

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EES 13-02 Ethics
SPONSOR(S): Ethics & Elections Subcommittee
TIED BILLS: PCB EES 13-03 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics & Elections Subcommittee	13 Y, 0 N	Davison	Marino

SUMMARY ANALYSIS

PCB EES 13-02 is a comprehensive bill that amends the Code of Ethics for Public Officers and Employees in the following manner:

- Prohibits public officers and qualified candidates from accepting employment with the state or any of its political subdivisions under specified conditions; prohibits public officers from accepting promotion or anything of value from an entity that employed the public officer prior to election under specified conditions.
- Prohibits a former Speaker of the House of Representatives or President of the Senate, for two years after vacation of office, from representing another for compensation before a state agency, other than before judicial tribunals; and prohibits either from associating with an entity for the purpose of working on matters that will come before the legislature or providing networking or relationship building services with current legislators.
- Presumptively prohibits a former Speaker of the House of Representatives or President of the Senate from associating with an entity whose primary purpose is legislative lobbying unless the Commission on Ethics (Commission) first issues an advisory opinion finding the association complies with the law.
- Requires constitutional officers to complete an annual 4-hour ethics course.
- Allows for the creation of blind trusts for public officers and finds that, if a public officer creates a trust in compliance with the law and does not control the interests held by the trust, his or her official actions will not result in a conflict of interest.
- Requires state public officers to abstain from voting on any matter that the officer knows would inure to his or her "special private gain or loss"; requires a public official to make every reasonable effort to disclose prior to a vote private interests that create a conflict of interest; requires memoranda filed after a vote to be filed no later than 15 days after the vote; specifies that attorneys who are public officers are not required to violate client confidentiality or privilege laws; allows legislators to file conflict of interest disclosure forms as prescribed by legislative rules.
- Requires the Commission to create an electronic filing system and creates a method for filers to "cure" incomplete or inaccurate financial disclosure forms under certain circumstances.
- Authorizes attorneys and CPAs to complete financial disclosure forms.
- Authorizes additional collection methods for the Commission for unpaid fines and extends the statute of limitations for collecting fines from 4 to 20 years.
- Prohibits a reporting individual or procurement employee from soliciting any gift and from knowingly accepting a gift worth more than \$100 from a vendor; prohibits a vendor doing business with a reporting individual's or procurement employee's agency from giving either a gift worth more than \$100; prohibits a reporting individual or procurement employee from knowingly accepting an honorarium from a vendor and prohibits a vendor from giving an honorarium to a reporting individual or vendor.
- Authorizes the Commission to investigate complaints alleging prohibited expenditures or other violations by an executive branch lobbyist or principal.
- Authorizes specified parties to submit written referrals of possible ethics violations to the Commission.
- Prohibits complaints on Election Day and 30 days prior unless the complaint is based upon personal information other than hearsay.
- Allows the Commission to dismiss a complaint of a de minimis violation.

While the bill will likely result in an increased collection of outstanding fines, the amount is indeterminate. Commission staff has estimated that the additional workload created by the bill will require two additional staff at a recurring cost of approximately \$89,000.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

1. Definition of “Business Entity”

Current Situation

The definition of “business entity” does not include a “company” or “limited liability company,” but does include any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.¹

Effect of Proposed Changes

The bill adds “company” and “limited liability company” to the definition of “business entity.”

2. Dual Public Employment

Current Situation

There is no provision specifically prohibiting members of the legislature from being employed by the state or its political subdivisions.² However, Article II, section 5 of the Florida Constitution prohibits anyone who holds a public office in Florida from holding any other public office simultaneously.³ Florida law also prohibits a member of the legislature from representing another person or entity for compensation during his term of office before any state agency⁴ other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.⁵

Under current law, an employee of a state agency, county, municipality, special taxing district, or other political subdivision of the state is prohibited from simultaneously holding office as a member of the governing board, council, commission, or authority, by whatever name known, that serves as his or her employer.⁶ Employees of an agency and public officers⁷ are prohibited from having an employment or contractual relationship with a business or agency that is doing business with or subject to the regulation of the agency of which they are an officer or employee.⁸ Employees and public officers are also prohibited from having an employment relationship that will create a continuing or frequently recurring conflict between their private interests and their public duties.⁹

Public officers, employees of agencies, local government attorneys, and their spouses and minor children are prohibited from accepting any compensation, payment, or thing of value when they know, or with the exercise of reasonable care should know, that it was given to influence a vote or other official action.¹⁰ Public officers, employees of agencies, and local government attorneys are also prohibited from corruptly using or attempting to use their official position or the resources thereof to obtain a special privilege or benefit for themselves or others.¹¹ Therefore, public officers cannot accept employment or a promotion when they know, or should know, it was offered for the purpose of influencing a vote or other official action.

¹ s. 112.312(5), F.S.

² “Political subdivision” includes “counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.” s. 1.01(8), F.S.

³ Art. II, s. 5(a), Fla. Const. The Constitution enumerates the following exceptions from this provision: notary publics, military officers, members of the constitution revision commission, members of the taxation and budget reform commission, members of a constitutional convention, and members of statutory bodies with purely advisory powers. Further, members of a judicial nominating commission may also hold non-judicial public office, and the Lieutenant Governor may act as the head of a department. Article V, Section 20, Fla. Const.; s. 20.05(3), F.S.

⁴ For purposes of this provision, “state agency” means an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control. s. 112.313(9), F.S.

