

Date Printed: 12/31/2008

JTS Box Number: IFES_20

Tab Number: 7

Document Title: GUIDE TO THE SUNSHINE AMENDMENT AND
CODE OF ETHICS FOR PUBLIC OFFICERS

Document Date: 1994

Document Country: USA

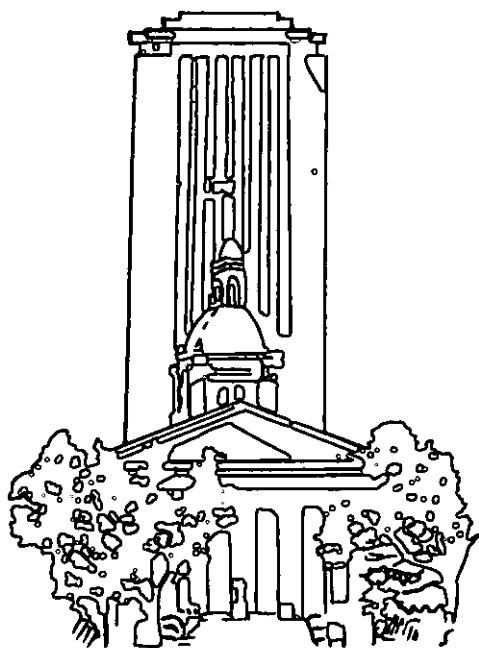
Document Language: ENG

IFES ID: EL00164



* 8 8 7 7 6 5 C 8 - 1 9 B 6 - 4 2 A C - B 5 7 5 - 9 0 3 1 3 3 9 8 9 0 2 D *

**GUIDE to the
SUNSHINE AMENDMENT
and
CODE of ETHICS
for Public Officers and Employees**





State of Florida
COMMISSION ON ETHICS
Joel K. Gustafson, *Chairman*
Ft. Lauderdale

Mirta P. Canton
Miami

Yolanda R. Lee
Tampa

Tildon L. Chavers, Jr.
Pace

Tom Lewis, Jr.
Orlando

N. David Flagg
Gainesville

R. Terry Rigsby
Tallahassee

Thomas L. Hazouri
Jacksonville

Stephen N. Zack
Miami

Bonnie J. Williams
Executive Director
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(904) 488-7864*

*Please direct all requests for information to
this number.

TABLE OF CONTENTS

I.	HISTORY OF FLORIDA'S ETHICS LAWS.....	1
II.	ROLE OF THE COMMISSION ON ETHICS...	2
III.	THE ETHICS LAWS	2
A.	PROHIBITED ACTIONS OR CONDUCT...	3
1.	Solicitation or Acceptance of Gifts	3
2.	Unauthorized Compensation.....	3
3.	Misuse of Public Position	4
4.	Disclosure or Use of Certain Information	4
5.	Solicitation or Acceptance of Honoraria	4
B.	PROHIBITED EMPLOYMENT AND BUSINESS RELATIONSHIPS	5
1.	Doing Business With One's Agency.....	5
2.	Conflicting Employment or Contractual Relationship	5
3.	Exemptions	5
4.	Additional Exemption	7
5.	Lobbying State Agencies By Legislators.....	7
6.	Employees Holding Office.....	7
7.	Professional & Occupational Licensing Board Members.....	7
8.	Contractual Services: Prohibited Employment	7
C.	RESTRICTIONS ON APPOINTING, EMPLOYING, AND CONTRACTING WITH RELATIVES	8
D.	POST OFFICE HOLDING AND EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS	8
1.	Lobbying By Former Legislators or Statewide Elected Officers.....	8
2.	Lobbying By Former State Employees	8
3.	Additional Restrictions on Former State Employees	10
4.	Lobbying By Former Local Government Officers and Employees	10

E. VOTING CONFLICTS OF INTEREST	10
F. DISCLOSURES	12
1. Form 6 - Full and Public Disclosure ...	12
2. Form 1 - Limited Financial Disclosure	13
3. Form 9 - Quarterly Gift Disclosure	16
4. Form 30 - Donor's Quarterly Gift Disclosure	16
5. Form 10 - Annual Disclosure of Gifts from Governmental Entities and Direct Support Organizations and Honorarium Event-Related Expenses.....	17
6. Form 2 - Quarterly Client Disclosure..	18
IV. AVAILABILITY OF FORMS	19
V. PENALTIES	19
A. For Violations of the Code of Ethics.....	19
B. For Violations by Candidates	20
C. For Violations by Former Officers and Employees	20
D. For Lobbyists and Others.....	20
E. Felony Convictions: Forfeiture of Retirement Benefits	21
VI. ADVISORY OPINIONS.....	21
A. Who Can Request An Opinion.....	21
B. How To Request An Opinion	21
C. Published Opinions	21
VII. COMPLAINTS.....	22
A. Citizen Responsibility.....	22
B. Confidentiality	22
C. Complaint Process: How It Works	23
D. Dismissal of Complaint at Any Stage of Disposition	24
E. Statute of Limitations	24
VIII. EXECUTIVE BRANCH LOBBYING	25
IX. WHISTLE-BLOWER'S ACT	26
X. ADDITIONAL INFORMATION	27
XI. ORDER FORM	IBC

**FLORIDA COMMISSION
ON ETHICS**
Guide to the
SUNSHINE AMENDMENT
and
CODE OF ETHICS
for
PUBLIC OFFICERS
and **EMPLOYEES**

**I. HISTORY OF FLORIDA'S
ETHICS LAWS**

Florida has been a leader among the states in establishing ethics standards for public officials and recognizing the right of her people to protect the public trust against abuse. Our state constitution was revised in 1968 to require that a code of ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interests be prescribed by law.

