CHAPTER 34-12
EXECUTIVE BRANCH LOBBYIST REGISTRATION

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34-12.010 Purpose and Scope of Rules.

(1) The purpose of this chapter is to implement the provisions of Section 112.3215, F.S.

(2) The rules of this chapter shall apply to the functions and proceedings of the Commission on Ethics under Section 112.3215, F.S., including registration of persons who lobby agencies of the Executive Branch or the Constitution Revision Commission, reports which must be filed by lobbying firms, opinions which may be requested from the Commission concerning the application of Section 112.3215, F.S., and proceedings involving complaints of a violation of the provisions of Section 112.3215, F.S. The rules do not apply to any of the other functions of the Commission under Article II, Section 8, Florida Constitution, under Part III, Chapter 112, F.S., or under provisions of law other than Section 112.3215, F.S.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 1-4-94, 7-2-00, 6-15-06.

34-12.015 Prohibitions.

(1) No lobbyist or principal shall make, directly or indirectly, and no agency official or employee shall knowingly accept, directly or indirectly, any expenditure made for the purpose of lobbying.

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

(3) No person who is a "lobbyist" as defined in Section 112.3215(1)(h), F.S., and this rule chapter may lobby an agency until such person has registered as a lobbyist with the Commission.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 6-15-06.

34-12.020 Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Agency" means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the Executive Branch, or the Constitution Revision Commission.

(2) "Agency official or employee" means an officer, employee, or other individual of the Executive Branch or the Constitution Revision Commission who is required by law to file full (CE Form 6) or limited (CE Form 1) public disclosure of his or her financial interests, but does not mean officers or employees of political subdivisions of the State.

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

(4) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal, directly or indirectly, for the purpose of lobbying. A contribution to a political party regulated under Chapter 103, F.S., or a contribution or an expenditure reported pursuant to Chapter 106, F.S., or its federal law counterpart, is not an expenditure for purposes of Section 112.3215, F.S., and this rule chapter.

(5) "Governmental entity" includes water management districts, regional planning councils, community college districts, counties, municipalities, special districts, and other political subdivisions of the State.

(6) "Lobbies" or "lobbying" 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.

(7) "Lobbying firm" means a business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business is a lobbyist. An association, a governmental entity, a corporation, or other business entity that does not derive compensation from principals for lobbying is not a "lobbying firm," and neither are its employee-lobbyists considered to be a "lobbying firm."

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

(9) "Policy" means a plan or course of action which is applicable to a class of persons, proceedings, or other matters, and which is designed to influence or determine the subsequent decisions and actions of an agency, such as any plan or course of action which would constitute a "rule" as defined in Section 120.52, F.S. The term does not include the adjudication or determination of any rights, duties, or obligations of a person made on a case-by-case basis, such as would be involved in the issuance or denial of a license, permit, or certification or in a disciplinary action or investigation involving a person.

(10) "Principal" means the person, firm, corporation, governmental entity, or other entity which has employed or retained a lobbyist. When an association has employed or retained a lobbyist, the association is the principal. The members of the association are not principals of the lobbyist merely because of their membership in the association.

(11) "Procurement" means the purchase or acquisition of any property, interest in property, or services by an agency.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 1-4-94, 7-2-00, 6-15-06.

34-12.030 Computation of Time.

In computing any period of time prescribed or allowed by these rules, by order of a presiding officer, or by any applicable statute, the time period shall be calculated in accordance with Rule 28-106.103, F.A.C.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 6-28-98.

34-12.100 "Lobbyist" Defined.

As used in this chapter and except as excluded in this chapter, "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 an agency on behalf of that other person or governmental entity.

(1) An employee of a principal is not a "lobbyist" unless the employee is principally employed for governmental affairs. "Principally employed for governmental affairs" means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

(2) One who is not an employee of a principal is a "lobbyist" if he is retained as an independent contractor or otherwise for payment or economic consideration by a person or governmental entity to lobby an agency on behalf of that person or governmental entity.

(3) If a corporation, partnership, firm, or other business organization is retained for payment or economic consideration to lobby an agency on behalf of another person or governmental entity, only the members, partners, associates, or employees of the organization who personally lobby in behalf of that person or governmental entity are "lobbyists."

(4) A person who lobbies an agency in behalf of himself or in behalf of a business entity in which he has an ownership interest is not a "lobbyist" unless he comes within one of the above descriptions.

(5) The terms "payment" or "economic consideration" do not include receiving only reimbursement for actual travel, lodging, and meal expenses.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 1-4-94, 1-1-97, 6-15-06.

34-12.110 Exclusions for Judicial Proceedings.

"Lobbyist" does not include an attorney or any other person who represents a client in a judicial proceeding.

(1) Representation of a client in a judicial proceeding includes all oral and written communications with an agency or any of its representatives which relate to the proceeding.

(2) For purposes of this rule, a judicial proceeding does not commence until a complaint, petition, indictment, information, or other pleading initiating the proceeding has been filed. Therefore, an attorney or other person representing a client who lobbies an agency regarding matters which in the future may result in a judicial proceeding may be a "lobbyist" for purposes of this chapter if he is seeking to influence the agency with respect to a decision of the agency in the area of "policy," as defined in subsection 34-12.020(9), F.A.C.

(3) A judicial proceeding is not concluded until the court or tribunal loses jurisdiction over the proceeding. Therefore, an

attorney or other person who represents a client before an executive branch agency regarding matters on which a court or judicial tribunal has jurisdiction to take action is not a "lobbyist."

