2015
City of Jacksonville
Ethics Program

ETHICS

Materials Prepared and Assembled By:
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June 2015

ETHICS

INDEX

CALENDAR OF IMPORTANT DATES
ETHICS

Good Idea: Have your ECA put these on your Outlook calendar with reminders!

March 31 Gift Disclosure Form 9 Due. (For gifts received the prior quarter: Oct.-Dec.)

June 31 Gift Disclosure Form 9 Due. (For gifts received Jan.-March)

July 1 **ANNUAL FINANCIAL DISCLOSURE FORM 6 DUE!

Sept. 30 Gift Disclosure Form 9 Due. (For gifts received April-June)

Dec. 31 Gift Disclosure Form 9 Due. (For gifts received July-Sept.)

Note: If you did not receive any reportable gifts (gifts over $100 from the City, for example) then you do not have to file the report.

You are also required to attend 4 hours a year of ethics training, per Florida law. This training will be offered by the City's Ethics Office with OGC, but any ethics training that meets the state requirements can be used to meet your requirement. (Like Florida Bar training, or online courses offered by the State Ethics Commission.) You will be reporting compliance with this requirement annually on your financial disclosure form due every July.

ETHICS DANGER AREAS

Carla Miller, Director, Office of Ethics, Compliance and Oversight
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1. **TAKING THINGS**. If you **accept** anything of value for you or your family (Gifts); over $100, it can violate state laws; OK to take gifts from relatives! Can't take anything of any value in exchange for a vote.
2. **ASKING FOR THINGS**. Favors, gifts, help for you or your family.
3. **GOING PLACES**. All travel should go through City or be approved by Ethics/OGC.
4. **FORGETING TO FILE DISCLOSURES--** Financial or Gift forms due to the State Ethics Commission.
5. **CONFLICTS BETWEEN YOUR CITY DUTIES AND PERSONAL LIFE**. Doing business with the city; you or your family or business partners having city contracts or business dealings; being a consultant for a company doing business with the City.
6. **MISUSING YOUR POSITION.** Throwing "your weight around", interfering with city employees/city process; using city resources; sexual harassment.
7. **VOTING WHEN YOU HAVE A CONFLICT**.
8. **TALKING TO YOUR FELLOW COUNCIL MEMBERS** outside of noticed meetings about city business.
9. **DESTROYING PUBLIC RECORDS**, text messages, emails.
10. **BEING QUIET** when you have a concern; ASK QUESTIONS!!!

VOTING CONFLICTS

**__Florida Law requires that you vote on all issues unless there is a conflict of interest__. (FS 286.012) You can't abstain from voting for other reasons.

1. Ask yourself if there is a conflict of interest under Florida Statute section 112.313(3), that you would be doing business with the City of Jacksonville or under 112.313(7), that you have a conflicting employment or contractual relationship.

2. Even if you abstain from voting, you could still violate anti-nepotism laws. Section 112.3135(2). (Example: The Council votes on your spouse being appointed to a position in the City.)

3. The law on Voting Conflicts is in Florida Statutes Section 112.3143.

4. **A voting conflict**:

You may not vote on any measure which would result in a **special private gain or loss** or which you know would result in a special private gain or loss to certain parties close to you: principal who retains/pays you; parent organization or subsidiary of a corporation that retains/pays you; **a relative**; **a business associate**.)

Principal: is your employer, a client of a professional practice; a corporation in which you are a compensated director.

Relative: (for voting conflicts law) father, mother, son, daughter, husband, wife, brother, sister, mother/father/ son/ and daughter-in-laws;

Business Associate: someone you are in business with; are you in a common business pursuit with someone? Is this a current, ongoing business relationship?

Special Private Gain or Loss: Gain or loss must be SPECIAL. This requires an **economic** benefit or harm for you, your relatives or business associates.

5. There are three things to look at:

a) what is the size of the class of those affected by the measure? Example: if you and 2 people benefit from the measure, then it is more likely it is a special gain to you and there is a conflict. If 5000 people benefit from it, and you do too, it is less likely that there is a voting conflict.

b) is the gain or loss remote, speculative? This is decided on a case by case basis. Ask!

c) is the measure just preliminary or procedural? Ask. Better to be safe than sorry.

6. **What do you do if you think there is a conflict**? Ask General Counsel's office for advice. If there is a conflict, for City Council members, you must 1) abstain from voting on the matter; 2) disclose the conflict orally PRIOR to the vote on the measure and 3) file a Form 8B within 15 days.

7. Exceptions: if the principal you work for is a public agency; or if the measure affects your expenses and salary as provided by the law, you may vote.

(Adapted from the outline for Voting Conflicts presented at the 2013 Florida Ethics Conference by the State Ethics Commission.)

Conflicts of Interests

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

Outline prepared 01-27-15
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I. PERSONS GOVERNED BY THE ETHICS LAWS; MANDATORY ETHICS TRAINING

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. have been found not to be public officers subject to the Code of Ethics. CEO 84-17, CEO 91-41. However, Chapter 2009-126, L.O.F., created F.S. 112.3136, subjecting the officers, directors, and chief executive officer of a corporation, partnership, or other business entity that is serving as the chief administrative or executive officer or employee of a political subdivision, and any business entity employee who is acting as the chief administrative or executive officer or employee of the political subdivision, to a number of provisions of the code of ethics. CEO 10-1. In a particular situation, neither a hospital authority's financial services firm nor the firm's personnel were found to be subject to F.S. 112.3136. CEO 09-17.

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. But note that Chapter 2009-214, L.O.F., amended F.S. 1002.33 to make members of charter school governing boards, including governing boards of schools operated by a private entity, subject to F.S. 112.313(2), (3), (7), and (12) and F.S. 112.3143(3), of the Code of Ethics. Also, charter school personnel in schools operated by a municipality or other public entity have been made subject to F.S. 112.3135 (the anti-nepotism law). Further, certain charter school personnel in a charter school operated by a private entity have been made subject to restrictions like the restrictions of F.S. 112.3135, but apparently without the administration of the restrictions being placed in the commission on ethics. F.S. 1002.33(24) and (26); F.S. 1002.33(26)(c).

4. See F.S. Chapter 288, as amended by Chapter 2014-183, L.O.F., regarding the president, senior managers, and members of the board of directors of Enterprise Florida, Inc., and the officers and members of the divisions of Enterprise Florida, Inc., the subsidiaries of Enterprise Florida, Inc., corporations created to carry out the missions of Enterprise Florida, Inc., and corporations with which a division is required by law to contract to carry out is missions, being subject to certain ethics laws.

5. As to Citizens Insurance board members, Citizens Insurance senior managers, and the Citizens Insurance executive director, see F.S. 627.351(6), as amended by Chapter 2014-183, L.O.F. CEO 14-07.

6. See F.S. 155.40(14) regarding governing board members of public hospitals and sales or leases of such hospitals.

7. Members of community alliances are subject to the Code of Ethics. F.S. 20.19(4)(h).

8. See F.S. 445.007(11) regarding Regional Workforce Boards.

9. See F.S. 627.311 regarding senior managers, officers, and members of the board of governors of joint underwriters and joint reinsurers.

10. See F.S. 288.8013 regarding Triumph Gulf Coast, Inc.

11. See F.S. 288.9625 regarding the Institute for Commercialization of Public Research.

12. See F.S. 626.9931, regarding the Interstate Insurance Product Regulation Commission.

13. See F.S. 985.664(11) regarding juvenile justice circuit advisory boards.

14. Members of the board of directors of Florida Is For Veterans, Inc., are subject to F.S. 112.313, F.S. 112.3135, and F.S. 112.3143; are required to file financial disclosure; and are potentially subject to a possible misdemeanor penalty for having an interest in certain business of the corporation during, and for two years following, their board service. In addition, employees of the corporation "shall comply with the Code of Ethics for Public Officers and Employees under part III of chapter 112," and corporation staff must refrain from having interests regarding the corporation's business both during and after their service for the corporation. F.S. 295.21(4) and (7), as created by Chapter 2014-1, L.O.F.

15. Appointees to the Florida Coordinating Council for the Deaf and Hard of Hearing must attend, prior to serving on the Council, orientation training that includes, but is not limited to, the Code of Ethics and conflict of interest laws. F.S. 413.271.

16. Any special district as defined in F.S. 189.012 is an "agency." F.S. 112.312(2), as amended by Chapter 2014-22, L.O.F. However, special districts appear to have been within the prior definition of "agency." Newly elected or appointed members of governing bodies of special districts may have available to them education programs that include courses on the Code of Ethics. F.S. 189.063.

17. Members of the Technology Advisory Council "shall be governed by the Code of Ethics for Public Officers and Employees as set forth in part III of chapter 112, and each member must file a statement of financial interests pursuant to s. 112.3145." F.S. 20.61, as created by Chapter 2014-221, L.O.F.

18. Members of the executive council of the Florida Clerks of Court Operations Corporation have been made subject to some provisions of the Code of Ethics. F.S. 28.35, as amended by Chapter 2014-183, L.O.F.

19. Citizen support and direct-support organizations created or authorized pursuant to law must adopt their own ethics codes. F.S. 112.3251, created via Chapter 2014-183, L.O.F. Expenditures of juvenile justice system direct-support organizations may not be used for the purpose of lobbying as defined in s. 11.045. F.S. 985.672.

20. Water Management District lobbyists have to be registered. F.S. 112.3261, new via Chapter 2014-183, L.O.F.

21. Florida Development Finance Corporation board of directors members are subject to portions of the Code of Ethics. F.S. 288.9604, as amended by Chapter 2014-183, L.O.F.

22. Chapters 2014-183 and 2014-171, L.O.F., significantly affected expressway authorities.

23. See Chapter 2014-254, L.O.F. (CS CS HB 1445), a local bill, concerning the Citrus County Hospital Trust.

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. Also, see CEO 83-2 regarding a "contract city manager." However, see this outline below regarding "local government attorneys," and above regarding F.S. 112.3136. An adjunct professor at a State University can be an independent contractor, rather than an employee. CEO 77-132.

3. See CEO 99-10 and F.S. 1002.33(24) and (26) regarding certain 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 candidate's 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.

E. Constitutional officers are required by F.S. 112.3142 (new, via Chapter 2013-36, L.O.F.) to complete 4 hours of ethics training, annually, that addresses ethics laws, public records laws, and public meetings laws. CEO 13-15; CEO 13-24. The training requirement of F.S. 112.3142 was extended to elected municipal officers; and Constitutional officers and municipal officers must certify on their financial disclosure forms that they have completed the required training. Chapter 2014-183, L.O.F. Elected members of Community Development District boards and elected members of other special district boards are not "elected municipal officers" subject to the annual ethics training requirement. CEO 14-29.

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 has been found not to address situations in which a relative is hired as an independent contractor. CEO 96-13. Of course, a private law firm is not a public "agency" within the meaning of the law. CEO 11-04.

B. At the State level, the law applies to all agencies (executive, legislative, and judicial), except for "an institution under the jurisdiction of the Board of Governors of the State

University System." 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). CEO 14-08 found state colleges to be the same as community colleges for purposes of exemption from the law. 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). A city charter school authority (as opposed to its sponsoring school district) is subject to F.S. 112.3135. CEO 06-13. And, see F.S. 1002.33(24), as amended by chapter 2009-214, L.O.F., making certain charter school officers or personnel subject to F.S. 112.3135 or to similar restrictions. 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). The Commission has found that one's mother's sister's husband is not one's "uncle" under the anti-nepotism law (CEO 99-5), that a person is not one's "sister-in-law"" by virtue of marriage to one's wife's brother (CEO 96-6), that one's paramour is not one's "relative" (CEO 02-3), and that the daughter of one's former spouse is not one's "stepdaughter" (CEO 14-09).

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). See CEO 13-7 as to elevation of planning and zoning board members being promotions or advancements. 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); CEO 09-15 (reappointments).

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. CEO 09-15. 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 (FWC) 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, CEO 13-1) and to reappointments (CEO 95-12, CEO 09-15).

I. Certain volunteer emergency medical, volunteer firefighting, and volunteer police services positions are exempted from the law. CEO 13-1.

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

III. DOING BUSINESS WITH ONE'S AGENCY PROHIBITION; BLIND TRUSTS

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 (CEO 09-3), from directly or indirectly purchasing, renting, or leasing realty, goods, or services (but, maybe, not intangible personal property, CEO 86-26) 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 certain "private" charter school governing board members and certain "privatized" chief administrative officers of political subdivisions are now subject to the statute. F.S. 1002.33(26) and F.S. 112.3136. However, 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, CEO 04-5, CEO 07-11 (note 8), CEO 10-24 (note 6)]; nevertheless, such a purchase may be violative of F.S. 112.313(7). Also, note that a director or officer can come within the prohibition whether or not he or she is paid or compensated (CEO 97-9, Note 8, CEO 06-26, CEO 10-2); that nonprofit corporations are "business entities" (CEO 94-17); but that public "agencies" (e.g., state universities) are not "business entities (CEO 06-2).