⁵ s. 112.313(9)(a)3., F.S.

⁶ s. 112.313(10)(a), F.S.

⁷ “Public officer” is defined as including “any person elected or appointed to hold office in any agency, including any person serving on an advisory body.” s. 112.313(1), F.S.

⁸ s. 112.313(7)(a), F.S.

⁹ s. 112.313(7)(a), F.S.

¹⁰ s. 112.313(4), F.S.

¹¹ s. 112.313(6), F.S.

Effect of Proposed Changes

The bill creates a new statute specifically prohibiting an elected state or local public officer,¹² or candidate who has qualified for state or local office, from accepting additional employment with the state or any of its political subdivisions if he or she knows or should know that the position is being offered for the purpose of gaining influence or some other advantage based upon his or her office or candidacy for office.

Any public employment accepted by a public officer or candidate must satisfy the following conditions:

- (1) The position already existed or was created by the employer without anticipation or knowledge of the public officer's or candidate's interest in the position;
- (2) The position was publicly advertised;
- (3) The public officer or candidate was subject to the same application and hiring process as other candidates for the position; and
- (4) The public officer or candidate meets or exceeds the qualifications for the position.

An individual employed by the state or any of its political subdivisions before qualifying as a public officer is prohibited from accepting promotion, advancement, additional compensation, or anything of value that he or she knows or should know is given as a result of the officer's election or position as an officer, or that is otherwise inconsistent with what is given to a similarly situated employee.

The bill does not authorize employment that is otherwise prohibited by law.

3. Post-officeholding Restrictions

Current Situation

Members of the legislature, appointed state officers, statewide elected officers, and designated public employees, and individuals elected to county, municipal, special district, or school district office are prohibited from representing another person or entity for compensation before the government body or agency of which the individual was an officer or member for two years following vacation of office.¹³ Counties, municipalities, special districts, and school districts are permitted to adopt laws to prohibit appointed county, municipal, special district, or school district officers from representing another person or entity before the government body or agency of which he was an officer for two years after leaving office.¹⁴

¹² "Public officer" is defined as "any person who is elected to state or local office or, for the period of his or her candidacy, any person who has qualified as a candidate for state or local office."

¹³ Art. II, s. 8(e), Fla. Const.; s. 112.313(9), F.S.; s. 112.313(14), F.S. For purposes of this provision, "employee" is defined as any person holding an executive or legislative branch position in Senior Management Service, Selected Exempt Service, or any person having authority over policy or procurement employed with the Department of the Lottery; the Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives; the executive director and deputy executive director of the Commission on Ethics; an executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title; the Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university; and any person, including an other-personal-services employee, having the power normally conferred upon the positions listed above. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations. s. 112.313(9), F.S.

¹⁴ s. 112.313(13), F.S.

Effect of Proposed Changes

The bill prohibits a former Speaker of the House of Representatives or President of the Senate, for two years after vacation of office, from:

- Representing another person or entity for compensation before any state agency, other than before judicial tribunals.
- Associating with a firm as a partner, principal, employee, or consultant for the purpose of drafting, strategizing, consulting, advising, or in any way working on matters that will come before the legislature.
- Providing networking or relationship building services with sitting members of the legislature.

A former presiding officer of the legislature is prohibited from employment, partnership, or association with a principal, firm, or entity whose primary purpose is legislative lobbying unless the former presiding officer of the legislature or the principal, firm, or employing entity seeks and receives a favorable opinion from the Commission on Ethics (Commission). Thereafter, if the primary purpose of the employer, association, partnership, principal, firm, or entity affiliating with the former presiding officer is legislative lobbying, the entity must annually file a sworn statement with the House Clerk or Secretary of the Senate affirming that any former presiding officer of the legislature associated with the entity did not engage in any of the prohibited activities (i.e. drafting, strategizing, consulting, advising, or in any way working on matters that will come before the legislature, or providing networking or relationship building services with current legislators).

4. Ethics Training for Constitutional Officers

Current Situation

Under current law, there is no provision requiring constitutional officers to complete ethics training regarding the Sunshine Amendment¹⁵ or the Code of Ethics for Public Officers and Employees (Code of Ethics).

Effect of Proposed Changes

The bill requires constitutional officers to complete an annual 4-hour ethics training addressing the Sunshine Amendment, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the state. This requirement can be met by completing a continuing education class, seminar, or presentation, as long as the required subjects are included.

The bill defines “constitutional officers” to include: the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.

The Commission is required to create rules that establish the minimum course content for the ethics training portions that relate to the Sunshine Amendment and the Code of Ethics. The bill requires the legislature to provide training for its members by the rules of each house.

5. Qualified Blind Trusts

Current Situation

A blind trust is a trust in which the beneficiaries have no knowledge of the holdings or management of the trust by the trustee. Blind trusts are used in situations where the beneficiary is to be kept unaware of the trust assets specifics, usually for reasons of avoiding conflicts of interest.

Under federal law, certain public officers and employees are required to file a report of their financial interests within 30 days after assuming their position.¹⁶ However, these officials are not required to disclose the holdings of or the source of income from any of the holdings of any qualified blind trust.¹⁷

¹⁵ Codified in Article II, Section 8 of the Florida Constitution.

¹⁶ Ethics in Government Act of 1978, 5 U.S.C. s. 101(a).