Florida's first successful constitutional initiative resulted in the adoption of the "Sunshine Amendment" in 1976, providing additional constitutional guarantees concerning ethics in government. In the area of enforcement, the Sunshine Amendment requires that there be an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges.

The "Code of Ethics for Public Officers and Employees" adopted by the Legislature is found in Chapter 112 (Part III) of the Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also

seeks to avoid the creation of unnecessary barriers to public service.

Criminal penalties which initially applied to violations of the Code were eliminated in 1974 in favor of administrative enforcement. The Legislature created the Commission on Ethics that year "to serve as guardian of the standards of conduct" for public officials, state and local. Five of the Commission's nine members are appointed by the Governor, and two each are appointed by the President of the Senate and Speaker of the House of Representatives. No more than five Commission members may be members of the same political party, and none may hold any public employment during their two-year terms of office. A chairman is selected from among the members to serve a one-year term and may not succeed himself.

II. ROLE OF THE COMMISSION ON ETHICS

In addition to its constitutional duties regarding the investigation of complaints, the Commission:

- Renders advisory opinions to public officials;
- Prescribes forms for public disclosure;
- Prepares mailing lists of public officials subject to financial disclosure for use by Supervisors of Elections and the Secretary of State in distributing forms and notifying delinquent filers;
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws, since it does not impose penalties;
- Administers the Executive Branch Lobbyist Registration Law;
- May file suit to void contracts.

III. THE ETHICS LAWS

The ethics laws generally consist of two types of provisions, those prohibiting certain actions or

conduct and those requiring that certain disclosures be made to the public. The following descriptions of these laws are simplified to put people on notice of their requirements. However, we also suggest that you review the wording of the actual law. Citations to the appropriate laws are contained in brackets. The laws summarized below apply generally to all public officers and employees, state and local, including members of advisory bodies. The principal exception to this broad coverage is the exclusion of judges, as they fall within the jurisdiction of the Judicial Qualifications Commission.

A. PROHIBITED ACTIONS OR CONDUCT

1. Solicitation and Acceptance of Gifts

Public officers, employees, and candidates are prohibited from soliciting or accepting anything of value, such as a gift, loan, reward, promise of future employment, favor, or service, that is based on an understanding that their vote, official action, or judgment would be influenced by such gift. [Sec. 112.313(2), Fla. Stat.]

A person required to file financial disclosure FORM 1 or FORM 6 (see part III F of this brochure), as well as a procurement employee for the State, is prohibited from **soliciting** any gift, food, or beverage from a political committee, committee of continuous existence, lobbyist who has lobbied his agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist. [Section 112.3148, Fla. Stat.]

A person required to file FORM 1 or FORM 6, as well as a State procurement employee, is prohibited from directly or indirectly **accepting** a gift worth over \$100 from such a lobbyist, from a partner, firm, employer, or principal of the lobbyist, or from a political committee or committee of continuous existence. [Section 112.3148, Fla. Stat.]

2. Unauthorized Compensation

Public officers or employees and their spouses and minor children are prohibited from accepting

any compensation, payment, or thing of value when they know, or with the exercise of reasonable care should know, that it is given to influence a vote or other official action. [Sec. 112.313(4), Fla. Stat.]

3. Misuse of Public Position

Public officers and employees are prohibited from corruptly using or attempting to use their official positions to obtain a special privilege for themselves or others. [Sec. 112.313(6), Fla. Stat.]

4. Disclosure or Use of Certain Information

Public officers and employees are prohibited from disclosing or using information not available to the public and obtained by reason of their public positions for the personal benefit of themselves or others. [Sec. 112.313(8), Fla. Stat.]

5. Solicitation or Acceptance of Honoraria

A person required to file financial disclosure FORM 1 or FORM 6 (see part III F of this brochure), as well as a procurement employee for the State, is prohibited from **soliciting** an honorarium which is related to his public office or duties. [Section 112.3149, Fla. Stat.]

A person required to file FORM 1 or FORM 6, as well as a State procurement employee, is prohibited from knowingly **accepting** an honorarium from a political committee, committee of continuous existence, lobbyist who has lobbied his agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist. However, he may accept the payment of expenses related to an honorarium event from such persons or entities, provided that the expenses are disclosed. See part III F of this brochure. [Section 112.3149, Fla. Stat.]

Lobbyists and their partners, firms, employers, and principals, as well as political committees and committees of continuous existence, are prohibited from **giving** an honorarium to persons required to file FORM 1 or FORM 6 and to State procurement employees. Violations of this law may result in fines of up to \$5,000 and prohibitions

against lobbying for up to two years. [Section 112.3149, Fla. Stat.]

B. PROHIBITED EMPLOYMENT AND BUSINESS RELATIONSHIPS

1. Doing Business With One's Agency

(a) A public employee acting as a purchasing agent, or public officer acting in his official capacity, is prohibited from purchasing, renting, or leasing any realty, goods, or services for his agency from a business entity in which he, his spouse, or child own more than a 5% interest. [Sec. 112.313(3), Fla. Stat.]

(b) A public officer or employee, acting in a private capacity, also is prohibited from renting, leasing, or selling any realty, goods, or services to his own agency if he is a state officer or employee, or, if he is an officer or employee of a political subdivision, to that subdivision or any of its agencies. [Sec. 112.313(3), Fla. Stat.]

