

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/SB 846 Governmental Ethics

SPONSOR(S): Appropriations and Community Affairs and Ethics and Elections, Latvala

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	14 Y, 2 N	Davison	Camechis

SUMMARY ANALYSIS

On April 21, 2014, the State Affairs Committee adopted a strike-all amendment to CS/CS/CS/SB 846. This analysis reflects the bill as amended by the State Affairs Committee.

The bill requires certain persons affiliated with the following quasi-governmental entities to comply with provisions of the state Code of Ethics: the Florida Clerks of Court Operations Corporation; Enterprise Florida, Inc.; the Divisions of Enterprise Florida, Inc.; the Florida Development Finance Corporation; and Citizens Property Insurance Corporation.

The bill requires elected municipal officers to complete four hours of annual ethics, public records, and open meetings training; requires all individuals required to complete the training to certify completion of the training on annual financial disclosures; and specifies that failure to certify completion of training does not constitute an immaterial, inconsequential, or de minimis error or omission on an annual financial disclosure.

The bill requires the Commission on Ethics ("Commission") to initiate proceedings, without having first received a complaint, against a person who has failed or refused to file an annual financial disclosure and has accrued the maximum automatic fine. If the Commission initiates a proceeding, it must determine whether the failure to file was willful and, if so, recommend removal from office of certain persons.

The bill requires citizen support and direct-support organizations to adopt a code of ethics and specifies that certain provisions must be included.

The bill requires persons who lobby water management districts to annually register with the district as a lobbyist. The bill also authorizes the Commission to investigate complaints alleging a violation of the registration requirements.

The bill allows a member of a local governmental board to abstain from voting if there is a conflict of interest under local standards of conduct that are in addition to or more stringent than the standards in the Code of Ethics and specifies conflict of interest disclosure requirements for those members.

The bill has an indeterminate fiscal impact, as explained in the Fiscal Analysis & Economic Impact Statement of this analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Relevant Provisions in the Code of Ethics

“Quid Pro Quo” Gifts Prohibited: A public officer,¹ employee of an agency, local government attorney, or candidate for nomination or election may not solicit or accept anything of value based upon any understanding that the vote, official action, or judgment of the individual would be influenced thereby.²

Doing Business with One’s Agency Prohibited: An employee of an agency acting in his or her official capacity as a purchasing agent, or a public officer acting in his or her official capacity, may not purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the office or employee or his or her spouse or child is an officer, partner, director, or proprietor, or has a material interest. A public officer or employee, in his private capacity, may not rent, lease, or sell any realty, goods, or services to the officer’s or employee’s own agency, if he or she is a state officer or employee, or to any political subdivision or agency thereof, if he or she is serving as an officer or employee of that political subdivision or agency.³

Unauthorized Compensation Prohibited: A public officer, employee of an agency, or local government attorney or his or her spouse or minor child may not accept any compensation when he or she knows or should know with reasonable care that the compensation was given to influence a vote in the individual’s official capacity.⁴

Salary and Expenses: A public officer may vote on a matter affecting his or her salary, expenses, or other compensation as a public officer.⁵

Misuse of Public Position Prohibited: A public officer, employee of an agency, or local government attorney may not corruptly use or attempt to use his or her official position or any property or resource that may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.⁶

Conflicting Employment or Contractual Relationship Prohibited: A public officer or employee of an agency may not hold any employment or contractual relationship with any business entity or any agency that is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any political subdivision thereof. An officer or employee of an agency may not have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties that would impede the full and faithful discharge of his or her public duties.⁷

Disclosure or Use of Certain Information Prohibited: A current or former public officer, employee of an agency, or local government attorney is prohibited from disclosing or using information not available to members of the general public and gained by reason of his or her position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.⁸

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

² s. 112.313(2), F.S. (2013).

³ s. 112.313(3), F.S. (2013). These requirements may be waived in certain instances pursuant to s. 112.313(12), F.S.

⁴ s. 112.313(4), F.S. (2013).

⁵ s. 112.313(5), F.S. (2013).

⁶ s. 112.313(6), F.S. (2013).

⁷ s. 112.313(7), F.S. These requirements may be waived in certain instances pursuant to ss. 112.313(12) & (15), F.S.

⁸ s. 112.313(8), F.S. (2013).

