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 Committee on Community Affairs

BILL:	SB 2
INTRODUCER:	Ethics and Elections Committee
SUBJECT:	Ethics
DATE:	January 25, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts		**ee SPB 7006 as introduced**
2.	Anderson	Yeatman	CA	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

I. Summary:

Senate Bill 2 is a comprehensive ethics reform bill which allows filers to use a certified public accountant (CPA) to prepare financial disclosure filings. The bill provides a "safe harbor" when errors are made by a CPA who was provided the necessary information to prepare the financial disclosure filing. Senate Bill 2 allows the Commission on Ethics (Commission) to collect unpaid financial disclosure fines by garnishment of wages and by authorizing the Commission to obtain a lien on the filer's real property. The bill creates a procedure for curing erroneous financial disclosure fines prior to September 1. A procedure is created to permit a filer to cure a filing that is the subject of a complaint, for a period of thirty days after the complaint has been filed if the alleged violation is de minimis in nature. The bill requires a qualifying officer to forward the financial disclosure form of any candidate who qualifies for election prior to filing his or her financial disclosure to the Commission. If the candidate qualifies after he or she files annual financial disclosure, the candidate is permitted to file a copy of his or her financial disclosure form with the qualifying officer. All filers who file financial disclosure must designate whether the filer is using the dollar value threshold or the comparative (percentage) threshold to determine whether an interest is required to be disclosed. Finally, the bill creates a grace period to file a new final financial disclosure form to correct any errors on the original filing; and, it provides a thirty day period in which to cure de minimis violations when a complaint is filed concerning a final financial disclosure filing. The bill extends the statute of limitations to collect an unpaid financial disclosure fine from four years to twenty years.

The bill incorporates a recommendation of the Nineteenth Statewide Grand Jury by allowing all public officers to place their assets in a blind trust. The blind trust must meet certain minimum requirements concerning the contents of the trust agreement and who can serve as trustee. If a public officer places assets in a blind trust, those assets would not give rise to certain conflicts of

interest and voting conflicts. The public officer would be required to make certain disclosures concerning the blind trust on his or her annual financial disclosure. The bill also limits the communications between the public officer and the trustee. Finally, the public officer is required to file a notice of the blind trust with the Commission.

The bill defines the term "special private gain or loss" as used in the voting conflicts law. The bill prohibits a ***state*** public officer from voting on matters that would inure to his or her special private gain or loss. The bill also clarifies that a member of the Legislature may use a disclosure form created pursuant to the rules of his or her respective house to satisfy the voting conflict disclosure requirement.

Senate Bill 2 clarifies that only those who have the authority to purchase more than $10,000 in a year are "procurement employees." The bill also prohibits reporting individuals from soliciting a gift or honoraria, from accepting any honoraria, or from accepting a gift in excess of $100 from a "vendor." The bill defines the term "vendor." For any gift from a vendor that is valued between $25 and $100, the vendor is required to report any gifts to reporting individuals or procurement employees on a quarterly basis.

Senate Bill 2 prohibits a reporting individual or procurement employee from soliciting or accepting a gift from a committee of continuous existence or a political committee.

In order to reduce the abuse of the ethics complaint process during elections the bill provides that a complaint may not be filed against a candidate for thirty days preceding an election unless the complaint is based on personal information or information other than hearsay. Additionally, any complaint filed against a candidate must be based upon personal information or information other than hearsay. The bill permits the Commission on Ethics to initiate investigations based upon a referral from the Governor, the Florida Department of Law Enforcement, a law enforcement agency, or a state attorney. Once a referral is received from the Governor, Florida Department of Law Enforcement, state attorney, or U.S. Attorney, a vote of 6 members of the Commission is required to initiate an investigation. After that determination, the procedure for handling the referral is the same as the current complaint process.

The bill requires "constitutional officers" to complete a minimum of 4 hours of training for ethics, open meetings, and public records laws. For purposes of this section, the term "constitutional officers" means the Governor, Lt. Governor, Attorney General, Chief Financial Officer, Agriculture Commissioner, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of circuit court, county commissioners, school board members, and school superintendents.

