

Regular Workshop – May 16, 2016
Agenda Item 16

Agenda Item: Discussion Regarding State Ethics Code and Town Ethics Code

Presenter: Town Attorney

Summary: In 1990 the Town adopted a Code of Ethics (Town Code Chapter 39) which was last amended in 1999. Florida's Code of Ethics for Public Officers and Employees is found in Chapter 112, Part III, Florida Statutes. Many provisions are identical, some are unique to the Town and, in some cases, conflict with State law.

At the September 28, 2015 Special Meeting the Town Attorney discussed her concerns regarding the variations and conflicts between the State Statute and Town Code. The Town Commission directed that conflicting or redundant provisions in the Town Code be deleted. The Town Commission also requested that additional information relating to the unique provisions within the Town Code be brought back for additional consideration and discussion.

Attachments: 5-10-2016 Memo, Town Attorney to Commission;

5-10-2016 (DRAFT) Strikethrough Edits and Comments to Town's Ethics Code (Chapter 39) Based on 9/28/15 Meeting;

9-28-15 Town Commission Meeting Materials – Ethics Discussion:
- 8-20-15 Memo, Town Attorney to Commission
- Town Code, Chapter 39, Ethics
- F.S. Chapter 112, Part III

Recommended

Action: Pending discussion, provide direction to Town Attorney and Town Manager.

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Reply to: Lakewood Ranch

MEMORANDUM

DATE: May 10, 2016
TO: Town Commission
THRU: Dave Bullock, Town Manager
FROM: Maggie D. Mooney-Portale, Town Attorney
Kelly M. Fernandez, Assistant Town Attorney
SUBJECT: Revisions to Town of Longboat Key's Code of Ethics

This Memorandum shall serve as a follow-up to the Town Commission's discussion of the Town's Code of Ethics at its meeting on September 28, 2015. At the September 28, 2015 Special Meeting, the Town Commission indicated a desire to delete all portions of the Town's Ethics Code that are clearly duplicative or in conflict with Florida's Code of Ethics (Part III, Chapter 112, Florida Statutes). The Town Commission also indicated a desire to discuss the provisions within the Town's Code of Ethics that are unique to the Town.

Below is a listing of those provisions of the Town's Ethics Code that are not found within Florida's Code of Ethics. These provisions are unique to the Town, and represent a stricter application of Florida's Code of Ethics. We are seeking direction as to which, if any, of these provisions the Town Commission wishes to retain.

A summary of those unique provisions are as follows:

1. The Town's Code of Ethics prohibits a candidate and Town officers and employees from canvassing the Town Commission for an appointment.

2. The Town's Code of Ethics prohibits, with some exceptions, the use by a Town officer or employee of Town-owned vehicles, equipment, materials or property for personal convenience or profit.

**Note: This provision can be interpreted as duplicative of an existing prohibition in Section 112.313(6), Florida Statutes, which provides as follows: "No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others." To the extent the Commission wishes to retain aspects of this local code provision and its applicability to Town employees, and it is legally permissible, the Town Commission may want to consider whether this is more appropriately included within the Town's Personnel Rules and Regulations ("Town Personnel Rules") rather than the Town's Code of Ethics. Currently, the Town's Personnel Rules forbid employees from using Town property, equipment, or vehicles except in the performance of official duty unless approved by the Town Manager.

3. Florida's Code of Ethics prohibits a reporting individual or procurement employee, or any person on his or her behalf, from accepting a gift in excess of \$100 from specified persons. The Town's Code of Ethics is broader as it applies to any employee. To the extent the Commission wishes to retain this provision, it may be more appropriate for inclusion in the Town Personnel Rules.

4. Florida's Code of Ethics prohibits a former Commissioner from representing someone for compensation before the Commission, Town Manager, and their immediate support staff for two years after vacating office. The Town's Code of Ethics expands this to prohibit representation before any Board.

5. The Town's Code of Ethics requires an employee who is an officer, director, partner, proprietor, associate, or general agent (other than a resident agent solely for service of process) of, or owns a material interest in, any business entity which is granted a privilege to operate in this state, to file with the town clerk a statement disclosing such facts. Town officers and anyone seeking to qualify as a candidate for nomination or election to any office must also file such a statement with the Town

Clerk, which would be in addition to the disclosure of financial interests and clients represented required by Florida's Code of Ethics.

6. The Town's Code of Ethics requires the disclosure of campaign contributions in excess of \$100 prior to a related vote.

7. The Town's Code of Ethics prohibits Commissioners from attempting, directly or indirectly, to influence the decision or official act of any member of any board or committee of the town or from appearing before any such board except upon invitation of a majority of the members of such board.

8. The Town's Code of Ethics provides a procedure for requesting an opinion from the Town Attorney as to the applicability of the Town's Code of Ethics and provides a special master procedure and appeal process for any alleged Town Code of Ethics violations.

**Note: Since the Town's Code of Ethics currently includes most of the Florida Code of Ethics, it is possible that anyone filing an ethics complaint related to a requirement of the Florida Code of Ethics could do so at both the state and local level simultaneously.

In addition to this Memorandum, and based upon the direction provided at the September 28, 2015 Special Meeting, attached is a draft copy of the Town's Code of Ethics which indicates by strikes-through all portions of the Town Code that are clearly duplicative or in conflict with Florida's Code of Ethics. The attached draft also provides comments in the margin of the document that highlights the unique provisions (listed in #1-8, above) within the Town's Code of Ethics. These comments have been placed in the margin of the draft document, to "highlight" these provisions and raise policy considerations for your anticipated discussion on this matter.

Finally, since the last discussion on this topic, our office has consulted with the Town's labor and employment counsel, Reynolds Allen, on the appropriateness of regulating Town employees (excluding the Town Manager and Town Attorney) within this Chapter of the Town Code. Based upon those discussions, it is further recommended that any references to Town employee conduct, should be governed by the Town's personnel rules and/or applicable collective bargaining agreements; not by the processes provided for in this Chapter. Accordingly, we recommend that all provisions relating to Town employees (excluding the Town Manager) be deleted from Chapter 39 of the Town's Ethics Code.

As we have previously advised, it remains our recommendation that if the Town wishes to retain the unique and more stringent standards within the Town's Ethics Code as outlined herein, then those provisions can be retained, updated as needed, and re-organized. However, this would require the Town to retain a procedure to enforce and hear alleged Town Ethics Code violations as the Florida Commission on Ethics will not enforce locally adopted ethics codes. Accordingly, if the Town retains its own Town Ethics Code it remains possible that a complaining party could bring parallel proceedings alleging violations of the state and Town Ethics Code in two forums: at the state and local level.

Following a discussion on the materials provided, the Town Attorney requests further direction from the Town Commission on the desired revisions to Chapter 39 of the Town's Ethics Code. Once such direction is provided, the Town Attorney is prepared to bring an appropriate Ordinance forward amending this Chapter of the Town Code.

Should you have any questions or concerns about this Memorandum, the attached draft strike through revisions to Chapter 39 of the Town Code (dated 5-10-2016), or the other supplemental materials previously provided for the September 28, 2015 Special Meeting, please do not hesitate to contact our office.

Chapter 39 - CODE OF ETHICS

39.01 - Declaration of purpose and policy.

The purpose of this chapter is to promote the welfare of the citizens of the town through the adoption of a code of ethics to govern all town officers and town employees, employed either on a part-time or full-time basis by the town. Within this framework, the general objectives of this chapter are as follows:

- (A) To facilitate the proper operation of municipal government by providing officers and employees who are independent, impartial and responsible to the people, and able to make governmental decisions and formulate policy within the established channels of governmental structure.
- (B) To ensure that public office or public employment not be used for private gain other than as provided for by law.
- (C) To ensure that the financial interests of employees and public office holders present neither a conflict nor the appearance of a conflict with the public trust.
- (D) To foster continued recognition of the concept that public employees and public office holders are agents of the public and hold office or employment for the benefit of the public.
- (E) To enhance public confidence in the integrity of its municipal government.
- (F) To promote a recommitment to the concept that public employees and public office holders are required to uphold the Constitution of the United States, the Constitution of the State of Florida and the Charter of the town, and are required to impartially carry out and enforce the laws of the nation, the state and the town.
- (G) To continue high moral standards in government.

To this end, there is established a code of ethics for the town.

39.02 - Definitions.

To the extent terms used in this chapter are not defined in Chapter 112, Part III, Florida Statutes "Code of Ethics for Public Officers and Employees", they shall be defined as follows
~~When used in this chapter:~~

~~"Business entity." Any person or individual, proprietorship, partnership, corporation, association or any organization which is engaged in business.~~

~~"Conflict" or "conflict of interest." A situation in which regard for a private interest tends to lead to disregard of a public duty or interest.~~

"Governmental body." The town or any of its departments, agencies, commissions, committees, authorities or boards.

~~"Represent" or "representation." Actual physical attendance on behalf of a client in a town proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of the town on behalf of a client.~~

"Town employee." Any person employed by the town or any of its departments, agencies, commissions, authorities or boards, whether on a full-time or part-time basis.

"Town officer." Any person elected or appointed to any public office or public body of the town, whether paid or unpaid, and whether part-time or full-time, including the town commission, planning and zoning board, code enforcement board, zoning board of adjustment, pension board, and the investment advisory board, but excluding any person serving on an advisory body not stated above or required by Florida law; except that any person serving on an advisory body shall be subject to the requirements of the ethics code, except for § 39.06(C)(1).

39.03 - Establishment.

The requirements set forth in this chapter shall constitute a code of ethics establishing reasonable standards and guidelines for the ethical conduct of town officers and employees. The provisions within this chapter shall be applicable in addition to the requirements of the Code of Ethics for Public Officers and Employees found in Chapter 112 Part III, Florida Statutes.

39.04 - Responsibilities of public office.

Town officers and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this state and to carry out impartially the laws of the nation, state and municipality and thus to foster respect for all government. As such, they are bound to observe the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern.

39.05 - Fair and equal treatment.

(A) Influencing appointments. Canvassing the members of the town commission, directly or through a third party, in order to obtain preferential consideration in connection with any appointment to and any application for employment in the town service shall disqualify the candidate for appointment except with reference to positions filled by appointment by the town commission. Town officers and employees shall not canvass any town commissioner on behalf of a candidate for appointment to the town service. Town commissioners shall not respond to canvassing by granting any special consideration, treatment, or advantage to the candidate which is not available to every other candidate. Members of the town commission shall adhere to article II, § 13, of the Town Charter, entitled "Relationship of Town Commission With Administration".

(B) Use of property. No town officer or employee shall use, request or permit the use of town-owned vehicles, equipment, materials or property for personal convenience or profit; except when such services are available to the public generally or are provided as town policy pursuant to town resolution passed by the town commission for the use of such officer, employee or others. Notwithstanding anything herein to the contrary, the town manager may authorize the personal use of the following town-owned property by town officers or employees upon receipt of a written request for such use and an authorization for the town to collect payment for any damages to the town property by payroll deduction:

- (1) Hand tools not requiring a power source to operate;
- (2) Folding chairs and tables;
- (3) Books;
- (4) On-premises, after-hours use of typewriters, drafting boards, calculators and similar nonexpendable office equipment.

~~(C) Obligations to citizens. No town officer or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.~~

Comment [A1]: This arguably falls within the "Misuse of Public Position" prohibitions in Section 112.313(6), F.S. Consider leaving all employee regulations within the Town's personnel rules.

39.06 - Standards of conduct; conflicts of interest.

(A) ~~Solicitation or~~ Acceptance of gifts.

~~(1) No town officer or employee, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the town officer or employee, or candidate would be influenced thereby.~~

~~(2) No town officer or employee shall accept any gift in excess of \$100.00 in value, whether in the form of entertainment, service, loan, thing, or promise, from any person, firm or corporation which to his knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the town.~~

Comment [A2]: This expands Florida law by applying to employees. Consider removing it and leaving to the Town's personnel rules.

~~(B) Doing business with town. No employee of the town acting in his official capacity as a purchasing agent, or town officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for the town from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his spouse or child, or any combination of them, has a material interest. Nor shall a town officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods or services of the town if he is serving as an officer or employee of the town. This subsection shall not affect or be construed to prohibit contracts entered into prior to:~~

- ~~(1) October 1, 1975;~~
- ~~(2) Qualification for elective office;~~
- ~~(3) Appointment to public office;~~

~~(4) Beginning public employment.~~

~~(C) Unauthorized compensation. No town officer or employee or his spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such officer or employee knows or, with the exercise of reasonable care, should know that it was given to influence a vote or other action in which the officer or employee was expected to participate in his official capacity.~~

~~(D) Salary and expenses. No town officer or employee shall be prohibited from voting on a matter affecting his salary, expenses, or other compensation as a town officer, as provided by law.~~

~~(E) Misuse of public position. No town officer or employee of the town shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with F.S. § 104.31.~~

~~(F) Conflicting employment or contractual relationship.~~

~~(1) No town officer or employee shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, the town, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the town; nor shall an officer or employee of the town have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.~~

~~(2) This subsection shall not prohibit a town officer or employee from practicing in a particular profession or occupation when such practice by persons holding such town office or employment is required or permitted by law or ordinance.~~

(B3) Post-office representation. No town commissioner may represent another person or entity for compensation before the town commission or any town board for a period of two years following vacation of office.

~~(G) Disclosure or use of certain information. No town officer or employee shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity.~~

(CH) Disclosure of specified interests.

(1) If a town officer or employee is an officer, director, partner, proprietor, associate, or general agent (other than a resident agent solely for service of process) of, or owns a material interest in, any business entity which is granted a privilege to operate in this state, he shall file with the town clerk a statement disclosing such facts. Such statement shall be filed no later than 45 days after becoming an officer or employee or after the acquisition of such position or material interest. The statement shall give the name, address, and principal business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of that interest. New appointees to town office or new town employees shall file the

Comment [A3]: This is an expansion of Florida law by including any town board.

statement required herein, if applicable, no later than 45 days after their appointment or after the date their employment begins.

- (2) A person seeking to qualify as a candidate for nomination or election to any office shall file a like statement with the town clerk along with, and as a part of, the required qualification papers. ~~Persons seeking to qualify as a candidate for nomination or election to town office, and officers and employees of the town, shall file their statements with the town clerk and the supervisor of elections of the county in which they are principally employed or are residents in accordance with Florida law.~~

Comment [A4]: Florida law already requires financial disclosures. This, therefore, is in addition to the state filings.

Comment [A5]: If the Commission chooses to retain this, clarify that the filing is to be submitted to the Town Clerk.

~~(I) Employees holding office. No employee of the town shall hold office as a member of the town commission while, at the same time, continuing as an employee of the town.~~

~~(J) Exemption. The requirements of subsections (B) and (F) as they pertain to persons serving on advisory boards may be waived in a particular instance by the town commission upon a full disclosure of the transaction or relationship to the town commission prior to the waiver and an affirmative vote in favor of waiver by two thirds vote of the town commission. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (B) or subsection (F) if:~~

- ~~(1) Within the town the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the town.~~
- ~~(2) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:
 - ~~(a) The official or his spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;~~
 - ~~(b) The official or his spouse or child has in no way used or attempted to use his influence to persuade the town or any personnel thereof to enter such a contract other than by the mere submission of the bid; and~~
 - ~~(c) The official, prior to or at the time of the submission of the bid, has filed a statement with the Supervisor of Elections of Sarasota or Manatee County disclosing his interest, or the interest of his spouse or child, and the nature of the intended business.~~~~
- ~~(3) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.~~
- ~~(4) An emergency purchase or contract which would otherwise violate a provision of subsection (B) or subsection (F) must be made in order to protect the health, safety, or welfare of the citizens of the town.~~
- ~~(5) The business entity involved is the only source of supply within the town and there is full disclosure by the officer or employee of his interest in the business entity to the town commission prior to the purchase, rental, sale, leasing, or other business being transacted.~~

- ~~(6) The total amount of the subject transaction does not exceed \$500.00.~~
- ~~(7) The fact that a town officer or member of a town board or body, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such town board or body, provided it appears in the records of the town that the town commission has determined that such officer or member of a town board or body has not favored such bank over other qualified banks.~~
- ~~(K) Additional exemption. No elected town commissioner shall be held in violation of subsection (F) (1) or (F) (2) if the commissioner maintains an employment relationship with an entity which is currently a tax exempt organization under § 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the town and:
 - ~~(1) The town commissioner's employment is not directly or indirectly compensated as a result of such contract or business relationship;~~
 - ~~(2) The town commissioner has in no way participated in the town's decision to contract or to enter into the business relationship with his employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the town or otherwise; and~~
 - ~~(3) The town commissioner abstains from voting on any matter which may come before the town involving the town commissioner's employer, publicly states to the assembly the nature of his interest in the matter from which he is abstaining, and files a written memorandum as provided in F.S. § 112.3143, (3).~~~~

39.07 - Voting conflicts.

- ~~(A) No town officer is prohibited from voting in his official capacity on any matter, except that no town officer shall vote in his official capacity upon any measure which inures to his special private gain or loss or shall knowingly vote in his official capacity upon any measure which inures to the special gain or loss of any principal, other than an agency, as defined in F.S. § 112.312(2), by whom he is retained.~~
- ~~(B) Any town officer abstaining pursuant to subsection (A) of this section shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.~~
- (C) Any town commissioner voting in his official capacity on a matter or measure which inures to the special gain or loss of any person or business entity from whom he has received a campaign contribution as defined in F.S. § 106.011(3), in excess of \$100.00 within two years prior to the time the vote is taken shall disclose such fact on the record of the commission prior to the vote. He shall also disclose any such contribution if received from

an officer, director, major stockholder, general or limited partner (if known), or any other principal of any such contributing business entity.

Comment [A6]: This is not required by Florida law.

- ~~(D) No appointed town officer shall participate in any matter which inures to his special private gain or loss or the special gain or loss of any principal by whom he is retained, without first disclosing the nature of his interest in the matter and the nature of the factual situation in which the regard for his private interest tends to lead to a disregard of his public duty or the public interest. Such disclosure shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting and shall be incorporated in the minutes; if the disclosure is initially made orally at a meeting attended by the officer, the written memorandum disclosing the nature of the conflict shall be filed within 15 days with the person responsible for recording the minutes of the meeting and shall be incorporated in the minutes. A copy of such memorandum, which shall become a public record upon filing, shall immediately be provided to the other members of the agency and shall be read publicly at the meeting prior to the consideration of the matter. For purposes of this paragraph, the term "participate" means any attempt to influence the decision by oral or written communication whether made by the officer or at his direction.~~
- ~~(E) Whenever a town officer or former town officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by the officer.~~

39.08 - Influence of board members by town commissioners; appearance before boards.

- (A) Town commissioners are hereby prohibited from:
- (1) Attempting directly or indirectly to influence the decision or official act of any member of any board or committee of the town;
 - (2) Appearing before any such board except upon invitation of a majority of the members of such board; provided, however, that if a town commissioner shall appear before such board without invitation, he shall be presumed to have a financial or personal interest in any matter which he shall have advocated or espoused before the board.
- (B) Excepted from the provisions hereof is participation by the mayor or members of the town commission in the acts and deliberations of any board of which they are appointed regular, or ex officio, or liaison members of the board.
- ~~(C) Violations of this section shall be deemed a misuse of public position as set forth in § 39.06(E) above.~~

39.09 - Applicability of the Code.

When a town commissioner or other officer or employee has doubt as to the applicability of a provision of this Code to a particular situation, he shall apply to the town attorney for an advisory opinion and be guided by that opinion when given. The town attorney may refer the request to a special master chosen pursuant to section 39.12. The commissioner or other officer

or employee shall have the opportunity to present his interpretation of the facts at issue and of the applicable provisions of the Code before such advisory decision is made. This Code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or Charter provision.

Comment [A7]: This does not insulate Town Commissioners or Town Officers from exposure to a state ethics complaint. Only an opinion from the Florida Commission on Ethics can accomplish that, so this process offers limited value.

39.10 - Relationship to state statute.

To the extent of any conflict between F.S. ch. 112, (1987), as it may be amended from time to time, and this Code, chapter 112 shall apply, except that any provision of this Code, which is more stringent than or in addition to the requirements of chapter 112 shall apply if not in conflict with chapter 112.

39.11 - Copies furnished.

A copy of this ethics code shall be furnished to all new town officers and town employees prior to assumption of any official duties.

39.12 - Special masters.

(A) Special masters. The town commission shall appoint a minimum of three independent special masters selected on the basis of their qualifications. When an ethics complaint is filed which is within the jurisdiction of the special master as set forth below, the special master shall be chosen by lot. Special masters may conduct investigations upon complaints or information received, and may subpoena evidence and swear witnesses. Special masters shall cause to be kept accurate and complete minutes of any and all public hearings.

Comment [A8]: The risk of confusion and potential for dual proceedings (state and local) should be considered in whether to retain this process.

(b) Ethics complaints concerning elected officials, candidates for town commission, and advisory board or committee members.

Comment [A9]: Note that elections are governed by separate Florida laws. Therefore, consider whether this process, if retained, should be applicable to candidates.

