



**BOARD OPERATIONS
POLICIES AND PROCEDURES**

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PART I

**FAU BOARD OF TRUSTEES
POLICIES AND PROCEDURES**

ARTICLE I

STATEMENT OF PURPOSE AND PRINCIPLES

Section 1.1

PURPOSE

The Florida Atlantic University Board of Trustees ("BOT") is vested by law with all the powers and authority to effectively govern and set policy for Florida Atlantic University ("FAU") in accordance with the laws of the State of Florida and with rules or policies of the Board of Governors ("BOG"). To more effectively discharge its responsibilities and duties, in connection with its governance of the University, the Florida Atlantic University Board of Trustees has resolved to adopt the following operating procedures.

Section 1.2

VISION, MISSION AND VALUES

VISION: Florida Atlantic University aspires to be recognized as a university of first choice for excellent and accessible undergraduate and graduate education, distinguished for the quality of its programs across multiple campuses, emulated for its collaborations with regional partners, and internationally acclaimed for its contributions to creativity and research.

MISSION: Florida Atlantic University is a public research university with multiple campuses along the southeast Florida coast serving a uniquely diverse community. It promotes academic and personal development, discovery and lifelong learning. FAU fulfills its mission through excellence and innovation in teaching, outstanding research and creative activities, public engagement and distinctive scientific and cultural alliances, all within an environment that fosters inclusiveness.

VALUES: Florida Atlantic University values an academic environment that facilitates intellectual growth through open and honest expression. The University is committed to excellence at all levels of the educational and creative experience, to success for all students and to development of the capacity to make reasoned and discriminating judgments with respect for differences and diversity in ideas. The University is dedicated to lifelong learning, which encourages the continual use of the mind. The University plays a vital role in the life of the surrounding community, in society and as an engine for economic development. More specifically, the University commits to:

- Prepare students to fulfill a productive destiny in the workplace and in society;
- Promote academic freedom and an atmosphere of free and open inquiry;

- Recognize and reward superior performance, creativity, innovation and entrepreneurship in all facets of University activity;
- Support all those who rely on the University, such as parents, employers of students and graduates, and community partners;
- Account for the sound use and careful stewardship of the resources provided to the University;
- Provide equal access, equal rights and equal justice, and encourage mutual regard for the rights and liberties of all persons;
- Respect all persons and display civility in all interactions;
- Provide a secure environment for the pursuit of learning;
- Foster community service and social responsibility;
- Promote honesty in all spheres, social and moral development, and ethical standards in all areas of human activity;
- Assure clear and open communication and sharing of information.

Section 1.3

PRINCIPLES OF ACADEMIC FREEDOM

The Florida Atlantic University Board of Trustees supports the principle of academic freedom and is committed to the search for new knowledge and to the effective dissemination of that which came before it. In furtherance of this commitment, the BOT will defend the right of faculty and students to pursue their academic goals free from constraints that hinder lawful intellectual inquiry and discourse, and will protect the freedom of faculty to teach and of students to learn from ideas that might be unpopular or not in the mainstream of accepted thought. In turn, faculty and students must exercise this freedom in a responsible manner so that honesty and integrity in their inquiries and discourse are maintained.

ARTICLE II

THE BOARD

Section 2.1

CORPORATE NAME

The Board of Trustees is a public body corporate called "the Florida Atlantic University Board of Trustees."

Section 2.2

COMPOSITION OF THE BOARD

Article IX, Section 7 of the Florida Constitution establishes the composition of the BOT. It provides that the BOT consists of thirteen (13) Trustees, with six (6) Trustees appointed by the Governor, five (5) appointed by the BOG and two (2) serving by virtue of their offices, the President of the FAU Student Government and the Chair of the equivalent of the faculty senate. All appointed members are confirmed by the Senate of the State of Florida.

Section 2.3

POWERS AND DUTIES OF THE BOARD

Article IX, Section 7 of the Florida Constitution posits in the BOG the responsibility to establish the powers and duties of the board of trustees of each university. By resolution the BOG delegated to the board of trustees of the state universities the power to administer each constituent university.

The BOT shall serve as the governing body of FAU. It shall select the President of FAU to serve at the pleasure of the BOT and shall hold the President responsible for the University's operation and management, performance, its fiscal accountability, and its compliance with federal and state laws and rules.

The BOT shall have the authority to carry out all lawful functions permitted by these policies and procedures, by delegation from the BOG, or by law. The specific statutory powers and duties of the BOT are enumerated in the BOG resolution passed and adopted on January 7, 2003.¹

The BOT may adopt rules and policies consistent with the University mission, with law, and with the rules of the BOG, in order to effectively fulfill its obligations under the law.

¹ The full text of the resolution and a summary appear at the end of this document, starting on page 30.

Section 2.4

CORPORATE SEAL/LOGO

The Florida Atlantic University Board of Trustees logo will be used on appropriate items including PowerPoint presentations, signage, promotional items, web site, nametags, etc. The BOT adopts the following mark as its official logo:



The Florida Atlantic University Board of Trustees corporate seal shall be used only in connection with the transaction of business of the BOT and of the University. The Secretary may affix the seal on any document signed on behalf of the corporation and may utilize the mark on its official letterhead. All other uses are prohibited unless otherwise stated in FAU's Visual Standards Manual. The BOT adopts the following mark as its official corporate seal:



ARTICLE III

THE TRUSTEES

Section 3.1

FIDUCIARIES

Section 112.311 (6) of the Florida Statutes provides that it is the declared policy of the state that public officers are agents of the people and hold their positions for the benefit of the public. Therefore, by virtue of their office, Trustees stand in a fiduciary relationship to the University and must serve the best interests of the University at all times.

Section 3.2

TERM OF OFFICE

Trustees shall serve for staggered 5-year terms, as provided by law and as specified in their appointment.

Section 3.3

COMPENSATION

Trustees shall receive no compensation but may be reimbursed upon request for travel and per diem expenses as provided in Section 112.061, Florida Statutes.

Section 3.4

REMOVAL

The Governor may remove a Trustee. Failure to attend three (3) consecutive regular board meetings in any fiscal year shall be grounds for removal.

Section 3.5

VACANCIES

The BOT Chair shall report any vacancies to the Governor and the BOG.

ARTICLE IV

OFFICERS OF THE BOARD

Section 4.1

OFFICERS

The Officers of the BOT shall be the Chair, Vice Chair, and University President, who serves as the Corporate Secretary.

Section 4.2

SELECTION OF OFFICERS AND TERMS OF OFFICE

The Chair and Vice-Chair shall be selected by the BOT at its first regular meeting after January 7, 2003, and shall serve for a 2-year term to begin immediately upon selection. Bi-annually thereafter, the BOT shall select the Chair and Vice Chair through nomination and selection from the members of the Board. The Chair and Vice-Chair shall be eligible for re-selection for one additional consecutive term by vote of the Board. There shall not be automatic succession by virtue of holding an office, except as otherwise provided in Section 4.3.

Section 4.3

PERMANENT VACANCIES IN CHAIR AND VICE CHAIR OFFICES

A permanent vacancy of the Chair shall be filled by the Vice Chair for the remainder of the term. A permanent vacancy of the Vice Chair shall be filled for the remainder of the term by a majority vote of the members of the Board, at its next regular meeting. Assumption to an unfinished term created by a permanent vacancy shall not preclude that officer from being eligible to be selected and re-selected as provided in Section 4.2.

Section 4.4

CHAIR

The duties of the Chair shall include presiding at all meetings of the BOT, calling special meetings of the BOT, appointing committee chairs, determining the composition of all non-statutory BOT committees, attesting to actions of the BOT, and otherwise serving as spokesperson for the BOT. The Chair shall perform such duties in consultation with the University President. The Chair may delegate the authority to sign and execute documents and instruments on behalf of the Board to the Corporate Secretary. The Board of Trustee Chair is responsible for causing the Board to conduct an annual evaluation of the University President.

Section 4.5

VICE CHAIR

The duty of the Vice Chair is to act as Chair during the absence or disability of the Chair.

