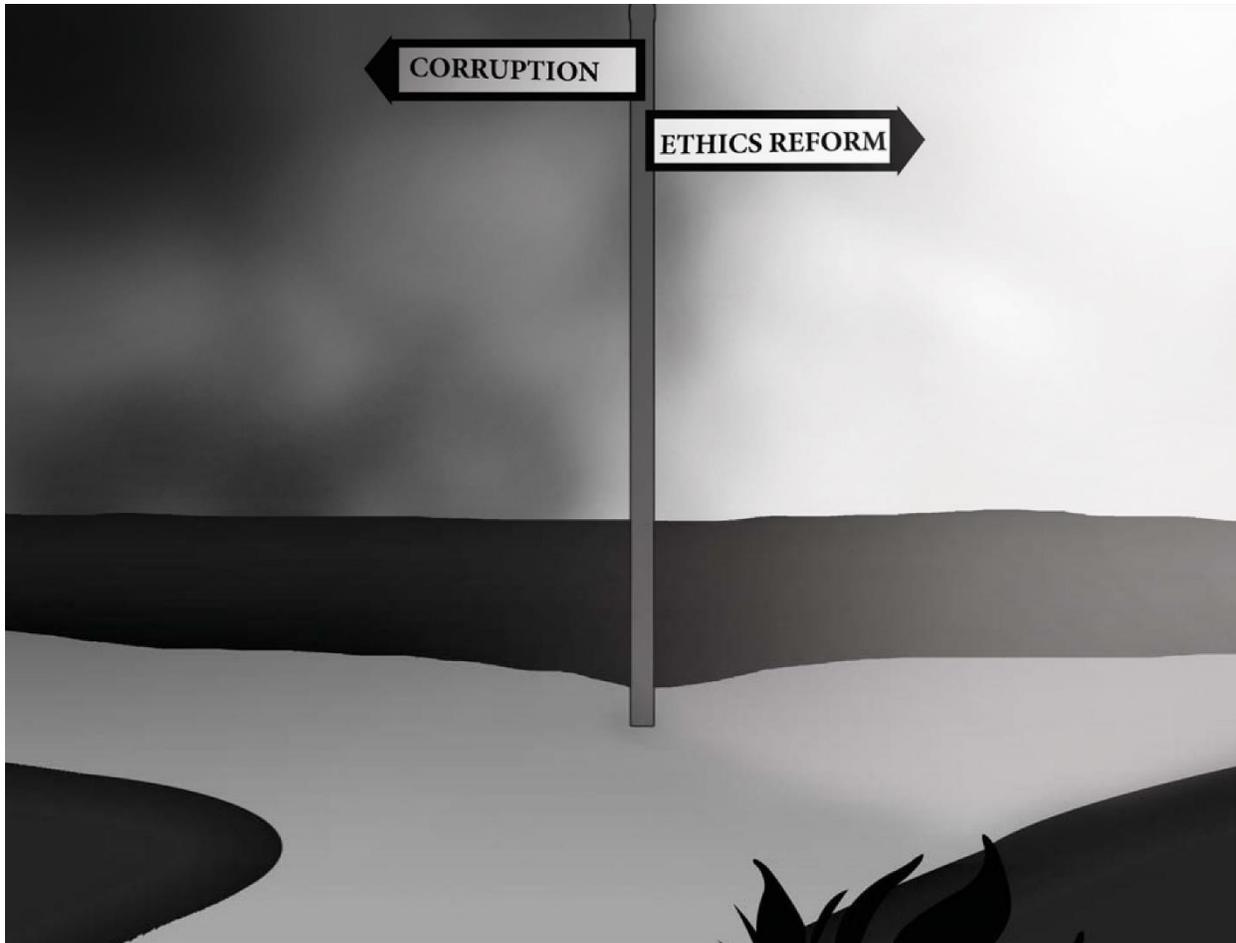


Florida's Path to Ethics Reform

By Alan Stonecipher and Ben Wilcox



i n t e g r i t y

F L O R I D A

Integrity Florida is a nonprofit, nonpartisan research institute and government watchdog whose mission is to promote integrity in government and expose public corruption.

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Executive Summary

Florida is making progress in the fight against public corruption. Ethics reforms that were passed in 2013 and 2014 represent the first significant attempt to update the state's ethics laws since the 1970's and since the 2012 publication of Integrity Florida's report titled *Corruption Risk Report: Florida Ethics Laws*. Yet when measured against the benchmarks cited in that report, it's clear much more remains to be done if government in Florida is to be more open, ethical and accountable to its citizens.

Florida went too long neglecting public corruption and ethical abuses and its citizens have paid a real price for corrupt government practices that have cost taxpayers' public funds and damaged the state's reputation.

In the 2016 legislative session and beyond, there are opportunities to advance policy proposals that would reduce the risk of corruption and improve Florida's grades in national benchmarks.

Key Findings

- **Florida is no longer number one in federal public corruption convictions** for the ten-year period from 2003 to 2013, the most recent data available. While Florida is still in the top five states ranked at number three with 622 convictions, Texas is now number one with 870 convictions, followed by California at number two with 678 convictions. In per-capita convictions Florida is ranked 23rd with 3.3 convictions per 100,000 population. Federal public corruption convictions in Florida have flattened out and appear to be trending downward.
- **In the 2015 update of the 2012 State Integrity Investigation**, Florida's overall grade for the 14 categories measuring government accountability fell from a C-minus to a D-minus. In the categories that were measured in both reports, Florida's grade was lower in virtually every category except in "Ethics Enforcement Agencies." In that category Florida went from an F grade to a D-minus.
- **While a few of the recommendations of the Nineteenth Statewide Grand Jury** have been adopted, the majority of those recommendations have never been considered by the Florida legislature.