(1) Upon the filing with the town clerk of a written, sworn complaint of any person concerning an alleged ethical breach by a town officer, candidate for town commission, or advisory board or committee member, the town clerk shall present the complaint to the town attorney, who, within five days of receipt of the complaint, shall cause a copy to be delivered to the alleged violator. If the facts contained within the complaint, if true, set forth a violation of the town's ethics code, the town attorney shall refer the matter to a special master who shall be chosen by lot by the town clerk. The special master, once selected, shall investigate the alleged violation of this chapter in accordance with the procedures set forth herein. All proceedings, the complaint, and other records relating to the preliminary investigation as provided herein, including a dismissal of the complaint, shall be open to the public. In no event shall a complaint under this section against a candidate in any town election be filed or the filing of or intention of filing such a complaint be disclosed on the day of any such election or within the five days immediately preceding the date of the election.

Comment [A10]: If this process is retained, we can revise to just reference the Town-specific Code provisions (i.e. removing reference to the Florida Code of Ethics), thereby limiting the use of the special master process.

Comment [A11]: In the state process, the proceeding is confidential until a probable cause determination is made.

Comment [A12]: This can result in confusion between complaints made under election laws and those made under ethics laws.

- (2) (a) A preliminary investigation shall first be undertaken by the special master to determine if the facts alleged in the complaint constitute probable cause to believe that an ethical violation has occurred. If upon completion of the preliminary investigation the special master finds no probable cause to believe that this chapter has been violated, the special master shall dismiss the complaint stating with particularity the reasons for dismissal of the complaint. The complaint, together with a written statement of the findings of the preliminary investigation and a summary of the facts, shall be transmitted to the complainant and the alleged violator.
- (b) If the special master finds from the preliminary investigation probable cause to believe that this chapter has been violated, he shall so notify the complainant and the alleged violator in writing. Such notification and all documents made or received in the disposition of the complaint shall be public records.
- (c) Upon request submitted to the special master in writing, any person who the special master finds probable cause to believe has violated any provision of this chapter shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if request therefor is not received by the special master within 14 days following the mailing of the probable cause notification required by this section; however, the special master may on his own motion require a public hearing and may conduct such further investigation as he deems appropriate and necessary. The complainant and alleged violator shall be given notice in writing of the date and time set for such public hearing at least ten days before the public hearing is held.
- (d) The hearing shall be conducted in accordance with all requirements of due process of law and in accordance with this chapter and any written rules and regulations that have been promulgated by the special master and approved by the town commission. Any person filing such a sworn complaint and any alleged violator may appear before the special master in person or by counsel and shall be entitled to question witnesses and present evidence in accordance with any rules that have been adopted. Within ten days after the public hearing, the special master shall make and promulgate written findings of fact and conclusions based thereon, including a determination as to the propriety of the conduct of the alleged violator, all of which shall be transmitted to the complainant, the alleged violator, the town commission, and the town manager.
- (e) In any case in which the special master finds probable cause to believe a violation of criminal law has been committed by an alleged violator, or where the special master finds probable cause to believe that a complainant has committed perjury in regard to any document filed with or any testimony given before the special master, he shall refer such evidence to the appropriate law enforcement agency for prosecution.
- (3) Sanctions to be determined by special master.
- (a) If the special master, pursuant to the provisions of this subsection makes a determination that the conduct of any town commissioner, candidate for town commission, or member of any advisory board or committee is or was improper,

Comment [A13]: Can again limit jurisdiction of special master here (see Comment A10).

Comment [A14]: Can again limit jurisdiction of special master here (see Comment A10).

Comment [A15]: Can again limit jurisdiction of special master here (see Comment A10).

the town commission may institute appropriate action for correction or rectification of that conduct, and may institute appropriate action to avoid any transaction with a public body or any determination made by a public body.

- (b) Violation of any provision of the town ethics code, in addition to any criminal penalty involved, shall constitute grounds for, and the special master may impose, one or more of the following sanctions:
 - 1. Public censure and reprimand.
 - 2. Forfeiture of no more than one-third of any salary per month for no more than 12 months.
 - 3. Restitution of any pecuniary benefits received because of any violation committed.
 - 4. Removal of the town officer from office.
 - 5. Recommendation to the governor of the State of Florida for the removal from public office of the town officer.
- (c) The special master shall base any decision to impose sanctions upon written findings of fact, conclusions and determinations. The imposition of sanctions should occur after the promulgation of the findings of fact, conclusions and determinations by the special master.

(C) Ethics complaints concerning town employees.

- (1) If the complaint involves ethical conduct of any town employee other than the town manager, the complainant shall file the sworn complaint with the town manager who shall review the complaint pursuant to ~~federal and state law~~, the Charter, this Code, and the personnel rules and regulations then in existence. The town manager shall have the power to investigate, and when appropriate to reprimand, punish, demote, dismiss or take any and all other disciplinary action concerning employees who breach ethical standards. For purposes of the Whistleblower Act, the town commission designates the town manager as the chief executive officer and appropriate local official for all complaints filed pursuant to F.S. § 112.3187 et seq., as amended.

Comment [A16]: We recommend that this be removed and handled by Town personnel rules and/or collective bargaining agreements (discipline).

(D) Ethics complaints concerning the town manager and town attorney.

- (1) Upon the filing with the town clerk of a written, sworn complaint of any person concerning an alleged ethical breach by the town manager or town attorney, the town clerk shall present the complaint to a special master chosen by lot who, within five days of receipt of the complaint, shall cause a copy to be delivered to the alleged violator. If the facts contained within the complaint, if true, set forth a violation of the town's ethics code, the special master shall instruct the town clerk to select another special master by lot to investigate the alleged violation of this chapter in accordance with the procedures as set forth in subsection (B) above, except that after all due proceedings the special master shall only make findings of fact as to whether an ethical breach occurred. These findings of fact shall be forwarded to the town commission for its consideration and further action.

Comment [A17]: Specify Code provisions

(E) The right to notice of public hearing from the special master.

- (1) Timing of the notice to the person charged. The notice shall be given to the person charged whenever all the following conditions are present:
 - (a) The stated reason(s) for the allegations and the finding of the probable cause have a significant bearing on the individual's reputation; and
 - (b) There is a factual dispute as to the truth or falsity of the stated reason(s); and
 - (c) The stated reason(s) is/are made or become a public record pursuant to Florida's Public Records Law, or is made public in any other way.
- (2) Content of the notice. At the time of the relevant finding of probable cause action, under the necessary conditions, the special master shall inform the person charged that he/she has a right to seek a hearing. The notice:
 - (a) Shall be in writing; and
 - (b) Shall inform the person charged of the nature of the stated charge(s) that were made public in connection with any of the special master actions, in sufficient detail to enable the person to show the error in the statements and allegations, including but not limited to the laws, statutes, ordinance, rules or regulations which the employee or public official has allegedly violated along with an explanation of the factual circumstances that constitute the alleged violation; and
 - (c) Shall state that the person charged may request a hearing; and
 - (d) Shall inform the person charged that he/she may submit documents or testimony at the hearing that contradicts the stated charge(s) that were made in connection with the special master's finding of probable cause. The notice shall inform the person charged that the purpose of the hearing is to factually dispute the statement or charge, and its purpose is not to inquire into or dispute the propriety of the special master's decision to investigate any initial finding of probable cause, even though the employee or public official may be totally exonerated or found innocent of all charges by the special master after due process.
- (3) Hearing.
 - (a) The hearing shall be set if the employee/town officer requests a hearing within 14 days after the mailing and receipt of the probable cause or right to hearing notification or if the special master requests a hearing upon its own initiative.
 - (i) The public hearing will be deemed waived as to the person charged if timely request is not made by the person charged.
 - (ii) If the person charged waives his right to a public hearing, the special master may on his own require a public hearing.
 - (b) Notice of the date and time of the hearing shall be sent in writing to the complainant and person charged at least ten days before the public hearing is held.
 - (c) The hearing shall be conducted by the special master, who shall be the hearing officer.

Comment [A18]: Ethics complaints under Florida law are exempt from disclosure until there is a probable cause determination.

Comment [A19]: Recommend that employees be instead subject to personnel rules and/or collective bargaining agreement discipline.

Comment [A20]: See Comment A19, above.

Comment [A21]: See Comment A19, above.

- (d) The town officer may submit documents and/or sworn testimony of himself/herself and/or third party witnesses and the initial complainant to contradict the statement(s) that were publicly made in connection with the charges.
- (e) The hearing shall be recorded by a court reporter, whose minutes or transcript shall become public record. One original transcript may be ordered and paid for by the town. Any party or interested person may order additional transcriptions or copies thereof at their own expense.
- (f) Both the complainant and the person charged who requested the hearing shall have the opportunity to submit written memoranda and/or briefs to the special master within such reasonable time as shall be set by the special master. The public hearing shall be continued and not closed pending receipt or official transcripts, memoranda, briefs, or proposed findings of fact and conclusions of law to be considered by the special master.

39.13 - Subpoena power.

- (A) The special master is empowered to issue subpoenas to persons, ordering them to appear for testimony before the special master, and to issue subpoenas ordering the person to whom it is directed to produce books, papers, documents or tangible things designated therein. The special master may issue subpoenas for investigatory functions or probable cause determinations, and public hearings.
- (B) Every subpoena shall be sealed by the town clerk upon request of the special master for issuance of a subpoena. The special master shall sign the subpoena upon the town clerk's verifying that the town seal has been affixed to the subpoena.
- (C) The special master may have the subpoena served by any person authorized by law to serve process or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be as provided by law. Proof of such services shall be made by affidavit of the person making service if not otherwise served by a public officer authorized by law to do so.
- (D) In the event the person to whom the subpoena is directed fails to obey it, the special master may apply to the circuit court for its enforcement.

39.14 - Appeals.

Anyone aggrieved by a determination of the special master shall apply to the circuit court for judicial relief within 30 days after rendition of the decision.

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Reply to: Lakewood Ranch

M E M O R A N D U M

DATE: August 20, 2015
TO: Town Commission
THRU: Dave Bullock, Town Manager
FROM: Maggie D. Mooney-Portale, Town Attorney
Kelly M. Fernandez, Assistant Town Attorney
SUBJECT: Town of Longboat Key's Ethics Code

In 1990, the Town of Longboat Key ("Town") adopted a Code of Ethics which is found in Chapter 39 of the Town Code of Ordinances (hereinafter referred to as "Town Ethics Code"). This section of the Town Code was last amended in 1999. The Florida Code of Ethics for Public Officers and Employees is found in Chapter 112, Part III, Florida Statutes (hereinafter referred to as "Florida Ethics Code"). Many of the provisions of the Town Ethics Code are identical or nearly identical to the Florida Ethics Code, while others are unique to the Town Ethics Code or in conflict with the Florida Ethics Code. A municipality is specifically authorized by state law to adopt additional or more stringent standards of conduct and disclosure requirements than those specified by the Florida Ethics Code. However, given the breadth of the Florida Ethics Code, the statutory mandated¹ annual Florida Ethics Code training required of all municipal elected officials, and the possibility for confusion or conflict between state requirements and Town requirements, the Town Attorney's Office recommends that the Town Commission consider whether the Town

¹ See, Fla. Stat. § 112.3142 (2014)

Ethics Code should be repealed or amended to reduce redundancy, eliminate conflicts, and provide clarity as to the required conduct of the Town’s elected and appointed public officials. Additionally, the Town Attorney’s office recommends that the Town Commission consider the procedural processes established by state law and the Town Code for enforcement of the Florida Ethics Code and Town Ethics Code, respectively, and determine whether a need exists for the locally codified process.

Comparison of Town Ethics Code with Florida Ethics Code

1. Identical Provisions

The Town Ethics Code is virtually identical to the Florida Ethics Code in that they both:

- Prohibit the solicitation or acceptance of anything of value based upon an understanding that the recipient will be influenced thereby. §39.06(A)(1); Fla. Stat. § 112.313(2)
- Prohibit a purchasing agent or town officer from doing business with the Town. §39.06(B); Fla. Stat. § 112.313(3).
- Prohibit compensation given to influence a vote or other action. §39.06(C); Fla. Stat. § 112.313(2).
- Allow a town officer or employee to vote on a matter affecting compensation. §39.06(D); Fla. Stat. § 112.313(5).
- Prohibit the corrupt use or attempt to use an official position or property or resource of the Town. §39.06(E); Fla. Stat. § 112.313(6).
- Address conflicting employment or a contractual relationship. §39.06(F)(1)&(2) and (K); Fla. Stat. § 112.313(7).
- Prohibit an employee from also being a Commissioner. §39.06(I); Fla. Stat. § 112.313(10).
- Require certain disclosures before abstaining from voting. §39.07(B); Fla. Stat. § 112.3143.
- Provide that any prior memoranda of conflict should be considered when a current or former officer is being considered for appointment or reappointment to public office. §39.07(E); Fla. Stat. § 112.3143.

2. Similar But Different Provisions

The Town Ethics Code and Florida Ethics Code are similar but different in the following ways which may cause confusion and/or unintentional violations:

Issue	Comparison
Definition of “Business entity” in Code §39.02 and Fla. Stat. § 112.312(5)	The Town definition is explicitly less inclusive than the State’s definition. For

	<p>instance, it does not include a firm, franchise, or enterprise.</p> <p>Analysis: State Law is more comprehensive.</p>
<p>Prohibition on a town officer's or employee's corrupt use or attempted use of town-owned property to secure a special privilege, benefit, or exemption. §39.05(B) and Fla. Stat. § 112.313(6)</p>	<p>The Town Ethics Code includes four exceptions to this prohibition when authorized by the Town Manager.</p> <p>Analysis: Town's Code exceptions are potentially unenforceable and violative of Florida's Ethics Code.</p>
<p>Prohibition on acceptance of gifts in excess of \$100 from someone doing business with the Town. §39.06(A)(2) and Fla. Stat. § 112.313(2)</p>	<p>The Town Ethics Code is broader as it applies to <i>any</i> employee rather than just a reporting individual or procurement employee or any other person acting on their behalf.</p> <p>Analysis: Town's Code is stricter.</p>
<p>Post-office representations before Town. §39.06(F)(3) and Fla. Stat. § 112.313(9)</p>	<p>The Town Ethics Code prohibits a Town Commissioner from representing any person for compensation before the Commission or any Town Board for two years after vacating office, while the Florida Ethics Code prohibits only representations before the Commission, Town Manager, and their immediate support staff.</p> <p>Analysis: Town's Code is stricter.</p>
<p>Prohibition on disclosure or use of information for benefit or gain. §39.06(G) and Fla. Stat. § 112.313(8)</p>	<p>The Town Ethics Code does not contain an exception in the Florida Ethics Code "for information relating exclusively to governmental practices."</p> <p>Analysis: Town's Code is stricter.</p>
<p>Disclosure of material interests. §39.06(H)(1)&(2) and Fla. Stat. § 112.313(2)</p>	<p>The Town Ethics Code is broader as the disclosure requirement applies to an "employee" without limitation. The Florida</p>

	<p>Ethics Code applies only to “local officers” which includes elected officials, appointed officials, city managers, city clerks, purchasing agent, etc. Also, under the Florida Ethics Code new appointees and employees must file their disclosure within 30 days of appointment/employment (not 45 days as in the Town Ethics Code) or at the end of the calendar year if a reporting individual. The Town Ethics Code also adds the requirement to file disclosure statements with the Town Clerk.</p> <p>Analysis: Potential source of confusion.</p>
<p>Exemptions to prohibitions on doing business with the Town and conflicting employment or contractual relationships. §39.06(J) and Fla. Stat. 112.313(3)</p>	<p>The Town Ethics Code does not include two exemptions contained in the Florida Ethics Code or the modifier that the \$500 business transaction limitation is “per calendar year.”</p> <p>Analysis: Potential source of confusion.</p>
<p>Voting conflicts. §39.07(A) and Fla. Stat. § 112.3143</p>	<p>The Florida Ethics Code is broader as it also prohibits voting when a Town officer knows the measure would inure to the special private gain or loss to the parent organization or subsidiary of a corporate principal by which he or she is retained or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.</p> <p>Analysis: State Law is stricter.</p>
<p>Appointed town officer conflicts for participating in matters. §39.07(D) and Fla. Stat. § 112.3143</p>	<p>The Florida Ethics Code is broader as it also prohibits participation when an appointed town officer knows the matter would inure to the special private gain or loss to the parent organization or subsidiary of a corporate principal by which he or she is retained or which he or she knows would inure to the special private gain or loss of a</p>

	<p>relative or business associate of the public officer. The Town Ethics Code requires an appointed town officer to disclose the nature of the factual situation in which the regard for his private interest tends to lead to a disregard of his public duty or the public interest, which the Florida Ethics Code does not. Finally, the Florida Ethics Code provides that a written memorandum related to a disclosure made orally at a meeting is to be read publicly at the next meeting held subsequent to the filing of the written memorandum, whereas the Town Ethics Code provides that the memorandum must be read “prior to consideration of the matter”. This is a conflict and also infeasible in certain circumstances.</p> <p>Analysis: State Law is stricter.</p>
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3. Exclusive Town Provisions

The following provisions of the Town Ethics Code are not found in the Florida Ethics Code:

- Prohibits a candidate and Town officers and employees from canvassing the Town Commission for an appointment. §39.05(A)
- Prevents a town officer or employee from granting special consideration, treatment, or advantage to any citizen that is not available to every other citizen. §39.05(C)
- Requires the disclosure of campaign contributions in excess of \$100 prior to a related vote. §39.07(C)
- Restricts the appearance of Commissioners before boards or committees of the Town. §39.08
- Provides a procedure for requesting an opinion as to the applicability of the Ethics Code² and provides a special master procedure and appeal process for any alleged Ethics Code violations. §39.09 and 39.12-39.14

² A legal opinion on Florida’s Ethics Code by the Town Attorney would be solely advisory in nature and even if followed by the requesting party, it would not insulate Town officials from an Ethics Complaint or potential exposure. Only the Florida Commission on Ethics and/or the agency’s in-house legal staff can render binding opinions on the applicability of ethics laws that, if followed by the requesting party, insulates Town officials from exposure.

It should also be noted that a number of restrictions found in the Florida Ethics Code are not in the Town Ethics Code, such as those related to the employment of relatives.

4. Enforcement Processes Under Florida Ethics Code and Town Ethics Code

The Florida Ethics Code and the Town Ethics Code have two different enforcement processes available for raising ethic violations. The Florida Commission on Ethics has authority to review and investigate complaints concerning violations of Florida's Ethics Code. There is a three stage process when such ethics' complaints are filed that includes: (1) review of the allegations set forth in a submitted Complaint by the Commission on Ethic's staff for legal sufficiency (Complaint forms are available on the Florida Commission on Ethic's website); (2) if legally sufficient, the Florida Commission on Ethic's staff investigates the allegations raised in Complaint to determine whether there is probable cause to believe there has been a violation of state law; and (3) if there is probable cause to believe a violation has occurred, the 9-member Commission on Ethics presides over a public evidentiary hearings in Tallahassee that is prosecuted by the Attorney General's office. At such hearings, the Commission on Ethics board will determine whether a state law was violated and what penalty should be recommended against the public official. Violations of Florida's Ethics Code can include the following consequences: removal/suspension from office, impeachment, public censure/reprimand, restitution of any pecuniary benefits and a civil penalty (up to \$10,000.00). Fla. Stat. § 112.317.

The Town has Special Master hearing process set forth in §§ 39.12-39.14 of Town Code that establishes the retention of a lot of three (3) special masters to preside over any complaints issued under the Town's Code. In the event a compliant is lodged, a single Special Master would be selected randomly and would then have the authority to conduct investigations, consider evidence and preside over public hearing(s) associated with complaints filed against elected or appointed officials, the town manager and the town attorney. The Town Code authorizes the Special Master to administer various sanctions upon elected or appointed officials of the Town. Aggrieved parties can appeal the Special Master's opinion to circuit court.

The Florida Commission on Ethics has jurisdiction to investigate, prosecute, preside over and sanction various public officials pursuant to state law. However, the Florida Commission on Ethics will not enforce local ethics codes that may have stricter standards. Any Town specific ethics standards that are not in conflict with state law could only be enforced under the Town's administrative Special Master process. The result is that a Town public official *could* be forced to defend against alleged ethic violations in two (2) separate administrative proceedings. Such duplication could result in significant legal expenses for the individuals and the Town. Furthermore, if the Town Commission wishes to retain the

Town Ethics Code then the Town Commission will need to be prepared to move forward with the selection and appointment of three (3) Special Masters to serve in this capacity who would be available to preside over any complaint(s) lodged under the Town's Code. At the present time, we do not believe that the Town has the pool of Special Masters available to provide these legal services if the need arises. The Town will be responsible for the attorney's fees payable to the Special Master under the Town's process.

5. Recommendation

It is apparent that the Town Ethics Code was at one time a duplication of the Florida Ethics Code with some Town-specific additions. Over time the Florida Ethics Code has evolved, but corresponding changes have not been incorporated into the Town Ethics Code. We are concerned that current variations between the Town Ethics Code and Florida Ethics Code could lead to unknowing and unintentional violations by the elected and appointed officials, cause unnecessary confusion, cause a duplication in enforcement actions, and cause the Town to incur significant legal expenses.