Though Florida law does not currently address blind trusts for public officers, reporting officials must specifically disclose all financial interests in filings with the Commission.¹⁸

Effect of Proposed Changes

The bill allows a public officer to create a qualified blind trust and place readily marketable assets into the trust to prevent a conflict of interest from arising with respect to those assets. The bill makes a legislative finding that if a public officer creates such a trust and does not control the interests held by the trust, his or her officer activities will not be influenced or appear to be influenced by private considerations. The bill declares that a public officer who places assets in a blind trust created in accordance with the law does not have a conflict of interest prohibited by law or a voting conflict of interest with respect to matters pertaining to assets in the trust.

The public officer is prohibited from influencing or controlling assets in the trust, making any effort to obtain information about the trust, and communicating with the trustee except under limited circumstances. These limited circumstances include requests for distributions, communications regarding the public officer's financial needs, and instructions to sell certain assets originally placed in the trust if the public officer is subsequently prohibited by law from holding the assets. The public officer is entitled to obtain enough information to prepare his or her personal income tax statements. The public officer is also required to disclose the blind trust as an asset on his or her financial disclosure form and to disclose as primary income any income exceeding the thresholds for reporting. Furthermore, the public officer is required to disclose, on his or her financial disclosure, all assets held by the trust.

The bill restricts who may serve as the trustee of the blind trust. The person appointed as the trustee may not be the public officer's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin, or the spouse of any such person. The trustee may not be an elected public officer, a public employee, a person who has been appointed to serve in an agency by the public officer, or a public employee supervised by the public officer.

The bill requires the trust agreement formed when the trust is created to list the assets placed in the trust and contain a statement of purpose to remove control and knowledge of the investments so that conflicts between the public officer's duties and his or her private interests will be eliminated. The trust agreement must give the trustee complete control over the assets, including the power to dispose of and acquire property. The trust agreement must also specify that communications between the trustee and the public officer concerning the trust holdings or sources of income are prohibited. Lastly, the agreement must specify that the trust tax return is to be prepared by the trustee and information related to the trust is not to be disclosed to the public officer.

Within five business days after the trust agreement is executed, the public officer must file with the Commission a copy of the trust agreement and a notice setting forth the date of execution, the name and address of the trustee, and an acknowledgment by the trustee that he or she has agreed to serve as trustee. If the trust is revoked or if the public officer learns of any replacement assets that have been added to the trust, the public officer must file an amendment to his or her most recent financial disclosure statement within 60 days.

6. Voting Conflicts

Current Situation

State public officers¹⁹ are not prohibited from voting on any matter.²⁰ However, when a state public officer is voting in an official capacity on a measure that would inure to the officer's special private gain or loss; that he

¹⁷ Ethics in Government Act of 1978, 5 U.S.C. s. 102(f)(2)(A).

¹⁸ See section discussing financial disclosure.

or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or that the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer, the conflict must be disclosed by the voting state public officer.²¹ Disclosure must be made within 15 days after the vote occurs in a memorandum stating the nature of the interest and filed with the person responsible for recording the minutes of the meeting.²²

In contrast, county, municipal, and other local public officers are prohibited from voting in an official capacity upon any measure that would inure to his or her special private gain or loss; or that the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. The officer must publicly announce the nature of his or her interest in the matter from which he or she is abstaining from voting. Disclosure must also be made within 15 days after the vote occurs in a memorandum stating the nature of the interest and filed with the person responsible for recording the minutes of the meeting.²³

Under current law, board members of Enterprise Florida, Inc. are subject to the voting conflict requirements in the Florida Statutes. However, the law does not specify whether board members of Enterprise Florida, Inc. are subject to the voting conflict requirements that apply to state public officers or to county, municipal, and other local public officers.²⁴

Effect of Proposed Changes

The bill defines “principal” to include the parent organization or subsidiary of any business entity by which the public officer is retained.

The bill prohibits a state public officer from voting on a measure that he or she knows will inure to *the public officer’s* “special private gain or loss” and requires the officer to make a reasonable effort to file a written disclosure of a conflict prior to a vote. The bill maintains the current voting and disclosure requirements for the “special private gain or loss” of relatives, business associates, or principals of the public officer. However, the bill requires a state public officer to make a “reasonable effort” to file a written disclosure of a conflict prior to taking a vote on a measure that inures to the special private gain or loss of relatives, business associates, or principals of the public officer. If it is not possible to file a disclosure before voting, the disclosure must be filed within 15 days after the vote.

The bill specifies that attorneys who are also public officers are not required to violate client confidentiality or privilege laws but must nevertheless disclose the nature of the interest in a way to provide notice of the conflict.

The bill allows legislators to satisfy the disclosure requirements by using a form created by their respective house.

The bill specifies that board members of Enterprise Florida, Inc. are required to comply with the voting conflicts requirements applicable to state public officers.

7. Financial Disclosure

Current Situation

¹⁹ “Public officer” includes “any person elected or appointed to hold office in any agency, including any person serving on an advisory body.” s. 112.3143(1)(a), F.S.

²⁰ s. 112.3143(2), F.S.

²¹ s. 112.3143(2), F.S.

²² s. 112.3143(2), F.S. Rule 3.2 of the House Rules contains the same disclosure requirements.

²³ s. 112.3143(3)(a), F.S.

²⁴ s. 288.901, F.S.; s. 112.3143, F.S.

