MEMORANDUM

TO: Commission Members

FROM: Kerrie Stillman, Executive Director

SUBJECT: Consideration of Proposed Legislation for 2024

DATE: August 24, 2023

In fulfillment of its statutory mandate to make recommendations for legislation, the Commission requested staff to agenda additional discussion of the Commission's 2024 legislative recommendations.

The proposals included as the starting point for your consideration of items for 2024 include the remaining recommendations you made in 2023 that either were not considered by the legislature or did not pass, plus a couple of items that were added based on member and staff suggestions.

The requested draft language for consideration and discussion of the whistleblower protections is appended to this memo.

Of course, you are not limited to the topics outlined in this memo. Additional suggestions are welcomed. If staff can research the issue prior to the meeting, please reach out to me.
Recommendations from 2023

Conflicts of Interest

Section 112.313(7)(a), Florida Statutes, prohibits a public officer or employee from having a contractual relationship with a company doing business with the official's own agency. So City Councilman A cannot contract with Business B, if Business B is doing business with his City. But if Councilman A creates "A, Inc.," that corporation can do business with Business B without violating the law, even if "A, Inc.," is solely owned by Councilman A. The Commission has seen this as thwarting the underlying goal of the law, which is to prevent officials from having relationships with companies doing business with their agencies.

Voting Conflicts Law

Under current law, Section 112.3143, Florida Statutes, state and local elected officials can participate in the discussion of a measure in which they have a conflict without revealing the existence of that conflict until the vote is actually taken. This means the official can make every effort to persuade his or her colleagues without telling them (and the public) about the conflict. Appointed officials, in contrast, must declare their conflict before participating in the discussion of the measure. Elected officials should have to adhere to the same standard.

In addition, state officers only have to abstain if the measure helps or hurts them personally. Unlike local officials, they do not have to abstain when the measure benefits their employer, relative, etc.

The Commission has expressed that the voting conflict standard should be the same for everyone, whether the official is appointed or elected and whether the official is a state or local official; and that the exemption from using the Commission's conflict disclosure form applicable only to Legislators be eliminated.

Whistle Blower-like Protection for Ethics Complainants

The Commission believes that the threat of adverse employment or personnel actions in retaliation for a person's filing of an ethics complaint discourages the filing of valid complaints. Thus, the Commission seeks the enactment of protections or remedies, akin to those in the "Whistle-blower's Act," Sections 112.3187-112.31895, Florida Statutes, for the benefit of ethics complainants.

New Proposals for Consideration

Costs and Fees Eligibility for Candidates (Commission request from prior meeting)

In a recent meeting, the Commission considered a fees petition filed by a candidate who did not hold public office. That petition was dismissed because as the law is currently written, candidates cannot petition for attorney's fees. The Commission could recommend a minor change to the law
that would permit candidates, when their petition meets the requirements of the law, could go to a hearing to seek payment of attorney's fees and costs by a complaint.

Individuals appointed to fill an elected office (staff observation for technical change)

The Commission should consider a recommendation that 112.3144(10) be amended to clarify that individuals appointed to complete the remainder of the term of office for a Form 6 office are required to complete a Form 6 disclosure.

**Legislation Opposed by the Commission**

**Representing Clients Before One's Own Board**

The Commission has opinions as early as 1977 and even since 2020 interpreting Section 112.313(7), Florida Statutes, to say, in essence, that if a person serves on a board, he cannot represent clients before that board, and neither can other members of his professional firm. This interpretation is similar to the Rules of Professional Conduct of the Florida Bar, which impute the conflict of one lawyer to all lawyers in the firm. The Commission views this as an important public protection, and opposes any relaxation of this standard.

**Gifts, Expenditures, or Compensation from Lobbyists**

The Commission opposed HB 1435 and SB 1490 in the 2020 session. These bills, which did not pass, would have allowed donations from lobbyists or their principals, *unlimited in amount*, to certain public employees and appointed public officials if the donations were used toward costs associated with serious injury, disease, or illness of the employee, appointed officer, or his or her child. Such a vast exemption to the gift and expenditure laws, aimed at public officials when they are most vulnerable to undue influence from special interests, would seriously undermine effective restrictions and prohibitions which have protected the public trust for many years. The Commission continues to oppose an unlimited exemption to the gift and expenditure laws.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 112.3187, Florida Statutes, is amended to read:

112.3187 Restrictions on compensated lobbying by enumerated public officers and employees.—

(4) ACTIONS PROHIBITED.—

(a) An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.

(b) An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information under this section.

(c) The provisions of this subsection shall not be applicable when an employee or person discloses information known by the employee or person to be false or when the employee or person discloses information that forms the basis of an award of costs or attorney's fees or both pursuant to s. 112.317(7).

(5) NATURE OF INFORMATION DISCLOSED.—The information disclosed under this section must include:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected
or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

(c) Any violation or suspected violation of:

1. any standard of conduct imposed by this part;

2. s. 8, Art. II of the State Constitution;

3. part II or chapter 287; or

4. s. 11.062(2), s. 350.031, s. 350.04, s. 350.041, s. 350.042, or s. 350.0605.

(6) TO WHOM INFORMATION DISCLOSED.—The information disclosed under this section must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under s. 112.3189(1) or inspectors general under s. 20.055, the Florida Commission on Human Relations, the Commission on Ethics, and the whistle-blower’s hotline created under s. 112.3189. However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. 447.203(9) or other appropriate local official or the Commission on Ethics, in instances where the Commission on Ethics has the authority to investigate the violation or suspected violation.

(7) EMPLOYEES AND PERSONS PROTECTED.—This section protects employees and persons who disclose information on their own
initiative in a written and signed complaint; who are requested
to participate in an investigation, hearing, or other inquiry
conducted by any agency or federal government entity; who refuse
to participate in any adverse action prohibited by this section;
or who initiate a complaint through the whistle-blower’s hotline
or the hotline of the Medicaid Fraud Control Unit of the
Department of Legal Affairs; or employees who submit a written
complaint to the Commission on Ethics executed on a form
prescribed by the Commission on Ethics and signed under oath or
affirmation; or employees who file any written complaint to
their supervisory officials or employees who submit a complaint
to the Chief Inspector General in the Executive Office of the
Governor, to the employee designated as agency inspector general
under s. 112.3189(1), or to the Florida Commission on Human
Relations. The provisions of this section may not be used by a
person while he or she is under the care, custody, or control of
the state correctional system or, after release from the care,
custody, or control of the state correctional system, with
respect to circumstances that occurred during any period of
incarceration. No remedy or other protection under ss. 112.3187-
112.31895 applies to any person who has committed or
intentionally participated in committing the violation or
suspected violation for which protection under ss. 112.3187-
112.31895 is being sought.