(4) A "judicial proceeding" includes a proceeding before a judge of compensation claims involving workers' compensation or birth-related neurological injuries.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89.

34-12.120 Exclusions for Administrative Proceedings as to Lobbying Activities Involving Water Management Districts.

"Lobbyist" does not include an attorney or other person who represents a client in a formal administrative proceeding conducted pursuant to Chapter 120, F.S., or in any other formal hearing before an agency.

(1) Formal administrative proceedings conducted pursuant to Chapter 120, F.S., and other formal hearings before an agency include:

(a) Formal and informal proceedings under Sections 120.569 and 120.57, F.S., after the filing of a petition or request for hearing which initiates the proceeding;

(b) Rule challenge proceedings under Section 120.56, F.S., after the filing of the petition or request with the Division of Administrative Hearings;

(c) Declaratory statement proceedings under Section 120.565, F.S., after the filing of the petition for a declaratory statement;

(d) Bid protest proceedings under Section 120.57(3), F.S., after the filing of a formal written protest; and

(e) All other hearings of an agency of a similar nature to a hearing governed by a provision of Chapter 120, F.S., after the filing of the petition, complaint, or request which initiates the proceeding.

(f) An attorney or other person representing a client who lobbies an agency regarding matters which in the future may result in an administrative proceeding described in paragraphs (a) through (e) above may be a "lobbyist" for purposes of this chapter if he is seeking to influence the agency with respect to a decision of the agency in the area of "policy," as defined in subsection 34-12.020(9), F.A.C.

(2) Representation of a client in one of the types of administrative proceedings and formal hearings described in subsection (1) includes all oral and written communications with an agency or any of its representatives which relate to the proceeding or hearing.

(3) An appearance in behalf of a client at a publicly noticed hearing or workshop conducted by the agency regarding a proposed agency rule constitutes the representation of a client in a formal hearing before the agency. However, communications with agency personnel in behalf of a client which seek to influence the agency's decision regarding the proposed rule and which are outside of such a hearing or workshop are not exempted on this basis.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented Chapter 2014-183, Section 6, LOF, 112.3215, 112.3261 FS. History–New 10-12-89.

34-12.125 Exclusions for Administrative Proceedings.

[Notice: This rule replaces Rule 34-12.120, F.A.C., except with respect to lobbying activities involving water management districts. Chapter 2014-183, Section 6, Laws of Florida, created Section 112.3261, F.S., "Lobbying before water management districts; registration." That section provides that "lobbies" means seeking, on behalf of another person, to influence a water management district with respect to a decision of the district in an area of policy or procurement or an attempt to obtain the goodwill of a district official or employee. The term "lobbies" shall be interpreted and applied consistently with the rules of the commission implementing Section 112.3215, F.S. As Rule 34-12.125, F.A.C., was not in existence when the Legislature enacted Section 112.3261, F.S., on May 2, 2014, the rule is not incorporated by reference into Section 112.3261, F.S.]

"Lobbyist" does not include an attorney or other person who represents a client in a formal administrative proceeding conducted pursuant to Chapter 120, F.S., or in any other formal hearing before an agency.

(1) Formal administrative proceedings conducted pursuant to Chapter 120, F.S., and other formal hearings before an agency include:

(a) Formal and informal proceedings under Sections 120.569 and 120.57, F.S., after the filing of a petition or request for hearing which initiates the proceeding;

(b) Rule challenge proceedings under Section 120.56, F.S., after the filing of the petition or request with the Division of Administrative Hearings;

(c) Declaratory statement proceedings under Section 120.565, F.S., after the filing of the petition for a declaratory statement;

(d) Bid protest proceedings under Section 120.57(3), F.S., after the filing of a formal written protest;

(e) Rulemaking proceedings under Section 120.54. F.S., after the publication of the notice of rule development pursuant to Section 120.54(2), F.S., or the filing of a petition to initiate rulemaking pursuant to Section 120.54(7), F.S., and,

(f) All other hearings of an agency of a similar nature to a hearing governed by a provision of Chapter 120, F.S., after the filing of the petition, complaint, or request which initiates the proceeding.

(g) An attorney or other person representing a client who lobbies an agency regarding matters which in the future may result in an administrative proceeding described in subsections (a) through (f) above may be a "lobbyist" for purposes of this rule if he or she is seeking to influence the agency with respect to a decision of the agency in the area of "policy," as defined in subsection 34-12.020(9), F.A.C.

(2) Representation of a client in one of the types of administrative proceedings and formal hearings described in subsection (1) includes all oral and written communications with an agency or any of its representatives which relate to the proceeding or hearing.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented Chapter 2014-183, Section 6, LOF, 112.3215, 112.3261 FS. History–New 10-19-14.

34-12.130 Exclusion for Officers or Employees of Agencies or Legislative or Judicial Branch Entities.

An officer or employee of a state agency or a legislative or judicial branch entity is excluded from being a "lobbyist" when acting on its behalf in the normal course of his or her duties.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented Chapter 2014-183, Section 6, L.O.F., 112.3215, 112.3261, FS. History–New 10-12-89, Amended 1-4-94, 7-2-00, 12-21-00.

34-12.140 Exclusion for Confidential Informants.

"Lobbyist" does not include a confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 1-4-94.

