

**DON GAETZ**  
President of the Senate



**WILL WEATHERFORD**  
Speaker of the House



# **Joint Legislative Auditing Committee**

**Senator Joseph Abruzzo, Chair**  
**Representative Lake Ray, Vice Chair**

## **Meeting Packet**

Monday, November 4, 2013

12:00 P.M. to 3:00 P.M.

301 Senate Office Building

**AGENDA**  
**JOINT LEGISLATIVE AUDITING COMMITTEE**

**DATE:** November 4, 2013

**TIME:** 12:00 p.m. to 3:00 p.m.

**PLACE:** Room 301, Senate Office Building

**MEMBERS:**

Senator Joseph Abruzzo, Chair  
Representative Lake Ray, Vice Chair

Senator Rob Bradley  
Senator Alan Hays  
Senator Jeremy Ring  
Senator Wilton Simpson

Representative Daphne D. Campbell  
Representative Gayle B. Harrell  
Representative Daniel D. Raulerson  
Representative Ray Rodrigues  
Representative Cynthia A. Stafford

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Discussion and adoption of guidelines for audits of lobbying firms' compensation reports (*draft guidelines are available on the Committee's website*)

Presentation of OPPAGA's report on the Palm Beach County Commission on Ethics (Report No. 13-10)



## **Guidelines for Audits of Lobbying Firm Compensation Reports**

The following documents are included in the meeting packet:

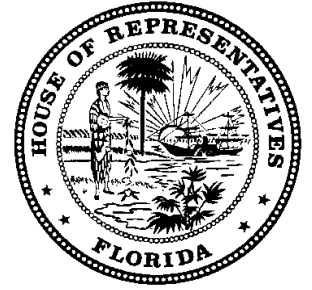
1. Draft Guidelines: includes revisions based on public input
2. Public Input: written comments received in response to the draft guidelines that were distributed on October 18, 2013
3. Relevant laws: ss. 11.40(3), 11.045, and 112.3215, F.S.
4. Relevant rules: Joint Rule One; portions of Senate Rule 9.8 (House Rules reference Joint Rule One); portions of Chapter 34-12, Rules of the Florida Commission on Ethics
5. Sample lobbying firm compensation report
6. Board of Accountancy Letter
7. FAQs from Online Sunshine related to both Legislative branch and Executive branch lobbyist registration and compensation reports



**DON GAETZ**  
President



**WILL WEATHERFORD**  
Speaker



**DRAFT**

**GUIDELINES**

**FOR**

**ATTESTATION SERVICES**

**RELATING TO**

**QUARTERLY LOBBYING FIRM**

**COMPENSATION REPORTS**

**Joint Legislative Auditing Committee**  
**For Consideration in November 2013**

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## **Joint Legislative Auditing Committee**

**Senator Joseph Abruzzo, Chair**  
**Representative Lake Ray, Vice Chair**

**Senator Rob Bradley**  
**Senator Alan Hays**  
**Senator Jeremy Ring**  
**Senator Wilton Simpson**

**Representative Daphne D. Campbell**  
**Representative Gayle B. Harrell**  
**Representative Daniel D. “Dan” Raulerson**  
**Representative Ray Rodrigues**  
**Representative Cynthia A. Stafford**



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**JOINT LEGISLATIVE AUDITING COMMITTEE  
GUIDELINES FOR ATTESTATION SERVICES RELATING TO  
LOBBYING FIRM COMPENSATION REPORTS**

**A. Introduction**

**1. Purpose**

Chapter 2005-359, Laws of Florida, mandates the filing of quarterly lobbying firm compensation reports that must be prepared and filed by both legislative branch and executive branch lobbying firms as defined in law.<sup>1</sup> The law also requires the Joint Legislative Auditing Committee (Committee) to adopt guidelines to govern random audits and field investigations of the quarterly compensation reports filed by lobbying firms in accordance with Sections 11.045 and 112.3215, Florida Statutes.

The purpose of these Guidelines is to provide direction to ~~practitioners-lobbying firms~~ and to certified public accountants (CPA) and CPA firms selected to perform the attestation services specified herein relating to the compensation reports filed by lobbying firms in accordance with Sections 11.045 and 112.3215, Florida Statutes. The Guidelines also describe the types of compensation-related records that should be maintained by the lobbying firms and made available to the CPA or CPA firm during the performance of the attestation services. These Guidelines are intended to supplement, rather than replace, the judgment of the independent CPA performing the attestation services.

In all cases, decisions and judgments by the CPAs should be made based upon applicable attestation standards established by the American Institute of Certified Public Accountants, provisions of Florida Statutes, and direction given in these Guidelines. Also, for background purposes, the CPAs should familiarize themselves with Joint Rule One of the Florida Legislature and Chapter 34-12, Florida Administrative Code (Rules of the Florida Commission on Ethics), as they relate to lobbying and compensation reporting requirements for the legislative branch and executive branch, respectively. Further guidance, including a frequently-asked questions document, will address issues and questions that may arise during the performance of the attestation services or from lobbying firms complying with the reporting requirements.

These guidelines govern attestation services relating to quarterly compensation reports filed after January 1, 2014. The attestation services described in these guidelines will begin after the deadline for filing the final compensation reports for calendar year 2014, and the procedures described in section F.2. below will be performed on each quarterly compensation report filed by the randomly selected lobbying firm for the preceding calendar year.

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<sup>1</sup> Sections 11.045, 11.40, and 112.3215, Florida Statutes

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**2. Responsible Parties**

The Lobbyist Registration Office (Office) within the Office of Legislative Services, Division of Law Revision and Information (Division), administers lobbyist registrations for the legislative ~~and executive~~ branches. The Commission on Ethics (Commission) administers lobbyist registrations for the executive branch. The Commission has co-located Commission employees in the Office. The Office maintains and provides this information to legislators, staff, public agencies, and the public. The lobbying firms are required to file quarterly lobbying firm compensation reports electronically with the Division. The Division is responsible for maintaining the electronic filing system and ensuring that all of the lobbyist registration forms and compensation reports are available for public inspection and duplication, if requested. The Division is also responsible for ensuring that the forms and reports filed with the Division are reasonably available on the Internet in an easily understandable and accessible format.

The Legislative committee charged with administrative responsibility for the process mandated in Chapter 2005-359, Laws of Florida (now Section 11.40(3), Florida Statutes), is the Joint Legislative Auditing Committee (Committee).

**3. Committee Contact**

The Committee's Coordinator primary contact is assigned to act as liaison to the CPAs and CPA firms performing the attestation services relating to the quarterly lobbying firm compensation reports is and can be contacted as follows:

Debbie White, CPA, Legislative Analyst

Telephone: (850) 487-4110

Email: [jlac@leg.state.fl.us](mailto:jlac@leg.state.fl.us)

FAX: (850) 922-5667

If Debbie is unavailable, please contact Kathy DuBose, Committee Coordinator, at (850) 487-4110, [jlac@leg.state.fl.us](mailto:jlac@leg.state.fl.us), or FAX (850) 922-5667.

**4. Questions**

Questions concerning the attestation services specified in these Guidelines, report formats, or special situations or circumstances encountered during the performance of the attestation services are encouraged from any CPA firm staff member. All such questions should be directed to the Committee contact at the telephone number, email, or FAX number listed above.

All other questions should be directed to the Committee contact, preferably in writing at the email or FAX number listed above.

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**B. Definitions**

The following are definitions of terms used throughout these guidelines:

Committee - the Joint Legislative Auditing Committee established by Joint Rule 4.1, Joint Rules of the Florida Legislature, [or its successor committee](#).

Compensation<sup>2</sup> - 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 lobbying activity. [Sections 11.045(1)(b), and 112.3215(1)(c), Florida Statutes]

Independent contract auditor - a state-licensed certified public accountant or firm with which a state-licensed certified public accountant is currently employed or associated who is actively engaged in the accounting profession. [Section 11.40(3)(a), Florida Statutes]

Lobbies/Lobbying - 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. [Section 112.3215(1)(f), Florida Statutes]; influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature. [Section 11.045(1)(e), Florida Statutes]

Lobbying firm - any 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 entity is a lobbyist. [Sections 11.045(1)(f) and 112.3215(1)(g), Florida Statutes]

Lobbyist - a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. [Sections 11.045(1)(g) and 112.3215(1)(h), Florida Statutes]

Principal - the person, firm, corporation, or other entity which has employed or retained a lobbyist. [Sections 11.045(1)(i) and 112.3215(1)(i), Florida Statutes]

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<sup>2</sup> It should only include compensation for lobbying before the Florida Legislature and state officials. It should not include compensation for lobbying local, municipal, or federal officials or officials of other states.

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Workpapers - documentation developed or obtained by the CPA during the course of the attestation engagement as a basis for, and in support of, the agreed-upon procedures report. Such documentation is the record of procedures performed, relevant evidence obtained, and conclusions reached by the CPA. It may include letters of confirmation and representation, schedules, copies of relevant documents, and correspondence concerning issues and questions that arise during the engagement. The workpapers are governed by standards ~~promulgated by the American Institute of Certified Public Accountants as~~ adopted by the Florida Board of Accountancy. Ownership of such workpapers and the CPA's responsibilities related to communications with clients<sup>3</sup> and confidential client information are set forth in Sections 473.316 and 473.318, Florida Statutes, and Chapter 61H1-23, Florida Administrative Code (Rules of the Florida Board of Accountancy). Additionally, such workpapers are confidential and exempt from disclosure pursuant to Sections 112.3215(8)(d) and 11.0431(2)(a) and (i), Florida Statutes.

**C. Compensation-Related Records to be Maintained**

Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers and other documents and records necessary to substantiate compensation. [Sections 11.045(2)(e) and 112.3215(5)(e), Florida Statutes] The lobbying firm's bookkeeping and accounting system need not be sophisticated; however, the lobbying firm should be using a reasonably systematic method of accounting for its financial transactions.

Records that should be maintained by the lobbying firm to document compensation received from or owed by a principal may include, but are not limited to, the following:

1. ~~Marketing a~~Agreements and/or ~~lobbying~~contracts for lobbying (however termed) between the lobbying firm and each principal by calendar year, including any amendments to such agreements or contracts.
2. Agreements and/or contracts between the lobbying firm and other lobbying firms or lobbyists that are working on a subcontractor basis with the lobbying firm for the purpose of lobbying (however termed), including any amendments to such agreements or contracts.
3. A schedule of contracted compensation by principal that indicates the payment schedule for such compensation (i.e., as services are rendered and billed, monthly, quarterly, lump sum at beginning of contract period, lump sum at end of contract period, etc.).

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<sup>3</sup> For purposes of these guidelines, client is defined as both the Legislature and the lobbying firms.

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4. Payment records by principal, including original receipts documentation. Such payment records should include: principal name, date of each payment, amount of each payment, and any amounts billed but not yet received. Original receipts documentation should include: receipts, invoices, or copies of the payment check; and deposit slips or other bank records that indicate that payments received from principals were deposited.
5. If the compensation reported includes any reimbursements received, then documentation to substantiate the reimbursement must be maintained. Such documentation could include receipts or invoices describing the goods or services for which reimbursement was requested, cancelled checks, and credit card receipts.
6. Records to document any allocation of compensation from a principal.

The Committee recognizes that a reasonable, common sense approach is necessary when any allocation is required. Therefore, in calculating such allocated amounts, any reasonable, fact-based method of calculation is acceptable.

One method that could be utilized is allocating the compensation based on percentage of time spent on activities. For example, actual time spent (hours or minutes) multiplied by the hourly rate of pay (for each lobbyist or support staff working on each activity).

It is imperative, however, that documentation be maintained to support both the method and any percentages used to determine amounts allocated to the following areas:

- a) Lobbying services versus non-lobbying services
- b) Florida legislative branch lobbying versus executive branch lobbying
- c) Florida legislative or executive branch lobbying versus lobbying any level or branch of a local, municipal, other state, or federal government.

The lobbying firm may choose to keep records of all Florida legislative or executive branch lobbying activities separate from the records of all other such lobbying and non-lobbying activities. If this is the case, then the lobbying firm is not required to make any documents related to any other lobbying or non-lobbying activities available as part of the attestation engagement. However, if the lobbying firm has chosen to keep records and accounts which ordinarily and customarily integrate both Florida legislative and/or executive branch lobbying activities and all other such lobbying and non-lobbying activities, then such integrated records must be made available during the attestation engagement if



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they are necessary to document all or a portion of the compensation amounts included on the quarterly compensation reports.

The types of documentation that may be used to support an allocation of compensation include, but are not limited to, the following:

- a) Signed time sheets or other records for each lobbying firm staff member that reflect the actual time spent (in hours or minutes) on lobbying activities for a principal, including reports generated by a time-reporting system using a coding or other system to identify time spent on lobbying activities with respect to a principal for purposes of billing for lobbying services;
- b) Salary information that indicates the hourly rate of pay for each lobbying firm staff member who worked on lobbying activities for a principal;
- b)c) Written contract or agreement for lobbying services signed by the parties specifying a fixed amount for lobbying services or providing for an agreed-upon allocation of compensation using specified percentages or other agreed-upon allocation;
- e)d) Written statement(s), signed by a management-level employee of either or both the lobbying firm and the principal, that describes the specific reasons for allocating compensation using specified percentages (i.e., 60% legislative branch and 40% executive branch or 70% lobbying services and 30% non-lobbying services).

An allocation method may be adjusted if the lobbying firm determines that such adjustments need to be made to accurately reflect current activity. Documentation as discussed above should be maintained to support any such adjustments.

**D. Record Redaction**

The Committee recognizes that records maintained by a lobbying firm and used to substantiate compensation may contain privileged or confidential information, the disclosure of which is not necessary for the CPA or CPA firm to perform the attestation procedures specified herein. A lobbying firm may redact information that is privileged or confidential so long as such redaction does not prevent the CPA or CPA firm from using the records to substantiate the accuracy of the compensation reported, the principal owing or providing the compensation, and the related time period.

If a lobbying firm refuses to provide documentation or if the lobbying firm provides redacted documentation that prevents the CPA or CPA firm from substantiating the compensation reported, the CPA or CPA firm should contact the Committee Coordinator for assistance.

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**D.E. Records Retention**

The records retention requirements are established in Sections 11.045(2)(e) and 112.3215(5)(e), Florida Statutes. Each lobbying firm and each principal is required to preserve for a period of **4 years** “all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation.”

**E.F. Objectives and Requirements for Attestation Services**

**1. Objectives**

The legislative objective of the process mandated in Section 11.40(3), Florida Statutes, is to obtain a timely attestation report from a CPA or CPA firm, licensed by the Florida Board of Accountancy. The attestation engagement is to be conducted and the attestation report is to be prepared in accordance with the applicable attestation standards promulgated by the American Institute of Certified Public Accountants as adopted by the Florida Board of Accountancy in Chapter 61H1-20, Florida Administrative Code. The specific procedures performed on the randomly selected lobbying firm’s quarterly compensation reports will be as agreed upon between the Legislature and the CPA or CPA firm selected to perform such procedures. Such procedures are described in section E.2. below and have been adopted by the Committee as authorized by Section 11.40(3)(h), Florida Statutes.

**2. Agreed-Upon Procedures to be Performed**

The agreed-upon procedures to be performed by the CPA or CPA firm selected to perform the attestation engagement are described below. Revisions to such procedures may be made if determined to be necessary by the Committee or by joint agreement of the presiding officers. Such revisions must be agreed upon in writing by the Committee or joint agreement of the presiding officers and the CPA or CPA firm contracted to perform such services. No oral agreements shall be valid or binding.

a) Documentation to be Obtained

Obtain the following documentation from the Committee office:

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- 1) all of the quarterly lobbying firm compensation reports for the calendar year that the lobbying firm filed with the Division;<sup>4</sup>
- 2) the registration form and the authorization form filed with the Division by each lobbyist of the lobbying firm for the calendar year; and
- 3) any change of address forms or cancellation forms filed with the Division by each lobbyist of the lobbying firm for the calendar year.

b) Comparison of Documents Filed with the Division

- 1) Compare the lobbyist(s) registered for the lobbying firm per the registration form(s) to the lobbyists listed on the quarterly lobbying firm compensation reports, noting any differences. Obtain a detailed explanation from the lobbying firm for any differences and document the explanation in the workpapers.
- 2) Compare the principal(s) listed for each lobbyist of the lobbying firm per the registration form(s) to the principal(s) listed on the quarterly lobbying firm compensation reports, noting any differences. Obtain a detailed explanation from the principal(s) for any differences and document the explanation(s) in the workpapers.

A finding must be included in the report if the explanations are not sufficiently documented.

c) Comparison of Documents Filed with Lobbying Firm Records

- 1) Request access from the lobbying firm to the documentation that supports all of the compensation amounts reported on the quarterly lobbying firm compensation reports, including \$0 amounts. If problems relating to access of such records and documentation are encountered, contact the Committee Coordinator for assistance.
- 2) Request and review all ~~marketing~~ agreements and/or ~~lobbying~~ contracts for lobbying (however termed) between the lobbying firm and each principal that cover the calendar year, including any amendments. Also request and review all agreements and/or contracts between the lobbying firm and other lobbying firms or lobbyists that are working on a subcontractor basis with the lobbying firm for the purpose of lobbying, including any amendments.

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<sup>4</sup> The quarterly compensation reports are also available on the Division's website (<http://olcrpublic.leg.state.fl.us/>).

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- 3) Review the agreements/contracts obtained in section [EF.2.c2](#) above and verify that none are contingency fee based,<sup>5</sup> unless an exception is provided in law (i.e., related to a claim bill (both legislative and executive)); compensation or commission of a salesperson as part of a bona fide contractual relationship with company paying the compensation or commission (executive only). A finding must be included in the report if it is determined that an agreement or contract was based on a contingency fee in violation of law.
- 4) Using the above-noted agreements and/or contracts, prepare (or obtain from lobbying firm) a schedule of the contracted compensation by principal, noting the payment schedule for such compensation (i.e., as services are rendered and billed, monthly, quarterly, lump sum at beginning of contract period, lump sum at end of contract period, etc.).

If the schedule is prepared by the lobbying firm, compare all compensation amounts per the schedule to the agreements and/or contracts. Resolve any differences, documenting the explanations provided by the lobbying firm in the workpapers.

- 5) Compare the principals per the schedule in section [EF.2.c4](#) above to the principals noted in (b) above. Resolve any differences, documenting the explanations provided by the lobbying firm in the workpapers.
- 6) Compare all of the compensation reported as provided or owed to the lobbying firm from each principal per the quarterly lobbying firm compensation reports to the schedule in section [EF.2.c4](#) above. Resolve any differences, documenting the explanations provided by the lobbying firms (timing, etc.) in the workpapers.
- 7) In order to verify the reported amounts, compare all of the compensation amounts provided or owed to the lobbying firm by each principal to the applicable client (principal) payment records and original receipts documentation, as described in section C.4. above. Prepare a schedule to document the results and notes to describe the procedures performed and the records utilized.

Any differences noted while performing the procedures specified in this section ([EF.2.c](#)) must be discussed with the lobbying firm, and explanations obtained and documented. A finding must be included in the report if the explanations are not sufficiently documented.

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<sup>5</sup> See Sections 11.047 and 112.3217, Florida Statutes, relating to contingency fees.

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d) Allocation of Compensation

Documentation, as discussed in section C.6. above, must be maintained to support both the method and any percentages used to determine any amounts allocated.

If any compensation amounts have been allocated between any of the following categories of services: (1) lobbying services versus non-lobbying services, (2) Florida legislative branch lobbying versus executive branch lobbying, (3) Florida legislative or executive branch lobbying versus lobbying any level or branch of a local, municipal, other state, or federal government, then:

1. ~~Determine if~~Verify that the explanation(s) and documentation provided by the lobbying firm for each allocation ~~are reasonable based on is in accordance with either~~ the allocation determined and documented by the lobbying firm or the default methodology described below for service provided in each applicable category.
2. Using the schedule in section EF.2.c4 above, verify that the allocated compensation amounts were correctly included or omitted from the quarterly lobbying firm compensation reports in order to verify the reported amounts.
3. Prepare a schedule to document the results and include any documentation provided by the lobbying firm in the workpapers. As described below, certain findings must be included in the report. Any finding must include a description of the amount allocated and any explanation provided by the lobbying firm as to why the allocation method was not documented.

- **Lobbying services versus non-lobbying services**

If the lobbying firm provided non-lobbying services to the principal, the compensation for the non-lobbying services must be excluded from the compensation report.

If the lobbying firm has not utilized and documented a reasonable allocation method between compensation from a principal for lobbying versus non-lobbying services, then the CPA will probably need to look at additional records maintained by the lobbying firm in order to determine that only compensation for lobbying services was included on the quarterly compensation reports.

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If there is not sufficient documentation to determine that the amounts reported on the quarterly compensation reports are only for lobbying services rendered, then a finding must be included in the report.

- **Florida legislative branch lobbying versus executive branch lobbying**

If the lobbying firm is providing both Florida legislative branch and executive branch lobbying services, there must be no double reporting of compensation on the legislative branch and the executive branch quarterly compensation reports.

If the lobbying firm has not utilized and documented a reasonable allocation method between compensation for such legislative branch versus executive branch lobbying services rendered, then the assumption will be that the compensation should be equally split (50-50) between the two categories of lobbying services.

A finding must be included in the report if the compensation reported on the quarterly compensation reports is not accurate based on either the allocation records maintained by the lobbying firm or the assumption applied, in the case where no allocation method was utilized and sufficiently documented by the lobbying firm.

- **Florida legislative or executive branch lobbying versus lobbying any level or branch of a local, municipal, other state, or federal government**

If the lobbying firm lobbied any level or branch of a local, municipal, other state, or federal government, the compensation for these lobbying services must be excluded from the compensation report.

If the lobbying firm has not utilized and documented a reasonable allocation method between compensation received for Florida legislative branch lobbying or executive branch lobbying services versus lobbying any level or branch of a local, municipal, other state, or federal government, then the assumption will be that the compensation should be equally proportioned between the categories of lobbying services described in the contract, agreement or other document that denotes the lobbying services to be provided by the lobbying firm.

A finding must be included in the report if the compensation reported on the quarterly compensation reports is not accurate based on either the allocation records maintained by the lobbying firm or the assumption

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applied, in the case where no allocation method was utilized and sufficiently documented by the lobbying firm.

e) Representation Letter from Lobbying Firm

Obtain a representation letter from the lobbying firm, indicating that the lobbying firm has provided full and complete records to the CPA or CPA firm, including all pertinent contracts and/or agreements for lobbying services provided during the calendar year and related supporting documentation. A sample representation letter is included as Appendix 1.

f) Preparation of Agreed-Upon Procedures Report

Prepare an agreed-upon procedures report in accordance with attestation standards promulgated by the American Institute of Certified Public Accountants as adopted by the Florida Board of Accountancy. A sample report shell is included as Appendix 2.

Pursuant to the requirements of Section 11.40(3)(f), Florida Statutes, a schedule must be prepared and included as an appendix to the report that states the name, address, and title, if any, of any individual in the lobbying firm ~~or associated with a principal of the lobbying firm~~ who failed to fully, voluntarily, and promptly participate in the attestation engagement process, or to provide any reasonably relevant documentation requested by the CPA or CPA firm in the course of conducting the attestation engagement.

g) Distribution of Agreed-Upon Procedures Report

The agreed-upon procedures report, which includes copies of the quarterly lobbying firm compensation reports as an appendix, and the schedule prepared in (f) above must be distributed as follows:

- 1) If the report is of a legislative branch lobbying firm, provide an original of such report to the President of the Florida Senate and to the Speaker of the Florida House of Representatives. An original of such report must also be provided to the Committee.
- 2) If the report is of an executive branch lobbying firm, provide an original of such report to the Florida Commission on Ethics. An original of such report must also be provided to the Committee.

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**3. Confidentiality of Records and Other Matters**

~~The agreed-upon procedures report is confidential until the report is issued, at which point it becomes public information.~~ Workpapers developed by the CPA or CPA firm during the course of the attestation engagement as a basis for, and in support of, the agreed-upon procedures report, are governed by standards ~~promulgated by the American Institute of Certified Public Accountants as~~ adopted by the Florida Board of Accountancy. Ownership of such workpapers and the CPA's responsibilities related to communications with clients and confidential client information are set forth in Sections 473.316 and 473.318, Florida Statutes, and Chapter 61H1-23, Florida Administrative Code (Rules of the Florida Board of Accountancy).<sup>6</sup> Such workpapers and draft reports of a CPA or CPA firm are confidential, but a final report submitted by a CPA or CPA firm to a client is not. Therefore, the agreed-upon procedures report is confidential until the report is issued.

Records of a lobbying firm that are associated with the attestation engagements relating to the quarterly compensation reports are confidential and exempt from public record disclosure requirements, unless there is a finding of probable cause that the audit reflects as a violation of the reporting laws. (See Sections 112.3215(8)(d) and 11.0431(2)(a) and (i), Florida Statutes)

The CPA or CPA firm contracted to perform the attestation engagement may be required to appear before various committees of the Legislature or the Florida Commission on Ethics, as applicable, to make oral presentations of the completed attestation report. If such appearance is required, the individuals involved will be paid based on the fee schedule that will be included in the contract with the CPA or CPA firm.

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<sup>6</sup> A CPA may not disclose any confidential information in the course of a professional engagement, except with the consent of the client.



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**APPENDIX 1 – SAMPLE REPRESENTATION LETTER**

**[Date]**

**To [CPA/CPA Firm Name]**

We are providing this letter in connection with your attestation engagement relating to the [20\_\_] quarterly compensation reports of the [Name of Lobbying Firm]. We confirm that we are responsible for the accuracy of the information included in these quarterly compensation reports.

We confirm, to the best of our knowledge and belief, as of [date of CPA's report] the following representation made to you during your attestation engagement.

We have made available to you all –

1. Contracts and/or agreements with principals for lobbying services provided during the [20\_\_] calendar year.
2. Contracts and/or agreements with other lobbying firms or lobbyists that are working on a subcontractor basis with [me/us] for the purpose of lobbying during the [20\_\_] calendar year.
3. All related ~~supporting~~ documentation necessary to support the total amount of compensation for lobbying activities on each quarterly compensation report and all allocations of compensation received from principals for lobbying activities, including payment records, and original receipts documentation, and documentation to support all allocations of compensation received from principals.