Florida Ethics Code applies within the Town irrespective of whether it is restated in the Town's Code of Ordinances, and the state law will apply in the event of direct conflict between state law and local code. Accordingly, we recommend that the Town Commission consider whether Florida's Ethics Code protects the interest of the public and whether provisions within the Town's Ethics Code are still needed. If local ethics code provision are deemed necessary, we recommend that the Town Commission at a minimum, strike the provisions of the Town Ethics Code that are identical (or nearly identical) to the Florida Ethics Code and strike any provisions of the Town Ethics Code that are in conflict with state law. If the Town Commission wants to retain other Town-specific standards, it is recommended that the Town Commission revisit and fill the administrative and procedural requirements needed to enforce these provisions under the Town's Ethics Code. Once the Town Commission has discussed this Memorandum and provided direction to the Town Attorney regarding the issues presented herein, if action is needed, the Town Attorney will move forward with drafting an Ordinance to implement the Town Commission's direction.

If you have any questions regarding this Memorandum, please do not hesitate to contact either of us at (941)306-4730.

Chapter 39
CODE OF ETHICS

Sections:

- 39.01 **Declaration of purpose and policy.**
- 39.02 **Definitions.**
- 39.03 **Establishment.**
- 39.04 **Responsibilities of public office.**
- 39.05 **Fair and equal treatment.**
- 39.06 **Standards of conduct; conflicts of interest.**
- 39.07 **Voting conflicts.**
- 39.08 **Influence of board members by town commissioners; appearance before boards.**
- 39.09 **Applicability of the Code.**
- 39.10 **Relationship to state statute.**
- 39.11 **Copies furnished.**
- 39.12 **Special masters.**
- 39.13 **Subpoena power.**
- 39.14 **Appeals.**

39.01 Declaration of purpose and policy.

The purpose of this chapter is to promote the welfare of the citizens of the town through the adoption of a code of ethics to govern all town officers and town employees, employed either on a part-time or full-time basis by the town. Within this framework, the general objectives of this chapter are as follows:

(A) To facilitate the proper operation of municipal government by providing officers and employees who are independent, impartial and responsible to the people, and able to make governmental decisions and formulate policy within the established channels of governmental structure.

(B) To ensure that public office or public employment not be used for private gain other than as provided for by law.

(C) To ensure that the financial interests of employees and public office holders present neither a conflict nor the appearance of a conflict with the public trust.

(D) To foster continued recognition of the concept that public employees and public office holders are agents of the public and hold office or employment for the benefit of the public.

(E) To enhance public confidence in the integrity of its municipal government.

(F) To promote a recommitment to the concept that public employees and public office holders are required to uphold the Constitution of the United States, the Constitution of the State of Florida and the Charter of the town, and are required to impartially carry out and enforce the laws of the nation, the state and the town.

(G) To continue high moral standards in government.

To this end, there is established a code of ethics for the town. (Ord. 90-13, passed 5-7-90; Amd. Ord. 91-28, passed 16-92)

39.02 Definitions.

When used in this chapter:

"Business entity." Any person or individual, proprietorship, partnership, corporation, association or any organization which is engaged in business.

"Conflict" or "conflict of interest." A situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

"Governmental body." The town or any of its departments, agencies, commissions, authorities or boards.

"Represent" or "representation." Actual physical attendance on behalf of a client in a town proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of the town on behalf of a client.

"Town employee." Any person employed by the town or any of its departments, agencies, commissions, authorities or boards, whether on a full-time or part-time basis.

"Town officer." Any person elected or appointed to any public office or public body of the town, whether paid or unpaid, and whether part-time or full-time, including the town commission, planning and zoning board, code enforcement board, zoning board of adjustment, pension board, and the investment advisory board, but excluding any person serving on an advisory body not stated above or required by Florida law; except that any person serving on an advisory body shall be subject to the requirements of the ethics code, except for § 39.06(H) (1). (Ord. 90-13, passed 5-7-90; Amd. Ord. 91-28, passed 1-6-92; Amd. Ord. 99-19, passed 6-7-99)

39.03 Establishment.

The requirements set forth in this chapter shall constitute a code of ethics establishing reasonable standards and guidelines for the ethical conduct of town officers and employees. (Ord. 90-13, passed 5-7-90)

39.04 Responsibilities of public office.

Town officers and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this state and to carry out impartially the laws of the nation, state and municipality and thus to foster respect for all government. As such, they are bound to observe the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern. (Ord. 90-13, passed 5-7-90)

39.05 Fair and equal treatment.

(A) *Influencing appointments.* Canvassing the members of the town commission, directly or through a third party, in order to obtain preferential consideration in connection with any appointment to and any application for employment in the town service shall disqualify the candidate for appointment except with reference to positions filled by appointment by the town commission.

Town officers and employees shall not canvass any town commissioner on behalf of a candidate for appointment to the town service. town commissioners shall not respond to canvassing by granting any special consideration, treatment, or advantage to the candidate which is not available to every other candidate. Members of the town commission shall adhere to article II, § 13, of the Town Charter, entitled "Relationship of Town Commission With Administration".

(B) *Use of property.* No town officer or employee shall use, request or permit the use of town-owned vehicles, equipment, materials or property for personal convenience or profit; except when such services are available to the public generally or are provided as town policy pursuant to town resolution passed by the town commission for the use of such officer, employee or others. Notwithstanding anything herein to the contrary, the town manager may authorize the personal use of the following town-owned property by town officers or employees upon receipt of a written request for such use and an authorization for the town to collect payment for any damages to the town property by payroll deduction:

- (1) Hand tools not requiring a power source to operate;
- (2) Folding chairs and tables;
- (3) Books;
- (4) On-premises, after-hours use of typewriters, drafting boards, calculators and similar nonexpendable office equipment.

(C) *Obligations to citizens.* No town officer or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen. (Ord. 90-13, passed 5-7-90; Amd. Ord. 91-28, passed 1-6-92; Amd. Ord. 97-02, passed 2-3-97)

39.06 Standards of conduct; conflicts of interest.

(A) *Solicitation or acceptance of gifts.*

- (1) No town officer or employee, or candidate for nomination or election shall solicit or accept anything of value to the recipient, includ-

ing a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the town officer or employee, or candidate would be influenced thereby.

(2) No town officer or employee shall accept any gift in excess of \$100.00 in value, whether in the form of entertainment, service, loan, thing, or promise, from any person, firm or corporation which to his knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the town.

(B) *Doing business with town.* No employee of the town acting in his official capacity as a purchasing agent, or town officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for the town from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his spouse or child, or any combination of them, has a material interest. Nor shall a town officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods or services of the town if he is serving as an officer or employee of the town. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (1) October 1, 1975;
- (2) Qualification for elective office;
- (3) Appointment to public office;
- (4) Beginning public employment.

(C) *Unauthorized compensation.* No town officer or employee or his spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such officer or employee knows or, with the exercise of reasonable care, should know that it was given to influence a vote or other action in which the officer or employee was expected to participate in his official capacity.

(D) *Salary and expenses.* No town officer or employee shall be prohibited from voting on a matter affecting his salary, expenses, or other compensation as a town officer, as provided by law.

(E) *Misuse of public position.* No town officer or employee of the town shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with F.S. § 104.31.

(F) *Conflicting employment or contractual relationship.*

(1) No town officer or employee shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, the town, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the town; nor shall an officer or employee of the town have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

(2) This subsection shall not prohibit a town officer or employee from practicing in a particular profession or occupation when such practice by persons holding such town office or employment is required or permitted by law or ordinance.

(3) No town commissioner may represent another person or entity for compensation before the town commission or any town board for a period of two years following vacation of office.

(G) *Disclosure or use of certain information.* No town officer or employee shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(H) *Disclosure of specified interests.*

(1) If a town officer or employee is an officer, director, partner, proprietor, associate, or general agent (other than a resident agent solely for service of process) of, or owns a material interest in, any

business entity which is granted a privilege to operate in this state, he shall file with the town clerk a statement disclosing such facts. Such statement shall be filed no later than 45 days after becoming an officer or employee or after the acquisition of such position or material interest. The statement shall give the name, address, and principal business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of that interest. New appointees to town office or new town employees shall file the statement required herein, if applicable, no later than 45 days after their appointment or after the date their employment begins.

(2) A person seeking to qualify as a candidate for nomination or election to any office shall file a like statement along with, and as a part of, the required qualification papers. Persons seeking to qualify as a candidate for nomination or election to town office, and officers and employees of the town, shall file their statements with the town clerk and the supervisor of elections of the county in which they are principally employed or are residents in accordance with Florida law.

(I) *Employees holding office.* No employee of the town shall hold office as a member of the town commission while, at the same time, continuing as an employee of the town.

(J) *Exemption.* The requirements of subsections (B) and (F) as they pertain to persons serving on advisory boards may be waived in a particular instance by the town commission upon a full disclosure of the transaction or relationship to the town commission prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of the town commission. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or

relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (B) or subsection (F) if:

(1) Within the town the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the town.

(2) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

(a) The official or his spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;

(b) The official or his spouse or child has in no way used or attempted to use his influence to persuade the town or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

(c) The official, prior to or at the time of the submission of the bid, has filed a statement with the Supervisor of Elections of Sarasota or Manatee County disclosing his interest, or the interest of his spouse or child, and the nature of the intended business.

(3) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(4) An emergency purchase or contract which would otherwise violate a provision of subsection (B) or subsection (F) must be made in order to protect the health, safety, or welfare of the citizens of the town.

(5) The business entity involved is the only source of supply within the town and there is full disclosure by the officer or employee of his interest in the business entity to the town commission prior to the purchase, rental, sale, leasing, or other business being transacted.

(6) The total amount of the subject transaction does not exceed \$500.00.

(7) The fact that a town officer or member of a town board or body, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under

the jurisdiction of any such town board or body, provided it appears in the records of the town that the town commission has determined that such officer or member of a town board or body has not favored such bank over other qualified banks.

(K) *Additional exemption.* No elected town commissioner shall be held in violation of subsection (F) (1) or (F) (2) if the commissioner maintains an employment relationship with an entity which is currently a tax-exempt organization under § 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the town and:

(1) The town commissioner's employment is not directly or indirectly compensated as a result of such contract or business relationship;

(2) The town commissioner has in no way participated in the town's decision to contract or to enter into the business relationship with his employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the town or otherwise; and

(3) The town commissioner abstains from voting on any matter which may come before the town involving the town commissioner's employer, publicly states to the assembly the nature of his interest in the matter from which he is abstaining, and files a written memorandum as provided in F.S. § 112.3143, (3). (Ord. 90-13, passed 5-7-90; Amd. Ord. 96-24, passed 12-2-96)

39.07 Voting conflicts.

(A) No town officer is prohibited from voting in his official capacity on any matter, except that no town officer shall vote in his official capacity upon any measure which inures to his special private gain or loss or shall knowingly vote in his official capacity upon any measure which inures to the special gain or loss of any principal, other than an agency, as defined in F.S. § 112.312(2), by whom he is retained.

(B) Any town officer abstaining pursuant to subsection (A) of this section shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he

is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(C) Any town commissioner voting in his official capacity on a matter or measure which inures to the special gain or loss of any person or business entity from whom he has received a campaign contribution as defined in F.S. § 106.011(3), in excess of \$100.00 within two years prior to the time the vote is taken shall disclose such fact on the record of the commission prior to the vote. He shall also disclose any such contribution if received from an officer, director, major stockholder, general or limited partner (if known), or any other principal of any such contributing business entity.

(D) No appointed town officer shall participate in any matter which inures to his special private gain or loss or the special gain or loss of any principal by whom he is retained, without first disclosing the nature of his interest in the matter and the nature of the factual situation in which the regard for his private interest tends to lead to a disregard of his public duty or the public interest. Such disclosure shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting and shall be incorporated in the minutes; if the disclosure is initially made orally at a meeting attended by the officer, the written memorandum disclosing the nature of the conflict shall be filed within 15 days with the person responsible for recording the minutes of the meeting and shall be incorporated in the minutes. A copy of such memorandum, which shall become a public record upon filing, shall immediately be provided to the other members of the agency and shall be read publicly at the meeting prior to the consideration of the matter. For purposes of this paragraph, the term "participate" means any attempt to influence the decision by oral or written communication whether made by the officer or at his direction.

(E) Whenever a town officer or former town officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by the officer. (Ord. 90-13, passed 5-7-90; Amd. Ord. 91-28, passed 1-6-92; Amd. Ord. 96-24, passed 12-2-96)

39.08 Influence of board members by town commissioners; appearance before boards.

(A) Town commissioners are hereby prohibited from:

(1) Attempting directly or indirectly to influence the decision or official act of any member of any board or committee of the town;

(2) Appearing before any such board except upon invitation of a majority of the members of such board; provided, however, that if a town commissioner shall appear before such board without invitation, he shall be presumed to have a financial or personal interest in any matter which he shall have advocated or espoused before the board.

(B) Excepted from the provisions hereof is participation by the mayor or members of the town commission in the acts and deliberations of any board of which they are appointed regular, or ex officio, or liaison members of the board.

(C) Violations of this section shall be deemed a misuse of public position as set forth in § 39.06(E) above. (Ord. 90-13, passed 5-7-90; Amd. Ord. 91-28, passed 1-6-92)

39.09 Applicability of the Code.

When a town commissioner or other officer or employee has doubt as to the applicability of a provision of this Code to a particular situation, he shall apply to the town attorney for an advisory opinion and be guided by that opinion when given. The town attorney may refer the request to a special master chosen pursuant to section 39.12. The commissioner or other officer or employee shall have the opportunity to present his interpre-

tation of the facts at issue and of the applicable provisions of the Code before such advisory decision is made. This Code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or Charter provision. (Ord. 90-13, passed 5-7-90; Amd. Ord. 99-19, passed 6-7-99)

39.10 Relationship to state statute.

To the extent of any conflict between F.S. ch. 112, (1987), as it may be amended from time to time, and this Code, chapter 112 shall apply, except that any provision of this Code, which is more stringent than or in addition to the requirements of chapter 112 shall apply if not in conflict with chapter 112. (Ord. 90-13, passed 5-7-90)

39.11 Copies furnished.

A copy of this ethics code shall be furnished to all new town officers and town employees prior to assumption of any official duties. (Ord. 90-13, passed 5-7-90)

39.12 Special masters.

(A) *Special masters.* The town commission shall appoint a minimum of three independent special masters selected on the basis of their qualifications. When an ethics complaint is filed which is within the jurisdiction of the special master as set forth below, the special master shall be chosen by lot. Special masters may conduct investigations upon complaints or information received, and may subpoena evidence and swear witnesses. Special masters shall cause to be kept accurate and complete minutes of any and all public hearings.

(b) *Ethics complaints concerning elected officials, candidates for town commission, and advisory board or committee members.*

(1) Upon the filing with the town clerk of a written, sworn complaint of any person concerning an alleged ethical breach by a town officer, candidate for town commission, or advisory board or committee member, the town clerk shall present the complaint to the town attorney, who, within five days of receipt of the complaint, shall cause a

copy to be delivered to the alleged violator. If the facts contained within the complaint, if true, set forth a violation of the town's ethics code, the town attorney shall refer the matter to a special master who shall be chosen by lot by the town clerk. The special master, once selected, shall investigate the alleged violation of this chapter in accordance with the procedures set forth herein. All proceedings, the complaint, and other records relating to the preliminary investigation as provided herein, including a dismissal of the complaint, shall be open to the public. In no event shall a complaint under this section against a candidate in any town election be filed or the filing of or intention of filing such a complaint be disclosed on the day of any such election or within the five days immediately preceding the date of the election.

(2) (a) A preliminary investigation shall first be undertaken by the special master to determine if the facts alleged in the complaint constitute probable cause to believe that an ethical violation has occurred. If upon completion of the preliminary investigation the special master finds no probable cause to believe that this chapter has been violated, the special master shall dismiss the complaint stating with particularity the reasons for dismissal of the complaint. The complaint, together with a written statement of the findings of the preliminary investigation and a summary of the facts, shall be transmitted to the complainant and the alleged violator.

(b) If the special master finds from the preliminary investigation probable cause to believe that this chapter has been violated, he shall so notify the complainant and the alleged violator in writing. Such notification and all documents made or received in the disposition of the complaint shall be public records.

(c) Upon request submitted to the special master in writing, any person who the special master finds probable cause to believe has violated any provision of this chapter shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if request

therefor is not received by the special master within 14 days following the mailing of the probable cause notification required by this section; however, the special master may on his own motion require a public hearing and may conduct such further investigation as he deems appropriate and necessary. The complainant and alleged violator shall be given notice in writing of the date and time set for such public hearing at least ten days before the public hearing is held.

(d) The hearing shall be conducted in accordance with all requirements of due process of law and in accordance with any written rules and regulations that have been promulgated by the special master and approved by the town commission. Any person filing such a sworn complaint and any alleged violator may appear before the special master in person or by counsel and shall be entitled to question witnesses and present evidence in accordance with any rules that have been adopted. Within ten days after the public hearing, the special master shall make and promulgate written findings of fact and conclusions based thereon, including a determination as to the propriety of the conduct of the alleged violator, all of which shall be transmitted to the complainant, the alleged violator, the town commission, and the town manager.

(e) In any case in which the special master finds probable cause to believe a violation of criminal law has been committed by an alleged violator, or where the special master finds probable cause to believe that a complainant has committed perjury in regard to any document filed with or any testimony given before the special master, he shall refer such evidence to the appropriate law enforcement agency for prosecution.

(3) Sanctions to be determined by special master.

(a) If the special master, pursuant to the provisions of this subsection makes a determination that the conduct of any town commissioner, candidate for town commission, or member of any advisory board or committee is or was improper, the town commission may institute appropriate

action for correction or rectification of that conduct, and may institute appropriate action to avoid any transaction with a public body or any determination made by a public body.

(b) Violation of any provision of the town ethics code, in addition to any criminal penalty involved, shall constitute grounds for, and the special master may impose, one or more of the following sanctions:

1. Public censure and reprimand.
2. Forfeiture of no more than one-third of any salary per month for no more than 12 months.
3. Restitution of any pecuniary benefits received because of any violation committed.
4. Removal of the town officer from office.
5. Recommendation to the governor of the State of Florida for the removal from public office of the town officer.

(c) The special master shall base any decision to impose sanctions upon written findings of fact, conclusions and determinations. The imposition of sanctions should occur after the promulgation of the findings of fact, conclusions and determinations by the special master.

(C) *Ethics complaints concerning town employees.*

(1) If the complaint involves ethical conduct of any town employee other than the town manager, the complainant shall file the sworn complaint with the town manager who shall review the complaint pursuant to federal and state law, the Charter, this Code, and the personnel rules and regulations then in existence. The town manager shall have the power to investigate, and when appropriate to reprimand, punish, demote, dismiss or take any and all other disciplinary action concerning employees who breach ethical standards. For purposes of the Whistleblower Act, the town commission designates the town manager as the chief executive officer and appropriate local official for all complaints filed pursuant to F.S. § 112.3187 et seq., as amended.

(D) *Ethics complaints concerning the town manager and town attorney.*

(1) Upon the filing with the town clerk of a written, sworn complaint of any person concern-

ing an alleged ethical breach by the town manager or town attorney, the town clerk shall present the complaint to a special master chosen by lot who, within five days of receipt of the complaint, shall cause a copy to be delivered to the alleged violator. If the facts contained within the complaint, if true, set forth a violation of the town's ethics code, the special master shall instruct the town clerk to select another special master by lot to investigate the alleged violation of this chapter in accordance with the procedures as set forth in subsection (B) above, except that after all due proceedings the special master shall only make findings of fact as to whether an ethical breach occurred. These findings of fact shall be forwarded to the town commission for its consideration and further action.

(E) *The right to notice of public hearing from the special master.*

(1) *Timing of the notice to the person charged.* The notice shall be given to the person charged whenever all the following conditions are present:

(a) The stated reason(s) for the allegations and the finding of the probable cause have a significant bearing on the individual's reputation; and

(b) There is a factual dispute as to the truth or falsity of the stated reason(s); and

(c) The stated reason(s) is/are made or become a public record pursuant to Florida's Public Records Law, or is made public in any other way.

(2) *Content of the notice.* At the time of the relevant finding of probable cause action, under the necessary conditions, the special master shall inform the person charged that he/she has a right to seek a hearing. The notice:

(a) Shall be in writing; and

(b) Shall inform the person charged of the nature of the stated charge(s) that were made public in connection with any of the special master actions, in sufficient detail to enable the person to show the error in the statements and allegations, including but not limited to the laws, statutes, ordinance, rules or regulations which the

employee or public official has allegedly violated along with an explanation of the factual circumstances that constitute the alleged violation; and

(c) Shall state that the person charged may request a hearing; and

(d) Shall inform the person charged that he/she may submit documents or testimony at the hearing that contradicts the stated charge(s) that were made in connection with the special master's finding of probable cause. The notice shall inform the person charged that the purpose of the hearing is to factually dispute the statement or charge, and its purpose is not to inquire into or dispute the propriety of the special master's decision to investigate any initial finding of probable cause, even though the employee or public official may be totally exonerated or found innocent of all charges by the special master after due process.

(3) *Hearing.*

(a) The hearing shall be set if the employee/town officer requests a hearing within 14 days after the mailing and receipt of the probable cause or right to hearing notification or if the special master requests a hearing upon its own initiative.

(i) The public hearing will be deemed waived as to the person charged if timely request is not made by the person charged.

(ii) If the person charged waives his right to a public hearing, the special master may on his own require a public hearing.

(b) Notice of the date and time of the hearing shall be sent in writing to the complainant and person charged at least ten days before the public hearing is held.

(c) The hearing shall be conducted by the special master, who shall be the hearing officer.