34-12.150 Exclusion for Category One Purchases.

"Lobbyist" does not include a person who lobbies to procure a contract pursuant to Chapter 287, F.S., which contract does not exceed category one as provided in Section 287.017(1), F.S.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 1-4-94.

34-12.160 Examples of Lobbying Activities Involving Water Management Districts.

As used in this rule, "lobbying" activities include, for example:

(1) The representation of a client in communications with the Office of the Governor with respect to legislative matters.

(2) Seeking to influence the content of an agency's request for proposals or specifications for the purchase of goods or services on behalf of another person or governmental entity, unless in regard to the category of purchases described in Rule 34-12.150, F.A.C.

(3) Seeking to influence the priority given by an agency to the purchase of land or to a construction project on behalf of another person or governmental entity.

(4) Seeking to influence an agency's decision regarding a proposed rule in behalf of a client through communications with agency personnel outside of a publicly noticed agency hearing or workshop.

(5) Seeking to influence an agency in behalf of a person or governmental entity with respect to policies of the agency.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented Chapter 2014-183, Section 6, L.O.F., 112.3215, 112.3261 FS. History–New 10-12-89, Amended 1-4-94, 10-19-14.

34-12.165 Examples of Lobbying Activities.

[Notice: This rule replaces Rule 34-12.160, F.A.C., except with respect to lobbying activities involving water management districts. Chapter 2014-183, Section 6, Laws of Florida, created Section 112.3261, F.S., "Lobbying before water management districts; registration." That section provides that "lobbies" means seeking, on behalf of another person, to influence a water management

district with respect to a decision of the district in an area of policy or procurement or an attempt to obtain the goodwill of a district official or employee. The term "lobbies" shall be interpreted and applied consistently with the rules of the commission implementing Section 112.3215, F.S. As Rule 34-12.165, F.A.C., was not in existence when the Legislature enacted Section 112.3261, F.S., on May 2, 2014, the rule is not incorporated by reference into Section 112.3261, F.S.]

As used in this rule, "lobbying" activities include, for example:

(1) The representation of a client in communications with the Office of the Governor with respect to legislative matters.

(2) Seeking to influence the content of an agency's request for proposals or specifications for the purchase of goods or services on behalf of another person or governmental entity, unless in regard to the category of purchases described in Rule 34-12.150, F.A.C.

(3) Seeking to influence the priority given by an agency to the purchase of land or to a construction project on behalf of another person or governmental entity.

(4) Seeking to influence an agency's decision regarding a proposed rule in behalf of a client through communications with agency personnel prior to the publication of a notice of rule development pursuant to Section 120.54(2), F.S., or the filing of a petition to initiate rulemaking pursuant to Section 120.54(7), F.S.

(5) Seeking to influence an agency in behalf of a person or governmental entity with respect to policies of the agency.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented Chapter 2014-183, Section 6, L.O.F., 112.3215, 112.3261 FS. History–New 10-19-14.

34-12.170 Examples of Activities Not Constituting Lobbying Involving Water Management Districts.

As used in this chapter, "lobbying" activities do not include, for example:

(1) Participation at a bid conference held by an agency after bid specifications have been set and announced by the agency.

(2) The mere submission of a bid or proposal in response to an agency's solicitation of bids or request for proposals.

(3) A request for information about an agency's procedures, forms, budget, budget proposal, programs, or other requirements in behalf of another.

(4) Appearances before an agency and communications with an agency which are initiated by the agency's request, such as a response to an agency's request for information, an appearance in response to an agency subpoena, or a quotation of prices or description of materials or services available in response to an agency's inquiry.

(5) Advice or services communicated to an agency which arise out of an existing contractual obligation to the agency to render the advice or services provided.

(6) Representation of a client before an agency where the agency's decision relates to the grant or denial of a permit, license, or certification, or may result in an order imposing or recommending the imposition of disciplinary action against the client.

(7) Representation of a client at a publicly noticed hearing or workshop conducted by an agency regarding a proposed agency rule.

(8) Representation of a person before an agency where the person provides only reimbursement for actual travel, lodging, and meal expenses, rather than compensation, remuneration, or a commission for the representation.

(9) Communications with an agency by an expert consultant retained by a person to gather, analyze, or disseminate information required by the agency, when made in connection with the person's application for a permit, license, or certification.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented Chapter 2014-183, Section 6, L.O.F., 112.3215, 112.3261 FS. History–New 10-12-89.

34-12.175 Examples of Activities Not Constituting Lobbying.

[Notice: This rule replaces Rule 34-12.170, F.A.C., except with respect to lobbying activities involving water management districts. Chapter 2014-183, Section 6, Laws of Florida, created Section 112.3261, F.S., "Lobbying before water management districts; registration." That section provides that "lobbies" means seeking, on behalf of another person, to influence a water management district with respect to a decision of the district in an area of policy or procurement or an attempt to obtain the goodwill of a district official or employee. The term "lobbies" shall be interpreted and applied consistently with the rules of the commission implementing Section 112.3215, F.S. As Rule 34-12.175, F.A.C., was not in existence when the Legislature enacted Section 112.3261, F.S., on May 2, 2014, the rule is not incorporated by reference into Section 112.3261, F.S.]

(1) Participation at a bid conference held by an agency after bid specifications have been set and announced by the agency.

(2) The mere submission of a bid or proposal in response to an agency's solicitation of bids or request for proposals.