The bill expands the lobbying prohibition applicable to former members of the Legislature by prohibiting former members from lobbying any agency for a period of two years after leaving the Legislature. It also prohibits a former member from accepting any position as a partner, principal, or employee of a firm or entity for the purpose of drafting, strategizing, consulting, advising or in any way working on matters that will come before the Legislature, or to provide networking or relationship building services with sitting members of the Legislature. If an opinion is not sought prior to such employment or association, it is presumed that the employment or association is prohibited.

The bill prohibits dual public employment by elected public officers and candidates for elected public office under certain circumstances and restricts certain promotions or advancements. Specifically, the bill would prohibit an elected public officer or candidate for elected public office, for the period of that candidacy, from obtaining new public employment after qualifying for elected public office. Members who had public employment prior to qualifying as a candidate would be allowed to keep their employment. However, the member or candidate may not accept promotions, raises, or any other additional compensation which is inconsistent with other similarly situated employees when the member knows, or should know that the additional compensation is being given because of his/her office or candidacy.

Finally, the bill amends the "Executive Branch Expenditure Ban" to parallel the provisions of the "Legislative Branch Expenditure Ban." Specifically, the bill provides that the Commission can investigate complaints alleging that a lobbyist or principal provided a prohibited expenditure to an executive branch agency official, member, or employee. The bill also provides that there be a civil penalty of up to $5,000 if a lobbyist, or anyone who is required to be registered as a lobbyist, fails to disclose any required information. That penalty is in addition to any other penalty already authorized in that statute.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: ss. 112.312, 112.3125, 112.313, 112.3142, 112.31425, 112.3143, 112.3144, 112.31445, 112.3145, 112.31455, 112.3147, 112.3148, 112.31485, 112.3149, and 112.324.

II. Present Situation:

Financial Disclosure

Currently, all elected constitutional officers and candidates for such offices are required by Art. II, s. 8 of the State Constitution, to file a full and public disclosure of their financial interests (CE Form 6) annually. The annual full and public disclosure is also required of all statewide elected officers and any other officers, candidates, and employees as determined by law. Additionally, other local officers, state employees, and local employees are required to file an annual statement of financial interests (CE Form 1).[1] The Commission has promulgated forms by which a filer may amend his or her full public disclosure of financial interests (CE Form 6X) or statement of financial interests (CE Form 1X). The Commission has also promulgated disclosure forms required of a public officer or employee upon leaving office or public employment. Those forms are the final full and public disclosure of financial interests (CE Form 6F) and the final statement of financial interests (CE Form 1F). There is no specific form by which to amend a final full and public disclosure of financial interests or a final statement of financial interests. Currently, the financial disclosure requirements are contained in s. 112.3144, F.S., and s. 112.3145, F.S.

[1] Members of an expressway authority or transportation authority are listed as required filers in s.112.3145 (1)(a)2.b., F.S. However, in Chapter 09-85, L.O.F., the Legislature required members of those authorities to file a full and public disclosure of their financial interests pursuant to s. 112.3144, F.S. Currently, the following officer or employees are not required to file financial disclosure: Community Redevelopment Agency members; finance directors of counties, municipalities, or other political subdivisions; Criminal Conflict and Civil Regional Counsel; or, Assistant Criminal Conflict and Civil Regional Counsel.

Those who are required to file a statement of financial interests pursuant to s. 112.3145, F.S., are required to disclose primary sources of income (other than from his or her public position), secondary sources of income (in certain circumstances), real property (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified businesses. The law permits a filer to report the required interests based upon one of two thresholds. First, the filer 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. This is referred to as the "comparative (percentage) threshold." Alternatively, the filer may determine whether an interest is reported if the interest exceeds a specified dollar value. This is referred to as the "dollar value threshold." Because the law permits a filer to choose which threshold he or she is going to use, the CE Form 1 promulgated by the Commission requires a filer to identify the threshold used by checking a box. The statute does not currently expressly require this designation on the CE Form 1.

