

DEPARTMENT OF FINANCIAL SERVICES

Division of Worker's Compensation

RULE NOS.: RULE TITLES:
 69L-5.205 Loss Data Reporting
 69L-5.217 Civil Penalties and Fines

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 37, No. 37, September 16, 2011 issue of the Florida Administrative Weekly.

The following is added to the end of the SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Based upon the economic analysis conducted by the Department and past experiences with rules of this nature, there will be no adverse effect on small businesses, economic growth, private-sector job creation, employment or investment in excess of the threshold requiring legislative ratification. There will also be no increase in regulatory costs in excess of the threshold requiring legislative ratification. The proposed amendment to Rule 69L-5.217, F.A.C., will reduce the penalties that are assessed against self-insurers for late filing of reports and forms.

**Section IV
 Emergency Rules**

DEPARTMENT OF THE LOTTERY

RULE NO.: RULE TITLE:
 53ER11-63 Code of Ethics

SUMMARY: This emergency rule sets forth the Code of Ethics for employees of the Florida Lottery and replaces Rules 53ER07-40 and 53ER07-41, F.A.C.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Diane Schmidt, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER11-63 Code of Ethics.

(1) All employees of the Florida Lottery are subject to the provisions of Chapter 112, Part III, Fla. Stat., Chapter 24, Fla. Stat., and rules promulgated thereunder. Where there are differences between this rule and the statute, the stricter provisions will apply.

(2) Definitions.

For purposes of this rule,

(a) "Chief ethics officer" means the Lottery's Deputy General Counsel.

(b) "Employee" means any person employed by the Florida Lottery.

(c) "Gift" means anything accepted by a person or on that person's behalf, whether directly or indirectly, for that person's benefit and for which no payment is made. Examples of gifts are: real property or the use thereof; tangible or intangible personal property or the use thereof; preferential rate or terms on a transaction not available to others similarly situated; forgiveness of a debt; transportation, lodging or parking; food or beverage; dues, fees and tickets; plants and flowers; personal services for which a fee is normally charged; or any other thing or service having an attributable value.

"Gift" does not include:

1. Salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization (the donee's principal employer or business occupation and unrelated to the donee's public position); or

2. Contributions reported pursuant to the campaign financing law (Chapter 106, F.S.), campaign-related personal services provided by individuals volunteering their time, or any other contribution or expenditure by a political party; or

3. An honorarium or expense related to an honorarium event paid to a person or the person's spouse by someone other than a lobbyist or principal of a lobbyist; or

4. An award, plaque, certificate or similar personalized item given in recognition of the donee's public, civic, charitable or professional service, provided that such item has no separate commercial value; or

5. Honorary membership in a service or fraternal organization presented as a courtesy by the organization; or

6. Use of a public facility for a public purpose made available by a governmental agency; or

7. Transportation provided by an agency in relation to officially approved governmental business; or

8. Anything of value provided directly or indirectly by a state, regional or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization, or staff of a governmental agency that is a member of the organization.

(d) "Lobby" means to seek, 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.

(e) "Lobbyist" means a person who is employed and receives payment 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, excluding an employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.

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

(g) "Procurement employee" means any employee who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in Section 287.012, Fla. Stat., if the cost of such services or commodities exceeds \$1,000 in any year.

(h) "Relative" means a person who is related to an agency official or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step great grandchild, engaged to be married to the agency official or employee, or who otherwise holds himself or herself out as or is generally known as the person whom the agency official or employee intends to marry or with whom the agency official or employee intends to form a household, or any other natural person having the same legal residence as the agency official or employee.

(i) "Reporting individual" means any employee who is required by Section 112.3145, Fla. Stat., to file a full or limited public disclosure of his or her financial interests.

(j) "Secretary" means the Secretary of the Florida Lottery or an employee of the Lottery authorized to act on behalf of the Secretary.

(3) Avoiding the Appearance of Impropriety.

Employees of the Lottery will use the powers and resources of the Lottery to further the public interest and not for any financial or personal benefit other than salaried compensation and employer-provided benefits.

(a) Safeguarding Impartiality.

Employees are expected to safeguard their ability to make objective, fair and impartial decisions, and therefore may not accept benefits of any sort under circumstances in which it could be inferred by a reasonable observer that the benefit was intended to influence a pending or future decision of the employee, or to reward a past decision. Employees should avoid any conduct (whether in the context of business, financial or social relationships) that might undermine the public trust, whether that conduct is unethical or lends itself to the appearance of ethical impropriety.

(b) Serving as Officers/Directors of Governmental and Non-governmental Entities.