(3) A request for information about an agency's procedures, forms, budget, budget proposal, programs, or other requirements in behalf of another.

(4) Appearances before an agency and communications with an agency which are initiated by the agency's request, such as a response to an agency's request for information, a response to an agency's request for or invitation to submit comments on a draft or proposed rule, an appearance in response to an agency subpoena, or a quotation of prices or description of materials or services available in response to an agency's inquiry.

(5) Advice or services communicated to an agency which arise out of an existing contractual obligation to the agency to render the advice or services provided.

(6) Representation of a client before an agency where the agency's decision relates to the grant or denial of a permit, license, or certification, or may result in an order imposing or recommending the imposition of disciplinary action against the client.

(7) Representation of a client in a rulemaking following the publication of a notice of rule development pursuant to Section 120.54(2), F.S., or the filing of a petition to initiate rulemaking pursuant to Section 120.54(7), F.S., including but not limited to representation at a publicly noticed hearing or workshop conducted by an agency regarding a proposed agency rule.

(8) Representation of a person before an agency where the person provides only reimbursement for actual travel, lodging, and meal expenses, rather than compensation, remuneration, or a commission for the representation.

(9) Communications with an agency by an expert consultant retained by a person to gather, analyze, or disseminate information required by the agency, when made in connection with the person's application for a permit, license, or certification.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented Chapter 2014-183, Section 6, L.O.F., 112.3215, 112.3261 FS. History–New 10-19-14.

34-12.180 Engendering "Goodwill."

(1) Activities by a lobbyist which do not involve directly attempting to influence a specific decision of an agency in the area of policy or procurement may nonetheless be considered "lobbying" pursuant to Section 112.3215, F.S., and this rule chapter, where an expenditure is made by a lobbyist or principal for the personal benefit of an agency official or employee. Such expenditures will be considered to have been for the purpose of engendering goodwill, unless the agency official or employee is a relative of the lobbyist or principal paying for the expenditure.

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

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 1-4-94.

34-12.190 Indirect Expenditures.

(1) Where an expenditure is made to a person other than the agency official or employee by a lobbyist or principal, where the expenditure or the benefit of the expenditure ultimately is received by the agency official or employee, and where the expenditure is provided with the intent to benefit the agency official or employee, such expenditure will be considered a prohibited indirect expenditure to the agency official or employee.

(2) Where an expenditure or the benefit of an expenditure is made to an agency official or employee by someone other than a lobbyist or principal, but the expenditure has been provided by or paid for by a lobbyist or principal who intends thereby to benefit the agency official or employee, such expenditure will be considered a prohibited indirect expenditure to the agency official or employee.

(3) Factors which the Commission will consider in determining whether a prohibited indirect expenditure has been made include but are not limited to:

(a) The existence or nonexistence of communications by the lobbyist or principal, or by the intervening third person, indicating the lobbyist's or principal's intent to make or convey the expenditure to the agency official or employee rather than to the

intervening third person;

(b) The existence or nonexistence of any relationship between the lobbyist or principal and the third person, independent of the relationship between the lobbyist or principal and the agency official or employee, that would motivate an expenditure to the third person;

(c) The existence or nonexistence of any relationship between the third person and the agency official or employee that would motivate the expenditure;

(d) Whether the same or similar expenditures have been or are being provided to other persons having the same relationship to the lobbyist or principal as the third person;

(e) Whether, under the circumstances, the third person had full and independent decision-making authority to determine whether the agency official or employee, or another, would receive the benefit of the expenditure;

(f) Whether the third person was acting with the knowledge or consent of, or under the direction of, the lobbyist or principal;

(g) Whether there were or were intended any payments or bookkeeping transactions between the third person and the lobbyist or principal reimbursing the third person for the expenditure; and

(h) The degree of ownership or control the lobbyist or principal has over the third person.

(4) The provisions of this rule may be illustrated by the following examples:

Example 1: A law firm which lobbies the agency of Agency Employee A ("A") invites all of its attorneys to attend a weekend retreat. The attorneys are encouraged to bring their spouses or significant others at the firm's expense. A is married to an attorney in the firm and has been asked by her spouse to attend the retreat. The lodging, meals, and entertainment provided to A for the weekend retreat would not be considered a prohibited indirect expenditure to A because the firm's invitation was to A's spouse through his employment with the firm.

Example 2: Agency Official B ("B") hosts a turkey shoot attended by other agency officials and employees. Lobbyists who lobby the agency of B give money to a third person, who is not an agency official or employee, to pay for the food and beverages which will be served at the turkey shoot. B orders and prepares the food and beverages. The money provided to the third person by the lobbyists would be a prohibited indirect expenditure to B, because it was given with the intent of benefiting B and his guests at the turkey shoot.

Example 3: Agency Official C ("C") and C's spouse have arranged to take a trip to New York City. A lobbyist who lobbies C's agency meets with the spouse and offers her theater tickets. The lobbyist and C's spouse know each other only through the lobbyist's involvement with C. The theater tickets would be a prohibited indirect expenditure to C.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 6-15-06.

34-12.200 Lobbyist Registration Requirements.