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

2. "Business entity" is defined in F.S. 112.312(5); and, under appropriate circumstances, may or may not include an individual natural person in their personal capacity. CEO 10-4.

3. "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.

4. "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, CEO 88-43, CEO 07-2, CEO 08-8 (Question 2). 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.

5. A public officer "acts in his or her official capacity" for purposes of the first prohibition when a board of which he or she is a member (e.g., a county commission) acts collegially to purchase, rent, or lease, regardless of whether the public officer abstains from voting on the matter. CEO 90-24, CEO 10-4. It has been found that a city commissioner does not act to purchase when the city physician, rather than the city commission, acts to purchase. CEO 82-24. The first prohibition is not violated where the purchase, rental, or leasing by the public agency occurs before the public officer of the public agency became connected privately to the business entity. CEO 07-1.

B. The second prohibition in F.S. 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. Note that an "agency of a political subdivision" has been found to include agencies of a county headed by Constitutional officers elected separately from the county commission (e.g., sheriff, clerk of court, supervisor of elections, tax collector, property appraiser). CEO 12-13.

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, CEO 94-3, CEO 12-13), 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; CEO 09-1. 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. One does not act in a private capacity where he or she was a member of the public agency, but held no connection to the business entity, at the time of the rental, lease, or sale to the public agency. CEO 07-1. One does not act in a private capacity to rent, lease, or sell to his political subdivision or an agency thereof where his or her company subcontracts with another company that in turn is renting, leasing, or selling to his political subdivision or agency thereof. CEO 07-2, CEO 08-8 (Question 2). "Selling" requires a sale (CEO 08-14). But a "sale" or "selling" has not been limited to cash sales for an express service; rather, a sale can be present in broader situations involving a valuable consideration (CEO 11-9).

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); CEO 08-15. However, one's public employee duties can be increased for extra pay without violating the statute. CEO 08-15, Question 2. [And see "local government attorneys" below.]

3. A public officer's or public employee's selling to his agency includes situations where his or her business entity provides services to a clientele that the agency itself would be legally obligated (not just voluntarily choosing) to serve but for the proxy actions of the entity paid for or supported by the agency. CEO 07-11 (note 9), CEO 82-22, CEO 82-9. But was found not to apply in a situation where a school board member's company sold uniforms to parents of school children, not to the school district or the district's schools. CEO 10-12.

C. Donations to one's agency have been found not to fall within the scope of this prohibition. CEO 82-15; CEO 13-13. 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 <u>from</u> one's agency or political subdivision; but also note the possible applicability of F.S. 112.313(7). CEO 82-50, CEO 01-16, CEO 07-11 (note 8).

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; CEO 09-1. 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) or unless the original agreement expressly provides for renewal for a specified period and the provisions of the contract under the renewal are the same as the provisions of the original agreement (CEO 85-40). Also, see CEO 02-14, CEO 07-1, CEO 08-8 (Question 1), and CEO 09-1. Further, the Commission has used F.S. 112.316 to grandfather contracts entered into between qualification for elective office and assumption of office (CEO 95-13); and has used F.S. 112.316 to negate the prohibition in situations involving a "unity of interest" (CEO 06-26, county tax collectors acquiring integrated tax management system). See CEO 11-17 regarding a hospital district board commissioner and grandfathering. CEO 14-16 grandfathered a contract predating the employment of physicians at a hospital district.

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. 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); note that it has been found that the whole of the body's attributes and operations must be advisory, note merely some of its nature (CEO 10-24); 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). See also CEO 06-24, in which a county transportation service board was found not to be an advisory board.

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 CEO 01-15 and CEO 11-9, regarding providers from outside of the political subdivision being included in the rotation.

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. In CEO 10-5, the Commission found that a water management district governing board member's earlier general involvement regarding a district real property did not equate to "participation in the determination of the bid specifications" regarding a subsequent lease of the property. And see CEO 07-23, applying F.S. 112.316 to negate a conflict in a "piggy-back" contract situation not technically in compliance with the exemption. 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. However, note that F.S. 1001.42(12)(i), a provision of law outside of the Code of Ethics and not administered by the Commission on Ethics (a provision of the Florida K-20 Education Code), prohibits school board members and school superintendents from having certain interests regarding contracts for materials, supplies, or services. AGO 06-50.

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) or utility location services (CEO 11-12, note 7). 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. Real property owned by a corporation in which an assistant principal has a one-third interest has been found, in a certain context, to be a sole source of supply of real property for construction of new schools. CEO 06-28. The purchase of parcels for road right-of-way can be a series of sole source purchases. CEO 91-31. In CEO 09-18, the exemption was found to be inapplicable to a relationship between a city and a developer, where the relationship involved interests of the developer beyond its provision of sole source items to the city. In CEO 10-4, realty adjacent to a county park was found to be a sole source item. CEO 11-02 found a landowner employing a water management district governing board member to be a sole source of a water project agreement. CEO 10-17 found a corporation employing a reserve deputy sheriff to be the only source of supply for computer applications that enable information sharing between police agencies. As with the rotation exemption, 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 F.S. 112.313(3). CEO 76-38. As a result, members of subordinate boards of a city or county would not, in certain circumstances, 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)] and so long as no other conflicting factors existed (see CEO 05-14, member of personnel board leasing space to county where member might be tempted to favor county in issues before the board). 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). Further, see CEO 94-19 (city police officers receiving rent reduction in exchange for providing security services), CEO 09-3 (city fire department personnel taking courses from fire lieutenant's company), and CEO 10-23 (city tennis professional employee also operating pro shop). See CEO 11-23, finding no prohibited conflict for public district school board members, the district superintendent, and district employees occasioned by their uncompensated service as board members of charter schools, where the district school board applied to itself for the charter school. See CEO 14-24, regarding application of F.S. 112.316 to negate conflict where a certain county employee contracted with the county to be an independent contractor for the county after her retirement. CEO 14-11 and CEO 14-12 found a "unity of interest" to negate conflict under F.S. 112.313(3), via application of F.S. 112.316, regarding uncompensated service for a county economic development council (EDC) receiving funding from the county. CEO 14-15 applied F.S. 112.316 to negate conflict where certain city police department employees provided equestrian services to the city.

E. F.S. 112.31425 (new, via Chapter 2013-36, L.O.F.) provides that if a public officer holds a beneficial interest in a qualified blind trust as described in the statute, he or she does not have a conflict of interest prohibited under F.S. 112.313(3) or (7) or a voting conflict of interest under F.S. 112.3143 with regard to matters pertaining to that interest. Essentially, the trust must be set up in a certain manner, including making documentation, disclosures, and filings, and the public officer must act in accord with the statute in relation to the trust and the trustee, in order to receive the conflict of interest and voting conflict protections. CEO 13-14.

F. F.S. 1002.84(20) is an additional provision relating to contracts involving members, members' relatives, and employees of early learning coalitions.

IV. CONFLICTING EMPLOYMENT AND CONTRACTUAL RELATIONSHIPS

A. F.S. 112.313(7) prohibits a public officer or employee (but not a mere candidate for office, CEO 09-20, and not a relative of the public officer or employee, CEO 11-04) 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. Note, as regarding F.S. 112.313(3), applicability of the statute to "private" charter school board members and to "privatized" chief administrative officers of political subdivisions. F.S. 1002.33(26), F.S. 112.3136.

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), includes compensated directors of nonprofit entities (CEO 85-89), and can include a real estate sales associate "hanging" his license with a broker (CEO 12-15). Refusal, in advance and in writing, of compensation has been held to negate the required element of compensation (CEO 00-23; CEO 08-22).

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, the ownership of shares of stock (CEO 99-13, CEO 11-05), the holding of stock options (CEO 05-18, note 8), and the "hanging" of a real estate sales associate's license (CEO 12-15) 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, CEO 04-9, CEO 10-20, CEO 10-24); but accountants have not been found to have similar "firm-based" contractual relationships (CEO 11-15). Proprietors of unincorporated insurance agencies have been found to hold contractual relationships with each client of the insurance agency (CEO 94-10). But, in CEO 09-19, under particular facts, it was found that an insurance agent's contractual relationship with a developer ended with the renewal of a policy she brokered for the developer.

d. Uncompensated service has been found not to constitute a contractual relationship (CEO 06-26), 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, real estate broker licensure, engineer licensure, landscape architect licensure) are involved (CEO 95-28, CEO 08-7, CEO 08-8, CEO 11-6). And note that a president of a voluntary association can have a conflicting contractual relationship (CEO 06-12), as can an officer or director of a voluntary association (CEO 08-7, Question 2); however, mere membership in the association or service on one of its committees likely would not support the existence of a conflicting contractual relationship. CEO 08-7; CEO 08-22. An uncompensated director of a nonprofit corporation, who is not a member (analogous to a shareholder) of the corporation, was not found to hold a contractual relationship with the corporation (CEO 10-2, CEO 14-12). See CEO 13-26 regarding a State university medical school department chair also involved with a private, nonprofit research foundation. And see CEO 09-7 (county

commissioner serving on economic development council). A member of a limited liability company (LLC) has a contractual relationship with the company. CEO 08-7; CEO 12-2. Less than full-time work has been found to constitute a contractual relationship. CEO 12-9. Marriage does not constitute a contractual relationship between the husband and wife. CEO 90-77. The statute has been found to address contractual relationships of the public officer or employee, not those of his or her spouse (CEO 12-2) or child (CEO 14-11).

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

f. One does not hold a contractual relationship with a company merely because one's corporation or company holds a contractual relationship with the company. CEO 08-23; CEO 14-27. However, CEO 14-02 found that the statute applied to prohibit a city commissioner's private performance of talk show services for a radio station doing business with the city, finding that the station sought the personal services of the commissioner and paid him through his firm; nevertheless, the opinion went on to find that the firm's provision of consulting services to the station, without the station seeking the commissioner's personal services and without his agreeing to perform personal services, was not prohibited. CEO 14-14 found that a city councilperson's employment with a bank did not mean that he also held employment with a company (which was doing business with the city) owned by a member of the bank's board of directors.

3. Past or possible future contractual relationships have been found not to violate the statute; the contractual relationship or employment must exist simultaneously with the other elements of the statute. CEO 88-11; CEO 08-14; CEO 12-3.

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) and a foundation/nonprofit corporation/tax-exempt organization (CEO 07-11). Different companies have been found to be separate business entities even when one company has an interest in or owns shares in the other company (CEO 11-13, regarding a healthcare executive/state university trustee/teaching hospital). CEO 13-5. Further, parent and subsidiary corporations have been found to be separate business entities (CEO 86-12, CEO 05-8), 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, CEO 09-2, CEO 11-05). Even an individual, such as a self-employed person privately providing tutoring services, can be a “business entity” (CEO 04-17, CEO 11-14); however, natural persons who merely own personal or real property are not necessarily “business entities” (CEO 92-2; CEO 82-88; CEO 07-18, note 4; CEO 08-12).

5. "Agency" is defined in 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; CEO 11-6). A city's downtown development review board was not found to be a separate agency from its economic development commission (CEO 10-24). However, a city manager's

agency was found to be much more of city government than the city manager's office (CEO 96-15). The agency of a county personnel board member is the board (CEO 05-14). The agency of a county transportation service board member has been found to be the board (CEO 06-24). The agency of a county board of adjustment member was found to be the board (CEO 88-17). 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). A public school teacher's or principal's agency is his or her school, not the whole of the school district (CEO 04-17, CEO 10-15). The agency of an employee of the operations department of a school district's central office was found to be the operations department (CEO 14-28). A school board member's agency has been found to be the entire school district (CEO 14-21; CEO 14-27). In CEO 08-1, the agency of a city councilman for purposes of F.S. 112.313(7) was determined to be the city council, and in CEO 12-13 the agency of a county commissioner was determined to be the county commission; but note that F.S. 112.313(3), see above, can apply regarding the whole of an officer's or employee's political subdivision. The whole of a water management district has been found to be the agency of a water management district engineer (CEO 96-3). At the State level, one's agency may only be one's bureau (CEO 92-48) or one's district (CEO 87-20, CEO 01-7) and not the whole of an executive department. But note that the agency of an employee of the State Agency for Persons with Disabilities (APD) is the entire APD. CEO 05-6, CEO 05-7. The agency of a member of the Florida Statewide Passenger Rail Commission has been found to be the Commission rather than FDOT. CEO 10-20. The agency of an employee of a county health department has been found to be the employee's health department and not health departments within other counties. CEO 98-20, CEO 90-65. CEO 14-05 found the agency of the general counsel of the Office of Financial Regulation (OFR) to be OFR. CEO 14-06 found the agency of the general counsel of the Department of Business and Professional Regulation (DBPR) to be DBPR.