**[Name of Lobbying Firm Executive Officer and Title]**

**JOINT LEGISLATIVE AUDITING COMMITTEE  
GUIDELINES FOR ATTESTATION SERVICES RELATING TO  
LOBBYING FIRM COMPENSATION REPORTS**

**APPENDIX 2 – SAMPLE REPORT**

**INDEPENDENT ACCOUNTANT’S REPORT  
ON APPLYING AGREED-UPON PROCEDURES**

To the President of the Senate and the Speaker of the House of Representatives  
*(For legislative branch compensation reports)*

**or**

To the Florida Commission on Ethics  
*(For executive branch compensation reports)*

[Introductory Paragraphs]

We have performed the procedures enumerated below, which were agreed to by the Joint Legislative Auditing Committee, solely to assist in evaluating the **[Name of Lobbying Firm]**’s compliance with the requirements set forth in the Florida Statutes relating to the **[20\_\_]** calendar year quarterly lobbying firm compensation reports. Management of the **[Name of Lobbying Firm]** is responsible for compliance with those requirements.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

***[Include paragraphs to enumerate procedures and findings.]***

The procedures that we performed and our findings are as follows:

1. *(Describe procedure performed.)*

No exceptions were found as a result of performing this procedure.  
*(or add description of exceptions)*

2. *(Describe procedure performed.)* **[NOTE: Repeat as needed to address all procedures performed.]**

**JOINT LEGISLATIVE AUDITING COMMITTEE  
GUIDELINES FOR ATTESTATION SERVICES RELATING TO  
LOBBYING FIRM COMPENSATION REPORTS**

No exceptions were found as a result of performing this procedure.  
*(or add description of exceptions)*

3. **[Add if applicable]** Pursuant to the requirements of Section 11.40(3)(f), Florida Statutes, we were required to prepare a schedule and include such as an appendix to this report that states the name, address, and title, if any, of any individual in the lobbying firm or associated with a principal of the lobbying firm who failed to fully, voluntarily, and promptly participate in the attestation engagement process, or to provide any reasonably relevant documentation requested by the CPA or CPA firm in the course of conducting the attestation engagement. Such schedule is included as Appendix A to this report..

**[Concluding Paragraphs]**

We were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on compliance. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Legislature *(or the Commission on Ethics for executive branch compensation)* and is not intended to be, and should not be, used by anyone other than these specified parties.

*[Signature of CPA or CPA Firm]*

*[Date]*

**2. Public Input Related to  
Draft Guidelines**

TO: Joint Legislative Auditing Committee

FROM: Charles F. Dudley, Managing Partner  
Floridian Partners, LLC

DATE: October 28, 2013

RE: Comments on Draft Guidelines for Attestation Services relating to Quarterly Lobbying Firm Compensation Reports

Thank you for the opportunity to provide input on the above-referenced proposed guidelines. Unfortunately, due to a heavy travel schedule, time constraints prevented us from conducting a more thorough review; however, below are our comments based on items which immediately concerned us on the first pass-through.

Page 4

C.1. ~~Marketing agreements and/or lobbying contracts (however termed)~~ Contracts for lobbying between the lobbying firm and each principal by calendar year, including any amendments to such agreements or contracts.

*Rationale: Lobbying is a specifically defined term in statute. We are unsure of what is meant by a "marketing agreement" and would suggest that terms that are specifically defined in the law be used.*

2. ~~Agreements and/or contracts~~ Contracts for lobbying between the lobbying firm and other lobbying firms or lobbyists that are working on a subcontractor basis with the lobbying firm for the purpose of lobbying, including any amendments to such ~~agreements or~~ lobbying contracts.

*Rationale: Lobbying is a specifically defined term (see above).*

Page 12

4. Attorney-lobbyists. Consideration should be made for those lobbyists who are also members of the Florida Bar and the implication of various Bar ethical requirements and these proposed audits and procedures.

*Rationale: Many lobbyists are attorneys who are governed by Rules of the Florida Bar. In some cases, Bar rules prohibit disclosure of client fees or require client authorization for such disclosures. We would respectfully suggest that this issue has not been addressed in these guidelines and would recommend input from the Florida Bar.*



Florida Association of  
Professional Lobbyists

October 29, 2013

The Honorable Joseph Abruzzo, Chairman  
Joint Legislative Auditing Committee  
The Capitol  
Tallahassee, FL 32399

Dear Chairman Abruzzo:

Thank you for the opportunity to provide feedback and comment on the November 2013 Draft Guidelines for Attestation Services Relating to Quarterly Lobbying Firm Compensation Reports.

As mentioned in our September 2013 letter to President Gaetz and Speaker Weatherford regarding this issue, we stated that FAPL members will continue to comply with all provisions of law applicable to the practice of lobbying and will adhere to self-imposed strict code of professional conduct. We also volunteered to be a resource and partner with the Legislature in drafting the lobbyist compensation report audit provisions so as to ensure not only compliance with the law, but also ways to implement the audit process without the unintentional addition of overburdensome regulations on many of our members who are small businesses.

On behalf of the board of directors of the Florida Association of Professional Lobbyists (FAPL), please accept the summary provided below as our initial feedback on these draft guidelines.

### **SUMMARY OF NOVEMBER 2013 GUIDELINES**

#### GENERAL COMMENTS:

- 1) The guidelines should be applied in a prospective manner and should clearly specify the date the initial audits will be conducted.
- 2) Retention of compensation-related records are not currently required by law and the guidelines appear to create a new requirement.

- 3) Accounting requirements and client contract/agreements are not currently required by law and the guidelines appear to create a new requirement for bookkeeping, timekeeping and work records that are not currently required by law.
- 4) The guidelines do not provide for a process to amend or revise compensation reports in the event a firm never receives invoiced compensation.
- 5) The guidelines appear to regulate and impose new requirements on non-lobbying services that are not currently subject to compensation reporting.
- 6) The guidelines appear not to take into consideration the size, corporate structure and business models of lobbying firms such as whether or not the firm has employees or non-employee contracted consultants.
- 7) Consideration should be given for compensation to be automatically allocate 50-50 between legislative and executive branch reports unless specified otherwise. We would suggest revising the principal authorization forms (legislative and executive) to include acknowledgement of allocation of compensation.
- 8) Consideration should be given to establishing a threshold for waiver of the audit requirement for small firms (ex. two or less lobbying clients).

#### SPECIFIC COMMENTS:

##### **Page 4**

C. "...the lobbying firm should be using a reasonably systematic method of accounting for its financial transactions." There is not a definition of what would be considered "reasonably systematic."

C. 1. Contracts or agreements are not currently required by law. We suggest copies of bank deposits sufficient to evidence compensation.

C. 3. The compensation paid by clients may not always be determined when a contract is signed. We suggest copies of bank deposits sufficient to evidence compensation.

C. 5. It is not clear if reimbursement by clients of business expenses will be considered "compensation" for purposes of the guidelines. We suggest that this determination should follow appropriate tax guidelines and not create a new standard.

## **Page 5**

C. 6. Documentation of non-lobbying services is not currently required by law. The guidelines appear to impose a new requirement and regulation of non-lobbying services. Further, it is not clear if segregated records for lobbying and non-lobbying services would allow for compensation of non-lobbying services to remain confidential.

C. 6. b) Salary information is not currently required under law. It appears the guidelines go beyond the statutory requirement of what the firm was paid or owed.

## **Page 6**

C. 6. c) Written statements required of employees or principals appear to go well beyond what is required by law and create a new regulation on principals. We believe principal authorization forms should be sufficient. More importantly, only the individual signing the quarterly compensation reports should provide any written statement in connection with the guidelines.

## **Page 7**

E. 2. b) ".....a finding must be included in the report if the explanations are not sufficiently documented...." There is not a definition of what would be considered "sufficiently documented."

E. 2. b) 1) The guidelines appear to create a new requirement that lobbyists are "registered for the lobbying firm" versus the current requirement that a lobbyist be registered for a principal.

## **Page 8**

E. 2. c) 3) ".....compensation or commission of a salesperson...." There is no guidance in the event a firm is paid a bonus or similar compensation outside of the contracted fee.

## **Page 9**

E. 2. d) 1. ".....each allocation are reasonable based on the service provided in each category." The guidelines appear to require the CPA to not only assess whether or not the compensation was reported accurately but that the lobbying firm's fees were reasonable based on the services provided. This is not currently required or regulated under law.

## **Page 11**

E. 2. e) The guidelines now require a "representation letter" from a lobbying firm. It would appear that this goes beyond current law and could be substantiated instead by the signature of the individual filing the quarterly compensation reports.

E. 2. f) ".....of any individual in the lobbying firm or associated with a principal of the lobbying firm who failed to fully....." The guidelines are not clear as to who is an individual "associated with a principal."



Again, we thank you for allowing our organization to provide input and offer our assistance as you embark upon fully implementing this very important law.

Sincerely,

Hubert "Bo" Bohannon  
Board Chairman

cc: Joint Legislative Auditing Committee  
FAPL Board of Directors

David Mica, CAE, DPL, Vice Chair, Florida Petroleum Council

Mike Hightower, DPL, Secretary/Treasurer, Florida Blue

Lori Killinger, Esq., DPL, Executive Comm. Member, Lewis, Longman & Walker, PA

Jose Gonzalez, DPL, Executive Comm. Member, Anheuser-Busch

Andrea B. Reilly, Esq., DPL, Smith, Bryan & Myers

Michael W. Carlson, Esq., DPL, Personal Insurance Federation of Florida

Eric Eikenberg, DPL, The Everglades Foundation

Candice Ericks, DPL, Ericks Consultants

Paula Fillmore-Mateo, DPL, AT&T Florida

Susan Goldstein, DPL, Susan Goldstein Consulting

Jennifer Green, CAE, DPL, Liberty Partners of Tallahassee

Frederick W. Leonhardt, Esq., DPL, Gray Robinson, PA

John Sebree, DPL, The Florida Realtors

John Wayne Smith, DPL, William Peebles & Associates, PA

October 30, 2013

The Honorable Joseph Abruzzo  
Chairman, Joint Legislative Auditing Committee  
111 W. Madison Street  
876 Pepper Building  
Tallahassee, FL 32399-1400

Attn: Kathy Dubose

Dear Chairman Abruzzo:

On behalf of the more than 18,000 members of the Florida Institute of CPAs (FICPA), we thank you and your committee staff for allowing us to provide feedback on the committee's "Draft Guidelines for Attestation Services Relating to Quarterly Lobbying Firm Compensation Reports." As requested by committee staff on October 18, the following comments specifically relate to the areas within the guidelines that affect the performance of the attestation engagements by Certified Public Accountants licensed and regulated under Chapter 473, F.S.

- Page 1, paragraph 2, the reference to "practitioners and certified public accountants (CPA) and CPA firms selected to perform the attestations services" may cause confusion to the public as to who can perform the audit services outlined in s. 11.40(3), F.S. Specifically, the term "practitioner" may lead the public to believe that someone other than an a state-licensed certified public accountant as stated in s. 11.40 (3)(a), F.S. is qualified to perform the audits as required by statute.
- Page 3, under the "Workpapers" definition and throughout the guidelines, limiting the governance to standards promulgated by the American Institute of the Certified Public Accountants may create unintended consequences for the Florida Board of Accountancy's process of adopting standards. It would be more clear to include "or as adopted by the Florida Board of Accountancy."
- Page 3, under the "Workpapers" definition, while the definition attempts to outline the responsibilities of confidential client information that are set forth in s. 473.316, F.S., s. 473.318, F.S. and Chapter 61h1-23, Florida Administrative Code, it may be unclear as to whether a CPA's workpapers are subject to a public records request. If it is the intent of the Joint Legislative Audit Committee for the workpapers of the CPA or CPA firm performing the attestation engagements workpapers to be exempt from public records, there should be further clarification in the proposed guidelines. This additional clarity should also be considered as part of the guidelines on page 12 of this document.
- Page 7, under "Comparison of Documents Filed with the Division", clarification may be needed to provide a CPA with the necessary guidance to determine whether an explanation is "sufficiently documented." The guidelines should be clear as to what is acceptable and required documentation.

The Honorable Joseph Abruzzo  
October 30, 2013  
Page 2

- Page 9, under "Allocation of Compensation", subsection #1, it may be unreasonable to require a CPA to determine if an allocation is "reasonable" based on the service provided. For a CPA to determine if an allocation is "reasonable", it may be prudent for the committee to provide additional guidelines that provide further guidance to the lobby firms as to their specific approach to allocating their compensation amounts. Further, it may be clearer to simply require a lobbyist to state their allocation of compensation when the first quarterly compensation report is filed for that particular client or when the principal authorization form is filed. It seems the judgment on this allocation really resides with the lobbyist based in their contractual relationship with a client. It would be difficult, if not impossible, for a CPA to determine if the allocation is reasonable unless the intention is for a CPA to look at the total compensation, the lobbyist's allocation determination and ensure the compensation amount reported reflected the allocation determination. (\*\* For example, a client pays a firm \$10,000. The lobbyist determines the fee will be 60% for legislative branch lobbying and 40% for executive branch lobbying and then reports \$6,000 on the legislative lobbying branch quarterly compensation report and \$4,000 on the executive branch quarterly compensation report. The CPA can clearly determine that the fee paid divided by the % allocation of compensation was reported correctly).

We greatly appreciate the opportunity to offer the committee this information and any insight the comments can provide. Please feel free to contact me at (850) 224-2727, ext. 240 or via email at [curryd@ficpa.org](mailto:curryd@ficpa.org) or Justin Thames via email at [thamesj@ficpa.org](mailto:thamesj@ficpa.org) regarding any additional assistance we may provide to the committee.

Sincerely,



Deborah L. Curry, CPA, CGMA  
President/CEO

cc: The Honorable Don Gaetz, President, Florida Senate  
The Honorable Will Weatherford, Speaker, Florida House of Representatives  
Bill Durkin, CPA, Chairman, Florida Board of Accountancy  
Ken Strauss, CPA, Chairman, FICPA  
Jennifer J. Green, Liberty Partners of Tallahassee, FICPA Consultant

Note: The following letter from Southern Strategies was received after the deadline and after discussions related to public input had occurred.

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**From:** Fraser, Towson <fraser@sostrategy.com>  
**Sent:** Friday, November 01, 2013 11:39 AM  
**To:** JLAC; ABRUZZO.JOSEPH.WEB; Ray, Lake  
**Cc:** Lloyd, Mark; DIAZ.KIMBERLY  
**Subject:** Comments regarding draft auditing guidelines  
**Attachments:** JLAC Letter from SSG.pdf

Chairs Abruzzo and Ray,

Please see the attached comments from Southern Strategy Group regarding the draft guidelines for auditing lobbyist compensation reports.

If you have any questions, please don't hesitate to contact us.

Thanks,  
Towson

**Towson Fraser**

-----  
Southern Strategy Group  
123 South Adams Street  
Tallahassee, FL 32301

Office: 850.671.4401  
Cellular: 850.443.1444



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Senator Joseph Abruzzo, Chair  
Joint Legislative Auditing Committee  
111 West Madison Street, Room 876  
Claude Pepper Building  
Tallahassee, FL 32399-1400

Dear Chairman Abruzzo,

We appreciate your efforts in clarifying and improving the method by which lobbyist fees are disclosed. Southern Strategy Group fully supports legislative audits of lobbyist fee disclosures. But, we believe the guidelines governing this process need to be clear, fair, and not so intrusive or burdensome that they chill the exercise of constitutional rights.

*The single biggest flaw in the proposed guidelines is that they establish new and oppressively complex record-keeping requirements for allocating lobbying efforts between the legislative and executive branches of government.* Nothing of this sort is reflected in the plain language of the law governing fee disclosure. The amount of data that would be required by the guidelines to be generated and maintained to support these allocations is unprecedented, and the disclosure of this information would reveal the strategy underlying lobbying efforts in a way that is not contemplated by the fee disclosure law and one that might run afoul of the right to petition government as guaranteed by the First Amendment. We strongly urge you to amend the guidelines to eliminate these burdensome and potentially unconstitutional requirements.

Florida law requires lobbying firms to report “total compensation provided or owed” to them by the principals they represent. The question before your committee seems to be how best to ensure the compliance with this standard through the use of random audits.

The draft guidelines currently being proposed are overly complex, intrusive, expensive to comply with, and potentially chill confidential communication between clients and lobbyists. It’s worth remembering that the lobbyist-client relationship is grounded in the constitutional protections of the First Amendment, and when a client hires a lobbyist the client does so to exercise its First Amendment right to petition government. Anything that impedes the expression of constitutional rights should be closely scrutinized by the Legislature, and in a close case we respectfully

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suggest your committee should err on the side of allowing, rather than impeding, the expression of this constitutional right.

Southern Strategy Group now discloses fees within the statutorily prescribed ranges based on how much we *invoice* our clients during the quarter for which we are reporting. It should be noted that this method provides the most useful type of information to the public because it most accurately reflects the financial bargain struck between a lobbyist and client for compensation related to advocating a particular issue. This can be contrasted with reporting actual payment received from a client. Actual payment received from a client in any given quarter can vary based on a number of extraneous and often random factors --the travel time of checks in the mail, for example—and may obscure the financial arrangement between a client and a lobbyist.

Our disclosure complies with the law by reflecting the total compensation owed our firm in any given quarter. An audit could effectively verify the accuracy of our compliance with the law if an auditor simply reviewed our billing records and verified their accuracy with our clients. This would alleviate the need for extensive record retention as well as the very expensive review of those records by taxpayer-funded auditors.

The proposed process in regard to allocation of compensation is even more complex, exceedingly intrusive, and overly burdensome. As proposed, it would require a level of reporting and record keeping far beyond what can be considered reasonable or necessary.

Southern Strategy Group employs approximately 20 lobbyists who advocate for more than 130 clients in Tallahassee. Our agreements, with rare exceptions, are on a monthly retainer basis and do not contemplate an hourly or daily accounting of time spent on specific tasks. During the course of a month, we deploy the best lobbyists to advocate for each client dependent upon that client's specific need. Each client has a lead lobbyist, but every client has access to all of our lobbyists whenever they are needed. One month, we may deploy 15 lobbyists to various legislative and executive branch leaders to advocate on behalf of a client. The next month, we may only deploy two or three for that same client.

A lobbyist's typical daily schedule, which is rarely begins at 9:00 a.m. or ends at 5:00 p.m., may include a breakfast meeting with a legislator on behalf of one client (in which the legislator pays for his or her own breakfast), three or four conference calls with other clients, lunch with another legislator on behalf of another client, meetings with executive branch staff and agency heads, countless phone calls and other communications as well as time spent researching and gathering information that may be useful to numerous clients. A lobbyist attending a three-hour Senate Committee hearing may be there on behalf of numerous clients and may talk to someone from the executive branch about an issue during that meeting. We would

suggest no one could account for each hour or minute spent during a schedule like that with any reliable degree of accuracy or in a manner easily verified.

Furthermore, accounting for our activities on behalf of individual clients with the level of specificity suggested in the draft guidelines would hand our competitors a detailed accounting of every moment spent advocating for a client, by whom and to whom, and give them an unprecedented and unacceptable view of the strategies we are employing. It would be a serious breach of the confidentiality agreements we have signed.

Currently, each lobbyist estimates the percentage of time spent lobbying the executive branch and legislative branch on behalf of each client for whom they are the lead. As a client's lead lobbyist, they are aware of all of the other lobbyists' activities on that client's behalf and are in the best position to estimate the proper allocations. We believe this current practice provides an adequate level of accurate disclosure as the law intends.

In summary, we understand your committee's directive to implement the law as written and we welcome the audits of our compensation reports to ensure that what is reported is accurate and verifiable. However, we believe you can accomplish these goals without burdening our industry, and every industry that employs us, with an exponentially expanded bureaucratic process that expends millions of taxpayer dollars with no real increased benefit to the hard-working people of Florida.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul", with a stylized flourish extending to the right.

Paul Bradshaw  
President, Southern Strategy Group





## Relevant Laws

The following laws are included in the meeting packet:

**Section 11.40(3), F.S.;** Legislative Auditing Committee

**Section 11.045, F.S.;** Lobbying before the Legislature; registration and reporting; exemptions; penalties

**Section 112.3215, F.S.;** Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission

**11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties.—**

(1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the committee of each house charged by the presiding officer with responsibility for ethical conduct of lobbyists.

(b) "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 lobbying activity.

(c) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

(d) "Legislative action" means introduction, sponsorship, testimony, debate, voting, or any other official action on any measure, resolution, amendment, nomination, appointment, or report of, or any matter that may be the subject of action by, either house of the Legislature or any committee thereof.

(e) "Lobbying" means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

(f) "Lobbying firm" means any business entity, including an individual contract lobbyist, which receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

(g) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

(h) "Office" means the Office of Legislative Services.

(i) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) Each house of the Legislature shall provide by rule, or may provide by a joint rule adopted by both houses, for the registration of lobbyists who lobby the Legislature. The rule may provide for the payment of a registration fee. The rule may provide for exemptions from registration or registration fees. The rule shall provide that:

(a) Registration is required for each principal represented.

(b) Registration shall include a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the Office of Legislative Services.

(c) A registrant shall promptly send a written statement to the office canceling the registration for a principal upon termination of the lobbyist's representation of that principal. However, the office may remove the name of a registrant from the list of registered lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal.

(d) Every registrant shall be required to state the extent of any direct business association or partnership with any current member of the Legislature.

(e) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation. Any documents and records retained pursuant to this section may be subpoenaed for audit by legislative subpoena of either house of the Legislature, and the subpoena may be enforced in circuit court.

(f) All registrations shall be open to the public.

(g) Any person who is exempt from registration under the rule shall not be considered a lobbyist for any purpose.

(3) Each house of the Legislature shall provide the following reporting requirements by rule:

(a)1. Each lobbying firm shall file a compensation report with the office for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report must include the:

a. Full name, business address, and telephone number of the lobbying firm;

b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report must also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1 to \$9,999; \$10,000 to \$19,999; \$20,000 to \$29,999; \$30,000 to \$39,999; \$40,000 to \$49,999; or \$50,000 or more. If the category "\$50,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the office shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.

(c) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. Reporting statements must be filed by electronic means as provided in s. [11.0455](#).

(d) Each house of the Legislature shall provide by rule, or both houses may provide by joint rule, a procedure by which a lobbying firm that fails to timely file a report shall be notified and assessed fines. The rule must provide the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day, not to exceed \$5,000 per report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the electronic receipt issued pursuant to s. [11.0455](#) is dated.

3. Such fine must be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the office. The moneys shall be deposited into the Legislative Lobbyist Registration Trust Fund.

4. A fine may not be assessed against a lobbying firm the first time any reports for which the lobbying firm is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm is responsible must be filed within 30 days after notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the General Counsel of the Office of Legislative Services, who shall recommend to the President of the Senate and the Speaker of the House of Representatives, or their respective designees, that the fine be

waived in whole or in part for good cause shown. The President of the Senate and the Speaker of the House of Representatives, or their respective designees, may concur in the recommendation and waive the fine in whole or in part. Any such request must be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to request a hearing.

6. A lobbying firm may request that the filing of a report be waived upon good cause shown, based on unusual circumstances. The request must be filed with the General Counsel of the Office of Legislative Services, who shall make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives may grant or deny the request.

7. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the office shall promptly notify all affected principals of any suspension or reinstatement.

8. The person designated to review the timeliness of reports shall notify the coordinator of the office of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed.

(4)(a) Notwithstanding s. [112.3148](#), s. [112.3149](#), or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.

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

(5) Each house of the Legislature shall provide by rule a procedure by which a person, when in doubt about the applicability and interpretation of this section in a particular context, may submit in writing the facts for an advisory opinion to the committee of either house and may appear in person before the committee. The rule shall provide a procedure by which:

(a) The committee shall render advisory opinions to any person who seeks advice as to whether the facts in a particular case would constitute a violation of this section.

(b) The committee shall make sufficient deletions to prevent disclosing the identity of persons in the decisions or opinions.

(c) All advisory opinions of the committee shall be numbered, dated, and open to public inspection.

(6) Each house of the Legislature shall provide by rule for keeping all advisory opinions of the committees relating to lobbying firms, lobbyists, and lobbying activities. The rule shall also provide that each house keep a current list of registered lobbyists along with reports required of lobbying firms under this section, all of which shall be open for public inspection.

(7) Each house of the Legislature shall provide by rule that a committee of either house investigate any person upon receipt of a sworn complaint alleging a violation of this section, s. [112.3148](#), or s. [112.3149](#) by such person; also, the rule shall provide that a committee of either house investigate any lobbying firm upon receipt of audit information indicating a possible violation other than a late-filed report. Such proceedings shall be conducted pursuant to the rules of the respective houses. If the committee finds that there has been a violation of this section, s. [112.3148](#), or s. [112.3149](#), it shall report its findings to the President of the Senate or the Speaker of the House of Representatives, as appropriate, together with a recommended penalty, to include a fine of not more than \$5,000, reprimand, censure, probation, or prohibition from lobbying for a period of time not to exceed 24 months. Upon the receipt of such report, the President of the Senate or the Speaker of the House of Representatives shall cause the committee report and recommendations to be brought before the respective house and a final determination shall be made by a majority of said house.

(8) Any person required to be registered or to provide information pursuant to this section or pursuant to rules established in conformity with this section who knowingly fails to disclose any material fact required by this section or by rules established in conformity with this section, or who knowingly provides false information on any report required by this section or by rules established in conformity with this section, commits a noncriminal infraction, punishable by a fine not to exceed \$5,000. Such penalty shall be in addition to any other penalty assessed by a house of the Legislature pursuant to subsection (7).

(9) There is hereby created the Legislative Lobbyist Registration Trust Fund, to be used for the purpose of funding any office established for the administration of the registration of lobbyists lobbying the Legislature, including the payment of salaries and other expenses, and for the purpose of paying the expenses incurred by the Legislature in providing services to lobbyists. The trust fund is not subject to the service charge to general revenue provisions of chapter 215. Fees collected pursuant to rules established in accordance with subsection (2) shall be deposited into the Legislative Lobbyist Registration Trust Fund.

**History.**—s. 1, ch. 78-268; s. 1, ch. 90-502; s. 1, ch. 91-292; s. 2, ch. 93-121; s. 1, ch. 96-203; s. 1, ch. 98-136; s. 2, ch. 2000-122; s. 1, ch. 2000-232; ss. 1, 2, ch. 2005-359; s. 11, ch. 2006-275; ss. 27, 30, ch. 2011-6; HJR 7105, 2011 Regular Session; s. 1, ch. 2012-51.

#### 11.40 Legislative Auditing Committee.—

(3)(a) As used in this subsection, “independent contract auditor” means a state-licensed certified public accountant or firm with which a state-licensed certified public accountant is currently employed or associated who is actively engaged in the accounting profession.