Employees Holding Office Prohibited: An employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state may not hold office as a member of the governing board, council, commission, or authority that is his or her employer while, at the same time, continuing as an employee of such employer.⁹

Nepotism Prohibited: A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative¹⁰ of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member.¹¹

Voting Conflicts: A state public officer is prohibited from voting on any matter that the officer knows would inure to his or her special private gain or loss. A state public officer who abstains from voting in an official capacity upon a measure that the officer knows would inure to the officer's special private gain or loss, or who votes in an official capacity on a measure that he or she knows would inure to the special private gain or loss of any principal, parent organization, or subsidiary of a corporate principal by whom the officer is retained, or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer, must make every reasonable effort to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who must incorporate the memorandum into the minutes. If the memorandum cannot be filed before the vote, the memorandum must be filed no later than 15 days after the vote.¹²

Quasi-Governmental Entities

Florida Clerks of Court Operations Corporation

Current Situation

The Florida Clerks of Court Operations Corporation ("corporation") is created as a "public corporation."¹³ Its membership consists of each of the Florida clerks of circuit court who holds his or her position and authority in an ex officio capacity. The functions of the corporation are performed by an executive council pursuant to a plan of operation approved by the members.¹⁴ The executive council is composed of eight clerks of court, elected by the members.¹⁵ The executive council also includes, as ex officio members, a designee of the President of the Senate, a designee of the Speaker of the House of Representatives, and a designee of the Chief Justice of the Supreme Court. The executive council members who are clerks of court are subject to the Code of Ethics for Public Officers and Employees in Part III, Chapter 112, Florida Statutes, ("Code of Ethics") in their official capacities as clerks of court.¹⁶

The Legislature has not expressly indicated that the Code of Ethics applies to members of the executive council of the corporation.

Effect of Proposed Changes

⁹ s. 112.313(10), F.S. (2013).

¹⁰ "Relative" is defined as "an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister." s. 112.3135(1)(d), F.S. (2013).

¹¹ s. 112.3135(2)(a), F.S. (2013).

¹² s. 112.3143(2)(a), F.S. (2013).

¹³ s. 28.35(1)(a), F.S. (2013). The corporation is also considered a political subdivision of the state and is exempt from the corporate income tax. s. 28.35(1)(c), F.S. (2013).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

The bill applies the following ethics provisions to the members of the executive council of the corporation:

- Prohibiting quid pro quo gifts (s. 112.313(2), F.S.);
- Prohibiting doing business with one's agency (s. 112.313(3), F.S.);
- Prohibiting unauthorized compensation (s. 112.313(4), F.S.);
- Allowing a state officer to vote on matters affecting his or her compensation (s. 112.313(5), F.S.);
- Prohibiting misuse of public position (s. 112.313(6), F.S.);
- Prohibiting conflicting employment or contractual relationships (s. 112.313(7), F.S.);
- Prohibiting disclosure of certain information (s. 112.313(8), F.S.);
- Prohibiting employees from holding office (s. 112.313(10), F.S.);
- Restricting employment of relatives (s. 112.3135, F.S.); and
- Regulating voting conflicts (s. 112.3143(2), F.S.).

The bill specifies that for purposes of these sections, executive council members are public officers and the corporation is their agency.

Enterprise Florida, Inc.

Current Situation

Enterprise Florida, Inc., ("Enterprise Florida") is created as a nonprofit corporation but is "not a unit or entity of state government."¹⁷ The 18-member board of directors is composed of various state officers and private individuals.¹⁸

The members of Enterprise Florida's board of directors are subject to the standards of conduct in section 112.313, F.S., the anti-nepotism provision in section 112.3135, F.S., and the voting conflict provisions in section 112.3143(2), F.S.¹⁹ Board members are specifically exempt from the prohibitions on "quid pro quo" gifts in section 112.313(2), F.S.²⁰ For purposes of these sections, the board members are considered public officers and employees. However, the statutes do not specify that the corporation is the agency of the board members. Finally, board members who are not otherwise required to file a financial disclosure are required to file an Annual Statement of Financial Interests pursuant to section 112.3145, F.S.²¹

Effect of Proposed Changes

The bill applies the following ethics provisions to the president, senior managers, and board members of Enterprise Florida:

- Prohibiting quid pro quo gifts (s. 112.313(2), F.S.);
- Prohibiting doing business with one's agency (s. 112.313(3), F.S.);
- Prohibiting unauthorized compensation (s. 112.313(4), F.S.);
- Allowing a state officer to vote on matters affecting his or her compensation (s. 112.313(5), F.S.);
- Prohibiting misuse of public position (s. 112.313(6), F.S.);
- Prohibiting conflicting employment or contractual relationships (s. 112.313(7), F.S.);
- Prohibiting disclosure of certain information (s. 112.313(8), F.S.);
- Prohibiting employees from holding office (s. 112.313(10), F.S.);
- Restricting employment of relatives (s. 112.3135, F.S.); and
- Regulating voting conflicts (s. 112.3143(2), F.S.).