Policy Recommendations

Ethics Reform/Anti-Corruption legislation that has been filed that would reduce corruption risk if passed in 2016 include:

- **Senate Bill 582/House Committee Bill by the Rules, Calendar and Ethics Committee:** These bills would put into law two anti-corruption recommendations that were in the 2010 Nineteenth Statewide Grand Jury Report. The bills would expand the definition of "public servant" so government vendors and contractors could be prosecuted under bribery and

misuse-of-office statutes. They would also remove language in the statutes that requires prosecutors prove defendants acted "corruptly" or with "corrupt intent." Instead prosecutors would only have to meet the standard burden of proof that someone acted "intentionally or knowingly."

- **Senate Bill 686/House Bill 593:** Titled the Florida Anti-Corruption Act of 2016, this an omnibus ethics reform measure that includes the provisions in Senate Bill 582.
- **Online financial disclosure filing system:** Create an online, publicly accessible filing system for financial disclosure statements for state and local officials as envisioned in the plan submitted by the Commission on Ethics to the Florida legislature.

Additional Ethics Reform/Anti-Corruption policy solutions that could be enacted to advance government ethics in Florida include:

- **Self-initiate investigations:** Allowing the Commission on Ethics to self-initiate investigations would be the single most effective change in the ethics laws that could be made, both in terms of actually enforcing the law and in terms of public confidence in government. This is a legislative priority of the Commission on Ethics.
- **Increase penalties:** Increase the maximum civil penalty for violations of ethics laws from \$10,000 to \$20,000 as recommended by the Florida Commission on Ethics.
- **Require all Elected Officials to file Full and Public Financial Disclosure (Form 6):** All constitutional officers in Florida are currently required to file Full and Public Financial Disclosure known as Form 6. Many other elected officers, including city officials, are only required to file the less-informative Form 1, known as Disclosure of Financial Interests.
- **Improve fine collections:** The problem of officials who fail to pay the automatic fines they receive for failing to file financial disclosure is well-documented. Allowing the Commission to record its final orders as liens on the debtor's real and personal property would give them another tool to collect unpaid fines.
- **Raise the standard for awarding attorney's fees against complainants:** This would restore the law on recovery of attorney fees to the way it had been construed by the Commission prior to a decision by the 1st District Court of Appeal; that Complainants are held to the same standard applicable to media publications regarding public figures. Under the former standard, the Ethics Commission awarded attorney's fees only against complainants who maliciously and knowingly filed complaints based on false information.
- **Change the burden of proving an ethics violation** from "clear and convincing evidence" to a "preponderance of the evidence."

Introduction

In June of 2012, Integrity Florida released a research report titled [*Corruption Risk Report: Florida Ethics Laws*](#).¹ The report found Florida was facing a “corruption crisis that threatens the state’s reputation, its economy and its ability to attract new jobs and capital.” It also found that Florida led the nation in federal public corruption convictions from 2000 to 2010. The report cited the results of the first Florida Corruption Risk Report Card conducted by State Integrity Investigation where Florida received a failing grade for ethics enforcement.

Since the publication of that report, the Florida legislature has considered substantial ethics reform measures in three consecutive sessions beginning in 2013. Senator Don Gaetz (R-Destin), who became Senate President that same year, prioritized passage of ethics reform during the two years of his presidency. He also filed a substantial ethics reform bill in 2015, which died on the calendar of the House of Representatives when the lower chamber chose to adjourn the session three days early. The reforms that did pass in 2013 and 2014, while not groundbreaking, are historic and represent the first time since the 1970’s that the legislature has taken a comprehensive look at improving and strengthening Florida’s ethics laws.

Integrity Florida’s 2012 research report made a number of recommended ethics reform solutions to improve Florida’s grade on the Corruption Risk Report Card and give the public more confidence in its government. Many of those recommendations were adopted by the legislature including building an online, searchable data base of financial disclosure forms, improving the collection process for fines owed due to ethics law violations and requiring ethics training for elected officials. The legislature also required the Commission on Ethics to come up with a plan to create an online system for filing financial disclosure forms, which was also recommended in the 2012 report.

Other key recommendations, like giving the Florida Commission on Ethics the ability to self-initiate investigations, have not been adopted. The legislature did agree in 2013 to allow new opportunities for complaints to be referred to the Commission by the Governor’s office, the Department of Law Enforcement, a state attorney or a United States Attorney.

This research report, titled *Florida’s Path to Ethics Reform*, will take an inventory of the ethics reforms that have been adopted in Florida and determine where the state stands in terms of the corruption risk benchmarks that were laid out in the 2012 Integrity Florida report. The report will examine the latest federal corruption conviction data, analyze the recently released update to the State Integrity Investigation and compare the reforms that have been adopted to the anti-corruption recommendations that were laid out in the 2010 landmark *Nineteenth Statewide Grand Jury Report: A Study of Public Corruption in Florida and Recommended Solutions*. The report will lay out a clear path for the state to follow to make Florida government more open, ethical, responsive and accountable.

Federal Public Corruption Conviction Data and Methodology

In the 2012 report titled *Corruption Risk Report: Florida Ethics Laws*, Integrity Florida found that Florida led the nation in federal public corruption convictions from the year 2000 through 2010. The finding was based on data provided by the U.S. Department of Justice. To find out if Florida is still number one for public corruption convictions, we analyzed the most recent DOJ data from 2003 to 2013.² (See appendix for data)

It turns out Florida is no longer the leader for public corruption convictions, Texas is now number one with 870 convictions and California is number two with 678 convictions. While total corruption convictions increased in Texas from 703 in 2000-2010 to 870 in 2003-2013, Florida's total declined during the same periods. Florida is now number three with 622 corruption convictions between 2003 and 2013. Florida's new corruption conviction total of 622 is lower than it was during the ten-year period from 2000 through 2010 when it was 674. While Florida is no longer number one for total public corruption convictions, it still scores much higher than the average of the 50 states which is 195 for the same ten-year period.