(d) The town officer may submit documents and/or sworn testimony of himself/herself and/or third party witnesses and the initial complainant to contradict the statement(s) that were publicly made in connection with the charges.

(e) The hearing shall be recorded by a court reporter, whose minutes or transcript shall become public record. One original transcript may

be ordered and paid for by the town. Any party or interested person may order additional transcriptions or copies thereof at their own expense.

(f) Both the complainant and the person charged who requested the hearing shall have the opportunity to submit written memoranda and/or briefs to the special master within such reasonable time as shall be set by the special master. The public hearing shall be continued and not closed pending receipt or official transcripts, memoranda, briefs, or proposed findings of fact and conclusions of law to be considered by the special master. (Ord. 90-13, passed 5-7-90; Amd. Ord. 90-22, passed 7-19-90; Amd. Ord. 91-28, passed 1-6-92; Amd. Ord. 94-20, passed, 7-21-94; Amd. Ord. 94-30, passed 1-9-95; Amd. Ord. 96-24, passed 12-2-96; Amd. Ord. 99-19, passed 6-7-99)

39.13 Subpoena power.

(A) The special master is empowered to issue subpoenas to persons, ordering them to appear for testimony before the special master, and to issue subpoenas ordering the person to whom it is directed to produce books, papers, documents or tangible things designated therein. The special master may issue subpoenas for investigatory functions or probable cause determinations, and public hearings.

(B) Every subpoena shall be sealed by the town clerk upon request of the special master for issuance of a subpoena. The special master shall sign the subpoena upon the town clerk's verifying that the town seal has been affixed to the subpoena.

(C) The special master may have the subpoena served by any person authorized by law to serve process or any other person who is not a party and who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be as provided by law. Proof of such services shall be made by affidavit of the person making service if not otherwise served by a public officer authorized by law to do so.

(D) In the event the person to whom the subpoena is directed fails to obey it, the special master

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may apply to the circuit court for its enforcement.
(Ord. 91-28, passed 1-6-92; Amd. Ord. 99-19,
passed 6-7-99)

39.14 Appeals.

Anyone aggrieved by a determination of the
special master shall apply to the circuit court for
judicial relief within 30 days after rendition of the
decision. (Ord. 99-19, passed 6-7-99)

PART III

CODE OF ETHICS FOR

PUBLIC OFFICERS AND EMPLOYEES

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112.311 Legislative intent and declaration of policy.—

(1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

(2) It is also essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.

(3) It is likewise essential that the people be free to seek redress of their grievances and express their opinions to all government officials on current issues and past or pending legislative and executive actions at every level of government. In order to preserve and maintain the integrity of the governmental process, it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions, either by direct communication with such officials or by solicitation of others to engage in such efforts, be regularly disclosed to the people.

(4) It is the intent of this act to implement these objectives of protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service.

(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

(6) It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public

interest and maintaining the respect of the people in their government must be of foremost concern.

History.—s. 1, ch. 67-469; s. 1, ch. 69-335; s. 1, ch. 74-177; s. 2, ch. 75-208; s. 698, ch. 95-147.

112.312 Definitions.—As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

- (1) "Advisory body" means any board, commission, committee, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the budget of each agency it serves or \$100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relating to its internal operations.
- (2) "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.
- (3) "Breach of the public trust" means a violation of a provision of the State Constitution or this part which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of s. 8, Art. II of the State Constitution or of this part.
- (4) "Business associate" means any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or coowner of property.
- (5) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.
- (6) "Candidate" means any person who has filed a statement of financial interest and qualification papers, has subscribed to the candidate's oath as required by s. 99.021, and seeks by election to become a public officer. This definition expressly excludes a committeeman or committeewoman regulated by chapter 103 and persons seeking any other office or position in a political party.
- (7) "Commission" means the Commission on Ethics created by s. 112.320 or any successor to which its duties are transferred.
- (8) "Conflict" or "conflict of interest" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.
- (9) "Corruptly" means 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.
- (10) "Disclosure period" means the taxable year for the person or business entity, whether based on a calendar or fiscal year, immediately preceding the date on which, or the last day of the period during which, the financial disclosure statement required by this part is required to be filed.

(11) "Facts materially related to the complaint at issue" means facts which tend to show a violation of this part or s. 8, Art. II of the State Constitution by the alleged violator other than those alleged in the complaint and consisting of separate instances of the same or similar conduct as alleged in the complaint, or which tend to show an additional violation of this part or s. 8, Art. II of the State Constitution by the alleged violator which arises out of or in connection with the allegations of the complaint.

(12)(a) "Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days, including:

1. Real property.
2. The use of real property.
3. Tangible or intangible personal property.
4. The use of tangible or intangible personal property.
5. A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.
6. Forgiveness of an indebtedness.
7. Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.
8. Food or beverage.
9. Membership dues.
10. Entrance fees, admission fees, or tickets to events, performances, or facilities.
11. Plants, flowers, or floral arrangements.
12. Services provided by persons pursuant to a professional license or certificate.
13. Other personal services for which a fee is normally charged by the person providing the services.
14. Any other similar service or thing having an attributable value not already provided for in this section.

¹(b) "Gift" does not include:

1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization.
2. Contributions or expenditures reported pursuant to chapter 106, contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party or affiliated party committee.
3. An honorarium or an expense related to an honorarium event paid to a person or the person's spouse.
4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.
5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.

6. The use of a public facility or public property, made available by a governmental agency, for a public purpose.
7. Transportation provided to a public officer or employee by an agency in relation to officially approved governmental business.
8. Gifts provided directly or indirectly by a state, regional, or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization.
 - (c) For the purposes of paragraph (a), "intangible personal property" means property as defined in s. 192.001(11)(b).
 - (d) For the purposes of paragraph (a), the term "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.
- (13) "Indirect" or "indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the person required to file under this part.
- (14) "Liability" means any monetary debt or obligation owed by the reporting person to another person, entity, or governmental entity, 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, or accrued income taxes on net unrealized appreciation. Each liability which is required to be disclosed by s. 8, Art. II of the State Constitution shall identify the name and address of the creditor.
- (15) "Material interest" means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. For the purposes of this act, indirect ownership does not include ownership by a spouse or minor child.
- (16) "Materially affected" means involving an interest in real property located within the jurisdiction of the official's agency or involving an investment in a business entity, a source of income or a position of employment, office, or management in any business entity located within the jurisdiction or doing business within the jurisdiction of the official's agency which is or will be affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected.
- (17) "Ministerial matter" means 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.
- (18) "Parties materially related to the complaint at issue" means any other public officer or employee within the same agency as the alleged violator who has engaged in the same conduct as that alleged in the complaint, or any other public officer or employee who has participated with the alleged violator in the alleged violation as a coconspirator or as an aider and abettor.
- (19) "Person or business entities provided a grant or privilege to operate" includes 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, and entities controlled by the Public Service Commission or granted a franchise to operate by either a city or county government.

(20) "Purchasing agent" means 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.

(21) "Relative," unless otherwise specified in this part, means an individual who is related to a public officer or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the public officer or employee or who otherwise holds himself or herself out as or is generally known as the person whom the public officer or employee intends to marry or with whom the public officer or employee intends to form a household, or any other natural person having the same legal residence as the public officer or employee.

(22) "Represent" or "representation" means actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

(23) "Source" means the name, address, and description of the principal business activity of a person or business entity.

(24) "Value of real property" means the most recently assessed value in lieu of a more current appraisal.

History.—s. 2, ch. 67-469; ss. 11, 12, ch. 68-35; s. 8, ch. 69-353; s. 2, ch. 74-177; s. 1, ch. 75-196; s. 1, ch. 75-199; s. 3, ch. 75-208; s. 4, ch. 76-18; s. 1, ch. 77-174; s. 2, ch. 82-98; s. 1, ch. 83-282; s. 2, ch. 90-502; s. 2, ch. 91-85; s. 3, ch. 91-292; s. 699, ch. 95-147; s. 1, ch. 96-328; s. 1, ch. 2000-243; ss. 28, 30, ch. 2011-6; s. 75, ch. 2011-40; HJR 7105, 2011 Regular Session.

¹Note.—Section 30, ch. 2011-6, provides that "[t]his act shall take effect July 1, 2010." Passed by the Senate and the House of Representatives over the Governor's veto March 24, 2011. House Joint Resolution 7105, 2011 Regular Session, provides that C.S. for C.S. for H.B. 1207, 2010 Regular Session, which became ch. 2011-6, is effective "upon becoming a law, the veto of the Governor notwithstanding. If any law amended by this act was also amended by a law enacted during the 2010 Regular Session, such laws shall be construed as if they had been enacted at the same session of the Legislature, and full effect shall be given to each if possible." C.S. for C.S. for H.B. 1207, 2010 Regular Session, became law on March 24, 2011.

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(1) DEFINITION.—As used in this section, unless the context otherwise requires, the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) SOLICITATION OR ACCEPTANCE OF GIFTS.—No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

(3) DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

(4) UNAUTHORIZED COMPENSATION.—No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

(5) SALARY AND EXPENSES.—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official

capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602 or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

b. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control.

3. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in s. 112.317 and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

- a. A person employed by the Legislature or other agency prior to July 1, 1989;
- b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;
- c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;
- d. A person who has reached normal retirement age as defined in s. 121.021(29), and who has retired under the provisions of chapter 121 by July 1, 1991; or
- e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

(b) In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

(10) EMPLOYEES HOLDING OFFICE.—

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council, commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.

(b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS.—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.

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.

(b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

1. The official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;
2. The official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.

(c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens of the state or any political subdivision thereof.

(e) The business entity involved is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.

(f) The total amount of the transactions in the aggregate between the business entity and the agency does not exceed \$500 per calendar year.

(g) The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks.

(h) The transaction is made pursuant to s. 1004.22 or s. 1004.23 and is specifically approved by the president and the chair of the university board of trustees. The chair of the university board of trustees shall submit to the Governor and the Legislature by March 1 of each year a report of the transactions approved pursuant to this paragraph during the preceding year.

(i) The public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) The public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency and:

1. The price and terms of the transaction are available to similarly situated members of the general public; and
2. The officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

(13) COUNTY AND MUNICIPAL ORDINANCES AND SPECIAL DISTRICT AND SCHOOL DISTRICT RESOLUTIONS REGULATING FORMER OFFICERS OR EMPLOYEES.—The governing body of any county or municipality may adopt an ordinance and the governing body of any special district or school district may adopt a resolution providing that an appointed county, municipal, special district, or school district officer or a county, municipal, special district, or school district employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of 2 years following vacation of office or termination of employment, except for the purposes of collective bargaining. Nothing in this section may be construed to prohibit such ordinance or resolution.

(14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.—A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

(a) The "government body or agency" of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

(b) The "government body or agency" of any other county elected officer is the office or department headed by that officer, including all subordinate employees.

(c) The "government body or agency" of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.

(d) The "government body or agency" of an elected special district officer is the special district.

(e) The "government body or agency" of an elected school district officer is the school district.

(15) ADDITIONAL EXEMPTION.—No elected public officer shall be held in violation of subsection (7) if the officer maintains an employment relationship with an entity which is currently a tax-exempt organization under s. 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the officer's agency and:

(a) The officer's employment is not directly or indirectly compensated as a result of such contract or business relationship;

(b) The officer has in no way participated in the agency's decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise; and

(c) The officer abstains from voting on any matter which may come before the agency involving the officer's employer, publicly states to the assembly the nature of the officer's interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s. 112.3143.

(16) LOCAL GOVERNMENT ATTORNEYS.—

(a) For the purposes of this section, "local government attorney" means any individual who routinely serves as the attorney for a unit of local government. The term shall not include any person who renders legal services to a unit of local government pursuant to contract limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding. For the purposes of this section, "unit of local government" includes, but is not limited to, municipalities, counties, and special districts.

(b) It shall not constitute a violation of subsection (3) or subsection (7) for a unit of local government to contract with a law firm, operating as either a partnership or a professional association, or in any combination thereof, or with a local government attorney who is a member of or is otherwise associated with the law firm, to provide any or all legal services to the unit of local government, so long as the local government attorney is not a full-time employee or member of the governing body of the unit of local government. However, the standards of conduct as provided in subsections (2), (4), (5), (6), and (8) shall apply to any person who serves as a local government attorney.

(c) No local government attorney or law firm in which the local government attorney is a member, partner, or employee shall represent a private individual or entity before the unit of local government to which the local government attorney provides legal services. A local government attorney whose contract with the unit of local government does not include

provisions that authorize or mandate the use of the law firm of the local government attorney to complete legal services for the unit of local government shall not recommend or otherwise refer legal work to that attorney's law firm to be completed for the unit of local government.

(17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.—No citizen member of the Board of Governors of the State University System, nor any citizen member of a board of trustees of a local constituent university, shall have or hold any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. 11.045.

History.—s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217; s. 16, ch. 2011-34.

112.3135 Restriction on employment of relatives.—

(1) In this section, unless the context otherwise requires:

(a) "Agency" means:

1. A state agency, except an institution under the jurisdiction of the Board of Governors of the State University System;
2. An office, agency, or other establishment in the legislative branch;
3. An office, agency, or other establishment in the judicial branch;
4. A county;
5. A city; and
6. Any other political subdivision of the state, except a district school board or community college district.

(b) "Collegial body" means a governmental entity marked by power or authority vested equally in each of a number of colleagues.

(c) "Public official" means an officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.

(d) "Relative," for purposes of this section only, with respect to a public official, means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(2)(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed,

employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide.

(b) Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

(3) An agency may prescribe regulations authorizing the temporary employment, in the event of an emergency as defined in s. 252.34, of individuals whose employment would be otherwise prohibited by this section.

(4) Legislators' relatives may be employed as pages or messengers during legislative sessions.

History.—ss. 1, 2, 3, ch. 69-341; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221; s. 3, ch. 83-334; s. 1, ch. 89-67; s. 4, ch. 90-502; s. 2, ch. 94-277; s. 1407, ch. 95-147; s. 1, ch. 98-160; s. 42, ch. 99-2; s. 11, ch. 2007-217; s. 47, ch. 2011-142.

Note.—Former s. 116.111.

112.3136 Standards of conduct for officers and employees of entities serving as chief administrative officer of political subdivisions.—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 the following standards of conduct of this part:

(1) Section 112.313, and their "agency" is the political subdivision that they serve; however, the contract under which the business entity serves as chief executive or administrative officer of the political subdivision is not deemed to violate s. 112.313(3) or (7).

(2) Section 112.3145, as a "local officer."

(3) Sections 112.3148 and 112.3149, as a "reporting individual."

History.—s. 1, ch. 2009-126.

112.3143 Voting conflicts.—

(1) As used in this section:

(a) "Public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(b) "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(2) No state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon 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 shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(5) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

History.—s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2.

112.3144 Full and public disclosure of financial interests.—

¹(1) An officer who is required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year shall file that disclosure with the Florida Commission on Ethics.

(2) A person who is required, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of financial interests and who has filed a full and public disclosure of financial interests for any calendar or fiscal year shall not be required to file a statement of financial interests pursuant to s. 112.3145(2) and (3) for the same year or for any part thereof notwithstanding any requirement of this part, except that a candidate for office shall file a copy of his or her disclosure with the officer before whom he or she qualifies.

(3) For purposes of full and public disclosure under s. 8(a), Art. II of the State Constitution, the following items, if not held for investment purposes and if valued at over \$1,000 in the aggregate, may be reported in a lump sum and identified as "household goods and personal effects":

- (a) Jewelry;
- (b) Collections of stamps, guns, and numismatic properties;
- (c) Art objects;
- (d) Household equipment and furnishings;
- (e) Clothing;
- (f) Other household items; and
- (g) Vehicles for personal use.

(4)(a) With respect to reporting, on forms prescribed under this section, assets valued in excess of \$1,000 which the reporting individual holds jointly with another person, the amount reported shall be based on the reporting individual's legal percentage of ownership in the property. However, assets that are held jointly, with right of survivorship, must be reported at 100 percent of the value of the asset. For purposes of this subsection, a reporting individual is deemed to own a percentage of a partnership which is equal to the reporting individual's interest in the capital or equity of the partnership.

(b)1. With respect to reporting liabilities valued in excess of \$1,000 on forms prescribed under this section for which the reporting individual is jointly and severally liable, the amount reported shall be based on the reporting individual's percentage of liability rather than the total amount of the liability. However, 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.

2. A separate section of the form shall be created to provide for the reporting of the amounts of joint and several liability of the reporting individual not otherwise reported in subparagraph 1.

(5) Forms for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be created by the Commission on Ethics. The commission shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(a) Not later than May 1 of each year, the commission shall prepare a current list of the names and addresses of and the offices held by every person required to file full and public disclosure annually by s. 8, Art. II of the State Constitution, or other state law. In compiling the list, the commission shall be assisted by each unit of government in providing at the request of the commission the name, address, and name of the office held by each public official within the respective unit of government.

(b) Not later than 30 days before July 1 of each year, the commission shall mail a copy of the form prescribed for compliance with full and public disclosure and a notice of the filing deadline to each person on the mailing list.

(c) Not later than 30 days after July 1 of each year, the commission shall determine which persons on the mailing list have failed to file full and public disclosure and shall send delinquency notices by certified mail to such persons. Each notice shall state that a grace period is in effect until September 1 of the current year.

(d) Statements must be filed not later than 5 p.m. of the due date. However, any statement that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, constitutes proof of mailing in a timely manner.

(e) Any person who is required to file full and public disclosure of financial interests and whose name is on the commission's mailing list but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however this \$1,500 limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and the procedures by which each person whose name is on the mailing list and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. The rule must provide for and make specific the following:

1. The amount of the fine due is based upon the earliest of the following:

a. When a statement is actually received by the office.

b. When the statement is postmarked.

c. When the certificate of mailing is dated.

d. When the receipt from an established courier company is dated.

2. Upon receipt of the disclosure statement or upon accrual of the maximum penalty, whichever occurs first, the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an explanation of the appeal procedure under subparagraph 3. Such fine must be paid within 30 days after the notice of payment due is transmitted, unless appeal is made to the commission pursuant to subparagraph 3. The moneys shall be deposited into the General Revenue Fund.

3. 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 made 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.

(f) Any person subject to the annual filing of full and public disclosure under s. 8, Art. II of the State Constitution, or other state law, whose name is not on the commission's mailing list of persons required to file full and public disclosure is not subject to the fines or penalties provided in this part for failure to file full and public disclosure in any year in which the omission occurred, but nevertheless is required to file the disclosure statement.

(g) The notification requirements and fines of this subsection do not apply to candidates or to the first filing required of any person appointed to elective constitutional office or other position required to file full and public disclosure, unless the person's name is on the commission's notification list and the person received notification from the commission. The appointing official shall notify such newly appointed person of the obligation to file full and public disclosure by July 1. The notification requirements and fines of this subsection do not apply to the final filing provided for in subsection (6).

(h) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such fine to a collection agent as provided in s. 17.20.

(6) 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.

(7) The commission shall adopt rules and forms specifying how a person who is required to file full and public disclosure of financial interests may amend his or her disclosure statement to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

History.—s. 1, ch. 82-98; s. 3, ch. 88-358; s. 19, ch. 91-45; s. 4, ch. 94-277; s. 1409, ch. 95-147; s. 2, ch. 2000-243; s. 30, ch. 2000-258; s. 127, ch. 2003-261; s. 3, ch. 2006-275.

¹Note.—As created by s. 30, ch. 2000-258. Subsection (1), as created by s. 2, ch. 2000-243, reads:

(1) A person who is required, pursuant to s. 8, Art. II of the State Constitution, to file a full and public disclosure of financial interests for any calendar or fiscal year shall file the disclosure with the Florida Commission on Ethics.

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires, the term:

(a) "Local officer" means:

1. Every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.
2. Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:
 - a. The governing body of the political subdivision, if appointed;
 - b. An expressway authority or transportation authority established by general law;
 - c. A community college or junior college district board of trustees;
 - d. A board having the power to enforce local code provisions;
 - e. A planning or zoning board, board of adjustment, board of appeals, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;
 - f. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or
 - g. Any other 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.
3. Any person holding one or more of the following positions: mayor; county or city manager; chief administrative employee of a county, municipality, or other political subdivision; county or municipal attorney; 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; community college president; district medical examiner; or purchasing agent having the authority to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY ONE, on behalf of any political subdivision of the state or any entity thereof.

(b) "Specified state employee" means:

1. Public counsel created by chapter 350, an assistant state attorney, an assistant public defender, a full-time state employee who serves as counsel or assistant counsel to any state agency, the Deputy Chief Judge of Compensation Claims, a judge of compensation claims, an administrative law judge, or a hearing officer.
2. Any person employed in the office of the Governor or in the office of any member of the Cabinet if that person is exempt from the Career Service System, except persons employed in clerical, secretarial, or similar positions.

3. The State Surgeon General or each appointed secretary, assistant secretary, deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, bureau chief, and assistant bureau chief of any state department or division; or any person having the power normally conferred upon such persons, by whatever title.
4. The superintendent or institute director of a state mental health institute established for training and research in the mental health field or the warden or director of any major state institution or facility established for corrections, training, treatment, or rehabilitation.
5. Business managers, purchasing agents having the power to make any purchase exceeding the threshold amount provided for in s. 287.017 for CATEGORY ONE, finance and accounting directors, personnel officers, or grants coordinators for any state agency.
6. Any person, other than a legislative assistant exempted by the presiding officer of the house by which the legislative assistant is employed, who is employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions.
7. Each employee of the Commission on Ethics.