¹⁷ s. 288.901(1)(a), F.S. (2013).

¹⁸ s. 288.901(5)(a), F.S. (2013).

¹⁹ s. 288.901(1)(c), F.S. (2013).

²⁰ *Id.*

²¹ *Id.*

The bill specifies that for purposes of these sections the president, senior managers, and board members are considered public officers or employees and the corporation is their agency.

Divisions of Enterprise Florida, Inc.

Current Situation

Enterprise Florida is authorized to create and dissolve divisions as necessary to carry out its mission. Each division must have distinct responsibilities and complementary missions.²² At a minimum, Enterprise Florida must have divisions related to international trade and business development, business retention and recruitment, tourism marketing, minority business development, and sports industry development.²³ The officers and agents of the divisions of Enterprise Florida are hired by the president of Enterprise Florida as deemed appropriate by the board of directors.²⁴

The Legislature has not expressly indicated whether any provisions of the Code of Ethics apply to officers or members of the divisions of Enterprise Florida.

Effect of Proposed Changes

The bill applies the following ethics provisions to the officers and members of the board of directors of: the divisions of Enterprise Florida; subsidiaries of Enterprise Florida; corporations created to carry out the missions of Enterprise Florida, Inc.; and corporations with which a division is required by law to contract to carry out its missions:

- Prohibiting quid pro quo gifts (s. 112.313(2), F.S.);
- Prohibiting doing business with one's agency (s. 112.313(3), F.S.);
- Prohibiting unauthorized compensation (s. 112.313(4), F.S.);
- Allowing a state officer to vote on matters affecting his or her compensation (s. 112.313(5), F.S.);
- Prohibiting misuse of public position (s. 112.313(6), F.S.);
- Prohibiting conflicting employment or contractual relationships (s. 112.313(7), F.S.);
- Prohibiting disclosure of certain information (s. 112.313(8), F.S.);
- Prohibiting employees from holding office (s. 112.313(10), F.S.);
- Restricting employment of relatives (s. 112.3135, F.S.); and
- Regulating voting conflicts (s. 112.3143(2), F.S.).

For purposes of these provisions, the above-listed officers and members are considered public officers or employees and Enterprise Florida is considered their agency.

²² s. 288.92(1), F.S. (2013).

²³ s. 288.92(1)(a)-(e), F.S. (2013).

²⁴ s. 288.92(2)(a), F.S. (2013).

Florida Development Finance Corporation

Current Situation

The Florida Development Finance Corporation is created as a “public body corporate and politic” and is “constituted as a public instrumentality.”²⁵ The five-member board of directors is appointed by the Governor, subject to Senate confirmation.²⁶ At least three of the five directors must be bankers nominated by Enterprise Florida and one director must be an economic development specialist.²⁷

The Legislature has not expressly applied the Code of Ethics to the directors of the Florida Development Finance Corporation.

Effect of Proposed Changes

The bill applies the following ethics provisions to the directors of the Florida Development Finance Corporation board of directors:

- Prohibiting quid pro quo gifts (s. 112.313(2), F.S.);
- Prohibiting doing business with one’s agency (s. 112.313(3), F.S.);
- Prohibiting unauthorized compensation (s. 112.313(4), F.S.);
- Allowing a state officer to vote on matters affecting his or her compensation (s. 112.313(5), F.S.);
- Prohibiting misuse of public position (s. 112.313(6), F.S.);
- Prohibiting conflicting employment or contractual relationships (s. 112.313(7), F.S.);
- Prohibiting disclosure of certain information (s. 112.313(8), F.S.);
- Prohibiting employees from holding office (s. 112.313(10), F.S.);
- Restricting employment of relatives (s. 112.3135, F.S.); and
- Regulating voting conflicts (s. 112.3143(2), F.S.).

The bill also specifies that, for purposes of those provisions, the directors are public officers and the corporation is their agency.

Citizens Property Insurance Corporation

Current Situation

Citizens Property Insurance Corporation (“corporation”) was created to ensure an orderly market for property insurance for Floridians.²⁸ An executive director and senior managers of the corporation are employed by the board of governors and serve at the pleasure of the board. The executive director’s appointment is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.²⁹

Senior managers and members of the board of governors are subject to the Code of Ethics and are required to file an annual financial disclosure pursuant to section 112.3145, F.S.

Senior managers are prohibited from representing another person or entity before the corporation for two years after retirement from or termination of service to the corporation. Senior managers are also prohibited from having any employment or contractual relationship with an insurer that has entered into a take-out bonus agreement with the corporation for two years after retirement from or termination of service to the corporation.³⁰

²⁵ s. 288.9604, F.S. (2013).