In just the last three years from 2011 through 2013, Florida's public corruption convictions fell to fourth behind Texas, California and Illinois. As was noted in the 2012 report, the number of public corruption convictions does not necessarily correlate as a measure of a state's risk for corruption. It may indicate that the Department of Justice and the FBI are doing a better job at prosecuting corruption in some states than in others.

A 2014 study by Harvard University further elaborated on the difficulty of measuring corruption based on public corruption convictions. The report, titled *Measuring Illegal and Legal Corruption in American States: Some Results from the Corruption in America Survey*,³ found problems with measuring corruption based on federal corruption convictions including the fact that corruption cases tried by state and local prosecutors are not included in the data and the fact that the data only includes those who are caught and convicted.

The Harvard study attempted to measure both illegal and legal corruption in states based on a survey of how news reporters perceive whether corruption is common in the states they report on. Using this perception based methodology, Florida also fares poorly compared to most other states. The Florida survey found the reporters thought illegal corruption was moderately common in the executive branch and very common in the legislative branch. The report defines legal corruption as political gains in the form of campaign contributions or endorsements in exchange for providing specific benefits to private individuals or groups. Florida fares even worse for legal corruption which the reporters found was very common in both the executive branch and the legislative branch.

Another problem with using the raw DOJ data on the number of public corruption convictions is that it doesn't take into account the size of the population of the state. It makes sense that highly populated states would have more cases of corruption than lower populated states. We computed the per-capita data for 2003 through 2013 and compared the number of corruption convictions to each state's population based on the 2010 census. We then applied the percentage to a population of 100,000. The state with the highest number of public corruption convictions per 100,000 was

Louisiana with 9.9. Florida was ranked 23rd, right at the average of the fifty states with 3.3 convictions per 100,000.

It's encouraging that total public corruption convictions in Florida appear to be trending downward and not upwards like the state of Texas, but when Florida is still ranked in the top five out of fifty states there remains great cause for concern. It's also important to note that federal public corruption convictions do not reflect one way or another on the strength of Florida's state laws. In fact, as determined by the Nineteenth Statewide Grand Jury, Florida's state law is notoriously weak when it comes to prosecuting corruption.

In 2013 and 2014, the Florida legislature enacted the first comprehensive improvements to state ethics laws in well over thirty years. There was also ethics reform legislation proposed in 2015 and there is new legislation on the table for 2016. It's too early to tell whether legislative attention to ethics reform in recent years has had any impact on the number of public corruption convictions, but it's conceivable that new laws requiring annual ethics training for state and local elected officials will help create a more ethical culture in Florida government.

Analysis of Recent Reforms

Following the publication of Integrity Florida's 2012 report *Corruption Risk Report: Florida Ethics Laws*, the legislature took a comprehensive look at the state's ethics law in 2013 and 2014. Then Senate President Don Gaetz made ethics reform his top priority during his term. In an article by Sunshine State News, Senator Gaetz cited a number ethics issues that had occurred in Okaloosa County where he lives as the reason why he decided to champion ethics reform.⁴

In 2013, the Senate Ethics and Elections Committee, led by Senator Jack Latvala (R-Clearwater), adopted Senate Bill 2 and Senate Bill 4.⁵ SB 2 was the omnibus ethics act and SB 4 was a companion bill that contained public records exemptions for the new provisions allowing for the referral of ethics complaints. Both bills were eventually adopted by the Florida legislature that year.

Senate Bill 2⁶ contained a number of significant improvements to Florida's ethics laws including:

- Prohibiting public officials from accepting government employment that is being offered for the purpose of gaining influence based upon the person's holding office or candidacy.
- Prohibiting former legislators from lobbying the executive branch for two years after leaving office.
- Requiring all constitutional officers to complete 4 hours of ethics training annually and requiring the legislature to adopt its own ethics training rules.
- Prohibiting state public officers from voting on a matter that would cause his or her special private gain or loss.
- Requiring all Form 6 financial disclosures filed with the Commission on Ethics be scanned and made publicly available on a searchable Internet database beginning in the 2012 filing year. Requiring the Commission develop a plan by December 2015 for a mandatory electronic financial disclosure filing system.

- Allowing for garnishment of wages for public officials who owe financial disclosure fines and extending the statute of limitations to up to 20 years to collect those fines.
- Allowing a new referral process for filing ethics complaints from the Governor, the Florida Department of Law Enforcement, a state attorney or a U.S. Attorney.

In the second year of Senator Gaetz's term as Senate President, Senator Latvala again sponsored legislation designed to improve ethics in Florida government. While not as comprehensive as Senate Bill 2, Senate Bill 846⁷ did make a number of incremental improvements when it was passed and signed into law in 2014. Those improvements include:

- Extending the four-hour annual ethics training requirement to city officials.
- Requiring those subject to the ethics training requirement certify that they have completed the training on their financial disclosure form.
- Requiring the Florida Commission on Ethics to self-initiate an investigation of any financial disclosure filer who has accrued the maximum automatic fine for late-filing and still refuses to file their financial disclosure.
- Requiring someone who lobbies a water management district to register as a lobbyist.
- Extending the standards of conduct, anti-nepotism provisions and voting conflict provisions in the Code of Ethics to the Florida Clerk of Courts Corporation, Enterprise Florida and the Florida Development Finance Corporation.
- Providing the Executive Director of Citizens Property Insurance is subject to the Ethics Code.