(b) Audits specified in this subsection cover the quarterly compensation reports for the previous calendar year for a random sample of 3 percent of all legislative branch lobbying firms and a random sample of 3 percent of all executive branch lobbying firms calculated using as the total number of such lobbying firms those filing a compensation report for the preceding calendar year. The committee shall provide for a system of random selection of the lobbying firms to be audited.

(c) The committee shall create and maintain a list of not less than 10 independent contract auditors approved to conduct the required audits. Each lobbying firm selected for audit in the random audit process may designate one of the independent contract auditors from the committee’s approved list. Upon failure for any reason of a lobbying firm selected in the random selection process to designate an independent contract auditor from the committee’s list within 30 calendar days after being notified by the committee of its selection, the committee shall assign one of the available independent contract auditors from the approved list to perform the required audit. No independent contract auditor, whether designated by the lobbying firm or by the committee, may perform the audit of a lobbying firm where the auditor and lobbying firm have ever had a direct personal relationship or any professional accounting, auditing, tax advisory, or tax preparing relationship with each other. The committee shall obtain a written, sworn certification subject to s. [837.06](#), both from the randomly selected lobbying firm and from the proposed independent contract auditor, that no such relationship has ever existed.

(d) Each independent contract auditor shall be engaged by and compensated solely by the state for the work performed in accomplishing an audit under this subsection.

(e) Any violations of law, deficiencies, or material misstatements discovered and noted in an audit report shall be clearly identified in the audit report and be determined under the rules of either house of the Legislature or under the joint rules, as applicable.

(f) If any lobbying firm fails to give full, frank, and prompt cooperation and access to books, records, and associated backup documents as requested in writing by the auditor, that failure shall be clearly noted by the independent contract auditor in the report of audit.

(g) The committee shall establish procedures for the selection of independent contract auditors desiring to enter into audit contracts pursuant to this subsection. Such procedures shall include, but not be limited to, a rating system that takes into account pertinent information, including the independent contract auditor’s fee proposals for participating in the process. All contracts under this subsection between an independent contract auditor and the Speaker of the House of Representatives and the President of the Senate shall be terminable by either party at any time upon written notice to



the other, and such contracts may contain such other terms and conditions as the Speaker of the House of Representatives and the President of the Senate deem appropriate under the circumstances.

(h) The committee shall adopt guidelines that govern random audits and field investigations conducted pursuant to this subsection. The guidelines shall ensure that similarly situated compensation reports are audited in a uniform manner. The guidelines shall also be formulated to encourage compliance and detect violations of the legislative and executive lobbying compensation reporting requirements in ss. [11.045](#) and [112.3215](#) and to ensure that each audit is conducted with maximum efficiency in a cost-effective manner. In adopting the guidelines, the committee shall consider relevant guidelines and standards of the American Institute of Certified Public Accountants to the extent that such guidelines and standards are applicable and consistent with the purposes set forth in this subsection.

(i) All audit reports of legislative lobbying firms shall, upon completion by an independent contract auditor, be delivered to the President of the Senate and the Speaker of the House of Representatives for their respective review and handling. All audit reports of executive branch lobbyists, upon completion by an independent contract auditor, shall be delivered by the auditor to the Commission on Ethics.

**History.**—s. 1, ch. 67-470; s. 1, ch. 69-82; s. 1, ch. 73-6; s. 18, ch. 95-147; s. 21, ch. 96-318; s. 13, ch. 2001-266; s. 879, ch. 2002-387; s. 5, ch. 2003-261; s. 1, ch. 2004-5; s. 1, ch. 2004-305; s. 4, ch. 2005-359; s. 1, ch. 2009-74; s. 12, ch. 2011-34; s. 11, ch. 2011-52; s. 35, ch. 2011-142; s. 1, ch. 2011-144.

**Note.**—Former s. 11.181.

**112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—**

(1) For the purposes of this section:

(a) "Agency" means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch. In addition, "agency" shall mean the Constitution Revision Commission as provided by s. 2, Art. XI of the State Constitution.

(b) "Agency official" or "employee" means any individual who is required by law to file full or limited public disclosure of his or her financial interests.

(c) "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 lobbying activity.

(d) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or contributions or expenditures reported pursuant to federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or an affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

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

(f) "Lobbies" means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. "Lobbies" also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission's action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.

(g) "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 entity is a lobbyist.

(h) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.

2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.

3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. [287.017](#).

(i) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) The Executive Branch Lobby Registration Trust Fund is hereby created within the commission to be used for the purpose of funding any office established to administer the registration of lobbyists lobbying an agency, including the payment of salaries and other expenses. The trust fund is not subject to the service charge to General Revenue provisions of chapter 215. All annual registration fees collected pursuant to this section shall be deposited into such fund.

(3) A person may not lobby an agency until such person has registered as a lobbyist with the commission. Such registration shall be due upon initially being retained to lobby and is renewable on a calendar year basis thereafter. Upon registration the person shall provide a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The principal shall also identify and designate its main business on the statement authorizing that lobbyist pursuant to a classification system approved by the commission. The registration shall require each lobbyist to disclose, under oath, the following information:

(a) Name and business address;

(b) The name and business address of each principal represented;

(c) His or her area of interest;

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

(e) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency with which he or she lobbies, or intends to lobby, as disclosed in the registration.

(4) The annual lobbyist registration fee shall be set by the commission by rule, not to exceed \$40 for each principal represented.

(5)(a)1. Each lobbying firm shall file a compensation report with the commission for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

- a. Full name, business address, and telephone number of the lobbying firm;
- b. Name of each of the firm's lobbyists; and

c. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; \$1 million or more.

2. For each principal represented by one or more of the firm's lobbyists, the lobbying firm's compensation report shall also include the:

a. Full name, business address, and telephone number of the principal; and

b. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1 to \$9,999; \$10,000 to \$19,999; \$20,000 to \$29,999; \$30,000 to \$39,999; \$40,000 to \$49,999; or \$50,000 or more. If the category "\$50,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

3. If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

a. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm's principal for reporting purposes under this paragraph; and

b. The reporting lobbying firm shall, for each lobbying firm identified under subparagraph 2., identify the name and address of the principal originating the lobbying work.

4. The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this paragraph.

(b) For each principal represented by more than one lobbying firm, the commission shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal.

(c) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. Reporting statements must be filed by electronic means as provided in s. [112.32155](#).

(d) The commission shall provide by rule the grounds for waiving a fine, the procedures by which a lobbying firm that fails to timely file a report shall be notified and assessed fines, and the procedure for appealing the fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day up to a maximum of \$5,000 per late report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the electronic receipt issued pursuant to s. [112.32155](#) is dated.

3. Such fine shall be paid within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the commission. The moneys shall be deposited into the Executive Branch Lobby Registration Trust Fund.

4. A fine shall not be assessed against a lobbying firm the first time any reports for which the lobbying firm is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm is responsible must be filed within 30 days after the notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the commission, which shall have the authority to waive the fine in whole or in part for good cause shown. Any such request shall be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission.

6. The person designated to review the timeliness of reports shall notify the commission of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the commission shall promptly notify all affected principals of each suspension and each reinstatement.

7. Notwithstanding any provision of chapter 120, any fine imposed under this subsection that is not waived by final order of the commission and that remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the lobbying firm's appeal shall be collected by the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department may assign the collection of such fine to a collection agent as provided in s. [17.20](#).

(e) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation. Any documents and records retained pursuant to this section may be subpoenaed for audit by the Legislative Auditing Committee pursuant to s. [11.40](#), and such subpoena may be enforced in circuit court.

(6)(a) Notwithstanding s. [112.3148](#), s. [112.3149](#), or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure.

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

(7) A lobbyist shall promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's representation of that principal. Notwithstanding this requirement, the commission may remove the name of a lobbyist from the list of registered lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal.

(8)(a) The commission shall investigate every sworn complaint that is filed with it alleging that a person covered by this section has failed to register, has failed to submit a compensation report, has made a prohibited expenditure, or has knowingly submitted false information in any report or registration required in this section.

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. [286.011\(1\)](#) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

(c) The commission shall investigate any lobbying firm, lobbyist, principal, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.

(d)1. Records relating to an audit conducted pursuant to this section or an investigation conducted pursuant to this section or s. [112.32155](#) are confidential and exempt from s. [119.07\(1\)](#) and s. 24(a), Art. I of the State Constitution.

2. Any portion of a meeting wherein such investigation or audit is discussed is exempt from s. [286.011](#) and s. 24(b), Art. I of the State Constitution.

3. The exemptions no longer apply if the lobbying firm requests in writing that such investigation and associated records and meetings be made public or the commission determines there is probable cause that the audit reflects a violation of the reporting laws.

(9) If the commission finds no probable cause to believe that a violation of this section occurred, it shall dismiss the complaint, whereupon the complaint, together with a written statement of the findings of the investigation and a summary of the facts, shall become a matter of public record, and the commission shall send a copy of the complaint, findings, and summary to the complainant and the alleged violator. If, after investigating information from a random audit of lobbying reports, the commission finds no probable cause to believe that a violation of this section occurred, a written statement of the findings of the investigation and a summary of the facts shall become a matter of public record, and the commission shall send a copy of the findings and summary to the alleged violator. If the commission finds probable cause to believe that a violation occurred, it shall report the

results of its investigation to the Governor and Cabinet and send a copy of the report to the alleged violator by certified mail. Such notification and all documents made or received in the disposition of the complaint shall then become public records. Upon request submitted to the Governor and Cabinet in writing, any person whom the commission finds probable cause to believe has violated any provision of this section shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the probable cause notification. However, the Governor and Cabinet may on its own motion require a public hearing and may conduct such further investigation as it deems necessary.

(10) If the Governor and Cabinet find that a violation occurred, <sup>[1]</sup>the Governor and Cabinet may reprimand the violator, censure the violator, or prohibit the violator from lobbying all agencies for a period not to exceed 2 years. If the violator is a lobbying firm, lobbyist, or principal, the Governor and Cabinet may also assess a fine of not more than \$5,000 to be deposited in the Executive Branch Lobby Registration Trust Fund.

(11) Any person who is required to be registered or to provide information under this section or under rules adopted pursuant to this section and who knowingly fails to disclose any material fact that is required by this section or by rules adopted pursuant to this section, or who knowingly provides false information on any report required by this section or by rules adopted pursuant to this section, commits a noncriminal infraction, punishable by a fine not to exceed \$5,000. Such penalty is in addition to any other penalty assessed by the Governor and Cabinet pursuant to subsection (10).

(12) Any person, when in doubt about the applicability and interpretation of this section to himself or herself in a particular context, may submit in writing the facts of the situation to the commission with a request for an advisory opinion to establish the standard of duty. An advisory opinion shall be rendered by the commission and, until amended or revoked, shall be binding on the conduct of the person who sought the opinion, unless material facts were omitted or misstated in the request.

(13) Agencies shall be diligent to ascertain whether persons required to register pursuant to this section have complied. An agency may not knowingly permit a person who is not registered pursuant to this section to lobby the agency.

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

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

**History.**—s. 2, ch. 89-325; s. 3, ch. 90-268; s. 29, ch. 90-360; s. 5, ch. 91-292; s. 2, ch. 92-35; s. 6, ch. 93-121; s. 705, ch. 95-147; s. 1, ch. 95-357; s. 2, ch. 96-203; s. 38, ch. 96-406; s. 1, ch. 97-12; s. 2, ch. 2000-232; s. 131, ch. 2003-261; ss. 5, 6, ch. 2005-359; s. 1, ch. 2005-361; ss. 12, 13, 14, ch. 2006-275; s. 6, ch. 2010-151; ss. 29, 30, ch. 2011-6; s. 76, ch. 2011-40; s. 1, ch. 2011-178; HJR 7105, 2011 Regular Session; s. 3, ch. 2012-25; s. 16, ch. 2013-36.

<sup>[1]</sup>**Note.**—The words “the Governor and Cabinet” were substituted for the word “it” by the editors to improve clarity.





## Relevant Rules

The following rules are included in the meeting packet:

*Applicable to Legislative Branch Lobbying*

**Joint Rules of the Florida Legislature, Joint Rule One;** Lobbyist Registration and Compensation Reporting (House Rules reference Joint Rule One)

*Applicable to Senate Lobbying*

**Portions of Senate Rule 9.8;** Lobbyist expenditures and compensation

*Applicable to Executive Branch Lobbying*

**Portions of Chapter 34-12, Rules of the Florida Commission on Ethics;** Executive Branch Lobbyist Registration:

- Compensation Reporting Requirements
- Penalties for Late Filing
- Appeal of Statutory Fines: Hearings, Unusual Circumstances
- Notification of Compensation Reporting Deadlines

**JOINT RULES  
of the  
Florida Legislature**

**Pursuant to SCR 2-Org., Adopted November 2012**

**JOINT RULE ONE**

**LOBBYIST REGISTRATION AND COMPENSATION REPORTING**

**1.1—Those Required to Register; Exemptions; Committee Appearance Records**

(1) All lobbyists before the Florida Legislature must register with the Lobbyist Registration Office in the Office of Legislative Services. Registration is required for each principal represented.

(2) As used in Joint Rule One, unless the context otherwise requires, the term:

(a) “Compensation” means 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 lobbying activity.

(b) “Legislative action” means introduction, sponsorship, testimony, debate, voting, or any other official action on any measure, resolution, amendment, nomination, appointment, or report of, or any matter that may be the subject of action by, either house of the Legislature or any committee thereof.

(c) “Lobby” or “lobbying” means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

(d) “Lobbying firm” means any business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying and where any partner, owner, officer, or employee of the business entity is a lobbyist. “Lobbying firm” does not include an entity that has employees who are lobbyists if

the entity does not derive compensation from principals for lobbying or if such compensation is received exclusively from a subsidiary or affiliate corporation of the employer. As used in this paragraph, an affiliate corporation is a corporation that directly or indirectly shares the same ultimate parent corporation as the employer and does not receive compensation for lobbying from any unaffiliated entity.

(e) “Lobbyist” means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. An employee of the 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. Any person employed by the Governor, the Executive Office of the Governor, or any executive or judicial department of the state or any community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, is a lobbyist.

(f) “Office” means the Office of Legislative Services.

(g) “Payment” or “salary” means wages or any other consideration provided in exchange for services but does not include reimbursement for expenses.

(h) “Principal” means the person, firm, corporation, or other entity that has employed or retained a lobbyist. When an association has employed or retained a lobbyist, the association is the principal; the individual members of the association are not principals merely because of their membership in the association.

(i) “Unusual circumstances,” with respect to any failure of a person to satisfy a filing requirement, means uncommon, rare, or sudden events over which the person has no control and which directly

result in the failure to satisfy the filing requirement.

(3) For purposes of this rule, the terms “lobby” and “lobbying” do not include any of the following:

(a) Response to an inquiry for information made by any member, committee, or staff of the Legislature.

(b) An appearance in response to a legislative subpoena.

(c) Advice or services that arise out of a contractual obligation with the Legislature, a member, a committee, any staff, or any legislative entity to render the advice or services where such obligation is fulfilled through the use of public funds.

(d) Representation of a client before the House of Representatives or the Senate, or any member or committee thereof, when the client is subject to disciplinary action by the House of Representatives or the Senate, or any member or committee thereof.

(4) For purposes of registration and reporting, the term “lobbyist” does not include any of the following:

(a) A member of the Legislature.

(b) A person who is employed by the Legislature.

(c) A judge who is acting in that judge’s official capacity.

(d) A person who is a state officer holding elective office or an officer of a political subdivision of the state holding elective office and who is acting in that officer’s official capacity.

(e) A person who appears as a witness or for the purpose of providing information at the written request of the chair of a committee, subcommittee, or legislative delegation.

(f) A person employed by any executive or judicial department of the state or any community college of the state who makes a personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, while that person is on approved leave or outside normal working hours and who does not otherwise meet the definition of lobbyist.

(5) When a person, regardless of whether the person is registered as a lobbyist, appears before a committee of the Legislature, that person must submit a Committee Appearance Record as required by the

respective house.

(6) The responsibilities of the office and of the Lobbyist Registration Office under Joint Rule One may be assigned to another entity by agreement of the President of the Senate and the Speaker of the House of Representatives for a contract period not to extend beyond December 1 following the Organization Session of the next biennium, provided that the powers and duties of the President, the Speaker, the General Counsel of the Office of Legislative Services, and any legislative committee referenced in Joint Rule One may not be delegated.

### **1.2—Method of Registration**

(1) Each person who is required to register must register on forms furnished by the Lobbyist Registration Office, on which that person must state, under oath, that person's full legal name, business address, and telephone number, the name and business address of each principal that person represents, and the extent of any direct business association or partnership that person has with any member of the Legislature. In addition, if the lobbyist is a partner, owner, officer, or employee of a lobbying firm, the lobbyist must state the name, address, and telephone number of each lobbying firm to which the lobbyist belongs. The Lobbyist Registration Office or its designee is authorized to acknowledge the oath of any person who registers in person. Any changes to the information provided in the registration form must be reported to the Lobbyist Registration Office in writing within 15 days on forms furnished by the Lobbyist Registration Office.

(2) Any person required to register must do so with respect to each principal prior to commencement of lobbying on behalf of that principal. At the time of registration, the registrant shall provide a statement on a form provided by the Lobbyist Registration Office, signed by the principal or principal's representative, that the registrant is authorized to represent the principal. On the authorization statement, the principal or principal's representative shall also identify and designate the principal's main business pursuant to a classification system approved by the Office of Legislative Services, which shall be the

North American Industry Classification System (NAICS) six-digit numerical code that most accurately describes the principal's main business.

(3) Any person required to register must renew the registration annually for each calendar year.

(4) A lobbyist shall promptly send a notice to the Lobbyist Registration Office, on forms furnished by the Lobbyist Registration Office, canceling the registration for a principal upon termination of the lobbyist's representation of that principal. A notice of cancellation takes effect the day it is received by the Lobbyist Registration Office. Notwithstanding this requirement, the Lobbyist Registration Office may remove the name of a lobbyist from the list of registered lobbyists if the principal notifies the Lobbyist Registration Office that the lobbyist is no longer authorized to represent that principal.

(5) The Lobbyist Registration Office shall retain all original registration documents submitted under this rule.

(6) A person who is required to register under Joint Rule One, or who chooses to register, shall be considered a lobbyist of the Legislature for the purposes of ss. 11.045, 112.3148, and 112.3149, Florida Statutes.

### **1.3—Registration Costs; Exemptions**

(1) To cover the costs incurred in administering Joint Rule One, each person who registers under Joint Rule 1.1 must pay an annual registration fee to the Lobbyist Registration Office. The annual period runs from January 1 to December 31. These fees must be paid at the time of registration.

(2) The following persons are exempt from paying the fee, provided they are designated in writing by the agency head or person designated in this subsection:

(a) Two employees of each department of the executive branch created under chapter 20, Florida Statutes.

(b) Two employees of the Fish and Wildlife Conservation Commission.

(c) Two employees of the Executive Office of the Governor.

- (d) Two employees of the Commission on Ethics.
  - (e) Two employees of the Florida Public Service Commission.
  - (f) Two employees of the judicial branch designated in writing by the Chief Justice of the Florida Supreme Court.
- (3) The annual fee is up to \$50 per each house for a person to register to represent one principal and up to an additional \$10 per house for each additional principal that the person registers to represent. The amount of each fee shall be established annually by the President of the Senate and the Speaker of the House of Representatives. The fees set shall be adequate to ensure operation of the lobbyist registration and reporting operations of the Lobbyist Registration Office. The fees collected by the Lobbyist Registration Office under this rule shall be deposited in the State Treasury and credited to the Legislative Lobbyist Registration Trust Fund specifically to cover the costs incurred in administering Joint Rule One.

#### **1.4—Reporting of Lobbying Firm Compensation**

(1)(a) Each lobbying firm shall file a compensation report with the office for each calendar quarter during any portion of which one or more of the firm’s lobbyists were registered to represent a principal. The report shall include the:

1. Full name, business address, and telephone number of the lobbying firm;
2. Registration name of each of the firm’s lobbyists; and
3. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to \$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999; \$500,000 to \$999,999; or \$1 million or more.

(b) For each principal represented by one or more of the firm’s lobbyists, the lobbying firm’s compensation report shall also include the:

1. Full name, business address, and telephone number of the principal; and
2. Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories: \$0; \$1

to \$9,999; \$10,000 to \$19,999; \$20,000 to \$29,999; \$30,000 to \$39,999; \$40,000 to \$49,999; or \$50,000 or more. If the category “\$50,000 or more” is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

(c) If the lobbying firm subcontracts work from another lobbying firm and not from the original principal:

1. The lobbying firm providing the work to be subcontracted shall be treated as the reporting lobbying firm’s principal for reporting purposes under this paragraph; and

2. The reporting lobbying firm shall, for each lobbying firm identified as the reporting lobbying firm’s principal under paragraph (b), identify the name and address of the principal originating the lobbying work.

(d) The senior partner, officer, or owner of the lobbying firm shall certify to the veracity and completeness of the information submitted pursuant to this rule; certify that no compensation has been omitted from this report by deeming such compensation as “consulting services,” “media services,” “professional services,” or anything other than compensation; and certify that no officer or employee of the firm has made an expenditure in violation of s. 11.045, Florida Statutes, as amended by chapter 2005-359, Laws of Florida.

(2) For each principal represented by more than one lobbying firm, the office shall aggregate the reporting-period and calendar-year compensation reported as provided or owed by the principal. Compensation reported within a category shall be aggregated as follows:

Category (dollars)	Dollar amount to use aggregating
0	0
1-9,999	5,000
10,000-19,999	15,000
20,000-29,999	25,000
30,000-39,999	35,000
40,000-49,999	45,000
50,000 or more	Actual amount reported



(3) The reporting statements shall be filed no later than 45 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. Reporting statements shall be filed by electronic means through the electronic filing system developed by the office, conforming to subsection (4).

(4) The electronic filing system for compensation reporting shall include the following:

(a) As used in this rule, the term “electronic filing system” means an Internet system for recording and reporting lobbying compensation and other required information by reporting period.

(b) A report filed pursuant to this rule must be completed and filed through the electronic filing system not later than 11:59 p.m. of the day designated in subsection (3). A report not filed by 11:59 p.m. of the day designated is a late-filed report and is subject to the penalties under Joint Rule 1.5(1).

(c) Each person given secure sign-on credentials to file via the electronic filing system is responsible for protecting the credentials from disclosure and is responsible for all filings made by use of such credentials, unless and until the office is notified that the person’s credentials have been compromised. Each report filed by electronic means pursuant to this rule shall be deemed certified in accordance with paragraph (1)(d) by the person given the secure sign-on credentials and, as such, subjects the person and the lobbying firm to the provisions of s. 11.045(8), Florida Statutes, as well as any discipline provided under the rules of the Senate or House of Representatives.

(d) The electronic filing system shall:

1. Be based on access by means of the Internet.
2. Be accessible by anyone with Internet access using standard web-browsing software.
3. Provide for direct entry of compensation-report information as

well as upload of such information from software authorized by the office.

4. Provide a method that prevents unauthorized access to electronic filing system functions.

5. Provide for the issuance of an electronic receipt to the person submitting the report indicating and verifying the date and time that the report was filed.

(5) The office shall provide reasonable public notice of the electronic filing procedures and of any significant changes in such procedures. If, whenever they deem it necessary, the President of the Senate and the Speaker of the House of Representatives jointly declare the electronic system not to be operable, the reports shall be filed in the manner required prior to April 1, 2007, as provided by House Concurrent Resolution 7011 (2007), enrolled, unless the President of the Senate and the Speaker of the House of Representatives direct use of an alternate means of reporting. The office shall develop and maintain such alternative means as may be practicable. Public notice of changes in filing procedures and any declaration or direction of the President of the Senate and the Speaker of the House of Representatives may be provided by publication for a continuous period of reasonable time on one or more Internet websites maintained by the Senate and the House of Representatives.

#### **1.5—Failure to File Timely Compensation Report; Notice and Assessment of Fines; Appeals**

(1) Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day, not to exceed \$5,000 per report.

(2) Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine based on when the report is actually received by the office or when the electronic receipt issued by the electronic filing system is dated,

whichever is earlier.

(3) Such fine shall be paid within 30 days after the notice of payment due is transmitted by the person designated to review the timeliness of reports, unless appeal is made to the office. The moneys shall be deposited into the Legislative Lobbyist Registration Trust Fund.

(4) A fine shall not be assessed against a lobbying firm the first time the report for which the lobbying firm is responsible is not timely filed. However, to receive the one-time fine waiver, the report for which the lobbying firm is responsible must be filed within 30 days after notice that the report has not been timely filed is transmitted by the person designated to review the timeliness of reports. A fine shall be assessed for any subsequent late-filed reports.

(5) Any lobbying firm may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the General Counsel of the Office of Legislative Services, who shall recommend to the President of the Senate and the Speaker of the House of Representatives, or their respective designees, that the fine be waived in whole or in part for good cause shown. The President of the Senate and the Speaker of the House of Representatives, or their respective designees, may by joint agreement concur in the recommendation and waive the fine in whole or in part. Any such request shall be made within 30 days after the notice of payment due is transmitted by the person designated to review the timeliness of reports. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of the firm's intention to request a hearing.

(6) A lobbying firm may request that the filing of a report be waived upon good cause shown, based on unusual circumstances. The request must be filed with the General Counsel of the Office of Legislative Services, who shall make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker

of the House of Representatives may, by joint agreement, grant or deny the request.

(7)(a) All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived and all late reports have been filed or waived. The office shall promptly notify all affected principals, the President of the Senate, and the Speaker of the House of Representatives of any suspension or reinstatement. All lobbyists who are partners, owners, officers, or employees of a lobbying firm are jointly and severally liable for any outstanding fine owed by a lobbying firm.

(b) No such lobbyist may be reinstated in any capacity representing any principal until the fine is paid and all late reports have been filed or waived or until the fine is waived as to that lobbyist and all late reports for that lobbyist have been filed or waived. A suspended lobbyist may request a waiver upon good cause shown, based on unusual circumstances. The request must be filed with the General Counsel of the Office of Legislative Services who shall, as soon as practicable, make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives may, by joint agreement, grant or deny the request.

(8) The person designated to review the timeliness of reports shall notify the director of the office of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed.

#### **1.6—Open Records; Internet Publication of Registrations and Compensation Reports**

(1) All of the lobbyist registration forms and compensation reports received by the Lobbyist Registration Office shall be available for public inspection and for duplication at reasonable cost.