²⁶ s. 288.9604(2), F.S. (2013).

²⁷ *Id.*

²⁸ s. 627.351(6), F.S. (2013).

²⁹ s. 627.351(6)(c)4.a., F.S. (2013).

³⁰ s. 627.351(6)(d)5.-6., F.S. (2013).

The Legislature has not expressly applied any portion of the Code of Ethics to the executive director.

Effect of Proposed Changes

The bill applies to the executive director of Citizens Property Insurance Corporation the entire Code of Ethics, including financial disclosure requirements and gift bans, which is consistent with current law for members of the board of governors and senior managers.

The bill prohibits the executive director and members of the board of governors from having any employment or contractual relationship with an insurer that has entered into a take-out bonus agreement with the corporation for two years after retirement from or termination of service to the corporation.

The bill states that, for purposes of application of the Code of Ethics, the executive director, senior managers, and members of the board of governors are public officers or employees and the corporation is their agency.

Annual Ethics Training

Current Situation

Article II, section 8 of the Florida Constitution imposes various ethics requirements on elected constitutional officers, public officers, public employees, and candidates for constitutional or public office. For purposes of determining who must file annual financial disclosures, the Commission on Ethics ("Commission") has identified elected constitutional officers as: 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 and supervisors of elections; county commissioners; all elective officers in a chartered county government if their duties consist of performing the duties of any of the above constitutional officers; elected wardens of schools; and members of district school boards.³¹

In 2013, the Legislature passed a law requiring certain constitutional officers to complete four hours of ethics training each year.³² While the Florida Statutes do not provide a definition of "constitutional officer," the law specifies that constitutional officers subject to the training requirement 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.³³ The ethics training must address, at a minimum, article II, section 8 of the Florida Constitution, the Code of Ethics for Public Officers and Employees,³⁴ and the state's public records and meetings laws.³⁵ However, the law does not explicitly apply the annual training requirement to elected municipal officers.

This requirement may be met by completing a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.³⁶ The Commission has promulgated rules to implement this training requirement.³⁷ To satisfy the requirement, an individual must receive training on Florida's public records and meetings laws and at least one topic concerning ethics requirements for public officers and employees.³⁸ The rules specify the following ethics topics may be used to meet the requirement:

³¹ ch. 34-8.003, F.A.C.

³² ch. 2013-38, L.O.F.; s. 112.3142(1), F.S. (2013).

³³ s. 112.3142(1), F.S. (2013).

³⁴ The Code of Ethics for Public Officers and Employees contains various provisions regarding both prohibited actions or conduct by public officers and employees as well as disclosures that these individuals must make.

³⁵ s. 112.3142(2)(a), F.S. (2013).

³⁶ s. 112.3142(2)(a), F.S. (2013).

³⁷ ch. 34-7.025, F.A.C.

³⁸ *Id.*

- Doing business with one's own agency;
- Conflicting employment or contractual relationships;
- Misuse of position;
- Disclosure or use of certain information;
- Gifts and honoraria, including solicitation and acceptance of gifts, and unauthorized compensation;
- Post-officeholding restrictions;
- Restrictions on the employment of relatives;
- Voting conflicts when the constitutional officer is a member of a collegial body and votes in his or her official capacity;
- Financial disclosure requirements, including the automatic fine and appeal process;
- Commission procedures on ethics complaints and referrals; and
- The importance of and process for obtaining advisory opinions rendered by the Commission.³⁹

In 2013, the Commission presented live educational training programs to forty groups and organizations, such as newly-elected school superintendents and clerks of court, supervisors of elections, and the Florida Sheriffs Association.⁴⁰

Individuals and groups or organizations may also pursue online training resources. The Commission provides six free training modules, prepared by Commission staff, on its website.⁴¹ Topics include voting conflicts for both state and local officers, gifts for local government officials, ethics laws, financial disclosure laws, and gift laws. The six free modules, three video and three audio, provide four hours and twenty-five minutes of ethics training. The Commission also provides links to fee-based⁴² training opportunities and states, "Other training opportunities involving the staff of the Commission on Ethics will be added to this page as they arise. Check back often."⁴³ Additionally, the Commission has opined that any knowledgeable person or entity may provide the training, but that the training could not be "satisfied by a self-directed learning program consisting of the official's review of materials he or she selects independently."⁴⁴

The law requires each house of the Legislature to provide for ethics training pursuant to its rules.⁴⁵