The Commission serves as the depository for financial disclosure filings of state officers or employees. Those who serve at a local level file their financial disclosure with the local supervisor of elections. The Commission and supervisors of elections are statutorily required to assist each other in identifying those subject to the financial disclosure requirement, providing notice to those individuals, and tracking receipt of financial disclosures. In the event that an individual fails to timely file his or her financial disclosure, the Commission imposes an automatic fine of $25 per day for failure to timely file financial disclosure. The automatic fine is capped at $1,500. Neither the Commission nor the supervisor of elections is required to examine the financial disclosure filings.

If a filer is uncertain about whether he or she is required to disclose information, the filer may contact the Commission for guidance. Usually, the Commission's staff can answer simple questions by telephone or letter. In some circumstances, staff may not be able to provide such informal guidance. The Commission's staff will usually provide the filer the "safe harbor" advice to disclose the information or will advise the filer to seek a formal opinion from the Commission at its next available meeting. Upon receipt of the guidance, the onus is on the filer to include the information on their original form or, if necessary, file an amendment form. A member of the public can file a complaint with the Commission alleging that the person failed to disclose information which they were legally obligated to disclose. That complaint follows the same procedure as any complaint alleging a violation of one of the standards of conduct in the Code of Ethics. In the event that the Commission finds the filer in violation, he or she is subject to the penalties in s. 112.317, F.S.

Gifts and Honoraria

Gifts to public officers and employees are regulated pursuant to s. 112.3148, F.S. "Gift" is defined in s. 112.312(9), F.S., and encompasses nearly anything of value. Under s. 112.3148, F.S., a reporting individual or procurement employee ("RIPE") is prohibited from soliciting any gift from a political committee, committee of continuous existence, a lobbyist, or an employer, principal, partner or a firm of a lobbyist. A "reporting individual" is anyone who is required to file financial disclosure, including candidates. A "procurement employee" is an employee of an officer, department, board, commission, or council of the executive 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 as defined in s. 287.012, F.S., if the cost of such services or commodities exceeds $1,000 in any year.

Additionally, a RIPE is prohibited from knowingly accepting a gift from a political committee, committee of continuous existence, a lobbyist, or an employer, principal, partner or a firm of a lobbyist if the gift is valued over $100. If a political committee, committee of continuous existence, a lobbyist, or an employer, principal, partner or a firm of a lobbyist gives a gift valued between $25 and $100 to a RIPE, the donor of the gift is required to report the gift on a quarterly basis using a CE Form 30.

Honoraria are regulated by s. 112.3149, F.S. An "honorarium" is a payment of money or anything of value, directly or indirectly, to a RIPE, or to any person on his behalf, as consideration for a speech, address, oration, or other oral presentation by the RIPE, regardless of whether presented in person, recorded, or broadcast over the media. An "honorarium" also includes a writing by the RIPE, other than a book, which has been or is intended to be published. "Honorarium" does not include payment for services related to employment held outside the RIPE's public position; ordinary payment or salary received for services related to the person's public position; campaign contributions regulated by Ch. 106, F.S.; or payment of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event. Actual and reasonable related expenses also include event or meeting registration fees to the RIPE and his or her spouse.

A RIPE is prohibited from soliciting any honorarium related to his or her public duties. A RIPE is also prohibited from knowingly accepting an honorarium from a political committee, committee of continuous existence, a lobbyist, or an employer, principal, partner or a firm of a lobbyist. A political committee, committee of continuous existence, a lobbyist, or an employer, principal, partner or a firm of a lobbyist is prohibited from giving an honorarium to a RIPE. The statute requires annual disclosure of any honorarium-related expenses received on a CE Form 10.