(c) "State officer" means:

1. Any elected public officer, excluding those elected to the United States Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office.
2. An appointed member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body.
3. A member of the Board of Governors of the State University System or a state university board of trustees, the Chancellor and Vice Chancellors of the State University System, and the president of a state university.
4. A member of the judicial nominating commission for any district court of appeal or any judicial circuit.

(2)(a) A person seeking nomination or election to a state or local elective office shall file a statement of financial interests together with, and at the same time he or she files, qualifying papers.

(b) Each state or local officer and each specified state employee shall file a statement of financial interests no later than July 1 of each year. Each state officer, local officer, and specified state employee shall file a final statement of financial interests 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 this section or s. 8, Art. II of the State Constitution or otherwise is required to file full and public disclosure or a statement of financial interests for the final disclosure period. Each state or local officer who is appointed and each specified state employee who is employed shall file a statement of financial interests within 30 days from the date of appointment or, in the case of a specified state employee, from the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file prior to confirmation hearings or within 30 days from the date of appointment, whichever comes first.

(c) State officers and specified state employees shall file their statements of financial interests with the Commission on Ethics. Local officers shall file their statements of financial interests with the supervisor of elections of the county in which they permanently reside. Local officers who do not permanently reside in any county in the state shall file their statements of financial interests with the supervisor of elections of the county in which their agency maintains its headquarters. Persons seeking to qualify as candidates for local public office shall file their statements of financial interests with the officer before whom they qualify.

(3) The statement of financial interests for state officers, specified state employees, local officers, and persons seeking to qualify as candidates for state or local office shall be filed even if the reporting person holds no financial interests requiring disclosure, in which case the statement shall be marked "not applicable." Otherwise, the statement of financial interests shall include, at the filer's option, either:

(a)1. All sources of income in excess of 5 percent of the gross income received during the disclosure period by the person in his or her own name or by any other person for his or her use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of income. The person reporting shall list such sources in descending order of value with the largest source first;

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 an amount which was in excess of 10 percent of his or her gross income during the disclosure period and which exceeds \$1,500. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting;

3. The location or description of real property in this state, except for residences and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and a general description of any intangible personal property worth in excess of 10 percent of such person's total assets. For the purposes of this paragraph, indirect ownership does not include ownership by a spouse or minor child; and

4. Every individual liability that equals more than the reporting person's net worth; or

(b)1. All sources of gross income in excess of \$2,500 received during the disclosure period by the person in his or her own name or by any other person for his or her use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of income. The person reporting shall list such sources in descending order of value with the largest source first;

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. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting;

3. The location or description of real property in this state, except for residence and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and a general description of any

intangible personal property worth in excess of \$10,000. For the purpose of this paragraph, indirect ownership does not include ownership by a spouse or minor child; and

4. Every liability in excess of \$10,000.

(4) Each elected constitutional officer, state officer, local officer, and specified state employee shall file a quarterly report of the names of clients represented for a fee or commission, except for appearances in ministerial matters, before agencies at his or her level of government. For the purposes of this part, agencies of government shall be classified as state-level agencies or agencies below state level. Each local officer shall file such report with the supervisor of elections of the county in which the officer is principally employed or is a resident. Each state officer, elected constitutional officer, and specified state employee shall file such report with the commission. The report shall be filed only when a reportable representation is made during the calendar quarter and shall be filed no later than the last day of each calendar quarter, for the previous calendar quarter. Representation before any agency shall be deemed to include representation by such officer or specified state employee or by any partner or associate of the professional firm of which he or she is a member and of which he or she has actual knowledge. For the purposes of this subsection, the term "representation before any agency" does not include appearances before any court or the Deputy Chief Judge of Compensation Claims or judges of compensation claims or representations on behalf of one's agency in one's official capacity. Such term does not include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license based on a quota or a franchise of such agency or a license or operation permit to engage in a profession, business, or occupation, so long as the issuance or granting of such license, permit, or transfer does not require substantial discretion, a variance, a special consideration, or a certificate of public convenience and necessity.

(5) Each elected constitutional officer and each candidate for such office, any other public officer required pursuant to s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests, and each state officer, local officer, specified state employee, and candidate for elective public office who is or was during the disclosure period an officer, director, partner, proprietor, or agent, other than a resident agent solely for service of process, of, or owns or owned during the disclosure period a material interest in, any business entity which is granted a privilege to operate in this state shall disclose such facts as a part of the disclosure form filed pursuant to s. 8, Art. II of the State Constitution or this section, as applicable. The statement shall give the name, address, and principal business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of that interest.

(6) Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(a)1. Not later than May 1 of each year, the commission shall prepare a current list of the names and addresses of, and the offices or positions held by, every state officer, local officer, and specified employee. In compiling the list, the commission shall be assisted by each unit of government in providing, at the request of the commission, the name, address, and name

of agency of, and the office or position held by, each state officer, local officer, or specified state employee within the respective unit of government.

2. Not later than May 15 of each year, the commission shall provide each supervisor of elections with a current mailing list of all local officers required to file with such supervisor of elections.

(b) Not later than 30 days before July 1 of each year, the commission and each supervisor of elections, as appropriate, shall mail a copy of the form prescribed for compliance with subsection (3) and a notice of all applicable disclosure forms and filing deadlines to each person required to file a statement of financial interests.

(c) Not later than 30 days after July 1 of each year, the commission and each supervisor of elections shall determine which persons required to file a statement of financial interests in their respective offices have failed to do so and shall send delinquency notices by certified mail, return receipt requested, to these persons. Each notice shall state that a grace period is in effect until September 1 of the current year; that no investigative or disciplinary action based upon the delinquency will be taken by the agency head or commission if the statement is filed by September 1 of the current year; that, if the statement is not filed by September 1 of the current year, a fine of \$25 for each day late will be imposed, up to a maximum penalty of \$1,500; for notices sent by a supervisor of elections, that he or she is required by law to notify the commission of the delinquency; and that, if upon the filing of a sworn complaint the commission finds that the person has failed to timely file the statement within 60 days after September 1 of the current year, such person will also be subject to the penalties provided in s. 112.317.

(d) No later than November 15 of each year, the supervisor of elections in each county shall certify to the commission a list of the names and addresses of, and the offices or positions held by, all persons who have failed to timely file the required statements of financial interests. The certification must include the earliest of the dates described in subparagraph (f)1. The certification shall be on a form prescribed by the commission and shall indicate whether the supervisor of elections has provided the disclosure forms and notice as required by this subsection to all persons named on the delinquency list.

(e) Statements must be filed not later than 5 p.m. of the due date. However, any statement that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, constitutes proof of mailing in a timely manner.

(f) Any person who is required to file a statement of financial interests and whose name is on the commission's mailing list but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however, this \$1,500 limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline and a complaint is filed, as provided in s. 112.324. The commission must provide by rule the grounds for waiving the fine and procedures by which each person whose name is on the mailing list and who is determined to have not filed in a timely manner will be notified of assessed fines and may appeal. The rule must provide for and make specific the following:

1. The amount of the fine due is based upon the earliest of the following:

- a. When a statement is actually received by the office.
 - b. When the statement is postmarked.
 - c. When the certificate of mailing is dated.
 - d. When the receipt from an established courier company is dated.
2. For a specified state employee or a state officer, upon receipt of the disclosure statement by the commission or upon accrual of the maximum penalty, whichever occurs first, and for a local officer upon receipt by the commission of the certification from the local officer's supervisor of elections pursuant to paragraph (d), the commission shall determine the amount of the fine which is due and shall notify the delinquent person. The notice must include an explanation of the appeal procedure under subparagraph 3. The fine must be paid within 30 days after the notice of payment due is transmitted, unless appeal is made to the commission pursuant to subparagraph 3. The moneys are to be deposited into the General Revenue Fund.
3. 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 made 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.
- (g) Any state officer, local officer, or specified employee whose name is not on the mailing list of persons required to file an annual statement of financial interests is not subject to the penalties provided in s. 112.317 or the fine provided in this section for failure to timely file a statement of financial interests in any year in which the omission occurred, but nevertheless is required to file the disclosure statement.
- (h) The notification requirements and fines of this subsection do not apply to candidates or to the first or final filing required of any state officer, specified employee, or local officer as provided in paragraph (2)(b).
- (i) Notwithstanding any provision of chapter 120, any fine imposed under this subsection which is not waived by final order of the commission and which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the appeal must be submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department shall assign the collection of such a fine to a collection agent as provided in s. 17.20.
- (7)(a) The appointing official or body shall notify each newly appointed local officer, state officer, or specified state employee, not later than the date of appointment, of the officer's or employee's duty to comply with the disclosure requirements of this section. The agency head of each employing agency shall notify each newly employed local officer or specified state employee, not later than the day of employment, of the officer's or employee's duty to comply with the disclosure requirements of this section. The appointing official or body or employing agency head may designate a person to be responsible for the notification requirements of this paragraph.
- (b) The agency head of the agency of each local officer, state officer, or specified state employee who is required to file a statement of financial interests 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 paragraph.

(8) A public officer who has filed a disclosure for any calendar or fiscal year shall not be required to file a second disclosure for the same year or any part thereof, notwithstanding any requirement of this act, except that any public officer who qualifies as a candidate for public office shall file a copy of the disclosure with the officer before whom he or she qualifies as a candidate at the time of qualification.

(9) The commission shall adopt rules and forms specifying how a state officer, local officer, or specified state employee may amend his or her statement of financial interests to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

History.—s. 5, ch. 74-177; ss. 2, 6, ch. 75-196; s. 2, ch. 76-18; s. 1, ch. 77-174; s. 63, ch. 77-175; s. 54, ch. 79-40; s. 3, ch. 82-98; s. 2, ch. 83-128; ss. 2, 5, ch. 83-282; s. 3, ch. 84-318; s. 1, ch. 88-316; s. 1, ch. 90-169; s. 5, ch. 90-502; s. 27, ch. 91-46; s. 6, ch. 91-85; s. 6, ch. 91-292; ss. 5, 13, ch. 94-277; s. 3, ch. 94-340; s. 1410, ch. 95-147; s. 14, ch. 96-410; s. 31, ch. 97-286; s. 17, ch. 99-399; s. 2, ch. 2000-161; s. 3, ch. 2000-243; s. 31, ch. 2000-258; s. 23, ch. 2000-372; s. 3, ch. 2001-91; s. 2, ch. 2001-282; s. 128, ch. 2003-261; s. 4, ch. 2006-275; s. 12, ch. 2007-217; s. 7, ch. 2008-6.

112.3146 Public records.—The statements required by ss. 112.313, 112.3145, 112.3148, and 112.3149 shall be public records within the meaning of s. 119.01.

History.—s. 6, ch. 74-177; s. 6, ch. 90-502; s. 7, ch. 91-85.

112.3147 Forms.—All information required to be furnished by ss. 112.313, 112.3143, 112.3144, 112.3145, 112.3148, and 112.3149 and by s. 8, Art. II of the State Constitution shall be on forms prescribed by the Commission on Ethics.

History.—s. 7, ch. 74-177; s. 3, ch. 76-18; s. 7, ch. 90-502; s. 8, ch. 91-85; s. 12, ch. 2000-243; s. 5, ch. 2006-275.

112.3148 Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.—

(1) The provisions of this section do not apply to gifts solicited or accepted by a reporting individual or procurement employee from a relative.

(2) As used in this section:

(a) "Immediate family" means any parent, spouse, child, or sibling.

(b)1. "Lobbyist" means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency.

2. With respect to an agency that has established by rule, ordinance, or law a registration process for persons seeking to influence decisionmaking or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term "lobbyist" includes only a person who is required to be registered as

a lobbyist in accordance with such rule, ordinance, or law or who was during the preceding 12 months required to be registered as a lobbyist in accordance with such rule, ordinance, or law. At a minimum, such a registration system must require the registration of, or must designate, persons as "lobbyists" who engage in the same activities as require registration to lobby the Legislature pursuant to s. 11.045.

(c) "Person" includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(d) "Reporting individual" means any individual, including a candidate upon qualifying, who is required by law, pursuant to s. 8, Art. II of the State Constitution or s. 112.3145, to file full or limited public disclosure of his or her financial interests or any individual who has been elected to, but has yet to officially assume the responsibilities of, public office. For purposes of implementing this section, the "agency" of a reporting individual who is not an officer or employee in public service is the agency to which the candidate seeks election, or in the case of an individual elected to but yet to formally take office, the agency in which the individual has been elected to serve.

(e) "Procurement employee" means any employee of an officer, department, board, commission, or council of the executive branch or judicial branch of state government who participates 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 s. 287.012, if the cost of such services or commodities exceeds \$1,000 in any year.

(3) A reporting individual or procurement employee is prohibited from soliciting any gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

(4) A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

(5)(a) A political committee or a committee of continuous existence, as defined in s. 106.011; a lobbyist who lobbies a reporting individual's or procurement employee's agency; the partner, firm, employer, or principal of a lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or

procurement employee or any other person on his or her behalf; however, such person may give a gift having a value in excess of \$100 to a reporting individual or procurement employee if the gift is intended to be transferred to a governmental entity or a charitable organization.

(b) However, a person who is regulated by this subsection, who is not regulated by subsection (6), and who makes, or directs another to make, an individual gift having a value in excess of \$25, but not in excess of \$100, other than a gift which the donor knows will be accepted on behalf of a governmental entity or charitable organization, must file a report on the last day of each calendar quarter, for the previous calendar quarter in which a reportable gift is made. The report shall be filed with the Commission on Ethics, except with respect to gifts to reporting individuals of the legislative branch, in which case the report shall be filed with the Division of Legislative Information Services in the Office of Legislative Services. The report must contain a description of each gift, the monetary value thereof, the name and address of the person making such gift, the name and address of the recipient of the gift, and the date such gift is given. In addition, when a gift is made which requires the filing of a report under this subsection, the donor must notify the intended recipient at the time the gift is made that the donor, or another on his or her behalf, will report the gift under this subsection. Under this paragraph, a gift need not be reported by more than one person or entity.

(6)(a) Notwithstanding the provisions of subsection (5), an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district created pursuant to s. 373.069, South Florida Regional Transportation Authority, the Technological Research and Development Authority, a county, a municipality, an airport authority, or a school board may give, either directly or indirectly, a gift having a value in excess of \$100 to any reporting individual or procurement employee if a public purpose can be shown for the gift; and a direct-support organization specifically authorized by law to support a governmental entity may give such a gift to a reporting individual or procurement employee who is an officer or employee of such governmental entity.

(b) Notwithstanding the provisions of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of \$100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district created pursuant to s. 373.069, South Florida Regional Transportation Authority, the Technological Research and Development Authority, a county, a municipality, an airport authority, or a school board if a public purpose can be shown for the gift; and a reporting individual or procurement employee who is an officer or employee of a governmental entity supported by a direct-support organization specifically authorized by law to support such governmental entity may accept such a gift from such direct-support organization.

(c) No later than March 1 of each year, each governmental entity or direct-support organization specifically authorized by law to support a governmental entity which has given a gift to a reporting individual or procurement employee under paragraph (a) shall provide the reporting individual or procurement employee with a statement of each gift having a value in excess of \$100 given to such reporting individual or procurement employee by the governmental entity or direct-support organization during the preceding calendar year. Such report shall contain a description of each gift, the date on which the gift was given, and the

value of the total gifts given by the governmental entity or direct-support organization to the reporting individual or procurement employee during the calendar year for which the report is made. A governmental entity may provide a single report to the reporting individual or procurement employee of gifts provided by the governmental entity and any direct-support organization specifically authorized by law to support such governmental entity.

(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.

(7)(a) The value of a gift provided to a reporting individual or procurement employee shall be determined using actual cost to the donor, less taxes and gratuities, except as otherwise provided in this subsection, and, with respect to personal services provided by the donor, the reasonable and customary charge regularly charged for such service in the community in which the service is provided shall be used. If additional expenses are required as a condition precedent to eligibility of the donor to purchase or provide a gift and such expenses are primarily for the benefit of the donor or are of a charitable nature, such expenses shall not be included in determining the value of the gift.

(b) Compensation provided by the donee to the donor, if provided within 90 days after receipt of the gift, shall be deducted from the value of the gift in determining the value of the gift.

(c) If the actual gift value attributable to individual participants at an event cannot be determined, the total costs shall be prorated among all invited persons, whether or not they are reporting individuals or procurement employees.

(d) Transportation shall be valued on a round-trip basis unless only one-way transportation is provided. Round-trip transportation expenses shall be considered a single gift.

Transportation provided in a private conveyance shall be given the same value as transportation provided in a comparable commercial conveyance.

(e) Lodging provided on consecutive days shall be considered a single gift. Lodging in a private residence shall be valued at the per diem rate provided in s. 112.061(6)(a)1. less the meal allowance rate provided in s. 112.061(6)(b).

(f) Food and beverages which are not consumed at a single sitting or meal and which are provided on the same calendar day shall be considered a single gift, and the total value of all food and beverages provided on that date shall be considered the value of the gift. Food and beverage consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

(g) Membership dues paid to the same organization during any 12-month period shall be considered a single gift.

(h) Entrance fees, admission fees, or tickets shall be valued on the face value of the ticket or fee, or on a daily or per event basis, whichever is greater.

(i) Except as otherwise specified in this section, a gift shall be valued on a per occurrence basis.

(j) The value of a gift provided to several individuals may be attributed on a pro rata basis among all of the individuals. If the gift is food, beverage, entertainment, or similar items, provided at a function for more than 10 people, the value of the gift to each individual shall be the total value of the items provided divided by the number of persons invited to the function, unless the items are purchased on a per person basis, in which case the value of the gift to each person is the per person cost.

(k) The value of a gift of an admission ticket shall not include that portion of the cost which represents a charitable contribution, if the gift is provided by the charitable organization.

(8)(a) Each reporting individual or procurement employee shall file a statement with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less, except the following:

1. Gifts from relatives.
2. Gifts prohibited by subsection (4) or s. 112.313(4).
3. Gifts otherwise required to be disclosed by this section.

(b) The statement shall include:

1. A description of the gift, the monetary value of the gift, the name and address of the person making the gift, and the dates thereof. If any of these facts, other than the gift description, are unknown or not applicable, the report shall so state.
2. A copy of any receipt for such gift provided to the reporting individual or procurement employee by the donor.

(c) The statement may include an explanation of any differences between the reporting individual's or procurement employee's statement and the receipt provided by the donor.

(d) The reporting individual's or procurement employee's statement shall be sworn to by such person as being a true, accurate, and total listing of all such gifts.

(e) Statements must be filed not later than 5 p.m. of the due date. However, any statement that is postmarked by the United States Postal Service by midnight of the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and

dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company, which bears a date on or before the due date constitutes proof of mailing in a timely manner.

(f) If a reporting individual or procurement employee has not received any gifts described in paragraph (a) during a calendar quarter, he or she is not required to file a statement under this subsection for that calendar quarter.

(9) A person, other than a lobbyist regulated under s. 11.045, who violates the provisions of subsection (5) commits a noncriminal infraction, punishable by a fine of not more than \$5,000 and by a prohibition on lobbying, or employing a lobbyist to lobby, before the agency of the reporting individual or procurement employee to which the gift was given in violation of subsection (5), for a period of not more than 24 months. The state attorney, or an agency, if otherwise authorized, may initiate an action to impose or recover a fine authorized under this section or to impose or enforce a limitation on lobbying provided in this section.

(10) A member of the Legislature may request an advisory opinion from the general counsel of the house of which he or she is a member as to the application of this section to a specific situation. The general counsel shall issue the opinion within 10 days after receiving the request. The member of the Legislature may reasonably rely on such opinion.

History.—s. 2, ch. 89-380; s. 8, ch. 90-502; s. 9, ch. 91-85; s. 7, ch. 91-292; s. 6, ch. 94-277; s. 1411, ch. 95-147; s. 2, ch. 96-328; s. 8, ch. 98-136; s. 4, ch. 2000-243; s. 32, ch. 2000-258; s. 8, ch. 2003-159; s. 6, ch. 2006-275.

112.3149 Solicitation and disclosure of honoraria.—

(1) As used in this section:

(a) “Honorarium” means a payment of money or anything of value, directly or indirectly, to a reporting individual or procurement employee, or to any other person on his or her behalf, as consideration for:

1. A speech, address, oration, or other oral presentation by the reporting individual or procurement employee, regardless of whether presented in person, recorded, or broadcast over the media.
2. A writing by the reporting individual or procurement employee, other than a book, which has been or is intended to be published.

The term “honorarium” does not include the payment for services related to employment held outside the reporting individual’s or procurement employee’s public position which resulted in the person becoming a reporting individual or procurement employee, any ordinary payment or salary received in consideration for services related to the reporting individual’s or procurement employee’s public duties, a campaign contribution reported pursuant to chapter 106, or the payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event, including any event or meeting registration fee, for a reporting individual or procurement employee and spouse.

(b) “Person” includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(c) “Reporting individual” means any individual who is required by law, pursuant to s. 8, Art. II of the State Constitution or s. 112.3145, to file a full or limited public disclosure of his or her financial interests.