Section 4.6

UNIVERSITY PRESIDENT AND CORPORATE SECRETARY

The University President shall serve as the Chief Executive Officer of the University. The University President shall be responsible for the operation and administration of the University, including efficient and effective budget and program administration, leading the University to accomplish its education missions and goals, monitoring educational and financial performance, consulting with the BOT in a timely manner on matters appropriate to its policy-making and fiduciary functions, and serving as the University's key spokesperson.

The President shall have the authority to execute all documents on behalf of the University and the BOT consistent with law, BOT policies, and the best interests of the University. The President shall exercise such powers as are appropriate to his/her position in promoting, supporting and protecting the interests of the University and in managing and directing its affairs. The specific statutory powers and duties of the President are enumerated in Section 1001.75, Florida Statutes. The President shall serve as the principal liaison officer and official contact between the BOT and the faculty, staff and students of the University. The President may issue directives and executive orders. Such directives and orders shall not violate existing BOT policies. The President shall serve as an ex-officio, non-voting member of all BOT Committees.

The University President shall serve as Corporate Secretary of the BOT, and in the capacity of Secretary, shall be responsible for giving notice of all meetings of the BOT and its committees, setting the Agenda and compiling the supporting documents for meetings of the BOT in consultation with the Chair, recording and maintaining the minutes of any BOT or committee meeting, including a record of all votes cast, in accordance with Section 286.011(2) of the Florida Statutes, executing or attesting to all documents which have been executed by the BOT, and acting as custodian of the Corporate Seal. The Secretary may designate an individual to assist him or her in this role.

ARTICLE V
COMMITTEES

Section 5.1

COMMITTEE MEMBERSHIP AND DUTIES

The BOT Chair shall appoint and remove committee members and their chairs and may make changes, at any time, unless otherwise provided by these procedures or law. A member of a committee shall hold office until the BOT Chair appoints a successor. The BOT Chair shall determine the length of the term of service of committee members and chairs.

Each committee shall consist of no less than three members. The BOT Chair and the BOT Vice Chair shall be ex officio voting members of all standing committees, subcommittees, or ad hoc committees. University staff with appropriate expertise in a committee's area of responsibility shall be appointed by the BOT Chair in consultation with the President to help the committees in their business.

Two members of a committee shall constitute a quorum for purposes of transacting committee business. Chair and Vice Chair may be counted for purposes of establishing a committee quorum. All Trustees who are not members of a particular committee are invited to attend that committee meeting and may comment, but not vote, on matters before the committee.

The duty of each committee shall be to consider and to make recommendations to the BOT upon matters under its jurisdiction or referred to it. Unless specifically delegated, or as otherwise provided in these policies and procedures, authority to act on all matters is reserved to the BOT. All committee chairs shall perform their duties in consultation with the University President and may appoint subcommittees to bring matters before the committee for further consideration.

Section 5.2

STANDING COMMITTEES

The following committees were established and approved in January of 2005 and are the standing committees of the BOT:

Academic and Student Affairs: oversees academic programs and services administered by the University Provost and Chief Academic Officer and the non-academic programs and services provided in support of student welfare administered by the Senior Vice President for Student Affairs. Develops and monitors academic performance accountability measures.

Audit and Finance: oversees the University budget and all revenue sources, receives internal and external audit results, recommends special audits, and develops and monitors financial performance and accountability measures.

Strategic Planning: oversees the University's strategic planning process to assure managed academic, enrollment, and physical growth and development

of the necessary resources to meet the mission of the University.

The BOT may establish additional standing committees, as it deems appropriate to discharge its responsibilities.

Section 5.3

AD-HOC COMMITTEES

Ad-hoc committees shall be appointed by the BOT Chair with such powers and duties and period of service as the BOT Chair may determine, provided that no ad-hoc committee shall be created to act upon any matter appropriate to be acted upon by a standing committee.

Section 5.4

PRESIDENTIAL SEARCH COMMITTEE

It is the duty of the BOT to select the University president, subject to ratification by the BOG. Candidates for the position of University president shall be recommended to the BOT by a presidential search committee. The members of the presidential search committee shall be appointed by the BOT. The selection of the members of the committee may be delegated to the Chair of the BOT.

ARTICLE VI

MEETINGS

Section 6.1

NOTICE AND AGENDA

All meetings of the BOT and its committees shall be noticed and open to the public at all times. No resolution, rule, or formal action shall be considered binding except as taken or made at a public meeting in accordance with Section 286.011 of the Florida Statutes. However, these notice or public meeting requirements shall not apply where the matters being considered are exempt by law from the notice or open meetings requirements, or both. The General Counsel or his or her designee shall be present at all BOT and Committee Meetings, whether open or not, unless otherwise provided by the BOT. All meetings required to be noticed will be posted on the Florida Atlantic University website at <http://www.fau.edu/bot/notices.php>.

Agenda items requiring action by Trustees must be submitted to the Corporate Secretary or his/her designee with sufficient time for the agenda and supporting information of the forwarded and received by the Trustees at least seven (7) days prior to the meeting requiring their vote. The time for submission of agenda items may be shortened only with the permission of the Corporate Secretary or his/her designee. No item requiring BOT action at a regular meeting may be included in the agenda without consideration by the committee having jurisdiction over the subject matter, unless previously approved by the BOT Chair and the Corporate Secretary in consultation with each other.

Section 6.2

REGULAR MEETINGS

There shall be no less than five (5) regular meetings a year, or as otherwise determined by the BOT.² For each calendar year thereafter, the schedule of meetings shall be set no later than the last meeting of the prior calendar year. Regular meetings shall be scheduled at 10:00 A.M. on the second Wednesday of the month in which the meeting is being held. Once established in accordance with these procedures, the time and date of a regular meeting may be changed only by an affirmative vote of a quorum of the BOT, or where deemed a necessity by the BOT Chair or the Corporate Secretary in consultation with each other.

² Upon adoption of these policies and procedures, the BOT shall set, at its next regular meeting, the schedule for regular BOT meetings for the remainder of the calendar year.

Section 6.3

SPECIAL MEETINGS

Special public meetings of the BOT may be held at the call of the BOT Chair, or in the absence of the Chair by the Vice Chair, the Corporate Secretary, or upon the written request of five (5) Trustees. The Corporate Secretary shall send written notice of such special meeting or request by a Trustee and include the purpose of the meeting to all Trustees. No matter may be considered at any special meeting that was not included in the call of that meeting except by an affirmative vote of a majority of the Trustees.

Section 6.4

EMERGENCY MEETINGS

An emergency public meeting of the BOT may be called by the Chair or Vice Chair or President upon a finding by the Chair or Vice Chair or President of the University, respectively, that immediate action is required to preserve the health, safety or welfare of the public. Whenever such emergency meeting is called, the Corporate Secretary will immediately notify either verbally or in writing each member of the BOT stating the date, hour and place of the meeting and the purpose for which the meeting has been called. As provided by Section 120.525 of the Florida Statutes, an emergency meeting shall also be noticed by any procedure that is fair under the circumstances. Only action necessary to protect the interest of the University and the community it serves shall be taken. At the time of the emergency meeting, or prior to the meeting, if possible, the specific facts and reasons for finding an immediate danger, as well as the reasons for concluding that the notice procedure is fair under the circumstances shall be published in writing. The minutes of the emergency meeting shall include the manner and method by which notice of such emergency meeting was given to each member of the Board.

Section 6.5

QUORUM AND VOTING

A quorum for the conduct of business by the full BOT shall consist of seven (7) Trustees. A quorum having been established, no business shall be transacted without a majority vote of all Trustees present, except as otherwise provided in these procedures. The decision of the majority of the Trustees in attendance and voting on an issue shall prevail. A Trustee may abstain from voting only under those circumstances prescribed by law.

For committee business, two members of the committee shall constitute a quorum. The Chair and Vice Chair may be counted for purposes of establishing a committee quorum.

Section 6.6

PROXIES

The use of proxies for purposes of determining a quorum, for voting, or for any other purposes is prohibited.

Section 6.7

RULES OF PROCEDURE

At the hour appointed for the meeting, the Chair shall call the meeting to order and call the roll. *The New Robert's Rules of Order*, newly revised, latest edition, will be followed in conducting all meetings of the BOT, unless otherwise provided by the BOT or law.