(1) A person who is a "lobbyist" as defined in Section 112.3215(1)(h), F.S., and this rule chapter may not lobby an agency until he or she has registered as a lobbyist with the Commission. Registration may be made by electronic means at www.floridalobbyist.gov or on CE Form 20, Executive Branch Lobbyist Registration. Registration shall require the registrant to disclose, under oath, the following:

(a) Name, business address, and telephone number;

(b) Name, business address, and telephone number of each principal represented by the registrant;

(c) Name, business address, and telephone number of the lobbying firm on behalf of which the registrant is representing the principal, if any;

(d) His or her area of interest;

(e) The agencies before which he or she will appear; and

(f) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency which he or she lobbies, or intends to lobby.

(2) The registrant shall pay an annual registration fee of $25.00 for each principal represented, which will be deposited into the Executive Branch Lobbyist Registration Trust Fund. The fee is payable only once on a calendar year basis and there will be no charge if the lobbyist amends his or her registration to lobby additional agencies on behalf of the same principal.

(3) The registrant shall include a separate statement signed by the principal or the principal's representative that the registrant is authorized to represent the principal. On this statement, the principal will also identify and designate its main business using the 6-digit NAICS code published in the *North American Industry Classification System–United States*. Classification system information

can be obtained by contacting the NAICS Association, 129 Lakeshore Drive, Rockaway, NJ 07866, or by visiting its website: www.naics.com.

(4) Any changes to the information provided on the registration form must be reported to the Commission in writing within 15 days.

(5) A person convicted of a felony after January 1, 2006 may not register as a lobbyist until:

(a) The person has been released from incarceration and any post-conviction supervision;

(b) The person has paid all court costs and court-ordered restitution; and

(c) The person has had his or her civil rights restored.

(6) In the event that a lobbyist who has registered with the Commission undertakes to represent a new principal, or to represent a principal for whom he or she previously has registered before an agency for which he or she had not registered, a new registration shall be made before lobbying the agency in behalf of that principal.

(7) Registration by electronic means may be made via the Lobbyist Registration and Compensation Reporting system available at www.floridalobbyist.gov or by using CE Form 20, Executive Branch Lobbyist Registration, Effective 1/2015 http://www.flrules.org/Gateway/reference.asp?No=Ref-04834. The CE Form 20 and instructions may be obtained without cost from the Lobbyist Registration Office, 111 West Madison Street, Room G-68, Tallahassee, Florida 32399, Telephone (850)922-4990.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 12-6-92, 6-15-06, 8-18-10, 8-18-10, 1-1-13, 1-8-15, 11-24-15.

34-12.210 Effective Date of Registration.

A lobbyist's registration to lobby a particular agency on behalf of a particular client shall be effective upon completion of the registration process provided by the Lobbyist Registration and Compensation Reporting system available at www.floridalobbyist.gov or receipt by the Commission or other office established to administer lobbyist registration of the completed registration form identified in Rule 34-12.200, F.A.C., submission of a statement signed by the principal or principal's representative providing that the registrant is authorized to represent the principal, and payment of the annual lobbyist registration fee.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 10-6-91, 7-5-92, 12-6-92, 1-8-15.

34-12.300 Registration Forms.

Rulemaking Authority 112.3215, 112.322(10) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 10-6-91, 1-1-97, Repealed 6-15-06.

34-12.310 Registration Fees.

Rulemaking Authority 112.3215, 112.322(9) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 10-6-91, 1-1-97, 11-24-97, 1-1-02, Repealed 6-15-06.

34-12.320 Filing Registration Forms and Fees.

Rulemaking Authority 112.3215, 112.322(10) FS. Law Implemented 112.3215 FS. History–New 10-12-89, Amended 7-5-92, 1-4-94, 1-1-97, Repealed 6-15-06.

34-12.330 Annual Renewals.

(1) Each lobbyist must renew his or her registration to lobby an agency on behalf of a principal on a calendar year basis by electronic means at www.floridalobbyist.gov or by filing a CE Form 20-R, Lobbyist Renewal Form, and payment of the annual registration fee of $25.00 for each principal represented.

(2) CE Form 20-R, Executive Branch Lobbyist Renewal, effective 1/2017, http://www.flrules.org/Gateway/reference.asp?No=Ref-07718 or by electronic means via the Lobbyist Registration and Compensation Reporting system available at www.floridalobbyist.gov. To be utilized by lobbyists to renew their annual registration

CHAPTER 34-15
REVIEW, INVESTIGATION AND HEARING OF COMPLAINTS ALLEGING VIOLATION OF S. 11.062(2), F.S.

34-15.001 Scope and Applicability of Chapter
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34-15.024 Action on Recommended Final Order by the Full Commission
34-15.025 Transmittal of Final Order

34-15.001 Scope and Applicability of Chapter.

Section 11.062(2), F.S., prohibits departments of the executive branch, state universities, community colleges, and water management districts from using public funds to retain lobbyists to represent them before the legislative and executive branches, except through the use of full-time employees. Similarly, persons are prohibited from accepting public funds from these agencies for lobbying the legislative or executive branch. The statute authorizes the Commission to accept complaints of violations, investigate, and report its determinations. The rules in this Chapter 34-15, F.A.C., shall govern the receipt and disposition of all complaints reported to the Commission under this statute.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95.

34-15.0015 Time Periods.

In computing any period of time prescribed or allowed by these rules, by order of the Commission, the Chair, or another presiding officer, or by any applicable statute, the time period shall be calculated in accordance with Rule 28-106.103, F.A.C.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98.

34-15.0016 Filing and Serving Documents; Facsimile Transmissions.