(2) The office shall make information filed pursuant to Joint Rules 1.2 and 1.4 reasonably available on the Internet in an easily

understandable and accessible format. The Internet website shall include, but not be limited to, the names and business addresses of lobbyists, lobbying firms, and principals, the affiliations between lobbyists and principals, and the classification system designated and identified with respect to principals pursuant to Joint Rule 1.2.

**1.7—Records Retention and Inspection and Complaint Procedure**

(1) Each lobbying firm and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate compensation reports.

(2) Upon receipt of a complaint based upon the personal knowledge of the complainant made pursuant to the Senate Rules or Rules of the House of Representatives, any such documents and records may be inspected when authorized by the President of the Senate or the Speaker of the House of Representatives, as applicable. The person authorized to perform the inspection shall be designated in writing and shall be a member of The Florida Bar or a certified public accountant licensed in Florida. Any information obtained by such an inspection may only be used for purposes authorized by law, this Joint Rule One, Senate Rules, or Rules of the House of Representatives, which purposes may include the imposition of sanctions against a person subject to Joint Rule One, the Senate Rules, or the Rules of the House of Representatives. Any employee who uses that information for an unauthorized purpose is subject to discipline. Any member who uses that information for an unauthorized purpose is subject to discipline under the applicable rules of each house.

(3) The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction.

**1.8—Questions Regarding Interpretation of this Joint Rule One**

(1) A person may request in writing an informal opinion from the General Counsel of the Office of Legislative Services as to the

application of this Joint Rule One to a specific situation involving that person's conduct. The General Counsel shall issue the opinion within 10 days after receiving the request. The informal opinion may be relied upon by the person who requested the informal opinion. A copy of each informal opinion that is issued shall be provided to the presiding officer of each house. A committee of either house designated pursuant to section 11.045(5), Florida Statutes, may revise any informal opinion rendered by the General Counsel through an advisory opinion to the person who requested the informal opinion. The advisory opinion shall supersede the informal opinion as of the date the advisory opinion is issued.

(2) A person in doubt about the applicability or interpretation of this Joint Rule One with respect to that person's conduct may submit in writing the facts for an advisory opinion to the committee of either house designated pursuant to s. 11.045(5), Florida Statutes, and may appear in person before the committee in accordance with s. 11.045(5), Florida Statutes.

#### **1.9—Effect of Readoption and Revision**

All obligations existing under Joint Rule One as of the last day of the previous legislative biennium are hereby ratified, preserved, and reimposed pursuant to the terms thereof as of that date. The provisions of Joint Rule One are imposed retroactively to the first day of the present legislative biennium except that provisions new to this revision are effective on the date of adoption or as otherwise expressly provided herein.

**FLORIDA SENATE  
RULES AND MANUAL**

**2012-2014**



**DON GAETZ  
PRESIDENT**

**AS ADOPTED NOVEMBER 20, 2012**

## **9.8—Lobbyist expenditures and compensation**

Chapter 2005-359, *Laws of Florida*, amends existing provisions of the law relating to legislative lobbying at the state level in Florida and adds new and substantial obligations, prohibitions, and requirements.

This Rule provides assistance to persons seeking to comply with the letter and spirit of the new law as it applies in the legislative context by refining the law and providing Interim Lobbying Guidelines and answers to 25 Frequently Asked Questions. It also is intended to provide guidance to the legislative committees that will participate in enforcing the new law.

Part One of the Guidelines refines and applies the new prohibition, with ten clearly stated exceptions, so that Senators and Senate employees can no longer directly or indirectly take any “expenditure” from a lobbyist or principal in either the public or private sector.

Part Two of the Guidelines refines and applies the underlying core requirement that “lobbying firms” must publicly disclose the compensation they receive for lobbying activities, and does so in a way that is narrowly tailored, furthers the state’s compelling governmental interest in regulating legislative lobbying at the state level, and employs the least intrusive means available to do so.

This Rule sets out general principles. Outcomes depend heavily on underlying fact patterns that can vary greatly from case to case. Full disclosure of the operative facts must be provided and considered before a proper and correct answer can be derived.

A Senator may request an informal advisory opinion from the Senate General Counsel regarding the application of the new law and this Rule to a specific situation, on which the legislator may reasonably rely.

The houses of the Legislature are responsible for the administration and enforcement of the legislative lobbying portions of the new law. The legislative lobbying expenditure prohibitions are not part of the Florida Code of Ethics for Public Officers and Employees. Neither the Florida Commission on Ethics nor the Florida courts have jurisdiction to interpret these internal matters of the Legislature.

\* \* \*



## Part Two - Compensation

### (1) General Guidelines

Chapter 2005-359, *Laws of Florida*, for the first time, requires the reporting of *compensation* received by *lobbying firms* for each calendar quarter, both in the aggregate and for each individual principal. Much of the reporting is done in dollar categories; however, if compensation from a single principal is \$50,000 or more in a calendar quarter, the lobbying firm must report the specific dollar amount of the compensation, rounded to the nearest \$1,000.

A “lobbying firm” is any business entity with a lobbyist, or an individual contract lobbyist, who gets paid to lobby for a principal. It is the lobbying firm that must report, *not the individual lobbyists in the firm* (except in the case of an individual contract lobbyist, where the lobbyist also comprises the entire lobbying firm).

Reports are due no later than 45 days after the end of each calendar quarter. Compensation reports must be filed electronically using the online filing system of the Office of Legislative Services.

The new law requires the senior partner, officer, or owner of the lobbying firm to certify to the veracity and completeness of each compensation report. This requirement is designed to discourage the mischaracterization and thus omission of reportable compensation through designations such as “media fees,” “consulting services,” “professional services,” “governmental services,” and other such artifices.

For example, if a law firm were paid a lump sum for rendering multiple types of services to a client, only one of which is lobbying, then the person certifying the report is responsible for properly and reasonably allocating the portion of the total fee received for lobbying activities and for activities other than lobbying. Only the compensation received for *lobbying* activities is to be reported on the compensation form.

The Legislature will use random audits supplemented by the lobbyist disciplinary process to hold the person certifying the compensation report and the lobbying firm accountable for making a true, complete, properly allocated report as required by law. In addition, the certification brings every compensation report filer within the scope of potential criminal penalties in section 837.06, *Florida Statutes*, for culpable violations.

## **(2) Frequently Asked Questions**

*1. Question: Is an in-house, salaried lobbyist for an association, a governmental entity, or a corporation that does not derive income from principals for lobbying required to report compensation?*

**ANSWER:** No. An association, a governmental entity, a corporation or other business entity that does not derive income from principals for lobbying, and its employee lobbyists, are not a “lobbying firm” as defined in section 11.045(1)(g), *Florida Statutes*. Only “lobbying firms” must report compensation as provided in section 11.045(3)(a), *Florida Statutes*.

*2. Question: Does the prohibition against providing compensation to an individual or business entity that is not a lobbying firm mean that inhouse lobbyists must either become a lobbying firm or cease lobbying?*

**ANSWER:** No. The provision in question merely clarifies that reportable “compensation” under the law must be provided to a “lobbying firm,” and not contracted or subcontracted through some “straw man” to circumvent compensation reporting requirements. The provision in question clarifies and emphasizes the statutory definition of “compensation” in section 11.045(1)(b), *Florida Statutes*, as “anything of value provided or owed to a *lobbying firm*.”

**RULES OF THE  
FLORIDA COMMISSION ON ETHICS  
CHAPTER 34-12  
EXECUTIVE BRANCH LOBBYIST REGISTRATION**

\* \* \* \* \*

[34-12.400](#) Compensation Reporting Requirements.

[34-12.405](#) Penalties for Late Filing.

[34-12.407](#) Appeal of Statutory Fines: Hearings, Unusual Circumstances.

[34-12.420](#) Notification of Compensation Reporting Deadlines.

\* \* \* \* \*

**34-12.400 Compensation Reporting Requirements.**

(1) Each lobbying firm shall file a CE Form 24, Executive Branch Quarterly Compensation Report, with the Commission on Ethics for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. Pursuant to Section 112.32155, Florida Statutes, compensation reports must be filed electronically. The Quarterly Compensation Report shall include:

(a) Full name, business address, and telephone number of the lobbying firm;

(b) Name of each of the firm's lobbyists; and

(c) Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories:

1. - 0 -

2. \$1 to \$49,999

3. \$50,000 to \$99,999

4. \$100,000 to \$249,999

5. \$250,000 to \$499,999

6. \$500,000 to \$999,999

7. \$1 million or more (2) For each principal represented by the lobbying firm's lobbyists, the Quarterly Compensation Report shall also include:

(a) Full name, business address, and telephone number of the principal;

(b) Total compensation provided or owed to the lobbying firm for the reporting period, reported in one of the following categories:

1. - 0 -

2. \$1 to \$9,999

3. \$10,000 to \$19,999

4. \$20,000 to \$29,999

5. \$30,000 to \$39,999

6. \$40,000 to \$49,999

7. \$50,000 or more. When this category is selected, the specific dollar amount of the compensation must be reported, rounded up or down to the nearest \$1,000.

(c) For lobbying work subcontracted from another lobbying firm and not directly from the principal originating the work, the employing lobbying firm shall be treated as the reporting lobbying firm's principal, but the name and address of the principal originating the work shall also be provided.

(3) Compensation "provided or owed" shall be reported using the accrual basis of accounting.

(4) Compensation provided or owed for lobbying activities as defined in Rule 34-12.020(6) and as described in Rule 34-12.160 should be reported. Compensation provided or owed for activities that are excluded, as provided in Rules 34-12.110, 34-12.120, and 34-12.130, and as described in Rule 34-12.170 is not required to be reported.

(5) The senior partner, officer, or owner of the lobbying firm filing the Quarterly Compensation Report shall certify:

(a) to the veracity and completeness of the information submitted on the Quarterly Compensation Report;

(b) that no compensation has been omitted from the Quarterly Compensation Report by deeming such compensation as "consulting services," "media services," "professional services," or anything other than compensation; and

(c) that no officer or employee of the lobbying firm has made an expenditure in violation of Section 112.3215, F.S., as amended by Chapter 2005-359, L.O.F.

(6) For each principal represented by two or more lobbying firms, the Commission shall aggregate quarterly and annually the compensation reported as provided or owed to lobbying firms by the principal by aggregating the reported ranges and specific dollar amounts.

(7) CE Form 24, Executive Branch Quarterly Compensation Report. Effective 6/2006. CE Form 24 must be created and submitted through the Lobbyist Registration Office's Electronic Filing System, not later than 11:59 p.m. Eastern on the date of the filing deadline. Proof of electronic filing will be by electronic receipt indicating the date and time that the report was submitted. The Lobbyist Registration Office's Electronic Filing System may be accessed at <http://olcr.leg.state.fl.us>. Examples of the form may be obtained without cost from the Lobbyist Registration Office, 111 West Madison Street, Room G-68, Tallahassee, Florida 32399, telephone (850) 922-4990. Rulmaking Authority 112.3215, 112.32155, 112.322(9). History--New 10-12-89, Amended 7-5-92, 12-6-92, 1-4-94, 1-1-97, 12-21-00, 6-15-06, 8-18-10.

#### **34-12.405 Penalties for Late Filing.**

(1) Upon determining that a Quarterly Compensation Report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm of its failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day up to a maximum of \$5,000 per late report.

(2) Upon receipt of the late-filed report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

(a) When a report is actually received by the lobbyist registration and reporting office;

(b) When the report is postmarked.

(c) When the certificate of mailing is dated; or

(d) When the receipt from an established courier company is dated.

(3) After the person designated to review the timeliness of reports has calculated the amount of the fine that has been assessed against a lobbying firm, the lobbying firm will be notified of the amount of the payment due.

(4) Such fine shall be paid within 30 days after the notice of payment due is transmitted by the lobbyist registration office, unless appeal is made to the Commission. The moneys shall be deposited into the Executive Branch Lobby Registration Trust Fund.

(5) A fine shall not be assessed against a lobbyist the first time any reports for which the lobbying firm is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbying firm is responsible must be filed within 30 days after the notice that any reports have not been timely filed is transmitted by the lobbyist registration office. A fine shall be assessed for any subsequent late-filed reports.

(6) The person designated to review the timeliness of reports shall notify the Commission of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed.

(7) Fines imposed by the Commission that remain unpaid 60 days after the notice of payment due is transmitted or 60 days after the Commission renders its final order shall be transmitted to the Department of Financial Services for collection.

Specific Authority 112.3215, 112.322(9), FS., Section 5, Chapter 2005-359, LOF.

Law Implemented 112.3215, FS., Section 5, Chapter 2005-359, LOF.

History--New 1-1-97, Amended 11-24-97, 12-21-00, 6-15-06.

#### **34-12.407 Appeal of Statutory Fines: Hearings, Unusual Circumstances.**

(1) A lobbying firm wishing to appeal or dispute a fine imposed in accordance with Section 112.3215(5)(e)5., Florida Statutes, shall file with the Commission on Ethics a notice of appeal within 30 days of the date the notice of payment due is transmitted by the lobbyist registration office, setting out with specificity the unusual circumstances surrounding the failure to file on the designated due date. The notice of appeal may be accompanied by any documentation or evidence supporting the claim.

(2) Failure to timely file a notice of appeal as described herein shall constitute a waiver of any such entitlement. A final order of waiver shall be promptly entered by the chairman of the Commission on Ethics without the necessity of any further action being taken by the Commission.

(3) A lobbying firm desiring a hearing before the Commission shall include in the notice of appeal a separate request for hearing. If no request for hearing is included in the notice of appeal, the Commission's determination shall be based on the notice and any supporting information and shall be final agency action. If a separate request for hearing is included in the notice, notice of hearing shall be provided and the Commission's

determination after hearing shall be final agency action. Failure to appear in accordance with the notice of hearing shall constitute a waiver of such entitlement, and the Commission shall dispose of the case on the written record before it.

(4) "Unusual circumstances" means uncommon, rare or sudden events over which the actor has no control and which directly result in the failure to act in accordance with the filing requirements. Circumstances which allow for time in which to take those steps necessary to assure compliance with the filing requirements shall be deemed not to constitute unusual circumstances.

Specific Authority 112.3215, 112.322(9), FS., Section 5, Chapter 2005-359, LOF.

Law Implemented 112.3215, FS., Section 5, Chapter 2005-359, LOF.

History--New 1-1-97, Amended 12-21-00, 6-15-06.

\* \* \* \* \*

**34-12.420 Notification of Compensation Reporting Deadlines.**

Following each quarterly reporting period, the Commission will send to each lobbying firm that has one or more currently registered lobbyists a copy of CE Form 24 together with a notice stating that the form must be filed on or before the specified date.

Specific Authority 112.3215, 112.322(9), FS., Section 5, Chapter 2005-359, LOF.

Law Implemented 112.3215, FS, Section 5, Chapter 2005-359, LOF.

History--New 10-12-89, Amended 7-5-92, 12-6-92, 1-4-94, 8-7-94, 1-1-97, 12-21-00, 6-15-06.

**5. Sample Lobbying Firm  
Compensation Reports**



[Return to Compensation Report List Page](#)

This report was submitted to the Lobbyist Registration Office on August 05, 2013 at 11:17:18 am Eastern Time.

### Reporting Period

April 1, 2013 - June 30, 2013 Legislative Branch Lobbying

### Firm Information

XYZ & Associates Inc  
PO Box 123  
TALLAHASSEE, FLORIDA US 33333  
(850) 555-5555

### Firm Lobbyists

- Doe, John B.

### Principals and Compensation

Principal	Information	Compensation
Blue Services Company	795 5th Avenue NEW YORK CITY, NEW YORK US 10065 (212) 555-0000	\$1.00 to \$9,999.00
North Air Company	8695 Parkway Ave TALLAHASSEE FLORIDA US 32301 (850) 555-0000	\$10,000.00 to \$19,999.00
The Products Corporation	1234 Hyde Park Blvd. JACKSONVILLE, FLORIDA US 32318 (888) 555-1111	\$1.00 to \$9,999.00
Box Company	Hwy 93 BOULDER CITY, NEVADA US 89005 (702) 293-8321	\$20,000.00 to \$29,000.00

### Prime Contractor Firms

Prime Contractor Firm	Firm Information	Originating Principal	Principal Information
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### Total Compensation

Total Compensation: \$50,000.00 to \$99,999.00

### Certification

I hereby certify to the veracity and completeness of the information herein; that no reportable compensation has been omitted; and that no officer or employee of this lobbying firm has made an expenditure in violation of Section 11.045 , F.S.

**John B Doe , Owner**







## FLORIDA BOARD OF ACCOUNTANCY

240 Northwest 76 Drive Suite A  
Gainesville Florida 32607-1111  
(352)333-2505 – Fax 352(333-2508)

October 7, 2013

The Honorable Joseph Abruzzo  
Chairman, Joint Legislative Auditing Committee  
876 Pepper Building  
111 W. Madison Street  
Tallahassee FL 32399-1400

The Honorable Lake Ray  
Alternating Chairman, Joint Legislative Auditing Committee  
876 Pepper Building  
111 W. Madison Street  
Tallahassee FL 32399-1400

Attention: Kathy DuBose  
Committee Coordinator, Joint Legislative Audit Committee

Dear Senator Abruzzo and Representative Ray:

Please accept this letter on behalf of the Florida Board of Accountancy. At our last meeting on October 4, 2013, we discussed issues relating to the implementation of section 11.40(3) Florida Statutes, as it relates to practicing public accountancy. After which, the board voted to draft a letter raising our concerns regarding how the implementation of section 11.40(3) Florida Statutes, will affect Florida certified public accountants. Specifically, the Florida Board of Accountancy has the following concerns:

1) **Audit Engagement:**

The statute indicates an "audit" will be performed. It is our opinion that the intent of the word "Audit" as it applies in section 11.40(3), Florida Statutes, actually may have been intended as Webster's Dictionary defines "a formal examination of an organization or individual accounts or financial situation; a methodical examination and review". This definition and what is practiced in public accountancy is where an expectation gap is created. I would refer you to the definition of audit in section 11.45, Florida Statutes attached. Further, after reviewing the definition under section 11.45, Florida Statutes, it is apparent that the "audit" required under section 11.40(3), Florida Statutes will be direct conflict with audit as defined in section 11.45, Florida Statutes

Based on our interviews and discussion, the requirements of section 11.40(3), Florida Statutes would be more accurately fulfilled by Florida CPA's performing "an agreed-upon procedures report", not an Audit. Such engagements are attestation engagements in which a CPA expresses a report of findings based on specific agreed-upon procedures in which a CPA expresses a report of findings based on specific agreed-upon procedures in lieu of an opinion. Instead, an agreed-upon procedures engagement is considered a "finding of facts." (See attached Definition of Agreed upon Procedures from AICPA Attestation Standards Section 201).

Cynthia Borders-Byrd, CPA  
Maria E. Caldwell, CPA  
David L. Dennis, CPA  
William H. Durkin, CPA, Chair  
Dr. Martin Fennema, CPA

Stephen C. Riggs, CPA, Vice-Chair  
Eric Robinson, CPA

Teresa Borcheck, Consumer Member  
H. Steven Vogel, Consumer Member

Veloria A. Kelly, Executive Director  
Mary Ellen Clark, Esq., Legal Counsel



## FLORIDA BOARD OF ACCOUNTANCY

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### 2) New Independence Definition Concerns:

Since this law specifically addresses the issue of auditor independence, it is important that consideration be given to the Board of Accountancy's current rule related to independence standards (see 61H1-21.001, F.A.C.). This rule closely tracks independence standards contained in the Code of Professional Conduct of the American Institute of Certified Public Accountants.

Under professional standards and Florida's laws and rules regulating CPA's, a CPA must be independent when expressing an opinion on a financial statement. The Board has concerns that creating a new definition of independence for Florida CPA's in section 11.40, Florida Statutes will cause confusion and conflicts between the current rules and this new engagement. It is entirely possible that a CPA could be adhering to the independence standards in this law, yet be violating the Florida Board of Accountancy's independence rule. Conversely, the CPA could adhere to the board's independence rule and violate the new statute. **Either action could subject the CPA to discipline, suspension or loss of licensure.**

Thank you for your time and consideration of these questions and concerns. I or another member of the Florida Board of Accountancy is available to address the committee or your staff, if needed.

Sincerely,

William H. Durkin, CPA  
Chairman, Florida Board of Accountancy

cc: The Honorable Don Gaetz, Senate President  
The Honorable Will Weatherford, Speaker of the House  
The Honorable Rob Bradley  
The Honorable Daphne Campbell  
The Honorable Gayle Harrell  
The Honorable Alan Hayes  
The Honorable Daniel D. Raulerson  
The Honorable Jeremy Ring  
The Honorable Ray Wesley Rodrigues  
The Honorable Wilton Simpson  
The Honorable Cynthia A. Stafford  
Florida Board of Accountancy  
Ken Lawson, DBPR Secretary  
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**61H1-21.001 Independence.**

(1) A firm shall not express an opinion on financial statements (as that term is defined in the Standards for Independence) of an enterprise or on the reliability of an assertion by one party for use by another (third) party unless the firm is active licensed and independent with respect to such enterprise or the party making the assertion. A licensed firm is also precluded from expressing such an opinion if the firm is aware that an individual in the firm is not independent and that individual is a covered certified public accountant or is otherwise required to be independent. A certified public accountant shall not express such an opinion unless the certified public accountant is independent with respect to such enterprise or the party making the assertion. A certified public accountant is also precluded from expressing such an opinion if he or she is aware that an individual in the firm is not independent and that individual is a covered certified public accountant or is otherwise required to be independent. All covered certified public accountants and all other individuals who are required to be independent are required to disclose to the firm that they are not independent prior to the issuance of such an opinion; failure to do so is a violation of this rule. All firms are required to adopt appropriate policies to implement the disclosure requirement and to monitor compliance therewith.

(2) In order to delineate the standards against which a certified public accountant's independence or lack thereof is to be judged, the Board has created a document entitled "Standards for Determining Independence in the Practice of Public Accountancy for CPAs Practicing Public Accountancy in the State of Florida" (effective 12-31-2004) (hereinafter "Standards for Independence") which document is hereby incorporated by reference in this rule. The standards contained in the "Standards for Independence" are similar to those contained in the Code of Professional Conduct promulgated by the American Institute of Certified Public Accountants.

(3) In order to be considered independent a certified public accountant must comply with the requirements set out in the "Standards for Independence" and the requirements of this rule.

*Rulemaking Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 12-4-79, Amended 2-3-81, 10-28-85, Formerly 21A-21.01, Amended 10-20-86, Formerly 21A-21.001, Amended 5-21-03, 1-31-05, 12-10-09.*

## 2013 Florida Statutes

<a href="#">Title III</a>	<a href="#">Chapter 11</a>	<a href="#">View</a>
LEGISLATIVE BRANCH; COMMISSIONS	LEGISLATIVE ORGANIZATION, PROCEDURES, AND STAFFING	<a href="#">Entire Chapter</a>

### 11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. [11.40-11.51](#), the term:

(a) “Audit” means a financial audit, operational audit, or performance audit.

(b) “County agency” means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of the above are under law separately placed.

(c) “Financial audit” means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits shall encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.

(d) “Governmental entity” means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function.

(e) “Local governmental entity” means a county agency, municipality, or special district as defined in s. [189.403](#), but does not include any housing authority established under chapter 421.

(f) “Management letter” means a statement of the auditor’s comments and recommendations.

(g) “Operational audit” means an audit whose purpose is to evaluate management’s performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing

standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

(h) "Performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.
2. Structure or design of the program to accomplish its goals and objectives.
3. Adequacy of the program to meet the needs identified by the Legislature or governing body.
4. Alternative methods of providing program services or products.
5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.
6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.
7. Compliance of the program with appropriate policies, rules, or laws.
8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

(i) "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(j) "State agency" means a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

(2) DUTIES.—The Auditor General shall:

- (a) Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee.
- (b) Annually conduct a financial audit of state government.
- (c) Annually conduct financial audits of all state universities and state colleges.

(d) Annually conduct financial audits of the accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census.

(e) Once every 3 years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census.

(f) At least every 3 years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind.

(g) At least every 3 years, conduct a performance audit of the local government financial reporting system, which, for the purpose of this chapter, means any statutory provision related to local government financial reporting. The purpose of such an audit is to determine the accuracy, efficiency, and effectiveness of the reporting system in achieving its goals and to make recommendations to the local governments, the Governor, and the Legislature as to how the reporting system can be improved and how program costs can be reduced. The Auditor General shall determine the scope of the audits. The local government financial reporting system should provide for the timely, accurate, uniform, and cost-effective accumulation of financial and other information that can be used by the members of the Legislature and other appropriate officials to accomplish the following goals:

1. Enhance citizen participation in local government;
2. Improve the financial condition of local governments;
3. Provide essential government services in an efficient and effective manner; and
4. Improve decisionmaking on the part of the Legislature, state agencies, and local government officials on matters relating to local government.

(h) At least every 3 years, conduct a performance audit of the Department of Revenue's administration of the ad valorem tax laws as described in s. [195.096](#). The audit report shall report on the activities of the ad valorem tax program of the Department of Revenue related to the ad valorem tax rolls. The Auditor General shall include, for at least four counties reviewed, findings as to the accuracy of assessment procedures, projections, and computations made by the department, using the same generally accepted appraisal standards and procedures to which the department and the property appraisers are required to adhere. However, the report may not include any findings or statistics related to any ad valorem tax roll that is in litigation between the state and county officials at the time the report is issued.

(i) Once every 3 years, review a sample of internal audit reports at each state agency, as defined in s. 20.055(1), to determine compliance with current Standards for the Professional Practice of Internal Auditing or, if appropriate, government auditing standards.

(j) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to determine the audited entity's progress in addressing the findings and recommendations contained within the Auditor General's previous report. The Auditor General shall notify each member of the audited entity's governing body and the Legislative Auditing Committee of the results of his or her determination.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

(3) **AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.**—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

- (a) The accounts and records of any governmental entity created or established by law.
- (b) The information technology programs, activities, functions, or systems of any governmental entity created or established by law.
- (c) The accounts and records of any charter school created or established by law.
- (d) The accounts and records of any direct-support organization or citizen support organization created or established by law. The Auditor General is authorized to require and receive any records from the direct-support organization or citizen support organization, or from its independent auditor.
- (e) The public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person. All records of a nongovernmental agency, corporation, or person with respect to the receipt and expenditure of such an appropriation shall be public records and shall be treated in the same manner as other public records are under general law.
- (f) State financial assistance provided to any nonstate entity as defined by s. 215.97.
- (g) The Tobacco Settlement Financing Corporation created pursuant to s. 215.56005.
- (h) Any purchases of federal surplus lands for use as sites for correctional facilities as described in s. 253.037.