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. In CEO 09-18, a corporation which had entered into a development agreement with a city was found to be "subject to the regulation of" the city council, due to the many terms and conditions contained in the agreement. 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. In some situations, a city council or a county commission may not regulate a developer, even though the city's board of adjustment and building department may. CEO 08-1, CEO 08-7. However, in CEO 11-6, the Commission found that activities of a city planning and zoning board did not constitute "regulation"; and see CEO 11-16. The enforcement of laws of general applicability does not constitute "regulation." CEO 91-22, CEO 04-14. 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). A city manager's ministerial (nondiscretionary) function to sign a subdivision plat has been found not to constitute regulation of a developer (CEO 76-205, Question 2). Annexation constitutes neither "regulation" nor "doing business." CEO 03-7. A waiver of taxes

or granting of a similar economic incentive by a city's economic development commission was found not to constitute regulation or the doing of business, but café permitting or similar functions by its downtown development review board were found to constitute regulation (CEO 10-24). A port authority regulates a shipping company operating at the port (CEO 03-17), the interests of a shipping agent (CEO 08-5), and a company moving cargo through port terminals (CEO 13-11). A county manatee rule review committee (an ad hoc advisory body) does not exercise regulatory authority (CEO 04-14). A city housing authority does not regulate a state university where the two cooperate to carry out tutoring of at-risk children under a federal program (CEO 06-2). CEO 97-7 found that a charter school is subject to the regulation of its sponsoring school district; but, in a particular context, CEO 09-23 used F.S. 112.316 and "the spirit of" F.S. 112.313(15) to negate a conflict of a school board member employed as an adjunct faculty member at a State college operating a charter school approved by the school board. A franchise has been found to be "regulation," in addition to constituting "doing business" (CEO 12-9). The Florida Virtual School was found not to be subject to the regulation of a local school district. CEO 13-22. In CEO 12-21, a county was not found to regulate a municipality. Note that possible future regulation is not "regulation" under the statute; one's contractual relationship must occur at the same time as the regulatory relationship (CEO 90-65).

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, CEO 07-11, CEO 11-14, CEO 11-15, CEO 12-15. CEO 14-04 found that a business entity seeking a contract would not be "doing business" with an agency until the agency awarded the contract to the company. Note that the public officer or public employee personally does not have to be involved on the private side of the business between his private employer and his public agency in order for the "doing business" element to be present. CEO 10-7. A public officer or employee does not hold employment or a contractual relationship with a company that is doing business with his or her public agency merely because a company of which he or she is an owner or officer subcontracts with the other company (CEO 88-43, CEO 07-2, CEO 11-12, CEO 11-18, CEO 12-8); however, see CEO 14-02, regarding a city commissioner whose personal services for a radio station were sought "through his firm." The company of a school board member was not found to be doing business with the school district when it sold uniforms to parents of school students but not to the district or the district's schools, provided no solicitation or pressuring of school personnel occurred. CEO 10-12. The Commission has found that a direct support organization is doing business with the agency (e.g., college, university) which created it (CEO 89-36, CEO 11-15). 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) or from an agency (CEO 04-5, Question 3, and CEO 04-6). Agreements between governmental entities for the provision of services generally do not constitute "doing business" [CEO 76-2, CEO 81-5, CEO 04-9, Question 3, CEO 06-2, CEO 12-21, (CEO 13-22, agreement between county school district and Florida Virtual School)], but the extension of a grant from one agency to another may (CEO 77-65). In CEO 08-6, it was determined that a sheriff's office's contracting with a city to provide municipal law enforcement services did not constitute "doing business," where a city commissioner's employment with the sheriff's office was not connected to the sheriff's provision of services to the city. The existence of a warranty on a sheriff's mobile command post constitutes "doing business" (CEO 06-25), as does the relationship between a charter school and its sponsoring school district (CEO 97-7). A city was found to be "doing

business" with a corporation by their entry into a development agreement with one another (CEO 09-18). A franchise has been found to constitute "doing business" (CEO 12-9). Receiving funds from a CRA through its commercial loan subsidy program has been found to constitute "doing business," and thus conflicting for CRA board members. CEO 12-7. Further, in CEO 12-7, the Commission found that the special voting conflict language applicable to CRAs for purposes of F.S. 112.3143 did not operate as an exemption to a conflict under F.S. 112.313(7). However, see CEO 12-14 regarding redevelopment area board members, as opposed to CRA members.

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)]; and health facilities authority's employee's law firm providing services to authority (CEO 08-15, Question 1).

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 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, CEO 11-6), 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]. Also, an appearance by one's firm before one's public board, not for a client but for one's own firm's development plans, has been found to be conflicting (CEO 11-6). And note that such a conflict has been recognized to exist if the public officer's firm represents the client in the matter, regardless of whether the firm's work includes an appearance before the public officer's assembled board or the work stops short of such an appearance. CEO 10-24; CEO 11-6. And see CEO 09-10. But see CEO 07-13 regarding other members of a city commissioner's law firm representing clients before city boards other than the city commission. See CEO 12-21 regarding a county commissioner's law firm serving as special counsel to a municipality located within the county. However, commentary in a private capacity to one's own public board regarding delivery of a product has been distinguished from prohibited representation of a client before one's public board. CEO 07-2, CEO 08-8 (note 6). Also, 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. See CEO 05-10 regarding the law firm of a member of the Florida Building Commission Technical Advisory Committee representing clients regarding the Commission, the Committee, or the Accessibility Advisory Council [however, the result of this opinion may be affected by F.S. 553.74(5)].

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; CEO 11-14, district school board employee privately marketing computer workbook tool).

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. But the statute would prohibit a State Representative from serving as president of the Florida Association of Realtors (CEO 06-12) and it would prohibit a State Representative from consulting with a waste management company as its manager of community and municipal relations (CEO 06-19). And see CEO 09-8 regarding a State Representative's working privately to cultivate, for his private employer, clients employing Legislative lobbyists. It would prohibit a county probation officer from being employed by an entity that is providing services to probationers. CEO 96-28. Absent aggravating facts, it would not prohibit Fish and Wildlife Conservation Commission law enforcement officers from providing security services to private landowners. CEO 07-25. 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. It would prohibit a district school board member from being employed as an assistant principal at a charter school sponsored by the school board (CEO 06-23); or from being president and owner of a corporation providing career preparation coaching to students of a charter school (CEO 10-10). It would prohibit a public school teacher from privately tutoring for pay his or her own public school students; but it would not, under certain circumstances, prohibit the teacher's private tutoring of other public school students. CEO 04-17. While the statute would not prohibit a teacher from operating, for a fee, a summer art camp, it would prohibit the teacher's contracting with parents of students who are in the teacher's classes to have their children participate in the camp. CEO 10-15; see, also, CEO 12-23. CEO 13-21 (teacher secondarily employed providing programs to students) found a prohibited conflict if the programs were provided privately, but not if the teacher performed extra school district public employee duties for extra public salary in providing the programs. And see CEO 09-3 (city fire department personnel taking courses from fire lieutenant's company). Also, it would prohibit a sheriff's administrative/disciplinary review board member from serving as president of a police union local. CEO 04-13. And, it has been found to prohibit a county commissioner from being employed by the same county's sheriff's office. CEO 12-12. The statute would not prohibit a trustee of a city's pension boards (who personally is not a member of any pension plan/system of the city) from being employed as the city's finance director. CEO 06-16. It would prohibit a member of the Florida Real Estate Commission from being employed as an instructor at a real estate school (CEO 06-9); however, no prohibited conflict was found where a member of a

hospital district board, acting in his private capacity as a real estate professional, received a commission regarding the purchase of a home by district personnel, where the member did not solicit the business (CEO 07-18). It would prohibit a DCF contract manager from being employed by a subcontractor of a nonprofit corporation contracting with DCF. CEO 07-9. Under certain conditions, the statute was not found to prohibit a city police officer's privately locating and recovering chattel property for lenders (CEO 08-16); but was found to prohibit a police officer's conducting surveillance in unfaithful spouse cases and employee theft cases (CEO 13-16). It was not found, under certain conditions, to prohibit a school board member's company from selling school uniforms to parents of students (CEO 10-12). CEO 14-21 opined on a school board member's employment with a nonprofit literacy foundation. CEO found a prohibited conflict would be created were a school board member's company to engage teachers from her school district to provide private tutoring, were it to provide services to students of her district, or if it were to provide STEM training using teachers of her district or to students of her district. The statute can apply when a public employee inspects his own private work or when another employee of his public agency inspects his private work (CEO 87-12, Question 2); but determining the scope of one's "agency" and possible application of F.S. 112.316, Florida Statutes, should be a part of the analysis in a given matter, especially if the other employee is not subordinate in his public capacity to the employee with the private endeavor. See CEO 11-03, regarding a State Representative being engaged as an expert witness by a law firm representing the Department of Financial Services in litigation. In CEO 11-05, under the circumstances presented, the Commission found that a Governor's passive investments in large national corporations and investment funds did not create a prohibited conflict under the statute; and the Commission found that the Governor could place non-conflicting investments in a blind trust without there being a prohibited conflict, even if the trust later invested in a Florida company in which the Governor would be prohibited from directly owning an interest. CEO 12-18 found that a DCF supervisor for the food stamp program would not have a prohibited conflict due to her part-time employment at a gas station/convenience store that accepts food stamps. CEO 12-8 found that a school board budget advisory committee member who consulted, through his LLC, with a charter school company did not, under the particular facts of the opinion, have a prohibited conflict under the second part of F.S. 112.313(7)(a). CEO 14-04 found a conflict would be created under the second part of the statute were a FDOT employee whose former private employer held his pension funds to be involved in the selection process for award of a FDOT contract sought by the former employer. CEO 14-07 found, under particular circumstances, no prohibited conflict where the chief risk officer of Citizens Property Insurance Corporation recommended actuarial services to his former private clients.

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).

6. Issues of use of leave time from one's public position to attend to one's private business endeavor and whether a public employee has adequate time to perform both his public and private jobs have been found not to be governed by the statute. CEO 86-81, CEO 90-65.

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. F.S. 112.313(7)(a)2. CEO 91-1. CEO 08-20 (state senator in private equity firm). CEO 09-8 (Florida House member). CEO 09-13 (House member employed by Office of Criminal Conflict and Civil Regional Counsel).

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, where 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; but see CEO 08-5. 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 [F.S. 112.313(7)(b) not applicable to Florida Building Commission member]. Regarding architectural review board members, see CEO 04-1. F.S. 627.351(6)(c)4 brings Citizens Property Insurance Corporation board members within F.S. 112.313(7)(b).

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, CEO 01-4, CEO 07-11, CEO 10-16. Note that this exemption only applies to "employment"; it does not apply to "contractual relationships" (CEO 98-11, note 2). Under particular facts, CEO 09-23 applied the exemption, via F.S. 112.316, to a school board member's employment with a State college [not a 501(c) organization] which operated a charter high school approved by the school board.

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 [but see above under F.S. 112.313(3) regarding how to determine whether a given board is or is not "advisory"]; depositories of public funds; passage on a common carrier; contracts awarded by sealed, competitive bid; emergency purchases; legal advertising in a newspaper; aggregated transactions not exceeding $500; and utilities service (CEO 11-12, note 7). And, at the local government level, business/work handled through a rotation system (CEO 11-9) or sole sources of supply.

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). Found not to

apply when officer's corporation, rather than officer as a natural person, purchased limousine service. CEO 08-23.