Three recommendations from Integrity Florida's 2012 report on Florida's ethics laws were enacted into law by the 2013 and 2014 legislation. The recommendations that are now law include:

- **Requiring Ethics Training for Elected Officials:** Constitutional officers, including the Governor, the Cabinet and county elected officials, were required in 2013 to undergo four hours of ethics training annually. The legislature was required to adopt rules mandating training. In 2014, elected city officials were also required to undergo four hours of training annually.
- **Improving Fine Collections:** In 2013, the legislature gave the Commission on Ethics the ability to garnish the wages of public employees who fail to pay late financial disclosure fines.
- **Building an online financial disclosure database:** The 2013 law required the Florida Commission on Ethics to put all form 6 financial disclosures online in a searchable database beginning with the 2012 filing year.

Taken as a whole, the reforms over this two-year period are significant and represent the first time since the 1970's that the Florida legislature has made a comprehensive effort to update Florida's ethics laws. Still, as this report will show, much remains to be done before Florida's ethics and anti-corruption laws measure up to the benchmark recommendations set forth in Integrity Florida's 2012 report as well as the State Integrity Investigation report and the Nineteenth Statewide Grand Jury report.

State Integrity Investigation

The first [State Integrity Investigation](#)⁸ was released in March, 2012 and it gave each of the 50 states a letter grade based on 300 government integrity indicators. State Integrity Investigation was a collaborative project of the Center for Public Integrity, Global Integrity and Public Radio International. Florida received an overall grade of C-minus and a numerical score of 71 ranking it 18th among the states.

Florida received grades in 14 categories including public access to information, political financing, lobbying disclosure and procurement among others. Most of the grades Florida received were C's and D's, but the only failing grade was for "Ethics Enforcement Agencies." Two factors contributed to the failing grade; one being that Florida's Commission on Ethics does not have an independently allocated budget; the other and most important reason being that Florida's Ethics Commission cannot self-initiate investigations without someone first filing a sworn ethics complaint.

It should be noted that the low grade for ethics enforcement is not a reflection on the work of the Florida Commission on Ethics. Rather, the State Integrity Investigation focused on whether ethics enforcement agencies are able to operate independently and effectively based on how they have been structured under state law. The low State Integrity grade reflects on the Florida legislature for not giving the Commission on Ethics the tools and structure it needs to do its job.

The Commission on Ethics has consistently asked the legislature for additional tools including the ability to self-initiate investigations, to increase the amount allowed for ethics fines and to allow for liens to be placed on personal property so fines that are owed can be collected. All of those recommendations and more are included in the Commission's legislative priorities⁹ for 2016.

As Integrity Florida's 2012 [report](#)¹⁰ found, states that had a "strong" or "very strong" overall performance on the State Integrity Investigation Corruption Risk Report Card all had ethics commissions with the power to independently initiate investigations.

1. New Jersey 92 (very strong)
2. Connecticut 90 (very strong)
3. Iowa 88 (strong)
4. California 84 (strong)
5. West Virginia 83 (strong)
6. Wisconsin 83 (strong)
7. Washington 82 (strong)

Integrity Florida's 2012 report recommended giving the Florida Commission on Ethics the power to self-initiate investigations as "the single, most effective change in the ethics laws that could be made, both in terms of actually enforcing the law and in terms of popular confidence in government."

Now there is a new [State Integrity Investigation](#)¹¹, an update of the 2012 report that was released in November, 2015. Florida's overall grade fell from a C-minus to a D-minus with a numerical score of 61 ranking it 30th among the states. And Florida's not alone. In the 2015 State Integrity report only 3 states scored higher than a D plus. The best score went to Alaska which scored a C. California was ranked second with a C-minus and Connecticut was ranked third also with a C-minus.

Even though Florida still does not allow the Florida Commission on Ethics to independently self-initiate investigations, the 2015 grade for ethics enforcement agencies improved slightly going from an F to a D-minus. The improvement can likely be attributed to the two pieces of legislation that were passed in 2013 and 2014 that were discussed earlier in this report.

In the narrative for the State Integrity Florida report, author Ashley Harrell states "In 2013, a meaningful ethics reform package was enacted for the first time in 36 years. Although its provisions were a bit of a mixed bag, headway was arguably made in restructuring campaign finance, empowering the ethics commission and regulating lobbyists. Those changes slightly boosted some of Florida's scores in this year's State Integrity Investigation, but they weren't enough to make a real impact."

Clearly the State Integrity Investigation sets a high bar for states to reach when it comes to all of the 14 government accountability categories it measures. For Florida, it's an especially high bar when it comes to the category of ethics enforcement agencies. Integrity Florida continues to believe that giving the Ethics Commission the ability to self-initiate investigations would be the single-most important change that could be made to Florida's ethics laws to improve that State Integrity grade.

Nineteenth Statewide Grand Jury

More than five years ago a statewide grand jury issued a report outlining legislation necessary to combat public corruption in Florida.

The Nineteenth State Grand Jury – created in February 2010 at the request of then-Governor Charlie Crist after a series of corruption scandals – said in its report that widespread "theft and mismanagement" of public funds amounted to Florida's "corruption tax," penalizing taxpayers by driving up the cost of public services.

The report, "[A Study of Public Corruption in Florida and Recommended Solutions](#),"¹² called for specific legislation to be passed in the 2011 legislative session. None of the recommended laws were passed. Instead, "The grand jury's words landed on deaf ears in Tallahassee," the Tampa Bay Times reported.¹³

In addition to investigating public corruption crimes, the grand jury was tasked with addressing the effectiveness of Florida statutes in fighting public corruption; identifying deficiencies in current laws, punishments or enforcement efforts and making detailed recommendations to improve anti-corruption measures, and examining public policy issues regarding public corruption and developing specific recommendations regarding improving current laws.¹⁴

Background

The report traced the history of efforts to prevent corruption in Florida, beginning with the enactment by the legislature in 1967 of what became the Code of Ethics for Public Officers and Employees. Later that year a constitutional amendment placed the requirement of a code of ethics into the Florida Constitution: “A code of ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interest shall be prescribed by law.” In 1969 public officials and employees of counties, cities and other jurisdictions were added to the ethics code. In 1970, criminal penalties were enacted for the first time, making violations misdemeanors and providing penalties of up to a \$1,000 fine or up to one year in jail. In 1974, the legislature required public disclosure of various financial interests, enacted tighter restrictions on conflicts of interests, and established a Commission on Ethics. With administrative penalties in place, the legislature no longer felt the need for criminal penalties. In 1975, the Commission on Ethics was given the authority to investigate, and civil fines were created for violations.