Section 6.8

SUBMISSION OF ITEMS BY THE PUBLIC FOR BOT CONSIDERATION

Individuals or representatives of groups who desire to appear before the BOT regarding any item must submit their written requests to the appropriate committee having subject matter jurisdiction over the item. The request must be submitted to the Corporate Secretary at the Administration Building, Room 339 FAU, 777 Glades Road, Boca Raton, Florida 33431. The request must specify the matter about which they wish to speak. Such a request, along with any supporting documentation, must be submitted at least fourteen (14) working days prior to the committee meeting. After presentation to the committee and a favorable recommendation by the committee that the matter be forwarded to the BOT for consideration, the BOT Chair, in consultation with the Corporate Secretary, will determine whether the item will be included in the agenda.

Section 6.9

PUBLIC COMMENT

Public comment may be presented at a regular meeting upon submission of a comment card. Cards may be obtained at the meeting place and submitted no later than five (5) minutes prior to the scheduled time for commencement of the meeting, so that at the Chair's discretion, the meeting may be opened for public comment as appropriate. During the meeting, any Trustee may move to recognize individuals for purposes of commenting on agenda items under discussion. If the motion passes, comments should be limited to three (3) minutes. At the conclusion of every BOT meeting, anyone who has submitted a public comment card shall be afforded three (3) minutes to comment.

Section 6.10

MEETINGS BY MEANS OF TECHNOLOGY

Any BOT business may be conducted by telephone conference call or any other technological means as if the proceeding were held in person. The notice of any meeting conducted by means of technological communication will state where and how members of the public may gain access to the meeting.

ARTICLE VII

CODE OF ETHICS AND CONFLICT OF INTEREST

Section 7.1

CODE OF ETHICS

Article 2, Section 8 of the Florida Constitution provides that a public office is a public trust and that the people of the State of Florida shall have the right to secure and sustain that trust against abuse. As appointed public officers, Trustees stand in a fiduciary relationship to the University and the people of the State of Florida. Therefore, Trustees shall act in good faith, with due regard to the interests of the University and shall comply with the ethical principles adopted in these policies, as well as those required by law and set forth in the Code of Ethics for Public Officers and Employees, Section 112.311-112.326 of the Florida Statutes¹. To that end, the terms used in these policies and procedures are to be given the broadest definitions appropriate, so as to best implement the BOT's policy and to avoid even the appearance of impropriety in transactions and relationships involving any Trustee and as they may pertain to the University or its affiliated organizations.

Section 7.2

CONFLICT OF INTEREST POLICY

It is the policy of this Board that no Trustee may have any interest, financial or otherwise, direct or indirect; engage in any business transaction, contractual relationship or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his/her duties as it relates to the University or its affiliated organizations. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the University and the taxpayers of the State of Florida. Therefore, no Trustee may rent, lease or sell any goods, services or realty to the University or its affiliated organizations, either directly or indirectly. Furthermore, no Trustee shall participate through decision, approval, recommendation or preparation of any part of a purchase request or influence the content of any specification or procurement standard, or contract with or become the agent contracting with the University or its affiliated organizations, and no Trustee shall permit the sale or lease of anything to the University or its affiliated organizations through his or her spouse or minor children, or through any business entity of which the Trustee's spouse or minor children, in any combination, have a material interest or direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity.

¹ Pertinent sections may be found as an exhibit at the end of these policies and procedures.

Trustees shall disclose and resolve potential conflicts of interest and ethical concerns in accordance with the Code of Ethics for Public Officers and Employees, Section 112.311-112.326 of the Florida Statutes and shall disclose to the BOT any possible conflict of interest at the earliest practical time by providing written notice to the Corporate Secretary. At the next Board meeting, the notice of such conflict shall be read and the minutes of the meeting shall duly note the nature of the conflict and disclosure.

Section 7.2

Waiver of Conflict

Notwithstanding the prohibitions or requirements with respect to conflict of interest contained in Article VII, to the extent that these prohibitions or requirements may exceed the requirements of Chapter 112, the BOT may, upon motion, vote to waive such stricter prohibitions or requirements. A Trustee desiring a waiver shall submit a written request to the Corporate Secretary at least two (2) weeks prior to the BOT meeting at which the request would be considered. The written request shall outline the nature of the proposed activity that would create a conflict and an explanation of how such conflict would be managed. The Corporate Secretary shall distribute the written materials to all Trustees as far in advance of the meeting as practicable.

ARTICLE VIII

AMENDMENT OR SUSPENSION OF PROCEDURES

Section 8.1

AMENDMENTS

These policies and procedures may be amended or repealed by a majority vote of the Board members in attendance at any regular meeting, when notice of the proposed amendment or repeal is provided in the meeting notice.

Section 8.2

SUSPENSION OF OPERATING PROCEDURES

Any provision of these procedures not required by law may be suspended in connection with the consideration of a matter before the BOT by a majority vote of the Board members in attendance.

ARTICLE IX

MISCELLANEOUS

Section 9.1

INDEMNIFICATION

The BOT shall, to the extent legally permissible, indemnify and defend each of its Trustees, officers, employees, volunteers, and other agents against all liabilities and expenses incurred in connection with the disposition of defense of any action, suit or other proceeding, whether civil or criminal, in which such person may be involved by reason of university service, except with respect to any matter in which such person shall have been adjudicated in any proceeding to have acted unlawfully or not in good faith. Claims based on such actions or omissions may, in the discretion of the BOT, be settled prior to or after the filing of suit.

Section 9.2

INSURANCE

The BOT may arrange for and pay the premium for appropriate insurance to cover all losses and expenses of actions referred to in Section 9.1.

Section 9.3

LIMITATION OF LIABILITY

The BOT is a corporation primarily acting as an instrumentality or agency of the state pursuant to section 768.28(2), Florida Statutes, for purposes of sovereign immunity.

PART II

**FAU BOARD OF TRUSTEES
DEVOLUTION OF POWERS AND DUTIES**

SUMMARY OF DEVOLVED DUTIES AND POWERS

BOT DUTIES

The following summary addresses general "must statements" in the devolution process.

In general terms, the duties devolved to the Board of Trustees by the Board of Governors require that the Board of Trustees

- administer the University
- perform all duties assigned by the Board of Governors and law
- act consistent with those responsibilities.

With respect to these, the Board of Governors has stated specifically that the BOT shall

- perform duties set forth in Title *XLVIIIK- 0 Education Code of the Florida Statutes*
- act consistent with those responsibilities
- maintain an effective information system to accurately meet data and reporting requirement requirements
- ensure that the University participates fully in statewide programs that advance articulation, access, equity, financial assistance and accountability as provided by law or rule.

Following are "must statements" or duties the Board of Governors devolved to the BOT arranged by subject matter:

PLANNING AND FACILITIES:

- develop a strategic plan for recommendation to the Board of Governors
- specify institutional goals and objectives for the University
- develop an accountability plan pursuant to guidelines established by the Board of Governors and statute
- submit to the Board of Governors, for approval, plans for all new campuses and instructional centers
- prepare and adopt a campus master plan pursuant to law
- prepare, adopt, and execute a campus development agreement pursuant to law
- administer a program for the maintenance and construction of facilities pursuant to law

- implement a plan, in accordance with guidelines of the State Board of Education, for working on a regular basis with the other university boards of trustees, representatives of the community college boards of trustees, and representatives of the district school boards, to achieve the goals of the seamless education system

HAVE RESPONSIBILITY FOR:

- measuring performance
- reporting information
- providing input regarding state policy, budgeting, and education standards.

ACADEMIC AND STUDENT MATTERS:

- govern admission of students pursuant to law and rules of the Board of Governors
- establish student performance standards for the awarding of degrees and certificates
- identify core curricula and work with school districts to ensure curricula in the preparation of students for college-level work
- adopt a written anti-hazing policy, appropriate penalties for violations of such policy, and a program for enforcing such policy
- establish a committee, at least one-half of the members of which shall be students appointed by the student body president, to periodically review and evaluate the student judicial system
- adopt a policy pursuant to law that reasonably accommodates the religious observance, practice, and belief of individual students with regard to admissions, class attendance, and the scheduling of examinations and work assignments
- approve the internal procedures of student government organizations.