Gifts from Certain Political Committees

Committees of continuous existence and political committees are statutory entities authorized in s. 106.04, F.S., and s. 106.03, F.S., respectively, to engage in certain political activities. Currently, s. 112.3148, F.S., prohibits a reporting individual or procurement employee from soliciting a "gift" from a committee of continuous existence or a political committee. "Gift" is defined in s. 112.312(9), F.S., and encompasses nearly anything of value. However, there are some items in that definition which are specifically excluded from the definition of "gift," the most significant of which is a campaign contribution or expenditure regulated by Chapter 106 and/or federal law.[2] Current law also prohibits a reporting individual or procurement employee from accepting anything over $100 in value. If a reporting individual or procurement employee accepts a "gift" valued less than $100, but greater than $25, the committee of continuous

[2] Section 112.313(12)(b)2, F.S.

existence or political committee must disclose the gift by filing a CE Form 30 with the Florida Commission on Ethics.

Blind Trusts

Currently, there is no provision of the Florida Statutes addressing the use of blind trusts by public officers.

State Public Officer Voting Conflicts

Under s. 112.3143(2), F.S., ***no state public officer is prohibited from voting in an official capacity on any matter.*** However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he 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 which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, 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.

Complaints Against Candidates

Under s. 112.324(2)(c), F.S., a complaint may not be filed against a candidate in any special, primary, or general election on election day or within the five days preceding the election. Additionally, that Section prohibits disclosure of the intent to file an ethics complaint against a candidate on an election day or within the five days preceding the primary, special, or general election.

Initiation of Investigations

Pursuant to s. 112.324(1), F.S., the Commission may only initiate an investigation upon receipt of a sworn complaint. When the Commission receives a complaint, the Executive Director reviews the complaint for "legal sufficiency." If the Executive Director determines that the complaint ***is not legally sufficient***, the complaint is brought before the Commission in executive session. In executive session, the Commission may: find the complaint sufficient and order an investigation; find the complaint insufficient, dismiss it, and notify the complainant that no investigation will be made; or the Commission may take such other action that it deems appropriate. If the complaint is dismissed as legally insufficient, a summary of the reasons for dismissing the complaint together with the complaint itself and all related documents become public record.

If the Executive Director determines that the complaint is sufficient to invoke the jurisdiction of the Commission, the Executive Director orders the complaint to be investigated. After the Executive Director orders the complaint to be investigated, it is assigned to a neutral investigator for investigation consistent with the Commission's rules. After the investigation is completed the Commission reviews the complaint to determine whether probable cause exists to find a violation of the Code of Ethics. If the Commission determines that probable cause does not exist,

the complaint is dismissed and all records become open to the public. If the Commission determines that probable cause exists, the complaint, files, and any further proceedings become public record. The subject of any complaint may waive confidentiality of the complaint against him or her at any time during the proceedings. If confidentiality is waived, all records are open to the public and any proceedings will be conducted in the public session of the Commission.

If probable cause is found against a public officer or employee, the officer or employee has the right to a public hearing. Pursuant to s. 112.324(3), F.S., public hearings can be conducted by the full Commission, a single Commission member, or by the Division of Administrative Hearings. The Commission does not have the authority to impose punishments if a violation is found. Instead, s. 112.324 F.S., specifies who has the authority to impose punishment.

Ethics Training

Currently, the Code of Ethics does not require any public officer or employee to complete training that addresses the Sunshine Amendment (Article II, s. 8, Florida Constitution) or the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes).

Legislative Revolving Door Policies

Article II, Section 8(e), of the Florida Constitution prohibits members of the Legislature from personally representing another person or entity for compensation before their former body for a period of two years following vacation of office. Additionally, that section prohibits members of the Legislature from personally representing another person or entity for compensation during term of office before any state agency other than judicial tribunals. These prohibitions are also codified in s. 112.313(9), F.S.

Dual Public Employment

Currently, there is no prohibition on members of the Legislature being employed by the state or any of its political subdivisions.