(i) Enterprise Florida, Inc., including any of its boards, advisory committees, or similar groups created by Enterprise Florida, Inc., and programs. The audit report may not reveal the identity of any person who has anonymously made a donation to Enterprise Florida, Inc., pursuant to this paragraph. The identity of a donor or prospective donor to Enterprise Florida, Inc., who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such anonymity shall be maintained in the auditor's report.

(j) The Florida Development Finance Corporation or the capital development board or the programs or entities created by the board. The audit or report may not reveal the identity of any person who has anonymously made a donation to the board pursuant to this paragraph. The identity of a donor or prospective donor to the board who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such anonymity shall be maintained in the auditor's report.

(k) The records pertaining to the use of funds from voluntary contributions on a motor vehicle registration application or on a driver's license application authorized pursuant to ss. 320.023 and 322.081.

(l) The records pertaining to the use of funds from the sale of specialty license plates described in chapter 320.

(m) The transportation corporations under contract with the Department of Transportation that are acting on behalf of the state to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems pursuant to ss. 339.401-339.421.

(n) The acquisitions and divestitures related to the Florida Communities Trust Program created pursuant to chapter 380.

(o) The Florida Water Pollution Control Financing Corporation created pursuant to s. 403.1837.

(p) The school readiness program, including the early learning coalitions under part VI of chapter 1002.

(q) The Florida Special Disability Trust Fund Financing Corporation created pursuant to s. 440.49.

(r) Workforce Florida, Inc., or the programs or entities created by Workforce Florida, Inc., created pursuant to s. 445.004.

(s) The corporation defined in s. 455.32 that is under contract with the Department of Business and Professional Regulation to provide administrative, investigative, examination,

licensing, and prosecutorial support services in accordance with the provisions of s. 455.32 and the practice act of the relevant profession.

(t) The Florida Engineers Management Corporation created pursuant to chapter 471.

(u) The books and records of any permitholder that conducts race meetings or jai alai exhibitions under chapter 550.

(v) The corporation defined in part II of chapter 946, known as the Prison Rehabilitative Industries and Diversified Enterprises, Inc., or PRIDE Enterprises.

(w) The Florida Virtual School pursuant to s. 1002.37.

(x) Virtual education providers receiving state funds or funds from local ad valorem taxes.

(4) SCHEDULING AND STAFFING OF AUDITS.—

(a) Each financial audit required or authorized by this section, when practicable, shall be made and completed within not more than 9 months following the end of each audited fiscal year of the state agency or political subdivision, or at such lesser time which may be provided by law or concurrent resolution or directed by the Legislative Auditing Committee. When the Auditor General determines that conducting any audit or engagement otherwise required by law would not be possible due to workload or would not be an efficient or effective use of his or her resources based on an assessment of risk, then, in his or her discretion, the Auditor General may temporarily or indefinitely postpone such audits or other engagements for such period or any portion thereof, unless otherwise directed by the committee.

(b) The Auditor General may, when in his or her judgment it is necessary, designate and direct any auditor employed by the Auditor General to audit any accounts or records within the authority of the Auditor General to audit. The auditor shall report his or her findings for review by the Auditor General, who shall prepare the audit report.

(c) The audit report when final shall be a public record. The audit workpapers and notes are not a public record; however, those workpapers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause. The audit workpapers and notes shall be retained by the Auditor General until no longer useful in his or her proper functions, after which time they may be destroyed.

(d) At the conclusion of the audit, the Auditor General or the Auditor General's designated representative shall discuss the audit with the official whose office is subject to audit and submit to that official a list of the Auditor General's findings which may be included in the audit report. If the official is not available for receipt of the list of audit findings, then delivery is presumed to be made when it is delivered to his or her office. The official shall submit to the Auditor General or the designated representative, within 30 days after the receipt of the list of

findings, his or her written statement of explanation or rebuttal concerning all of the findings, including corrective action to be taken to preclude a recurrence of all findings.

(e) The Auditor General shall provide the successor independent certified public accountant of a district school board with access to the prior year's working papers in accordance with the Statements on Auditing Standards, including documentation of planning, internal control, audit results, and other matters of continuing accounting and auditing significance, such as the working paper analysis of balance sheet accounts and those relating to contingencies.

(5) PETITION FOR AN AUDIT BY THE AUDITOR GENERAL.—

(a) The Legislative Auditing Committee shall direct the Auditor General to make an audit of any municipality whenever petitioned to do so by at least 20 percent of the registered electors in the last general election of that municipality pursuant to this subsection. The supervisor of elections of the county in which the municipality is located shall certify whether or not the petition contains the signatures of at least 20 percent of the registered electors of the municipality. After the completion of the audit, the Auditor General shall determine whether the municipality has the fiscal resources necessary to pay the cost of the audit. The municipality shall pay the cost of the audit within 90 days after the Auditor General's determination that the municipality has the available resources. If the municipality fails to pay the cost of the audit, the Department of Revenue shall, upon certification of the Auditor General, withhold from that portion of the distribution pursuant to s. 212.20(6)(d)5, which is distributable to such municipality, a sum sufficient to pay the cost of the audit and shall deposit that sum into the General Revenue Fund of the state.

(b) At least one registered elector in the most recent general election must file a letter of intent with the municipal clerk prior to any petition of the electors of that municipality for the purpose of an audit. Each petition must be submitted to the supervisor of elections and contain, at a minimum:

1. The elector's printed name;
2. The signature of the elector;
3. The elector's residence address;
4. The elector's date of birth; and
5. The date signed.

All petitions must be submitted for verification within 1 calendar year after the audit petition origination by the municipal electors.

(6) REQUEST BY A LOCAL GOVERNMENTAL ENTITY FOR AN AUDIT BY THE AUDITOR GENERAL.—Whenever a local governmental entity requests the Auditor General to conduct an audit of all or part of its operations and the Auditor General conducts the audit under his or

her own authority or at the direction of the Legislative Auditing Committee, the expenses of the audit shall be paid by the local governmental entity. The Auditor General shall estimate the cost of the audit. Fifty percent of the cost estimate shall be paid by the local governmental entity before the initiation of the audit and deposited into the General Revenue Fund of the state. After the completion of the audit, the Auditor General shall notify the local governmental entity of the actual cost of the audit. The local governmental entity shall remit the remainder of the cost of the audit to the Auditor General for deposit into the General Revenue Fund of the state. If the local governmental entity fails to comply with paying the remaining cost of the audit, the Auditor General shall notify the Legislative Auditing Committee.

**(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—**

(a) The Auditor General shall notify the Legislative Auditing Committee of any local governmental entity, district school board, charter school, or charter technical career center that does not comply with the reporting requirements of s. 218.39.

(b) The Auditor General, in consultation with the Board of Accountancy, shall review all audit reports submitted pursuant to s. 218.39. The Auditor General shall request any significant items that were omitted in violation of a rule adopted by the Auditor General. The items must be provided within 45 days after the date of the request. If the governmental entity does not comply with the Auditor General's request, the Auditor General shall notify the Legislative Auditing Committee.

(c) The Auditor General shall provide annually a list of those special districts which are not in compliance with s. 218.39 to the Special District Information Program of the Department of Economic Opportunity.

(d) During the Auditor General's review of audit reports, he or she shall contact those units of local government, as defined in s. 218.403, that are not in compliance with s. 218.415 and request evidence of corrective action. The unit of local government shall provide the Auditor General with evidence of corrective action within 45 days after the date it is requested by the Auditor General. If the unit of local government fails to comply with the Auditor General's request, the Auditor General shall notify the Legislative Auditing Committee.

(e) The Auditor General shall notify the Governor or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee of any audit report reviewed by the Auditor General pursuant to paragraph (b) which contains a statement that a local governmental entity, charter school, charter technical career center, or district school board has met one or more of the conditions specified in s. 218.503. If the Auditor General requests a clarification regarding information included in an audit report to determine whether a local governmental entity, charter school, charter technical career center, or district school board

has met one or more of the conditions specified in s. 218.503, the requested clarification must be provided within 45 days after the date of the request. If the local governmental entity, charter school, charter technical career center, or district school board does not comply with the Auditor General's request, the Auditor General shall notify the Legislative Auditing Committee. If, after obtaining the requested clarification, the Auditor General determines that the local governmental entity, charter school, charter technical career center, or district school board has met one or more of the conditions specified in s. 218.503, he or she shall notify the Governor or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee.

(f) The Auditor General shall annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports reviewed in paragraph (b) or otherwise identified by the Auditor General's review of such audit reports and financial information, and identified in audits of district school boards conducted by the Auditor General. The Auditor General shall include financial information provided pursuant to s. 218.32(1)(e) for entities with fiscal years ending on or after June 30, 2003, within his or her reports submitted pursuant to this paragraph.

(g) If the Auditor General discovers significant errors, improper practices, or other significant discrepancies in connection with his or her audits of a state agency or state officer, the Auditor General shall notify the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee. The President of the Senate and the Speaker of the House of Representatives shall promptly forward a copy of the notification to the chairs of the respective legislative committees, which in the judgment of the President of the Senate and the Speaker of the House of Representatives are substantially concerned with the functions of the state agency or state officer involved. Thereafter, and in no event later than the 10th day of the next succeeding legislative session, the person in charge of the state agency involved, or the state officer involved, as the case may be, shall explain in writing to the President of the Senate, the Speaker of the House of Representatives, and to the Legislative Auditing Committee the reasons or justifications for such errors, improper practices, or other significant discrepancies and the corrective measures, if any, taken by the agency.

(h) The Auditor General shall annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee by December 1 of each year a report that includes a projected 2-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General. The Auditor General may also transmit

recommendations at other times of the year when the information would be timely and useful for the Legislature.

(i) Beginning in 2012, the Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

(j) The Auditor General shall notify the Legislative Auditing Committee of any financial or operational audit report prepared pursuant to this section which indicates that a state university or Florida College System institution has failed to take full corrective action in response to a recommendation that was included in the two preceding financial or operational audit reports.

1. The committee may direct the governing body of the state university or Florida College System institution to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.

2. If the committee determines that the written statement is not sufficient, the committee may require the chair of the governing body of the state university or Florida College System institution, or the chair's designee, to appear before the committee.

3. If the committee determines that the state university or Florida College System institution has failed to take full corrective action for which there is no justifiable reason or has failed to comply with committee requests made pursuant to this section, the committee shall refer the matter to the State Board of Education or the Board of Governors, as appropriate, to proceed in accordance with s. 1008.32 or s. 1008.322, respectively.

(8) RULES OF THE AUDITOR GENERAL.—The Auditor General, in consultation with the Board of Accountancy, shall adopt rules for the form and conduct of all financial audits performed by independent certified public accountants pursuant to ss. 215.981, 218.39, 1001.453, 1004.28, and 1004.70. The rules for audits of local governmental entities, charter schools, charter technical career centers, and district school boards must include, but are not limited to, requirements for the reporting of information necessary to carry out the purposes of the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act as stated in s. 218.501.

(9) TECHNICAL ADVICE PROVIDED BY THE AUDITOR GENERAL.—The Auditor General may provide technical advice to:

(a) The Department of Education in the development of a compliance supplement for the financial audit of a district school board conducted by an independent certified public accountant.

(b) Governmental entities on their financial and accounting systems, procedures, and related matters.

(c) Governmental entities on promoting the building of competent and efficient accounting and internal audit organizations in their offices.

**History.**—s. 6, ch. 67-470; s. 6, ch. 69-82; s. 1, ch. 72-6; ss. 1, 2, ch. 73-234; s. 1, ch. 75-122; s. 1, ch. 76-73; s. 1, ch. 77-102; s. 2, ch. 79-183; ss. 1, 3, 6, ch. 79-589; s. 1, ch. 81-167; s. 1, ch. 83-55; s. 1, ch. 83-106; s. 1, ch. 84-241; s. 1, ch. 85-80; s. 14, ch. 86-204; s. 2, ch. 86-217; s. 1, ch. 87-114; s. 4, ch. 89-87; s. 30, ch. 89-169; s. 9, ch. 90-110; s. 19, ch. 90-227; s. 65, ch. 91-45; s. 17, ch. 91-282; s. 2, ch. 91-429; s. 91, ch. 92-142; s. 136, ch. 92-279; s. 55, ch. 92-326; s. 15, ch. 94-249; s. 1309, ch. 95-147; s. 1, ch. 95-214; s. 1, ch. 95-380; s. 12, ch. 95-396; s. 26, ch. 96-318; s. 1, ch. 96-324; s. 21, ch. 97-96; s. 1, ch. 97-111; s. 1, ch. 97-255; s. 26, ch. 97-271; s. 3, ch. 99-333; s. 1, ch. 2000-151; s. 4, ch. 2000-264; s. 31, ch. 2000-355; s. 36, ch. 2000-371; s. 30, ch. 2001-140; s. 15, ch. 2001-266; s. 1, ch. 2002-1; s. 17, ch. 2002-22; s. 880, ch. 2002-387; s. 2, ch. 2004-305; s. 1, ch. 2004-331; s. 3, ch. 2004-484; s. 1, ch. 2005-171; s. 7, ch. 2006-190; s. 5, ch. 2009-68; s. 1, ch. 2009-214; s. 2, ch. 2010-5; s. 13, ch. 2011-34; s. 1, ch. 2011-49; s. 1, ch. 2011-52; s. 36, ch. 2011-142; s. 1, ch. 2012-5; s. 1, ch. 2012-134; s. 1, ch. 2013-15; s. 1, ch. 2013-51; s. 19, ch. 2013-252.

**Note.**—Former s. 11.186.

## AT Section 201

### ***Agreed-Upon Procedures Engagements***

Source: SSAE No. 10; SSAE No. 11.

Effective when the subject matter or assertion is as of or for a period ending on or after June 1, 2001, unless otherwise indicated.

#### **Introduction and Applicability**

.01 This section sets forth attestation standards and provides guidance to a practitioner concerning performance and reporting in all agreed-upon procedures engagements, except as noted in paragraph .02. A practitioner also should refer to the following sections of this Statement on Standards for Attestation Engagements (SSAE), which provide additional guidance for certain types of agreed-upon procedures engagements:

- a. Section 301, *Financial Forecasts and Projections*
- b. Section 601, *Compliance Attestation*

.02 This section does not apply to the following:<sup>1</sup>

- a. Situations in which an auditor reports on specified compliance requirements based solely on an audit of financial statements, as addressed in AU section 623, *Special Reports*, paragraphs .19–.21
- b. Engagements for which the objective is to report in accordance with AU section 801, *Compliance Audits*, unless the terms of the engagement specify that the engagement be performed pursuant to SSAEs
- c. Engagements covered by AU section 634, *Letters for Underwriters and Certain Other Requesting Parties*
- d. Certain professional services that would not be considered as falling under this section as described in section 101, *Attest Engagements*, paragraph .04.

[Revised, December 2010, to reflect conforming changes necessary due to the issuance of SAS No. 117. Revised, August 2011, to reflect conforming changes necessary due to the issuance of SSAE No. 16.]

#### **Agreed-Upon Procedures Engagements**

.03 An agreed-upon procedures engagement is one in which a practitioner is engaged by a client to issue a report of findings based on specific procedures performed on subject matter. The client engages the practitioner to assist specified parties in evaluating subject matter or an assertion as a result of a need or needs of the specified parties.<sup>2</sup> Because the specified parties require that

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<sup>1</sup> The Attest Interpretation, "Responding to Requests for Reports on Matters Relating to Solvency" (section 9101.23–.33), prohibits the performance of any attest engagements concerning matters of solvency or insolvency.

<sup>2</sup> See paragraphs .08 and .09 for a discussion of subject matter and assertion.



findings be independently derived, the services of a practitioner are obtained to perform procedures and report his or her findings. The specified parties and the practitioner agree upon the procedures to be performed by the practitioner that the specified parties believe are appropriate. Because the needs of the specified parties may vary widely, the nature, timing, and extent of the agreed-upon procedures may vary as well; consequently, the specified parties assume responsibility for the sufficiency of the procedures since they best understand their own needs. In an engagement performed under this section, the practitioner does not perform an examination or a review, as discussed in section 101, and does not provide an opinion or negative assurance.<sup>3</sup> (See paragraph .24.) Instead, the practitioner's report on agreed-upon procedures should be in the form of procedures and findings. (See paragraph .31.)

.04 As a consequence of the role of the specified parties in agreeing upon the procedures performed or to be performed, a practitioner's report on such engagements should clearly indicate that its use is restricted to those specified parties.<sup>4</sup> Those specified parties, including the client, are hereinafter referred to as *specified parties*.

## Standards

.05 The general, fieldwork, and reporting standards for attestation engagements as established in section 50, *SSAE Hierarchy*, together with interpretive guidance regarding their application as addressed throughout this section, should be followed by the practitioner in performing and reporting on agreed-upon procedures engagements. [Revised, November 2006, to reflect conforming changes necessary due to the issuance of Statement on Standards for Attestation Engagements No. 14.]

## Conditions for Engagement Performance

.06 The practitioner may perform an agreed-upon procedures attest engagement provided that—

- a. The practitioner is independent.
- b. One of the following conditions is met.
  - (1) The party wishing to engage the practitioner is responsible for the subject matter, or has a reasonable basis for providing a written assertion about the subject matter when the nature of the subject matter is such that a responsible party does not otherwise exist.
  - (2) The party wishing to engage the practitioner is not responsible for the subject matter but is able to provide the practitioner, or have a third party who is responsible for the subject matter provide the practitioner with evidence of the third party's responsibility for the subject matter.
- c. The practitioner and the specified parties agree upon the procedures performed or to be performed by the practitioner.

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<sup>3</sup> For guidance on expressing an opinion on specified elements, accounts, or items of a financial statement based on an audit, see AU section 623.11–18.

<sup>4</sup> See section 101.78–.83 for additional guidance regarding restricted-use reports.

- d.* The specified parties take responsibility for the sufficiency of the agreed-upon procedures for their purposes.
- e.* The specific subject matter to which the procedures are to be applied is subject to reasonably consistent measurement.
- f.* Criteria to be used in the determination of findings are agreed upon between the practitioner and the specified parties.
- g.* The procedures to be applied to the specific subject matter are expected to result in reasonably consistent findings using the criteria.
- h.* Evidential matter related to the specific subject matter to which the procedures are applied is expected to exist to provide a reasonable basis for expressing the findings in the practitioner's report.
- i.* Where applicable, the practitioner and the specified parties agree on any materiality limits for reporting purposes. (See paragraph .25.)
- j.* Use of the report is restricted to the specified parties.
- k.* For agreed-upon procedures engagements on prospective financial information, the prospective financial statements include a summary of significant assumptions. (See section 301.52.)

### Agreement on and Sufficiency of Procedures

.07 To satisfy the requirements that the practitioner and the specified parties agree upon the procedures performed or to be performed and that the specified parties take responsibility for the sufficiency of the agreed-upon procedures for their purposes, ordinarily the practitioner should communicate directly with and obtain affirmative acknowledgment from each of the specified parties. For example, this may be accomplished by meeting with the specified parties or by distributing a draft of the anticipated report or a copy of an engagement letter to the specified parties and obtaining their agreement. If the practitioner is not able to communicate directly with all of the specified parties, the practitioner may satisfy these requirements by applying any one or more of the following or similar procedures.

- Compare the procedures to be applied to written requirements of the specified parties.
- Discuss the procedures to be applied with appropriate representatives of the specified parties involved.
- Review relevant contracts with or correspondence from the specified parties.

The practitioner should not report on an engagement when specified parties do not agree upon the procedures performed or to be performed and do not take responsibility for the sufficiency of the procedures for their purposes. (See paragraph .36 for guidance on satisfying these requirements when the practitioner is requested to add other parties as specified parties after the date of completion of the agreed-upon procedures.)

### Subject Matter and Related Assertions

.08 The subject matter of an agreed-upon procedures engagement may take many different forms and may be at a point in time or covering a period of time. In an agreed-upon procedures engagement, it is the specific subject

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matter to which the agreed-upon procedures are to be applied using the criteria selected. Even though the procedures are agreed upon between the practitioner and the specified parties, the subject matter and the criteria must meet the conditions set forth in the third general standard. (See section 101.23 and .24.) The criteria against which the specific subject matter needs to be measured may be recited within the procedures enumerated or referred to in the practitioner's report.

**.09** An assertion is any declaration or set of declarations about whether the subject matter is based on or in conformity with the criteria selected. A written assertion is generally not required in an agreed-upon procedures engagement unless specifically required by another attest standard (for example, see section 601.11). If, however, the practitioner requests the responsible party to provide an assertion, the assertion may be presented in a representation letter or another written communication from the responsible party, such as in a statement, narrative description, or schedule appropriately identifying what is being presented and the point in time or the period of time covered.

### Establishing an Understanding With the Client

**.10** The practitioner should establish an understanding with the client regarding the services to be performed. When the practitioner documents the understanding through a written communication with the client (an *engagement letter*), such communication should be addressed to the client, and in some circumstances also to all specified parties. Matters that might be included in such an understanding include the following:

- The nature of the engagement
- Identification of the subject matter (or the assertion related thereto), the responsible party, and the criteria to be used
- Identification of specified parties (See paragraph .36.)
- Specified parties' acknowledgment of their responsibility for the sufficiency of the procedures
- Responsibilities of the practitioner (See paragraphs .12 to .14 and .40.)
- Reference to attestation standards established by the American Institute of Certified Public Accountants (AICPA)
- Agreement on procedures by enumerating (or referring to) the procedures (See paragraphs .15 to .18.)
- Disclaimers expected to be included in the practitioner's report
- Use restrictions
- Assistance to be provided to the practitioner (See paragraphs .22 and .23.)
- Involvement of a specialist (See paragraphs .19 to .21.)
- Agreed-upon materiality limits (See paragraph .25.)

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## Nature, Timing, and Extent of Procedures

### Responsibility of the Specified Parties

.11 Specified parties are responsible for the sufficiency (nature, timing, and extent) of the agreed-upon procedures because they best understand their own needs. The specified parties assume the risk that such procedures might be insufficient for their purposes. In addition, the specified parties assume the risk that they might misunderstand or otherwise inappropriately use findings properly reported by the practitioner.

### Practitioner's Responsibility

.12 The responsibility of the practitioner is to carry out the procedures and report the findings in accordance with the general, fieldwork, and reporting standards as discussed and interpreted in this section. The practitioner assumes the risk that misapplication of the procedures may result in inappropriate findings being reported. Furthermore, the practitioner assumes the risk that appropriate findings may not be reported or may be reported inaccurately. The practitioner's risks can be reduced through adequate planning and supervision and due professional care in performing the procedures, determining the findings, and preparing the report.

.13 The practitioner should have adequate knowledge in the specific subject matter to which the agreed-upon procedures are to be applied. He or she may obtain such knowledge through formal or continuing education, practical experience, or consultation with others.<sup>5</sup>

.14 The practitioner has no responsibility to determine the differences between the agreed-upon procedures to be performed and the procedures that the practitioner would have determined to be necessary had he or she been engaged to perform another form of attest engagement. The procedures that the practitioner agrees to perform pursuant to an agreed-upon procedures engagement may be more or less extensive than the procedures that the practitioner would determine to be necessary had he or she been engaged to perform another form of engagement.

### Procedures to Be Performed

.15 The procedures that the practitioner and specified parties agree upon may be as limited or as extensive as the specified parties desire. However, mere reading of an assertion or specified information about the subject matter does not constitute a procedure sufficient to permit a practitioner to report on the results of applying agreed-upon procedures. In some circumstances, the procedures agreed upon evolve or are modified over the course of the engagement. In general, there is flexibility in determining the procedures as long as the specified parties acknowledge responsibility for the sufficiency of such procedures for their purposes. Matters that should be agreed upon include the nature, timing, and extent of the procedures.

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<sup>5</sup> Section 601.19 and .20 provide guidance about obtaining an understanding of certain requirements in an agreed-upon procedures engagement on compliance.

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**.16** The practitioner should not agree to perform procedures that are overly subjective and thus possibly open to varying interpretations. Terms of uncertain meaning (such as general review, limited review, check, or test) should not be used in describing the procedures unless such terms are defined within the agreed-upon procedures. The practitioner should obtain evidential matter from applying the agreed-upon procedures to provide a reasonable basis for the finding or findings expressed in his or her report, but need not perform additional procedures outside the scope of the engagement to gather additional evidential matter.

**.17** Examples of appropriate procedures include the following:

- Execution of a sampling application after agreeing on relevant parameters
- Inspection of specified documents evidencing certain types of transactions or detailed attributes thereof
- Confirmation of specific information with third parties
- Comparison of documents, schedules, or analyses with certain specified attributes
- Performance of specific procedures on work performed by others (including the work of internal auditors—see paragraphs .22 and .23)
- Performance of mathematical computations

**.18** Examples of inappropriate procedures include the following:

- Mere reading of the work performed by others solely to describe their findings
- Evaluating the competency or objectivity of another party
- Obtaining an understanding about a particular subject
- Interpreting documents outside the scope of the practitioner's professional expertise

### Involvement of a Specialist<sup>6</sup>

**.19** The practitioner's education and experience enable him or her to be knowledgeable about business matters in general, but he or she is not expected to have the expertise of a person trained for or qualified to engage in the practice of another profession or occupation. In certain circumstances, it may be appropriate to involve a specialist to assist the practitioner in the performance of one or more procedures. The following are examples.

- An attorney might provide assistance concerning the interpretation of legal terminology involving laws, regulations, rules, contracts, or grants.
- A medical specialist might provide assistance in understanding the characteristics of diagnosis codes documented in patient medical records.
- An environmental engineer might provide assistance in interpreting environmental remedial action regulatory directives that may affect

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<sup>6</sup> A *specialist* is a person (or firm) possessing skill or knowledge in a particular field other than the attest function. As used herein, a specialist does not include a person employed by the practitioner's firm who participates in the attest engagement.

the agreed-upon procedures applied to an environmental liabilities account in a financial statement.

- A geologist might provide assistance in distinguishing between varying physical characteristics of a generic minerals group related to information to which the agreed-upon procedures are applied.

.20 The practitioner and the specified parties should explicitly agree to the involvement of the specialist in assisting a practitioner in the performance of an agreed-upon procedures engagement. This agreement may be reached when obtaining agreement on the procedures performed or to be performed and acknowledgment of responsibility for the sufficiency of the procedures, as discussed in paragraph .07. The practitioner's report should describe the nature of the assistance provided by the specialist.