Training Affirmation on Financial Disclosure Forms

The Florida Constitution requires local officers, state officers, specified state employees, and all constitutional officers to file an annual financial disclosure with the Commission by July 1.⁴⁶ An amended financial disclosure filed before September 1 must be treated as the original filing, regardless of whether a complaint regarding the financial disclosure has been filed.⁴⁷ If a complaint is filed after August 25 alleging an immaterial, inconsequential, or de minimis error or omission, the Commission must give the filer 30 days to "cure" the financial disclosure before taking any action on the complaint, other than notifying the filer of the complaint.⁴⁸ An error or omission is immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest.⁴⁹

³⁹ *Id.*

⁴⁰ Annual Report to the Florida Legislature For Calendar Year 2013, at pp. 14-15, available at <http://www.ethics.state.fl.us/publications/2013%20Annual%20Report.pdf>.

⁴¹ Florida Commission on Ethics, <http://www.ethics.state.fl.us/> (follow "Training" hyperlink).

⁴² The "Ethics Package" provided by the Florida Institute of Government costs \$85.00 and satisfies the four hour requirement. http://iog.fsu.edu/events/online_training/index.html. A link is also provided to the Florida Bar's website which provides electronic course media and materials for purchase.

⁴³ Florida Commission on Ethics, <http://www.ethics.state.fl.us/> (follow "Training" hyperlink).

⁴⁴ CEO 13-15 at p. 2.

⁴⁵ s. 112.3142(3), F.S.

⁴⁶ s. 112.3144, F.S. (2013); s. 112.3145, F.S. (2013).

⁴⁷ s. 112.3144(7)(a), F.S. (2013); s. 112.3145(9)(a), F.S. (2013).

⁴⁸ *Id.*

⁴⁹ s. 112.3144(7)(c), F.S. (2013); s. 112.3145(9)(c), F.S. (2013).

Constitutional officers are not required to certify or report whether they have met the ethics training requirement.

Effect of Proposed Changes

Beginning January 1, 2015, the bill requires elected municipal officers to complete four hours of ethics training each calendar year that meets the same requirements as ethics training for constitutional officers. According to the League of Cities, there are approximately 2,200 elected municipal officers in the state.⁵⁰

The bill also requires each officer who is subject to the ethics training requirement, including constitutional officers and elected municipal officers, to certify on the officer's financial disclosure that he or she has completed the required training. Failure to affirm completion of annual ethics training does not constitute an immaterial, inconsequential, or de minimis error or omission. Therefore, after August 31, an officer would not be permitted to "cure" the failure to affirm completion of the training on a financial disclosure if a complaint is filed regarding the failure.

Lastly, the bill provides that it is the Legislature's intent that a constitutional officer or elected municipal officer required to complete the ethics training receive the training as close as possible to the date he or she assumes office. If the constitutional officer or elected municipal officer assumes a new office or new term of office on or before March 31, the officer must complete the annual training on or before December 31 of the year in which the term began. If the officer assumes a new office after March 31, the officer is not required to complete the ethics training for the calendar year in which he or she assumes office.

The bill also clarifies that the four hours of ethics training required each year is per *calendar* year.

Financial Disclosure

Current Situation

Sections 112.3144 and 112.3145, F.S., require elected constitutional officers and candidates for such offices,⁵¹ local officers, specified state employees, and state officers to file a financial disclosure annually with the Commission. Failure to file a financial disclosure results in an automatic fine of \$25 per day, up to a maximum of \$1,500.⁵²

A constitutional officer filing a financial disclosure as a candidate at the time of qualifying who may otherwise be required to file a financial disclosure for the same year is not required to file a financial disclosure with the Commission. The qualifying officer must forward an electronic copy of all candidate financial disclosures to the Commission.⁵³ If a candidate qualifies after filing his annual disclosure with the Commission, the candidate may file a copy of the disclosure with his or her filing officer.⁵⁴

Local officers, specified state employees, and state officers seeking nomination or election to a state or local office must also file a financial disclosure at the time of qualifying. The financial disclosure filed at the time of qualifying is deemed to satisfy the annual disclosure requirement, and the filing officer must record that the financial disclosure was timely filed. If a candidate qualifies after filing his annual disclosure with the Commission, the candidate may file a copy of the disclosure with his or her filing

⁵⁰ Information provided during telephone conversation on March 13, 2014, with Kraig Conn, Deputy General Counsel, Florida League of Cities.

⁵¹ The Commission on Ethics has identified elected constitutional officers as: 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 and supervisors of elections; county commissioners; all elective officers in a chartered county government if their duties consist of performing the duties of any of the above constitutional officers; elected wardens of schools; and members of district school boards. ch. 34-8.003, F.A.C.