In 1976, Governor Reuben Askew led the first citizen initiative constitutional amendment effort that placed in the state constitution the “Sunshine Amendment,” accomplishing “what the legislature failed to do.” The amendment required financial disclosure of assets by constitutional officers and candidates for those offices and campaign finance reported by public officials and candidates for any office.

The amendment also:

- Subjected public officials and employees convicted of a felony involving “a breach of the public trust” to forfeiting retirement benefits and pensions.
- Prohibited for two years lobbying by legislators and statewide elected officials from the same body or agency where he served.
- Created an independent Commission on Ethics to conduct investigations and issue reports on all complaints regarding breach of public trust by public officials and employees.
- Created a code of ethics for all state employees and non-judicial officers prohibiting conflicts of interest between public duties and private interests.

Two other corruption study commissions issued reports before the Nineteenth Grand Jury’s:

- In 1999-2000, a [Public Corruption Study Commission](#) was tasked by Governor Jeb Bush to complete a comprehensive review of current laws, policies, and procedures and recommend changes to better prevent public corruption. Some of the commission’s recommendations were eventually adopted, but several crucial ones were not, the Nineteenth Grand Jury reported.
- A [Fifteenth Judicial Circuit Grand Jury](#) investigated Palm Beach County and public corruption issues in 2009.

Why Public Officials Often Are Not Punished

The Nineteenth Grand Jury concluded that public officials often escaped punishment under Florida’s public corruption laws because:

1. The act is not criminalized;
2. The cases are too difficult to prove due to their definitions and extra elements of proof;
3. The punishments imposed too lenient penalties and do not fit the crime; or
4. The prosecutor decides to charge another crime or accept a plea in order to allow a defendant to avoid the negative publicity of public corruption charges.

Status of Grand Jury Recommendations

Recommendation	Enacted into Florida Law	Not Enacted
Redefine “public servant” to include corrupt individuals in private entities performing government functions		X
Replace statutory language requiring “corruptly” or “with corrupt intent” with “knowingly” or “intentionally” to make prosecution of offenses more likely		X
Strengthen bid-tampering, bid-rigging, and bid-splitting language		X
Redefine current unconstitutional commercial bribery language to make it a violation of Florida law		X
Strengthen punishments to make it less likely that a public official can plea bargain to avoid the stigma of a public corruption conviction		X
Criminalize voting conflicts of interest, self-dealing conflicts of interest, and misuse of public position		X
Create an <u>independent</u> Office of State Inspector General to oversee the work of all other state agency inspectors general		X

Strengthen the independence of agency inspectors general by requiring that they be appointed by the chief inspector general with written approval of the agency head	Enacted to apply to agencies under the governor but not Cabinet agencies	
Require that an agency inspector general can be removed upon “good cause shown”	Enacted for state agencies reporting to the governor	
Require than an agency inspector general be given 21 days’ notice prior to removal		X
Allow inspector general offices at any agency to conduct investigations without having to notify the agency head, executive director, or any other person		X
Give the Commission on Ethics limited authority to self-initiate investigations on a super-majority vote of the commissioners		Commission can initiate proceedings only against a person who has failed to file finance disclosure forms and has already received the maximum fine
Increase the maximum civil penalty for violations of the Code of Ethics from \$10,000 to \$100,000		X
Make it a misdemeanor criminal offense for any public official who fails to file a required disclosure form within 90 days after the required date of filing		X
Rewrite the Code of Ethics so that it clearly applies to all people and entities paid with public funds to perform a public function or service	Enterprise Florida president, senior managers and board members were made subject to certain ethics provisions in 2014¹⁵	Not enacted: clearly applying the Code of Ethics to all paid with public funds to perform a public function

Require that a gift disclosure form be filed even if the person subject to disclosure has not received any gifts, thus stating he has received no gifts		X
Eliminate “3-pack” political advertising under F.S. 106.021(3)(d)		X
Define “residency” to require that a candidate actually lives in the district at the time the candidate is running for or elected to serve in any office		X
Give the Elections Commission independent authority to investigate based on a super-majority vote by the commission		X
Any vendor or person convicted of a felony or a crime of dishonesty should be barred from entering into any procurement contact for five years from the date of the conviction or release from a sentence		X
Require elected or appointed officials subject to the Code of Ethics to undergo ethics training before or within 60 days of holding office	Certain officers were required in 2013 ¹⁶ to complete four hours of ethics training in a year; elected municipal officials were added in 2014 ¹⁷	

Anti-Corruption/Ethics Reform Legislation Proposed for 2016

Two bills strengthening ethics statutes in Florida have been filed, both by Senator Don Gaetz. One, Senate Bill 582, is a bill recommended by Gannett newspapers (*Pensacola News Journal*, *Tallahassee Democrat*, FLORIDA TODAY in Brevard County and *The News-Press* in Lee and Collier counties). The newspapers say it is an effort to end what the 19th Statewide Grand Jury called Florida’s “corruption tax.”¹⁸

Senate Bill 582

SB582 contains two major recommendations of the Grand Jury: expanding the definition of “public servants” subject to Florida's public-corruption laws to government contractors and

others acting on behalf of a governmental entity; and changing the standard for burden of proof to make it easier to obtain convictions.