An employee may serve as an officer or director of a governmental or non-governmental entity subject to the approval of the chief ethics officer. Approval shall be requested at the time of original employment with the Lottery or at the time the employee seeks to be appointed to such position.

(c) Screening.

To avoid any appearance of impropriety, an employee will not participate in meetings between and/or decisions directly involving the employee and his or her former employer or clients/business entities for which he or she has had substantial, direct responsibility during the one year prior to assuming his or her present employment with the Lottery. To the extent an employee seeks to participate in any such meeting or decision, he or she will first notify the chief ethics officer who will prescribe an appropriate screen depending on the particular circumstances. Moreover, nothing in this Code is meant to prohibit an employee from addressing or making decisions relating to issues that may generally affect an industry or business sector with which the employee may have had a prior relationship.

(4) Acceptance of Gifts.

No employee who is a reporting individual or a procurement employee ("RIPE") may accept any gift from a non-lobbyist. There are limited exceptions to the prohibition on the acceptance of gifts from non-lobbyists, as follows:

(a) Gifts from relatives, regardless of value.

(b) Gifts received from personal friends in the ordinary course of friendship, regardless of value, (including but not limited to birthday and/or anniversary gifts and gifts of hospitality), provided that any such personal friend is not:

1. The partner, firm, member, employer, employee or principal of a lobbyist;

2. A person having a special pecuniary interest (either individually or through a corporation or organization) in a matter pending before the Lottery;

3. A person who (either individually or through a corporation or organization) provides goods or services to the Lottery under contract or agreement;

4. A person who (either individually or through a corporation or organization) is seeking such business with the Lottery.

(c) On-site consumption of food and refreshment at receptions and/or other events, provided the employee's attendance at such event is an appropriate exercise of the employee's official duties and the food and refreshments at such event are not paid for by a lobbyist or the principal of a lobbyist, in which case the guidelines set forth in paragraph 5 below apply.

(d) Gifts accepted on behalf of a governmental entity or charitable organization, or for which a public purpose can be shown, provided the gift is not being made by a lobbyist or the principal of a lobbyist.

(e) Gifts involving volunteer campaign-related travel, lodging, and/or food or beverage expenses, provided the chief ethics officer has approved such acceptance.

(5) Use of Lobbyists and Lobbyist Expenditures.

(a) The use of lobbyists will not be required or preferred as a way to obtain access to Lottery employees.

(b) Employees shall not solicit any gift, regardless of value, from a lobbyist or principal, if the gift is for the personal benefit of the employee, the employee's family, or another employee.

(c) No employee shall knowingly accept anything of value from a lobbyist or the principal of a lobbyist, regardless of whether the thing is being offered or given for the purpose of lobbying, except that an expenditure for the personal benefit of an employee may be accepted from a lobbyist or principal who is a relative of the employee.

However,

1. An employee may attend an event or accept a thing of value that is otherwise prohibited if the employee pays or provides equivalent consideration contemporaneously with or preceding the receipt of the item or attendance at the event. In situations in which it is difficult to place a value (such as dinner at someone's home), equivalent consideration in the form of a house gift, appropriate priced bottle of wine or spirits, floral arrangement or plant, or other appropriately valued item may substitute for monetary consideration. Attendance at weddings, showers, birthdays or other special occasions where guests usually bring gifts and the feted person or others on his or her behalf provide food and entertainment also fall into this category.

2. An employee may attend a community event that is open to all persons.

3. An employee may accept an item or benefit generally available for free or below the customary rate if the rate is a government rate available to all other similarly-situated government employees or a rate that is available to similarly-situated members of the public by virtue of occupation, affiliation, age, religion, sex or national origin. If discounted pricing is made possible as a result of sponsorship by a lobbyist or principal, the discounted pricing may not be accepted unless it is available equally to all government employees and not intended to benefit a particular class of employees.

The key question in each of these situations is whether the expenditure or the available discount is being made for the personal benefit of the employee, the employee's parent, spouse, child or sibling. If it is, accepting the expenditure or discount is prohibited.

In determining whether an expenditure is a prohibited one, the following questions must be asked:

a. Is there commercial value involved?

The following items have commercial value and are examples of prohibited expenditures: food and beverages, tickets to entertainment events (golf tournament, sporting event, or theatre performance), transportation, lodging, and honorarium expenses.

b. Is the thing of commercial value primarily for the benefit of the agency's employees and not generally available to members of the public (or a large class of persons) on the same terms and conditions?

c. Does a lobbyist or principal control who receives the benefit of the thing of value?

d. If a third person (such as a non-profit) is distributing the thing of value, is it acting under the direction of the lobbyist or principal?

e. Did an agency official or employee solicit the lobbyist or principal for the sponsorship of the event?