The Florida Constitution and the Florida Statutes require public officials, candidates, and certain public employees to file financial disclosure forms.²⁵ Persons required to annually file a statement of financial interests (Form 1)²⁶ include all state officers, local officers, candidates for local elective office, and specified state employees (other than those officers who are required by law to file Form 6).²⁷ Persons required by law to annually file a full and public disclosure of financial interests (Form 6) include all elected constitutional officers and candidates for such offices, which offices include the Governor, the Lieutenant Governor; the members of the Cabinet; the members of the Legislature, the Justices of the Supreme Court; the Judges of the District Courts of Appeal, Circuit Courts, and County Courts; State Attorneys; Public Defenders; Clerks of the Circuit Courts; Sheriffs; County Tax Collectors; Property Appraisers; Supervisors of Elections; County Commissioners; elected Superintendents of schools; members of District School Boards; Mayor and members of the Jacksonville City Council; the Duval County Superintendent of Schools; members of the Florida Housing Finance Corporation Board and the Florida Prepaid College Board; and members of expressway authorities, transportation authorities (except the Jacksonville Transportation Authority), or toll authorities created pursuant to general law.²⁸

Form 1 filers must disclose their primary sources of income (other than from his or her public position), secondary sources of income (in certain circumstances), real property in Florida (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified businesses.²⁹

Form 1 filers have the option of calculating reportable interests based on either “comparative (percentage) threshold” or “dollar value threshold.” Filers that choose the “comparative (percentage) threshold” method may calculate whether an interest is required to be reported based upon whether that interest exceeds a specified percentage of his or her net worth. Filers that choose the “dollar value threshold method” may calculate whether an interest is required to be reported based upon whether that interest exceeds a specified dollar value. Reporting dollar values requires fewer calculations. No dollar values are required to be disclosed. Because the law permits a filer to choose which calculation method he is going to use, Form 1 includes a section requesting filers to indicate which method is used. However, under current law, filers are not expressly required to indicate which method is used.³⁰

Form 6 filers must disclose their net worth, the aggregate value of household goods and personal effects, assets individually valued over \$1,000, liabilities in excess of \$1,000, sources of income, secondary sources of income (in certain circumstances), and interests in specified businesses.³¹ Form 6 must be accompanied by either the filer’s most recent federal tax return or a sworn statement identifying each source of income. Filers may choose to file their most recent income tax return in lieu of listing sources of income.³²

Constitutional officers, state officers, and specified state employees file their financial disclosure with the Commission on Ethics.³³ Local officers file with the supervisor of elections of the county in which they reside.³⁴ Candidates are required to file with their qualifying officer.³⁵

Financial disclosure forms are due July 1 of each year.³⁶ Forms not filed by September 1 are subject to a fine of \$25 per day for each day late up to a maximum of \$1,500.³⁷ For candidates, financial disclosure is required at the time of qualifying along with other qualifying materials.³⁸ Form 1 must also be filed 30 days after the date of employment or appointment.³⁹ Filers of Form 1 or Form 6 may amend their disclosure with Form 1X

²⁵ Art. II, s. 8(a)-(b), Fla. Const.; s. 112.3144, F.S.; s. 112.3145, F.S.

²⁶ The Commission on Ethics has promulgated the forms discussed in this section.

²⁷ s. 112.3145, F.S.

²⁸ Art. II, s. 8, Fla. Const.; s. 112.3144, F.S.; Rule 34-8.003, Fla. Admin. Code; “Who Must File Form 6,” Florida Commission on Ethics, *CE Form 6 Full and Public Disclosure of Financial Interests*, 2012.

²⁹ s. 112.3145(3), F.S.

³⁰ s. 112.3145(3), F.S. See also Florida Commission on Ethics, *CE Form 6 Full and Public Disclosure of Financial Interests*, 2012.

³¹ s. 112.3144(3)-(4), F.S.; Rule 34-8.005, Fla. Admin. Code. See also Florida Commission on Ethics, *CE Form 6 Full and Public Disclosure of Financial Interests*, 2012.

³² Rule 34-8.005, Fla. Admin. Code. See also Florida Commission on Ethics, *CE Form 6 Full and Public Disclosure of Financial Interests*, 2012.

³³ s. 112.3144(1), F.S.; s. 112.3145(2)(c), F.S.

³⁴ s. 112.3145(2)(c), F.S.

³⁵ s. 112.3145(2)(c), F.S.

³⁶ s. 112.3144(5)(g), F.S.; s. 112.3145(2)(b), F.S.

³⁷ s. 112.3144(5)(e), F.S.; s. 112.3145(6)(c), F.S.

³⁸ s. 99.061(5), F.S.

³⁹ s. 112.3145(2)(b), F.S.

and Form 6X.⁴⁰ Sixty days after leaving public office or employment, a final full and public disclosure of financial interests (Form 6F) or a final statement of financial interests (Form 1F) must be filed.⁴¹ There is no specific form by which to amend Form 6F or Form 1F.

The Commission on Ethics and supervisors of elections are statutorily required to identify those subject to the financial disclosure requirement, to provide notice to those individuals, and to track receipt of financial disclosures.⁴² Filers may contact the Commission on Ethics for guidance. Formal written opinions can also be issued by the Commission.⁴³

Neither the Commission nor the supervisors of elections are required to examine financial disclosure filings. However, a member of the public can file a complaint with the Commission alleging that the filer failed to disclose information they were legally obligated to disclose or inaccurately disclosed such information.⁴⁴ Failure to make any required disclosure or inaccurate disclosure may constitute grounds for, and may be punished by, one or more of the following: disqualification from being on the ballot, impeachment, removal or suspension from office or employment, demotion, reduction in salary, reprimand, or a civil penalty not exceeding \$10,000.⁴⁵ Though a filer may amend his financial disclosure, an amendment may not necessarily “cure” the original filing in an instance where a complaint is filed.

