

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

**BILL:** SB 1458  
**INTRODUCER:** Senators Gelber, Smith, and others  
**SUBJECT:** Bribery or Misuse of Public Office  
**DATE:** March 10, 2010      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.	_____	_____	EE	_____
3.	_____	_____	JA	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 1458 inserts the term “agent” into the definition of “public servant” set forth in s. 838.014, F.S., the definition section for the bribery and misuse of public office chapter of the criminal law.

This bill substantially amends section 838.014 of the Florida Statutes.

**II. Present Situation:**

In 2003, the Legislature passed the “Citizen’s Right to Honest Government Act” which significantly amended ch. 838, F.S. That legislation modified a number of criminal offenses and definitions, and created new criminal offenses as second and third degree felonies for: official misconduct; criminal misuse of official position; disclosure or use of confidential criminal justice information; bid tampering in connection with public contracts; and, perjury in official proceedings.

Prior to the 2003 revision of s. 838.014, F.S., the definition of “public servant” included the term “agent.” The 2003 revision deleted the term “agent” as well as “juror” and “any person who holds an office or position in a political party or political party committee, whether elected or appointed.” The staff analyses from the 2003 Legislative Session do not mention any reason that the term “agent” was deleted at that time.

“Agent” is defined in The American Heritage Dictionary as “one that acts or has the power or authority to act.” In the definitions section of Part III of Chapter 112 (Code of Ethics for Public Officers and Employees) neither “agent” nor “public servant” is defined. In s. 112.312(20), F.S.,

however, the more narrow term “purchasing agent” is defined as “a public officer or employee having the authority to commit the expenditure of public funds through a contract for, or the purchase of, any goods, services, or interest in real property for an agency....”

The current meaning of “public servant” in s. 838.014(6), F.S., is:

- (a) Any officer or employee of a state, county, municipal, or special district agency or entity;
- (b) Any legislative or judicial officer or employee;
- (c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
- (d) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of public office.

### **III. Effect of Proposed Changes:**

The bill amends the definition of “public servant” in ch. 838, F.S., the bribery and misuse of public office chapter of the criminal law, to include the term “agent” which was deleted from the definition in 2003.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Although the Criminal Justice Impact Conference has not considered this bill to date, it was projected in 2002 on a bill that was similar to the bill that passed in 2003 and actually created new felony offenses, that the impact would be indeterminate, but minimal. As this bill does not create a new criminal penalty nor substantially expand the pool of people who might be subject to the penalties set forth in ch. 838, F.S., it is not likely that the Conference would find differently than it did in 2002.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.