2. Conflicting Employment or Contractual Relationship

(a) A public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his public agency. [Sec. 112.313(7), Fla. Stat.]

(b) A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between his private interests and public duties or which will impede the full and faithful discharge of his public duties. [Sec. 112.313(7), Fla. Stat.]

3. Exemptions—The prohibitions against doing business with one's agency and having conflicting employment may not apply:

(a) When the business is rotated among all qualified suppliers in a city or county.

(b) When the business is awarded by sealed, competitive bidding and the official, his

spouse, or child have not attempted to persuade agency personnel to enter the contract. NOTE: Disclosure of the interest of the official, spouse, or child and the nature of the business must be filed prior to or at the time of submission of the bid on Commission FORM 3A with the Secretary of State or Supervisor of Elections, depending on whether the official serves at the state or local level.

(c) When the purchase or sale is for legal advertising, utilities service, or for passage on a common carrier.

(d) When an emergency purchase must be made to protect the public health, safety, or welfare.

(e) When the business entity is the only source of supply within the political subdivision and there is full disclosure of the official's interest to the governing body on Commission FORM 4A.

(f) When the aggregate of any such transactions does not exceed \$500 in a calendar year.

(g) When the business transacted is the deposit of agency funds in a bank of which a county, city, or district official is an officer, director, or stockholder, so long as agency records show that the governing body has determined that the member did not favor his bank over other qualified banks.

(h) When the prohibitions are waived in the case of ADVISORY BOARD MEMBERS by the appointing person or by a two-thirds vote of the appointing body (after disclosure on Commission FORM 4A).

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

(j) When the public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his agency where the price and terms of the transaction are available to similarly situated

members of the general public and the officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction. [Sec. 112.313(12), Fla. Stat.]

4. Additional Exemption

No elected public officer is in violation of the conflicting employment prohibition when employed by a tax exempt organization contracting with his agency so long as the officer is not directly or indirectly compensated as a result of the contract, does not participate in any way in the decision to enter into the contract, abstains from voting on any matter involving the employer, and makes certain disclosures. [Sec. 112.313(14), Fla. Stat.]

5. Lobbying State Agencies By Legislators

A member of the Legislature is prohibited from representing another person or entity for compensation during his term of office before any state agency other than judicial tribunals. [Art II, Sec. 8(e), Fla. Const. and Sec. 112.313(9), Fla. Stat.]

6. Employees Holding Office

A public employee is prohibited from being a member of the governing body which serves as his employer. [Sec. 112.313(10), Fla. Stat.]

7. Professional and Occupational Licensing Board Members

An officer, director, or administrator of a state, county, or regional professional or occupational organization or association, while holding such position, may not serve as a member of a state examining or licensing board for the profession or occupation. [Sec. 112.313(11), Fla. Stat.]

8. Contractual Services: Prohibited Employment

A state employee of the executive or judicial branches who participates in the decision-making process involving a purchase request, who influences the content of any specification or procurement standard, or who renders advice, investiga-

tion, or auditing, regarding his agency's contract for services, is prohibited from being employed with a person holding such a contract with his agency. [Sec. 112.3185(2), Fla. Stat.]

C. RESTRICTIONS ON APPOINTING, EMPLOYING, AND CONTRACTING WITH RELATIVES

A public official is prohibited from seeking for a relative any appointment, employment, promotion or advancement in the agency in which he is serving or over which he exercises jurisdiction or control. No person may be appointed, employed, promoted, or advanced in or to a position in an agency if such action has been advocated by a related public official who is serving in or exercising jurisdiction or control over the agency. NOTE: This prohibition does not apply to school districts, community colleges, and state universities. Also, the approval of budgets does not constitute "jurisdiction or control" for the purposes of this prohibition. [Sec. 112.3135, Fla. Stat.]

A state employee of the executive or judicial branches is prohibited from directly or indirectly procuring contractual services for his agency from a business entity of which a relative is an officer, partner, director, or proprietor, or in which he, his spouse, and children own more than a 5% interest. [Sec. 112.3185(6), Fla. Stat.]

D. POST OFFICEHOLDING AND EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS

1. Lobbying By Former Legislators Or Statewide Elected Officers

A member of the Legislature or a statewide elected official is prohibited for two years following vacation of office from representing another person or entity for compensation before the government body or agency of which the individual was an officer or member. [Art. II, Sec. 8(e), Fla. Const. and Sec. 112.313(9), Fla. Stat.]

2. Lobbying By Former State Employees

Certain employees of the executive and legislative branches of state government are prohibited from personally representing another person

or entity for compensation before the agency with which they were employed for a period of two years after leaving their positions, unless employed by another agency of state government. [Sec. 112.313(9), Fla. Stat.] These employees include the following:

(a) Executive branch employees serving in the SENIOR MANAGEMENT SERVICE and SELECTED EXEMPT SERVICE, as well as any person employed by the DEPARTMENT OF THE LOTTERY having authority over policy or procurement.

(b) Employees serving in the following position classifications: the Auditor General; the Sergeant at Arms and Secretary of the Senate; the Sergeant at Arms and Clerk of the House of Representatives; the executive director of the Advisory Council on Intergovernmental Relations and the executive director and deputy executive director of the Commission on Ethics; an executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, legislative analyst, or attorney serving in the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, the Senate Minority Party Office, the House Majority Party Office, the House Minority Party Office; any person, hired on a contractual basis and having the power normally conferred upon such persons, by whatever title; and any person having the power normally conferred upon the above positions.