Effect of Proposed Changes

Public Accessibility

The bill requires all full and public disclosures of financial interests (Form 6) that are filed with the Commission beginning with the 2012 filing year to be scanned and made available on the Commission’s website in a searchable database. The Commission is required to submit a proposal by December 1, 2015, for a mandatory electronic filing system for Form 6 filers. At a minimum, the proposal must:

- (a) Provide for access by Internet;
- (b) Establish a procedure to make filings available in a searchable format online;
- (c) Allow for preparation of financial disclosure forms with software approved by the Commission;
- (d) Provide for security to prevent unauthorized access to the system;
- (e) Provide for signature by a certified public accountant (CPA) or attorney;
- (f) Provide for an alternative filing method in the event the system is inoperable;
- (g) Provide for a receipt to be obtained verifying that the officer has filed the form; and
- (h) Provide for a determination of the feasibility and necessity of including Form 1 in the electronic filing system.

De Minimis Exception Procedures

The bill creates new procedures for addressing de minimis errors or omissions concerning complaints alleging violations related to the financial disclosure requirement. Specifically, the bill creates a “cure” mechanism by requiring the Commission to treat an amended financial disclosure as the original filing if the amendment is filed by September 1, even if a complaint has been filed. If a complaint pertains to a disclosure filed in the current year or the previous five years, the Commission is required to follow the normal statutory complaint procedures if a complaint is filed alleging failure to properly and accurately disclose any information. However, if a complaint is filed after August 25 of any year alleging an immaterial, inconsequential, or de minimis error or omission, the Commission may only notify a filer. The filer has 30 days to file an amended disclosure correcting errors, but the Commission must follow normal complaint procedures if the filer fails to submit an amended disclosure.

⁴⁰ Rule 34-8.209, Fla. Admin. Code; Rule 34-8.009, Fla. Admin. Code.

⁴¹ s. 112.3144(6), F.S.; s. 112.3145(2)(b), F.S.

⁴² s. 112.3144, F.S.; s. 112.3145, F.S.

⁴³ s. 112.322(3)(a), F.S.

⁴⁴ s. 112.324, F.S.

⁴⁵ s. 112.317(1), F.S.

The bill allows filers to file a new *final* disclosure form within 60 days after the original form was filed regardless of whether a complaint was filed. The Commission is authorized to follow normal complaint procedures if a complaint is filed more than 60 days after a form is filed if the complaint alleges a complete omission of any required information. However, if a complaint is filed alleging an immaterial, inconsequential, or de minimis error or omission, the Commission may only notify the filer. The filer has 30 days to file a new final disclosure correcting the errors, but the Commission must follow normal complaint procedures if the filer fails to timely file a new final disclosure.

For purposes of these changes, an error or omission is considered immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest.

Preparation of Forms by CPA

The bill authorizes a certified public accountant (CPA) or an attorney to prepare disclosure forms for a filer. The bill requires the CPA or attorney to sign the financial disclosure form indicating that the form is true and correct to the best of his or her knowledge and that the disclosure requirements were followed. If a complaint is filed alleging failure to disclose required information, the Commission is required to determine whether the information was disclosed to the CPA or attorney. The failure of a CPA or attorney to accurately transcribe information provided by the filer is not a violation of the Code of Ethics. A candidate or elected officeholder is allowed to pay for CPA or attorney services from funds in a campaign or office account.

Candidate Qualifying Financial Disclosures

The bill requires qualifying officers to submit an electronic copy of a candidate's financial disclosure to the Commission within 3 days after receipt. This disclosure satisfies the annual disclosure requirements of the law. A candidate who does not qualify until after filing an annual financial disclosure may file a copy of the annual financial disclosure with the qualifying officer.

Form 1 Filing Requirements

The bill requires the following persons, who are not required to file disclosures under current law, to file a limited disclosure of financial interests (Form 1):

- (1) Members of a community redevelopment agency board;
- (2) The finance director of a county, municipality, or other political subdivision;
- (3) Criminal Conflict and Civil Regional Counsel; and
- (4) Assistant Criminal Conflict and Civil Regional Counsel.

8. Collection Methods for Unpaid Automatic Fines

Current Situation

Any fine for a violation of a financial disclosure requirement imposed by the Commission 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 appeal must be submitted to the Department of Financial Services as a claim, debt, or other obligation owed to the state.⁴⁶ The Department of Financial Services is required to assign the collection of such a fine to a collection agent.⁴⁷

⁴⁶ s. 112.3145(6)(i), F.S.

⁴⁷ s. 112.3145(6)(i), F.S.

Under current law, the Commission is limited to collecting unpaid fines within four years.⁴⁸ According to the Commission, collection efforts have often been unsuccessful and the Commission has been required to write off many unpaid fines.

Effect of Proposed Changes

The bill provides the Commission additional authority to collect financial disclosure fines. The bill increases the amount of time the Commission has to collect unpaid fines from four years to twenty years. The bill also requires the Commission to attempt to determine if a person who owes an unpaid fine is a current public officer or public employee. If so, the Commission may notify the Chief Financial Officer (CFO) or the governing body of the appropriate county, municipality, or special district of the total amount of the fine owed. The CFO or local agency must withhold the lesser of 10% or the maximum allowable under federal law of any salary-related payment. The withheld amount is remitted to the Commission until the full fine is paid.