.21 A practitioner may agree to apply procedures to the report or work product of a specialist that does not constitute assistance by the specialist to the practitioner in an agreed-upon procedures engagement. For example, the practitioner may make reference to information contained in a report of a specialist in describing an agreed-upon procedure. However, it is inappropriate for the practitioner to agree to merely read the specialist's report solely to describe or repeat the findings, or to take responsibility for all or a portion of any procedures performed by a specialist or the specialist's work product.

## Internal Auditors and Other Personnel

.22 The agreed-upon procedures to be enumerated or referred to in the practitioner's report are to be performed entirely by the practitioner except as discussed in paragraphs .19 to .21.<sup>7</sup> However, internal auditors or other personnel may prepare schedules and accumulate data or provide other information for the practitioner's use in performing the agreed-upon procedures. Also, internal auditors may perform and report separately on procedures that they have carried out. Such procedures may be similar to those that a practitioner may perform under this section.

.23 A practitioner may agree to perform procedures on information documented in the working papers of internal auditors. For example, the practitioner may agree to—

- Repeat all or some of the procedures.
- Determine whether the internal auditors' working papers contain documentation of procedures performed and whether the findings documented in the working papers are presented in a report by the internal auditors.

However, it is inappropriate for the practitioner to—

- Agree to merely read the internal auditors' report solely to describe or repeat their findings.
- Take responsibility for all or a portion of any procedures performed by internal auditors by reporting those findings as the practitioner's own.
- Report in any manner that implies shared responsibility for the procedures with the internal auditors.

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<sup>7</sup> AU section 322, *The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements*, does not apply to agreed-upon procedures engagements.

## Findings

**.24** A practitioner should present the results of applying agreed-upon procedures to specific subject matter in the form of findings. The practitioner should not provide negative assurance about whether the subject matter or the assertion is fairly stated based on the criteria. For example, the practitioner should not include a statement in his or her report that "nothing came to my attention that caused me to believe that the [identify subject matter] is not presented based on [or the assertion is not fairly stated based on] [identify criteria]."

**.25** The practitioner should report all findings from application of the agreed-upon procedures. The concept of materiality does not apply to findings to be reported in an agreed-upon procedures engagement unless the definition of materiality is agreed to by the specified parties. Any agreed-upon materiality limits should be described in the practitioner's report.

**.26** The practitioner should avoid vague or ambiguous language in reporting findings. Examples of appropriate and inappropriate descriptions of findings resulting from the application of certain agreed-upon procedures follow.

<i>Procedures Agreed Upon</i>	<i>Appropriate Description of Findings</i>	<i>Inappropriate Description of Findings</i>
Inspect the shipment dates for a sample (agreed-upon) of specified shipping documents, and determine whether any such dates were subsequent to December 31, 20XX.	No shipment dates shown on the sample of shipping documents were subsequent to December 31, 20XX.	Nothing came to my attention as a result of applying that procedure.
Calculate the number of blocks of streets paved during the year ended September 30, 20XX, shown on contractors' certificates of project completion; compare the resultant number to the number in an identified chart of performance statistics.	The number of blocks of streets paved in the chart of performance statistics was Y blocks more than the number calculated from the contractors' certificates of project completion.	The number of blocks of streets paved approximated the number of blocks included in the chart of performance statistics.
Calculate the rate of return on a specified investment (according to an agreed-upon formula) and verify that the resultant percentage agrees to the percentage in an identified schedule.	No exceptions were found as a result of applying the procedure.	The resultant percentage approximated the predetermined percentage in the identified schedule.

<b><i>Procedures Agreed Upon</i></b>	<b><i>Appropriate Description of Findings</i></b>	<b><i>Inappropriate Description of Findings</i></b>
Inspect the quality standards classification codes in identified performance test documents for products produced during a specified period; compare such codes to those shown in an identified computer printout.	All classification codes inspected in the identified documents were the same as those shown in the computer printout except for the following:  [List all exceptions.]	All classification codes appeared to comply with such performance documents.
Trace all outstanding checks appearing on a bank reconciliation as of a certain date to checks cleared in the bank statement of the subsequent month.	All outstanding checks appearing on the bank reconciliation were cleared in the subsequent month's bank statement except for the following:  [List all exceptions.]	Nothing came to my attention as a result of applying the procedure.
Compare the amounts of the invoices included in the "over ninety days" column shown in an identified schedule of aged accounts receivable of a specific customer as of a certain date to the amount and invoice date shown on the outstanding invoice and determine whether or not the invoice dates precede the date indicated on the schedule by more than ninety days.	All outstanding invoice amounts agreed with the amounts shown on the schedule in the "over ninety days" column, and the dates shown on such invoices preceded the date indicated on the schedule by more than ninety days.	The outstanding invoice amounts agreed within approximation of the amounts shown on the schedule in the "over ninety days" column, and nothing came to our attention that the dates shown on such invoices preceded the date indicated on the schedule by more than ninety days.

## Working Papers

[.27-.30] [Paragraphs deleted by the issuance of Statement on Standards for Attestation Engagements No. 11, January 2002.]<sup>[8-9]</sup>

<sup>[8-9]</sup> [Footnotes deleted by the issuance of Statement on Standards for Attestation Engagements No. 11, January 2002.]



## Reporting

### Required Elements

.31 The practitioner's report on agreed-upon procedures should be in the form of procedures and findings. The practitioner's report should contain the following elements:

- a. A title that includes the word *independent*
- b. Identification of the specified parties (See paragraph .36.)
- c. Identification of the subject matter<sup>10</sup> (or the written assertion related thereto) and the character of the engagement
- d. Identification of the responsible party
- e. A statement that the subject matter is the responsibility of the responsible party
- f. A statement that the procedures performed were those agreed to by the specified parties identified in the report
- g. A statement that the agreed-upon procedures engagement was conducted in accordance with attestation standards established by the AICPA
- h. A statement that the sufficiency of the procedures is solely the responsibility of the specified parties and a disclaimer of responsibility for the sufficiency of those procedures
- i. A list of the procedures performed (or reference thereto) and related findings (The practitioner should not provide negative assurance—see paragraph .24.)
- j. Where applicable, a description of any agreed-upon materiality limits (See paragraph .25.)
- k. A statement that the practitioner was not engaged to and did not conduct an examination<sup>11, 12</sup> of the subject matter, the objective of which would be the expression of an opinion, a disclaimer of opinion on the subject matter, and a statement that if the practitioner

<sup>10</sup> In some agreed-upon procedures engagements, the practitioner may be asked to apply agreed-upon procedures to more than one subject matter or assertion. In these engagements, the practitioner may issue one report that refers to all subject matter covered or assertions presented. (For example, see section 601.28.)

<sup>11</sup> If the practitioner also wishes to refer to a review, alternate wording would be as follows. A statement that the practitioner was not engaged to and did not conduct an examination or a review of the subject matter, the objectives of which would be the expression of an opinion or limited assurance, a disclaimer of opinion on the subject matter, and a statement that if the practitioner had performed additional procedures, other matters might have come to his or her attention that would have been reported.

<sup>12</sup> If the subject matter consists of elements, accounts, or items of a financial statement, this statement may be worded as follows.

We were not engaged to and did not conduct an audit [or a review], the objective of which would be the expression of an opinion [or limited assurance] on the [identify elements, accounts, or items of a financial statement]. Accordingly, we do not express such an opinion [or limited assurance].

Alternatively, the wording may be the following.

These agreed-upon procedures do not constitute an audit [or a review] of financial statements or any part thereof, the objective of which is the expression of opinion [or limited assurance] on the financial statements or a part thereof.

had performed additional procedures, other matters might have come to his or her attention that would have been reported<sup>13</sup>

- l. A statement of restrictions on the use of the report because it is intended to be used solely by the specified parties<sup>14</sup>
- m. Where applicable, reservations or restrictions concerning procedures or findings as discussed in paragraphs .33, .35, .39, and .40
- n. For an agreed-upon procedures engagement on prospective financial information, all items included in section 301.55
- o. Where applicable, a description of the nature of the assistance provided by a specialist as discussed in paragraphs .19 through .21
- p. The manual or printed signature of the practitioner's firm
- q. The date of the report

### Illustrative Report

.32 The following is an illustration of an agreed-upon procedures report.

#### Independent Accountant's Report on Applying Agreed-Upon Procedures

To the Audit Committees and Managements of ABC Inc. and XYZ Fund:

We have performed the procedures enumerated below, which were agreed to by the audit committees and managements of ABC Inc. and XYZ Fund, solely to assist you in evaluating the accompanying Statement of Investment Performance Statistics of XYZ Fund (prepared in accordance with the criteria specified therein) for the year ended December 31, 20X1. XYZ Fund's management is responsible for the statement of investment performance statistics. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

*[Include paragraphs to enumerate procedures and findings.]*

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<sup>13</sup> When the practitioner consents to the inclusion of his or her report on an agreed-upon procedures engagement in a document or written communication containing the entity's financial statements, he or she should refer to AU section 504, *Association With Financial Statements*, or to Statement on Standards for Accounting and Review Services (SSARS) No. 1, *Compilation and Review of Financial Statements* [AR section 100], as appropriate, for guidance on his or her responsibility pertaining to the financial statements.

The practitioner should follow (a) AU section 504.04 when the financial statements of a public or nonpublic entity are audited (or reviewed in accordance with AU section 722, *Interim Financial Information*, or (b) AU section 504.05 when the financial statements of a public entity are unaudited. The practitioner should follow SSARS No. 1, paragraph 3 [AR section 100.03] when (a) the financial statements of a nonpublic entity are reviewed or compiled or (b) the financial statements of a nonpublic entity are *not* reviewed or compiled and are not submitted by the accountant, as defined in SSARS No. 1, paragraph 1 [AR section 100.01]. (See section 101.82 and .83 for guidance when the practitioner combines or includes in a document a restricted-use report with a general-use report.) [Footnote revised, November 2002, to reflect conforming changes necessary due to the issuance of Statement on Standards for Accounting and Review Services No. 9.]

<sup>14</sup> The purpose of the restriction on the use of the practitioner's report on applying agreed-upon procedures is to restrict its use to only those parties that have agreed upon the procedures performed and taken responsibility for the sufficiency of the procedures. Paragraph .36 describes the process for adding parties who were not originally contemplated in the agreed-upon procedures engagement.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the accompanying Statement of Investment Performance Statistics of XYZ Fund. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the audit committees and managements of ABC Inc. and XYZ Fund,<sup>15</sup> and is not intended to be and should not be used by anyone other than these specified parties.

[Signature]

[Date]

### Explanatory Language

.33 The practitioner also may include explanatory language about matters such as the following:

- Disclosure of stipulated facts, assumptions, or interpretations (including the source thereof) used in the application of agreed-upon procedures (For example, see section 601.26.)
- Description of the condition of records, controls, or data to which the procedures were applied
- Explanation that the practitioner has no responsibility to update his or her report
- Explanation of sampling risk

### Dating of Report

.34 The date of completion of the agreed-upon procedures should be used as the date of the practitioner's report.

### Restrictions on the Performance of Procedures

.35 When circumstances impose restrictions on the performance of the agreed-upon procedures, the practitioner should attempt to obtain agreement from the specified parties for modification of the agreed-upon procedures. When such agreement cannot be obtained (for example, when the agreed-upon procedures are published by a regulatory agency that will not modify the procedures), the practitioner should describe any restrictions on the performance of procedures in his or her report or withdraw from the engagement.

### Adding Specified Parties (Nonparticipant Parties)

.36 Subsequent to the completion of the agreed-upon procedures engagement, a practitioner may be requested to consider the addition of another party as a specified party (*a nonparticipant party*). The practitioner may agree to add a nonparticipant party as a specified party, based on consideration of such factors as the identity of the nonparticipant party and the intended use of the report.<sup>16</sup> If the practitioner does agree to add the nonparticipant party, he or

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<sup>15</sup> The report may list the specified parties or refer the reader to the specified parties listed elsewhere in the report.

<sup>16</sup> When considering whether to add a nonparticipant party, the guidance in AU section 530, *Dating of the Independent Auditor's Report*, paragraphs .06 and .07, may be helpful.

she should obtain affirmative acknowledgment, normally in writing, from the nonparticipant party agreeing to the procedures performed and of its taking responsibility for the sufficiency of the procedures. If the nonparticipant party is added after the practitioner has issued his or her report, the report may be reissued or the practitioner may provide other written acknowledgment that the nonparticipant party has been added as a specified party. If the report is reissued, the report date should not be changed. If the practitioner provides written acknowledgment that the nonparticipant party has been added as a specified party, such written acknowledgment ordinarily should state that no procedures have been performed subsequent to the date of the report.

## Written Representations

**.37** A practitioner may find a representation letter to be a useful and practical means of obtaining representations from the responsible party. The need for such a letter may depend on the nature of the engagement and the specified parties. For example, section 601.68 requires a practitioner to obtain written representations from the responsible party in an agreed-upon procedures engagement related to compliance with specified requirements.

**.38** Examples of matters that might appear in a representation letter from the responsible party include the following:

- a. A statement acknowledging responsibility for the subject matter and, when applicable, the assertion
- b. A statement acknowledging responsibility for selecting the criteria and for determining that such criteria are appropriate for their purposes
- c. The assertion about the subject matter based on the criteria selected
- d. A statement that all known matters contradicting the subject matter or the assertion and any communication from regulatory agencies affecting the subject matter or the assertion has been disclosed to the practitioner
- e. Availability of all records relevant to the subject matter and the agreed-upon procedures
- f. Other matters as the practitioner deems appropriate

**.39** The responsible party's refusal to furnish written representations determined by the practitioner to be appropriate for the engagement constitutes a limitation on the performance of the engagement. In such circumstances, the practitioner should do one of the following.

- a. Disclose in his or her report the inability to obtain representations from the responsible party.
- b. Withdraw from the engagement.<sup>17</sup>
- c. Change the engagement to another form of engagement.

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<sup>17</sup> For an agreed-upon procedures engagement performed pursuant to section 601, management's refusal to furnish all required representations also constitutes a limitation on the scope of the engagement that requires the practitioner to withdraw from the engagement.

## Knowledge of Matters Outside Agreed-Upon Procedures

.40 The practitioner need not perform procedures beyond the agreed-upon procedures. However, in connection with the application of agreed-upon procedures, if matters come to the practitioner's attention by other means that significantly contradict the subject matter (or written assertion related thereto) referred to in the practitioner's report, the practitioner should include this matter in his or her report.<sup>18</sup> For example, if, during the course of applying agreed-upon procedures regarding an entity's internal control, the practitioner becomes aware of a material weakness by means other than performance of the agreed-upon procedure, the practitioner should include this matter in his or her report.

## Change to an Agreed-Upon Procedures Engagement From Another Form of Engagement

.41 A practitioner who has been engaged to perform another form of attest engagement or a nonattest service engagement may, before the engagement's completion, be requested to change the engagement to an agreed-upon procedures engagement under this section. A request to change the engagement may result from a change in circumstances affecting the client's requirements, a misunderstanding about the nature of the original services or the alternative services originally available, or a restriction on the performance of the original engagement, whether imposed by the client or caused by circumstances.

.42 Before a practitioner who was engaged to perform another form of engagement agrees to change the engagement to an agreed-upon procedures engagement, he or she should consider the following:

- a. The possibility that certain procedures performed as part of another type of engagement are not appropriate for inclusion in an agreed-upon procedures engagement
- b. The reason given for the request, particularly the implications of a restriction on the scope of the original engagement or the matters to be reported
- c. The additional effort required to complete the original engagement
- d. If applicable, the reasons for changing from a general-use report to a restricted-use report

.43 If the specified parties acknowledge agreement to the procedures performed or to be performed and assume responsibility for the sufficiency of the procedures to be included in the agreed-upon procedures engagement, either of the following would be considered a reasonable basis for requesting a change in the engagement—

- a. A change in circumstances that requires another form of engagement
- b. A misunderstanding concerning the nature of the original engagement or the available alternatives

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<sup>18</sup> If the practitioner has performed (or has been engaged to perform) an audit of the entity's financial statements to which an element, account, or item of a financial statement relates and the auditor's report on such financial statements includes a departure from a standard report [see AU section 508, *Reports on Audited Financial Statements*], he or she should consider including a reference to the auditor's report and the departure from the standard report in his or her agreed-upon procedures report.

.44 In all circumstances, if the original engagement procedures are substantially complete or the effort to complete such procedures is relatively insignificant, the practitioner should consider the propriety of accepting a change in the engagement.

.45 If the practitioner concludes, based on his or her professional judgment, that there is reasonable justification to change the engagement, and provided he or she complies with the standards applicable to agreed-upon procedures engagements, the practitioner should issue an appropriate agreed-upon procedures report. The report should not include reference to either the original engagement or performance limitations that resulted in the changed engagement. (See paragraph .40.)

### **Combined Reports Covering Both Restricted-Use and General-Use Subject Matter or Presentations**

.46 When a practitioner performs services pursuant to an engagement to apply agreed-upon procedures to specific subject matter as part of or in addition to another form of service, this section applies only to those services described herein; other Standards would apply to the other services. Other services may include an audit, review, or compilation of a financial statement, another attest service performed pursuant to the SSAEs, or a nonattest service.<sup>19</sup> Reports on applying agreed-upon procedures to specific subject matter may be combined with reports on such other services, provided the types of services can be clearly distinguished and the applicable Standards for each service are followed. See section 101.82 and .83, regarding restricting the use of the combined report.

### **Effective Date**

.47 This section is effective when the subject matter or assertion is as of or for a period ending on or after June 1, 2001. Early application is permitted.

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<sup>19</sup> See section 101.105–.107 for requirements relating to attest services provided as part of a consulting service engagement.

.48

## Appendix

### Additional Illustrative Reports

The following are additional illustrations of reporting on applying agreed-upon procedures to elements, accounts, or items of a financial statement.

#### 1. Report in Connection With a Proposed Acquisition

Independent Accountant's Report  
on Applying Agreed-Upon Procedures

To the Board of Directors and Management of X Company:

We have performed the procedures enumerated below, which were agreed to by the Board of Directors and Management of X Company, solely to assist you in connection with the proposed acquisition of Y Company as of December 31, 20XX. Y Company is responsible for its cash and accounts receivable records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and the associated findings are as follows:

**Cash**

1. We obtained confirmation of the cash on deposit from the following banks, and we agreed the confirmed balance to the amount shown on the bank reconciliations maintained by Y Company. We mathematically checked the bank reconciliations and compared the resultant cash balances per book to the respective general ledger account balances.

<i>Bank</i>	<i>General Ledger Account Balances as of December 31, 20XX</i>
ABC National Bank	\$ 5,000
DEF State Bank	3,776
XYZ Trust Company regular account	86,912
XYZ Trust Company payroll account	5,000
	<u>\$110,688</u>

We found no exceptions as a result of the procedures.

**Accounts Receivable**

2. We added the individual customer account balances shown in an aged trial balance of accounts receivable (identified as Exhibit A) and compared the resultant total with the balance in the general ledger account.

We found no difference.

3. We compared the individual customer account balances shown in the aged trial balance of accounts receivable (Exhibit A) as of December 31, 19XX, to the balances shown in the accounts receivable subsidiary ledger.

We found no exceptions as a result of the comparisons.

4. We traced the aging (according to invoice dates) for 50 customer account balances shown in Exhibit A to the details of outstanding invoices in the accounts receivable subsidiary ledger. The balances selected for tracing were determined by starting at the eighth item and selecting every fifteenth item thereafter.

We found no exceptions in the aging of the amounts of the 50 customer account balances selected. The sample size traced was 9.8 percent of the aggregate amount of the customer account balances.

5. We mailed confirmations directly to the customers representing the 150 largest customer account balances selected from the accounts receivable trial balance, and we received responses as indicated below. We also traced the items constituting the outstanding customer account balance to invoices and supporting shipping documents for customers from which there was no reply. As agreed, any individual differences in a customer account balance of less than \$300 were to be considered minor, and no further procedures were performed.

Of the 150 customer balances confirmed, we received responses from 140 customers; 10 customers did not reply. No exceptions were identified in 120 of the confirmations received. The differences disclosed in the remaining 20 confirmation replies were either minor in amount (as defined above) or were reconciled to the customer account balance without proposed adjustment thereto. A summary of the confirmation results according to the respective aging categories is as follows.

<i>Aging Categories</i>	<i>Accounts Receivable December 31, 20XX</i>		
	<i>Customer Account Balances</i>	<i>Confirmations Requested</i>	<i>Confirmations Received</i>
Current	\$156,000	\$ 76,000	\$ 65,000
Past due:			
Less than one month:	60,000	30,000	19,000
One to three months	36,000	18,000	10,000
Over three months	48,000	48,000	8,000
	<u>\$300,000</u>	<u>\$172,000</u>	<u>\$102,000</u>

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on cash and accounts receivable. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the board of directors and management of X Company and is not intended to be and should not be used by anyone other than these specified parties.

[Signature]

[Date]



**2. Report in Connection With Claims of Creditors****Independent Accountant's Report  
on Applying Agreed-Upon Procedures**

To the Trustee of XYZ Company:

We have performed the procedures described below, which were agreed to by the Trustee of XYZ Company, with respect to the claims of creditors solely to assist you in determining the validity of claims of XYZ Company as of May 31, 20XX, as set forth in the accompanying Schedule A. XYZ Company is responsible for maintaining records of claims submitted by creditors of XYZ Company. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the party specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are as follows:

1. Compare the total of the trial balance of accounts payable at May 31, 20XX, prepared by XYZ Company, to the balance in the related general ledger account.

The total of the accounts payable trial balance agreed with the balance in the related general ledger account.

2. Compare the amounts for claims received from creditors (as shown in claim documents provided by XYZ Company) to the respective amounts shown in the trial balance of accounts payable. Using the data included in the claims documents and in XYZ Company's accounts payable detail records, reconcile any differences found to the accounts payable trial balance.

All differences noted are presented in column 3 of Schedule A. Except for those amounts shown in column 4 of Schedule A, all such differences were reconciled.

3. Obtain the documentation submitted by creditors in support of the amounts claimed and compare it to the following documentation in XYZ Company's files: invoices, receiving reports, and other evidence of receipt of goods or services.

No exceptions were found as a result of these comparisons.

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on the claims of creditors set forth in the accompanying Schedule A. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Trustee of XYZ Company and is not intended to be and should not be used by anyone other than this specified party.

[Signature]

[Date]

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# FAQs For Lobbyists Before The Florida Legislature

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Lobbyists are urged to read the law (sections 11.045-11.062, Florida Statutes) and Joint Rule One prior to registration.

## 1. Who is required to register in order to lobby?

Lobbyists must register. A lobbyist is anyone who lobbies for compensation or any person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

## 2. When do lobbyists register?

For each principal represented, a lobbyist must register prior to lobbying for that principal.

## 3. What is a principal?

The entity, person, firm, corporation, or association which has employed or retained a lobbyist.

## 4. How do lobbyists register?

By filing a completed Registration Form and Authorization Form, and paying the applicable registration fee. Forms are furnished by the Lobbyist Registration Office (LRO).

## 5. Where may lobbyists obtain the required forms?

From the web site at [www.leg.state.fl.us/Lobbyist/index.cfm?Mode=Forms&Submenu=4&Tab=lobbyist](http://www.leg.state.fl.us/Lobbyist/index.cfm?Mode=Forms&Submenu=4&Tab=lobbyist) or from the LRO at 111 W. Madison St., Rm. G-68, Tallahassee, Florida 32399-1425.

## 6. When are registrations effective?

When all of the required items have been received in good order by the LRO.

## 7. How long are registrations effective?

The registration cycle is a calendar year beginning January 1 and ending December 31.

## 8. What information is required on the Registration Form?

The lobbyist's name, business address and phone number; the principal represented and principal's business address; the lobbying firm (if applicable), the lobbying firm's phone number and business address; whether the lobbyist has a business association or partnership with a current member of the Legislature and the name of the member; whether the lobbyist has been convicted of a felony. Registration information must be stated under oath.

## 9. Must lobbyists have permission of a principal in order to register for that principal?

Yes. Their principals must authorize them to lobby. The required Authorization Form, which is furnished by the LRO, must be filed with the Registration Form and fee.

## 10. What is the registration fee?

Lobbyists must pay \$50 for their first registration of the year and \$20 for each additional registration for that year. Registration fees are not prorated over the calendar year. The fee must be submitted with the Registration Form. (If a person is registering to lobby before only one chamber, then the fee is \$25 for the first registration and \$10 for each additional registration.)

## 11. Are there any exemptions to the registration fee?

Yes. There are fee exemptions, but only for employees of specified state agencies and the judicial branch. Two employees of the following are exempt from paying the fee, provided

they are designated in writing by the agency head:

- each department created under chapter 20, F.S.
- the Fish and Wildlife Conservation Commission
- the Executive Office of the Governor
- the Commission on Ethics
- the Florida Public Service Commission
- the judicial branch (designated in writing by the Chief Justice of the Florida Supreme Court)

All other registrants must pay the fee.

**12. What must lobbyists do if they no longer represent a principal?**

Cancel their registration immediately on a Cancellation Form furnished by the LRO. Principals may also submit a letter canceling their lobbyists' registrations. Cancellations cannot be made retroactively and are effective only upon receipt by the LRO.

**13. What must lobbyists do if their registration information changes during the year?**

Notify the LRO within 15 days of any changes on a "Change in Information Form" furnished by the LRO.

**14. What should a lobbyist do if he or she registered for a principal and the principal subsequently changed its name?**

If a lobbyist registered for a principal, for example Blue Green Dot Consulting, Inc, and the principal subsequently changed its name to Green Dot Consulting, Inc., then lobbyist must cancel the current registration for the principal under the old name and file registration and authorization forms under the new name of the principal and pay the \$20 registration fee.

However, if the principal did not actually change its name but the lobbyist made a simple mistake on the registration form, such as a typographical error or omitting a comma or a word like "The" from the name, then the lobbyist may file a form furnished by the LRO to correct the name.

**15. May lobbyists receive contingency fees?**

No. No person may, in whole or part, pay, give, or receive, or agree to pay, give, or receive a contingency fee. However, this prohibition does not apply to lobbying on a claim bill.

**16. What is compensation?**

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 lobbying activity.

**17. Who is required to disclose compensation?**

Lobbying firms. Every lobbying firm must submit a Compensation Report for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal.