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, usually when both 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), CEO 08-4 (note 6), CEO 09-1. And see CEO 09-20, in which it was found that grandfathering was available to negate a conflict where the business was entered into during a prior office holding, during which an official held no employment with the company, and where the official then left office, followed by his employment with the company and his subsequent election and taking of office again. But renewals/extensions/amendments, after one takes office, of a grandfathered contract can violate the statute (CEO 02-14, CEO 08-8, CEO 09-1), as can entry into new contracts after one takes office (CEO 09-20, CEO 10-16). And the Commission also has applied F.S. 112.316 to negate a conflict in a "piggy-back" contract situation. CEO 07-23. However, F.S. 112.316 is not necessarily applicable, via "grandfathering," to negate a conflict under the second, as opposed to the first, part of F.S. 112.313(7)(a). CEO 97-15. See CEO 11-17 regarding a hospital district board commissioner and grandfathering. CEO 14-16 grandfathered a contract regarding physicians who would become employees of a hospital district. 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 (but note that application of F.S. 112.316 can be limited, especially regarding governing board members and other high-ranking personnel or "central office" personnel, CEO 12-9, CEO 12-15). 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]; see CEO 03-9 (county parks and recreation department employees providing on-site security for county parks); see CEO 06-10 (Department of Agriculture and Consumer Services employees participating in cost-share programs administered by the Division of Forestry); see CEO 08-28 (county recreation employee also Special Olympics employee); see CEO 09-3 (city fire lieutenant); see CEO 10-23 (city tennis professional employee also operating pro shop); see CEO 14-24 (county employee contacting with county to be independent contractor after retirement); and see CEO 10-24 (city economic development commission/downtown development review board). Also, see CEO 05-6 (not applicable to negate conflict of employee of Agency for Persons with Disabilities occasioned by employee's operation of group home); but see F.S. 393.0654 (and CEO 14-23, which construes F.S. 393.0654). Additionally, see CEO 06-25 (deputy sheriff employed by company contracting with sheriff's office). CEO 14-04 applied F.S. 112.316 to negate the application of the first part of F.S. 112.313(7)(a) where a FDOT employee removed himself from the contract-selection process involving his former private employer and where the employee's remaining relationship with the former employer involved only his holding a very small percentage of its stock via his pension. Further, F.S. 112.316 has been applied in a situation in which a county commissioner owned a small number of shares in a large, publicly-traded corporation (CEO 05-8), in a situation in which a State-level employee owned a small number of stock options in a large, publicly-traded telecommunications company (CEO 05-18), and in a situation in which a hospital district board member was employed by a large corporation making

limited sales of equipment to the district (CEO 10-7). In addition, F.S. 112.316 has been applied to negate a conflict under F.S. 112.313(7)(a) where a member of a housing authority joined a law firm contracting with the authority, where the contract/business between the authority and the law firm was entered into before the member became connected to the firm. CEO 07-1. And, F.S. 112.316 was applied to negate, without the use of grandfathering, a conflict regarding a severance package from a former employer held by an executive director of a shipping port. CEO 13-11. F.S. 112.316 was relevant to a decision of no prohibited conflict where an airport authority commissioner donated (with mutual obligations) his right to purchase a property to the authority. CEO 13-13. But be careful to analyze a given situation in light of the second part of F.S. 112.313(7)(a), as a F.S. 112.316 grandfathering alone may not be adequate to exempt a situation from creating a continuing or frequently recurring conflict or an impediment to public duty. CEO 09-1.

9. Officers of collective bargaining organizations (e.g., police unions) can be excluded from the prohibitions of the first part of the statute, but not necessarily from the prohibitions of the second part. CEO 04-13.

10. F.S. 112.316 can be applied to negate a rote application of F.S. 112.313(7)(a), and thus find no prohibited conflict of interest, where there is a "unity of interest." See, for example, CEO 11-23, which found no prohibited conflict for district school board members, the district superintendent, and district employees, where they served without compensation on the board of a charter school created by the district board's application to itself for the charter school.

11. Compliance with the voting conflicts law, F.S. 112.3143, will not obviate a conflict under F.S. 112.313(7); the two statutes operate independently. CEO 94-5, CEO 12-9.

12. Removal of a public employee's public capacity interaction with certain persons or entities interfacing with the employee's public agency has been recognized, in a certain situation, as a factor in negating a prohibited conflict under the second part of the statute. CEO 13-12.

V. PROHIBITION ON EMPLOYEES HOLDING OFFICE; DUAL PUBLIC EMPLOYMENT

A. No person may both be an employee of a county, municipality, special taxing district, or other political subdivision, or of a State agency, and hold office as a member of the governing board, council, commission, or authority which is his or her employer. F.S. 112.313(10). Both positions must be held at the same time for a violation to exist. CEO 12-3.

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). CEO 14-10 found a county employee who would serve on the county commission to be similarly protected by an unpaid leave of absence.

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. But see F.S. 112.3125, below.

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.

E. The prohibition can be negated, in particular circumstances, by the application of F.S. 112.316. CEO 06-2 (city housing authority commissioner manager of tutoring site on authority property).

F. F.S. 112.313(10) has been found not to prohibit a county commissioner from being employed in the same county's sheriff's office; but note that this dual position-holding was found to be prohibited by F.S. 112.313(7)(a). CEO 12-12.

G. The prohibition of F.S. 112.313(10) is separate from the "dual office-holding" prohibition of Article II, Section 5(a), Florida Constitution.

H. Chapter 2013-36, L.O.F., created F.S. 112.3125. The new statute greatly restricts the ability of elected state or local officers, and candidates for such offices, to accept employment with the State or any of its political subdivisions. There is a limited "grandfathering," but not as to promotions, advancements, or additional compensation. The law is self-explanatory; therefore, its detail will not be repeated here. In CEO 13-10, the Commission found that the law did not apply to a situation where a county commissioner's limited liability company contracted with a school board/district. CEO 14-10 found that a county employee who took a leave of absence to serve on the county commission and who was no longer a county commissioner when he was reactivated as a county employee would not violate the statute.

VI. RESTRICTION ON PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS; AND RESTRICTION ON BOARD OF GOVERNORS OF STATE UNIVERSITY SYSTEM AND TRUSTEES OF UNIVERSITIES SERVING AS A LEGISLATIVE LOBBYIST

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. F.S. 112.313(11). 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). Was found, under specific facts, not to apply to simultaneous service on the Florida Real Estate Appraisal Board and service for a private organization whose members came from various professions (CEO 13-18).

B. F.S. 112.313(17) prohibits citizen members of the Board of Governors of the State University System and citizen members of boards of trustees of local constituent universities from holding employment or a contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to F.S. 11.045.

VII. MISUSE OF PUBLIC POSITION PROHIBITION

A. Public officers, public employees, local government attorneys, and "privatized" chief administrative officers of political subdivisions (F.S. 112.3136) 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"; see CEO 07-24 regarding a sheriff's office employee (candidate for sheriff) wearing uniform and equipment while campaigning; see CEO 08-20 regarding identification of a senator's public position in private firm descriptive information; see CEO 09-7, note 9, as to a county commissioner's promoting job creation; and see CEO 13-25 regarding a senator's providing a letter of support for grant funding or for a hospice's certificate of need application.

VIII. PROHIBITION AGAINST DISCLOSURE OR USE OF CERTAIN INFORMATION

Current and former 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 (except for information relating exclusively to governmental practices) 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); CEO 11-01. Does not prohibit use of one's general expertise or skill, but can be violated where one would work privately regarding a particular project or matter about which he or she gained knowledge or expertise via his or her public position. CEO 04-15. Note that the statute now has applicability to "privatized" chief administrative officers of political subdivisions (F.S. 112.3136).

IX. PROHIBITION AGAINST SOLICITATION AND ACCEPTANCE OF CERTAIN GIFTS

A. Under F.S. 112.313(2), public officers, public employees, local government attorneys, "private" charter school board members [F.S. 1002.33(26)(a)], "privatized" chief administrative officers of political subdivisions [F.S. 112.3136], 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. CEO 09-21. CEO 13-2, Question 2. CEO 14-26 dealt with a city council member accepting designation by a chamber of commerce as an endorsed vendor.

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, local government attorneys, and their spouses and minor children (but not other relatives, e.g., a son-in-law, CEO 11-04) 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); but see CEO 04-11 (violation unlikely under circumstances where school superintendent received “to-be-forgiven” home loan). In CEO 08-12, a fair market value, arms-length residential rental to a school board member was not found to violate the statute. In CEO 09-21, a public officer's not knowing the identity of contributors to a fund to help her ill son-in-law was a factor in there being no violation of the statute. CEO 10-9 found that the statute was not violated where the wife of a Public Service Commission member obtained contract work with a private school, where the husband of a member of the school's advisory board frequently represented intervenors before the PSC.

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).

D. See CEO 14-26, which opined as to F.S. 112.313(4) in the context of a city council member accepting a chamber of commerce's designation as an endorsed vendor.

Note: the statute now has applicability to "privatized" chief administrative officers of political subdivisions. F.S. 112.3136.

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. The persons subject to this law include, but are not limited to, district school board members. However, note that district school board members also are subject to F.S. 1001.421, which prohibits district school board members and their relatives, as defined in F.S. 112.312(21), from directly or indirectly soliciting or accepting any gift, as defined in F.S. 112.312(12), in excess of $50, from any person, vendor, "potential vendor," or other entity doing business with the school district; and note that F.S. 1001.421 is not a part of the Code of Ethics contained in F.S. Part III, Chapter 112. And, note the additional gift provision applicable to employees and board members of Citizens Property Insurance Corporation. F.S. 627.351(6)(d)4.

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 F.S. 112.3145 (CE Form 1). F.S. 112.3148(2)(d); and see F.S. 112.3136 regarding chief administrative officers of political subdivisions. Reporting Individuals who are suspended from office have been found to remain subject to the gift law while suspended. CEO 10-19. "Procurement employees" are defined to include any employee of an officer, department, board, commission, council, or agency of the executive branch or judicial branch of state government who has participated in the preceding 12 months 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 F.S. 287.012, if the cost of such services or commodities exceeds or is expected to exceed $10,000 in any fiscal year. F.S. 112.3148(2)(e).

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 F.S. 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, from a vendor doing business with the RIPE's agency, or from a political committee as defined in the election laws (F.S. 106.011), if it is for the personal benefit of the RIPE, another RIPE, or a parent, spouse, child, or sibling of a RIPE. F.S. 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. Under the facts of CEO 09-21 (fund established to benefit ill son-in-law of county commissioner), solicitation was not found.

3. Note that there may be provisions outside the Code of Ethics which place further restrictions on solicitations of items, but which cannot "relax" the provisions contained within the Code. See, for example, F.S. 334.195, concerning solicitation of funds by FDOT personnel from "any person who has, maintains, or seeks business relations with the department."

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 vendor; or (2) directly or indirectly made on behalf of the partner, firm, employer, or principal of such a lobbyist. F.S. 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) and CEO 05-5 (city officials accepting admissions to speedway suite). See also CEO 06-27 (city paying travel expenses for companions of city officials) and CEO 07-3 (conference sponsor offering discounted registration rate to employees of Office of Financial Regulation). In CEO 08-2, it was determined that appearances by the Attorney General in public service announcements promoting a Florida conference for women (although constituting a gift) would not constitute an indirect gift from a prohibited donor. CEO 09-21 (fund established to benefit ill son-in-law of county commissioner) did not find an impermissible indirect gift.

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. CEO 13-2, Question 2. 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. F.S. 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). Note that travel expenses of a public official provided directly to the official by persons or entities other than the official's own public agency have been found to be gifts to the official and not gifts to his governmental entity; but that reimbursement to an agency for the official's travel or donations to an agency travel fund can be permissible as gifts to the governmental entity. CEO 13-3.

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 created

pursuant to F.S. 373.069, the South Florida Regional Transportation Authority, a county, a municipality, or a school board), provided that a public purpose can be shown for the gift. F.S. 112.3148(6)(a)&(b). 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. F.S. 112.3148(6)(a)&(b). 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. F.S. 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. For example, see CEO 10-11 (direct-support organization of hospital district providing gifts to district board members). 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. A procurement employee files with the Commission on Ethics. The form need not be filed if no reportable gift was received. F.S. 112.3148(6)(d); Rule 410. The report filed by a reporting individual or procurement employee who left office or employment during the calendar year covered by the report shall be filed by July 1 of the year after leaving office or employment at the same location as his or her final financial disclosure statement or, in the case of a former procurement employee, with the Commission on Ethics.

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, a political committee, or a vendor 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. F.S. 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): A 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 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 Office of Legislative Services. F.S. 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 created pursuant to F.S. 373.069, the South Florida Regional Transportation 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. CEO 10-11. 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. F.S. 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, the partner, employer, or principal of a lobbyist, or a vendor. F.S. 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. F.S. 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" [F.S. 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) 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. Free publicity or exposure for members of the Legislature can constitute a "gift" (CEO 05-11), as it can for a city commissioner (CEO 08-29).

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. CEO 01-19, CEO 05-5 (regarding speedway admissions). 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. In CEO 13-2, the Commission found that a charity auction purchase by a public officer of a poker party provided to the charity by a principal of a lobbyist of the officer's public agency was not a gift because the auction was open to all and the auction price was adequate consideration for the poker party.

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 donee's service as an officer or director of a corporation or organization. F.S. 112.312(12)(b)1; CEO 14-26; CEO 09-1; CEO 10-11. 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. Except as provided in F.S. 112.31485, 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. F.S. 112.3148(2)(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. F.S. 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 method 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 Commission's 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. F.S. 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. F.S. 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. F.S. 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. F.S. 112.3148(7)(d); Rule 500(4).