If the person who owes the fine is no longer a public officer or employee, or if the Commission is unable to determine whether the person is a current public officer or employee, the bill authorizes the Commission to seek garnishment of any wages of the person owing a fine or refer to a collection agency an unpaid fine.

9. Gift Ban

Current Situation

Under the “gift ban” in ch. 112, F.S., reporting individuals and procurement employees⁴⁹ are prohibited from soliciting any gifts from a political committee, a committee of continuous existence (CCE), or a lobbyist who lobbies the individual’s agency, or the partner, firm, employer, or principal of such lobbyist, where the gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.⁵⁰ Reporting individuals and procurement employees are also prohibited from knowingly accepting, directly or indirectly, a gift believed to have a value in excess of \$100 from the same individuals or entities.⁵¹ Political committees, CCEs, principals, and lobbyists are prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to a reporting individual or procurement employee or any other person on his or her behalf.⁵² However, these individuals and entities are permitted to give, and reporting individuals and procurement employees are permitted to receive, gifts having a value in excess of \$100 if the gift is intended to be transferred to a governmental entity or a charitable organization.⁵³

Effect of Proposed Changes

The bill refines the definition of “procurement employee” to include only employees who, in the previous 12 months, have participated in the procurement of contractual services or commodities costing more than \$10,000 during any fiscal year, rather than all employees who have ever participated in a procurement regardless of the amount of its cost.

The bill prohibits reporting individuals and procurement employees from soliciting *any* gift, and from knowingly accepting a gift worth more than \$100 from a vendor. The bill defines vendor as a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services. A vendor doing business with a reporting individual’s or procurement employee’s agency is also prohibited from giving either a gift worth more than \$100.

⁴⁸ s. 95.11(3)(f), F.S..

⁴⁹ A procurement employee is “any employee of an officer, department, board, commission, or council of the executive branch or judicial branch of state government 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 . . . if the cost of such services or commodities exceeds \$1,000 in any year.” s. 112.3148(1)(e), F.S.

⁵⁰ s. 112.3148(3), F.S.

⁵¹ s. 112.3148(4), F.S.

⁵² s. 112.3148(5)(a), F.S.

⁵³ ss. 112.3148(4) and 112.3148(5)(a), F.S.

The bill retains the current prohibitions with respect to lobbyists, principals, and political committees. The bill deletes references to CCEs because CS/CS/CS/HB 569 eliminates CCEs.

10. Honoraria

Current Situation

An honorarium is a payment of money or anything of value, directly or indirectly, to a reporting individual or procurement employee, or to any other person on his or her behalf, as consideration for a speech, address, oration, or other oral presentation by the reporting individual or procurement employee, regardless of whether presented in person, recorded, or broadcast over the media; or a writing by the reporting individual or procurement employee, other than a book, which has been or is intended to be published.⁵⁴ The term honorarium does not include “the payment for services related to employment held outside the reporting individual’s or procurement employee’s public position that resulted in the person becoming a reporting individual or procurement employee, any ordinary payment or salary received in consideration for services related to the reporting individual’s or procurement employee’s public duties, a campaign contribution reported pursuant to chapter 106, or the payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event, including any event or meeting registration fee, for a reporting individual or procurement employee and spouse.”⁵⁵

Reporting individuals and procurement employees are prohibited from knowingly accepting an honorarium from a political committee, a CCE, or a lobbyist who lobbies the individual’s agency, or from the employer, principal, partner, or firm of such a lobbyist.⁵⁶ In turn, these individuals and entities are prohibited from giving honoraria to reporting individuals and procurement employees.⁵⁷ A reporting individual or procurement employee is also prohibited from soliciting an honorarium that is related to the reporting individual’s or procurement employee’s public office or duties.⁵⁸

Effect of Proposed Changes

The bill refines the definition of “procurement employee” to include only employees who, in the previous 12 months, have participated in the procurement of contractual services or commodities costing more than \$10,000 during any fiscal year, rather than all employees who have ever participated in a procurement regardless of the amount of its cost.

The bill prohibits reporting individuals and procurement employees from knowingly accepting an honorarium from a vendor doing business with the reporting individual’s or procurement employee’s agency. The bill defines vendor as a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services. A vendor doing business with a reporting individual’s or procurement employee’s agency is also prohibited from giving either an honorarium.

The bill retains the current prohibitions with respect to lobbyists, principals, and political committees. The bill deletes references to CCEs because CS/CS/CS/HB 569 eliminates CCEs.

11. Lobbying Before the Executive Branch

Current Situation

Each person who wishes to lobby the executive branch must register as a lobbyist with the Commission, and must provide a statement signed by the principal or principal’s representative that the registrant is authorized to represent the principal.⁵⁹ Each lobbying firm must 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

⁵⁴ s. 112.3149(1)(a), F.S.

⁵⁵ s. 112.3149(1)(a), F.S.

⁵⁶ s. 112.3149(3), F.S.

⁵⁷ s. 112.3149(4), F.S.

⁵⁸ s. 112.3149(2), F.S.