Employees who were employed prior to July 1, 1989, or who reached normal retirement age and retired from State employment by July 1, 1989, are exempt from these lobbying prohibitions.

PENALTIES: Persons found in violation of this section are subject to the penalties contained in the Code (see PENALTIES, Part V) as well as a civil penalty in an amount equal to the compensation which the person receives for the prohibited conduct. [Sec. 112.313(9)(a)5., Fla. Stat.]

3. Additional Restrictions on Former State Employees

A former executive or judicial branch employee is prohibited from having employment or a contractual relationship, at any time after retirement or termination of employment, with any business entity (other than a public agency) in connection with a contract in which the employee participated personally and substantially by recommendation or decision while a public employee. [Sec. 112.3185(3), Fla. Stat.]

A former executive or judicial branch state employee who has retired or terminated employment is prohibited from having any employment or contractual relationship for two years with any business entity (other than a public agency) in connection with a contract for services which was within his responsibility while serving as a state employee. [Sec. 112.3185(4), Fla. Stat.]

Unless waived by the agency head, a former executive or judicial branch state employee may not be paid more for contractual services provided by him to his former agency during the first year after leaving the agency than his annual salary before leaving. [Sec. 112.3185(5), Fla. Stat.]

4. Lobbying By Former Local Government Officers and Employees

Beginning October 1, 1992, a person elected to county, municipal, or special district office is prohibited from representing another person or entity for compensation before the government body of which he was an officer for two years after leaving office. This does not apply to an elected official who held office on October 1, until re-elected after that date. Appointed officers and employees of counties, municipalities, and special districts may be subject to a similar restriction by local ordinance or resolution. [Sec. 112.313(13) and (14), Fla. Stat., as amended by Ch. 92-35, Laws of Fla.]

E. VOTING CONFLICTS OF INTEREST

NO STATE PUBLIC OFFICIAL IS PROHIBITED FROM VOTING IN HIS OFFICIAL CAPACITY ON ANY MATTER COMING BEFORE HIM.

However, a STATE PUBLIC OFFICER who votes on a measure which inures to his special private gain, or which he knows would inure to the special private gain of any PRINCIPAL by whom he is retained, of the PARENT ORGANIZATION or SUBSIDIARY of a CORPORATE PRINCIPAL by which he is retained, of a RELATIVE, or of a BUSINESS ASSOCIATE, must file a memorandum of voting conflict on Commission FORM 8A with the recording secretary within 15 days after the vote occurs, disclosing the nature of his interest in the matter.

NO COUNTY, MUNICIPAL, or other LOCAL PUBLIC OFFICER shall vote in his official capacity upon any measure which would inure to his special private gain, or which he knows would inure to the special private gain of any PRINCIPAL by whom he is retained, of the PARENT ORGANIZATION or SUBSIDIARY of a CORPORATE PRINCIPAL by which he is retained, of a RELATIVE, or of a BUSINESS ASSOCIATE. He must publicly announce the nature of his interest before the vote and must file a memorandum of voting conflict on Commission FORM 8B with the meeting's recording officer within 15 days after the vote occurs disclosing the nature of his interest in the matter. However, members of community redevelopment agencies and district officers elected on a one-acre, one-vote basis are not required to abstain.

NO APPOINTED STATE OR LOCAL OFFICER shall PARTICIPATE in any matter which would inure to his special private gain, the special private gain of any PRINCIPAL by whom he is retained, of the PARENT ORGANIZATION or SUBSIDIARY of a CORPORATE PRINCIPAL by which he is retained, of a RELATIVE or of a BUSINESS ASSOCIATE, without first disclosing the nature of his interest in the matter. The memorandum of voting conflict (Commission FORM 8A or 8B) must be filed with the meeting's recording officer, be provided to the other members of the agency, and be read publicly at the next meeting.

If the conflict is unknown or not disclosed prior to the meeting, the appointed official must orally disclose the conflict at the meeting when the

conflict becomes known. Also, a written memorandum of voting conflict must be filed with the meeting's recording officer within 15 days of the disclosure being made and must be provided to the other members of the agency with the disclosure being read publicly at the next scheduled meeting. [Sec. 112.3143, Fla. Stat.]

F. DISCLOSURES

Conflicts of interest may occur when public officials are in a position to make decisions which affect their personal financial interests. This is why public officers and employees, as well as candidates who run for public office, are required to publicly disclose their financial interests. The disclosure process serves to remind officials of their obligation to put the public interest above personal considerations. It also helps citizens to monitor the considerations of those who spend their tax dollars and participate in public policy decisions or administration.

All public officials and candidates do not file the same degree of disclosure; nor do they all file at the same time or place. Thus, care must be taken to determine which disclosure forms a particular official or candidate is required to file.

The following forms are described below to set forth the requirements of the various disclosures and the steps for correctly providing the information in a timely manner.

1. FORM 6 - Full and Public Disclosure

Who Must File:

Persons required to file FORM 6 are elected constitutional officers and candidates for such office; the Mayor and members of the City Council of Jacksonville and candidates for these offices; the Duval County Superintendent of Schools; Judges of Compensation Claims; and members of the Florida Housing Finance Agency, the Florida Commission on Tourism, the Florida Film and Television Investment Board, the Florida Black Business Investment Board, the Prepaid Postsecondary Education Expense Board, and the Board of Directors of Enterprise Florida, Inc.