Pleadings and other documents under the rules of this chapter shall be filed and served in accordance with Rule 28-106.104, F.A.C, whether in paper or electronic form, and shall contain the information required by that rule.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98.

34-15.0017 Presiding Officer.

For the purposes of Commission proceedings under Section 11.062(2), F.S., the presiding officer shall be the Chair of the Commission or, in the event the Chair is unavailable, the Vice Chair of the Commission.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 7-28-98.

34-15.002 Staff Procedures Upon Receipt of a Complaint.

(1) Upon receipt of a complaint pursuant to Section 11.062(2), F.S., of a possible violation of that law, staff shall assign a control number. The Executive Director shall review the complaint to determine whether the matters alleged indicate a violation; if

not, the Executive Director may request additional information from the complainant.

(2) The person or agency that is the subject of the complaint shall be designated as the respondent(s).

(3) A copy of the complaint shall be forwarded to the respondent within five working days following receipt by the Commission.

(4) When the Executive Director determines that a violation is indicated by the complaint, the Executive Director shall order an investigation of the matter in accordance with the rules of this chapter. If the Executive Director determines that the complaint is not sufficient to indicate a possible violation, the Executive Director shall recommend that the Commission dismiss the complaint. The Commission may find the complaint to be sufficient and order an investigation; may find the complaint to be insufficient, dismiss it, and notify the complainant that no investigation will be made; or may take such other action as may be appropriate.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95.

34-15.0035 Delegation of Authority.

The Commission hereby delegates to its investigators the authority to administer oaths and affirmations, delegates the authority to issue subpoenas to its chair and, in the absence or unavailability of the chair, to its vice chair, and authorizes its employees to serve any subpoena issued under the Commission's authority.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98.

34-15.004 Subpoenas During Preliminary Investigation.

When an investigation is ordered or at any time thereafter, upon recommendation of the Executive Director or upon motion of the Commission, the Commission Chair or other member authorized by the Commission may authorize the issuance of subpoenas or subpoenas duces tecum. Each subpoena shall be signed by the Chair or other member authorized by the Commission and shall state the person, documents or other things to be subpoenaed. Each subpoena further shall name the person before whom the witness is to give testimony, and shall state in general terms the subject matter of the testimony to be elicited. If documents or other things are to be produced, the subpoena shall describe the same with as much specificity as reasonably practicable. The subpoena shall state clearly on its face that it is issued by the Commission on Ethics in accordance with its authority to investigate violations of Section 11.062(2), F.S. Such subpoenas shall be issued for investigative purposes only, and neither the respondent nor the respondent's counsel shall be entitled to attend the investigative proceeding at which the witness is to give a sworn statement unless the respondent is the person subpoenaed.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98.

34-15.005 Investigations.

(1) Commencement of Investigations. Investigations shall be initiated as provided above in Rule 34-15.002, F.A.C., provided that information from public records may be obtained by staff prior to the ordering of an investigation.

(2) Investigators. Investigation shall be conducted by Commission staff, by personnel of the Department of Legal Affairs, or by any other person or agency so designated by the Commission.

(3) Scope of Investigation. Investigations shall be limited to the allegations of the complaint.

(4) Evidence of Wrongful Acts Unrelated to the Complaint. If during the course of an investigation evidence of a wrongful act unrelated to the complaint is discovered by the investigator, such evidence shall be reported to the Commission in a separate investigator's report. The wrongful act shall not be further investigated by the investigator in the absence of a complaint with respect thereto. Upon receipt of a separate investigator's report containing evidence of a wrongful act unrelated to the matter at issue, the Commission shall: (a) as soon as practicable forward evidence of the commission of a crime to the appropriate law enforcement official; and (b) forward evidence of the commission of any other wrongful act to the appropriate disciplinary or law enforcement official as soon as practicable following the completion of the preliminary investigation. If upon independent investigation the appropriate disciplinary official wishes to file a complaint with the Commission he may do so and said complaint shall be received and considered by the Commission in the same manner as any other complaint.

(5) Investigator to be Impartial. An investigator shall be impartial and unbiased in the conduct of the preliminary investigation. An investigator shall collect all evidence related to the allegations, whether such evidence tends to prove or disprove the allegations. If the Commission determines that a public hearing shall be held, however, the investigator is responsible for assisting the Advocate

in the proof of the allegations brought against the respondent. If an investigator feels that for any reason he or she cannot be impartial or unbiased during the preliminary investigation then the investigator shall so notify the Executive Director and shall immediately discontinue working in the investigation. If the Commission feels that the investigator cannot be unbiased or impartial at any point of time during the preliminary investigation, the Commission shall terminate any further investigation by the investigator.

(6) Investigator's Report. Upon the completion of the preliminary investigation, the investigator shall prepare a report to the Commission. The report shall contain a narrative account of all pertinent information obtained through interviews of witnesses, documentary evidence, or other sources and shall include a discussion of any conflicts in the evidence. The report shall not contain any determination or speculation with respect to whether the evidence indicates a violation. The report shall make no recommendations. A separate report shall be prepared in accordance with subsection (4), above, if necessary.

(7) Investigatory File. The investigator shall prepare an investigatory file to be maintained in the office of the Commission, which file shall contain:

(a) Copies of all documents obtained during the course of the investigation;

(b) Tape recordings of interviews with witnesses and, if no recording is made, a summary of the interview;

(c) A list of the names and addresses of all persons actually interviewed;

(d) Any other relevant documents; and

(e) The investigator's report(s) to the Commission.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98.