"Executive Branch Expenditure Ban"

The "Executive Branch Expenditure Ban" is located in s. 112.3215, F.S. The executive ban is the sister provision to the "Legislative Branch Expenditure Ban" in s. 11.045, F.S. The "Executive Branch Expenditure Ban" requires individuals to register with the Commission on ethics prior to engaging in lobbying the executive branch. Each lobbying firm is required to make certain disclosures and is required to maintain records corroborating those disclosures.[3]

Under "Executive Branch Expenditure Ban," an official, member, or employee of the executive branch is prohibited from soliciting or accepting, directly or indirectly, an expenditure from a lobbyist or principal.[4] For purposes of this prohibition, the term "expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or

[3] Section 112.3215(5), F.S.
[4] Section 112.3215(6)(a), F.S.

principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106, F.S., or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or an affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

III. Effect of Proposed Changes:

Financial Disclosure

Public Accessibility (Section 8)

The bill creates s. 112.31445, F.S., which requires the Commission to scan all CE Form 6 filers and make them available in an online searchable database beginning with the 2012 filing year. The bill requires the Commission, by December 1, 2015, to prepare a proposal for submission to the President of the Senate and the Speaker of the House for the creation of an online financial disclosure filings system. The system would be similar to the system used by candidates, political committees, and others pursuant to Chapter 106 of the Florida Statutes. At a minimum, the proposal must:

- Mandate online filing system for CE Form 6 filers;
- Provide a secure method that prevents unauthorized access to electronic filing system functions;
- Permit the filer, or his or her CPA, to file via the internet portal;
- Require that the filings in the database be accessible to the public;
- Describe any necessary statutory or rule authority changes;
- Provide for an alternative filing method in case the filing system is inoperable; and
- Provide for a receipt to be obtained verifying that the officer has filed his or her form.

Collection Tools (Sections 7 and 9)

The bill gives the Commission greater ability to collect financial disclosure fines. Specifically, the bill amends ss. 112.3144 and 112.3145, F.S., to increase the statute of limitations for the Commission to collect unpaid financial disclosure fines from four years to twenty years. The bill creates s. 112.31455, F.S., which gives the Commission new tools to collect unpaid financial disclosure fines. That Section requires the Commission to determine whether the person who owes the fine is a public officer, public employee, or is currently receiving public contract payments. If the Commission determines that the person is still receiving such public payments, then it must notify the Chief Financial Officer or governing body or board of the amount owed. Six months after receipt of the notice, the CFO or governing body/board must withhold up to 10 percent of any payment made from public money to satisfy outstanding fines. Additionally, the CFO or governing body/board may withhold up to 2 percent of each payment to compensate for administrative costs. If the Commission determines that the person is no longer a public officer, public employee, or receiving contractual payments from public funds, the bill gives the Commission the authority to seek a lien on real property, pursuant to Chapter 55, F.S., and/or

garnishment of any wages, pursuant to Chapter 77, F.S., within the state six months after the order becomes final.

De Minimis Exception Procedures (Sections 7 and 9)

The bill creates a new procedure for addressing de minimis errors or omissions in ss. 112.3144 and 112.3145, F.S., concerning complaints alleging violations of the financial disclosure requirement. Specifically, the bill creates an absolute "cure" by specifying that any amended disclosure form that is filed prior to September 1 is to be treated as the original filing, regardless of whether a complaint was filed during that period. If a complaint pertaining to the current year, or the preceding 5 years alleges a failure to properly and accurately disclose any required information, the Commission may immediately follow its normal complaint procedures in s. 112.324, F.S. However, for a complaint filed after August 25, alleging an immaterial, inconsequential, or de minimis error or omission, the Commission must notify the filer that he or she has 30 days to file an amended financial disclosure form. If no amendment is filed within that timeframe, the Commission may continue with the complaint.

In the event that there is an error or omission made on the final financial disclosure filing, the filer has a grace period of 60 days from the date of the original filing to correct any errors, regardless of whether a complaint was filed. If a complaint is filed after sixty days alleging a complete omission of any information required to be disclosed, the Commission may immediately proceed with the complaint as provided for in s. 112.324, F.S. However, if the complaint alleges an immaterial, inconsequential, or de minimis error or omission, the Commission must notify the filer that he or she has 30 days to file a new final financial disclosure form. If no amendment is filed within that timeframe, the Commission may continue with the complaint as provided in s. 112.324, F.S.