- (d)1. "Lobbyist" means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency.
2. With respect to an agency that has established by rule, ordinance, or law a registration process for persons seeking to influence decisionmaking or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term "lobbyist" includes only a person who is required to be registered as a lobbyist in accordance with such rule, ordinance, or law or who was during the preceding 12 months required to be registered as a lobbyist in accordance with such rule, ordinance, or law. At a minimum, such a registration system must require the registration of, or must designate, persons as "lobbyists" who engage in the same activities as require registration to lobby the Legislature pursuant to s. 11.045.
- (e) "Procurement employee" means any employee of an officer, department, board, commission, or council of the executive branch or judicial branch of state government who participates 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 s. 287.012, if the cost of such services or commodities exceeds \$1,000 in any year.
- (2) A reporting individual or procurement employee is prohibited from soliciting an honorarium which is related to the reporting individual's or procurement employee's public office or duties.
- (3) A reporting individual or procurement employee is prohibited from knowingly accepting an honorarium from a political committee or committee of continuous existence, as defined in s. 106.011, from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or from the employer, principal, partner, or firm of such a lobbyist.
- (4) A political committee or committee of continuous existence, as defined in s. 106.011, a lobbyist who lobbies a reporting individual's or procurement employee's agency, or the employer, principal, partner, or firm of such a lobbyist is prohibited from giving an honorarium to a reporting individual or procurement employee.
- (5) A person who is prohibited by subsection (4) from paying an honorarium to a reporting individual or procurement employee, but who provides a reporting individual or procurement employee, or a reporting individual or procurement employee and his or her spouse, with expenses related to an honorarium event, shall provide to the reporting individual or procurement employee, no later than 60 days after the honorarium event, a statement listing the name and address of the person providing the expenses, a description of the expenses provided each day, and the total value of the expenses provided for the honorarium event.
- (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.

(7) A person, other than a lobbyist regulated under s. 11.045, who violates the provisions of subsection (4) commits a noncriminal infraction, punishable by a fine of not more than \$5,000 and by a prohibition on lobbying, or employing a lobbyist to lobby, before the agency of the reporting individual or procurement employee to whom the honorarium was paid in violation of subsection (4), for a period of not more than 24 months. The state attorney, or an agency, if otherwise authorized, may initiate an action to impose or recover a fine authorized under this section or to impose or enforce a limitation on lobbying provided in this section.

(8) A member of the Legislature may request an advisory opinion from the general counsel of the house of which he or she is a member as to the application of this section to a specific situation. The general counsel shall issue the opinion within 10 days after receiving the request. The member of the Legislature may reasonably rely on such opinion.

History.—s. 9, ch. 90-502; s. 7, ch. 94-277; s. 1412, ch. 95-147; s. 5, ch. 2000-243; s. 33, ch. 2000-258; s. 7, ch. 2006-275.

112.3151 Extensions of time for filing disclosure.—The Commission on Ethics may grant, for good cause, on an individual basis, an extension of time for filing of any disclosure required under the provisions of this part or s. 8(a), Art. II of the State Constitution. However, no extension may extend the filing deadline to a date within 20 days before a primary election. The commission may delegate to its chair the authority to grant any extension of time which the commission itself may grant under this section; however, no extension of time granted by the chair may exceed 45 days. Extensions of time granted under this section shall be exempt from the provisions of chapter 120.

History.—s. 4, ch. 83-282; s. 700, ch. 95-147.

112.316 Construction.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

History.—s. 6, ch. 67-469; s. 2, ch. 69-335; s. 701, ch. 95-147.

112.317 Penalties.—

(1) Violation of any provision of this part, including, but not limited to, any failure to file any disclosures required by this part or violation of any standard of conduct imposed by this part, or violation of any provision of s. 8, Art. II of the State Constitution, in addition to any criminal penalty or other civil penalty involved, shall, under applicable constitutional and statutory procedures, constitute grounds for, and may be punished by, one or more of the following:

(a) In the case of a public officer:

1. Impeachment.
2. Removal from office.
3. Suspension from office.
4. Public censure and reprimand.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed \$10,000.
7. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of which the public officer was a member or to the General Revenue Fund.

(b) In the case of an employee or a person designated as a public officer by this part who otherwise would be deemed to be an employee:

1. Dismissal from employment.
2. Suspension from employment for not more than 90 days without pay.
3. Demotion.
4. Reduction in salary level.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed \$10,000.
7. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency by which the public employee was employed, or of which the officer was deemed to be an employee, or to the General Revenue Fund.

8. Public censure and reprimand.

(c) In the case of a candidate who violates the provisions of this part or s. 8(a) and (i), Art. II of the State Constitution:

1. Disqualification from being on the ballot.
2. Public censure.
3. Reprimand.
4. A civil penalty not to exceed \$10,000.

(d) In the case of a former public officer or employee who has violated a provision applicable to former officers or employees or whose violation occurred before the officer's or employee's leaving public office or employment:

1. Public censure and reprimand.
2. A civil penalty not to exceed \$10,000.
3. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund.

(e) In the case of a person who is subject to the standards of this part, other than a lobbyist or lobbying firm under s. 112.3215 for a violation of s. 112.3215, but who is not a public officer or employee:

1. Public censure and reprimand.
2. A civil penalty not to exceed \$10,000.
3. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of the person or to the General Revenue Fund.

(2) In any case in which the commission finds a violation of this part or of s. 8, Art. II of the State Constitution and the proper disciplinary official or body under s. 112.324 imposes a civil penalty or restitution penalty, the Attorney General shall bring a civil action to recover such penalty. No defense may be raised in the civil action to enforce the civil penalty or order of restitution that could have been raised by judicial review of the administrative findings and recommendations of the commission by certiorari to the district court of appeal. The Attorney General shall collect any costs, attorney's fees, expert witness fees, or other costs of collection incurred in bringing the action.

(3) The penalties prescribed in this part shall not be construed to limit or to conflict with:

(a) The power of either house of the Legislature to discipline its own members or impeach a public officer.

(b) The power of agencies to discipline officers or employees.

(4) Any violation of this part or of s. 8, Art. II of the State Constitution by a public officer shall constitute malfeasance, misfeasance, or neglect of duty in office within the meaning of s. 7, Art. IV of the State Constitution.

(5) By order of the Governor, upon recommendation of the commission, any elected municipal officer who violates any provision of this part or of s. 8, Art. II of the State Constitution may be suspended from office and the office filled by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the Governor. The Senate may, in proceedings prescribed by law, remove from office, or reinstate, the suspended official, and for such purpose the Senate may be convened in special session by its President or by a majority of its membership.

(6) In any case in which the commission finds probable cause to believe that a complainant has committed perjury in regard to any document filed with, or any testimony given before, the commission, it shall refer such evidence to the appropriate law enforcement agency for prosecution and taxation of costs.

(7) In any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee by filing the complaint with 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 this part, the complainant shall be liable for costs plus reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of

competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

History.—s. 7, ch. 67-469; s. 1, ch. 70-144; s. 2, ch. 74-176; s. 8, ch. 74-177; s. 2, ch. 75-199; s. 7, ch. 75-208; s. 5, ch. 82-98; s. 10, ch. 90-502; s. 10, ch. 91-85; s. 8, ch. 94-277; s. 1413, ch. 95-147; s. 1, ch. 95-354; s. 13, ch. 2000-151; s. 8, ch. 2006-275; s. 2, ch. 2009-126.

112.3173 Felonies involving breach of public trust and other specified offenses by public officers and employees; forfeiture of retirement benefits.—

(1) INTENT.—It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.

(2) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or of nolo contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

(b) "Court" means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.

(c) "Public officer or employee" means an officer or employee of any public body, political subdivision, or public instrumentality within the state.

(d) "Public retirement system" means any retirement system or plan to which the provisions of part VII of this chapter apply.

(e) "Specified offense" means:

1. The committing, aiding, or abetting of an embezzlement of public funds;
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
3. Bribery in connection with the employment of a public officer or employee;
4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;
5. The committing of an impeachable offense;
6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or
7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

(3) FORFEITURE.—Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

(4) NOTICE.—

(a) The clerk of a court in which a proceeding involving a specified offense is being conducted against a public officer or employee shall furnish notice of the proceeding to the Commission on Ethics. Such notice is sufficient if it is in the form of a copy of the indictment, information, or other document containing the charges. In addition, if a verdict of guilty is returned by a jury or by the court trying the case without a jury, or a plea of guilty or of nolo contendere is entered in the court by the public officer or employee, the clerk shall furnish a copy thereof to the Commission on Ethics.

(b) The Secretary of the Senate shall furnish to the Commission on Ethics notice of any proceeding of impeachment being conducted by the Senate. In addition, if such trial results in conviction, the Secretary of the Senate shall furnish notice of the conviction to the commission.

(c) The employer of any member whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense shall forward notice thereof to the commission.

(d) The Commission on Ethics shall forward any notice and any other document received by it pursuant to this subsection to the governing body of the public retirement system of which the public officer or employee is a member or from which the public officer or employee may be entitled to receive a benefit. When called on by the Commission on Ethics, the Department of Management Services shall assist the commission in identifying the appropriate public retirement system.

(5) FORFEITURE DETERMINATION.—

(a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to subsection (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board shall give notice and hold a hearing in accordance with chapter 120 for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board shall order such rights and privileges forfeited.

(b) Any order of forfeiture of retirement system rights and privileges is appealable to the district court of appeal.

(c) The payment of retirement benefits ordered forfeited, except payments drawn from nonemployer contributions to the retiree's account, shall be stayed pending an appeal as to a felony conviction. If such conviction is reversed, no retirement benefits shall be forfeited. If such conviction is affirmed, retirement benefits shall be forfeited as ordered in this section.

(d) If any person's rights and privileges under a public retirement system are forfeited pursuant to this section and that person has received benefits from the system in excess of his or her accumulated contributions, such person shall pay back to the system the amount of the benefits received in excess of his or her accumulated contributions. If he or she fails to pay back such amount, the official or board responsible for paying benefits pursuant to the retirement system or pension plan may bring an action in circuit court to recover such amount, plus court costs.

(6) FORFEITURE NONEXCLUSIVE.—

(a) The forfeiture of retirement rights and privileges pursuant to this section is supplemental to any other forfeiture requirements provided by law.

(b) This section does not preclude or otherwise limit the Commission on Ethics in conducting under authority of other law an independent investigation of a complaint which it may receive against a public officer or employee involving a specified offense.

History.—s. 14, ch. 84-266; s. 4, ch. 90-301; s. 44, ch. 92-279; s. 55, ch. 92-326; s. 22, ch. 94-249; s. 1414, ch. 95-147; s. 13, ch. 99-255; s. 3, ch. 2008-108.

112.3175 Remedies; contracts voidable.—

(1) Any contract that has been executed in violation of this part is voidable:

(a) By any party to the contract.

(b) In any circuit court, by any appropriate action, by:

1. The commission.

2. The Attorney General.

3. Any citizen materially affected by the contract and residing in the jurisdiction represented by the officer or agency entering into such contract.

(2) Any contract that has been executed in violation of this part is presumed void with respect to any former employee or former public official of a state agency and is voidable with respect to any private sector third party who employs or retains in any capacity such former agency employee or former public official.

History.—s. 8, ch. 75-208; s. 2, ch. 2001-266.

112.3185 Additional standards for state agency employees.—

(1) For the purposes of this section:

(a) "Contractual services" shall be defined as set forth in chapter 287.

(b) "Agency" means any state officer, department, board, commission, or council of the executive or judicial branch of state government and includes the Public Service Commission.

(2) An agency employee who participates 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 may not become or be, while an agency employee, the employee of a person contracting with the agency by whom the employee is employed.

(3) An agency employee may not, after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract in which the agency employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, or investigation while an officer or employee. 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.

(4) An agency employee may not, within 2 years after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract for contractual services which was within his or her responsibility while an employee. 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.

(5) The sum of money paid to a former agency employee during the first year after the cessation of his or her responsibilities, by the agency with whom he or she was employed, for contractual services provided to the agency, shall not exceed the annual salary received on the date of cessation of his or her responsibilities. This subsection may be waived by the agency head for a particular contract if the agency head determines that such waiver will result in significant time or cost savings for the state.

(6) An agency employee acting in an official capacity may not directly or indirectly procure contractual services for his or her own agency from any business entity of which a relative is an officer, partner, director, or proprietor or in which the officer or employee or his or her spouse or child, or any combination of them, has a material interest.

(7) A violation of any provision of this section is punishable in accordance with s. 112.317.

(8) This section is not applicable to any employee of the Public Service Commission who was so employed on or before December 31, 1994.

History.—s. 6, ch. 82-196; s. 32, ch. 83-217; s. 2, ch. 90-268; s. 11, ch. 90-502; s. 9, ch. 94-277; s. 1415, ch. 95-147; s. 9, ch. 2006-275.

112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.—

(1) SHORT TITLE.—Sections 112.3187-112.31895 may be cited as the “Whistle-blower’s Act.”

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public’s health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

(3) DEFINITIONS.—As used in this act, unless otherwise specified, the following words or terms shall have the meanings indicated:

(a) “Agency” means any state, regional, county, local, or municipal government entity, whether executive, judicial, or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university.

(b) “Employee” means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.

(c) “Adverse personnel action” means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.

(d) “Independent contractor” means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.

(e) "Gross mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

(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.

(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.

(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, 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.

(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 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.

(8) REMEDIES.—

(a) Any employee of or applicant for employment with any state agency, as the term "state agency" is defined in s. 216.011, who is discharged, disciplined, or subjected to other adverse personnel action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint, which complaint must be made in accordance with s. 112.31895. Upon receipt of notice from the Florida Commission on Human Relations of termination of the investigation, the complainant may elect to pursue the administrative remedy available under s. 112.31895 or bring a civil action within 180 days after receipt of the notice.

(b) Within 60 days after the action prohibited by this section, any local public employee protected by this section may file a complaint with the appropriate local governmental authority, if that authority has established by ordinance an administrative procedure for handling such complaints or has contracted with the Division of Administrative Hearings under s. 120.65 to conduct hearings under this section. The administrative procedure created by ordinance must provide for the complaint to be heard by a panel of impartial persons appointed by the appropriate local governmental authority. Upon hearing the complaint, the panel must make findings of fact and conclusions of law for a final decision by the local governmental authority. Within 180 days after entry of a final decision by the local governmental authority, the public employee who filed the complaint may bring a civil action in any court of competent jurisdiction. If the local governmental authority has not established an administrative procedure by ordinance or contract, a local public employee may, within 180 days after the action prohibited by this section, bring a civil action in a court of competent jurisdiction. For the purpose of this paragraph, the term "local governmental authority" includes any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing.

(c) Any other person protected by this section may, after exhausting all available contractual or administrative remedies, bring a civil action in any court of competent jurisdiction within 180 days after the action prohibited by this section.

(9) RELIEF.—In any action brought under this section, the relief must include the following:

(a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.

(b) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

(c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.

(d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.

(e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction.

(f) Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. 112.31895, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee which includes documentation of the

employee's violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

(10) DEFENSES.—It shall be an affirmative defense to any action brought pursuant to this section that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's or person's exercise of rights protected by this section.

(11) EXISTING RIGHTS.—Sections 112.3187-112.31895 do not diminish the rights, privileges, or remedies of an employee under any other law or rule or under any collective bargaining agreement or employment contract; however, the election of remedies in s. 447.401 also applies to whistle-blower actions.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 86-233; s. 1, ch. 91-285; s. 12, ch. 92-316; s. 1, ch. 93-57; s. 702, ch. 95-147; s. 1, ch. 95-153; s. 15, ch. 96-410; s. 20, ch. 99-333; s. 2, ch. 2002-400.

¹112.3188 Confidentiality of information given to the Chief Inspector General, internal auditors, inspectors general, local chief executive officers, or other appropriate local officials.

(1) The name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor:

(a) Has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or

(b) Has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty

may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local official's staff without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.

(2)(a) Except as specifically authorized by s. 112.3189, all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations or the Department of Law Enforcement is confidential and exempt from s. 119.07(1) if the information is being received or derived from allegations as set forth in paragraph (1)(a) or paragraph (1)(b), and an investigation is active.

(b) All information received by a local chief executive officer or appropriate local official or information produced or derived from fact-finding or investigations conducted pursuant to the administrative procedure established by ordinance by a local government as authorized by s. 112.3187(8)(b) is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the information is being received or derived from allegations as set forth in paragraph (1)(a) or paragraph (1)(b) and an investigation is active.

(c) Information deemed confidential under this section may be disclosed by the Chief Inspector General, agency inspector general, local chief executive officer, or other appropriate local official receiving the information if the recipient determines that the disclosure of the information is absolutely necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime. Information disclosed under this subsection may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.

1. An investigation is active under this section if:

a. It is an ongoing investigation or inquiry or collection of information and evidence and is continuing with a reasonable, good faith anticipation of resolution in the foreseeable future; or

b. All or a portion of the matters under investigation or inquiry are active criminal intelligence information or active criminal investigative information as defined in s. 119.011.

2. Notwithstanding sub-subparagraph 1.a., an investigation ceases to be active when:

a. The written report required under s. 112.3189(9) has been sent by the Chief Inspector General to the recipients named in s. 112.3189(9);

b. It is determined that an investigation is not necessary under s. 112.3189(5); or

c. A final decision has been rendered by the local government or by the Division of Administrative Hearings pursuant to s. 112.3187(8)(b).

3. Notwithstanding paragraphs (a), (b), and this paragraph, information or records received or produced under this section which are otherwise confidential under law or exempt from disclosure under chapter 119 retain their confidentiality or exemption.

4. Any person who willfully and knowingly discloses information or records made confidential under this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 90-247; s. 1, ch. 91-150; s. 3, ch. 91-285; s. 2, ch. 93-57; s. 1, ch. 95-136; s. 2, ch. 95-153; s. 1, ch. 95-166; ss. 36, 37, ch. 96-406; s. 21, ch. 99-333.

¹Note.—As amended by s. 1, ch. 95-166, s. 2, ch. 95-153, and s. 36, ch. 96-406; this version of paragraph (2)(a) was also amended by s. 21, ch. 99-333. For a description of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes, "Statutory Construction." This section was also amended by s. 1, ch. 95-136, and s. 37, ch. 96-406, and that version reads:

112.3188 Confidentiality of information given to the Chief Inspector General and agency inspectors general.—

(1) The identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general information that alleges that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to anyone other than a member of the Chief Inspector General's or agency inspector general's

staff without the written consent of the individual, unless the Chief Inspector General or agency inspector general determines that:

(a) The disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime, provided that such information is disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime;

(b) The disclosure of the individual's identity is unavoidable and absolutely necessary during the course of the inquiry or investigation; or

(c) The disclosure of the individual's identity is authorized as a result of the individual consenting in writing to attach general comments signed by such individual to the final report required pursuant to s. 112.3189(6)(b).

(2)(a) Except as specifically authorized by s. 112.3189 and except as provided in subsection (1), all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Department of Legal Affairs, the Office of the Public Counsel, or the Department of Law Enforcement is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution for an initial period of not more than 30 days during which time a determination is made whether an investigation is required pursuant to s. 112.3189(5)(a) and, if an investigation is determined to be required, until the investigation is closed or ceases to be active. For the purposes of this subsection, an investigation is active while such investigation is being conducted with a reasonable good faith belief that it may lead to the filing of administrative, civil, or criminal charges. An investigation does not cease to be active so long as the Chief Inspector General or the agency inspector general is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the Chief Inspector General or agency inspector general or other administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information as defined in s. 119.011, and except as otherwise provided in this section, all information obtained pursuant to this subsection shall become available to the public when the investigation is closed or ceases to be active. An investigation is closed or ceases to be active when the final report required pursuant to s. 112.3189(9) has been sent by the Chief Inspector General to the recipients specified in s. 112.3189(9)(c).

(b) Information deemed confidential under this subsection may be disclosed by the Chief Inspector General or agency inspector general receiving the information if the Chief Inspector General or agency inspector general determines that the disclosure of the information is absolutely necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime, and such information may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.

(3) Information or records obtained under this section which are otherwise confidential under law or exempt from disclosure shall retain their confidentiality or exemption.

(4) Any person who willfully and knowingly discloses information or records made confidential under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

112.3189 Investigative procedures upon receipt of whistle-blower information from certain state employees.—

(1) This section only applies to the disclosure of information as described in s. 112.3187(5) by an employee or former employee of, or an applicant for employment with, a state agency, as the term "state agency" is defined in s. 216.011, to the Office of the Chief Inspector General of the Executive Office of the Governor or to the agency inspector general. If an agency does not have an inspector general, the head of the state agency, as defined in s. 216.011, shall designate an employee to receive information described in s. 112.3187(5). For purposes of this section and s. 112.3188 only, the employee designated by the head of the state agency shall be deemed an agency inspector general.

(2) To facilitate the receipt of information described in subsection (1), the Chief Inspector General shall maintain an in-state toll-free whistle-blower's hotline and shall circulate among the various state agencies an advisory for all employees which indicates the existence of the toll-free number and its purpose and provides an address to which written whistle-blower information may be forwarded.

(3) When a person alleges information described in s. 112.3187(5), the Chief Inspector General or agency inspector general actually receiving such information shall within 20 days of receiving such information determine:

(a) Whether the information disclosed is the type of information described in s. 112.3187(5).

(b) Whether the source of the information is a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011.

