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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 Legislative Plan and Recommendations for 2026 (Updated)

**DATE:** August 28, 2025

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The Commission is statutorily required to make recommendations for legislation, and it does that in its Annual Report. The 2026 session will begin in January, but work on legislation begins earlier, so it is time to begin your discussion of your approach and recommendations.

As a part of your continuing discussion and 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.

Based on your discussion at the July meeting, the list that follows has been revised. Of course, you are 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 Legislative Recommendations from Last Year**

#### Gift Acceptance and Disclosure

The gifts law provides that Reporting Individuals and Procurement Employees do not have any restrictions related to accepting gifts from relatives. The law also provides that Reporting Individuals and Procurement Employees do not have to disclose gifts given to them by relatives, irrespective of their monetary value. The term "relative" for purposes of the gifts law is defined in Section 112.312(21), Florida Statutes, and that definition is quite expansive- it even includes step great grandparents, for example. However, foster parents and children are not currently included in that definition. Given the often-ongoing familial role that foster parents and children may share, the Commission has indicated that it would like to include current and former foster parents and children in the definition of the term relative.

#### 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.

### **Other Recommendations to Consider**

#### 1. Personal Knowledge or Information Other than Hearsay

In the 2024 Legislative Session, Senate Bill 7014 was introduced and ultimately signed into law by the Governor. This bill, among other things, created a requirement that the Commission may only investigate ethics complaints that are based on personal knowledge or information other than hearsay. There are many different types of documents that constitute hearsay, or contain hearsay within hearsay, but do not always qualify for the hearsay exceptions found in Chapter 90. Examples include investigative reports, accounting reports, audit reports, and law enforcement reports. As a result, Commission staff often cannot investigate complaints that are solely based on information contained within documents such as these. We believe there should be an exception to the personal knowledge or information other than hearsay requirement that would allow documents such as these be able to form the basis of an ethics investigation.

Complaints received through the referral process, however, are not subject to the personal knowledge or information other than hearsay standard. Another option would be to increase the types of agencies/persons who may refer a matter to the Commission.

*Sample language:*

#### PERSONAL KNOWLEDGE OR INFORMATION OTHER THAN HEARSAY

112.324(1) The commission shall investigate an alleged violation of this part or other alleged breach of the public trust within the jurisdiction of the commission as provided in s. 8(f), Art. II of the State Constitution:

(a) Upon a written complaint executed on a form prescribed by the commission which is based upon personal knowledge, information within investigative, accounting, or audit reports created or commissioned by any public agency of the State or its political subdivisions, information within reports by law enforcement officers or agencies, or information other than hearsay and signed under oath or affirmation by any person.

#### ENHANCED REFERRALS

112.324(1) The commission shall investigate an alleged violation of this part or other alleged breach of the public trust within the jurisdiction of the commission as provided in s. 8(f), Art. II of the State Constitution:

\* \* \*

(b) Upon receipt of a written referral of a possible violation of this part or other possible breach of the public trust from the Governor, the Department of Law Enforcement, a state attorney, or a United States Attorney, or from the agency head or Inspector General of an agency of the State or from the agency head or governing body of any political subdivision, where the named respondent is a current or former public officer or employee of that agency and the referral concerns their service to that State agency or that political subdivision.

#### 2. First-Time Fine Waiver for Financial Disclosure

Pursuant to Section 112.3215(5)(d)4., Florida Statutes, a fine is not assessed against a lobbying firm *the first time* any reports for which the lobbying firm is responsible are not timely filed. We believe a similar provision regarding fines for those who have failed to timely file their financial disclosure forms should be introduced, with the caveat that this first-time fine waiver is only applicable if the reporting individual filed his or her form prior to accruing the maximum \$1,500 fine. This would increase efficiency by reducing the number of fine appeals Commission staff have to process. It would also comport with the Commission's ultimate goal of achieving a filing by the filer at issue.

#### 3. Public Records Exemptions

The Commission and its staff engage in adversarial proceedings against Respondents to ethics complaints. These proceedings can result in harsh penalties for Respondents, up to and including removal from their public positions, and fines of up to \$20,000. Aside from this, Commission staff often receive hostile communications from members of the public, as well as ethics Complainants who are upset about the outcome of complaints they have filed. Because of this, we believe Commission Members, as well as Commission staff, should receive a public records exemption

for information such as their home addresses and phone numbers, similar to other public records exemptions available to other public officers and employees.