34-15.006 Counsel.

(1) Respondent. Respondent may be represented by a lawyer or other qualified representative. All notices and communications to a respondent represented by a lawyer or qualified representative shall be made through respondent's lawyer or qualified representative.

(2) Advocate. The Advocate presenting the matter before the Commission shall be an Assistant Attorney General or another attorney designated by the Commission as Advocate. The Advocate represents the Commission in its prosecutorial function.

(3) Appearances. Appearances by counsel or other qualified representatives shall be governed by Rules 28-106.105 and 28-106.106, F.A.C. The qualifications of a representative shall be determined in accordance with Rule 28-106.106, F.A.C. Qualified representatives shall observe the standards of conduct specified in Rule 28-106.107, F.A.C.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2), 120.62(2) FS. History–New 2-16-95, Amended 7-28-98.

34-15.007 Probable Cause Determination.

(1) Notification of Completion of Investigation. When the investigator's report is completed, the Executive Director shall notify the respondent that the report is completed and shall send to the respondent a copy of the investigator's report and a copy of the Executive Director's order to investigate. The investigatory file then shall be open for inspection by the respondent and the respondent's counsel, and copies may be obtained at no more than cost.

(2) Time to Review Report. The probable cause hearing shall be not less than 14 days from the date of mailing of the investigator's report to the respondent, within which time the respondent and counsel for the respondent may review the report and file with the Commission a written response to the report.

(3) Advocate's Recommendation. The Advocate shall review the investigator's report and shall make a written recommendation to the Commission for the disposition of the matter. If the Advocate recommends that a public hearing be held, the recommendation shall include a statement of what charges shall be at issue at the hearing. A copy of the recommendation shall be furnished to the respondent or counsel for respondent no later than 7 days prior to the hearing, within which time the respondent may file with the Commission a written response to the recommendation.

(4) Notice of Hearing and Right to Attend. The respondent shall be given at least 14 days notice of the probable cause hearing and may attend, provided that this period may be shortened by the Commission, so long as reasonable notice under the circumstances is given.

(5) Scope of Hearing. The probable cause hearing is the conclusion of the preliminary investigation. The respondent and the Advocate shall be permitted to make brief oral statements in the nature of oral argument to the Commission, based on the investigator's report, before the probable cause determination. The determination shall be based upon the investigator's report, the

Advocate's recommendation, the complaint, and staff recommendations, as well as oral or written statements by the respondent. The respondent may not testify or present or call witnesses at this hearing.

(6) Determination of Probable Cause. The Commission shall meet to determine the manner in which the proceeding will be disposed of. The Commission may continue the hearing to allow further investigation; may order the dismissal of the proceeding if it finds no probable cause to believe that a violation has occurred, concluding the matter before it; may order a final, public hearing of the matter if it finds probable cause to believe that a violation has occurred; or may take such other action as it deems necessary to resolve the matter, consistent with due process of law. In making its determination the Commission may consider:

(a) The sufficiency of the evidence against the respondent, as contained in the investigator's report;

(b) The admissions and other stipulations of the respondent, if any;

(c) The nature and circumstances of the respondent's actions;

(d) The expense of further proceedings; and

(e) Such other factors as it deems material to its decision. If the Commission orders a public hearing, the Commission shall determine what charges shall be at issue for the hearing.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95.

34-15.008 Notification of Manner of Disposition.

Upon the Commission's ordering a final, public hearing the Executive Director shall, within five days, so notify the respondent in writing. If the Commission enters any other order regarding the proceeding, the Executive Director shall send a copy of the order to the respondent.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95.

34-15.010 Procedures for Public Hearings, Generally.

Public hearings may be conducted by the full Commission, by a single Commission member, or by the Division of Administrative Hearings, as directed by the Chair of the Commission after considering the Commission's workload. The Commission may refer the matter by letter to the Division of Administrative Hearings for the appointment of an administrative law judge. Public hearings held before the Commission or its members shall be governed by the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C. Proceedings before the Commission after the public hearing shall be governed by the Uniform Rules of the Administration Commission, Chapter 28-106, F.A.C., if one of the rules of that chapter is applicable, or by the remaining rules of this chapter.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98.

34-15.013 Notice of Public Hearing.

The Executive Director shall notify respondent of the date, time and place of the public hearing by mailing to the respondent by certified mail, return receipt requested, a written notice at least 30 days prior to the hearing. The notice shall describe the specific violations charged. Upon written consent of respondent, the 30-day notice may be waived and the hearing held sooner. In addition, the hearing may be held sooner than 30 days when the passage of time may be reasonably expected to render moot the ultimate disposition of the matter by the Commission, so long as reasonable notice under the circumstances is given.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95.

34-15.017 Disqualification of Commission Members.

(1) Commission members shall be disqualified from sitting as a member of the Commission at either the probable cause hearing or the final public hearing for bias, prejudice, or interest. Disqualification may be raised by a respondent, by the Advocate, or by any member, but not by the complainant.

(2) Unless good cause is shown, all motions for disqualification shall be filed with the Commission at least 5 days prior to the hearing at which the member is expected to participate. The motion shall be accompanied by an affidavit stating the particular grounds.

(3) Unless denied as untimely, the motion shall be ruled on by the Commission member whose disqualification is sought; the ruling shall be based on the legal sufficiency of the motion and affidavit. If the motion and affidavit are found legally sufficient, the member shall disqualify himself or herself.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95.