**18. What is a lobbying firm?**

"Lobbying firm" means an association, a corporation, or any other 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 entity is a lobbyist. "Lobbying firm" does not include an entity that has "employees" who are lobbyists as long as the entity does not derive compensation from principals for lobbying, or such compensation is received exclusively from a subsidiary corporation of the employer "Employees" receive W-2 forms. If you receive a 1099, you are not an "employee" for LRO purposes.

**19. What are the filing requirements for a compensation report?**

Compensation reports must be created and submitted through the [LRO's Electronic Filing System](#), not later than 11:59 p.m. Eastern on the date of the filing deadline. Proof of electronic filing will be by electronic receipt indicating the date and time that the report was submitted. View the LRO's Electronic Filing System at <http://olcr.leg.state.fl.us>.

**20. When are the deadlines for filing Compensation Reports?**

Reports must be filed no later than 45 days after the end of each quarter. The four quarters are January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31.

**21. What method of accounting must be used to report compensation?**

Compensation shall be reported using the accrual basis of accounting.

**22. What information is required on the Compensation Report?**

The lobbying firm's full name, business address, and phone number; the name of each of the firm's registered lobbyists; the total compensation provided or owed to the lobbying firm from all principals for the quarter; the principal's full name, business address and phone number; total compensation provided or owed to the firm for each principal represented. Compensation should only be reported once. In other words, do not report the same item of compensation in the quarter it became owed and again in the quarter it was received.

**23. What if the lobbying firm subcontracts work from another firm and not from the originating principal?**

The lobbying firm providing the work to be subcontracted is treated as the reporting lobbying firm's "principal" for compensation reporting purposes. The reporting lobbying firm must state the name and address of the principal that **originated** the lobbying work.

**24. How does a lobbying firm report compensation that was partly for lobbying and partly for legal or other non-lobbying services, or was partly for legislative and partly for executive branch lobbying services?**

Good faith, rationally-based, contemporaneously-documented allocation is required and will likely be a lobbying firm's first line of response if the firm's compensation reports are selected for examination by the Legislature's independent contract auditor.

**25. Are there fines for filing a report after the deadline?**

Yes. The fine is \$50 per report per day for each late day, not to exceed \$5,000 per report. If a lobbying firm fails to pay a fine timely, then the registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm are all automatically suspended until the fine is paid or waived.

**26. May a lobbying firm pay the fine the first time a report is filed late and use the one-time fine waiver during another quarter when the report might be filed late?**

No. The one-time fine waiver is only available to a lobbying firm the very first time the firm's compensation report is filed late.

## FAQs for Lobbyists before Executive Branch Agencies

Lobbyists are urged to read the full text of the law (Section 112.3215, Florida Statutes, as amended by Chapters 2005-359 and 2006-275, Laws of Florida, and Commission on Ethics Rule Chapter 34-12, Florida Administrative Code).

### 1. Who is required to register in order to lobby?

Lobbyists must register. A lobbyist is anyone 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 that other person or governmental entity.

### 2. When do lobbyists register?

Prior to lobbying for the principal for each principal represented.

### 3. What is a principal?

The person, firm, corporation, governmental entity, or other entity which has employed or retained a lobbyist.

### 4. How do lobbyists register?

By filing a completed CE Form 20 - Registration Form, along with the Authorization to Represent Principal, and paying the registration fee. Forms are furnished by the Lobbyist Registration Office (LRO) and are also available on-line at:

[www.leg.state.fl.us/Lobbyist/index.cfm?Mode=Forms&Submenu=4&Tab=lobbyist](http://www.leg.state.fl.us/Lobbyist/index.cfm?Mode=Forms&Submenu=4&Tab=lobbyist)

### 5. When are registrations effective?

When all of the required items have been received by the LRO. Do not lobby until the registration is effective.

### 6. How long are registrations effective?

The registration cycle is a calendar year beginning January 1 and ending December 31.

### 7. What information is required on the Registration Form?

The lobbyist's name, business address, telephone number, and areas of interest; the principal represented and principal's business address; the lobbying firm (if applicable); the lobbying firm's mailing address and telephone number; whether the lobbyist has a business association, partnership, or financial relationship with any employee of an agency that will be lobbied; and those agencies the lobbyist will lobby. If "Agency Registration" is left blank, the lobbyist is registered to lobby all agencies. Registration information is required to be stated under oath.

### 8. Must lobbyists have permission in order to register?

Their principals must authorize them to lobby. The Authorization to Represent Principal, which includes the principal's six-digit NAICS code, must be signed by the principal or principal's representative and filed with the CE Form 20 - Registration Form.

### 9. What is the registration fee?

Lobbyists must pay \$25 per principal, which must be included with their registration. There is no charge if the lobbyist amends his or her registration to lobby additional agencies.

**10. Are there any exemptions to the registration fee?**

No. However, the definition of "lobbyist" does not include: an attorney, or other person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to Ch. 120, F.S. or any other formal hearing before an agency, board commission, or authority of this state; an employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties; a confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes; or a person who lobbies to procure a contract pursuant to Ch. 287, F.S., which is less than \$15,000.

**11. What should lobbyists do if they no longer represent a principal?**

Cancel their registration form immediately on a Cancellation Form furnished by the LRO. Principals may also submit a letter canceling their lobbyists' registrations. Cancellations are effective upon receipt by the LRO.

**12. What should lobbyists do if their registration information changes during the year?**

Notify the LRO within 15 days of any changes using a "Changes in Executive Branch Lobbyist Registration Information Form" furnished by the LRO.

**13. What should a lobbyist do if he or she registered for a principal and the principal subsequently changed its name?**

If a lobbyist registered for a principal, for example Blue Green Dot Consulting, Inc, and the principal subsequently changed its name to Green Dot Consulting, Inc., then lobbyist must cancel the current registration for the principal under the old name and file registration and authorization forms under the new name of the principal and pay the \$25 registration fee.

**14. Where may lobbyists obtain the required forms?**

From the website at [www.leg.state.fl.us/Lobbyist/index.cfm?Mode=Forms&Submenu=4&Tab=lobbyist](http://www.leg.state.fl.us/Lobbyist/index.cfm?Mode=Forms&Submenu=4&Tab=lobbyist) or from the LRO located in the Pepper Building at 111 W. Madison Street, Room G-68, Tallahassee, FL 32399-1425.

**15. May lobbyists receive contingency fees?**

No. No person may, in whole or in part, pay, give, or receive, or agree to pay, give or receive a contingency fee. However, this prohibition does not apply to claims bills, or to a salesperson from receiving compensation or a commission as part of a bona fide contractual relationship with the company paying the compensation or commission.

**16. What is compensation?**

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 lobbying activity.

**17. Who is required to disclose compensation?**

Lobbying firms. Every lobbying firm must submit a Compensation Report for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal.

**18. What is a lobbying firm?**

"Lobbying firm" means any 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 entity 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.

**19. What are the filing requirements for a compensation report?**

Compensation reports must be created and submitted through the LRO's Electronic Filing System, not later than 11:59 p.m. Eastern on the date of the filing deadline. Proof of electronic filing will be by electronic receipt indicating the date and time that the report was submitted. View the LRO's Electronic Filing System at <http://olcr.leg.state.fl.us>.

**20. When is the deadline for filing Compensation Reports?**

Reports are filed for each calendar quarter during any portion of which one or more of the lobbying firm's lobbyists were registered to represent a principal. The four quarters are: January 1- March 31, April 1 - June 30, July 1 - September 30, and October 1- December 31. Reports must be filed no later than 45 days after the end of each quarter.

**21. What information is required on the Compensation Report?**

The lobbying firm's full name, business address, and phone number; the name of each of the firm's registered lobbyists; the total compensation provided or owed to the lobbying firm from all principals for the quarter; the principal's full name, business address and phone number; total compensation provided or owed to the firm for each principal represented.

**22. What if the lobbying firm subcontracts work from another firm and not from the originating principal?**

The lobbying firm providing the work to be subcontracted is treated as the reporting lobbying firm's "principal" for compensation reporting purposes. The reporting lobbying firm must state the name and address of the principal that originated the lobbying work.

**23. Are there fines for filing a Compensation Report after the deadline?**

The fine is \$50 per report for each day late, not to exceed \$5,000 per report. If a lobbying firm fails to pay a fine timely, then all the registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm are automatically suspended until the fine is paid or waived.

**24. Who do I call if I have questions?**

The Commission on Ethics administers the Executive Branch Lobbyist registration and reporting requirements. It has co-located Commission employees in the LRO maintained in the Pepper Building, and you may contact them directly at 850/922-4990 for further assistance. The Commission's main office can be reached at 850/488-7864.









# **Palm Beach County Commission on Ethics Was Created Using Several Best Practices; Some Processes Could Be Enhanced**

*A Presentation to the  
Joint Legislative Auditing Committee*

**Mary Alice Nye, Ph.D.  
Chief Legislative Analyst**

November 4, 2013

# Project Scope

- OPPAGA examined the Palm Beach County Commission on Ethics' budget, operating procedures, and mechanisms for assuring compliance with operating procedures.

# Background

- The Palm Beach County Commission on Ethics was created in 2009 to address several concerns
  - Local business leaders established a citizen initiative to improve the county's ethical climate
  - State attorney convened a grand jury
  - Board of County Commissioners adopted ordinances to implement grand jury recommendations

# Commission Composition and Responsibilities

- Five members serve staggered four-year terms
  - Appointed by county civic, educational, and professional associations
- Commission responsibilities include
  - Overseeing, administering, and enforcing the code
  - Investigating complaints, issuing formal advisory opinions
  - Providing training for officials and employees,
  - Proposing changes to the ethics code

# Commission Budget

- Commission is funded with county ad valorem tax revenues
  - Fiscal Year 2013 budget - \$589,402
- Employee salaries and benefits comprise the bulk of commission expenditures
  - Five staff members - Executive director, staff counsel, two investigators, intake manager

# The Commission Was Created Using Several Best Practices

- Examples of best practices
  - Commissioner selection process
  - Mandatory training for local government officials and employees
  - Ability to issue advisory opinions
  - Ability to accept sworn and unsworn complaints
  - Confidentiality of complaint information until a determination of probable cause



# The Commission Has Achieved a Number of Milestones

- From June 2010 to May 2013, the commission processed 60 complaints
  - 23 complaints met the threshold for legal sufficiency
  - 9 resulted in a finding of probable cause
- During the same period, the commission issued 250 advisory opinions
  - Most advisory opinions related to the gift law, misuse of office or employment, or charitable solicitation

# Clarification of Roles Could Improve Commission Complaint Process

- Commission practices sometimes blur the roles of investigators and staff counsel
  - Investigators have made preliminary recommendations as to probable cause
  - Staff counsel has served dual roles - advisor to the commission and advocate in probable cause hearings
- Commissioners determine both probable cause and the outcome of a final hearing
- Commission could consider recommending ethics code changes

# Conflict of Interest Provisions Have Been a Source of Concern

- Prevailing state law concerns conflicts of interest that involve a financial interest
  - Some commissioners have expressed concern in instances where no financial interest exists
- In probable cause or final hearings, a motion can be filed to disqualify commissioners
  - Can be disqualified for bias, interest, or prejudice, but the terms are not defined
- Commission could require disclosure of relationships and clarify definitions of bias, interest, or prejudice

# Expansion of Jurisdiction May Warrant Consideration of Code Revisions

- In 2011, the commission's jurisdiction was expanded to include 38 municipalities, vendors, and lobbyists
  - Two groups whose leaders are now subject to the code appoint members: Palm Beach League of Cities and Association of Chiefs of Police
  - Vendors and lobbyists are now subject to the county ethics ordinances but not required to receive training
- Commission could consider recommending ethics code changes

# The Commission Could Benefit from Enhanced Commissioner Training

- Initial commissioner training was similar to training provided to other government officials and employees
- Commissioner training could be enhanced to include
  - Procedures for hearing complaints
  - Due process including rules of procedure
  - Issues of bias, prejudice, and interest
  - Compliance with the state's Sunshine Law

# The Commission Could Improve Its Performance Accountability System

- Current performance information focuses on outputs
  - Number of advisory opinions issued, in-person training conducted, complaints investigated
- Commission could benefit from measurement system and strategic plan that includes
  - Clearly stated goals and objectives
  - Expectations for activities
  - Measures for assessing progress in meeting goals

# Questions?



*oppaga*

THE FLORIDA LEGISLATURE'S OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY  
OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations.



October 2013

Report No. 13-10

# Palm Beach County Commission on Ethics Was Created Using Several Best Practices; Some Processes Could Be Enhanced

## *at a glance*

Our review of the Palm Beach County Commission on Ethics determined that while the commission was created using several best practices, it could benefit from

- clarifying commissioner and staff roles and responsibilities to better separate investigative, prosecutorial, and quasi-judicial functions;
- increasing awareness of conflict of interest issues in commissioner orientation and training and defining the terms bias, interest, and prejudice in procedures relating to disqualification of members from hearings;
- suggesting consideration of modifications to the county ethics code to address issues related to its expanded jurisdiction over municipalities, lobbyists, and vendors;
- enhancing commissioner training; and
- strengthening its performance accountability system by improving performance measures and developing a strategic plan.

## Scope

As directed by the Legislature, this report examines the Palm Beach County Commission on Ethics' budget, operating procedures, and mechanisms for assuring compliance with operating procedures.

## Background

From 2006 to 2010, citizens in Palm Beach County witnessed the public corruption prosecution of several elected officials. During this time, local business leaders established an ethics initiative and the state attorney convened a grand jury to address the ethical crisis facing the county. As a result of these and other efforts, the Palm Beach County Board of County Commissioners adopted ordinances in December 2009 to implement the grand jury's recommendations to establish a code of ethics, a county ethics commission, and an office of inspector general, and to strengthen lobbying regulations.<sup>1,2</sup> In November 2010, county voters approved a referendum that made the county's 38 municipalities subject to the ethics code. In response, the county commission revised the ethics code effective June 2011.<sup>3</sup>

The commission fulfills numerous responsibilities via its five-member panel and professional staff. The county's ordinance identifies the major responsibilities of the Palm Beach County Commission on Ethics, which include

- overseeing, administering, and enforcing the ethics code;
- investigating ethics complaints;

<sup>1</sup> The 2010 Legislature also appropriated \$200,000 for Palm Beach State College to create the Center for Applied Ethics to provide ethics training and to work with the Commission on Ethics and others in the community.

<sup>2</sup> Palm Beach County's original lobbyist registration, established in 2003, was revised in 2009 as part of the county's ethics initiative.

<sup>3</sup> This revision was made pursuant to local referendum.



- issuing formal advisory opinions to persons who fall under the commission’s jurisdiction;
- training municipal and county officials and employees; and
- proposing changes to the ethics code.

The commission’s responsibilities regarding oversight, administration, and enforcement of the ethics code include specific provisions pertaining to prohibited conduct, acceptance of gifts, anti-nepotism, lobbyist registration, and post-employment. Prohibited conduct that can result in a violation of the code includes the misuse of public office or employment and corrupt misuse of official position.<sup>4</sup> A lobbyist’s failure to register or the receipt by a government employee or official of certain gifts with a value greater than \$100 from a lobbyist can also result in a violation of the code.<sup>5</sup>

In addition, the commission, along with one delegate each from the state attorney’s office and the public defender’s office for the Fifteenth Judicial Circuit, serves as the Inspector General Committee. The Inspector General Committee selects the inspector general, determines whether or not to renew the inspector general’s term, and participates in the removal of the inspector general.

The commission is composed of five members appointed by the leaders of various civic, educational, and professional associations; commissioners serve staggered four-year terms. The commission is empowered to select an executive director using a competitive process and establishes the director’s salary. The executive director appoints and oversees commission staff, which currently includes a staff counsel, two

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<sup>4</sup> An individual cannot use his/her position when he/she knows or should know with an exercise of reasonable care that it would result in special financial benefit to the individual, his/her spouse, domestic partner, relatives, etc. Corrupt misuse of an official position refers to an official action taken with wrongful intent for the purpose of receiving financial benefit which is inconsistent with the proper performance of one’s public duties.

<sup>5</sup> No vendor, lobbyist, or principal or employer of a lobbyist who lobbies an advisory board or any county or municipal department that is subject in any way to the advisory board’s authority, influence or advice, shall knowingly give, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is a member of that advisory board.

investigators, and an intake manager who fulfills various functions.<sup>6</sup> The commission’s Fiscal Year 2013 budget totaled \$589,402, with funding derived from county ad valorem tax revenues. Employee salaries and benefits comprise the bulk of the commission’s expenditures.

Several factors must be considered when evaluating the commission’s performance. The commission has been in full operation for a relatively short period (about three years), and much of its first several months of operation was spent hiring an executive director and staff; developing and adopting bylaws, rules of procedures, and operating processes; and developing training materials and programs.<sup>7</sup> Therefore, not enough time has elapsed to fully evaluate the commission’s effectiveness.

There are few local government ethics commissions or boards in Florida or other states with which to compare the Palm Beach County Commission on Ethics and benchmark its performance. To identify best practices for local ethics bodies, we examined relevant academic literature and research center publications, reviewed the governing laws and annual reports of other local, state, and federal ethics commissions and boards, and interviewed governmental ethics experts. We then reviewed the commission’s design, policies, and procedures within the context of recommended best practices.

## Findings

### *The commission was created using several best practices and has achieved a number of milestones*

Best practices used during the establishment of the Palm Beach County Commission on Ethics include the commissioner selection process, required ethics training for local government officials and employees, and the ability to issue

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<sup>6</sup> The intake manager’s duties include receiving complaints; answering the hotline; maintaining the training schedules; managing the commission’s website; and performing administrative functions related to purchasing, inventory, payroll, and travel.

<sup>7</sup> The commission’s initial board members were sworn in on February 23, 2010, and its first executive director was selected in April 2010.

advisory opinions. Several features of the commission's complaint process also are consistent with best practices described by ethics experts. In addition to establishing operational policies and procedures, from June 2010 to May 2013, the commission issued 250 advisory opinions and processed 60 ethics complaints.

Palm Beach County's ethics ordinances incorporate several recommended best practices. Experts suggest that the selection of ethics commissioners separate and apart from local elected officials is central to maintaining a commission's independence. The leaders of the following entities each appoint one of the five members of the Palm Beach County Commission on Ethics: the Palm Beach County Association of Chiefs of Police; Florida Atlantic University; the Palm Beach Chapter of the Florida Institute of Certified Public Accountants; the Palm Beach County League of Cities; and local bar associations.

Experts also agree that local ethics commissions should emphasize training and education for those subject to ethics laws. The Palm Beach County Commission on Ethics provides both in-person and online training to individuals covered by the county's ethics code.<sup>8</sup> The commission also helps educate these individuals through its advisory opinions.<sup>9</sup> The county's ethics code is a concise document (approximately 12 pages) that cannot cover every possible situation that an elected official or employee might face. Consequently, an individual who is uncertain about interpreting the ethics code can request an advisory opinion concerning his or her specific circumstances.

Some aspects of the commission's complaint process also reflect practices recommended by some ethics experts. (See Appendix A for a detailed discussion of the complaint process.) For example, the commission receives two types of complaints—sworn complaints and unsworn or anonymous

complaints. Allowing the submission of anonymous complaints can encourage individuals to come forward when they have knowledge of an ethics violation. Without anonymity, individuals may fear retaliation for filing a complaint.

In addition, the commission maintains the confidentiality of complaint information until it has determined whether probable cause exists to indicate a violation. Such confidentiality helps to protect respondents from potentially damaging false allegations. Moreover, the commission's ordinance also allows individuals to appeal a commission decision to the circuit court, which further protects the rights of the individual.

Since its inception, the commission has achieved a number of milestones. Initial appointments to the ethics commission were completed in February 2010, and the commission hired an executive director in April 2010. The commission's first steps included adopting by-laws and rules of procedure to guide its operations and decision-making processes. In addition to developing and implementing a complaint processing system, the commission also developed procedures for issuing advisory opinions.

As shown in Exhibit 1, during the period from June 2010 to May 2013, commission staff processed 60 complaints.<sup>10</sup> Of these complaints, 36 (60%) were dismissed for lack of legal sufficiency and 1 was rescinded. Of the 23 complaints that were found to be legally sufficient, 10 were dismissed at probable cause hearings.<sup>11</sup> The commission found probable cause that a violation occurred in 9 cases; 5 of these cases resulted in settlement agreements, respondents in 3 of these cases were issued letters of instruction, and 1 complaint was scheduled for a final hearing.

<sup>8</sup> The commission also provides training to community groups upon request.

<sup>9</sup> The Palm Beach County Commission on Ethics' ordinance provides that employees, officials, lobbyists, and vendors within the commission's jurisdiction may request an advisory opinion to advise them of the standard of duty under the ethics code that applies to their situation.

<sup>10</sup> Complaint disposition information presented in the exhibit is primarily based on data provided by the commission as of May 1, 2013. However, the disposition of some complaints was re-categorized by OPPAGA staff based on a review of supporting documents and orders. For example, the disposition of several complaints that were legally sufficient but dismissed due to lack of probable cause was refined to indicate that letters of instruction were also issued for these cases.

<sup>11</sup> For four complaints, the commission found that while the complaints were legally sufficient, there was not probable cause to believe that a violation occurred and a letter of instruction would be appropriate.

**Exhibit 1  
Most Complaints Processed by Commission Staff  
from June 2010 to May 2013 Were Dismissed for  
Lack of Legal Sufficiency**

Complaint Disposition	2010 <sup>1</sup>	2011 <sup>2</sup>	2012	2013	Total
Not Legally Sufficient	7	21	5	3	36
Legally Sufficient – No Probable Cause Found	2	3	4	1	10
Legally Sufficient – No Probable Cause Found, Letter of Instruction Issued	1	0	3	0	4
Legally Sufficient – Probable Cause Found, Letter of Instruction Issued	1	0	2	0	3
Legally Sufficient – Probable Cause Found, Respondent Pled	0	3	1	1	5
Legally Sufficient – Probable Cause Found, Final Hearing Scheduled	0	0	1	0	1
Complaint Rescinded	0	1	0	0	1
<b>Total</b>	<b>11</b>	<b>28</b>	<b>16</b>	<b>5</b>	<b>60</b>

<sup>1</sup> The commission issued its first final order regarding a complaint in August 2010.

<sup>2</sup> The Palm Beach County Board of County Commissioners adopted changes to the ethics code to include the county’s 38 municipalities effective June 2011.

Source: OPPAGA analysis of Palm Beach County Commission on Ethics complaint data as of May 1, 2013, and review of commission complaint reports and orders.

The commission issued 250 advisory opinions from June 2010 to May 2013. As shown in Exhibit 2, these opinions addressed a wide range of subjects, including charitable solicitations and fundraising, contractual relationships, lobbyist registration, misuse of office, and travel expenses. During our review, commission staff reported that requests for advisory opinions have declined. Staff attributed the decline to increased awareness of the ethics code by county and municipal officials and employees. Moreover, the commission’s advisory opinions provide a body of advice on a range of topics that individuals can reference for information.

**Exhibit 2  
Commission Advisory Opinions Have Addressed a  
Wide Variety of Subjects**

Subject	Number <sup>1</sup>
Gift law	89
Misuse of office or employment	52
Charitable solicitation/fundraising	27
Contractual relationships	27
Outside employment	18
Jurisdiction of the commission	11
Travel expenses	10
Lobbyist registration	6
Employee discounts	4
Political fundraising/contributions	4
Advisory board member waiver	2
Pension plan – employees/officials	2
Contingency fee prohibition	1
Nepotism	1

<sup>1</sup> The numbers in the exhibit sum to more than 250 because the commission classified four advisory opinions as addressing two subjects.

Source: OPPAGA analysis of Palm Beach County Commission on Ethics data.

During the period from June 2010 to May 2013, commission staff participated in 218 live training sessions for public officials and employees, vendors and lobbyists, and members of community organizations. The commission’s executive director, staff counsel, and lead investigator, all of whom have law degrees, conduct in-person training. The commission also provides training through DVDs and streaming videos available on the commission’s website. Commission staff also audits local governments to ensure that employees have taken required ethics training and have completed and signed training acknowledgement forms.

***Clarification of roles could improve the  
commission’s complaint processes***

The Palm Beach County Commission on Ethics’ complaint process includes investigative, prosecutorial, and quasi-judicial functions. Best practices emphasize the importance of separating these functions; that is, assigning different entities to conduct these activities. However, the commission’s procedures and practices may sometimes result in a blurring of these functions.

A related issue arises regarding requirements for the commission to both sit as a probable cause panel and to determine the outcome of a final hearing.

Commission practices sometimes blur the roles of investigators and the staff counsel. A lack of separation between the commission's investigative and prosecutorial functions occurs because its procedures and practices provide for investigators to go beyond gathering facts when completing investigations. Specifically, commission investigators may draw conclusions about or make preliminary recommendations as to the existence of probable cause.<sup>12</sup> In contrast, Florida Commission on Ethics investigators do not make recommendations of probable cause, leaving this function to those prosecuting the case.

In addition, due to its small size, commission staff may serve in different capacities, which results in blurred roles and less separation between key functions. For example, the commission's staff counsel serves as the primary advisor to the commission regarding commission business (e.g., advising the commission regarding policy or procedural matters). However, while the commission often uses volunteer advocates to act as prosecutors, the staff counsel and lead investigator may also serve as prosecutors for complaints during probable cause determinations.<sup>13, 14</sup>

According to ethics experts, the lack of separation between investigative and prosecutorial functions may dispose commissioners toward accepting staff recommendations and advice as to probable cause. Specifically, commissioners may be more inclined to rely on staff's advice and opinions compared to an outside volunteer advocate since commissioners depend on staff to assist them in ongoing commission business. Using staff in the role of advocates, while allowed by the commission's ordinance, may also raise concerns about the advocate's independence.

To preserve separation of investigative and prosecutorial functions, some experts recommend that a small commission outsource either its investigative or prosecutorial functions. The Florida Commission on Ethics follows this practice and employs its own investigators but relies on the Florida Attorney General's Office to prosecute complaints. During the course of our review, the Palm Beach County Commission on Ethics' executive director reported that he planned to increase the number of volunteer advocates available to serve as prosecutors for cases heard by the commission.

The use of volunteer advocates provides both advantages and disadvantages. Advantages are two-fold: volunteer advocates may be perceived as having greater independence, and their use reduces the commission's costs. Commission staff estimated annual cost savings of \$200,000 from using volunteer advocates.<sup>15</sup> The disadvantages are also two-fold: the use of different volunteers on an infrequent basis may result in an ongoing, steep learning curve and may cause them to depend heavily on commission staff to understand the ethics code and the precedents from prior cases.