HAVE RESPONSIBILITY FOR:

- implementing and maintaining high quality education programs within law and rules of the Board of Governors
- establishing and discontinuing degree programs up to and including the master's degree level
- course offerings
- providing credit and non-credit educational offerings
- location or classes
- services provided and dissemination of information concerning such programs and services

- approval of new programs pursuant to criteria established by the Board of Governors
- ensuring that students have access to general education courses as identified in adopted rules
- requiring no more than 120 semester hours of coursework for baccalaureate degree programs unless approved by the Board of Governors
- ensuring that at least half of the required coursework for any baccalaureate degree is offered at the lower-division level, except in program areas approved by the Board of Governors
- policies related to students, enrollment of students, student activities and organizations, financial assistance, and other student services. Specifically:

FINANCE:

- establish tuition and fees
- submit budget requests
- account for expenditures of all state, local, federal, and other funds in the manner described by the Board of Governors
- ensure compliance with statutory requirements for utilization of minority business enterprises on procurement in amounts equal to or exceeding \$250,000.

HAVE RESPONSIBILITY FOR:

- cost-effective policy decisions appropriate to the University's mission
- the use, maintenance, protection, and control of university-owned or university-controlled buildings and grounds, property and equipment, name, trademarks and other proprietary marks, and the financial and other resources of the university.

PERSONNEL:

- establish the personnel program for all employees of the university, including the president
- evaluate the president, annually, in accordance with rules of the Board of Governors and submit such evaluations to the Board of Governors for review

HAVE RESPONSIBILITY FOR:

- supervising faculty practice plans for the academic health science centers

AFFILIATED ORGANIZATIONS:

- prescribe conditions for direct-support organizations and university health services support organizations to be certified and to use university property

and services, including audit review and oversight by the Board of Trustees.

GOVERNANCE:

- comply with state and federal laws, rules, regulations, and requirements
- provide proper governance and improvement of the university in accordance with law and with rules of the Board of Governors
- appoint a presidential search committee

BOT POWERS:

Generally, the Board of Trustees has the power and authority to:

- take action without a recommendation from the president
- require president to deliver all data and information required by the board of trustees to perform its duties
- acquire real and personal property and contract for the sale and disposal of same
- approve and execute contracts
- place restrictions on activities

Following are the powers and authority of the BOT summarized and arranged by subject matter:

PLANNING AND FACILITIES:

- restrict access to facilities, firearms, food, tobacco, alcoholic beverages, distribution of printed materials, commercial solicitation, animals and sound
- prioritize and charge for the use of space, property, equipment, and resources
- with the consent of the Board of Trustees of the Internal Improvement Trust Fund, sell, convey, transfer, exchange, trade, or purchase real property and related improvements necessary and desirable to serve the needs and purposes of the university
- secure appraisals and surveys and enter into an option contract before an appraisal is obtained

ACADEMIC AND STUDENT MATTERS:

- create divisions of sponsored research to serve the function of administration and promotion of the programs of research
- establish intra-institutional and inter-institutional programs to maximize articulation

- establish educational research centers for child development
- develop and produce work products relating to educational endeavors that are subject to trademark, copyright, or patent statutes
- consider the past actions of any person applying for admission or enrollment
- deny admission or enrollment to an applicant because of misconduct
- establish a uniform code of conduct and appropriate penalties for violations of its rules by students and student organizations, including rules governing student academic honesty.

FINANCE:

- secure comprehensive general liability insurance
- reimburse trustees for travel and per diem expenses incurred in the performance of their duties
- provide for payment of the costs of civil actions against officers, employees, or agents of the board
- accept credit card payments as compensation for goods, services, tuition, and fees
- authorize the rent or lease of parking facilities, provided that such facilities are funded through parking fees or parking fines imposed by a university and charge fees for parking at such rented or leased parking facilities.

GOVERNANCE:

- adopt rules pursuant to implement the provisions of law consistent with rules of the Board of Governors
- exercise the right of eminent domain
- bring suit or action in its own name
- govern traffic on the campus grounds
- adopt rules and procedures related to data and technology, including stems, communications systems, computer hardware and software, and networks. Such policies and procedures shall ensure that each institution participates fully and efficiently in statewide management information systems.

**BOARD OF GOVERNORS
RESOLUTION DEVOLVING
POWERS AND DUTIES
(FULL TEXT)**

**STATE OF FLORIDA
RESOLUTION**

WHEREAS, the voters of the State of Florida passed Amendment 11 to Article IX, Section 7 of the Florida Constitution thereby creating the Board of Governors; and

WHEREAS, the Board of Governors shall operate, regulate, control, and be fully responsible for the management of the whole university system; and

WHEREAS, the responsibilities of the Board of Governors include, but are not limited to:

defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges;

ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs; and

establishing the powers and duties of the boards of trustees; and

WHEREAS, the Board of Governors management is subject to the powers of the legislature to appropriate for the expenditure of funds; and

WHEREAS, the Board of Governors shall account for such expenditures as provided by law; and

WHEREAS Amendment 11 mandates that each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purposes of the state university system; and

WHEREAS, the university boards of trustees are comprised of six citizen members appointed by the Governor and five citizen members appointed by the Board of Governors. The appointed members are confirmed by the Senate. The chair of the faculty senate, or the equivalent, and the president of the Florida Student Association, or the equivalent, are also members.

NOW THEREFORE, BE IT RESOLVED, that: each local constituent university shall be administered by a board of trustees; and

BE IT RESOLVED that:

1. Members of the boards of trustees shall receive no compensation but may be reimbursed for travel and per diem expenses as provided in s. 112.061.
2. Boards of trustees' members shall serve staggered terms of five years as provided by law.
3. Each board of trustees shall select its chair and vice chair from the appointed members at its first regular meeting. The chair shall serve for 2 years and may be re-selected for one additional consecutive term. The duties of the chair shall include presiding at all meetings of the board of trustees, calling special meetings of the board of trustees, attesting to actions of the board of trustees, and notifying the

Governor in writing whenever a board member fails to attend three consecutive regular board meetings in any fiscal year, which failure may be grounds for removal. The duty of the vice chair is to act as chair during the absence or disability of the chair.

4. The university president shall serve as executive officer and corporate secretary of the board of trustees and shall be responsible to the board of trustees for all operations of the university and for setting the agenda for meetings of the board of trustees in consultation with the chair; and

BE IT RESOLVED that:

1. Each board of trustees shall be a public body corporate by the name of "The (name of university) Board of Trustees," with all the powers of a body corporate, including the power to adopt a corporate seal, to contract and be contracted with, to sue and be sued, to plead and be impleaded in all courts of law or equity, and to give and receive donations. In all suits against a board of trustees, service of process shall be made on the chair of the board of trustees or, in the absence of the chair, on the corporate secretary or designee.
2. The university boards of trustees are not departments of the executive branch of state government within the scope and meaning of s. 6, Art. IV of the State Constitution.
3. The corporation is constituted as a public instrumentality, and the exercise by the corporation of the power conferred by this section is considered to be the performance of an essential public function. The corporation shall constitute an agency for the purposes of s. 120.52. The corporation is subject to chapter 119, subject to exceptions applicable to the corporation, and to the provisions of chapter 286; however, the corporation shall be entitled to provide notice of internal review committee meetings for competitive proposals or procurement to applicants by mail or facsimile rather than by means of publication. The corporation is not governed by chapter 607, but by the provisions of this part. The corporation shall maintain coverage under the State Risk Management Trust Fund as provided in chapter 284.
4. No bureau, department, division, agency, or subdivision of the state shall exercise any responsibility and authority to operate any state university except as specifically provided by law or rules of the Board of Governors. This section shall not prohibit any department, bureau, division, agency, or subdivision of the state from providing access to programs or systems or providing other assistance to a state university pursuant to an agreement between the board of trustees and such department, bureau, division, agency, or subdivision of the state.
5. University boards of trustees shall be corporations primarily acting as instrumentalities or agencies of the state, pursuant to s. 768.28(2), for purposes of sovereign immunity; and

BE IT RESOLVED that:

1. Whenever appointed by any competent court of the state, or by any

statute, or in any will, deed, or other instrument, or in any manner whatever as trustee of any funds or real or personal property in which any of the institutions or agencies under its management, control, or supervision, or their departments or branches or students, faculty members, officers, or employees, may be interested as beneficiaries, or otherwise, or for any educational purpose, a university board of trustees is hereby authorized to act as trustee with full legal capacity as trustee to administer such trust property, and the title thereto shall vest in said board as trustee. In all such cases, the university board of trustees shall have the power and capacity to do and perform all things as fully as any individual trustee or other competent trustee might do or perform, and with the same rights, privileges, and duties, including the power, capacity, and authority to convey, transfer, mortgage, or pledge such property held in trust and to contract and execute all other documents relating to said trust property which may be required for, or appropriate to, the administration of such trust or to accomplish the purposes of any such trust.