Specifically, the bill:

- Includes as “government entities” bodies such as Citizens Property Insurance Corporation, statutorily created direct support organizations, and other statutorily created public entities.
- Defines “public servant” to include any officer, director, partner, representative or employee of a nongovernmental entity, private corporation and quasi-public bodies. Nongovernmental entity is defined as a person, association, cooperative, corporation, partnership, organization or other entity, either profit or nonprofit.
- Changes the term “corruptly” to “knowingly and intentionally” relating to bribery, unlawful compensation, official misconduct and bid tampering. Prosecutors and the 19th Statewide Grand Jury maintained that “knowingly and intentionally” lowers the burden of proof necessary to obtain convictions of public officials.¹⁹

Senate Bill 686

The second bill filed for 2016, SB 686, is called the “Florida Anti-Corruption Act of 2016.” The bill’s companion in the House is HB 593. The bills include the major provisions of SB 582. SB 686/HB 593 does the following, among other provisions:

- Replaces “corruptly” and “corrupt intent” with “knowingly and intentionally” for the crimes of bribery, unlawful compensation or reward, official misconduct and bid tampering.
- Makes subject to standards of conduct officers and board members of Department of Economic Opportunity corporate entities, including Space Florida, CareerSource Florida, Inc., and the Florida Housing Finance Corporation.
- For a period of six years, or 10 years if removed for misconduct, prohibits officers and board members of Department of Economic Opportunity bodies from representing for compensation his or her corporation, a subsidiary, or a corporation required by law to carry out its missions.
- Adds language to the definition of “public servant” similar to SB 582.²⁰

Conclusion

Florida is making progress in the fight against public corruption. Ethics reforms that were passed in 2013 and 2014 represent the first significant attempt to update our ethics laws since the 1970's and since the 2012 publication of Integrity Florida's report titled *Corruption Risk Report: Florida Ethics Laws*. Yet when measured against the benchmarks cited in that report, it's clear much more remains to be done if government in Florida is to be more open, ethical and accountable to its citizens.

There continues to be interest in the legislature in raising the bar for Florida government when it comes to ethics reform. Two bills have been sponsored in both the Senate and the House for consideration in the 2016 legislative session. House Speaker Designate Richard Corcoran has also announced his intention to seek new ethics and lobbying reforms when he serves as Speaker in 2017 and 2018.

Key Findings

- **Florida is no longer number one in public corruption convictions** for the ten-year period from 2003 to 2013. Florida is now ranked at number three with 622 convictions, Texas is now number one with 870 convictions, followed by California at number two with 678 convictions. Florida's latest corruption conviction rate of 622 convictions is lower than the ten-year period from 2000 to 2010 which saw 674 convictions. In per-capita public corruption convictions, Florida is ranked 23rd, right at the average of the fifty states with 3.3 convictions per 100,000 people. Federal public corruption convictions in Florida have flattened out and appear to be trending downward.
- **In the 2015 update of the 2012 State Integrity Investigation**, Florida's overall grade for the 14 categories measuring government accountability fell from a C-minus to a D-minus. In the categories that were measured in both reports, Florida's grade was lower in virtually every category except in "ethics enforcement agencies." In that category Florida went from an F grade to a D-minus. The author recognized that the Florida legislature had passed a "meaningful ethics reform package," but later said it "wasn't enough to make a real impact."
- **While a few of the recommendations of the Nineteenth Statewide Grand Jury** have been adopted, the majority of those recommendations have never been considered by the Florida legislature.

Policy Recommendations

Ethics Reform/Anti-Corruption legislation that has been filed that would reduce corruption risk if passed in 2016 include:

- **Senate Bill 582/House Committee Bill by the Rules, Calendar and Ethics Committee:**
These bills would put into law two anti-corruption recommendations that were in the 2010

Nineteenth Statewide Grand Jury Report. The bills would expand the definition of "public servants" so government vendors and contractors could be prosecuted under bribery and misuse-of-office statutes. It would also remove language in the statutes that requires prosecutors prove defendants acted "corruptly" or with "corrupt intent." The grand jury described that language as an extra burden of proof that has limited the effectiveness of corruption laws. Instead prosecutors would only have to meet the standard burden of proof that someone acted "intentionally or knowingly."

- **Senate Bill 686/House Bill 593:** Titled the Florida Anti-Corruption Act of 2016, this omnibus ethics reform measure includes the provisions in Senate Bill 582 as well as other good reforms including requiring elected city officials to file full financial disclosure, applying lobby registration requirements to special districts and prohibiting members of the Enterprise Florida Board from lobbying the agency for six years after they leave the Board.
- **Online financial disclosure filing system:** Create an online, publicly accessible filing system for financial disclosure statements for state and local officials.

The 2013 ethics reform bill (SB 2) required the Florida Commission on Ethics to come up with a plan to develop an online financial disclosure filing system by December 2015. The Commission submitted the [plan](#)²¹ on-time for consideration by the 2016 legislature. If approved by the legislature, the plan would have an online, electronic financial disclosure filing system in place for those who file Full and Public Disclosure of Financial Interests (Form 6) by January 1, 2019.

The Commission's stated goals for the online filing system "should be ease of use for the filer, immediate information to the public, and efficiency for the agency. Such a system should also facilitate filing and reduce the occurrence of common filer errors."

Additional Ethics Reform/Anti-Corruption policy solutions that could be enacted to advance government ethics in Florida include:

- **Self-initiate investigations:** The state's ethics law enforcement agency needs this important tool to effectively enforce the law. With the bi-partisan Ethics Commission providing oversight and authorization, the Commission should be able to join the 30 other states that already have ethics enforcement agencies that can begin an ethics investigation on their own.

The counter-argument is that this power could be misused by a politicized Ethics Commission. However, this possibility could be eliminated by requiring more than a majority vote of the Commission members to proceed, which would require members of the minority party to join the majority party on the Commission and would require legislative appointees to join with the Governor's appointees.