What Must be Disclosed:

FORM 6 is a detailed disclosure of assets, liabilities, and sources of income over \$1,000 and their values, as well as net worth. Officials may opt to file their most recent income tax return in lieu of listing sources of income but still must disclose their assets, liabilities, and net worth. In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

When and Where To File:

Incumbent officials must file FORM 6 annually by July 1 with the Secretary of State. CANDIDATES must file with the officer before whom they qualify at the time of qualifying. [Art. II, Sec. 8(a) and (h), Fla. Const., and Sec. 112.3144, Fla. Stat.]

2. FORM 1 - Limited Financial Disclosure

Who Must File:

Persons required to file FORM 1 include all state officers, local officers, candidates for local elective office, and specified state employees as defined below (other than those officers who are required by law to file FORM 6).

STATE OFFICERS include:

- (1) Appointed members of any board having statewide jurisdiction, excluding members of boards which are solely advisory;
- (2) Members of the Board of Regents, the chancellor and vice-chancellor of the state university system, and presidents of state universities; and
- (3) All elected public officers (excluding congressional) not covered under "local officers" and any person appointed to fill a vacancy in such elective office.

LOCAL OFFICER includes:

- (1) Any person elected to office in any political subdivision and any person appointed to fill a vacancy for an unexpired term in such elective office;

- (2) An appointed member of a board of any political subdivision (except members of solely advisory bodies);
- (3) Any member of a body exercising land-planning, zoning, or natural resources responsibilities, whether advisory or not;
- (4) A mayor and the chief administrative officer of a county, municipality, or other political subdivision;
- (5) Any person holding one or more of the following positions within a county or municipality: city or county attorney; chief building inspector; water resources coordinator; pollution control director; environmental control director; administrator with power to grant or deny a land development permit;
- (6) A chief of police; fire chief; municipal clerk; district school superintendent; community college president; medical examiner; and a purchasing agent having the authority to make any purchase exceeding \$1,000 for any political subdivision of the state or any entity thereof.

SPECIFIED STATE EMPLOYEE includes:

- (1) The 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; a judge of compensation claims; and a hearing officer;
- (2) Any person employed in the offices of the Governor or member of the Cabinet who is exempt from the career service system, except those persons 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; and the division director, assistant division director, deputy director, bureau chief, or assistant bureau chief of any state department or division, or persons having the power normally conferred upon such person by whatever title;

(4) A superintendent or institute director of a state mental health institute established for training and research in the mental health field or of any major state institution or facility for corrections, training, treatment, or rehabilitation;

(5) A business manager, purchasing agent having the power to make any purchase exceeding \$1,000; finance and accounting director, personnel officer, and grants coordinator for any state agency;

(6) Any person employed in the legislative branch of government, except persons employed in maintenance, clerical, secretarial, or similar positions and legislative assistants exempted by the presiding officer of their house; and

(7) Each employee of the Ethics Commission.

What Must Be Disclosed:

FORM 1 requirements are set forth fully on the form. In general, this includes the reporting person's sources and types of financial interests, such as the names of employers and addresses of real property holdings. **NO DOLLAR VALUES ARE REQUIRED TO BE LISTED.** In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

When to File:

CANDIDATES for elected local office must file FORM 1 together with and at the same time they file their qualifying papers.

STATE and LOCAL OFFICERS and SPECIFIED STATE EMPLOYEES are required to file disclosure by July 1 of each year. They also must file within thirty days from the date of appointment or the beginning of employment. Those appointees requiring Senate confirmation must file prior to confirmation.

Where to File:

Each **LOCAL OFFICER** files FORM 1 with the Supervisor of Elections in the county in which he permanently resides.

A STATE OFFICER or SPECIFIED STATE EMPLOYEE files with the Department of State, Division of Elections, Room 1801, The Capitol, Tallahassee, Florida 32399. [Sec. 112.3145, Fla. Stat.]

3. FORM 9 - Quarterly Gift Disclosure

Each person required to file FORM 1 or FORM 6, and each State procurement employee, must file a FORM 9, Quarterly Gift Disclosure, with the Secretary of State on the last day of any calendar quarter following the calendar quarter in which he received a gift worth over \$100, other than gifts from relatives, gifts prohibited from being accepted, gifts primarily associated with his business or employment, and gifts otherwise required to be disclosed. FORM 9 NEED NOT BE FILED if no such gift was received during the calendar quarter.

Information to be disclosed includes a description of the gift and its value, the name and address of the donor, the date of the gift, and a copy of any receipt for the gift provided by the donor. [Sec. 112.3148, Fla. Stat.]

4. FORM 30 - Donor's Quarterly Gift Disclosure

As mentioned above, the following persons and entities generally are prohibited from giving a gift worth over \$100 to a reporting individual (a person required to file FORM 1 or FORM 6) or to a State procurement employee: a political committee or committee of continuous existence; a lobbyist who lobbies the reporting individual's or procurement employee's agency; and the partner, firm, employer, or principal of such a lobbyist. If such person or entity makes a gift worth between \$25 and \$100 to a reporting individual or State procurement employee (that is not accepted in behalf of a governmental entity or charitable organization), the gift should be reported on FORM 30. The donor also must notify the recipient at the time the gift is made that it will be reported.

The FORM 30 should be filed by the last day of the calendar quarter following the calendar quarter in which the gift was made. If the gift was made to

an individual in the legislative branch, FORM 30 should be filed with the JOINT LEGISLATIVE MANAGEMENT COMMITTEE. If the gift was to any other reporting individual or State procurement employee, FORM 30 should be filed with the DEPARTMENT OF STATE, DIVISION OF ELECTIONS. The first filing of this report was due on March 31, 1992.