2. Deeds, mortgages, leases, and other contracts of the university board of trustees relating to real property of any such trust or any interest therein may be executed by the university board of trustees, as trustee, in the same manner as is provided by the laws of the state for the execution of similar documents by other corporations or may be executed by the signatures of a majority of the members of the board of trustees; however, to be effective, any such deed, mortgage, or lease contract for more than 10 years of any trust property, executed hereafter by the university board of trustees, shall be approved by a resolution of the Board of Governors; and such approving resolution may be evidenced by the signature of either the chair or the secretary of the Board of Governors to an endorsement on the instrument approved, reciting the date of such approval, and bearing the seal of the Board of Governors. Such signed and sealed endorsement shall be a part of the instrument and entitled to record without further proof.
3. Any and all such appointments of, and acts by, the Board of Regents as trustee of any estate, fund, or property prior to May 18, 1949, are hereby validated, and said board's capacity and authority to act as trustee until July 1, 2001, in all of such cases is ratified and confirmed; and all deeds, conveyances, lease contracts and other contracts heretofore executed by the Board of Regents, either by the signatures of a majority of the members of the board or in the board's name by its chair or chief executive officer, are hereby approved, ratified, confirmed, and validated.
4. Nothing herein shall be construed to authorize a university board of trustees to contract a debt on behalf of, or in any way to obligate, the state; and the satisfaction of any debt or obligation incurred by the university board as trustee under the provisions of this section shall be exclusively from the trust property, mortgaged or encumbered; and nothing herein shall in any manner affect or relate to the authority of the State Board of Education; and

BE IT RESOLVED that:

1. The boards of trustees shall be responsible for cost-effective policy decisions appropriate to the university's mission, the implementation and maintenance of high quality education programs within law and rules of the

Board of Governors, the measurement of performance, the reporting of information, and the provision of input regarding state policy, budgeting, and education standards.

2. Each board of trustees is vested with the authority to govern its university, as necessary to provide proper governance and improvement of the university in accordance with law and with rules of the Board of Governors. Each board of trustees shall perform all duties assigned by law or by the Board of Governors.
3. A board of trustees shall have the power to take action without a recommendation from the president and shall have the power to require the president TO deliver to the board of trustees all data and information required by the board of trustees in the performance of its duties.
4. Each board of trustees may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it. Such rules must be consistent with rules of the Board of Governors.
5. Each board of trustees shall have the authority to acquire real and personal property and contract for the sale and disposal of same and approve and execute contracts for the purchase, sale, lease, license, or acquisition of commodities, goods, equipment, contractual services, leases of real and personal property, and construction. The acquisition may include purchase by installment or lease-purchase. Such contracts may provide for payment of interest on the unpaid portion of the purchase price. Title to all real property acquired prior to January 7, 2003, and to all real property acquired with funds appropriated by the Legislature shall be vested in the Board of Trustees of the Internal Improvement Trust Fund and shall be transferred and conveyed by it. Notwithstanding any other provisions of this subsection, each board of trustees shall comply with the provisions of s. 287.055 for the procurement of professional services as defined therein.
6. Each board of trustees shall have responsibility for the use, maintenance, protection, and control of university-owned or university-controlled buildings and grounds, property and equipment, name, trademarks and other proprietary marks, and the financial and other resources of the university. Such authority may include placing restrictions on activities and on access to facilities, firearms, food, tobacco, alcoholic beverages, distribution of printed materials, commercial solicitation, animals, and sound. The authority vested in the board of trustees in this subsection includes the prioritization of the use of space, property, equipment, and resources and the imposition of charges for those items.
7. Each board of trustees has responsibility for the establishment and discontinuance of degree programs up to and including the master's degree level; the establishment and discontinuance of course offerings; provision of credit and noncredit educational offerings; location of classes; services provided; and dissemination of information concerning such programs and services. Approval of new programs must be pursuant to criteria established by the Board of Governors.
8. Each board of trustees is authorized to create divisions of sponsored research pursuant to the provisions of s. 1011.411 to serve the function of administration and promotion of the programs of research.

9. Each board of trustees has responsibility for ensuring that students have access to general education courses as identified in rule and requiring no more than 120 semester hours of coursework for baccalaureate degree programs unless approved by the Board of Governors. At least half of the required coursework for any baccalaureate degree must be offered at the lower-division level, except in program areas approved by the Board of Governors.
10. Each board of trustees has responsibility for policies related to students, enrollment of students, student activities and organizations, financial assistance, and other student services. Specifically:
 - (a) Each board of trustees shall govern admission of students pursuant to s. 1007.261 and rules of the Board of Governors. Each board of trustees may consider the past actions of any person applying for admission or enrollment and may deny admission or enrollment to an applicant because of misconduct if determined to be in the best interest of the university.
 - (b) Each board of trustees shall establish student performance standards for the award of degrees and certificates.
 - (c) Each board of trustees must identify its core curricula and work with school districts to ensure that its curricula coordinate with the core curricula and prepare students for college-level work.
 - (d) Each board of trustees must adopt a written anti-hazing policy, appropriate penalties for violations of such policy, and a program for enforcing such policy.
 - (e) Each board of trustees may establish a uniform code of conduct and appropriate penalties for violations of its rules by students and student organizations, including rules governing student academic honesty. Such penalties, unless otherwise provided by law, may include fines, the withholding of diplomas or transcripts pending compliance with rules or payment of fines, and the imposition of probation, suspension, or dismissal.
 - (f) Each board of trustees shall establish a committee, at least one-half of the members of which shall be students appointed by the student body president, to periodically review and evaluate the student judicial system.
 - (g) Each board of trustees must adopt a policy pursuant to s. 1006.53 that reasonably accommodates the religious observance, practice, and belief of individual students in regard to admissions, class attendance, and the scheduling of examinations and work assignments.
 - (h) A board of trustees may establish intra-institutional and inter-institutional programs to maximize articulation pursuant to s. 1007.22.
 - (i) Each board of trustees shall approve the internal procedures of student government organizations.
11. Each board of trustees shall establish fees pursuant to ss. 1009.24 and 1009.26.

12. Each board of trustees shall submit an institutional budget request, including a request for fixed capital outlay, and an operating budget to the Board of Governors for approval in accordance with guidelines established by the Board of Governors.
13. Each board of trustees shall account for expenditures of all state, local, federal, and other funds in the manner described by the Board of Governors.
14. Each board of trustees shall develop a strategic plan specifying institutional goals and objectives for the university for recommendation to the Board of Governors.
15. Each board of trustees shall develop an accountability plan pursuant to guidelines established by the Board of Governors and statute.
16. Each board of trustees shall maintain an effective information system to provide accurate, timely, and cost-effective information about the university, and shall ensure that all data and reporting requirements of the Commissioner are met.
17. Each board of trustees is authorized to secure comprehensive general liability insurance pursuant to s. 1004.24.
18. Each board of trustees may provide for payment of the costs of civil actions against officers, employees, or agents of the board pursuant to s. 1012.965.
19. Each board of trustees shall establish the personnel program for all employees of the university, including the president, pursuant to the provisions of chapter 1012 and, in accordance with rules and guidelines of the Board of Governors, including: compensation and other conditions of employment, recruitment and selection, non-reappointment, standards for performance and conduct, evaluation, benefits and hours of work, leave policies, recognition and awards, inventions and works, travel, learning opportunities, exchange programs, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure and permanent status, ethical obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment. The Department of Management Services shall retain authority over state university employees for programs established in ss. 110.123, 110.1232, 110.1234, and 110.1238 and in chapters 121, 122, and 238. No rule of the Board of Governors shall be considered to in any way contravene the responsibility of each of the university board of trustees to act as the sole public employer with regard to all public employees of its universities for the purposes of collective bargaining in accord with chapter 447 Florida Statutes.
20. Each board of trustees may consider the past actions of any person applying for employment and may deny employment to any person because of misconduct if determined to be in the best interest of the university.
21. Each board of trustees shall appoint a presidential search committee to make recommendations to the full board of trustees, from which the board of trustees may select a candidate for ratification by the Board of Governors.
22. Each board of trustees shall conduct an annual evaluation of the

president in accordance with rules of the Board of Governors and submit such evaluations to the Board of Governors for review. The evaluation must address the achievement of the performance goals established by the accountability process implemented pursuant to s. 1008.46 and the performance of the president in achieving the annual and long-term goals and objectives established in the institution's employment equity accountability program implemented pursuant to s. 1012.95.