⁵⁹ s. 112.3215(3), F.S.

principal.⁶⁰ A lobbyist or principal is prohibited from making, directly or indirectly, and an agency official, member or employee is prohibited from knowingly accepting, directly or indirectly, any expenditure⁶¹ The Commission is required to investigate complaints alleging that a person failed to register as required by law, failed to submit a compensation report, or knowingly submitted false information in any report or registration.⁶² Investigation by the Commission occurs upon receipt of information from a sworn complaint against a lobbying firm or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.⁶³ Upon a finding that a violation has occurred, the Governor and Cabinet may reprimand the violator, censure the violator, or prohibit the violator from lobbying for up to two years.⁶⁴ If the violator is a lobbying firm, the Governor and Cabinet may also assess a fine of up to \$5,000.⁶⁵

Effect of Proposed Changes

The bill conforms the executive branch lobbyist expenditure provisions to the more comprehensive legislative branch lobbyist expenditure provisions found in s. 11.045, F.S. Specifically, the bill authorizes the Commission to investigate complaints alleging prohibited expenditures or other violations by an executive branch lobbyist or principal. The bill provides that an executive branch lobbyist or principal who knowingly fails to disclose any material fact that is required, who knowingly provides false information on any report, or who violates the lobbyist expenditure ban may be subject to a fine of up to \$5,000. The \$5,000 penalty is in addition to any other penalty assessed by the Governor and Cabinet as described above.

12. Procedures on Complaints of Violations and Referrals

Current Situation

The Commission is required to investigate an alleged violation of the Code of Ethics or any other breach of the public trust upon receipt of a written, sworn complaint submitted by any person.⁶⁶ The Commission must transmit a copy of the complaint to the alleged violator within 5 days of receipt.⁶⁷ The Executive Director first reviews the complaint for legal sufficiency.⁶⁸ If the Executive Director determines that the complaint is not legally sufficient, the complaint is brought before the Commission in executive session with the recommendations of the Executive Director.⁶⁹ The Commission then may find the complaint to be sufficient and order an investigation; may find the complaint to be insufficient, dismiss it, and notify the complainant that an investigation will not be conducted; or may take such other action as may be appropriate.⁷⁰ If a complaint is found legally insufficient and dismissed, a summary of the reasons for dismissing the complaint, the complaint itself, and all related documents become a public record and constitute a public report.⁷¹

If the Executive Director determines that the complaint is sufficient to invoke the jurisdiction of the Commission, an investigation is conducted⁷² consistent with the Commission's rules.⁷³ After the investigation is completed, the Commission reviews the complaint and investigative findings to determine whether probable cause exists to believe that a violation has occurred.⁷⁴ If the Commission determines that probable cause does not exist, the complaint is dismissed and all records become public record.⁷⁵

If the Commission determines that probable cause exists to believe a violation has occurred, the officer or employee who is the subject of the complaint has a right to a public hearing.⁷⁶ Public hearings may be

⁶⁰ s. 112.3215(5)(a)1., F.S.

⁶¹ s. 112.3215(6)(a), F.S. An expenditure is a "payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying." s. 112.3215(1)(d), F.S.

⁶² s. 112.3215(8)(a), F.S.

⁶³ s. 112.3215(8)(c), F.S.

⁶⁴ s. 112.3215(10), F.S.

⁶⁵ s. 112.3215(10), F.S.

⁶⁶ s. 112.324(1), F.S.

⁶⁷ s. 112.324(1), F.S.

⁶⁸ Rule 34-5.002(1), Fla. Admin. Code.

⁶⁹ Rule 34-5.002(3), Fla. Admin. Code.

⁷⁰ Rule 34-5.002(3), Fla. Admin. Code.

⁷¹ Rule 34-5.002(3), Fla. Admin. Code.

⁷² Rule 34.5002(2), Fla. Admin. Code.

⁷³ Rule 34.5004, Fla. Admin. Code.

⁷⁴ s. 112.324(3), F.S.

⁷⁵ s. 112.324(3), F.S.

⁷⁶ s. 112.324(3), F.S.

conducted by the full Commission, by a single Commission member, or by the Division of Administrative Hearings, as directed by the Chair of the Commission after considering the Commission's workload.⁷⁷ The Commission does not have the authority to impose penalties if a violation is found, but rather must forward its findings to the appropriate body or official for discipline.⁷⁸ Also, if the Commission determines that probable cause exists, the complaint, files, and any further proceedings become public record.⁷⁹ The subject of any complaint may waive, in writing, confidentiality of the complaint at any time during the proceedings.⁸⁰

A complaint against a candidate in any special, primary, or general election may not be filed with the Commission on Election Day or within the five days immediately preceding the election.⁸¹ The disclosure of an intent to file a complaint is likewise prohibited during this time.⁸²

Effect of Proposed Changes

The bill requires the Commission to investigate an alleged violation of the Code of Ethics or an alleged breach of the public trust upon receipt of a written referral from the Governor, the Florida Department of Law Enforcement, a state attorney, or a United States Attorney, if six of the nine members of the Commission determine the referral is sufficient to indicate a violation. The bill also prohibits complaints or referrals against a candidate on Election Day or 30 days prior to the election, unless the complaint is based on personal information other than hearsay.

The bill also allows the Commission to dismiss a complaint or referral during any stage of proceeding if it determines that the violation or alleged violation is a de minimis violation attributable to inadvertent or unintentional error. A violation is declared de minimis if it is unintentional and not material in nature, and if the interests of the public were protected despite the violation.