5. FORM 10 - Annual Disclosure of Gifts from Government Agencies and Direct-Support Organizations and Honorarium Event Related Expenses

State government entities (including airport authorities), counties, municipalities, and school boards may give a gift worth over \$100 to a person required to file FORM 1 or FORM 6, and to State procurement employees, if a public purpose can be shown for the gift. Also, a direct-support organization for a governmental entity may give such a gift to a person who is an officer or employee of that entity. These gifts are to be reported on FORM 10, to be filed by July 1.

The governmental entity or direct-support organization giving the gift must provide the officer or employee with a statement about the gift no later than March 1 of the following year. The officer or employee then must disclose this information by filing a statement by July 1 with his annual financial disclosure that describes the gift and lists the donor, the date of the gift, and the value of the total gifts provided during the calendar year. State procurement employees file their statements with the Department of State. [Sec. 112.3148, Fla. Stat.]

In addition, a person required to file FORM 1 or FORM 6, or a State procurement employee, who receives expenses or payment of expenses after January 1, 1991, related to an honorarium event from someone who is prohibited from giving him an honorarium, must disclose annually the name, address, and affiliation of the donor, the amount of the expenses, the date of the event, a description of the expenses paid or provided, and the total value of the expenses on FORM 10. The donor paying the expenses must provide the officer or employee with a statement about the expenses within 60

days of the honorarium event. Honorarium related expenses from someone who does not employ a lobbyist do not have to be reported.

The disclosure must be filed by July 1, for expenses received during the previous calendar year, with the officer's or employee's FORM 1 or FORM 6. State procurement employees file their statements with the Department of State. [Sec. 112.3149, Fla. Stat., as created by Ch. 90-502, Laws of Fla.]

6. FORM 2 - Quarterly Client Disclosure

The state officers, local officers, and specified state employees as listed above, as well as elected constitutional officers, must file a FORM 2 if they or a partner or associate of their professional firm represent a client for compensation before an agency at their level of government.

A FORM 2 disclosure includes the names of clients represented by the reporting person or by any partner or associate of his professional firm for a fee or commission before agencies at the reporting person's level of government. Such representations DO NOT INCLUDE appearances in ministerial matters, appearances before judges of compensation claims, or representations on behalf of one's agency in one's official capacity. Nor does the term include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license, so long as the issuance of the license does not require a variance, special consideration, or a certificate of public convenience and necessity.

When to File:

This disclosure should be filed quarterly, within 15 days after the last day of the calendar quarter during which a reportable representation was made. FORM 2 need not be filed merely to indicate that no reportable representations occurred during the preceding quarter; it should be filed ONLY when reportable representations were made during the quarter.

Where To File:

LOCAL OFFICERS file with the Supervisor of Elections of the county in which they permanently reside.

STATE OFFICERS and SPECIFIED STATE EMPLOYEES file with the Department of State, Division of Elections, Room 1801, The Capitol, Tallahassee, Florida 32399. [Sec. 112.3145(4), Fla. Stat.]

IV. AVAILABILITY OF FORMS

LOCAL OFFICERS and EMPLOYEES who must file annually FORMS 1 or 10 will be sent these forms by mail from the Supervisor of Elections in the county in which they permanently reside not later than JUNE 1 of each year. Newly elected and appointed officials or employees should contact the board of their agency for copies of the forms.

ELECTED CONSTITUTIONAL OFFICERS, OTHER STATE OFFICERS, and SPECIFIED STATE EMPLOYEES who must file annually FORMS 1, 6 or 10 will be sent these forms by mail from the Department of State by JUNE 1 of each year. Newly elected and appointed officers and employees should contact the heads of their agencies or the Department of State for copies of the forms.

Any person needing one or more of the other forms (FORMS 2, 3A, 4A, 8A, 8B, 9, 30, and 50) described herein may obtain them upon request from a Supervisor of Elections or from the Department of State, Division of Elections, Room 1801, The Capitol, Tallahassee, Florida 32399.

V. PENALTIES

A. Non-criminal Penalties for Violation of the Sunshine Amendment and the Code of Ethics

There are no criminal penalties for violation of the Sunshine Amendment and the Code of Ethics. Penalties for violation of those laws may include:

impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$5,000, and restitution of any pecuniary benefits received.

B. Penalties for Candidates

CANDIDATES for public office who are found in violation of the Sunshine Amendment or the Code of Ethics may be subject to one or more of the following penalties: disqualification from being on the ballot, public censure, reprimand, or a civil penalty not to exceed \$5,000.

C. Penalties for Former Officers and Employees

FORMER PUBLIC OFFICERS or **EMPLOYEES** who are found in violation of a provision applicable to former officers or employees or whose violation occurred prior to such officer's or employee's leaving public office or employment may be subject to one or more of the following penalties: public censure and reprimand, a civil penalty not to exceed \$5,000, and restitution of any pecuniary benefits received. [Sec. 112.317, Fla. Stat.]

D. Penalties for Lobbyists and Others

An executive branch lobbyist who has failed to comply with the Executive Branch Lobbying Registration law (see Part VIII) may be fined up to \$5,000, reprimanded, censured, or prohibited from lobbying executive branch agencies for up to 2 years.