⁵² s. 112.3144(4)(e), F.S. (2013); s. 112.3145(6)(f), F.S. (2013).

⁵³ The Commission has expressed that under current law, the Commission will receive forms for candidates who do not presently serve in a position requiring a financial disclosure. The Commission has expressed that this may create some compliance and storage problems. Information provided in an e-mail on March 28, 2014, from Virilindia Doss, Executive Director, Florida Commission on Ethics.

⁵⁴ s. 112.3144(2), F.S. (2013).

officer.⁵⁵ However, the filing officer is not required to notify the Commission that the candidate has filed the disclosure.

The Commission is required 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,⁵⁶ 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.

The Commission may not initiate an investigation into alleged violations of the financial disclosure laws, or any other ethics laws, without having first received a written complaint from any person,⁵⁷ or a referral from the Governor, the Department of Law Enforcement, a state attorney, or a U.S. Attorney.⁵⁸

Effect of Proposed Changes

The bill requires a qualifying officer to forward an electronic copy of a financial disclosure to the Commission for an incumbent who is qualifying for the same office or a candidate who holds another office subject to the filing requirement.

The bill requires the Commission to self-initiate an investigation and conduct a public hearing, in accordance with current procedures governing investigations and hearings, to determine whether a person who fails or refuses to file a financial disclosure and has accrued the maximum \$1,500 fine, even if the fine has been paid, has done so willfully. The Commission must enter an order recommending the officer or employee be removed from office or employment if it determines the failure to file was willful. The bill requires the Commission, upon a finding of a violation by a legislator, to forward the complaint and its findings to the House or Senate for action.

The bill also clarifies provisions concerning complaints that allege an immaterial, inconsequential, or de minimis error or omission.

⁵⁵ s. 112.3145, F.S. (2013).

⁵⁶ An error or omission is defined as immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest. s. 112.3144(7)(c), F.S. (2013); s. 112.3145(9)(c), F.S. (2013).

⁵⁷ S. 112.324(1)(a), F.S. (2013).

⁵⁸ s. 112.324(1)(b), F.S. (2013).

Citizen Support Organizations and Direct-Support Organizations

Current Situation

Citizen support organizations (“CSOs”) and direct-support organizations (“DSOs”) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes.

CSOs and DSOs are not required to adopt their own ethics codes nor are they subject to the state Code of Ethics.

Effect of Proposed Changes

The bill creates new section 112.3251, F.S., which requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain certain standards of conduct in section 112.313, F.S., including the misuse of office prohibition, unlawful compensation prohibition, postemployment/officeholding lobbying restrictions, and conflicting employment prohibition.⁵⁹

A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the law.

The organizations are also required to conspicuously post their code of ethics on their website.

Lobbying Water Management Districts

Current Situation

Section 373.069, F.S., provides for the creation of water management districts. A water management district (“WMD” or “district”) is defined as “any flood control, resource management, or water management district.”⁶⁰ There are 5 WMDs in Florida: Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, Southwest Florida Water Management District, and South Florida Water Management District.⁶¹

There are no provisions of law requiring lobbyists to register before lobbying WMDs. Also, there is no requirement that lobbyists disclose the identity of those who retained them or the compensation paid to the lobbyists for their services.

Effect of Proposed Changes

The bill requires persons who lobby⁶² WMDs to annually register with the district as a lobbyist.⁶³

The registration must include a statement signed by the principal stating that the registrant is authorized to lobby the principal,⁶⁴ identify its main business pursuant to a classification system approved by the district, and disclose the existence of any direct or indirect business or financial relationship between the lobbyist and any officer or employee of the district. A district may accept a completed legislative branch or executive branch lobbyist registration form in lieu of creating its own registration form.

⁵⁹ See s. 112.313, F.S. (2013); s. 112.3143(2), F.S. (2013).

⁶⁰ s. 373.019(23), F.S. (2013).

⁶¹ s. 373.069, F.S. (2013).

⁶² “Lobbies” is defined as “seeking, on behalf of another person, to influence a governmental entity with respect to a decision of the entity in an area of policy or procurement or an attempt to obtain the goodwill of an entity official or employee.”

⁶³ “Lobbyist” is defined as “a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.”

⁶⁴ “Principal” is defined as “the person, firm, corporation, or other entity which has employed or retained a lobbyist.”

Each district may levy an annual lobbyist registration fee not to exceed \$40 for each principal represented. The money collected is to be used for administration of the lobbyist registration system. The districts must be diligent in determining whether lobbyists are duly registered and are prohibited from knowingly authorizing unregistered individuals to lobby the district.

