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## MEMORANDUM

**TO:** All Interested Persons

**FROM:** Virlindia Doss, Executive Director *VAD*

**SUBJECT:** Proposed Legislation for 2017

**DATE:** November 7, 2016

Section 112.322(8), Florida Statutes, requires that the Florida Commission on Ethics make recommendations for legislation to improve the code of ethics and its enforcement. In 2017, the Commission recommends the Legislature make the following changes to the Code of Ethics:

### **1. Burden of Proof**

From its inception in 1974, until 1997, the Commission applied the "preponderance of evidence" as its standard of proof in evidentiary hearings. That changed when the First District Court of Appeal ruled in Latham v. Florida Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997) that the standard should be "clear and convincing" evidence. The Commission sees this as making the law less enforceable by making cases harder to prove, and recommends a return to the preponderance of evidence standard.

### **2. Conflicts of Interest**

The law prohibits an official from having a contractual relationship with a company doing business with his or her own agency. So City Councilman A could not contract with Business B, if that company 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 sees this as thwarting the underlying goal of the law, which is to prevent officials from having relationships with companies doing business with their agencies.

### **3. Attorney Fees**

Persons against whom complaints have been filed can seek to recover costs and attorney fees from their accuser, in what can be expensive and protracted litigation. But if the complainant successfully defends against a fees petition, current law does not allow the recovery of the complainant's *own* costs and fees. The Commission proposes addressing this imbalance by allowing the prevailing party in a fees petition—whether it be the respondent or the complainant—to recover costs and fees incurred both in the fees petition and the underlying complaint proceeding.

### **4. Enhanced Financial Disclosure for Local Elected Officials**

All elected Constitutional officers must file Form 6—Full and Public Disclosure of Financial Interests. Many other elected officers have similar authority and spending power, but are only required to file the less-informative Form 1—Disclosure of Financial Interests. The Commission believes that anyone asking for the citizens' votes should be willing to make full disclosure, and should be required to file the form 6.

### **5. Financial Disclosure**

- a. The Commission recommends allowing officials who are running for election, or re-election, to provide the Commission a *copy* of the disclosure they file with the qualifying officer. Current law, which requires qualifying officers to electronically send the Commission a copy of the candidate's disclosure, has proven very difficult to administer, requiring agency resources which could be better allocated.
- b. A 2013 change to the law allows filers 30 days to correct a "de minimis" error or omission, but it is unclear what should be considered "de minimis." The Commission recommends greater specificity in the law.

### **6. Voting Conflicts Law**

- a. Under current law, 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. The Commission believes this restriction should apply equally to elected officers.
- b. The Commission also believes the voting conflict standard for appointed (but not elected) state officials should be changed to mirror the standard for appointed local officials. This would mean appointed state officials would be required to abstain from voting on matters which would inure to the special private gain or loss of a relative, principal, or business associate; something they are not currently required to do.

## **7. Applying the Ethics Laws to "Privatized" Government Functions**

In the 2000s, Florida began to privatize some historically government functions, including foster care services, community mental health, and aging and adult care. The Commission believes that the employees and officers of the private entities performing these functions should be subject to the ethics laws.