If the answer to any of the foregoing questions a-e is "yes", then the employee may not attend the event or accept the thing of value without giving appropriate and contemporaneous consideration. If the answer to all of the foregoing questions a-e is "no," then the employee may attend the event or accept the thing of value unless he or she knows or has reason to believe that the arrangement is a subterfuge for an otherwise prohibited expenditure.

4. Notwithstanding that awards, plaques, certificates or similar personalized items given in recognition of the employee's public, civic, charitable or professional service are not considered "gifts" under Chapter 112, Fla. Stat., the employee shall notify the chief ethics officer of the receipt of any such item.

5. A Lottery vendor who is also a principal may make expenditures for reasonable and necessary expenses of Lottery sales conferences and other marketing activities when such payments are made pursuant to a contractual obligation of the vendor to provide marketing support to the Lottery under a contract that was entered pursuant to a competitive procurement process. A Lottery employee's participation in such a sales conference or other marketing activities shall not be considered to be a violation of this rule.

Employees have a duty to inquire whether the thing of value is from a lobbyist or principal. Ignorance of the facts is no excuse.

(6) Reporting Requirements.

(a) Gift Reporting.

This Code permits the acceptance of gifts from non-lobbyists only in certain specified circumstances set forth in subsection (4) above. RPEs must report and disclose any permissible gift unless the gift is from a relative or a friend; however, gifts from friends must be reported if they exceed \$100 in value.

Pursuant to Section 112.3148, Florida Statutes, RPEs must file Form 9, quarterly Gift Disclosure, with the Commission on Ethics on the last day of any calendar quarter following the calendar quarter in which he or she received a reportable gift.

Form 9 need not be filed if no such gift was received during the calendar quarter. RИPEs must also file with the Commission on Ethics Form 10, Annual Disclosure of Gifts from Governmental Entities and Direct Support Organizations and Honorarium Event Related Expenses by July 1 of each year, along with the employee's Form 1 filing (see paragraph (6)(b) below), if a reportable gift or expense was received.

(b) Financial Disclosure.

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

Pursuant to Section 112.3145(b), Florida Statutes, reporting individuals are required to file with the Commission on Ethics, Form 1, Statement of Financial Interests, within thirty (30) days of appointment and by July 1 of each year thereafter.

Employees will be notified by the chief ethics officer if their position with the Lottery requires them to file financial disclosure forms.

(7) General Prohibitions of Chapters 24 and 112, Florida Statutes.

(a) Employees shall not solicit or accept anything of value to the employee, including gifts, loans, rewards, promises of future employment, favors, or services based upon any understanding that the official action or judgment of the employee would be influenced thereby.

(b) Employees shall not corruptly use or attempt to use their positions to gain special privileges, benefits or exemptions for themselves or others.

(c) Employees, their spouses and minor children shall not accept any compensation, payment or thing of value when they know or should know that it was given to influence the official action of the employee.

(d) Employees shall not disclose or use information not available to the public and obtained by reason of their public positions for the personal benefit of themselves or others.

(e) Employees shall not solicit or accept an honorarium that is related to their public office or duties. Employees may accept payment of expenses related to an honorarium event unless the payment is from a lobbyist or principal.

(f) Employees acting as purchasing agents shall not directly or indirectly purchase, rent, or lease any realty, goods or services for the Lottery from a business in which the employee or the employee's spouse or child owns more than a 5% interest.

(g) Employees acting in a private capacity shall not rent, sell or lease realty, goods or services to the Lottery.

(h) Employees shall not accept employment that would create a conflict of interest between their private interests and the performance of their public duties, or accept other employment with any business entity subject to regulation by, or doing business with, the Lottery.

(i) Employees having decisionmaking authority shall not participate in any decision involving a vendor or retailer with whom they have a financial interest.

(j) Employees having decisionmaking authority shall not participate in any decision involving a vendor or retailer with whom they have discussed employment opportunities, without the prior approval of the Secretary.

(k) Purchase of lottery tickets by employees or any relatives residing in their household is strictly prohibited.

(8) Post-Employment Restrictions.

(a) Employees who became employed by the Lottery after July 1, 1989, who have authority over policy or procurement, shall not, for a period of two (2) years after retirement or termination, personally represent another person or entity for compensation before the Department, unless employed by another agency of state government.

(b) Employees shall not, for a period of two (2) years after retirement or termination, hold any employment or contractual relationship with a business entity other than a state agency in connection with any contract for contractual services that was within the employee's responsibility while employed by the Lottery.