23. Each board of trustees constitutes the contracting agent of the university.
24. Each board of trustees may enter into agreements for, and accept, credit card payments as compensation for goods, services, tuition, and fees.
25. Each board of trustees may establish educational research centers for child development pursuant to s. 1011.48.
26. Each board of trustees may develop and produce work products relating to educational endeavors that are subject to trademark, copyright, or patent statutes pursuant to s. 1004.23.
27. Each board of trustees shall submit to the Board of Governors, for approval, plan; for all new campuses and instructional centers.
28. Each board of trustees shall administer a program for the maintenance and construction of facilities pursuant to chapter 1013.
29. Each board of trustees shall ensure compliance with the provisions of s. 287.09451 for all procurement and ss. 255.101 and 255.102 for construction contracts, and rules adopted pursuant thereto, relating to the utilization of minority business enterprises, except that procurements costing less than the amount provided for in CATEGORY FIVE as provided in s. 287.017 shall not be subject to s. 287.09451.
30. Each board of trustees may exercise the right of eminent domain pursuant to the provisions of chapter 1013. Any suits or actions brought by the board of trustees shall be brought in the name of the board of trustees, and the Department of Legal Affairs shall conduct the proceedings for, and act as the counsel of, the board of trustees.
31. Notwithstanding the provisions of s. 253.025, each board of trustees may, with the consent of the Board of Trustees of the Internal Improvement Trust Fund, sell, convey, transfer, exchange, trade, or purchase real property and related improvements necessary and desirable to serve the needs and purposes of the university.

(a) The board of trustees may secure appraisals and surveys. The board of trustees shall comply with the rules of the Board of Trustees of the Internal Improvement Trust Fund in securing appraisals. Whenever the board of trustees finds it necessary for timely property acquisition, it may contract, without the need for competitive selection, with one or more appraisers whose names are contained on the list of approved appraisers maintained by the Division of State Lands in the Department of Environmental Protection.

(b) The board of trustees may negotiate and enter into an option contract before an appraisal is obtained. The option contract must state that the final

purchase price may not exceed the maximum value allowed by law. The consideration for such an option contract may not exceed 10 percent of the estimate obtained by the board of trustees or 10 percent of the value of the parcel, whichever is greater, unless otherwise authorized by the board of trustees.

(c) This subsection is not intended to abrogate in any manner the authority delegated to the Board of Trustees of the Internal Improvement Trust Fund or the Division of State Lands to approve a contract for purchase of state lands or to require policies and procedures to obtain clear legal title to parcels purchased for state purposes. Title to property acquired by a university board of trustees prior to January 7, 2003, and to property acquired with funds appropriated by the Legislature shall vest in the Board of Trustees of the Internal Improvement Trust Fund.

32. Each board of trustees shall prepare and adopt a campus master plan pursuant to s. 1013.30.
33. Each board of trustees shall prepare, adopt, and execute a campus development agreement pursuant to s. 1013.30.
34. Each board of trustees has responsibility for compliance with state and federal laws, rules, regulations, and requirements.
35. Each board of trustees may govern traffic on the grounds of that campus pursuant to s. 1006.66.
36. A board of trustees has responsibility for supervising faculty practice plans for the academic health science centers.
37. Each board of trustees shall prescribe conditions for direct-support organizations and university health services support organizations to be certified and to use university property and services. Conditions relating to certification must provide for audit review and oversight by the board of trustees.
38. Each board of trustees shall actively implement a plan, in accordance with guidelines of the State Board of Education, for working on a regular basis with the other university boards of trustees, representatives of the community college boards of trustees, and representatives of the district school boards, to achieve the goals of the seamless education system.
39. Notwithstanding the provisions of s. 216.351, a board of trustees may authorize the rent or lease of parking facilities, provided that such facilities are funded through parking fees or parking fines imposed by a university. A board of trustees may authorize a university to charge fees for parking at such rented or leased parking facilities.
40. Each board of trustees may adopt rules and procedures related to data and technology, including information systems, communications systems, computer hardware and software, and networks. Such policies and procedures shall ensure that each institution participate fully and efficiently in statewide management information systems.
41. Each board of trustees shall ensure that each institution participates fully in statewide programs that advance articulation, access, equity, financial

assistance and accountability as provided by law or rule.

42. A board of trustees shall perform such other duties as are provided by law or by the Board of Governors; and

BE IT RESOLVED that in addition to the duties and responsibilities of the boards of trustees enumerated herein, the universities shall have those duties and responsibilities specifically set forth in the K-20 Education Code, Title XLVIII Florida Statutes and shall act consistent with those responsibilities; and

BE IT RESOLVED that if previously adopted rules conflict with or contravene this resolution, the provisions of this resolution shall prevail; and

BE IT RESOLVED that it is the intent of the Board of Governors that the university boards of trustees shall be the sole public employers with respect to all public employees of the respective state universities as provided in s. 447.203(2) and (10) F.S. for the purpose of collective bargaining, and no rule previously adopted by the Board of Governors shall contravene this intent or shall be in conflict with the boards of trustees adoption of rules in furtherance of their responsibilities as public employers; and

BE IT RESOLVED that IF any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase, or portion thereof

PASSED AND ADOPTED by the Board of Governors of the State of Florida at a public meeting thereof duly called and held this 7th day of January 2003.

PART III

CONSTITUTION, STATUTES, AND RULES

**FLORIDA ADMINISTRATIVE CODE
FLORIDA ATLANTIC UNIVERSITY
ETHICS RULE
6C5-5.013**

FLORIDA ADMINISTRATIVE CODE
TITLE 06. DEPARTMENT OF EDUCATION
SUBTITLE 6C5. FLORIDA ATLANTIC UNIVERSITY

CHAPTER 6C5-5. PERSONNEL

6C5-5.013. University Ethics.

(1) State Code of Ethics

The Code of Ethics for Public Officers and Employees, Chapter 112, Part 3, Florida Statutes, is a part of the law of the State of Florida. The Code of Ethics declares that it is the policy of the state that no employee of a state agency may 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/her duties in the public interest. The University adopts and reaffirms the State Code of Ethics and further adopts the following supplementary policies as part of the FAU Ethics Rule. The terms used are to be given the broadest definitions appropriate, so as to best implement the state policy and to evade even the appearance of impropriety in transactions and relationships involving University employees.

(2) Collective Bargaining Agreements

This rule applies to all University employees. The provisions of this rule are subject to applicable provisions of collective bargaining agreements. In the event of conflict between this rule and a collective bargaining agreement, the provisions of the collective bargaining agreement shall prevail.

(3) Purchasing Activities

(a) Application. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the University and the taxpayers of the State of Florida. All University personnel engaged in purchasing activities including, but not limited to the President, Vice President, Deans, Chairpersons, Directors, Budget Committee Members, Initiators of Requirements, Receiving Personnel, Recommending Advisors, Finance and Accounting, Purchasing Agents, and all persons involved in purchasing activities, and their Supervisors, are bound by the standards of conduct for public officers and employees set forth in Chapter 112, Part 3, Florida Statutes.

(b) All employees. No full or part-time University employee may rent, lease or sell any goods, services or realty to the University, either directly, indirectly.