Allowing the Commission on Ethics to self-initiate investigations would be the single most effective change in the ethics laws that could be made, both in terms of actually enforcing the law and in terms of public confidence in government.

- **Increase penalties:** Increase the maximum civil penalty for violations of ethics laws from \$10,000 to \$20,000 as recommended by the Florida Commission on Ethics.

The public believes that \$10,000 is not enough of a sanction to discourage unethical conduct. More importantly, the Ethics Commission reserves the maximum fine for the worst conduct, and most violations don't entail the worst conduct, so the fines tend to group around \$1,000. That truly isn't viewed as a significant penalty. Expanding the maximum would give the Commission a greater range of penalties, enabling it to make better distinctions between degrees of culpability.

- **Require all Elected Officials to file Full and Public Financial Disclosure (Form 6):** All constitutional officers in Florida are currently required to file Full and Public Financial Disclosure known as Form 6. Many other elected officers, including city officials, are only required to file the less-informative Form 1, known as Disclosure of Financial Interests.

This proposal is recommended for legislative action by the Florida Commission on Ethics and is currently contained in proposed Senate Bill 686 and House Bill 593.

- **Improve fine collections:** The problem of officials who fail to pay the automatic fines they receive for failing to file financial disclosure is well-documented. In 2013, the legislature gave the Commission on Ethics a new tool, the ability to garnish the wages of officials who are still on the public payroll.

The Commission has proposed another fine-collecting tool for the legislature to consider; allowing it to record its final orders as liens on the debtor's real and personal property. Liens on personal property would mean a lien could be applied to automobiles or other significant assets.

This would improve people's confidence in government and enable the Ethics Commission to achieve its goal of 100 percent financial disclosure compliance.

- **Raise the standard for awarding attorney's fees against complainants:** The Florida Commission on Ethics has recommended that the legislature address the perceived "chilling effect" on potential complainants that was created by a decision by the 1st District Court of Appeal. The case, Brown v. State, Commission on Ethics (Fla. 1st DCA 2007), made it easier to seek attorney's fees from complainants who filed an ethics complaint that was later dismissed. Action by the legislature would restore the law on recovery of attorney fees to the way it had been previously construed by the Commission; that Complainants are held to the same standard applicable to media publications regarding public figures.

Right now, a reasonable citizen, who has no personal motivation other than a desire for good government, has to weigh the personal financial consequences of filing a complaint against the potential good to the public of having unethical conduct exposed.

People with strong political or personal motivations still file complaints, but other people who read or hear about possible unethical conduct do not. Under the former standard, the Ethics Commission awarded attorney's fees only against complainants who knowingly and maliciously filed complaints based on false information.

- **Change the burden of proving an ethics violation from "clear and convincing evidence" to a "preponderance of the evidence":** Another way to make the ethics laws more enforceable would be to change the burden of proving a violation from "clear and convincing evidence" to a "preponderance of the evidence."

Currently, the "clear and convincing" standard has been applied by some judges as strictly as if it were the criminal burden of proof (beyond a reasonable doubt). The "preponderance of the evidence" standard should be sufficient since the consequences of an ethics violation are far from criminal.

Prior to 2013, Florida suffered an ethics reform drought despite the best efforts of well-meaning legislators like Senators Mike Fasano, Paula Dockery and Dan Gelber. During that time, good legislation was filed, but was either never heard in committee, or it failed to advance to passage. Florida went too long neglecting public corruption and ethical abuses and its citizens have paid a real price for corrupt government practices that have cost taxpayers' public funds and damaged the state's reputation when potential employers are considering moving to the state.

In the 2016 legislative session and beyond, there are exciting opportunities to make government in Florida the most open, ethical and accountable as it can potentially be. Florida has a clear path to ethics reform and it should take that path to ensure the state's future is bright.

Appendix

Total Federal Public Corruption Convictions from 2003 to 2013

State and Rank	Number of Public Corruption Convictions 2003-2013
1. Texas	870
2. California	678
3. Florida	622
4. Illinois	516
5. New York	511
6. Virginia	501
7. Pennsylvania	458
8. Louisiana	450
9. Ohio	432
10. New Jersey	417
11. Maryland	325
12. Kentucky	296
13. Tennessee	275
14. Alabama	273
15. Georgia	262
16. Arizona	252
17. Michigan	230
18. Massachusetts	217
19. Missouri	196
20. Oklahoma	182
21. Indiana	169
22. North Carolina	168

23. Mississippi	151
24. Wisconsin	120
25. Arkansas	92
26. Connecticut	92
27. Washington	84
28. West Virginia	80
29. South Dakota	70
30. Colorado	68
31. Minnesota	61
32. Montana	53
33. Iowa	51
34. South Carolina	50
35. New Mexico	49
36. Alaska	47
37. Kansas	45
38. Oregon	42
39. Delaware	38
40. North Dakota	36
41. Maine	35
42. Rhode Island	33
43. Hawaii	32
44. Nevada	32
45. Nebraska	31
46. Utah	29
47. Wyoming	25
48. Idaho	21
49. Vermont	19

50. New Hampshire	8
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Source – *Report to Congress on the Activities and Operations of the Public Integrity Section for 2013/ U.S. Department of Justice.*²²

Top Five States in 2011, 2012 and 2013

Top Five States for Federal Corruption from 2011 to 2013	2011 Convictions	2012 Convictions	2013 Convictions	Total Convictions 2011, 2012, 2013
Texas	88	101	166	355
California	52	89	63	204
Illinois	41	44	69	155
Florida	40	62	49	151
New York	52	57	26	135

Source – *Report to Congress on the Activities and Operations of the Public Integrity Section for 2013/ U.S. Department of Justice.*²³

