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**MEMORANDUM**

**TO:** Commission Members

**FROM:** Kerrie Stillman, Executive Director 

**SUBJECT:** Consideration of Legislative Plan and Recommendations for 2023

**DATE:** July 6, 2022

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The 2023 Legislative Session begins March 7 and committee weeks will likely begin in December or January. In fulfillment of your statutory mandate to make recommendations for the upcoming session, included with this memo as a starting point for discussion are your recommendations from last session. I've also noted issues related to the relaunch of e-filing for the Commission to discuss. We are starting this discussion early, with the hope we can solidify the direction for 2023 recommendations and work with the House and Senate on these issues prior to committee weeks, especially relating to e-filing.

Two underlying issues to consider as you consider legislative recommendations are: 1) whether, and to what degree, you want to take positions on issues other than those in your legislative recommendations; and, 2) who should have the authority to speak for the Commission.

Regarding the first issue, it makes sense for the Commission to state its position on legislation affecting the Commission or the Code, and doing so would likely give the Commission a greater legislative presence. The only downside I can foresee is that the Commission could be criticized for its position.

As to the second issue, you may recall that, last year, the Commission authorized certain Commissioners to act as Legislative Liaisons to speak for you, and that was very helpful. If the Commission chooses to be more vocal on more issues, this authority will be much more

important. The responsibility for the Liaison will also be much greater, as there is always the possibility that one or more Members may have a different view of an issue than the position voiced by the Liaison.

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

If there are other issues you would like us to research prior to the Commission meeting, please let me know as soon as possible.

## **Legislative Recommendations from 2022**

### Conflicts of Interest

Section 112.313(7)(a), Florida Statutes, prohibits a public officer or employee from having a contractual relationship with a company doing business with the official's own agency. So City Councilman A cannot contract with Business B, if Business B is doing business with his City. But if Councilman A creates "A, Inc.," that corporation can do business with Business B without violating the law, even if "A, Inc.," is solely owned by Councilman A. The Commission has seen this as thwarting the underlying goal of the law, which is to prevent officials from having relationships with companies doing business with their agencies.

### Voting Conflicts Law

Under current law, Section 112.3143, Florida Statutes, state and local *elected* officials can participate in the discussion of a measure in which they have a conflict without revealing the existence of that conflict until the vote is actually taken. This means the official can make every effort to persuade his or her colleagues without telling them (and the public) about the conflict. Appointed officials, in contrast, must declare their conflict before participating in the discussion of the measure. Elected officials should have to adhere to the same standard.

In addition, state officers only have to abstain if the measure helps or hurts them personally. Unlike local officials, they do not have to abstain when the measure benefits their employer, relative, etc.

The Commission has expressed that the voting conflict standard should be the same for everyone, whether the official is appointed or elected and whether the official is a state or local official; and that the exemption from using the Commission's conflict disclosure form applicable only to Legislators be eliminated.

### Enhanced Financial Disclosure for Local Elected Officials

Elected municipal officials are very important and administer vast amounts of public resources. For these, and other reasons, their disclosure should be on par with that of county officials and others who file Form 6, rather than Form 1. The Commission believes the enhanced disclosure should be applied to all elected municipal officials regardless of the population of the municipality.

### Dismissal of Complaints Alleging de minimis Financial Disclosure Violations

Section 112.324(11), Florida Statutes, currently allows the Commission to dismiss complaints alleging de minimis violations attributable to inadvertent or unintentional error, except for financial disclosure complaints. The Commission believes the statute should be amended to allow for dismissal of financial disclosure complaints, too.

### Dismissal of Lobbying Firm Audit matters

Section 112.324(12), Florida Statutes, which allows the Commission to dismiss complaints when it finds that the public interest would not be served by proceeding further on the complaint, currently is not available for dismissal of lobbying firm audit matters under Section 112.3215, Florida Statutes, even when circumstances justify such a dismissal. The Commission recommends amending Section 112.324(12) to allow for dismissal of audit matters.

### Increase of Civil Penalties

Currently, Section 112.317, Florida Statutes, provides for a maximum fine of \$10,000 for a violation of the ethics laws. This amount has not been increased since 1994. Due to inflation and seriousness of ethics offenses, the Commission believes the maximum fine amount should be increased.

### Whistle Blower-like Protection for Ethics Complainants

The Commission believes that the threat of adverse employment or personnel actions in retaliation for a person's filing of an ethics complaint discourages the filing of valid complaints. Thus, the Commission seeks the enactment of protections or remedies, akin to those in the "Whistle-blower's Act," Sections 112.3187-112.31895, Florida Statutes, for the benefit of ethics complainants.

### Ethics Training

Pursuant to the provisions of Section 112.3142(2)(e), Florida Statutes, a constitutional officer or elected municipal officer assuming a new office or new term of office after March 31 is not required to complete ethics training for the calendar year in which their term of office began. In 2019, the law was amended to require commissioners of community redevelopment agencies to complete 4 hours of ethics training. However, they were not included in the new office or new term of office exemption language contained in Section 112.3142(2)(e), Florida Statutes. As a result, CRA board members are required to take four hours of training regardless of when they take office, even if their start date is near the very end of the year. The Commission believes CRA board members should be added to the exemption language appearing in Section 112.3142(2)(e), Florida Statutes.

### Representing Clients Before One's Own Board

The Commission has opinions as early as 1977 and even since 2020 interpreting Section 112.313(7), Florida Statutes, to say, in essence, that if a person serves on a board, he cannot represent clients before that board, and neither can other members of his professional firm. This interpretation is similar to the Rules of Professional Conduct of the Florida Bar, which impute the conflict of one lawyer to all lawyers in the firm. The Commission views this as an important public protection, and opposes any relaxation of this standard.

### Gifts, Expenditures, or Compensation from Lobbyists

The Commission opposed HB 1435 and SB 1490 in the 2020 session. These bills, which did not pass, would have allowed donations from lobbyists or their principals, *unlimited in amount*, to certain public employees and appointed public officials if the donations were used toward costs associated with serious injury, disease, or illness of the employee, appointed officer, or his or her child. Such a vast exemption to the gift and expenditure laws, aimed at public officials when they are most vulnerable to undue influence from special interests, would seriously undermine effective restrictions and prohibitions which have protected the public trust for many years. The Commission continues to oppose an unlimited exemption to the gift and expenditure laws.

### **Additional Items To Consider**

Electronic filing: HB 5003 contained a number of provisions affecting e-filing; however, those provisions expire July 1, 2023. Therefore, we must have a bill relating to e-filing that makes changes to launch date(s) for Form 1. New legislation will need to reflect the 2024 launch date for Form 1 or the Commission could recommend a different date or launch strategy.