B. SECTION DIRECTORY:

- Section 1. Amends s. 112.312, F.S., revising definitions.
- Section 2. Creates s. 112.3125, F.S., defining the term "public officer"; prohibiting public officers from accepting employment with the state or any of its political subdivisions under specified conditions.
- Section 3. Amends s. 112.313, F.S., imposing additional post-officeholding employment restrictions on the Speaker of the House of Representatives and the President of the Senate.
- Section 4. Creates s. 112.3142, F.S., requiring constitutional officers to complete annual ethics training; specifying requirements for ethics training; requiring the Commission to adopt rules to establish minimum course content; requiring each house of the Legislature to provide for ethics training pursuant to its rules.
- Section 5. Creates s. 112.31425, F.S., providing for the creation of a qualified blind trust by public officers.
- Section 6. Amends s. 112.3143, F.S., requiring state public officers to abstain from voting on any matter that the officer knows would inure to his or her special private gain or loss; requiring that a memorandum filed after a vote be filed no later than 15 days after the vote; providing that a member of the Legislature satisfies the disclosure requirement by filing a form created pursuant to the rules of his or her respective house; providing that confidential or privileged information need not be disclosed.
- Section 7. Amends s. 112.3144, F.S., modifying financial disclosure filing requirements for public officers and employees.
- Section 8. Creates s. 112.31445, F.S., requiring electronic access to certain financial disclosure forms and requiring the Commission to report on the feasibility of an electronic filing system for all financial disclosure forms.
- Section 9. Amends s. 112.3145, F.S., modifying financial disclosure filing requirements for public officers and employees.

⁷⁷ Rule 34-5.010, Fla. Admin. Code.

⁷⁸ s. 112.324(4)-(9), F.S.

⁷⁹ s. 112.324(4), F.S.

⁸⁰ s. 112.324(2)(c), F.S.; Rule 34.5008(1)(a), Fla. Admin. Code.

⁸¹ s. 112.324(2)(c), F.S.

⁸² s. 112.324(2)(c), F.S.

- Section 10. Creates s. 112.31455, F.S., modifying the manner in which the Commission may collect unpaid fines for violation of financial disclosure requirements.
- Section 11. Amends s. 112.3147, F.S., providing an exception to the requirement that all forms be prescribed by the Commission.
- Section 12. Amends s. 112.3148, F.S., prohibiting a reporting individual or procurement employee from soliciting or knowingly accepting a gift from a vendor.
- Section 13. Amends s. 112.3149, F.S., prohibiting a reporting individual or procurement employee from knowingly accepting an honorarium from a vendor; prohibiting a vendor from giving an honorarium to a reporting individual or procurement employee.
- Section 14. Amends s. 112.317, F.S., making technical changes.
- Section 15. Amends s. 112.3215, F.S., modifying provisions governing persons who lobby the executive branch.
- Section 16. Amends s. 112.324, F.S., requiring the Commission to investigate referrals submitted by certain parties of possible ethics violations; extending the period in which the disclosure of the intent to file or the filing of a complaint against a candidate is prohibited; providing exceptions; authorizing the Commission to dismiss a complaint of a de minimis violation; providing exceptions; defining a de minimis violation.
- Section 17. Reenacts s. 120.665, F.S., incorporating references.
- Section 18. Reenacts s. 286.012, F.S., incorporating references.
- Section 19. Reenacts s. 287.175, F.S., incorporating references.
- Section 20. Amends s. 288.901, F.S., correcting a cross-reference.
- Section 21. Amends s. 445.007, F.S., incorporating references.
- Section 22. Reenacts s. 627.311(5)(m), F.S., incorporating references.
- Section 23. Reenacts s. 627.351(6)(d), F.S., incorporating references.
- Section 24. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: By enhancing the Commission's ability to collect unpaid fines for violations of financial disclosure requirements, the bill will likely have a positive, but indeterminate, fiscal impact. To illustrate, Commission staff estimate that approximately \$238,614.57 in automatic fines imposed in persons who fail to file timely financial disclosure have exceeded the 4-year statute of limitations and cannot be collected by normal collection methods.

In addition, conforming the penalties imposed on executive branch lobbyists for violations of ethics laws to the penalties imposed on legislative branch lobbyists will also have a positive, but indeterminate, fiscal impact.

2. Expenditures: The following costs may be associated with implementation of provisions in the bill by the Commission on Ethics:
 - According to Commission staff, they are functioning at near maximum capacity and would be unable to perform the additional work generated by this bill with current resources; specifically, additional collection efforts (garnishment), redacting online forms, processing new *final* disclosure forms and related notices, and developing ethics training requirements and monitoring. Commission staff projects an additional attorney and administrative assistant will be needed at an estimated cost of \$89,000, including benefits and expenses, and \$3,000 in OPS expenses to process the additional workload.
 - While the bill is somewhat vague on when certain information need be available online, it appears the Commission has to develop a proposal to create an online system to access Form 6 financial disclosures by January 1, 2015. The cost to develop the proposal is indeterminate, as is the amount of work and cost that will be needed in fiscal year 2013-14. It is likely that much of the development will be performed in conjunction with the Office of Legislative Information Technology Services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not appear to require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or cities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or cities.
2. Other: None.

B. RULE-MAKING AUTHORITY: Section 4 of the bill requires the Commission on Ethics to adopt rules establishing the minimum course content for the portion of an ethics training class that addresses s. 8, Art. II of the State Constitution and the Code of Ethics for Public Officers and Employees.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Ethics and Elections Subcommittee adopted a substitute amendment which corrected a drafting error to reinstate the restrictions in current law on gifts from political committees.

This analysis is drafted to the bill as amended.