(c) Whether the information actually disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

(4) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is not the type of information described in s. 112.3187(5), or that the source of the information is not a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, or that the information disclosed does not demonstrate reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty, the Chief Inspector General or agency inspector general shall notify the complainant of such fact and copy and return, upon request of the complainant, any documents and other materials that were provided by the complainant.

(5)(a) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is the type of information described in s. 112.3187 (5), that the source of the information is from a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, and that the information disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty, the Chief Inspector General or agency inspector general making such determination shall then conduct an investigation, unless the Chief Inspector General or the agency inspector general determines, within 30 days after receiving the allegations from the complainant, that such investigation is unnecessary. For purposes of this subsection, the Chief Inspector General or the agency inspector general shall consider the following factors, but is not limited to only the following factors, when deciding whether the investigation is not necessary:

1. The gravity of the disclosed information compared to the time and expense of an investigation.
2. The potential for an investigation to yield recommendations that will make state government more efficient and effective.
3. The benefit to state government to have a final report on the disclosed information.
4. Whether the alleged whistle-blower information primarily concerns personnel practices that may be investigated under chapter 110.
5. Whether another agency may be conducting an investigation and whether any investigation under this section could be duplicative.
6. The time that has elapsed between the alleged event and the disclosure of the information.

(b) If the Chief Inspector General or agency inspector general determines under paragraph (a) that an investigation is not necessary, the Chief Inspector General or agency inspector general making such determination shall:

1. Copy and return, upon request of the complainant, any documents and other materials provided by the individual who made the disclosure.
2. Inform in writing the head of the state agency for the agency inspector general making the determination that the investigation is not necessary and the individual who made the disclosure of the specific reasons why an investigation is not necessary and why the disclosure will not be further acted on under this section.

(6) The agency inspector general may conduct an investigation pursuant to paragraph (5) (a) only if the person transmitting information to the agency inspector general is an employee or former employee of, or an applicant for employment with, the agency inspector general's agency. The agency inspector general shall:

- (a) Conduct an investigation with respect to the information and any related matters.
- (b) Submit to the complainant and the Chief Inspector General, within 60 days after the date on which a determination to conduct an investigation is made under paragraph (5)(a), a final written report that sets forth the agency inspector general's findings, conclusions, and recommendations, except as provided under subsection (11). The complainant shall be advised in writing by the agency head that the complainant may submit to the Chief

Inspector General and agency inspector general comments on the final report within 20 days of the date of the report and that such comments will be attached to the final report.

(7) If the Chief Inspector General decides an investigation should be conducted pursuant to paragraph (5)(a), the Chief Inspector General shall either:

(a) Promptly transmit to the appropriate head of the state agency the information with respect to which the determination to conduct an investigation was made, and such agency head shall conduct an investigation and submit to the Chief Inspector General a final written report that sets forth the agency head's findings, conclusions, and recommendations; or

(b) 1. Conduct an investigation with respect to the information and any related matters; and
2. Submit to the complainant within 60 days after the date on which a determination to conduct an investigation is made under paragraph (5)(a), a final written report that sets forth the Chief Inspector General's findings, conclusions, and recommendations, except as provided under subsection (11). The complainant shall be advised in writing by the Chief Inspector General that the complainant may submit to the Chief Inspector General comments on the final report within 20 days of the date of the report and that such comments will be attached to the final report.

(c) The Chief Inspector General may require an agency head to conduct an investigation under paragraph (a) only if the information was transmitted to the Chief Inspector General by:

1. An employee or former employee of, or an applicant for employment with, the agency that the information concerns; or
2. An employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(8) Final reports required under this section must be reviewed and signed by the person responsible for conducting the investigation (agency inspector general, agency head, or Chief Inspector General) and must include:

- (a) A summary of the information with respect to which the investigation was initiated.
- (b) A description of the conduct of the investigation.
- (c) A summary of any evidence obtained from the investigation.
- (d) A listing of any violation or apparent violation of any law, rule, or regulation.
- (e) A description of any action taken or planned as a result of the investigation, such as:
 1. A change in an agency rule, regulation, or practice.
 2. The restoration of an aggrieved employee.
 3. A disciplinary action against an employee.
 4. The referral to the Department of Law Enforcement of any evidence of a criminal violation.

(9)(a) A report required of the agency head under paragraph (7)(a) shall be submitted to the Chief Inspector General and the complainant within 60 days after the agency head receives the complaint from the Chief Inspector General, except as provided under subsection (11). The complainant shall be advised in writing by the agency head that the complainant may submit to the Chief Inspector General comments on the report within 20 days of the date of the report and that such comments will be attached to the final report.

(b) Upon receiving a final report required under this section, the Chief Inspector General shall review the report and determine whether the report contains the information required by subsection (8). If the report does not contain the information required by subsection (8),

the Chief Inspector General shall determine why and note the reasons on an addendum to the final report.

(c) The Chief Inspector General shall transmit any final report under this section, any comments provided by the complainant, and any appropriate comments or recommendations by the Chief Inspector General to the Governor, the Legislative Auditing Committee, the investigating agency, and the Chief Financial Officer.

(d) If the Chief Inspector General does not receive the report of the agency head within the time prescribed in paragraph (a), the Chief Inspector General may conduct the investigation in accordance with paragraph (7)(b) or request that another agency inspector general conduct the investigation in accordance with subsection (6) and shall report the complaint to the Governor, to the Joint Legislative Auditing Committee, and to the investigating agency, together with a statement noting the failure of the agency head to file the required report.

(10) For any time period set forth in subsections (3), (6), (7), and (9), such time period may be extended in writing by the Chief Inspector General for good cause shown.

(11) If an investigation under this section produces evidence of a criminal violation, the report shall not be transmitted to the complainant, and the agency head or agency inspector general shall notify the Chief Inspector General and the Department of Law Enforcement.

History.—s. 13, ch. 92-316; s. 3, ch. 93-57; s. 129, ch. 2003-261; s. 17, ch. 2011-34.

112.31895 Investigative procedures in response to prohibited personnel actions.—

(1)(a) If a disclosure under s. 112.3187 includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. 216.011, that is so affected may file a complaint alleging a prohibited personnel action, which complaint must be made by filing a written complaint with the Office of the Chief Inspector General in the Executive Office of the Governor or the Florida Commission on Human Relations, no later than 60 days after the prohibited personnel action.

(b) Within three working days after receiving a complaint under this section, the office or officer receiving the complaint shall acknowledge receipt of the complaint and provide copies of the complaint and any other preliminary information available concerning the disclosure of information under s. 112.3187 to each of the other parties named in paragraph (a), which parties shall each acknowledge receipt of such copies to the complainant.

(2) FACT FINDING.—The Florida Commission on Human Relations shall:

(a) Receive any allegation of a personnel action prohibited by s. 112.3187, including a proposed or potential action, and conduct informal fact finding regarding any allegation under this section, to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action under s. 112.3187 has occurred, is occurring, or is to be taken.

(b) Notify the complainant, within 15 days after receiving a complaint, that the complaint has been received by the department.

(c) Within 90 days after receiving the complaint, provide the agency head and the complainant with a fact-finding report that may include recommendations to the parties or proposed resolution of the complaint. The fact-finding report shall be presumed admissible in any subsequent or related administrative or judicial review.

(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

(a) The Florida Commission on Human Relations, in accordance with this act and for the sole purpose of this act, is empowered to:

1. Receive and investigate complaints from employees alleging retaliation by state agencies, as the term "state agency" is defined in s. 216.011.
2. Protect employees and applicants for employment with such agencies from prohibited personnel practices under s. 112.3187.
3. Petition for stays and petition for corrective actions, including, but not limited to, temporary reinstatement.
4. Recommend disciplinary proceedings pursuant to investigation and appropriate agency rules and procedures.
5. Coordinate with the Chief Inspector General in the Executive Office of the Governor and the Florida Commission on Human Relations to receive, review, and forward to appropriate agencies, legislative entities, or the Department of Law Enforcement disclosures of a violation of any law, rule, or regulation, or disclosures of gross mismanagement, malfeasance, misfeasance, nonfeasance, neglect of duty, or gross waste of public funds.
6. Review rules pertaining to personnel matters issued or proposed by the Department of Management Services, the Public Employees Relations Commission, and other agencies, and, if the Florida Commission on Human Relations finds that any rule or proposed rule, on its face or as implemented, requires the commission of a prohibited personnel practice, provide a written comment to the appropriate agency.
7. Investigate, request assistance from other governmental entities, and, if appropriate, bring actions concerning, allegations of retaliation by state agencies under subparagraph 1.
8. Administer oaths, examine witnesses, take statements, issue subpoenas, order the taking of depositions, order responses to written interrogatories, and make appropriate motions to limit discovery, pursuant to investigations under subparagraph 1.
9. Intervene or otherwise participate, as a matter of right, in any appeal or other proceeding arising under this section before the Public Employees Relations Commission or any other appropriate agency, except that the Florida Commission on Human Relations must comply with the rules of the commission or other agency and may not seek corrective action or intervene in an appeal or other proceeding without the consent of the person protected under ss. 112.3187-112.31895.
10. Conduct an investigation, in the absence of an allegation, to determine whether reasonable grounds exist to believe that a prohibited action or a pattern of prohibited action has occurred, is occurring, or is to be taken.

(b) Within 15 days after receiving a complaint that a person has been discharged from employment allegedly for disclosing protected information under s. 112.3187, the Florida Commission on Human Relations shall review the information and determine whether temporary reinstatement is appropriate under s. 112.3187(9)(f). If the Florida Commission on Human Relations so determines, it shall apply for an expedited order from the appropriate agency or circuit court for the immediate reinstatement of the employee who has been discharged subsequent to the disclosure made under s. 112.3187, pending the issuance of the final order on the complaint.

(c) The Florida Commission on Human Relations shall notify a complainant of the status of the investigation and any action taken at such times as the commission considers appropriate.

(d) If the Florida Commission on Human Relations is unable to conciliate a complaint within 60 days after receipt of the fact-finding report, the Florida Commission on Human Relations shall terminate the investigation. Upon termination of any investigation, the Florida Commission on Human Relations shall notify the complainant and the agency head of the termination of the investigation, providing a summary of relevant facts found during the investigation and the reasons for terminating the investigation. A written statement under this paragraph is presumed admissible as evidence in any judicial or administrative proceeding but is not admissible without the consent of the complainant.

(e)1. The Florida Commission on Human Relations may request an agency or circuit court to order a stay, on such terms as the court requires, of any personnel action for 45 days if the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited personnel action has occurred, is occurring, or is to be taken. The Florida Commission on Human Relations may request that such stay be extended for appropriate periods of time.

2. If, in connection with any investigation, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited action has occurred, is occurring, or is to be taken which requires corrective action, the Florida Commission on Human Relations shall report the determination together with any findings or recommendations to the agency head and may report that determination and those findings and recommendations to the Governor and the Chief Financial Officer. The Florida Commission on Human Relations may include in the report recommendations for corrective action to be taken.

3. If, after 20 days, the agency does not implement the recommended action, the Florida Commission on Human Relations shall terminate the investigation and notify the complainant of the right to appeal under subsection (4), or may petition the agency for corrective action under this subsection.

4. If the Florida Commission on Human Relations finds, in consultation with the individual subject to the prohibited action, that the agency has implemented the corrective action, the commission shall file such finding with the agency head, together with any written comments that the individual provides, and terminate the investigation.

(f) If the Florida Commission on Human Relations finds that there are no reasonable grounds to believe that a prohibited personnel action has occurred, is occurring, or is to be taken, the commission shall terminate the investigation.

(g)1. If, in connection with any investigation under this section, it is determined that reasonable grounds exist to believe that a criminal violation has occurred which has not been previously reported, the Florida Commission on Human Relations shall report this determination to the Department of Law Enforcement and to the state attorney having jurisdiction over the matter.

2. If an alleged criminal violation has been reported, the Florida Commission on Human Relations shall confer with the Department of Law Enforcement and the state attorney before proceeding with the investigation of the prohibited personnel action and may defer the investigation pending completion of the criminal investigation and proceedings. The Florida Commission on Human Relations shall inform the complainant of the decision to defer the investigation and, if appropriate, of the confidentiality of the investigation.

(h) If, in connection with any investigation under this section, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a violation of a law, rule, or regulation has occurred, other than a criminal violation or a prohibited action under this section, the commission may report such violation to the head of the agency involved. Within 30 days after the agency receives the report, the agency head shall provide to the commission a certification that states that the head of the agency has personally reviewed the report and indicates what action has been or is to be taken and when the action will be completed.

(i) During any investigation under this section, disciplinary action may not be taken against any employee of a state agency, as the term "state agency" is defined in s. 216.011, for reporting an alleged prohibited personnel action that is under investigation, or for reporting any related activity, or against any employee for participating in an investigation without notifying the Florida Commission on Human Relations.

(j) The Florida Commission on Human Relations may also petition for an award of reasonable attorney's fees and expenses from a state agency, as the term "state agency" is defined in s. 216.011, pursuant to s. 112.3187(9).

(4) RIGHT TO APPEAL.—

(a) Not more than 60 days after receipt of a notice of termination of the investigation from the Florida Commission on Human Relations, the complainant may file, with the Public Employees Relations Commission, a complaint against the employer-agency regarding the alleged prohibited personnel action. The Public Employees Relations Commission shall have jurisdiction over such complaints under ss. 112.3187 and 447.503(4) and (5).

(b) Judicial review of any final order of the commission shall be as provided in s. 120.68. History.—s. 14, ch. 92-316; s. 4, ch. 93-57; s. 703, ch. 95-147; s. 22, ch. 99-333; s. 130, ch. 2003-261.

112.31901 Investigatory records.—

(1) If certified pursuant to subsection (2), an investigatory record of the Chief Inspector General within the Executive Office of the Governor or of the employee designated by an agency head as the agency inspector general under s. 112.3189 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Investigatory records are those records that are related to the investigation of an alleged, specific act or omission or other wrongdoing, with respect to an identifiable person or group of persons, based on information compiled by the Chief Inspector General or by an agency inspector general, as named under the provisions of s. 112.3189, in the course of an investigation. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

(2) The Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under s. 112.3189, may certify that such investigatory records require an exemption to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. The certification must specify the nature and purpose of the investigation and shall be kept with the exempt records and made public when the records are made public.

(3) This section does not apply to whistle-blower investigations conducted pursuant to ss. 112.3187, 112.3188, 112.3189, and 112.31895.

History.—s. 4, ch. 93-405; s. 35, ch. 95-398; s. 38, ch. 2005-251; s. 13, ch. 2006-1.

Note.—Former s. 119.07(6)(w).

112.3191 Short title.—This act shall be known and cited as "The John J. Savage Memorial Act of 1974."

History.—s. 1, ch. 74-176.

112.320 Commission on Ethics; purpose.—There is created a Commission on Ethics, the purpose of which is to serve as guardian of the standards of conduct for the officers and employees of the state, and of a county, city, or other political subdivision of the state, as defined in this part, and to serve as the independent commission provided for in s. 8(f), Art. II of the State Constitution.

History.—s. 2, ch. 74-176; s. 11, ch. 91-85.

112.321 Membership, terms; travel expenses; staff.—

(1) The commission shall be composed of nine members. Five of these members shall be appointed by the Governor, no more than three of whom shall be from the same political party, subject to confirmation by the Senate. One member appointed by the Governor shall be a former city or county official and may be a former member of a local planning or zoning board which has only advisory duties. Two members shall be appointed by the Speaker of the House of Representatives, and two members shall be appointed by the President of the Senate. Neither the Speaker of the House of Representatives nor the President of the Senate shall appoint more than one member from the same political party. Of the nine members of the Commission, no more than five members shall be from the same political party at any one time. No member may hold any public employment. An individual who qualifies as a lobbyist pursuant to s. 11.045 or s. 112.3215 or pursuant to any local government charter or ordinance may not serve as a member of the commission, except that this prohibition does not apply to an individual who is a member of the commission on July 1, 2006, until the expiration of his or her current term. A member of the commission may not lobby any state or local governmental entity as provided in s. 11.045 or s. 112.3215 or as provided by any local government charter or ordinance, except that this prohibition does not apply to an individual who is a member of the commission on July 1, 2006, until the expiration of his or her current term. All members shall serve 2-year terms. A member may not serve more than two full terms in succession. Any member of the commission may be removed for cause by majority vote of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.

(2) The members of the commission shall elect a chair from their number, who shall serve for a 1-year term and may not succeed himself or herself as chair.

(3) Members of the commission shall receive no salary but shall receive travel and per diem as provided in s. 112.061.

(4) In accordance with the uniform personnel, job classification, and pay plan adopted with the approval of the President of the Senate and the Speaker of the House of Representatives and administered by the Office of Legislative Services, the commission shall employ an executive director and shall provide the executive director with necessary office space, assistants, and secretaries. Within the above uniform plan, decisions relating to hiring,

promotion, demotion, and termination of commission employees shall be made by the commission or, if so delegated by the commission, by its executive director.

History.—s. 2, ch. 74-176; s. 3, ch. 75-199; s. 6, ch. 82-98; s. 1, ch. 86-148; s. 3, ch. 88-29; s. 2, ch. 91-49; s. 704, ch. 95-147; s. 24, ch. 98-136; s. 6, ch. 2000-243; s. 10, ch. 2006-275.

112.3213 Legislative intent and purpose.—The Legislature finds that the operation of open and responsible government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on executive branch action. Further, the Legislature finds that preservation of the integrity of the governmental decisionmaking process is essential to the continued functioning of an open government. Therefore, in order to preserve and maintain the integrity of the process and to better inform citizens of the efforts to influence executive branch action, the Legislature finds it necessary to require the public disclosure of the identity, expenditures, and activities of certain persons who attempt to influence actions of the executive branch in the areas of policy and procurement.

History.—s. 5, ch. 93-121.

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(1) For the purposes of this section:

(a) "Agency" means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch. In addition, "agency" shall mean the Constitution Revision Commission as provided by s. 2, Art. XI of the State Constitution.

(b) "Agency official" or "employee" means any individual who is required by law to file full or limited public disclosure of his or her financial interests.

(c) "Compensation" means a payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbying firm, directly or indirectly, by a principal for any lobbying activity.

¹(d) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or an affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

(e) "Fund" means the Executive Branch Lobby Registration Trust Fund.

(f) "Lobbies" means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. "Lobbies" also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission's action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.

(g) "Lobbying firm" means a business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

(h) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.
2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.
3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.
4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017.

(i) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) The Executive Branch Lobby Registration Trust Fund is hereby created within the commission to be used for the purpose of funding any office established to administer the registration of lobbyists lobbying an agency, including the payment of salaries and other expenses. The trust fund is not subject to the service charge to General Revenue provisions of chapter 215. All annual registration fees collected pursuant to this section shall be deposited into such fund.

(3) A person may not lobby an agency until such person has registered as a lobbyist with the commission. Such registration shall be due upon initially being retained to lobby and is renewable on a calendar year basis thereafter. Upon registration the person shall provide a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the commission. The registration shall require each lobbyist to disclose, under oath, the following information:

- (a) Name and business address;
- (b) The name and business address of each principal represented;
- (c) His or her area of interest;
- (d) The agencies before which he or she will appear; and
- (e) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency with which he or she lobbies, or intends to lobby, as disclosed in the registration.

(4) The annual lobbyist registration fee shall be set by the commission by rule, not to exceed \$40 for each principal represented.

(5)(a)1. Each lobbying firm shall file a compensation report with the commission for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

- a. Full name, business address, and telephone number of the lobbying firm;

- b. Name of each of the firm's lobbyists; and
 - c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1 million or more.
2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:
 - a. Full name, business address, and telephone number of the principal; and
 - b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1 to \$9,999; \$10,000 to \$19,999; \$20,000 to \$29,999; \$30,000 to \$39,999; \$40,000 to \$49,999; or \$50,000 or more. If the category "\$50,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.
 3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:
 - a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and
 - b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.
 4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.
- (b) For each principal represented by more than one lobbying firm, the commission shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.
- (c) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. Reporting statements must be filed by electronic means as provided in s. 112.32155.
- (d) The commission shall provide by rule the grounds for waiving a fine, the procedures by which a lobbying firm that fails to timely file a report shall be notified and assessed fines, and the procedure for appealing the fines. The rule shall provide for the following:
1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day up to a maximum of \$5,000 per late report.
 2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:
 - a. When a report is actually received by the lobbyist registration and reporting office.
 - b. When the electronic receipt issued pursuant to s. 112.32155 is dated.
 3. Such fine shall be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the commission. The moneys shall be deposited into the Executive Branch Lobby Registration Trust Fund.
 4. A fine shall not be assessed against a lobbying firm the first time any reports for which the lobbying firm is responsible are not timely filed. However, to receive the one-time fine

waiver, all reports for which the lobbying firm is responsible must be filed within 30 days after the notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the commission, which shall have the authority to waive the fine in whole or in part for good cause shown. Any such request shall be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm shall, 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.

6. The person designated to review the timeliness of reports shall notify the commission of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the commission shall promptly notify all affected principals of each suspension and each reinstatement.

7. Notwithstanding any provision of chapter 120, any fine imposed under this subsection that is not waived by final order of the commission and that remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the lobbying firm's appeal shall be collected by the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department may assign the collection of such fine to a collection agent as provided in s. 17.20.