For purposes of these changes, the term "de minimis" is defined as an error or omission that is 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 a CPA/Safe Harbor (Sections 7 and 9)

Senate Bill 2 amends ss. 112.3144 and 112.3145, F.S., to permit all filers to use a CPA to prepare their financial disclosure forms for filing. The bill requires the CPA to attest that he or she prepared the form in accordance with applicable industry standards, if any, and that the form is true and correct to the best of his or her knowledge. If a complaint is filed alleging a failure to disclose anything required to be disclosed, the Commission must determine whether the CPA was aware of the interest. If he or she was aware of the interest, but failed to disclose the interest, the officer cannot be held in violation for failure to disclose the item. The bill also amends ss. 112.3144 and 112.3145, F.S., to permit a candidate or elected officeholder to pay for the costs of the CPA from a campaign account created pursuant to s. 106.11, F.S., during the year that the individual qualifies for election to public office, or from his or her office account created pursuant to s. 106.141, F.S.

Candidate Qualifying Financial Disclosures (Sections 7 and 9)

The bill amends ss. 112.3144 and 112.3145, F.S., to require a qualifying officer to send an electronic copy of a candidate's financial disclosure form within three (3) days of receipt. The electronic copy sent to the Commission will satisfy that year's annual financial disclosure requirement. That provision only applies if the candidate qualifies before the deadline to file the annual financial disclosure filing. However, if the candidate qualifies after the candidate's financial disclosure form has been filed with the Commission or Supervisor of Elections, the candidate is required to file a copy of the disclosure form with his or her qualifying officer.

CE Form 1 Filing Requirements (Section 9)

The bill removes an outdated requirement in s. 112.3145, F.S., that members of an expressway authority or transportation authority file a CE Form 1. Those board members are required to file a CE Form 6 disclosure.[5]

The bill requires the following to file a statement of financial interests (CE Form 1) pursuant to s. 112.3145, F.S.:

- Community Redevelopment Agency board members;
- Finance directors of counties, municipalities, or other political subdivisions;
- Criminal Conflict and Civil Regional Counsel; and
- Assistant Criminal Conflict and Civil Regional Counsel.

Finally, the bill requires anyone filing a CE Form 1 to indicate whether the filer used the dollar value threshold or the comparative (percentage) threshold to determine whether the filer is required to disclose his or her interests.

Gifts and Honoraria (Sections 12 and 14)

The bill amends the definition of "procurement employee" in ss. 112.3148 and 112.3149, F.S., to clarify that only those employees who have authority to make more than $10,000 in purchases during the year are procurement employees.

The bill also incorporates a recommendation of the Commission and the Nineteenth Statewide Grand Jury that reporting individuals or procurement employees be prohibited from soliciting any gift or honoraria, accepting any gift in excess of $100, or accepting any honoraria from a "vendor." A "vendor" is any business entity that is doing business directly with an agency, such as renting, leasing, or selling any realty, goods or services.

Gifts from Certain Political Committees (Section 13)

The bill creates s. 112.31485, F.S., prohibiting a reporting individual or procurement employee, or a member of his or her immediate family, from soliciting or knowingly accepting, directly or indirectly, any gift from a political committee or a committee of continuous existence. The bill

[5] Ch. 2009-85, *Laws of Florida*.

also prohibits a political committee or a committee of continuous existence from giving, directly or indirectly, any gift to a reporting individual or procurement employee, or his or her immediate family.

For purposes of this section, the bill defines "gift" as any purchase, payment, distribution, loan, advance, transfer of funds, or disbursement of money or anything of value that is not primarily related to contributions, expenditures, or other political activities authorized pursuant to Chapter 106, F.S. "Immediate family" means parent, spouse, child, or sibling. Finally, in addition to the penalties available in s. 112.317, F.S., the bill requires a penalty equal to three times the amount of the gift payable to the State's General Revenue Fund. The reporting individual, procurement employee, immediate family member, or an agent or person acting on behalf of a committee of continuous existence or a political committee is personally liable for the treble penalty. The bill deletes references in the "Gifts Law" in s. 112.3148, F.S., to conform.