6. Lodging on consecutive days is a single gift. Lodging in a private residence is valued at $44 per night (the per diem rate less the meal rate provided in F.S. 112.061). F.S. 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. F.S. 112.3148(7)(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) and CEO 04-12 (opining as to a charitable golf tournament). 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. F.S. 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. F.S. 112.3148(7)(i); Rule 500(6).

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). CEO 08-19.

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). CEO 08-19.

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). CEO 08-19.

L. Newly-created F.S. 112.31485 (via Chapter 2013-36, L.O.F.) prohibits a RIPE or a member of a RIPE's immediate family from soliciting or knowingly accepting, directly or indirectly, any "gift" from a political committee; and prohibits a political committee from giving such a gift. For purposes of this prohibition, "gift" is defined to mean "any purchase, payment, distribution, loan, advance, transfer of funds, or disbursement of money or anything of value that is not primarily related to contributions, expenditures, or other political activities authorized pursuant to chapter 106." This statute is in addition to the provisions of F.S. 112.3148, discussed above.

M. F.S. 627.351(6)(d)4 contains an additional gift prohibition for employees and board members of Citizens Property Insurance Corporation.

XII. PROHIBITED "EXPENDITURES" AT THE STATE LEVEL

[Note: In addition to the gift and honoraria laws codified at F.S. 112.3148 and 112.3149, the legislature enacted, in a December 2005 Special Session, Chapter 2005-359, L.O.F. (amending F.S. 112.3215), which addresses legislative and executive-branch lobbying at the state level. The law contains substantial obligations, prohibitions, and requirements. However, while the law may apply to certain lobbying-related gifts, expenditures, or activities made by or on behalf of local governments to state level officials, it does not apply to such items or activities directed at local government officials. Nevertheless, the law did not repeal any prohibition of sections 112.3148 and 112.3149, which continue to apply at both the state and local levels. The Commission on Ethics has developed rules and renders advisory opinions regarding the portion of the law which it administers (Executive-Branch portion, F.S. 112.3215, Florida Statutes); and the legislature has established lobbying guidelines for the House and Senate.] See CEO 06-4 (Executive Branch lobbying, agency officials and employees buying tickets to association's

annual legislative reception), CEO 06-6 (engagement party or wedding gifts paid for by lobbyists), CEO 06-7 (donations to the Department of Agriculture and Consumer Services and its direct-support organization given by principals of lobbyists), CEO 06-11 (Governor and staff traveling on trade mission paid for by Enterprise Florida, Inc.), CEO 06-14 (corporate donations used to underwrite costs of annual Prudential Financial-Davis Productivity Awards), CEO 06-15 (corporate gifts and donations to the United Way for the annual Florida State Employees' Charitable Campaign), CEO 06-17 (promotional items given away by insurance provider to state employees attending benefit fairs), CEO 06-18 (discounted cellular telephone service offered to Department of Revenue employees by company whose lobbyists are registered to lobby the executive branch), CEO 07-3 (conference sponsor offering discounted registration rate to employees of Office of Financial Regulation), CEO 07-8 (lobbying firms and prohibited indirect expenditures), CEO 08-2 (Attorney General appearing in public service announcements), and CEO 09-1 (Citizens Insurance board member). Also, see F.S. 112.3215(1)(d) regarding what is an "expenditure." Many government entities have been found not to be an "agency" for purposes of F.S. 112.3215 (CEO 08-19). Expenditures from one who lobbies any executive branch agency have been found to be prohibited as to certain officials or employees of all executive branch agencies (CEO 08-19). Reimbursement to a public agency, as opposed to an agency employee, has been found not to be a prohibited expenditure (CEO 08-26). See CEO 12-16, regarding recorded greetings by the Governor being played on airport shuttle buses.

XIII. 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)(a).

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. 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. F.S. 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. F.S. 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; a political committee; or a vendor. 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. F.S. 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. F.S. 112.3149(6); Rule 710. A procurement employee files with the Commission on Ethics. The statement filed by a reporting individual or procurement employee who left office or employment during the calendar year covered by the statement shall be filed by July 1 of the year after leaving office or employment at the same location as his or her final financial disclosure statement or, in the case of a former procurement employee, with the Commission on Ethics.

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. F.S. 112.3149(5).

F. Note that the expenditure ban of F.S. 112.3215(6)(a) may prohibit honoraria event-related expenses not prohibited under F.S. 112.3149; and that F.S. 112.31485 (gifts involving political committees) could prohibit the payment of expenses not prohibited by F.S. 112.3149.

XIV. LOCAL GOVERNMENT ATTORNEYS

A. All "local government attorneys" are subject to the provisions of the Code of Ethics contained in F.S. 112.313(2), (4), (5), (6), & (8). Government employee (not independent contractor) local government attorneys, and public officer local government attorneys (e.g., a city attorney where the city's charter states that the city attorney is among the officers of city government, like the mayor or the police chief), also are subject to F.S. 112.313(3) & (7). F.S. 112.313(16); CEO 02-19, note 3.

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).

D. The Commission on Ethics did not find F.S. 112.313(16) to apply to a situation involving a public employee general counsel/executive director whose employment was not limited to the provision of legal services. CEO 08-15.

XV. CHIEF ADMINISTRATIVE OFFICERS OF POLITICAL SUBDIVISIONS

A. The officers, directors, and chief executive officer of a corporation, partnership, or other business entity that is serving as the chief administrative or executive officer or employee of a political subdivision, and any business entity employee who is acting as the chief administrative or executive officer or employee of the political subdivision, for the purposes of the following sections, are public officers and employees who are subject to F.S. 112.313 [various standards of conduct, with qualifications], 112.3145 [financial disclosure and other disclosures], 112.3148 [gift laws], and 112.3149 [honoraria laws]. F.S. 112.3136. CEO 09-17, CEO 10-01. CEO 14-13 found, under the facts presented regarding a particular city, that neither the city's financial services firm nor the firm's personnel were subject to F.S. 112.3136.

B. For F.S. 112.313 purposes, their "agency" is the political subdivision that they serve.

C. The contract under which the business entity serves as chief executive or administrative officer is not deemed to violate F.S. 112.313(3) or (7).

XVI. CHARTER SCHOOL BOARD MEMBERS/PERSONNEL [F.S. 1002.33(24) & (26)]

A. Charter school governing board members, including members of governing boards of charter schools operated by a private entity, are subject to F.S. 112.313(2), (3), (7), and (12), and to F.S. 112.3143(3). CEO 11-23.

B. Charter school personnel in schools operated by a municipality or other public entity have been made subject to F.S. 112.3135 (the anti-nepotism law). And to F.S. 112.3145 (financial disclosure), via Chapter 2011-232, L.O.F.

C. Certain charter school personnel in charter schools operated by a private entity are subject to restrictions like the restrictions of F.S. 112.3135, but apparently without the administration of the restrictions being placed in the Commission on Ethics. AGO 10-14.

D. An employee of a charter school, or his or her spouse, or an employee of a charter management organization, or his or her spouse, may not be a member of the governing board of the charter school. F.S. 1002.33(26)(c).

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

A. F.S. 112.313(9) contains a two-year prohibition on former legislators, statewide elected officers, selected exempt service employees, senior management service employees, and certain others representing persons or entities before their former agencies. CEO 10-14 found that a former Assistant State Attorney was not subject to the prohibition because his public position had not been that of an "employee" under the applicable definition. Applies only to certain former State-level employees or officers; does not apply to former local (e.g., city housing authority) employees or officers (CEO 07-19, note 3). CEO 14-20 found that a member

of the New Motor Vehicle Arbitration Board is an appointed state officer subject to the prohibition.

1. Usually does not apply to former career service employees. CEO 00-09. Under certain circumstances, was found not to apply to former career service employees subjected to an en masse transfer to selected exempt service (CEO 02-1); but see Section 2, Chapter 2006-275, L.O.F., bringing those transferred en masse under the prohibition. CEO 12-4. In CEO 14-31, the Commission found that the position of Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH) is not a position within the prohibition.

2. Was found, in a particular situation, not to apply to a former Other Personal Services (OPS) employee (CEO 05-1); but see Section 2, Chapter 2006-275, L.O.F., bringing OPS employees under the prohibition.

3. If applicable, effects are broad due to definition of "represent" codified in F.S. 112.312(22). CEO 09-5; CEO 11-24, note 10. But see CEO 11-03, finding, under a similar prohibition, that certain expert witness services involving a public agency did not amount to "representation" before the agency; and see CEO 11-7, finding that a former Secretary of the Department of Community Affairs could serve as an expert witness.

4. To be applicable, the representation must be regarding a matter before one's former agency; however, note that a matter can be "before" one's former agency regardless of whether or not the former agency is the locus of the authority to take final action regarding the matter. See CEO 06-1, in which the Commission found that a FDOT former SES employee would be prohibited by F.S. 112.313(9)(a)4 from personally representing another person or entity for compensation against FDOT in eminent domain proceedings, in eminent domain presuit negotiations, in an inverse condemnation lawsuit, and in negotiations prior to an inverse condemnation lawsuit. As to the extent of one's former "agency," see CEO 02-12, CEO 03-10, CEO 04-16, CEO 06-1, CEO 07-4 (former employee of Department of Financial Services and Office of Insurance Regulation), CEO 09-6 (former employee of Commission for the Transportation Disadvantaged), CEO 09-11 (former DCF employee), CEO 10-13 (former senior attorney of Agency for Workforce Innovation), and CEO 11-19 (former DCA/AWI employee). For purposes of the prohibition, CEO 08-18 found that the agency of a former employee of the Florida Turnpike Enterprise (FTE) was the FTE, not the whole of the FDOT. Note that CEO 11-10 clarified that the "agency" of a particular former FDOT District employee was the District, and not the whole of FDOT; but that CEO 11-21 and CEO 12-17 found that other FDOT employees had two Districts as their "agency," due to their particular work histories. And see CEO 11-24, as to "agency," finding that a former DCF employee was restricted as to both DCF's Central Region and its SAMH Tallahassee Program Office, due to her having a presence at both during her DCF employment. CEO 12-22 found the "agency" of a former FDOT central office employee to be the central office and all FDOT Districts, due to his work history at FDOT.

5. Is ameliorated by certain "grandfathering." CEO 94-20; CEO 00-01; CEO 08-21 (as to former PSC employee); CEO 14-30 (former FDOT employee grandfathered); but CEO 14-01 found that a former FDOT employee was not grandfathered out of the prohibition where he had changed from one district to another within FDOT after the 1989 grandfather date, even though he had begun work (in the other FDOT district) prior to the grandfather date.

6. Applies only to representations before one's former "agency," and not to representations before all of State government. CEO 00-20, CEO 00-11, CEO 02-12, CEO 12-4. 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; CEO 01-5; CEO 05-16; CEO 05-19, note 5; CEO 06-3; CEO 09-5; and CEO 12-17); but see F.S. 112.3185 below. CEO 11-19 found that one's provision of good-faith responses to unsolicited inquiries for information would not amount to prohibited "representation."

7. Does not apply vicariously to other members of one's post-public-service firm. CEO 00-20; CEO 09-5.

8. One was found to be an "appointed" state officer when he was chosen by other members of his public board rather than selected by a more traditional method of "appointment." CEO 13-6.

9. Has been found not to apply where the former employee is listed in bid response documents written or filed by another person. CEO 09-6.

10. Former employees are exempt if their new employment is with another agency of State (not local or regional) government. CEO 11-22. A State University is an agency of State government satisfying the exemption. CEO 14-32.

11. 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 00-7, CEO 00-18. However, the Commission receded from CEO 00-7 and CEO 00-18 in CEO 09-4.

12. As to a former Attorney General, see CEO 10-22.

13. CEO 13-23 found that a former legislator was prohibited for two years from asking legislative officials to designate legal services plans as available employee benefits to enable him to market the plans to legislative employees.

14. F.S. 112.313(9)(a)3.b. (new via Chapter 2013-36, L.O.F.) prohibits former Legislators from acting as a lobbyist for compensation before an executive branch agency, agency official, or employee for two years following vacation of office. CEO 13-23.