(c) Employees Involved in Purchasing. No full or part-time University employee who participates through decision, approval, recommendation or preparation of any part of a purchase request or who influences the content of any specification or procurement standard, may contract with or become the agent contracting with the University. Nor shall such an employee permit the sale or lease of anything to the University through the employee's spouse or minor children, or through any business entity of which the employee's spouse or minor children, in any combination, have a material interest. "Material interest" is defined as having direct or indirect ownership of more than 5 percent

of the total assets or capital stock of any business entity.

(4) Conflicts of Interest

(a) No University employee may have outside employment or a contractual relationship with any business entity which is doing business with the University, whether compensated or uncompensated, which would create a continuing or frequently recurring conflict between private interests and the full and faithful performance of the employee's public duties.

(b) No University employee may solicit or accept anything of value, including gifts, loans, rewards, promise of future employment, favor or service the employee knows or should have known that it was given to influence the judgment or official action of the employee.

(c) The University reserves the right to refrain from contracting with any vendor of goods or services if it determines that such a contract would involve or would appear to involve a conflict of interest.

(5) Exemptions: University employees may be exempted by the University from the foregoing prohibitions against doing business with the University, if:

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

1. The employee or the employee's spouse or child has in no way used or participated in the determination of the bid specifications for the determination of the lowest or best bidder;

2. The employee or the employee's spouse or child has in no way used or attempted to use influence to persuade the University or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

3. The employee, prior to or at the time of the submission of the bid, has filed a statement with the Department of State, disclosing the interest of the employee or the employee's spouse or child, and the nature of the intended business.

(b) An emergency purchase or contract which would otherwise violate this Code of Ethics must be made in order to protect the health, safety, or welfare of the citizens of the state.

(c) The business entity involved is the only source of supply and there is full disclosure of the employee of his or her interest in the business entity to the University prior to the business being transacted. Additional documentation may be required to verify sole source purchases.

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

(e) The employee is engaged in research and development pursuant to a University copyright or patent, or under the auspices of the University's Division of Sponsored Research. Such transaction must be approved by the President and the Chancellor and reported to the Governor and the Legislature.

(f) As a matter of policy, exemptions will not be approved by the University if other means of procurement of goods or services are available and more appropriate.

(6) Outside Employment, Business and Professional Activities

(a) All Faculty and Administrative and Professional Employees.

1. It is the obligation of each faculty and staff member to keep the Chairman or Supervisor informed in detail as to all outside employment. Keeping the Supervisor informed, however, does not relieve the faculty or staff member of final responsibility for his or her actions. The attention of faculty members is directed to the possibility of conflict of interest between their outside activities and work at the University.

2. This University subscribes in principle to the statement on this subject by the American Council on Education and the American Association of University Professors. Before assuming outside employment, business or professional activities, the University faculty or staff member shall complete a University Outside Activity Form and submit it to his or her Department or Supervisor. Approval of Outside Activities is granted for a period not to exceed one year.

3. In general, outside activities shall not require absence from assigned duties. Situations which are not satisfactorily resolved between a faculty or staff member and the appropriate Chairman or Supervisor may be referred or appealed through normal administrative channels.

4. Any University employee who proposes to engage in outside employment or any continuing business activity shall obtain approval, in writing, as far in advance as is practical. The request for approval shall include at a minimum the name of the proposed employer, or recipient of services and funding source; the location where such activity will be performed, the nature and extent of the activity; and any intended use of University facilities, equipment, or services. The employee shall inform the Supervisor of any changes in outside activities prior to engaging in the change. University Outside Activity Forms are public records under the laws of Florida.

5. If the request for approval of outside activities includes an intended use of University facilities, equipment, or personnel, approval may be conditioned upon reimbursement to the University for any additional costs resulting from such use. Outside activities may be approved without approval of the use of University facilities, equipment, or personnel.

(b) In-Unit Faculty and Administrative and Professional Employees.

1. In-Unit Faculty and Administrative and Professional Employees may undertake outside employment pursuant to the provisions of applicable collective bargaining agreements.

2. A University Outside Activities Form must be filed prior to undertaking outside activities

a. If any employee is compensated for outside professional activities, or,

b. If one could reasonably conclude that the activity could create conflict of interest, or which could otherwise interfere with the full performance of the employee's professional or institutional responsibilities.

(c) University Support Personnel Service Employees Student Employees and Others.

1. University's Support Personnel Service employees, student employees and all other part-time University employees not mentioned in (a) and (b) above, may undertake outside employment or business or professional activities provided it does not interfere with the regular work of the employee and does not result in any conflict of interest between the outside activity and the employee's responsibility to the University.

2. It is the obligation of the employee to inform his/her Supervisor in writing on the University Outside Activity Form as to all outside employment, professional and business activities, if one could reasonably conclude that the activity is likely to create a conflict of interest or the appearance of conflict of interest, interfere with the full performance of the employee's duties, if the business entity, which the employee proposes to be employed by or to contract with, does business with the University.

(7) Use of University Name and Symbols

No employee shall claim to represent the University or use University letterhead or the University seal, logos, or other marks in connection with any outside employment or activity, unless authorized in writing to do so, by the University President or the President's representative.

(8) Faculty Produced Books and Materials

(a) An employee may procure copyrights, and receive the royalties resulting there from, for the employee's products, provided (a) the ideas came from the employee, (b) the products were the result of the employee's independent labors, and (c) the University was not held responsible for any opinions expressed therein. If the products were in any way supported by University funds, personnel, facilities equipment, or materials, the employee shall report to the President or representative the employee's interest in having the product copyrighted.

(b) University faculty members are expected to be eminent in their areas of expertise. Faculty members are also encouraged to engage in creative pursuits and to publish the products of those pursuits. The result is that the best text for use in a faculty member's class is often written by the faculty member. A faculty member may require students to buy textbooks he or she has written provided that textbook has been published by a nationally recognized, commercial book company other than vanity press companies. The decision of the College Dean as to whether a company is a vanity press company shall be binding upon the college.

(c) Faculty members may require students in their classes to buy course manuals, studies guides, and other materials prepared by the faculty member if such materials are produced off campus, comply with copyright laws, and are offered for sale by the University Bookstore or if the materials are produced and sold by the University Copy Center. The charges to students for these materials will cover only the cost of producing and distributing the material and must be approved by the Department Chairperson and College Dean.

(d) Faculty members may not sell books or materials to the University except

in conformity with other provisions of the University Ethics Rule.

9) Disciplinary Actions

University employees who are determined by the University President to have violated the Ethics Rules are subject to disciplinary action. Actions may include penalties specified by law, such as dismissal, suspension, demotion, reduction in salary, forfeiture of salary, restitution, public censure, and reprimand, or such other actions as may be deemed appropriate by the University President.

Specific Authority 120.53(5), 240.227(1) FS. *Law Implemented* Chapter 112, Part III, 240.229, 240.241, 287.055, 287.057, 287.062 FS. History-New 11-11-87.

6FLADC6C5-5.013

END OF DOCUMENT

FLORIDA CONSTITUTION
ARTICLE 2, SECTION 8
ETHICS

Article 2, SS 8:

A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

(b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.

(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

(e) No member of the legislature 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 two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

(g) A code or ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(h) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(i) Schedule-On the effective date of this amendment and until changed by law:

"Text of par. (1), introductory paragraph, effective until Jan. 7, 2003

(1) Full and public disclosure of financial interests shall mean filing with the secretary of state by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

Text of par. (1), introductory paragraph, effective Jan. 7, 2003

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one

of the following:

a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

(2) Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to subsection (i)(1)

(3) The independent commission provided for in subsection (f) shall mean the Florida Commission on Ethics."

END OF DOCUMENT

FLORIDA STATUTES
CHAPTER 112
PUBLIC OFFICERS AND EMPLOYEES:
GENERAL PROVISIONS

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.

END OF DOCUMENT

112.312 Definitions

As used in this part and for purposes of the provisions of Section 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 Section 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 venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co owner 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 Section 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 Section 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 Section 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.

(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,

campaign- related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.

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 Section 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 Section 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 abider 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.

END OF DOCUMENT

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 Division of Universities of the Department of Education;
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(3), of individuals whose employment would be otherwise prohibited by this section.

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

END OF DOCUMENT

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 Section 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 Section 163.356 or Section 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 or 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.