Blind Trusts (Section 5)

Senate Bill 2 creates s. 112.31425, F.S., permitting public officers to create a blind trust and place their assets into the trust. When a public officer places assets into a blind trust, the public officer gives the trustee the authority to dispose of the assets and the public officer must not attempt to influence or exert control over decisions regarding the management of the trust. However, the public officer may make requests for distributions, communicate with the trustee concerning his or her financial needs, and provide 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 would also be entitled to enough information from the trustee to prepare their personal income tax statements. The public officer would be required to disclose the blind trust as an asset on his or her financial disclosure form. The public officer would also be required to disclose as primary income any income exceeding the thresholds for reporting.

The bill prohibits certain relatives and other individuals from serving as a trustee. The bill also specifies that the trust agreement must contain a statement of purpose namely, to remove control and knowledge of the investments so that conflicts between the grantor's responsibilities as a public officer 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 agreement must specify that communications concerning the trust holdings or sources of income are prohibited. The agreement must also specify that the trust tax return is to be prepared by the trustee and information relating to the trust is not to be disclosed to the public officer.

The public officer must notify the Commission that the trust was created within 5 business days. The notice to the Commission must set forth the date the agreement was executed; the name and address of the trustee; and acknowledgement that he or she has agreed to serve as the trustee. Assets placed in a blind trust would not give rise to certain conflicts of interests. Specifically, assets in the trust would not create a violation of the prohibition on doing business with one's own agency in s. 112.313(3), F.S.; would not give rise to a conflicting employment or contractual relationship which would be prohibited in s. 112.313(7), F.S.; and the assets in the blind trust would not give rise to a voting conflict of interests under s. 112.3143, F.S.

State Public Officer Voting Conflicts (Section 6)

The bill defines the terms "principal" and "special private gain or loss" in s. 112.3143, F.S. For purposes of the bill, the term "principal" includes the parent organization or subsidiary of any person or entity by which the public officer is retained. The term "special private gain or loss" means an economic benefit or harm that would inure to the voting official or the voting official's relative, business associate, or principal in a unique way or disproportionate to other members of the group.

The bill prohibits a state public officer from voting on a measure that he or she ***knows*** will inure to his or her special private gain or loss. Under the bill, state public officers must disclose any interest when the officer ***knows*** a vote inures to his or her special private gain or loss. The bill maintains the current disclosure requirement concerning the interests of a relative; business associate; or principal by which the officer is retained. Further, state public officers ***will be required to make every reasonable effort*** to disclose any interest that is required to be disclosed prior to the vote but no later than 15 days after the vote occurs.

The bill clarifies in ss. 112.3143 and 112.3147, F.S., that members of the Legislature may satisfy the disclosure requirement using a form created pursuant to the rules of their respective house if the form contains all information required to be disclosed by s. 112.3143, F.S.

Complaints Against Candidates (Section 17)

Currently, s. 112.324, F.S., provides that a complaint against a candidate, or the intent to file a complaint against a candidate, may not be disclosed for a period of five days before a special, primary, or general election. The bill extends the period of time to thirty days before a special, primary, or general election, unless the complaint is based upon personal information or information other than hearsay.