B. Persons who have been elected (not appointed, CEO 07-19, note 3) to any county, municipal, school district, or special district office are prohibited by F.S. 112.313(14) from representing another person or entity for compensation before the government body or agency of which they were an officer for a two-year period after leaving office. For the statute to apply, one must have been elected to office, not merely appointed to an elective office. CEO 09-16. Was found to be applicable to representations before the former governing body, before individual members of the former governing body, and before aides to members; but not to representations before other boards of the political subdivision that are not the "governing body" or "part of the governing body." CEO 05-4. However, F.S. 112.313(14), as amended by Section 2, Chapter 2006-275, L.O.F., now defines "government body or agency," differently for various local governments. As a result, a former county commissioner is prohibited for two years after he leaves office from representing a client for compensation before the county commission collegially, or its individual members, as well as the commissioners' aides and others. "Representation" includes mere physical attendance at a county commission meeting or workshop, even if the former county commissioner does not directly address the commission. CEO 06-22. A former county commissioner is not prohibited from merely attending, in behalf of a client for compensation, gatherings which are not regular meetings of the county commission and which are not advertised or noticed under the Sunshine Law; however, the former county commissioner is prohibited from making comments in behalf of a client at such a gathering if a county commissioner or one or more enumerated county employees is present. CEO 07-6. Also, see CEO 09-20. In CEO 12-3, F.S. 112.316 was applied to negate the prohibition as to a former school board member representing a school district direct support organization, the Commission

on Ethics finding a unity of interest. CEO 13-10 found that the prohibition restricted a former school board member's representation of his own company before his former school district.

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 F.S. 112.313(13). However, if enacted, such an ordinance or resolution is not within the jurisdiction of the Commission on Ethics and a violation of it would not constitute a violation of the State Code of Ethics (CEO 07-19).

XVIII. ADDITIONAL RESTRICTIONS (STATE-LEVEL EMPLOYEES; LEGISLATORS)

A. F.S. 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 F.S. 112.3185(3) contains a restriction, unlimited in duration (CEO 11-24, note 6), 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, CEO 03-8 (former State Technology Office employees), CEO 05-9 (former Department of Juvenile Justice employee), and CEO 08-17 (former FDOT employee) regarding "substantial"] through decision, approval, disapproval, recommendation, rendering of advice, or investigation (activities concerning development or procurement of a contract, CEO 83-8, CEO 06-3, CEO 11-20). Also, see CEO 11-20 (former FDOT intelligent transportation system project manager) regarding "substantial," in a very specific context; and see CEO 12-5. 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, CEO 09-11); and can apply to contracts coming into existence before or after one leaves public employment (CEO 00-6; CEO 11-20; CEO 11-24, note 6). Along with F.S. 112.3185(4), has been found not to be violated in a specific situation due to the application of F.S. 112.316 (CEO 05-16); see also CEO 05-19. The public employee's public agency duties must have concerned a particular contract between the agency and the business entity in order for a violation to exist; mere participation in an entire program or subject matter (without participation as to the particular contract) will not violate the statute (CEO 06-3, note 6). The restriction cannot be avoided by employment with a different company than the company contracting with one's former public agency (e.g., cannot be avoided via subcontracting), if one's actual post-public-employment (private) work is in connection with the contract (CEO 07-16, note 3). However, when the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection does not prohibit him or her from employment or contractual relationship with the business entity if the employee's participation in the contract was limited to recommendation, rendering of advice, or investigation and if the agency head determines that the best interests of the state will be served thereby and provides prior written approval for the particular employee.

C. F.S. 112.3185(4) is a two-year restriction on former public employees holding employment or a contractual relationship with any 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, CEO 06-3). However, "within responsibility" includes situations in which one is the supervisor of another who actually participates (for example, who actually monitors/manages) regarding a contract (CEO 07-16, CEO 01-6); also, see CEO 08-17 and CEO 11-24. Depending on particular facts, restriction can be negated by F.S. 112.316, Florida Statutes (CEO 07-16; and CEO 12-20, in a particular circumstance regarding one who was in the chain of supervision of actual monitors/managers). Unlike F.S. 112.3185(3), cannot apply to contract not in existence until after employee leaves public employment (CEO 84-30, CEO 00-6, CEO 02-17, CEO 03-8, CEO 11-20, CEO 11-24). "Contractual services" are defined as set forth in F.S. Chapter 287. CEO 06-3; F.S. 112.3185(1)(a). The restriction cannot be avoided by employment with a different company than the company contracting with one's former public agency (e.g., cannot be avoided via subcontracting), if one's actual post-public-employment (private) work is in connection with the contract (CEO 07-16, note 3; CEO 11-24). But, the prohibition is specific to particular contracts; it does not encompass entire programs or subject matters. CEO 11-24. However, if the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection may be waived by the agency head through prior written approval for a particular employee if the agency head determines that the best interests of the state will be served thereby. CEO 11-24, note 7. As to the mechanics of waiver in a certain context, see CEO 14-22 (former State University employee). Was found to be inapplicable to purchases from, as opposed to purchases by, the Florida Lottery. CEO 13-8.

D. F.S. 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; and the gross amount paid, rather than the net received, is the measure (CEO 08-14). 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 F.S. 112.3185 (3) & (4)]; see CEO 93-2 and CEO 00-6. If former public employee is employed at arm's length by a bona fide company (rather than being employed by his or her former public agency or by a sham/straw man company), the prohibition does not apply, regardless of the amount of money paid to the former public employee by the bona fide company. CEO 05-13; CEO 08-17; CEO 11-24.

E. F.S. 112.3185(6) contains a prohibition similar to that contained in F.S. 112.313(3). However, the prohibition is broader in that it applies in part to an employee's "relative," as defined in F.S. 112.312(21), and not just to an employee's spouse or child. The prohibition does not apply to local government officials. CEO 11-04, note 1.

F. Regarding F.S. 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. "Agency" is specially defined within the statute; but "employee" has its usual and ordinary meaning. CEO 12-5, note 2. As to an application of F.S. 112.3185 to former State University employees, see CEO 88-12 and CEO 08-14.

H. Also, Article II, Section 8(e), Florida Constitution, and F.S. 112.313(9)(a)3 contain term-of-office representation prohibitions for legislators. They apply to representation before State-level (not local) agencies. CEO 03-11; CEO 09-8; CEO 09-13. See CEO 13-4 as to State Universities, but not State Colleges or Community Colleges, being "state agencies." Exempt from the prohibitions are representations before judicial tribunals involving State agencies; but note that formal administrative proceedings pursuant to F.S. Chapter 120 (DOAH hearing officer/ALJ proceedings) have not been found to be within the "judicial tribunal" exemption. CEO 91-54, CEO 84-6, CEO 78-2. In CEO 11-3, the Commission found that a State Representative would not be personally "representing" another person or entity for compensation before a State agency when negotiating with a law firm to extend a contract for his expert witness services, when acting as an expert witness in fulfillment of the contract and testifying in court, or when consulting with counsel or communicating with agents and employees of the Department of Financial Services, where the law firm represented the Department in litigation.

XIX. 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.

Note: gain or loss to an entity (for example, a corporation) in which a natural person owns a substantial interest necessarily constitutes gain or loss to the natural person. CEO 90-54, Question 2; CEO 06-20, note 6; CEO 08-7, Question 1. Similarly, see CEO 10-6 regarding family/closely-held entities.].

1. A "principal by whom the officer is retained" includes: the officer's employer (CEO 78-27); clients of one's multi-discipline planning/development firm (CEO 11-6); a client of the officer's legal, accounting, or other professional practice (CEO 84-11, CEO 84-1, CEO 76-107, CEO 78-59, CEO 79-2, CEO 85-14, CEO 08-7, Question 1, CEO 11-6, CEO 11-15; 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)—but, compare CEO 09-19. However, a non-lawyer employee of a law/lobbying firm was not found to be retained by clients of the firm other than her clients, although she would be retained by the firm (CEO 08-13). A corporation which wholly owns a corporation which wholly owns another corporation which employs a city council member is a parent organization of a corporate principal by whom the council member is retained (CEO 03-13). Depending on the facts of a given situation, persons or entities other than the person or entity who signs one's paycheck can also be one's employer or principal. CEO 06-21; In re

Irving Ellsworth, Comm. on Ethics Compl. No. 02-108 (final order 06-024), affirmed, per curiam, as Ellsworth v. Commission on Ethics, 944 So. 2d 359; and CEO 09-2. Note that the principal-agent relationship must exist at the time of the vote; the voting conflicts law addresses present (not past or possible future) employment. CEO 06-5, CEO 09-9. F.S. 112.3143 now defines, via Chapter 2013-36, L.O.F., "principal by whom retained." The definition mirrors the Commission's decisional history.

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, CEO 08-12); 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; CEO 08-4, Question 4; CEO 09-7; CEO 10-2); an economic development council (EDC) of which one is an uncompensated board member (CEO 14-11, CEO 14-12); a charter school of which one is an uncompensated board member (CEO 11-23); the hospital where the officer is on the medical staff (CEO 84-3, CEO 02-16); customers of the officer's retail store (CEO 76-209); a person with whom the officer merely holds a contractual relationship (CEO 08-1); a volunteer fire department from which a city commissioner does not receive funds and for which he is not an officer or director (CEO 08-22); a developer for whom an insurance broker previously obtained a policy (CEO 09-19); and a principal of an officer's spouse or other relative (CEO 11-4, CEO 11-8)—but see the discussion below regarding votes affecting an officer's relatives.

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). However, in CEO 10-6, notwithstanding that "brother-in-law" is not included in the definition, a voting conflict was found because the vote/measure affecting the brother-in-law of a mosquito district commissioner also affected the commissioner's "sister" (a relationship within the definition), due to the sister and her husband (the brother-in-law) sharing a household and living expenses. Note that a measure affecting a public officer's relative's private firm (e.g., an officer's husband's employer) or its clients can, but does not necessarily, inure to the special private gain or loss of the relative. CEO 07-5, CEO 08-30, CEO 11-4 (county commissioner's son-in-law non-equity shareholder in law firm when county commission voting on land use matter in which firm is representing the property owner), CEO 11-8 (city commissioners voting on contract where bidders employ their sons), CEO 11-16, note 3 (planning commissioner's wife employed by city development corporation); CEO 12-11 (city councilmember voting on proposal for city contract for law enforcement services with sheriff's office where councilmember's father is employee of sheriff's office).

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 venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner 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). In CEO 08-4, it was determined that other directors of a bank's board of directors are not, by virtue of being directors, business associates of a county commissioner/bank director. CEO 14-14 found that persons who both own stock (not listed on any national or regional exchange) in a bank's holding company are business associates. In CEO 08-12, a residential landlord and tenant were not found to be business associates via the rental. CEO 09-2 did not determine that persons who merely held responsibilities for a corporation were business associates; and see CEO 09-12. Note that the definition has been found to require a present, not a past or possible future, relationship (CEO 09-12).

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). Note F.S. 1002.33(26), subjecting board members of "private" charter schools to F.S. 112.3143; F.S. 288.901(1)(c), regarding the board of directors of Enterprise Florida, Inc.; F.S. 445.007, regarding regional workforce boards; F.S. 627.311(5)(m), regarding joint underwriters and joint reinsurers; and F.S. 627.351(6), regarding Citizens Property Insurance Corporation.

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), as opposed to F.S. 1012.23(2), 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. Via Chapter 2013-36, L.O.F., effective May 1, 2013, State-level public officers are prohibited from voting on any matter that the officer knows would inure to his or her special private gain or loss. The new law also changes disclosure and filing requirements for State-level public officers. See CE Form 8A (the version incorporating the specifics of the new law). Also, Legislators have a choice of forms for the required disclosures. Further, under the new law, if disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of the voting conflicts law by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict. Similar to appointed local officers, appointed State officers also have requirements regarding "participation" in certain matters that are not applicable to elected officers. In CEO 11-12 (see note 8), the Commission found that an appointed governing board member of a utility authority was subject to the "participation" limitations of F.S. 112.3143(4) regarding matters of the authority, notwithstanding that he was a nonvoting member of the board. See F.S. 288.92, as amended by Chapter 2014-183, L.O.F., regarding the members of the board of directors of the Florida Tourism Industry Marketing Corporation. Also, see F.S. 310.151(1)(c) regarding participation by members of the Pilotage Rate Review Committee. And see F.S. 627.351(6)(d)3 regarding Citizens Insurance board members.

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 <u>elective</u> 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.

d. However, as with State-level officers who are attorneys (see, above), local officers have an alternative method of disclosure. F.S. 112.3143(5), as amended by Chapter 2013-36, L.O.F.

[Note that elected officials are not subject to the same limitation on their ability to "participate" in the matter as appointed officials; and note that one appointed to fill a position normally filled by election is not an appointed official (CEO 87-14, CEO 09-9). "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." In CEO 11-12 (see note 8), the Commission found that an appointed governing board member of a utility authority was subject to the "participation" limitations of F.S. 112.3143(4) regarding matters of the authority, notwithstanding that he was a nonvoting member of the board. Also, note that the voting conflicts law itself (as opposed to possible quasi-judicial/due process concerns) does not require full or complete "recusal." CEO 11-9.]