(c) Employees are prohibited, after retirement or termination, from holding any employment or contractual relationship with a business entity other than a state agency in connection with any contract in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, or investigation while an employee of the Lottery.

(d) Employees shall not, for a period of one (1) year following cessation of employment with the Lottery, represent any vendor or retailer before the Lottery regarding any specific matter in which the employee was involved while employed by the Lottery.

(9) Nepotism.

Employees are prohibited from seeking for a relative any appointment, employment, promotion or advancement in the unit in which he/she is serving or over which he/she exercises jurisdiction or control.

(10) Frequent-Flyer Miles Earned Through State-Reimbursed Travel.

Employees may sometimes be required to travel on State business, requiring them to spend evenings and weekends away from their homes and families. Per diem reimbursements often do not fully reimburse the employee for out-of-pocket travel expenses. As a matter of general policy, any

frequent-flyer miles and/or bonus miles awarded to an employee as a result of State-reimbursed travel may be used for personal use by the employee.

(11) Exceptions.

There may be unique and/or compelling circumstances warranting exceptions to and/or waivers from the above requirements in certain individual cases. In those instances, application may be made in advance to the chief ethics officer for an exception.

(12) Reporting of Violation.

An employee who believes that a violation of the Lottery Code of Ethics has occurred may report the suspected violation to the chief ethics office and/or the Lottery's Office of Inspector General.

(13) Training.

All employees shall receive Code of Ethics training upon appointment and thereafter on an annual basis.

Rulemaking Authority 24.105(20), 24.109(1) FS. Law Implemented 24.105(20), 24.105(19)(b), (c), 24.116(2), Chapter 112, Part III. FS. History—New 11-16-11, Replaces 53ER07-40 and 53ER07-41.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: November 16, 2011

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF LAW ENFORCEMENT

NOTICE IS HEREBY GIVEN that on November 15, 2011, the Criminal Justice Standards and Training Commission, received a petition for a permanent waiver of subsection 11B-27.00212(14), F.A.C., from Lake Wales Police Department on behalf of one officer for the 2008 reporting period (7/1/2006 – 6/30/2008). Subsection 11B-27.00212(14), F.A.C., requires officers to requalify with a firearm every two years on a course of fire mandated by Commission rule and supervised by a CJSTC-certified firearms instructor. The petition supports the requested waiver by stating that the officer at issue did successfully complete the course of fire, however, there is no CJSTC 86A form on file showing that the officer completed the course of fire. Petitioner states that the officer will suffer a substantial hardship if his certification is rendered inactive as a result of this situation. Petitioner further states that it would violate the principles of fairness to fail to recognize that the officer did successfully complete the requirement simply because his CJSTC 86A form is missing for the 2008 mandatory firearms requalification for the officer.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302 or by telephoning (850)410-7676.

WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN that on November 9, 2011, the South Florida Water Management District (District), received a petition for waiver from Florida Power and Light Company, Application No. 11-1109-1 M, for utilization of Works or Lands of the District known as L-31E to allow an existing power pole with siren system serving the Turkey Point Power Plant located within forty feet of the top of the canal bank to remain within the west right of way of L-31E located approximately 141' north of the intersection of L-31 E and the North Canal, Section 16, Township 57 South, Range 40 East, Miami-Dade County. The petition seeks relief from paragraphs 40E-6.221(2)(a) and (j), Florida Administrative Code, which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of the canal bank within Works or Lands of the District.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Juli Russell at (561)682-6268 or e-mail: jurussel@sfwmd.gov. The District will accept comments concerning the petition for 14 days from the date of publication of this notice. To be considered, comments must be received by the end of business on the 14th day at: South Florida Water Management District, 3301 Gun Club Road, MSC #1410, West Palm Beach, FL 33406, Attn.: Juli Russell, Office of Counsel.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

The Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice on November 16, 2011, the Division issued an order. The Final Order was in response to a Petition for emergency Variance from Crystal River Nuclear Plant, filed October 19, 2011, and advertised in Vol. 37, No. 4, of the Florida Administrative Weekly. No comments were received in response to the petition. The Final Order on the Petition for Variance grants the Petitioner a variance from Rule 5.7.12.2 ASME A17.1, 2000 edition, as adopted by Chapter 30, Section 3001.2, Florida Building Code, adopted by paragraph 61C-5.001(1)(a), Florida Administrative Code, that requires special purpose personnel elevator's capacity not exceed 1000 lbs and clear area not exceed 13 square feet because the Petitioner has demonstrated that the purpose of the statute underlying the rule will be met and that Petitioner would suffer a substantial hardship if required to comply with this rule (VW 2011-354).