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"A Public Office is a Public Trust"

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MEMORANDUM

TO: Commission Members

FROM: Kerrie Stillman, Executive Director

SUBJECT: Consideration of Proposed Legislation for 2024 [UPDATED]

DATE: August 29, 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.

Fines for In-Office and Post-Office Lobbying Restrictions (staff observation)

In 2023, the Legislature accepted the Commission's recommendation to increase the penalties for ethics violations by increasing the civil penalties in Section 112.317 from \$10,000 to \$20,000. Staff has identified that the In-Office and Post-Office Lobbying Restrictions do not rely on Section 112.317 for penalties, but instead rely on Section 112.3122. Section 112.3122 has its own penalty provision, which includes civil penalties up to \$10,000. The section should be amended to comport with Section 112.317.

Salary Withholding for Complaint Penalties (Advocate request)

Currently, the Commission Advocates obtain judgements from the courts when a Respondent fails to pay an imposed penalty. The Advocates ask the Commission consider recommending an additional tool for collecting civil penalties under 112.317(2). Salary withholding would be an efficient, cost-effective way to collect complaint civil penalties. It has proven very effective with the statutory automatic fines for late-filed disclosure forms. Language could be adapted from 112.31455(1) and added to 112.317.

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.