2. Local officials holding <u>appointive</u> 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.

c. Also, see F.S. 445.007(11) regarding regional workforce boards.

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 can relate to the number of persons affected, stating:

> Whether 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; see also CEO 04-10 (measure affecting 55 employees one of whom is relative of public officer requires abstention). 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. 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), CEO 00-13 (regarding a city commissioner receiving and voting on pension benefits), CEO 11-01 (city councilmember voting on collective bargaining measures affecting her police officer-husband), CEO 06-20 (regarding a county commissioner voting on measures concerning a proposed judicial complex near her properties), and CEO 07-22 (county commissioner voting on matter affecting developers including homebuilder spouse). But see CEO 06-21 (no special private gain where each of a town's residents was similarly impacted by a rezoning vote, notwithstanding the small number of town residents) and CEO 07-17 (no special private gain where votes will impact virtually all of a town's residents similarly). CEO 10-2 found no special private gain or loss to a county commissioner's husband who was one of many healthcare providers who would be similarly affected by a measure regarding a healthcare information network. See CEO 12-6 regarding a city councilmember receiving pension benefits as a former city firefighter voting on an increase in benefits. CEO 13-20 found no voting conflict where a mayor voted on de-annexation from a town's boundaries the part of a subdivision (108 lots/85 homes) where he resided. CEO 14-19 found a sufficiently large class to negate a voting conflict regarding the siting of a baseball stadium.

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, CEO 92-43, and CEO 04-6 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.

9. A vote/measure of a SAC (school advisory council) to award "A plus" school recognition moneys to teachers/staff of the school, including teacher/staff members of the SAC, was not found to involve "special" gain or loss, notwithstanding the number of persons affected by the vote/measure, provided the vote/measure did not address a particular person/customized amount. CEO 10-21.

10. The statute now defines, via Chapter 2013-36, L.O.F., "special private gain or loss." The definition is consistent with the Commission's decisional history, but makes it clear that gain or loss must be of an "economic" nature.

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; see also CEO 09-14 (county purchase of airport buffer where mortgage retained). 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. See also CEO 05-2 (village affordable housing committee member owner of mobile home park and voting on mobile home park measures), CEO 05-3 (county commissioner and relatives owning interest in parcels of land near proposed road), CEO 05-17 (airport authority member voting on matters concerning road project near her business), and CEO 09-7, note 7, (county commissioner voting to fund EDC where his corporate cash pay-out tied to land sale). 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. In CEO 07-14 and CEO 07-15 (identical opinions issued to two city commissioners), the Commission found that any gain or loss would be remote or speculative regarding measures to hire or dismiss city attorneys who might counsel city conduct regarding lawsuits to which the city was a party and to which the commissioners were nominal, private-capacity parties; and also found that city measures to continue or settle the lawsuits, or measures to repeal the ordinance underlying the litigation, would not cause gain or loss to the commissioners, inasmuch as they were nominal parties not personally responsible for paying for the litigation. In CEO 10-8, a mayor was not found to have a voting conflict regarding measures concerning a commuter rail station in his city, where he was employed by a hospital corporation whose interests in a neighboring city were tied to commuter rail. See CEO 13-9 finding that a county commissioner was not prohibited from voting on the sheriff's budget where the commissioner's brother was a deputy sheriff applicant.

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, CEO 91-70, CEO 06-8, and CEO 06-20; however, compare CEO 01-8. Later, under the particular facts of CEO 08-1, a city's relinquishment of an outfall (drainage) easement burdening property of a developer upstream from a city councilman's property was found not to create a voting conflict. CEO 14-03 found that a county commissioner was not presented with a voting conflict regarding measures to amend or approve a management agreement and a purchase and sale agreement for a county-owned airport adjacent to his property, determining

any gain or loss to be remote and speculative; note, however, that the situation involved an existing airport, not the locating of an airport where no airport existed. CEO 14-19 found that gain or loss from the siting of a baseball stadium near already-developed property of a city commissioner would be remote and speculative.

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). Voting on altering the language of a funding agreement has been found not to be remote or speculative as to gain or loss, where the public officer privately was involved in seeking funding from the program; but voting on the membership of the program's advisory board was found to present no voting conflict. CEO 13-19.

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 11-18. But see CEO 07-7, in which a city councilman whose company was a supplier of a local manufacturer of fire trucks was not presented with a voting conflict regarding a measure to provide financial incentives to the manufacturer in an effort to keep the manufacturer from relocating. See also CEO 00-5 (effect of transient rental ordinance on a grocery store not remote and speculative). Citing the remote and speculative nature of any gain or loss, the Commission determined that no voting conflict would be created were a city commissioner to vote on a measure to amend the city's affordable (work force) housing ordinance, where one of the commissioner's private legal clients was a potential developer of affordable housing within the city. CEO 05-15. Also, see CEO 12-19 regarding voting on recommendations concerning expansion of alcohol sales. And see CEO 06-21 (regarding Town of Marineland). In CEO 12-1, any gain or loss to businesses owned by city commissioners and frequented by cruise ship passengers due to a city commission vote/measure to seek a ship channel-widening feasibility study was found to be remote and speculative. In CEO 12-3, the Commission found that a school board member was presented with a voting conflict regarding a measure which would

select her for or eliminate her from a position of employment to begin after she left the school board.

5. The new statutory definition of "special private gain or loss" also recognizes that the uncertain, or remote and speculative, nature of a given measure/vote is important under the voting conflicts law.

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." CEO 13-22 found the Florida Virtual School to be an "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). CEO 12-7. In CEO 86-13 and CEO 10-24, 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. And see F.S. 163.367(2), a provision outside the Code of Ethics, which independently requires certain disclosures by CRA officials, commissioners, and employees.

3. Public officers are not prohibited from voting on matters affecting their salary, expenses, or other compensation as a public officer, <u>as provided by law</u>. F.S. 112.313(5). See CEO 08-24 and CEO 08-25, regarding voting to appoint oneself to paid mayor or council office. Under the circumstances presented, CEO 14-17 found that a mayor was not prohibited from voting on an amendment to the city budget which established the salary of the mayor. 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.

Note also the "voting requirements law," F.S. 286.012. See CEO 08-11 and CEO 11-8. This law was amended via Chapter 2014-183, L.O.F., to extend the exception to its voting requirement to certain quasi-judicial contexts, and to provide for potentially differing disclosures

depending on whether one's possible voting conflict is based in a local, versus a State, ethics prohibition.

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

A. Who Must File? Note: See Form 6, available on the Commission's website (www.ethics.state.fl.us), for a listing of a number of persons/positions who must file; however, if one is unsure as to whether he or she must file, the Commission on Ethics should be contacted.

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.

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(5). Willful refusal to file after receiving a maximum automatic fine could result in removal from public office or employment. Chapter 2014-183, L.O.F., amending F.S. 112.3144. Article V, Florida Constitution, judges and justices do not receive reminder notices and do not get the grace period; however, they are not subject to the statutory automatic fines (their conduct is cognizable by the Judicial Qualifications Commission).

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; F.S. 99.063; F.S. 105.031.

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. Note that persons required to file a Form 6F must also file a Form 6 on or before July 1, if they were in office on December 31 of the year prior to the year in which their partial service necessitated the need for the Form 6F filing.

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 one's debts. CEO 87-84 and CEO 78-1. The asset should be valued at fair market value, as of the date used for reporting one's net worth. Property owned solely by one's spouse need not be reported. CEO 77-158. However, the full value of property held in tenancy by the entirety (held as husband and wife), or otherwise held jointly with right of survivorship, must be reported. CEO 74-27. Assets held jointly, other than in tenancy by the entirety or in joint tenancy with right of survivorship, can be reported based on the percentage of value owned by the reporting person. F.S. 112.3144(4)(a). Investment products held in IRAs, 401(k)s, the Florida Retirement Investment Plan, the Florida College Prepaid Plans, and Deferred Option Retirement Accounts should be reported as assets; when funds are held in a bank, credit union, or other institutional account, the account should be identified as an asset. CEO 12-10. For disclosing real property, a street

address should be used if a street address exists for the property. For disclosing a vehicle lease, see CEO 14-18.

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). For disclosing a vehicle lease, see CEO 14-18. Liability for a debt that is secured by property owned by the reporting individual but that is held jointly, with right of survivorship, must be reported at 100 percent of the total amount owed. F.S. 112.3144(4)(b). 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 individual's most recent income tax return (including all schedules, W2s, 1099s, and 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. As to correct reporting of "declined payment of salary," see CEO 04-8.

5. Amendments (Commission Form 6X) to full disclosure filings are allowed. However, the curative effect of an amendment can vary.

D. Form 6 filings are scanned and made publicly available through a searchable Internet database.

E. The law also provides for additional collection methods (garnishment and wage withholding) for unpaid "automatic" financial disclosure fines. The collections actions statute of limitations is 20 years.

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

A. Who Must File? Note: Consult the Form itself, on the Commission's website (www.ethics.state.fl.us), for a listing of some persons/positions who must file; however, if one is unsure of whether he or she is required to file, the Commission on Ethics should be contacted. "State officers" (CEO 02-15, Question 2), "local officers," and "specified state employees" (for example, full-time state employees serving as counsel or assistant counsel to a state agency, a criminal conflict and civil regional counsel, and an assistant criminal conflict and civil regional counsel), as defined in F.S. 112.3145(1), are required to file the "limited" financial disclosure statements (Commission Form 1--Statement of Financial Interests). State university "grants compliance analysts" who have no authority to apply for or award grants and no authority to decide how grant funds are spent were determined not to be "grants coordinators," and thus do not have to file (CEO 10-25). Trial court staff attorneys are not required to file (CEO 03-12); but

see CEO 05-12, requiring filing by various employees of the State Courts System in a Judicial Circuit. 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). A Regional Counsel for the Office of Criminal Conflict and Civil Regional Counsel is required to file as a "specified state employee" due to his status as a "purchasing agent" with the requisite purchasing authority. CEO 08-9. "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 various, but not all, appointed bodies. See CE Form 1, F.S. 112.3145(1)(a)2., CEO 01-11, and CEO 01-20.

4. Certain personnel of private businesses serving as the chief administrative/executive officer of a city or other political subdivision. F.S. 112.3136. CEO 10-01.

5. Members of governing boards of charter schools operated by a city or other public entity. F.S. 1002.33(26).

6. 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.

7. 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; finance director of a county, municipality, or other political subdivision; chief county or municipal building code inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator, with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; district school superintendent (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 the amount in F.S. 287.017 CATEGORY ONE, 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. Includes a city attorney whose firm is retained as an independent contractor. CEO 08-27.

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, were found not to be "local officers." CEO 03-5. Appointed and ex officio members of the Citrus Levy Marion Regional Workforce Development Board, Inc. were not found to be subject to filing financial disclosure (CEO 08-3); but see below regarding Regional Workforce Boards.

e. A "finance director of a county, municipality, or other political subdivision" (required to file via Chapter 2013-36, L.O.F.) was found not to include a finance director of a sheriff's office. CEO 13-17.

f. Trustees of a voluntary employees' beneficiary association were found not to be "local officers." CEO 14-25.

8. A non-voting member of a board has been found to be a "member" required to file financial disclosure (CEO 07-20), and a suspended city commissioner has been found to be required to file (CEO 10-19).

9. Members of Regional Workforce Boards and the executive director of such Boards (or the equivalent of the executive director) must file CE Form 1, pursuant to F.S. 112.3145, unless they are required to file CE Form 6. F.S. 445.007(1).

10. Members of the Jacksonville Transportation Authority file Form 1 with the Commission on Ethics. F.S. 349.03(3)(a). Members of the Gasparilla Island Bridge Authority file Form 1 with the Commission on Ethics. Chapter 2012-242, L.O.F.

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, 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). Willful refusal to file after receiving a maximum automatic fine could result in removal from public office or employment. F.S. 112.3145, as amended by Chapter 2014-183, L.O.F.

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). Filing of a Form 1F does not relieve the filer of the obligation to file a Form 1, if the person was in their public position for the whole of the year preceding the partial year necessitating the filing of a Form 1F.

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. A street address should be used if a street address exists for the property. "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. Regarding reporting of funds or investment products held in IRAs and regarding reporting of other intangible personal properties, see CEO 11-11.

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 co-maker 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. 112.3145(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. Regarding reporting of funds or investment products held in IRAs and regarding reporting of other intangible personal properties, see CEO 11-11.

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

E. As with Form 6, see above, Chapter 2013-36, L.O.F., provided for additional collection methods (garnishment and wage withholding) for unpaid "automatic" fines, and extended the collections actions statute of limitations to 20 years.