The bill requires lobbyist registrations to be made available to the public. If the district maintains a website, a database of currently registered lobbyists and principals must be available on the district's website.

A lobbyist must notify the district that their representation of a principal has ended.

The bill authorizes the Commission to accept sworn complaints alleging that a lobbyist or principal has failed to register with a WMD or has knowingly submitted false information in a report or registration and requires the Commission to investigate the sworn complaint. The Commission must provide the Governor with a report of its findings and recommendations in any investigation. The Governor is authorized to enforce the Commission's findings and recommendations.

Voting Conflict Provisions

Current Situation

Section 112.326, F.S., authorizes the governing body of any political subdivision, by ordinance, or agency, by rule, to impose upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of the Code of Ethics.

Pursuant to section 286.012, F.S., no member of any state, county, or municipal governmental board, commission, or agency who is present at any official meeting may abstain from voting, except when there appears to be a conflict or possible conflict of interest under the provisions of sections 112.311,⁶⁵ 112.313,⁶⁶ or 112.3143, F.S.⁶⁷ County, municipal, and other local public officers are prohibited from voting in an official capacity upon any measure which would inure to his or her special private gain or loss.⁶⁸ County, municipal, and other local public officers are prohibited from voting in an official capacity upon any measure which he or she *knows* would inure to the special private gain or loss of any principal by whom he or she is retained, the parent organization or subsidiary of a corporate principal by which he or she is retained, or a relative or business associate of the public officer.⁶⁹

The public officer must, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter. Within 15 days after the vote occurs, the public officer must disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who must incorporate the memorandum in the minutes.⁷⁰

⁶⁵ Section 112.311, F.S., provides the legislative intent and declaration of policy relating to the Code of Ethics. Specifically, section 112.311, F.S., provides that it is in the public interest that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

⁶⁶ Section 112.313, F.S., provides the standards of conduct for public officers, employees of agencies, and local government attorneys.

⁶⁷ Section 112.3143, F.S., provides voting conflict provisions.

⁶⁸ "Special private gain or loss" is defined as "an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal" s. 112.3143(1)(d), F.S. (2013).

⁶⁹ s. 112.3143(3)(a), F.S. (2013).

⁷⁰ *Id.*

Effect of Proposed Changes

The bill includes additional or more stringent standards of conduct and disclosure requirements, imposed by the governing body of any political subdivision pursuant to section 112.326, F.S., as additional grounds for a voting abstention due to a conflict or possible conflict of interest. If the only conflict or possible conflict arises from additional or more stringent disclosure requirements adopted pursuant to section 112.326, F.S., the member must comply with those disclosure requirements.

The bill allows a member to abstain from voting on an official decision, ruling, or act in the context of a quasi-judicial proceeding, if the abstention is to assure a fair proceeding free from potential bias or prejudice.

B. SECTION DIRECTORY:

Section 1 amends s. 28.35, F.S., specifying the applicability of certain provisions of the Code of Ethics for Public Officers and Employees to members of the executive council of the Florida Clerks of Court Operations Corporation.

Section 2 amends s. 112.3142, F.S., requiring elected municipal officers to participate in annual ethics training; providing legislative intent.

Section 3 amends s. 112.3144, F.S., requiring an officer required to participate in annual ethics training to certify participation on his or her full and public disclosure of financial interests; revising the conditions under which a qualifying officer forwards a full and public disclosure of financial interests to the Commission on Ethics; requiring the Commission on Ethics to initiate an investigation and hold a public hearing without receipt of a complaint in certain circumstances; requiring the commission to enter an order recommending removal of an officer or public employee from public office or public employment in certain circumstances; prohibiting the commission from taking action on a complaint alleging certain errors or omissions on a disclosure; providing that failure to certify completion of annual ethics training on a disclosure does not constitute an immaterial, inconsequential, or de minimis error or omission.

Section 4 amends s. 112.3145, F.S., requiring an officer required to participate in annual ethics training to certify participation on his or her statement of financial interests; requiring the Commission on Ethics to initiate an investigation and hold a public hearing without receipt of a complaint in certain circumstances; requiring the commission to enter an order to remove an officer or public employee from public office or public employment in certain circumstances; prohibiting the commission from taking action on a complaint alleging certain errors or omissions on a statement; providing that failure to certify completion of annual ethics training on a statement does not constitute an immaterial, inconsequential, or de minimis error or omission.

Section 5 creates s. 112.3251, F.S., requiring citizen support and direct-support organizations to adopt a code of ethics; establishing minimum requirements for a code of ethics.