#### 4. Technical Changes

##### a. Financial Disclosure Appellate Deadlines

Currently, the law states that the Commission must *receive* a financial disclosure fine appeal within 30 days of the filer receiving notice of his or her appellate rights. However, given that a filer cannot control how long it takes for a piece of mail to arrive at the Commission's office after he or she sends it, we believe the law should be amended to consider a mailed appeal timely if the *postmark* date is within the 30-day appellate deadline.

*Sample language:*

112.3145(8)(f)2. Any reporting person may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the commission, which may waive the fine in whole or in part for good cause shown. Any such request must be in writing and ~~received by~~ mailed or transmitted to the commission within 30 days after the notice of payment due is transmitted. In such a case, the reporting person must, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission. Requests sent via U.S. Mail or a commercial delivery service are considered timely if the postmark date is within the 30-day timeframe.

##### b. 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 any Form 6 office are required to complete a Form 6 disclosure.

*Sample language:*

112.3144(10) Each person required to file full and public disclosure of financial interests shall file a final disclosure statement within 60 days after leaving his or her public position for the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure under s. 8, Art. II of the State Constitution, or is otherwise required to file full and public disclosure for the final disclosure period. The head of the agency of each person required to file full and public disclosure for the final disclosure period shall notify such persons of their obligation to file the final disclosure and may designate a person to be responsible for the notification requirements of this subsection. ~~When an elected local officer specified in paragraph (1)(d) a~~ person required to file full and public disclosure of financial interests leaves office before the expiration of his or her term, any individual appointed to replace such officer for the remainder of that term must file a full and public disclosure of financial interests annually thereafter for the remainder of his or her term in office.

c. Ethics Training

Certain public officers are required by law to complete annual ethics training. The statute makes clear that each elected local officer of an independent special district, and each person who is appointed to fill a vacancy for an unexpired term of such elected office, must complete the annual training. However, in the context elected *municipal officers*, the statute does not have a similar provision for those who are appointed to fill a vacancy for an unexpired term of an elected office. For purposes of consistency, we believe the same language related to those who are appointed to elected offices of independent special districts should be included for those who are appointed to elected municipal offices.

*Sample language:*

112.3142(b) All elected municipal officers, and each person who is appointed to fill a vacancy for an unexpired term of such elective office, must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

d. Form 10

Currently, the law says that the Form 10 must be filed with an individual's CE Form 1 or CE Form 6. However, now that the Commission uses our electronic filing system for the Form 1 and the Form 6, language regarding the filing location for the Form 10 should be updated because it is not an electronic form. *Your staff recommends that this as a necessary change.*

*Sample language:*

112.3148(5)(d) No later than July 1 of each year, each reporting individual or procurement employee shall file a statement listing each gift having a value in excess of \$100 received by the reporting individual or procurement employee, either directly or indirectly, from a governmental entity or a direct-support organization specifically authorized by law to support a governmental entity. The statement shall list the name of the person providing the gift, a description of the gift, the date or dates on which the gift was given, and the value of the total gifts given during the calendar year for which the report is made. The reporting individual or procurement employee shall attach to the statement any report received by him or her in accordance with paragraph (c), which report shall become a public record when filed with the statement of the reporting individual or procurement employee. The reporting individual or procurement employee may explain any differences between the report of the reporting individual or procurement employee and the attached reports. The annual report filed by a reporting individual shall be filed ~~with the financial disclosure statement required by either s. 8, Art. II of the State Constitution or s. 112.3145~~, as applicable to the reporting individual. ~~The annual report filed by a procurement employee shall be filed with the Commission on Ethics.~~ 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.

\* \* \*

112.3149(6) A reporting individual or procurement employee who receives payment or provision of expenses related to any honorarium event from a person who is prohibited by subsection (4) from paying an honorarium to a reporting individual or procurement employee shall publicly disclose on an annual statement the name, address, and affiliation of the person paying or providing the expenses; the amount of the honorarium expenses; the date of the honorarium event; a description of the expenses paid or provided on each day of the honorarium event; and the total value of the expenses provided to the reporting individual or procurement employee in connection with the honorarium event. The annual statement of honorarium expenses shall be filed by July 1 of each year for those expenses received during the previous calendar year. The reporting individual or procurement employee shall attach to the annual statement a copy of each statement received by him or her in accordance with subsection (5) regarding honorarium expenses paid or provided during the calendar year for which the annual statement is filed. The attached statement shall become a public record upon the filing of the annual report. ~~The annual statement of a reporting individual shall be filed with the financial disclosure statement required by either s. 8, Art. II of the State Constitution or s. 112.3145, as applicable to the reporting individual. The annual statement of a procurement employee shall be filed 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.