

c. Representations on behalf of one's agency in one's official capacity;

d. Preparing and filing forms and applications merely to obtain or transfer a license based on a quota, a franchise of the agency, or a license or operation permit to engage in a profession, business, or occupation, when the action does not require substantial discretion, a variance, a special consideration, or a certificate of public convenience and necessity.

XXI. AUTHORITY TO ADOPT MORE STRINGENT STANDARDS

Agencies, by rule, and political subdivisions, by ordinance, are expressly authorized to adopt "additional or more stringent standards of conduct and disclosure requirements," provided that they do not otherwise conflict with the provisions of the Code of Ethics. F.S. 112.326.