Section 6 creates s. 112.3261, F.S., defining terms; prohibiting a person from lobbying a water management district before registering; establishing registration requirements; requiring public availability of lobbyist registrations; establishing procedures for termination of a lobbyist's registration; authorizing a water management district to establish a registration fee; requiring a water management district to monitor compliance with registration requirements; requiring the Commission on Ethics to investigate a lobbyist or principal upon receipt of a sworn complaint containing certain allegations; requiring the commission to provide the Governor with a report on the findings and recommendations resulting from the investigation; authorizing the Governor to enforce the commission's findings and recommendations.

Section 7 amends s. 286.012, F.S., revising disclosure requirements with respect to a voting abstention at a meeting of a governmental body; authorizing a member to abstain from voting on a decision, ruling, or act in a quasi-judicial proceeding under certain circumstances.

Section 8 amends s. 288.901, F.S., specifying the applicability of certain provisions of the Code of Ethics for Public Officers and Employees to the president, senior managers, and members of the board of directors of Enterprise Florida, Inc.

Section 9 amends s. 288.92, F.S., specifying the applicability of certain provisions of the Code of Ethics for Public Officers and Employees to certain officers and board members associated with the divisions of Enterprise Florida, Inc.

Section 10 amends s. 288.9604, F.S., specifying the applicability of certain provisions of the Code of Ethics for Public Officers and Employees to the board of directors of the Florida Development Finance Corporation.

Section 11 amends s. 627.351, F.S., specifying the applicability of certain provisions of the Code of Ethics for Public Officers and Employees to the executive director of Citizens Property Insurance Corporation; prohibiting a former executive director, senior manager, or member of the board of governors from entering employment or a contractual relationship for a specified timeframe with certain insurers.

Section 12 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: As a result of the 2013 legislation enacting the training requirement for constitutional officers, the Commission adopted rules and developed training. The Commission is not expected to incur additional costs as a result of this bill.

The bill imposes additional requirements on the Commission to conduct complaint proceedings related to financial disclosure and independent special district lobbying, and subjects certain persons associated with a number of quasi-governmental entities to the Code of Ethics. However, because the number of additional proceedings that may result is indeterminate, the fiscal impact on the Commission is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill permits water management districts to collect up to \$40 per principal for lobbyist registrations. Because the number of lobbyists varies depending on the district, and due to the permissive nature of the registration fee provision, the actual impact is indeterminate.
2. Expenditures: While this bill requires elected municipal officers to complete annual ethics training, it does not require municipalities to spend funds to provide the training. However, municipalities may elect to do so. If a municipality does not pay for or otherwise provide the annual training, there may be a negative fiscal impact on its elected officers if they do not choose to take free courses offered by the Commission but choose to pay the cost from personal funds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill permits water management districts to collect up to \$40 per principal for lobbyist registrations. Because the number of lobbyists varies depending on the district, and due to the permissive nature of the registration fee provision, the actual impact is indeterminate.

The bill may have a positive fiscal impact on private providers of ethics training if elected municipal officers choose to enroll in private courses to satisfy the annual training requirement. According to the League of Cities, there are approximately 2,200 elected municipal officers in the state.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill requires each elected municipal officer to complete four hours of ethics training every calendar year. Pursuant to Article VII, section 18(a), Florida Constitution, a mandate includes a general bill requiring counties or municipalities to spend funds. While this bill requires elected municipal officers to complete annual ethics training, it does not require a municipality to spend funds to provide the training. Therefore, this bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY:

Although the Commission on Ethics must amend its rules to reflect some statutory changes made by the bill, the Commission's existing rulemaking authority appears to be sufficient.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 21, 2014, the State Affairs Committee adopted a strike-all amendment that amended CS/CS/CS SB 846 as follows:

1. The Senate bill prohibits local officers from lobbying the Legislature or a state agency on behalf of a person or entity other than his or her political subdivision, but the amendment does not.
2. The Senate bill authorizes, while the amendment requires, the Commission on Ethics to initiate an investigation and conduct a public hearing to determine whether a person who fails to file a financial disclosure and has accrued the maximum fine has done so willfully.
3. The Senate bill requires withholding from a current officer's or employee's salary the entire amount of an automatic fine owed, plus any administrative costs, for failure to file a financial disclosure, but the amendment does not.
4. The Senate bill requires a person to register as a lobbyist if he or she lobbies a water management district, a hospital district, a children's services district, an expressway authority, a port authority, or an independent special district with annual revenues of more than \$5 million that exercises ad valorem taxing authority. The amendment only requires a person who lobbies a water management district to register as a lobbyist with the district.
5. The Senate bill prohibits board members and certain employees of several quasi-governmental entities from lobbying the organizations for two years after leaving employment or office, but the amendment does not.