Per-Capita Federal Public Corruption Convictions

State and Rank	2010 Population	Public Corruption Convictions 2003-2013	Convictions per 100,000 Population
1. Louisiana	4,533,372	450	9.9
2. South Dakota	814,180	70	8.5
3. Kentucky	4,339,367	296	6.8
4. Alaska	710,231	47	6.6
5. Virginia	8,001,024	501	6.2
6. Alabama	4,779,736	273	5.7
7. Maryland	5,773,552	325	5.6
8. Montana	989,415	53	5.3
9. North Dakota	672,591	36	5.3
10. Mississippi	2,967,297	151	5.0
11. Oklahoma	3,751,351	182	4.8
12. New Jersey	8,791,894	417	4.7
13. Wyoming	563,626	25	4.4

14. Tennessee	6,346,105	275	4.3
15. West Virginia	1,852,994	80	4.3
16. Delaware	897,934	38	4.2
17. Illinois	12,830,632	516	4.0
18. Arizona	6,392,087	252	3.9
19. Ohio	11,536,504	432	3.7
20. Pennsylvania	12,702,379	458	3.6
21. Texas	25,145,561	870	3.4
22. Massachusetts	6,547,817	217	3.3
23. Florida	18,801,310	622	3.3
24. Missouri	5,988,927	196	3.2
25. Arkansas	2,915,958	92	3.1
26. Rhode Island	1,052,567	33	3.1
27. Vermont	625,741	19	3.0
28. Georgia	9,687,653	262	2.7
29. New York	19,378,102	511	2.6
30. Maine	1,328,361	35	2.6
31. Indiana	6,483,802	169	2.6
32. Connecticut	3,574,097	92	2.5
33. New Mexico	2,059,179	49	2.3
34. Hawaii	1,360,301	32	2.3
35. Michigan	9,883,640	230	2.3
36. Wisconsin	5,686,986	120	2.1
37. California	37,253,956	678	1.8
38. North Carolina	9,535,483	168	1.7
39. Nebraska	1,826,341	31	1.6
40. Iowa	3,046,355	51	1.6
41. Kansas	2,853,118	45	1.5
42. Colorado	5,029,196	68	1.3
43. Idaho	1,567,582	21	1.3
44. Washington	6,724,540	84	1.2
45. Nevada	2,700,551	32	1.1
46. Minnesota	5,303,925	61	1.1
47. Oregon	3,831,074	42	1.0
48. South Carolina	4,625,364	50	1.0
49. Utah	2,763,885	29	1.0
50. New Hampshire	1,316,470	8	0.6

Source – U. S. Census Bureau²⁴ and *Report to Congress on the Activities and Operations of the Public Integrity Section for 2013/ U.S. Department of Justice.*²⁵

Endnotes

- ¹ http://www.integrityflorida.org/wp-content/uploads/2013/03/Integrity_Florida-Corruption-Risk-Report-Florida-Ethics-Laws-06.06.12.pdf
- ² <http://www.justice.gov/sites/default/files/criminal/legacy/2014/09/09/2013-Annual-Report.pdf>
- ³ <http://ethics.harvard.edu/blog/measuring-illegal-and-legal-corruption-american-states-some-results-safra>
- ⁴ <http://www.sunshinestatenews.com/story/don-gaetz-florida-counties-will-participate-upcoming-ethics-reforms>
- ⁵ http://www.flsenate.gov/PublishedContent/Session/2013/BillSummary/Ethics_EE0004ee_0004.pdf
- ⁶ http://www.flsenate.gov/PublishedContent/Session/2013/BillSummary/Ethics_EE0002ee_0002.pdf
- ⁷ http://www.flsenate.gov/PublishedContent/Session/2014/BillSummary/Ethics_EE0846ee_0846.pdf
- ⁸ <http://www.publicintegrity.org/2012/03/19/18165/florida-gets-c-grade-2012-state-integrity-investigation>
- ⁹ <http://www.integrityflorida.org/wp-content/uploads/2015/12/2016LegislativeRecommendationsFICommissiononEthics.pdf>
- ¹⁰ http://www.integrityflorida.org/wp-content/uploads/2013/03/Integrity_Florida-Corruption-Risk-Report-Florida-Ethics-Laws-06.06.12.pdf
- ¹¹ <http://www.publicintegrity.org/accountability/state-integrity-investigation/state-integrity-2015>
- ¹² [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf)
- ¹³ <http://www.tampabay.com/news/politics/legislature/what-grand-jury-florida-legislature-fails-to-pass-essential-ethics-reform/1170808>
- ¹⁴ Pages 5-6. [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf)
- ¹⁵ <https://www.flsenate.gov/Session/Bill/2014/0846/Analyses/s0846z1.SAC.PDF>
- ¹⁶ <https://www.flsenate.gov/Session/Bill/2013/0002/Analyses/2013s0002.hms.PDF>
- ¹⁷ <https://www.flsenate.gov/Session/Bill/2014/0846/Analyses/s0846z1.SAC.PDF>
- ¹⁸ <http://www.floridatoday.com/story/news/2015/09/25/-corruption-bill-sponsor-gaetz/72807326/>
- ¹⁹ <https://www.flsenate.gov/Session/Bill/2016/0582/Analyses/2016s0582.pre.go.PDF>
- ²⁰ <https://www.flsenate.gov/Session/Bill/2016/0686/BillText/Filed/PDF>
- ²¹ <http://www.integrityflorida.org/wp-content/uploads/2015/12/E-Filing-proposal-12.2015.pdf>
- ²² <http://www.justice.gov/sites/default/files/criminal/legacy/2014/09/09/2013-Annual-Report.pdf>
- ²³ <http://www.justice.gov/sites/default/files/criminal/legacy/2014/09/09/2013-Annual-Report.pdf>
- ²⁴ <http://www.census.gov/>
- ²⁵ <http://www.justice.gov/sites/default/files/criminal/legacy/2014/09/09/2013-Annual-Report.pdf>