END OF DOCUMENT

112.3144 Full and Public Disclosure of Financial Interests

(1) An officer who is required by Section 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 Section 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 Section 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) Forms for compliance with the full and public disclosure requirements of Section 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 Section 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 Section 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 Section 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 (5).

(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 Banking and Finance 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 Section 17.20.

(5) 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 Section 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.

(6) 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. 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.

END OF DOCUMENT

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 Section 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. 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 Section 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 Regents, [FN1] 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 Section 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 institutional 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 Section 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 Section 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 to such 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 Section 112.317.

(d) Not 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 Section 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 Section 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 Banking and Finance 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 Section 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.

[FN-1] Abolished by Laws 2001, c. 2001-170, § 3

END OF DOCUMENT

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.

END OF DOCUMENT

112.3147 Forms

(1) All information required to be furnished by Section 112.313 112.3143, 112.3144, 112.3145, 112.3148, and 112.3149 and by Section 8, Art. II of the State Constitution shall be on forms prescribed by the Commission on Ethics.

(2)(a) With respect to reporting assets valued in excess of \$1,000 on forms prescribed pursuant to Section 112.3144 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, except that assets held jointly with the reporting individual's spouse shall be reported a 100 percent of the value of the asset. For purposes of this subsection, a reporting individual is deemed to own an interest in a partnership which corresponds 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 pursuant to Section 112.3144 for which the reporting individual is jointly and severally liable, the amount reported shall be based upon the reporting individual's percentage of liability rather than the total amount of the liability except, a joint and several liability with the reporting individual's spouse for a debt which relates to property owned by both as tenants by the entirety shall 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 paragraph (a).

END OF DOCUMENT

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 decision-making 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 decision-making 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 Section 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 Section 8, Art. II of the State Constitution or Section 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 Section 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

Section 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 Section 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 Section 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 Section 373.069, Tri-County Commuter Rail 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 Section 373.069, Tri-County Commuter Rail 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) Not 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) Not 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 such 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 Section 8, Art. II of the State Constitution or Section 112.3145, as applicable to the reporting individual. The annual report filed by a procurement employee shall be filed 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 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 Section 112.061(6)(a)1. less the meal allowance rate provided in Section 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 on 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 Section 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) 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 Section 11.045, who violates the provisions of subsection (5) commits a non-criminal 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.

END OF DOCUMENT

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 Section 8, Art. II of the State Constitution or Section 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 decision-making 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 decision-making 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 Section 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 Section 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 Section 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 Section 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 such 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 said or provided during the calendar year for which the annual statement is filed. Such 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 Section 8, Art. II of the State Constitution or Section 112.3145, as applicable to the reporting individual. The annual statement of a procurement employee shall be filed with the Commission on Ethics.

(7) A person, other than a lobbyist regulated under Section 11.045, who violates the provisions of subsection (4) commits a non-criminal 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.

END OF DOCUMENT

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 Section 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.

END OF DOCUMENT

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.

END OF DOCUMENT

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 Section 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 Sections 838.15 and 838.16;
5. The committing of an impeachable offense; or
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.

(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 non-employer 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.

END OF DOCUMENT

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.

END OF DOCUMENT

112.3185 Contractual services

(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) No 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 shall become or be, while an agency employee, the employee of a person contracting with the agency by whom the employee is employed.

(3) No agency employee shall, 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.

(4) No agency employee shall, 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.

(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. The provisions of 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) No agency employee acting in an official capacity shall 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 such 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 Section 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.

END OF DOCUMENT

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.

(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 Section 112.3189(1) or inspectors general under Section 20.055, the Florida Commission on Human Relations, and the whistle-blower's hotline created under Section 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 Section 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 Section 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 Section 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 Section 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 Section 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 Section 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 Section 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 Section 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 Section 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 Section 447.401 also applies to whistle-blower actions.

END OF DOCUMENT

112.3188 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 Section 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 Section 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 Section 112.3187(8)(b) is confidential and exempt from Section 119.07(1) and Section 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 Section 119.011.

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

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

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

c. A final decision has been rendered by the local government or by the Division of Administrative Hearings pursuant to Section 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 Section 775.082 or Section 775.083.

END OF DOCUMENT

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 or 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 in 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, to the Joint Legislative Auditing Committee, to the investigating agency, and to the Comptroller.

(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.

END OF DOCUMENT

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 ins. 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.

(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 Comptroller. 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.--

(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.

END OF DOCUMENT

112.3191 Short Title

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

END OF DOCUMENT

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.

END OF DOCUMENT

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. All members shall serve two-year terms. No member shall 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 one-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.

END OF DOCUMENT

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 decision-making 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.

END OF DOCUMENT

112.3215 Lobbyists 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 Section 2, Art. XI of the State Constitution.

(b) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying.

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

(d) "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 non-action through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.

(e) "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(1)(a).

(f) "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 registration shall require the 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) A registered lobbyist must also submit to the commission, biannually, a signed expenditure report summarizing all lobbying expenditures by the lobbyist and the principal for each 6-month period during any portion of which the lobbyist is registered. All expenditures made by the lobbyist and the principal for the purpose of lobbying must be reported. Reporting of expenditures shall be on an accrual basis. The report of such expenditures must identify whether the expenditure was made directly by the lobbyist, directly by the principal, initiated or expended by the lobbyist and paid for by the principal, or initiated or expended by the principal and paid for by the lobbyist. The principal is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the principal. The lobbyist is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the lobbyist. Expenditures made must be reported by the category of the expenditure, including, but not limited to, the categories of food and beverages, entertainment, research, communication, media advertising, publications, travel, and lodging. Lobby expenditures do not include a lobbyist's or principal's salary, office expenses, and personal expenses for lodging, meals, and travel.

(b) A principal who is represented by two or more lobbyists shall designate one lobbyist whose expenditure report shall include all lobbying expenditures made directly by the principal and those expenditures of the designated lobbyist on behalf of that principal as required by paragraph (a). All other lobbyists registered to represent that principal shall file a report pursuant to paragraph (a). The report of lobbying expenditures by the principal shall be made pursuant to the requirements of paragraph (a). The principal is responsible for the accuracy of figures reported by the designated lobbyist as lobbying expenditures made directly by the principal. The designated lobbyist is responsible for the accuracy of the figures reported as lobbying expenditures made by that lobbyist.

(c) For each reporting period the commission shall aggregate the expenditures of all lobbyists for a principal represented by more than one lobbyist. Further, the commission shall aggregate figures that provide a cumulative total of expenditures reported as spent by and on behalf of each principal for the calendar year.

(d) The reporting statements shall be filed no later than 45 days after the end of each reporting period and shall include the expenditures for the period from January 1 through June 30, and July 1 through December 31, respectively.

(e) Reports shall be filed no later than 5 p.m. of the report due date. However, any report that is postmarked by the United States Postal Service no later than midnight of the due date shall be 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, shall be proof of mailing in a timely manner.

(f) The commission shall provide by rule a procedure by which a lobbyist who fails to timely file a report shall be notified and assessed 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 lobbyist 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 report is postmarked.

c. When the certificate of mailing is dated.

d. When the receipt from an established courier company 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 lobbyist the first time any reports for which the lobbyist is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbyist 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 lobbyist 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 lobbyist 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 lobbyist to file a report after notice or of the failure of a

lobbyist to pay the fine imposed.

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 lobbyist's appeal shall be collected by the Department of Banking and Finance 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.

(g) The commission shall adopt a rule which allows reporting statements to be filed by electronic means, when feasible.

(h) Each lobbyist 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 lobbying expenditures. Any documents and records retained pursuant to this section may be inspected under reasonable circumstances by any authorized representative of the commission. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction.

(6) 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. Each lobbyist is responsible for filing an expenditure report for each period during any portion of which he or she was registered, and each principal is responsible for seeing that an expenditure report is filed for each period during any portion of which the principal was represented by a registered lobbyist.

(7) 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 an expenditure report, or has knowingly submitted false information in any report or registration required in this section. All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and Section 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of Section 286.011(1) and Section 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.

(8) 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 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.

(9) 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.

(10) 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.

(11) 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.

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

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

END OF DOCUMENT

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 Section 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.

END OF DOCUMENT

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.

END OF DOCUMENT

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.

END OF DOCUMENT

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.

END OF DOCUMENT