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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: Legislative Plan and Recommendations for 2025

DATE: August 28, 2024

The Commission is statutorily required to make recommendations for legislation, and it does that in its Annual Report. The 2025 session will begin in March, but work on legislation begins earlier, so it is time to begin your discussion of your approach and recommendations.

The last two legislative sessions have been busy ones for the Commission. As a part of your consideration of legislative recommendations for next legislative session, it is important that in addition to deciding *what* you want to recommend, you decide on the approach you want to take, specifically:

- 1) Whether to actively lobby any of the recommendations, and if so, establishing your priorities. The Commission is not required to do anything more than make recommendations, but has, in most years, actively engaged in the legislative process.
- 2) Whether to have a Member serve as legislative liaison and what authority to give him or her. Any lobbying effort is greatly enhanced by having a Member serve as legislative liaison. It is very meaningful to members of the House and Senate when they hear from Commission members, rather than just staff.

Below, I have outlined the Commission's remaining recommendations from last year as a starting point for your discussion. You are, of course, free to add to or subtract from this list, as you see fit. If you have questions about any of these or there are other issues you would like us to research prior to the Commission meeting, please let me know.

I genuinely appreciate your interest in this process, and look forward to your discussion and guidance.

Remainder of Last Year's Legislative Recommendations

Conflicts of Interest

The law prohibits an official from having a contractual relationship with a company doing business with the official's own agency. Therefore, City Councilman A cannot contract with Business B, if Business B is doing business with his City. However, if Councilman A creates "A, Inc.," that corporation can do business with Business B without violating the law, even if Councilman A solely owns "A, Inc." 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, 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, regardless of whether the official is appointed or elected, and regardless of 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.

Salary Withholding for Complaint Penalties

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.

Individuals appointed to fill an elected office

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.

Opposition Included with Recommendations Last Year

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 that have protected the public trust for many years. The Commission continues to oppose an unlimited exemption to the gift and expenditure laws.