(e) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation. Any documents and records retained pursuant to this section may be subpoenaed for audit by the Legislative Auditing Committee pursuant to s. 11.40, and such subpoena may be enforced in circuit court.

(6)(a) Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure.

(b) No person shall provide compensation for lobbying to any individual or business entity that is not a lobbying firm.

(7) A lobbyist shall promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's representation of that principal. Notwithstanding this requirement, the commission may remove the name of a lobbyist from the list of registered lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal.

(8)(a) The commission shall investigate every sworn complaint that is filed with it alleging that a person covered by this section has failed to register, has failed to submit a compensation report, or has knowingly submitted false information in any report or registration required in this section.

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the

provisions of s. 286.011(1) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

(c) The commission shall investigate any lobbying firm, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.

(d)1. Records relating to an audit conducted pursuant to this section or an investigation conducted pursuant to this section or s. 112.32155 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any portion of a meeting wherein such investigation or audit is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

3. The exemptions no longer apply if the lobbying firm requests in writing that such investigation and associated records and meetings be made public or the commission determines there is probable cause that the audit reflects a violation of the reporting laws.

(9) If the commission finds no probable cause to believe that a violation of this section occurred, it shall dismiss the complaint, whereupon the complaint, together with a written statement of the findings of the investigation and a summary of the facts, shall become a matter of public record, and the commission shall send a copy of the complaint, findings, and summary to the complainant and the alleged violator. If, after investigating information from a random audit of lobbying reports, the commission finds no probable cause to believe that a violation of this section occurred, a written statement of the findings of the investigation and a summary of the facts shall become a matter of public record, and the commission shall send a copy of the findings and summary to the alleged violator. If the commission finds probable cause to believe that a violation occurred, it shall report the results of its investigation to the Governor and Cabinet and send a copy of the report to the alleged violator by certified mail. Such notification and all documents made or received in the disposition of the complaint shall then become public records. Upon request submitted to the Governor and Cabinet in writing, any person whom the commission finds probable cause to believe has violated any provision of this section shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the probable cause notification. However, the Governor and Cabinet may on its own motion require a public hearing and may conduct such further investigation as it deems necessary.

(10) If the Governor and Cabinet finds that a violation occurred, it may reprimand the violator, censure the violator, or prohibit the violator from lobbying all agencies for a period not to exceed 2 years. If the violator is a lobbying firm, the Governor and Cabinet may also assess a fine of not more than \$5,000 to be deposited in the Executive Branch Lobby Registration Trust Fund.

(11) Any person, when in doubt about the applicability and interpretation of this section to himself or herself in a particular context, may submit in writing the facts of the situation to the commission with a request for an advisory opinion to establish the standard of duty. An advisory opinion shall be rendered by the commission and, until amended or revoked, shall be binding on the conduct of the person who sought the opinion, unless material facts were omitted or misstated in the request.

(12) Agencies shall be diligent to ascertain whether persons required to register pursuant to this section have complied. An agency may not knowingly permit a person who is not registered pursuant to this section to lobby the agency.

(13) Upon discovery of violations of this section an agency or any person may file a sworn complaint with the commission.

(14) The commission shall adopt rules to administer this section, which shall prescribe forms for registration and compensation reports, procedures for registration, and procedures that will prevent disclosure of information that is confidential as provided in this section.

History.—s. 2, ch. 89-325; s. 3, ch. 90-268; s. 29, ch. 90-360; s. 5, ch. 91-292; s. 2, ch. 92-35; s. 6, ch. 93-121; s. 705, ch. 95-147; s. 1, ch. 95-357; s. 2, ch. 96-203; s. 38, ch. 96-406; s. 1, ch. 97-12; s. 2, ch. 2000-232; s. 131, ch. 2003-261; ss. 5, 6, ch. 2005-359; s. 1, ch. 2005-361; ss. 12, 13, 14, ch. 2006-275; s. 6, ch. 2010-151; ss. 29, 30, ch. 2011-6; s. 76, ch. 2011-40; s. 1, ch. 2011-178; HJR 7105, 2011 Regular Session.

¹Note.—Section 30, ch. 2011-6, provides that “[t]his act shall take effect July 1, 2010.” Passed by the Senate and the House of Representatives over the Governor’s veto March 24, 2011. House Joint Resolution 7105, 2011 Regular Session, provides that C.S. for C.S. for H.B. 1207, 2010 Regular Session, which became ch. 2011-6, is effective “upon becoming a law, the veto of the Governor notwithstanding. If any law amended by this act was also amended by a law enacted during the 2010 Regular Session, such laws shall be construed as if they had been enacted at the same session of the Legislature, and full effect shall be given to each if possible.” C.S. for C.S. for H.B. 1207, 2010 Regular Session, became law on March 24, 2011.

112.32151 Requirements for reinstatement of lobbyist registration after felony conviction.—A person convicted of a felony after January 1, 2006, may not be registered as a lobbyist pursuant to s. 112.3215 until the person:

- (1) Has been released from incarceration and any postconviction supervision, and has paid all court costs and court-ordered restitution; and
- (2) Has had his or her civil rights restored.

History.—s. 9, ch. 2005-359; s. 8, ch. 2007-5.

112.32155 Electronic filing of compensation reports and other information.—

(1) As used in this section, the term “electronic filing system” means an Internet system for recording and reporting lobbying compensation and other required information by reporting period.

(2) Each lobbying firm who is required to file reports with the Commission on Ethics pursuant to s. 112.3215 must file such reports with the commission by means of the electronic filing system.

(3) A report filed pursuant to this section must be completed and filed through the electronic filing system not later than 11:59 p.m. of the day designated in s. 112.3215. A report not filed by 11:59 p.m. of the day designated is a late-filed report and is subject to the penalties under s. 112.3215(5).

(4) Each report filed pursuant to this section is considered to meet the certification requirements of s. 112.3215(5)(a)4. Persons given a secure sign-on to the electronic filing system are responsible for protecting it from disclosure and are responsible for all filings using such credentials, unless they have notified the commission that their credentials have been compromised.

- (5) The electronic filing system must:
- (a) Be based on access by means of the Internet.
 - (b) Be accessible by anyone with Internet access using standard web-browsing software.
 - (c) Provide for direct entry of compensation report information as well as upload of such information from software authorized by the commission.
 - (d) Provide a method that prevents unauthorized access to electronic filing system functions.
- (6) The commission shall provide by rule procedures to implement and administer this section, including, but not limited to:
- (a) Alternate filing procedures in case the electronic filing system is not operable.
 - (b) The issuance of an electronic receipt to the person submitting the report indicating and verifying the date and time that the report was filed.
- (7) The commission shall make all the data filed available on the Internet in an easily understood and accessible format. The Internet website shall also include, but not be limited to, the names and business addresses of lobbyists, lobbying firms, and principals, the affiliations between lobbyists and principals, and the classification system designated and identified by each principal pursuant to s. 112.3215(3).

History.—s. 7, ch. 2005-359.

112.3217 Contingency fees; prohibitions; penalties.—

- (1) "Contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent or in any way contingent on the enactment, defeat, modification, or other outcome of any specific executive branch action.
- (2) No person may, in whole or in part, pay, give, or receive, or agree to pay, give, or receive, a contingency fee. However, this subsection does not apply to claims bills.
- (3) Any person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If such person is a lobbyist, the lobbyist shall forfeit any fee, bonus, commission, or profit received in violation of this section and is subject to the penalties set forth in s. 112.3215. When the fee, bonus, commission, or profit is nonmonetary, the fair market value of the benefit shall be used in determining the amount to be forfeited. All forfeited benefits shall be deposited into the Executive Branch Lobby Registration Trust Fund.
- (4) Nothing in this section may be construed to prohibit any salesperson engaging in legitimate state business on behalf of a company from receiving compensation or commission as part of a bona fide contractual arrangement with that company.

History.—s. 7, ch. 93-121; s. 9, ch. 2000-336.

112.322 Duties and powers of commission.—

- (1) It is the duty of the Commission on Ethics to receive and investigate sworn complaints of violation of the code of ethics as established in this part and of any other breach of the public trust, as provided in s. 8(f), Art. II of the State Constitution, including investigation of all facts and parties materially related to the complaint at issue.
- (2)(a) Any public officer or employee may request a hearing before the Commission on Ethics to present oral or written testimony in response to allegations that such person violated the code of ethics established in this part or allegations of any other breach of the public trust, as provided in s. 8, Art. II of the State Constitution, provided a majority of the commission members present and voting consider that the allegations are of such gravity as

to affect the general welfare of the state and the ability of the subject public officer or employee effectively to discharge the duties of the office. If the allegations made against the subject public officer or employee are made under oath, then he or she shall also be required to testify under oath.

(b) Upon completion of any investigation initiated under this subsection, the commission shall make a finding and public report as to whether any provision of the code of ethics has been violated or any other breach of the public trust has been committed by the subject official or employee. In the event that a violation or breach is found to have been committed, the commission shall recommend appropriate action to the agency or official having power to impose any penalty provided by s. 112.317.

(c) All proceedings conducted pursuant to this subsection shall be public meetings within the meaning of chapter 286, and all documents made or received in connection with the commission's investigation thereof shall be public records within the meaning of chapter 119.

(d) Any response to a request of a public official or employee shall be addressed in the first instance to the official or employee making the request.

(3)(a) Every public officer, candidate for public office, or public employee, when in doubt about the applicability and interpretation of this part or s. 8, Art. II of the State Constitution to himself or herself in a particular context, may submit in writing the facts of the situation to the Commission on Ethics with a request for an advisory opinion to establish the standard of public duty. Any public officer or employee who has the power to hire or terminate employees may likewise seek an advisory opinion from the commission as to the application of the provisions of this part or s. 8, Art. II of the State Constitution to any such employee or applicant for employment. An advisory opinion shall be rendered by the commission, and each such opinion shall be numbered, dated, and published without naming the person making the request, unless such person consents to the use of his or her name.

(b) Such opinion, until amended or revoked, shall be binding on the conduct of the officer, employee, or candidate who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion.

(4) The commission has the power to subpoena, audit, and investigate. The commission may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the commission or to the exercise of its powers. The commission may delegate to its investigators the authority to administer oaths and affirmations. The commission may delegate the authority to issue subpoenas to its chair, and may authorize its employees to serve any subpoena issued under this section. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state which shall have jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Failure to obey the order may be punished by the court as contempt. Witnesses shall be paid mileage and witnesses fees as authorized for witnesses in civil cases, except that a witness who is required to travel outside the county of his or her residence to testify is entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, to be paid after the witness appears.

(5) The commission may recommend that the Governor initiate judicial proceedings in the name of the state against any executive or administrative state, county, or municipal officer to enforce compliance with any provision of this part or of s. 8, Art. II of the State Constitution or to restrain violations of this part or of s. 8, Art. II of the State Constitution, pursuant to s. 1(b), Art. IV of the State Constitution; and the Governor may without further action initiate such judicial proceedings.

(6) The commission is authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties. The Department of Legal Affairs shall, upon request, provide legal and investigative assistance to the commission.

(7) The commission may prepare materials designed to assist persons in complying with the provisions of this part and with s. 8, Art. II of the State Constitution.

(8) It shall be the further duty of the commission to submit to the Legislature from time to time a report of its work and recommendations for legislation deemed necessary to improve the code of ethics and its enforcement.

(9) The commission is authorized to make such rules not inconsistent with law as are necessary to carry out the duties and authority conferred upon the commission by s. 8, Art. II of the State Constitution or by this part. Such rules shall be limited to:

(a) Rules providing for the practices and procedures of the commission.

(b) Rules interpreting the disclosures and prohibitions established by s. 8, Art. II of the State Constitution and by this part.

History.—s. 2, ch. 74-176; s. 4, ch. 75-199; s. 1, ch. 76-89; s. 1, ch. 77-174; s. 7, ch. 82-98; s. 33, ch. 89-169; s. 12, ch. 91-85; s. 13, ch. 94-277; s. 1416, ch. 95-147; s. 7, ch. 2000-243; s. 15, ch. 2006-275.

112.3231 Time limitations.—

(1) On or after October 1, 1993, all sworn complaints alleging a violation of this part, or of any other breach of the public trust within the jurisdiction of the Commission on Ethics under s. 8, Art. II of the State Constitution, shall be filed with the commission within 5 years of the alleged violation or other breach of the public trust.

(2) A violation of this part or any other breach of public trust is committed when every element has occurred or, if the violation or breach of public trust involves a continuing course of conduct, at the time when the course of conduct or the officer's, employee's, or candidate's complicity therein is terminated. Time starts to run on the day after the violation or breach of public trust is committed.

(3) The applicable period of limitation is tolled on the day a sworn complaint against the public officer, employee, or candidate is filed with the Commission on Ethics. If it can be concluded from the face of the complaint that the applicable period of limitation has run, the complaint shall be dismissed and the commission shall issue a public report.

History.—s. 13, ch. 91-85; s. 10, ch. 94-277.

112.3232 Compelled testimony.—If any person called to give evidence in a commission proceeding shall refuse to give evidence because of a claim of possible self-incrimination, the commission, with the written authorization of the appropriate state attorney, may apply to the chief judge of the appropriate judicial circuit for a judicial grant of immunity ordering the testimony or other evidence of such person notwithstanding his or her objection, but in such case no testimony or other information compelled under the order, or any information

directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal proceeding.

History.—s. 10, ch. 2000-243.

112.324 Procedures on complaints of violations; public records and meeting exemptions.—

(1) Upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person, the commission shall investigate any alleged violation of this part or any 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 in accordance with procedures set forth herein. Within 5 days after receipt of a complaint by the commission, a copy shall be transmitted to the alleged violator.

(2)(a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Any proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from the provisions of s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(c) The exemptions in paragraphs (a) and (b) apply until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records and proceedings be made public, or until the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred. In no event shall a complaint under this part against a candidate in any general, special, or primary election be filed or any intention of filing such a complaint be disclosed on the day of any such election or within the 5 days immediately preceding the date of the election.

¹(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) A preliminary investigation shall be undertaken by the commission of each legally sufficient complaint over which the commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission finds no probable cause to believe that this part has been violated or that any other breach of the public trust has been committed, the commission shall dismiss the complaint with the issuance of a public report to the complainant and the alleged violator, stating with particularity its reasons for dismissal of the complaint. At that time, the complaint and all materials relating to the complaint shall become a matter of public record. If the commission finds from the preliminary investigation probable cause to believe that this part has been violated or that any other breach of the public trust has been committed, it shall so notify the complainant and the alleged violator in writing. Such notification and all documents made or received in the disposition of the

complaint shall then become public records. Upon request submitted to the commission in writing, any person who the commission finds probable cause to believe has violated any provision of this part or has committed any other breach of the public trust shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the probable cause notification required by this subsection. However, the commission may on its own motion, require a public hearing, may conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the state. The commission is without jurisdiction to, and no respondent may voluntarily or involuntarily, enter into a stipulation or settlement which imposes any penalty, including, but not limited to, a sanction or admonition or any other penalty contained in s. 112.317. Penalties shall be imposed only by the appropriate disciplinary authority as designated in this section.

(4) If, in cases pertaining to members of the Legislature, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution, the commission shall forward a copy of the complaint and its findings by certified mail to the President of the Senate or the Speaker of the House of Representatives, whichever is applicable, who shall refer the complaint to the appropriate committee for investigation and action which shall be governed by the rules of its respective house. It shall be the duty of the committee to report its final action upon the complaint to the commission within 90 days of the date of transmittal to the respective house. Upon request of the committee, the commission shall submit a recommendation as to what penalty, if any, should be imposed. In the case of a member of the Legislature, the house in which the member serves shall have the power to invoke the penalty provisions of this part.

(5) If, in cases pertaining to complaints against impeachable officers, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution, and the commission finds that the violation may constitute grounds for impeachment, the commission shall forward a copy of the complaint and its findings by certified mail to the Speaker of the House of Representatives, who shall refer the complaint to the appropriate committee for investigation and action which shall be governed by the rules of the House of Representatives. It shall be the duty of the committee to report its final action upon the complaint to the commission within 90 days of the date of transmittal.

(6) If the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution by an impeachable officer other than the Governor, and the commission recommends public censure and reprimand, forfeiture of a portion of the officer's salary, a civil penalty, or restitution, the commission shall report its findings and recommendation of disciplinary action to the Governor, who shall have the power to invoke the penalty provisions of this part.

(7) If the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution by the Governor, and the commission recommends public censure and reprimand, forfeiture of a portion of the Governor's salary, a civil penalty, or restitution, the commission shall report its findings and recommendation of disciplinary

action to the Attorney General, who shall have the power to invoke the penalty provisions of this part.

(8) If, in cases pertaining to complaints other than complaints against impeachable officers or members of the Legislature, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part or of s. 8, Art. II of the State Constitution, it shall be the duty of the commission to report its findings and recommend appropriate action to the proper disciplinary official or body as follows, and such official or body shall have the power to invoke the penalty provisions of this part, including the power to order the appropriate elections official to remove a candidate from the ballot for a violation of s. 112.3145 or s. 8(a) and (i), Art. II of the State Constitution:

(a) The President of the Senate and the Speaker of the House of Representatives, jointly, in any case concerning the Public Counsel, members of the Public Service Commission, members of the Public Service Commission Nominating Council, the Auditor General, or the director of the Office of Program Policy Analysis and Government Accountability.

(b) The Supreme Court, in any case concerning an employee of the judicial branch.

(c) The President of the Senate, in any case concerning an employee of the Senate; the Speaker of the House of Representatives, in any case concerning an employee of the House of Representatives; or the President and the Speaker, jointly, in any case concerning an employee of a committee of the Legislature whose members are appointed solely by the President and the Speaker or in any case concerning an employee of the Public Counsel, Public Service Commission, Auditor General, or Office of Program Policy Analysis and Government Accountability.

(d) Except as otherwise provided by this part, the Governor, in the case of any other public officer, public employee, former public officer or public employee, candidate or former candidate, or person who is not a public officer or employee, other than lobbyists and lobbying firms under s. 112.3215 for violations of s. 112.3215.

(e) The President of the Senate or the Speaker of the House of Representatives, whichever is applicable, in any case concerning a former member of the Legislature who has violated a provision applicable to former members or whose violation occurred while a member of the Legislature.

(9) In addition to reporting its findings to the proper disciplinary body or official, the commission shall report these findings to the state attorney or any other appropriate official or agency having authority to initiate prosecution when violation of criminal law is indicated.

(10) Notwithstanding the foregoing procedures of this section, a sworn complaint against any member or employee of the Commission on Ethics for violation of this part or of s. 8, Art. II of the State Constitution shall be filed with the President of the Senate and the Speaker of the House of Representatives. Each presiding officer shall, after determining that there are sufficient grounds for review, appoint three members of their respective bodies to a special joint committee who shall investigate the complaint. The members shall elect a chair from among their number. If the special joint committee finds insufficient evidence to establish probable cause to believe a violation of this part or of s. 8, Art. II of the State Constitution has occurred, it shall dismiss the complaint. If, upon completion of its preliminary investigation, the committee finds sufficient evidence to establish probable cause to believe a violation has occurred, the chair thereof shall transmit such findings to the Governor who shall convene a meeting of the Governor, the President of the Senate, the Speaker of the

House of Representatives, and the Chief Justice of the Supreme Court to take such final action on the complaint as they shall deem appropriate, consistent with the penalty provisions of this part. Upon request of a majority of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, the special joint committee shall submit a recommendation as to what penalty, if any, should be imposed.

(11) Notwithstanding the provisions of subsections (1)-(8), the commission may, at its discretion, dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, in which case the commission shall issue a public report stating with particularity its reasons for the dismissal.

History.—s. 2, ch. 74-176; s. 5, ch. 75-199; s. 3, ch. 83-282; s. 30, ch. 90-360; s. 14, ch. 91-85; s. 11, ch. 94-277; s. 1417, ch. 95-147; s. 2, ch. 95-354; s. 4, ch. 96-311; s. 3, ch. 97-293; s. 14, ch. 2000-151; s. 17, ch. 2000-331; s. 30, ch. 2001-266; s. 1, ch. 2002-186; s. 1, ch. 2005-186; s. 17, ch. 2008-4; s. 3, ch. 2009-126; s. 1, ch. 2010-116; s. 1, ch. 2010-130; s. 18, ch. 2011-34.

¹Note.—As amended by s. 1, ch. 2010-130. Both s. 1, ch. 2010-130, and s. 1, ch. 2010-116, repealed an existing Open Government Sunset Review repeal set for October 2, 2010, but only s. 1, ch. 2010-130, established a new repeal with an October 2, 2015, date.

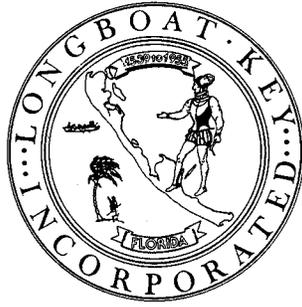
112.3241 Judicial review.—Any final action by the commission taken pursuant to this part shall be subject to review in a district court of appeal upon the petition of the party against whom an adverse opinion, finding, or recommendation is made.

History.—s. 6, ch. 75-199; s. 4, ch. 84-318.

112.326 Additional requirements by political subdivisions and agencies not prohibited.

—Nothing in this act shall prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part.

History.—s. 5, ch. 75-196; s. 12, ch. 94-277.



End of Agenda Item