34-15.0171 Ex Parte Communications.

(1) A Commission member shall not initiate nor consider any ex parte communication relative to the merits of a pending proceeding by:

(a) A public employee or official engaged in prosecution or advocacy in connection with the matter;

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed action of the Commission, or his or her authorized representative or counsel; or

(c) A complainant or any other individual who has personal knowledge of the facts underlying the proceeding, or his or her authorized representative or counsel.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the Commission in the proceeding or shall prohibit Commission members who are contacted by any of the above persons from referring them to Commission staff or the Commission Advocate.

(2) A commission member who receives such an ex parte communication shall place on the record all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party, including the Advocate, desiring to rebut the ex parte communication shall be allowed to do so if a request for the opportunity for rebuttal is made within 10 days after notice of the communication.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95.

34-15.0181 Subpoenas for Discovery; Discovery.

At any time after the Commission orders a public hearing of the matter, the Commission may issue subpoenas to effect discovery upon the written request of respondent or Advocate. The requesting person shall give the name and address of each witness he wishes to have deposed and shall describe with particularity those documents or other items that the person wishes to have the witness to produce, bring or deliver pursuant to a subpoena duces tecum. Subpoenas shall be issued by the Chairman or other authorized member of the Commission and shall be promptly served. The respondent is responsible for service of subpoenas requested by him. Parties may also obtain discovery through the means and in the manner provided in the Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 11-24-15.

34-15.020 Stipulations, Settlements, and Consent Orders.

Informal disposition of the proceeding shall be made by stipulation, agreed settlement, or consent order between the Advocate and the Respondent, upon approval of the Commission in a public meeting.

(1) The Advocate is not required to present or propose to the Commission a stipulation, settlement, or consent order offer from the Respondent unless the Advocate agrees to the terms of the offer.

(2) Commission staff shall send to the complainant a copy of the proposed stipulation, settlement, or consent order, notify the complainant of the meeting at which the Commission will consider the proposed stipulation or order, and advise the complainant that any written response to the proposed stipulation or order submitted by the complainant will be provided to the Commission for its consideration.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98.

34-15.024 Action on Recommended Final Order by the Full Commission.

(1) Where the hearing has been conducted by a single Commissioner or DOAH administrative law judge, the meeting of the full Commission to consider the recommended final order shall not be an evidentiary "hearing." No new evidence shall be taken.

(2) As the complainant is not a party, the complainant is not entitled to address the Commission either orally or in writing in response to the recommended order.

(3) In order to assist the Commission in evaluating any exceptions that may have been filed, Commission staff may provide a draft final order analyzing the exceptions. If one is drafted, copies shall be provided to the respondent and the Advocate prior to the

final hearing.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98, 11-24-15.

34-15.025 Transmittal of Final Order.

The final order shall be signed by the Chair, shall be transmitted by mail to the respondent and complainant, and shall be made available to the public.

Rulemaking Authority 11.062(2) FS. Law Implemented 11.062(2) FS. History–New 2-16-95, Amended 7-28-98.

CHAPTER 34-18
ABUSE OF POSITION TO OBTAIN DISPROPORTIONATE BENEFIT

34-18.001 Scope and Applicability of Chapter

34-18.001 Scope and Applicability of Chapter.

(1) The purpose of this chapter is to provide notice and guidance to public officers or public employees, as well as to the general public, regarding the definition of the term "disproportionate benefit," as that term is used in Article II, Section 8(h)(2) of the Florida Constitution, as well as the requisite intent for finding a violation of the prohibition contained in Article II, Section 8(h)(2) of the Florida Constitution.

(2) Definitions

(a) For the purpose of Article II, Section 8(h)(2) of the Florida Constitution, "disproportionate benefit" means a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.

(3) The Commission will consider the following in determining whether a benefit, privilege, exemption, or result contitutes a "disproportionate benefit":

(a) The number of persons, besides the public officer or public employee, his or her spouse, children, employer, or business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest, who will experience the benefit, privilege, exemption, or result;

(b) The nature of the interests involved;

(c) The degree to which the interests of all those who will experience the benefit, privilege, exemption, or result are affected;

(d) The degree to which the public officer or public employee, his or her spouse, children, employer, or business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest, receives a greater or more advantageous benefit, privilege, exemption, or result when compared to others who will receive a benefit, privilege, exemption, or result;

(e) The degree to which there is uncertainty at the time of the abuse of public position as to whether there would be any benefit, privilege, exemption, or result, and, if so, the nature or degree of the benefit, privilege, exemption, or result must also be considered; and

(f) The degree to which the benefit, privilege, exemption, or result is not available to similarly situated persons. As used in this chapter, "similarly situated persons" means those with a commonality or like characteristic to the public officer or public employee that is unrelated to the holding of public office or public employment, or a commonality or like characteristic to the public officer's or public employee's spouse, children, or employer, or to any business with which the public officer or public employee contracts, serves as an officer, partner, director, or proprietor, or in which he or she owns an interest.

(4) The requisite intent for finding a violation of the prohibition in Article II, Section 8(h)(2) of the Florida Constitution is that the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties.

Rulemaking Authority Article II, Section 8(h)(2), Florida Constitution, 112.322(9) FS. Law Implemented Article II, Section 8(h)(2), Florida Constitution, 112.322(9) FS. History–New 9-30-19.