Lobbyists, their employers, principals, partners, and firms, and political committees and committees of continuous existence who give a prohibited gift or honorarium or fail to comply with the gift reporting requirements for gifts worth between \$25 and \$100 may be penalized by a fine of not more than \$5,000 and a prohibition on lobbying, or employing a lobbyist to lobby, before the agency of the public officer or employee to whom the gift was given for up to 2 years.

E. Felony Convictions: Forfeiture of Retirement Benefits

Public officers and employees are subject to forfeiture of all rights and benefits under the retirement system to which they belong if convicted of certain offenses prior to their retirement. The offenses include embezzlement or theft of public funds; bribery; felonies specified in Chapter 838, Florida Statutes; impeachable offenses; and felonies committed with intent to defraud the public or their public agency. [Sec. 112.3173, Fla. Stat.]

VI. ADVISORY OPINIONS

Conflicts of interest may be avoided by greater awareness of the ethics laws on the part of public officials and employees through advisory assistance from the Commission on Ethics.

A. Who Can Request An Opinion

Any public officer, candidate for public office, or public employee in Florida who is in doubt about the applicability of the standards of conduct or disclosure laws to himself, or anyone who has the power to hire or terminate another public employee, may seek an advisory opinion from the Commission about himself or that employee.

B. How To Request An Opinion

Opinions may be requested by letter presenting a question based on a real situation and including a detailed description of the situation. Opinions are issued by the Commission and are binding on the conduct of the person who is the subject of the opinion, unless material facts were omitted or misstated in the request for the opinion. Published opinions will not bear the name of the persons involved unless they consent to the use of their names.

C. How To Obtain Published Opinions

Published opinions of the Commission on Ethics are available for purchase at prices below

their actual cost. The opinions are printed in loose-leaf volumes containing a subject-matter index and a citator to all Florida Statutes and State constitutional provisions construed or relied upon by the Commission. Every agency of government should have a set of opinions for ready reference when the need arises.

The Commission also publishes a Digest of its advisory opinions which is available to anyone upon request. The Digest is published quarterly and is sent free of charge. The order form at the end of this booklet may be used to request copies of the Commission's published opinions.

VII. COMPLAINTS

A. A Citizen's Responsibility

The Commission on Ethics cannot conduct investigations of alleged violations of the Sunshine Amendment or the Code of Ethics unless a person files a sworn complaint with the Commission alleging such violation has occurred.

If you have knowledge that a person in government has violated the standards of conduct or disclosure laws described above or has committed some other breach of the public trust, you may report these violations to the Commission by filing a sworn complaint. Otherwise, the Commission is unable to take action, even after learning of such misdeeds through newspaper reports and phone calls.

Should you desired assistance in obtaining or completing a complaint form (FORM 50), you may receive either by contacting the Commission office at the address or phone number shown on the inside front cover of this booklet.

B. Confidentiality

The complaint, as well as all proceedings and records relating to the complaint, are confidential until the accused requests that such records be made public or until the complaint reaches a stage in the Commission's proceedings where it becomes public. This means that unless the

Commission receives a written waiver of confidentiality from the accused, the Commission is not free to release any documents or to comment on a complaint to members of the public or press, so long as the complaint remains in a confidential stage.

IN NO EVENT MAY A COMPLAINT BE FILED OR DISCLOSED WITH RESPECT TO A CANDIDATE FOR ELECTION WITHIN 5 DAYS PRECEDING THE ELECTION DATE.

C. How the Complaint Process Works

The Commission staff must forward a copy of the original sworn complaint to the accused within five days of its receipt. Any subsequent sworn amendments to the complaint also are transmitted within five days of their receipt.

Once a complaint is filed, there are three procedural stages which it goes through under the Commission's rules. The first stage is a determination of whether the allegations of the complaint are legally sufficient, that is, whether they indicate a possible violation of any law over which the Commission has jurisdiction. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation, and all records relating to the complaint will become public at that time.

If the complaint is found to be legally sufficient, a preliminary investigation will be undertaken by the investigative staff of the Commission. The second stage of the Commission's proceedings involves this preliminary investigation and a decision by the Commission of whether there is probable cause to believe that there has been a violation of any of the ethics laws. If the Commission finds no probable cause to believe there has been a violation of the ethics laws, the complaint will be dismissed and will become a matter of public record. If the Commission finds probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and usually enters the third stage of proceedings. This stage requires the Commission to decide whether the law was actually

violated and, if so, whether a penalty should be recommended. At this stage, the accused has the right to request a public hearing (trial) at which evidence is presented or the Commission may order that such a hearing be held. Public hearings usually are held in or near the area where the alleged violation occurred.

When the Commission concludes that a violation has been committed, it may recommend one or more penalties to the appropriate disciplinary body or official and issues a public report of its findings.

When the Commission determines that a person has filed a complaint with malicious intent and the complaint further is found to be frivolous and without basis in law or fact, the complainant will be liable for costs plus reasonable attorney's fees incurred by the person complained against. The Department of Legal Affairs may bring a civil action to recover such costs, if they are not paid willingly.

D. Dismissal of Complaints At Any Stage of Disposition

The Commission may, at its discretion, dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, in which case the Commission will issue a public report stating with particularity its reasons for the dismissal. [Sec. 112.324(10), Fla. Stat.]