Complaints and Investigative Proceedings (Section 17)

The bill amends s. 112.324, F.S., to authorize the Commission to initiate investigations based upon a referral received from the Governor, the Florida Department of Law Enforcement, a state attorney, or a U.S. Attorney. In order to investigate such a referral, a vote of six members of the Commission is required. The bill requires that records and proceedings associated with a referral remain confidential until: the Commission determines that it will not investigate the referral; the Commission determines whether probable cause exists to believe that a violation occurred; or, the subject of the complaint waives confidentiality.[6]

The bill requires the Commission to dismiss any complaint, other than a complaint relating to financial disclosure filings, or referral at any stage of the proceedings if it determines that the violation that is alleged or has occurred is a de minimis violation attributable to inadvertent or unintentional error. In determining whether a violation was de minimis, the Commission shall

[6] In order to exempt a referral from public records and open meetings laws, a second bill containing the public records and open meetings exemptions will be required pursuant to Article I, Section 24, Florida Constitution. That bill, SB 4, must pass by a 2/3 vote of each house.

consider whether the interests of the public were protected despite the violation. For purposes of this section, a "de minimis" violation is any violation that is unintentional and not material in nature.

Ethics Training (Section 4)

The bill creates s. 112.3142, F.S., requiring all constitutional officers to receive a minimum of four hours of training that addresses the Sunshine Amendment (Article II, Section 8, Florida Constitution), the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes), public records laws (Chapter 119, F.S.), and open meetings laws. The requirement can be satisfied by attending, or via recording of, a continuing legal education class, other continuing professional education class, seminar, or other presentation so long as the requirements herein are satisfied. The bill provides that an ethics training requirement for members of the Legislature is to be adopted by the rules of each respective house.

For purposes of the bill, "constitutional officers" means: the Governor, Lt. Governor, Attorney General, Chief Financial Officer, Agriculture Commissioner, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit courts, county commissioners, school board members, and school superintendents.

Legislative Revolving Door Policies (Section 3)

The bill amends s. 112.313(9), F.S., to prohibit a former member of the Legislature from lobbying ***any*** agency for a period of two years after vacation of office. Additionally, the former member is prohibited from becoming a partner, principal, or employee of a firm whose primary purpose is lobbying in a position the purpose of which is drafting, strategizing, consulting, advising or in any way working on matters that will come before the Legislature, or will provide networking or relationship building services with sitting members of the Legislature. This prohibition applies for a period of 2 years after vacation of office. The bill specifies that employment, partnership, or association with a principal, firm, or entity whose primary purpose is legislative lobbying is presumptively prohibited, unless either side requests an opinion of the Commission. If the former member affiliates with partnership, or association with a principal, firm, or entity whose primary purpose is legislative lobbying, that entity must file an annual statement attesting that the former member did not engage in any of the prohibited activities.

The statement must be filed with either the Secretary of the Senate or the Clerk of the House of Representatives. If the former member served in both houses, then a form must be filed with both houses.

Dual Public Employment (Section 2)

The bill creates s. 112.3125, F.S., which prohibits an elected public officer or, for the period of his or her candidacy, any person who has qualified as a candidate for elected public office from accepting employment with the state or any of its political subdivisions. An exception is provided for persons who had public employment prior to qualifying for office. However, the candidate or member may not accept promotion, advancement, additional compensation, or other thing of value that he or she knows, or with the exercise of reasonable care should know, was

given as a result of the officer's election or position as a officer, or that is otherwise inconsistent with the promotion, advancement, additional compensation, or things of value provided to other similarly-situated employees.

These provisions do not apply to a qualified person seeking a position as an educator whose primary duties are instructional, as opposed to managerial or administrative, in nature.

"Executive Branch Expenditure Ban" Changes (Section 16)

The bill amends s. 112.3215, F.S., so that its provisions parallel the provisions in the "Legislative Branch Expenditure Ban" in s. 11.045, F.S. Specifically, the bill authorizes the Commission to investigate whether a lobbyist has made a prohibited expenditure. The bill also specifies that lobbyists, or anyone required to be registered as a lobbyist, who knowingly fails to disclose any information required to be reported is subject to a penalty up to $5,000. That new penalty is in addition to any penalty already authorized pursuant to s. 112.3215(10), F.S., which may be imposed by the Governor and Cabinet.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates a new exemption for public records and open meetings related to referrals to the Commission on Ethics from the Governor, the Florida Department of Law Enforcement, a state attorney, or a U.S. Attorney. These exemptions are the subject of a travelling companion bill, SB 4.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.