XXII. 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 types of businesses for which this disclosure must be made include state and federally chartered banks, state and federal savings and loan associations, cemetery companies, insurance companies, 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).

XXIII. CLIENT DISCLOSURE (QUARTERLY)

A. Who Must File?

State officers, local officers (note addition of "privatized" chief administrative officers, F.S. 112.3136), 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. Depending on the substance of one's relationship to a law firm, one who is "of counsel" to a law firm may not be a "member" of the firm. CEO 74-55, CEO 92-11.

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. Contact with staff can be a reportable representation. CEO 79-7.

6. 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.

XXIV. AUTHORITY TO ADOPT MORE STRINGENT STANDARDS

Agencies, by rule, and political subdivisions, by ordinance, may 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. Counties may specify fines and jail time by ordinance. F.S. 125.69(1).

XXV. ETHICS COMMISSION PROCESSES AND PROCEDURES

A. Commission on Ethics created in F.S. 112.320 to serve:

1. As the guardian of the standards of conduct provided in the Code of Ethics for Public Officers and Employees (Part III, Ch. 112, F.S.); and

2. As the independent commission provided for in Art. II, Sec. 8(f), Fla. Const., to "conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission."

B. The Commission does so, primarily, in two ways:

1. By rendering binding, judicially-reviewable advisory opinions [F.S. 112.322(3); relevant rules are in Ch. 34-6, Florida Administrative Code]; and

2. By investigating complaints [F.S. 112.324; relevant rules are in Ch. 34-5, Florida Administrative Code]

C. Advisory Opinions:

1. Standing is limited to:

a. the person who is in doubt about the applicability of the law to himself or herself, "in a particular context" (not hypothetical); or

b. a public officer or employee having the power to hire or terminate an employee has standing to request an opinion about how the law applies to that applicant or employee

2. Opinion Procedure:

a. Written request initiates the proceeding

b. Commission staff prepares a draft opinion which is sent to the Commission and to the requestor prior to the meeting at which it will be considered

c. Requestor can respond in writing, appear at the meeting and be heard; rendered opinions are numbered, dated and published at Commission's website (www.ethics.state.fl.us)

d. Are analogous to declaratory statements under APA (F.S. 120.565), as they are based on the facts provided by the requestor, rather than on adjudicated facts, and are reviewable by appeal to a District Court of Appeal (F.S. 112.3241)

D. Complaints:

1. Must be made under oath on the form prescribed by the Commission (CE Form 50); a copy must be sent by the Commission to the respondent (accused violator) within 5 days [F.S. 112.324(1)]. Note that the Code of Ethics (Part III, Chapter 112, Florida Statutes) does not expressly require anyone to file an ethics complaint; but note, also, that there may be other statutes or bases requiring a filing [for example, F.S. 1001.64(3), which authorizes community college boards of trustees to ask for investigations of actions by the college's president, and which requires referral of inspector-general-identified potential violations to the Commission on Ethics, FDLE, the Attorney General, or other appropriate authority].

2. Are confidential, unless confidentiality is waived in writing, up to the point where either the complaint is dismissed by the Commission or the Commission finds "probable cause" [F.S. 112.324(2)]

3. First stage: facial review for legal sufficiency of complaint. If Commission finds complaint to be insufficient to indicate a possible violation of the ethics laws, complaint is dismissed without investigation, but with order explaining reasoning. [Rule 34-5, F.A.C.]

4. Second stage: preliminary investigation to determine "probable cause." Commission or Executive Director orders investigation of complaint; investigator prepares written report, which is provided to the respondent, who is given time to reply. Commission "Advocate" (prosecutor) prepares written probable cause recommendation, which also is provided to the respondent, who can provide a written reply. "Probable cause" hearing before the Commission allows oral argument by the respondent and Advocate (no evidence taken) and allows the complainant to observe. If probable cause is found, Commission can order hearing or allow respondent 14 days to request a public hearing. [F.S. 112.324(3); Rule 34-5]

5. Third stage: determination of whether there was a violation. Either stipulated settlement agreement negotiated between respondent and Advocate or hearing before Division of Administrative Hearings' Administrative Law Judge. ALJ's recommended order reviewed by Commission pursuant to F.S. 120.569 and 120.57. Clear and convincing evidence standard applies to complaint proceedings. Latham v. Fla. Comm. on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Penalties provided for in F.S. 112.317 are imposed by disciplinary officials

(typically the Governor), not by the Commission, which can only recommend penalties. Commission's final order is subject to appeal to District Court of Appeal under F.S. 112.3241 and 120.68. Orders are published on Commission's website per F.S. 120.53.

6. If a complaint is dismissed, the complainant does not have standing to appeal the Commission's decision, not being considered to be a party to the complaint proceeding. Mulgado v. Rodriguez, 933 So.2d 657 (Fla. 1st DCA 2006), and Mulgado v. Diaz, 933 So. 2d 658 (Fla. 1st DCA 2006).

7. In addition to being able to entertain a matter filed as an ethics complaint, the Commission is authorized, via Chapter 2013-36, L.O.F., to proceed on referrals of possible ethics violations, when the referral comes from the Governor, the Florida Department of Law Enforcement, a State Attorney, or a United States Attorney.

8. Also, Chapter 2014-183, L.O.F., amended F.S. 112.3144 and F.S. 112.3145 to mandate that the Commission initiate an investigation, if a person fails to file financial disclosure and accrues the maximum "automatic" fine of $1,500, for the purpose of determining whether the failure to file was willful. If willful, the Commission must recommend that the official be removed from public office or employment.

E. Composition of the Commission:

1. Nine members appointed for two-year terms

2. Five members appointed by the Governor, no more than three of whom are from the same political party, one of whom must be a former city or county official

3. Two members are appointed by the President of the Senate, and two members by the Speaker of the House of Representatives; neither the Speaker nor the President may appoint more than one member from the same political party

4. No member may hold any public employment or be a "lobbyist" under State law or local charter or ordinance; no member may serve more than two full terms in succession. (F.S. 112.321(1))

F. Other Responsibilities of the Commission:

1. Financial disclosure -- compile a list of persons required to file financial disclosure, receive and maintain disclosure forms, and enforce the timely filing of forms by collecting automatic fines imposed by statute for late filings ($25 per day; $1,500 maximum) and by hearing appeals from the fines [F.S. 112.3144(5) and 112.3145(6)]

2. Administer and enforce the executive branch lobbyist registration and reporting law, which requires that persons register to lobby executive branch agencies and officials, and Con. Rev. Comm'ns, under certain circumstances (Legislative lobbyists are regulated by the Legislature) [F.S. 112.3215]

3. Investigate complaints alleging a violation of F.S. 11.062(2), which requires executive branch agencies, state universities, community colleges, and water management districts to lobby the legislative and executive branch only by using full-time employees.

4. Investigate suspected violations of limitations on proper use of State motor vehicles and State aircraft when reported by the CFO (F.S. 287.175)

5. Investigate complaints and render opinions concerning the ethics standards applicable to members and staff of the Public Service Commission, and to members of the Public Service Commission Nominating Council. F.S. 350.031 - .043; 350.0605 (former members).

G. Representing Agency Personnel in Complaints before the Ethics Commission

1. Consider Whether a Conflict of Interest May Prohibit the Representation

a. When an ethics complaint has been filed against an agency officer or employee, the Commission has advised that the Code of Ethics does not prohibit an agency attorney from representing the officer or employee. See CEO 76-144 and CEO 86-57.

b. However, in at least some instances the Bar has concluded that professional ethics considerations would prohibit the agency attorney from representing the officer or employee before the Commission. See Professional Ethics of the Florida Bar Opinion 77-30, May 9, 1978 (county attorney may not represent individual county commissioner before Ethics Commission in matter involving misuse of public office).

c. This opinion was reconsidered by the Board of Governors on Sept. 29, 2006, to clarify its views on conflicts involving a county attorney's representation of a county commissioner who is the subject of an ethics complaint. The reconsidered opinion concludes that there may be a conflict of interest under Rule 4-1.7, and that whether the conflict may be waived depends on the individual circumstances of the matter. In order to waive the conflict, both the commissioner and the county must give informed consent in writing, with the county's consent being given by someone other than the commissioner.

2. Consider the Extent to Which the Attorney Client Privilege May Apply

a. In Re Bruce R. Lindsey, 158 F.3d 1263 (D.C. Cir. 1998):

Government attorney-client privilege did not protect from disclosure advice which Deputy White House counsel rendered on political, strategic, or policy issues in connection with lawsuit involving the President in his personal capacity prior to expansion of Independent Counsel's jurisdiction to investigate whether wrongdoing occurred in connection with that action.

Deputy White House Counsel could not assert government attorney-client privilege to avoid responding to grand jury if he possessed information relating to possible criminal violations.

Deputy White House Counsel could not withhold from grand jury information about possible criminal misconduct that he obtained in conferring with the President and the President's private counsel on matters of overlapping concern to the President personally and in his official capacity.

b. In Re A Witness Before the Special Grand Jury 2000-2, 288 F.3d 289 (7th Cir. 2002):

Attorney-client privilege did not apply to bar grand jury testimony of state government counsel as to communications with officeholder; any privilege ran to the office and not to the employees in that office, and lack of criminal liability for government agencies and duty of public lawyers to uphold the law outweighed any need for a privilege, in context of a federal criminal investigation.

c. Attorney General Opinion 97-61:

Discussions regarding school business between individual school board members and the school board attorney are not attorney-client conversations and, therefore, are not privileged communications.

A school board attorney may memorialize, in writing, any conversations with an individual school board member or the superintendent. These documents are public records subject to inspection and copying.

d. Attorney General Opinion 98-59:

Those records in the files of the city attorney which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor.

H. Attorney's Fees for Defense Against Ethics Complaint

1. Paid by the Official's Public Agency

a. An official's successful defense of misconduct charges brought in proceedings before the Ethics Commission qualifies under the common law for reimbursement by the official's agency of attorney's fees expended in that defense. (There is no statutory obligation.) Thornber v. City of Fort Walton Beach, 568 So. 2d 914, fn. 7 at p. 918 (Fla. 1990).

b. However, fees may not be awarded when the complaint arises out of a vote by the public official that directly advances the official's private pecuniary interests. Chavez v. City of Tampa, 560 So.2d 1214 (Fla. 2d DCA 1990).

c. Maloy v. Bd. of County Commissioners of Leon County, 946 So.2d 1260 (Fla. 1st DCA 2007), rev. den. 962 So. 2d 337 (Fla. 2007): Court affirmed Leon County's refusal to pay Commissioner's attorney fees for successfully defending against ethics complaint which arose out of his consensual affairs with two women, concluding that the ethics proceeding "did not arise out of and in the course of Maloy's employment with the Board while he served a public purpose."

2. Paid by the Complainant

a. A complainant who has filed an ethics complaint with malicious intent to injure the reputation of the official by filing with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains false allegations, of fact material to a violation of the Code of Ethics is liable for costs and reasonable attorney's fees incurred in defending the official. (F.S. 112.317(7); Commission Rule 34-5.0291, F.A.C.)

b. Regardless of whether the official was represented by agency counsel and the official did not incur any out-of-pocket expenses, a complainant who has filed a frivolous ethics complaint with malicious intent to injure the reputation of the official is liable for reasonable costs and attorneys fees incurred in defending the official. Couch v. Commission on Ethics, 617 So. 2d 1119 (Fla. 5th DCA 1993).

c. The amount to be awarded includes fees and expenses incurred in proving entitlement to attorney's fees. Kaminsky v. Lieberman, 675 So.2d 261 (Fla. 4th DCA 1996).

d. For purposes of considering a fees award, the "complaint" filed by the complainant may include statements made by the complainant's attorney to the Commission investigator during the investigation. Osborne v. Commission on Ethics, 951 So.2d 25 (Fla. 5th DCA 2007), rev. dismissed sub nom Milanick v. Osborne, 962 So.2d 337 (Fla. 2007).

e. "[T]he elements of a claim by a public official for costs and attorney fees are that (1) the complaint was made with a malicious intent to injure the official's reputation; (2) the person filing the complaint knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth; and (3) the statements were material." This is not the "actual malice" standard of NY Times v. Sullivan. Brown v. State Commission on Ethics, et al., 969 So.2d 553 (Fla. 1st DCA 2007), pet. for rev. den. sub nom Burgess v. Brown, 980 So.2d 1070 (Fla. 2008).

f. The procedure for requesting an award of attorney's fees is set out in Commission Rule 34-5.0291, F.A.C., and contemplates the filing of a petition within 30 days of dismissal of the underlying complaint, review of the petition by Commission staff, possible dismissal after an informal hearing, and award of fees only after a formal hearing by the Division of Administrative Hearings.