Commissioners determine both probable cause and the outcome of a final hearing. The ethics commission's ordinance requires the commission to determine probable cause as to whether the evidence suggests a violation has occurred. After a finding of probable cause, an individual accused

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<sup>12</sup> During the course of our review, commission staff reported that investigators no longer make recommendations as to probable cause. However, our review of commission files identified at least one instance in April 2013 where the investigative report included a recommendation as to the existence of probable cause.

<sup>13</sup> The lead investigator would not act as a prosecutor for complaints he investigated, but rather for those conducted by the commissioner's second investigator. Nevertheless, the lead investigator reviews the final investigative report.

<sup>14</sup> The county ethics commission's ordinance provides that the commission shall retain legal counsel to serve as the advocate and prosecute cases before the commission. The executive director may serve as advocate if he/she is a member of the Florida Bar in good standing. In addition, the commission has established a pro bono volunteer advocate program to prosecute ethics complaints; under the program, private attorneys from the community serve as advocates to earn pro bono hours to report to the Florida Bar.

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<sup>15</sup> Estimate is based on a rate of \$275 per hour.

of a violation can negotiate a settlement agreement or request a public hearing that would be conducted by the commission. To date, settlement agreements, rather than public hearings, have been used to resolve most ethics complaints where probable cause was found. The current process, however, may encourage individuals to settle given that the same commissioners who found probable cause will conduct the final hearing.

In contrast, the Florida Commission on Ethics refers cases to the Division of Administrative Hearings (DOAH) if a final hearing is required. The commission could consider recommending changes to the ethics code that could strengthen the ethics complaint process by authorizing hearing officers to conduct final hearings. However, the use of hearing officers would increase commission costs. Currently, DOAH charges \$146 per hour plus travel expenses for hearing officers.

***Conflict of interest provisions continue to be a source of concern for commissioners and others***

Prevailing state law addresses conflicts of interest in terms of decisions by officials and employees on matters that involve a financial interest. The Palm Beach County Code of Ethics also addresses voting conflict guidelines for government employees and officials. However, Palm Beach County ethics commissioners usually make decisions that do not directly affect financial expenditures like those made by a typical government official or employee who transacts government business, expends public funds, or votes regarding government projects. Rather, commissioners’ decisions usually fall into one of two categories: approving advisory opinions or resolving ethics complaints.

Clarification of terms regarding conflicts of interest may help commissioners as they conduct commission business. Regular disclosure and explanation of prevailing state law and local ordinances may also help the public better understand commission decisions regarding conflicts.

Ethics commissioners express concern regarding potential conflicts that do not involve financial interests. State law defines conflict of interest as “a situation in which regard for a private interest tends to lead to a disregard of a public duty or interest.”<sup>16</sup> The law clarifies the Legislature’s intent to protect the public and establish standards for the conduct of elected officials and government employees where conflict exists.<sup>17</sup> Specifically, state law prohibits a public official from voting on public matters that inure to his or her special private gain or the special private gain of others, such as relatives or business associates.<sup>18</sup>

Given the proximity of commissioners to the community they serve, it is not surprising that a commissioner might know someone accused of an ethics violation or someone seeking an advisory opinion. Even with no financial interest at issue, a commissioner could desire to recuse or disqualify him- or herself to avoid even the appearance of a conflict.

To address conflict of interest and related questions, the Palm Beach County Commission on Ethics sought clarification from the Florida Commission on Ethics and the Florida Attorney General’s Office, although neither entity has direct authority over the commission. The Attorney General’s Office advised commissioners that state law requires officials to recuse themselves when they or a member of their family would gain financially by voting on a matter before them.<sup>19</sup>

Thus, commissioners have determined that if issues do not meet the threshold of a financial interest, they cannot recuse themselves from voting even if they know the parties involved. However, commissioners continue to express concern about and find themselves subject to criticism because of perceived conflicts of interest in adjudicating complaints and approving advisory opinions.

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<sup>16</sup> Section 112.312(8), F.S.

<sup>17</sup> Section 112.311, F.S.

<sup>18</sup> Section 112.3143(3)(a), F.S.

<sup>19</sup> Section 112.3143, F.S.

The commission could benefit from clarifying commissioner disqualification terms and procedures. The Palm Beach County Code of Ethics includes standards regarding voting conflicts for government officials and employees. In addition, commission procedures provide guidelines concerning commissioner conflicts that might exist in probable cause or final hearings, proceedings where respondents have protected due process rights. Specifically, commission rules of procedure provide that the advocate or the individual responding to a complaint may file a motion to disqualify a commissioner for bias, interest, or prejudice, accompanied by an affidavit stating the particular grounds for the motion.<sup>20</sup>

However, concerns exist regarding commission procedures and issues of potential commissioner bias, interest, or prejudice. The terms bias, interest, and prejudice are not defined in commission procedures and may be unclear and interpreted differently based on a participant's experience and expertise.

Further, the procedures specify that unless good cause is shown, all motions for disqualification shall be filed with the commission at least five days prior to the hearing at which the commissioner is expected to participate. Personal bias against a particular individual based on a prior relationship may be readily apparent to someone accused of an ethics violation. However, other issues of bias, interest, or prejudice based on individual or group characteristics may not be apparent until commissioners begin discussing a case. As a result, parties may be unaware of bias or prejudice until a hearing is already in progress. In such a situation, the procedures appear to support the respondent's good cause to raise an issue of bias during a hearing.<sup>21</sup> Nevertheless, respondents could feel that making an accusation of bias against a commissioner is not in their best

interest given commissioners' overlapping prosecutorial and quasi-judicial roles.

To address conflict of interest concerns, the commission could emphasize such issues in its commissioner orientation and training and provide for explicit definitions of the terms bias, interest, and prejudice in its procedures relating to disqualification of members. In addition, each public and closed commission meeting could commence with the chairperson asking if members have any disclosures concerning the matters before the commission. In this way, commissioners could be on the record about any current or prior relationships with individuals before the commission even if the issues do not meet the financial benefit threshold of a conflict of interest. The commission could also use these disclosure discussions as an opportunity to explain how prevailing state law and local ordinances guide their decisions regarding conflicts of interest.

***The impact of recent changes to expand the commission's jurisdiction may warrant consideration of code revisions***

Several changes have been made to the ethics code since the county first adopted it in 2009. For example, in 2010, the code was revised to allow for outside employment for county employees under certain circumstances. To date, the most significant change occurred in 2011 when voters made all 38 municipalities subject to the Palm Beach County Code of Ethics. Other changes included adding vendors to the county gift law and expanding prohibited acts to include corrupt misuse of official position. Recent changes may warrant consideration of additional revisions to certain ordinances concerning appointments, lobbyists, and vendors.

The commission's expanded jurisdiction changes the nature of appointments and could diminish its independence. In creating the ethics commission, the county established its independence through the commissioner appointment process. Commissioners were selected by groups whose leaders were not subject to the county ethics code.

<sup>20</sup> According to the commission's rules of procedures, the motion shall be ruled on by the commissioner whose disqualification is sought, based on the legal sufficiency of the motion and affidavit.

<sup>21</sup> The ethics commission's procedures regarding bias, interest, and prejudice are similar to those of other ethics entities, including the Miami-Dade County Commission on Ethics and Public Trust and the City of Jacksonville Ethics Commission.

Expansion of the ethics code to include the county's 38 municipalities means that groups whose leaders are now subject to the code appoint ethics commissioners. For example, the Palm Beach County League of Cities, whose board of directors is composed of municipal officials, appoints one of five commissioners that now oversee ethics in the county's municipalities. Further, the municipal chiefs of police are now subject to the code as is their association president, who appoints an ethics commissioner.<sup>22</sup> To preserve its independence, the commission may want to recommend revising the ethics code regarding the appointment process to replace the Palm Beach County League of Cities and the Palm Beach County Association of Chiefs of Police with other independent entities.

Vendors and lobbyists are now subject to the county ethics ordinances but not required to receive training. The county established its initial lobbyist registration ordinance in 2003. In 2009, the county commission amended the lobbying ordinance to bring lobbying enforcement under the Commission on Ethics and added additional lobbying provisions to the ethics code. In 2011, vendors were incorporated into the ethics code gift law provisions.<sup>23</sup>

The gift law prohibits government officials and employees from soliciting or accepting gifts of any value in return for or because of the way they perform their duties. The law also prohibits lobbyists, vendors, or principals or employers of lobbyists that lobby local government from giving gifts to officials and employees. The law does not require the reporting of certain gifts, including those received from relatives, domestic partners, or dependents, and awards for professional or civic achievement. Officials or employees who receive a reportable gift in excess of \$100 must submit an annual gift disclosure form or a copy of state-required gift forms. Commission staff reviews gift forms and may initiate an inquiry based on information provided in the forms.

<sup>22</sup> The current and one of the two immediate past presidents of the Palm Beach County Association of Chiefs of Police were municipal chiefs of police.

<sup>23</sup> While the commission enforces the lobbyist registration law, staff does not oversee or maintain the registration system.

While the commission offers free training for lobbyists and vendors, the training is not mandatory. Best practices, such as those used by Miami-Dade County, the City of Chicago, and some other local governments, require lobbyists and/or vendors to undergo ethics training prior to engaging in business in their respective jurisdictions. Commission staff indicated that the issue of vendor training could be addressed through local government contracts with provisions to require training as a condition of doing county or municipal business. Alternatively, the commission could consider recommending changes to the county ethics code to require vendors and lobbyists to take the training. The requirement could be modeled after current provisions for government officials and employees, which require initial ethics training and periodic updates.<sup>24</sup>

***The commission could benefit from enhanced commissioner training***

Best practices indicate that the effectiveness of government ethics commissions can be enhanced by providing commissioners with the orientation and training required to perform their responsibilities. Palm Beach County Commission on Ethics members reported that when they were initially appointed to the commission, they took the same online training on the ethics code as local government officials and employees. Some commissioners also reported that they attended training that staff provided to various groups, reviewed copies of documents, such as the ethics code, and were offered one-on-one training by the commission's staff.

While it is useful for ethics commissioners to initially attend or view an ethics training session for local officials and employees and read related materials, such training does not provide commissioners with specific guidance in performing their responsibilities. The commissioners should receive additional training

<sup>24</sup> Section 2-446 of the Palm Beach County Code of Ethics provides that the "county administrator or municipal administrator as applicable shall establish by policy a mandatory training schedule for all officials and employees which shall include mandatory periodic follow-up sessions. This policy may also address ethics training for entities that receive county or municipal funds as applicable."

that, at a minimum, includes commission procedures for hearing complaints and ensuring due process, including rules of procedure and evidence and issues of bias, prejudice, and interest; methods for understanding and analyzing complaint information and commission precedent; preparation and issuance of advisory opinions; and compliance with open records and sunshine laws.<sup>25</sup>

Experts also note that it is important for ethics commissioners to have annual continuing education. Such training could serve as a refresher and cover any changes in ethics laws at the state and local level. It could also provide a forum for commissioners to learn about best practices in government ethics programs.

***The commission could improve its performance accountability system***

Like other government entities, the Palm Beach County Commission on Ethics should be accountable for and provide information to citizens regarding its effectiveness. To do this, the commission needs a performance accountability system and a strategic plan that includes clearly stated goals and objectives that provide expectations for its activities and measures for assessing its progress in meeting these expectations.

The commission includes some performance information in its annual reports, such as the number of

- advisory opinions issued;
- in-person trainings conducted;
- complaints investigated and their disposition; and
- reviews conducted that found governmental entities with employees not in compliance with ethics training requirements.<sup>26</sup>

<sup>25</sup> During the course of our review, the commission began efforts to improve commissioner training. In July 2013, the commission authorized its staff to develop a revised training program for commissioners.

<sup>26</sup> During the course of our review, commission staff also began to survey online and in-person training participants to assess their satisfaction with the training experience.

These measures, while useful, primarily assess program outputs, which represent counts of the number of products produced in a single year. Additional information could be provided on the commission's timeliness in completing activities (e.g., the average number of days taken to determine whether a complaint is legally sufficient or the number of days to respond to a request for an advisory opinion) or trends in the number of complaints investigated and advisory opinions issued over a multi-year period. Changes, whether increases or decreases, in complaints or requests for advisory opinions over a multi-year period could be used to direct the commission's education activities or other resources to help government officials and employees gain a better understanding of their responsibilities under the ethics code.

In addition, the commission could collaborate with stakeholders to develop a survey to identify the reasons for changes in commission activities (e.g., increases or decreases in complaints and advisory opinions) and the impact of these and other activities on improving the climate of ethics in the county. For example, a survey could be used to determine the training benefits to local government employees by assessing their knowledge of the ethics code; the percent of local government employees who believe that their agency leaders and supervisors pay attention to ethics; and the percent who believe that individuals caught violating ethics rules are appropriately disciplined. Governments at the federal, state, and local level have used surveys of this kind to gauge the effect of ethics reforms.

The commission should also develop a strategic plan that identifies major issues facing the commission, presents strategies to address the issues, and specifies measurable goals and objectives for evaluating its progress and performance. Developing a strategic plan would also provide commissioners with a means for reaching a consensus regarding the commission's focus in the coming years as well as guidance on what it hopes to accomplish.



## *Appendix A*

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### **The Palm Beach County Commission on Ethics Complaint Process Involves Numerous Steps**

A major activity of the Palm Beach County Commission on Ethics is complaint processing. (See Exhibit A-1.) The commission receives two types of complaints—sworn complaints, including self-initiated complaints, and unsworn or anonymous complaints. Sworn complaints are submitted in writing and sworn to before a notary public by the person filing the complaint. The county inspector general, the state attorney, or the commission’s executive director may also self-initiate complaints if they become aware of possible violations. For example, if the inspector general conducts an audit that identifies a violation that falls within the commission’s jurisdiction, the inspector general could refer the matter to the ethics commission.

The commission also receives unsworn complaints, which are typically from individuals that contact its hotline or who otherwise report or send information anonymously alleging an ethics violation. Depending on the nature of the complaint, commission staff conducts a preliminary inquiry to gather additional information, if necessary. If an anonymous or unsworn complaint appears to contain information regarding a potential violation, the commission’s executive director self-initiates a sworn complaint.

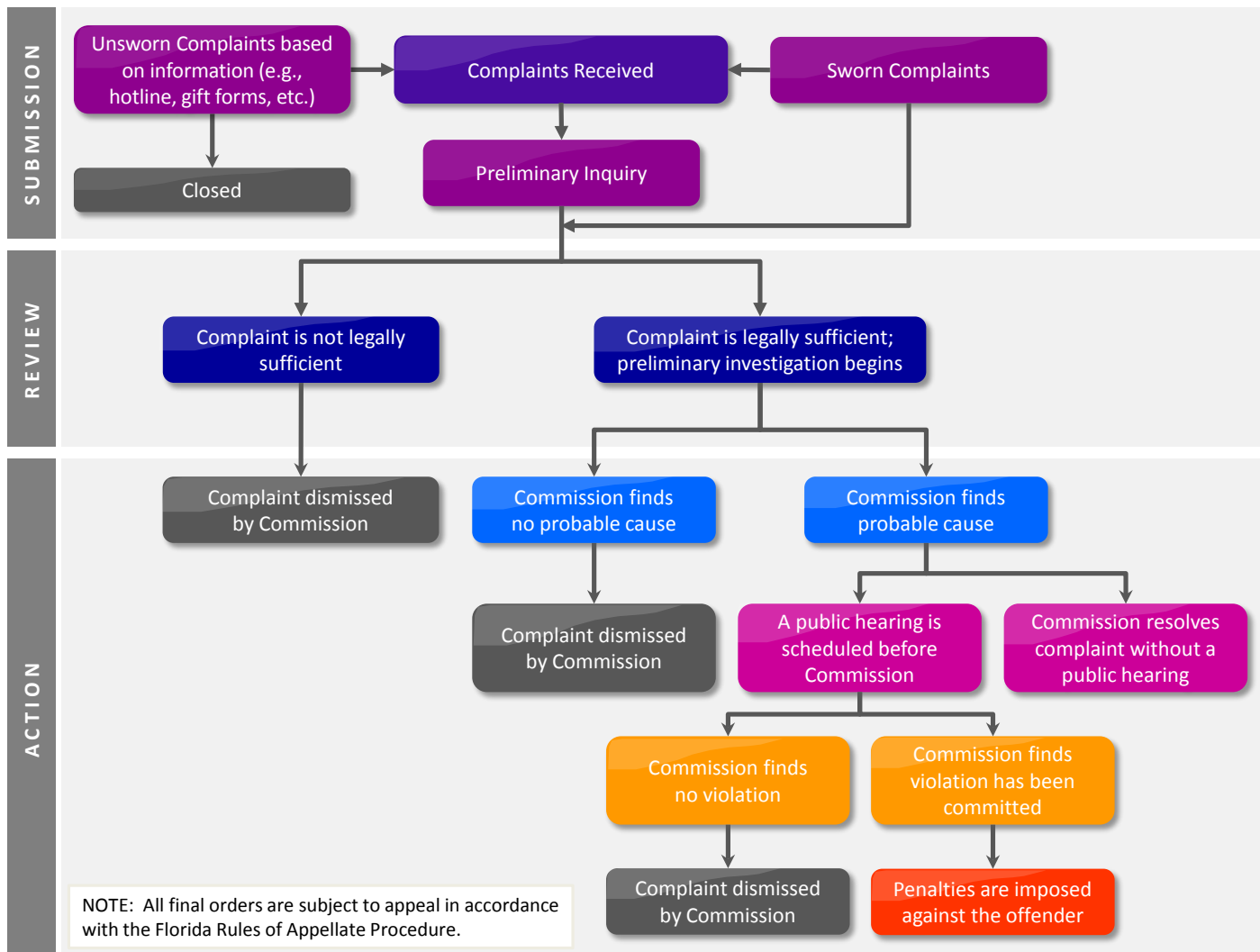
Following an initial inquiry, complaints must meet two important thresholds in order to move forward. First, the commission’s executive director must determine if the complaint is legally sufficient. Legal sufficiency requires that a complaint be in writing on a form prescribed by the commission, allege that a violation occurred that is within the commission’s jurisdiction, and be sworn before a notary public. For legally sufficient complaints, commission staff investigates the allegations, gathers evidence, takes sworn testimony from witnesses, and writes a report of investigation findings. Staff presents to the commission for dismissal all complaints that do not meet legal sufficiency criteria.

Second, the commission must determine whether probable cause exists that a violation has occurred. Following a completed investigation, the commission’s staff counsel or a volunteer advocate prepares a recommendation to the commission for or against a finding of probable cause. If no probable cause is found, the case is dismissed.

If commissioners determine that the violation was unintended or inadvertent, they could dismiss the case with a letter of instruction to the individual. Otherwise, the commission may enter into a negotiated settlement with the violator or order a public hearing.

Exhibit A-1

The Commission's Complaint Process Includes Many Steps from Submission to Final Action



Source: Palm Beach County Commission on Ethics.



# Palm Beach County Commission on Ethics

**Commissioners**

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 Patricia L. Archer, Vice Chair  
 Daniel T. Galo  
 Salesia V. Smith-Gordon  
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Re: *Palm Beach County Commission on Ethics Was Created using Several Best Practices; Some Processes Could Be Enhanced, Draft Report*

Dear Mr. Twogood,

The Palm Beach County Commission on Ethics discussed, in public sessions on September 12 and October 3 2013, your request to provide an official response to the captioned report. Kindly accept this as that response.

The background section of the report captures adequately some of the history leading up to the formation of the commission. It is important to note that many dedicated individuals including the electorate, county officials, interested citizens and groups, commissioners and staff are responsible for today's Commission. In creating and helping the Commission evolve, the singular mission of these stakeholders is to provide an ethically and legally sound framework which promotes public trust in government. That task is sometimes difficult and controversial.

The report correctly observes several dynamics that make the commission unique. It has only been in operation for approximately three years. In crafting the ordinances, establishing rules and procedures, hiring an executive director and staff and developing training programs, the founding commissioners and many others literally created the agency "out of whole cloth." There are only a few similar agencies nationwide. When the agency's small size (five volunteer commissioners and a staff of five) and modest budget (\$589,000 in FY 2013) are considered, its accomplishments to date are impressive. In recognition of these efforts, the National Association of Counties conferred its Achievement Award upon Palm Beach County in 2011 for the ethics initiative.

In establishing the Commission and its procedures, as well as amending the Ordinances and Rules, the goal has always been to utilize best practices. The report correctly notes that such best practices include the commissioner selection practices, requiring training, issuing advisory opinions, following an orderly complaint handling process, maintaining confidentiality, having detailed rules regarding probable cause and final hearings, and ensuring due process rights, including an appellate process.

Thank you for recognizing the "number of milestones" the Commission has achieved since its inception. These accomplishments include the establishment of the Commission according to the best practices discussed above. Also, between June 2010 and May 2013:

- 60 formal complaints were processed.
- 250 advisory opinions were issued in 14 different subject areas
- 218 live training sessions were conducted
- Audits of all local governments were conducted to ensure training compliance

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In response to each of the report's findings:

*Finding 1: "Commission practices sometimes blur the roles of investigators and the staff counsel."*

**Response:** This finding describes some of the dynamics inherent in a small staff. Specifically, staff counsel may both serve as both as policy and procedure advisor to the commission as well as serve as advocate. Additionally, staff counsel and the lead investigator (also an attorney) may serve as advocates during probable cause hearings and trials. As long as the roles of advocate and legal advisor to the Commission do not overlap in a given case, the First District Court of Appeal has found no legal prohibition against the consolidation of investigative, prosecutorial and adjudicative authority in a single agency. (McAlpin v. Criminal Justice Standards and Training Commission, Case # 1D12-2819, September 13, 2013)

To preserve independence and save costs, a volunteer advocate program has been created and expanded. This program provides for the use of skilled pro bono attorneys prosecuting cases before the Commission. The Commission may also consider the feasibility of utilizing the services of a full or part-time advocate at a future time.

Budgetary constraints likely prohibit the outsourcing of either investigative or prosecutorial functions. It is estimated that doing so would increase the budget by 100-200%. The investigative staff does not make any recommendation as to findings of probable cause. The Commission believes that the current system best balances competing concerns while maintaining fiscal control.

*Finding 2: "Commissioners determine both probable cause and the outcome of a final hearing."*

**Response:** The Commission on Ethics Ordinance sections 2-260 (d) and 2-260.1 require commissioners to perform both functions. The standard for determining probable cause is whether there are reasonably trustworthy facts and circumstances for the Commission to believe that a violation has occurred. The standard at a final hearing is proof by clear and convincing evidence. Commissioners, serving in a quasi-judicial capacity, are fully capable of separating these functions and judging the evidence against the (different) legal standards. Circuit judges perform these differing functions frequently. Outsourcing the trial function to DOAH judges may raise legal issues and/or be cost prohibitive.

There is some sentiment in the Commission both for and against supporting changes to the Ordinances and Rules in favor of outsourcing the trial function. This matter was taken under advisement and staff was directed to further study the issues. This matter may be taken up in the future.

*Finding 3: "Conflict of interest provisions continue to be a source of concern for commissioners and others."*

**Response:** State law requires commissioners to vote on business before the Commission unless they meet the grounds for recusal (Fla. Stat. §286.012, Palm Beach County Code of Ethics §2-443). Only a significant statutory change, which the commissioners have no control over, would allow them to recuse themselves for other than financial reasons. The current practice is to disclose relationships even where no financial conflict exists. The commission may consider the adoption of rules to define these disclosure practices.

*Finding 4: "The commission could benefit from clarifying commissioner disqualification terms and procedures."*

Response: The existing disqualification procedure is in line with the general law of judicial recusal. The commissioner against whom a disqualification motion is directed hears the motion. A commissioner faced with a motion to disqualify filed outside of the time restrictions of the Rule would have discretion to hear the motion. A Rule change permitting a motion to be filed at any time may be considered.

*Finding 5: "The commission's expanded jurisdiction changes the nature of appointments and could diminish its independence."*

Response: The composition of the Commission fits the purpose for which it is intended. Moreover, any change in the way commissioners are appointed would require a recommendation for such change, the work of a drafting committee and approval by the Board of County Commissioners. Any of the other existing appointing entities (including the local bar associations, the CPA Institute and Florida Atlantic University) could easily have members within their ranks subject to the Code of Ethics.

*Finding 6: "Vendors and lobbyists are now subject to the county ethics Ordinance but are not required to receive training."*

Response: The countywide Lobbyist Registration Ordinance was effective on April 2, 2012. Live training was provided for vendors and lobbyists before the effective date. A video training has been available through our website since the effective date and is currently being revised. Live training presentations continue to be available upon request. Any change to require training for vendors and/or lobbyists and/or principals, or employers of lobbyists would require a recommendation for such change, the work of a drafting committee and approval by the Board of County Commissioners. The costs associated with providing mandatory training, and maintaining oversight of this function, may be prohibitive. It may be possible to increase the awareness of vendors and lobbyists of the availability of existing training. Staff will undertake to make the access to training materials more visible on the new Commission website. The Commission may revisit this issue in the future.

*Finding 7: "The commission could benefit from enhanced commissioner training."*

Response: Staff has just completed a comprehensive commissioner training video. This, approximately 8-hour, program includes a comprehensive review of all Ordinances, Rules, Procedures, investigative overview, advisory opinions, quasi-judicial functions, best practices during hearings and the Sunshine Law. All commissioners have been provided with a complete copy of all Ordinances, Rules, Policy and Procedure Manuals and the Government in the Sunshine Manual. Yearly updates and retraining are planned.

*Finding 8: "The commission could improve its performance accountability system."*

Response: Staff has expanded the performance measures contained in the annual budget documents. Additionally, surveys have been placed on the website to collect user data. Website analytics have been implemented to identify patterns of use. Surveys distributed at trainings collect data on the effectiveness of training and to gauge the effects of ethics reforms. These data will be used to develop enhanced strategic plans.

The Commission, staff and all of the stakeholders in Palm Beach County remain fiercely loyal to the ethics movement. We feel that this agency has accomplished much in its short tenure. Our dedication to continue that effort, and support the effectuation of changes to policies and practices when appropriate, is strong. Thank you for your report and this opportunity to respond. We also appreciate very much the professionalism and courtesy of the team through its leader, Kara Collins-Gomez during this process.

Respectfully Submitted,



Steven P. Cullen  
Executive Director  
Palm Beach County Commission on Ethics

SPC/gal

Copies to: COE Website, COE Staff, COE Commissioners

# *The Florida Legislature*

## *Office of Program Policy Analysis and Government Accountability*



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