E. Statute of Limitations

Beginning October 1, 1993, all sworn complaints alleging a violation of the Sunshine Amendment or the Code of Ethics will have to be filed with the Commission within 5 years of the alleged violation or other breach of the public trust. Time starts to run on the day AFTER the violation or breach of public trust is committed. The statute of limitations is tolled on the day a sworn complaint is filed with the Commission. If a complaint is filed and the statute of limitations has run, the complaint will be dismissed and the complaint and related

materials will remain confidential. (Sec. 112.3231, Fla. Stat.)

VIII. EXECUTIVE BRANCH LOBBYING

Any person who, for compensation and on behalf of another, lobbies an agency of the executive branch of state government with respect to a decision in the area of policy or procurement may be required to register as an executive branch lobbyist. Registration is required before lobbying an agency and is renewable annually. In addition, expenditure reports must be filed annually, and quarterly expenditure reports must be made for any calendar quarter in which lobbying expenditures are made. [Sec. 112.3215, Fla. Stat.]

Paying an executive branch lobbyist a contingency fee based upon the outcome of any specific executive branch action, and receiving such a fee, is prohibited. A violation of this prohibition is a first degree misdemeanor, and the amount received is subject to forfeiture. This does not prohibit sales people from receiving a commission. [Sec. 112.3217, Fla. Stat.]

Executive branch departments, state universities, community colleges, and water management districts are prohibited from using public funds to retain an executive branch (or legislative branch) lobbyist, although these agencies may use full-time employees as lobbyists. [Sec. 11.062, Fla. Stat.]

Additional information about the executive branch lobbyist registration system may be obtained by contacting the Lobbyist Registrar at the following address:

**Executive Branch Lobbyist Registration
Room G-68, Claude Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1425
Phone: 904/922-4990**

IX. WHISTLE-BLOWER'S ACT

In 1986, the Legislature enacted a "Whistleblower's Act" to protect employees of agencies and government contractors from adverse personnel actions in retaliation for disclosing information in a sworn complaint alleging certain types of improper activities on the part of an agency contractor, or for participating in an investigation or hearing conducted by an agency.

In 1991, the Legislature revised this law to afford greater protection to these employees by allowing a WRITTEN and SIGNED complaint rather than a sworn complaint. Further changes provide that the reporting of a public employer's gross waste of funds is an employee protected action. The most significant revision to the law is the shift to the employer of the burden of proof that an adverse personnel action was not taken in retaliation for the disclosure by an employee of any information pursuant to the "Whistle-blower's Act."

This law also creates a private sector "Whistleblower's Act" which will prohibit a private employer who employs more than 10 persons from discharging, suspending, demoting, or taking any other adverse personnel action against an employee in retaliation for disclosing, or refusing to participate in, an illegal activity or practice of an employer. As created, the new law provides private employee and employer protections, specifies the mechanism by which an employer's violation of law may be reported, and describes remedies that can be imposed by the courts.

Employees who are subject to adverse actions as a result of reporting improper activities or disclosing information under this Act may, after exhausting all contractual or administrative remedies, bring a civil action against their employers in the appropriate court of law. [Sec. 112.3187 and Sec. 112.3188, Fla. Stat.]

While this language is contained within the Code of Ethics, the Commission has no jurisdiction or authority to proceed against persons who violate this Act in behalf of a person who is being retaliated

against. Therefore, a person who has disclosed information alleging improper conduct as described above and who may suffer adverse consequences as a result should consult an attorney for information about his legal rights.

X. ADDITIONAL INFORMATION

As mentioned above, we suggest that you review the language used in each law for a more detailed understanding of Florida's ethics laws. The "Sunshine Amendment" is Article II, Section 8, of the Florida Constitution. The Code of Ethics for Public Officers and Employees is contained in Part III of Chapter 112, Florida Statutes.

Additional information about the Commission's functions and interpretations of these laws may be found in Chapter 34 of the Florida Administrative Code, where the Commission's rules are published, and in **The Florida Administrative Law Reports**, which publishes many of the Commission's final orders.

If you are a public officer or employee concerned about your obligations under these laws, you may wish to contact an attorney who represents your agency or a private attorney for advice. The staff of the Commission will be happy to respond to oral and written inquiries by providing information about the law, the Commission's interpretations of the law, and the Commission's procedures.

**ORDER FORM
FOR
ADVISORY OPINIONS
OF THE
COMMISSION ON ETHICS
P.O. DRAWER 15709
TALLAHASSEE, FL 32317-5709**

Name _____

Address _____

City _____ State _____ Zip _____

Tax Exempt No. (if applicable) _____

ITEM	QTY	UNIT PRICE	UNIT TAX (6% or 7%)*	TOTALS
1974-77 Opinions		\$14.00		
1978 Opinions		\$3.50		
1979 Opinions		\$3.50		
1980 Opinions		\$3.50		
1981-82 Opinions		\$7.00		
1983 Opinions		\$3.50		
1984 Opinions		\$3.50		
1985 Opinions		\$3.50		
1986 Opinions		\$3.50		
1987 Opinions		\$3.50		
1988 Opinions		\$3.50		
1989 Opinions		\$3.50		
1990 Opinions		\$3.50		
1991 Opinions		\$3.50		
1992 Opinions		\$3.50		
Looseleaf binder		\$3.50		
TOTAL AMOUNT ENCLOSED \$ _____				
Please make your check or money order payable to the State of Florida.				

* * Prepayment required. * *

If State agency paying by Journal Transfer from appropriated funds, please use following SAMAS Code: 11-10-1-000499-11800000-00
BF Object Code 230000
BF Category 040000

*If you are located in a county in Florida that imposes a discretionary sales surtax, please remit the amount for a 7% sales tax.

