

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 Ethics and Elections

BILL: SB 606

INTRODUCER: Senator Clemens

SUBJECT: Governmental Ethics

DATE: February 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Pre-meeting
2.			CA	
3.			AP	

I. Summary:

SB 606 amends several provisions of the Code of Ethics for Public Officers and Employees in Part III, Chapter 112, Florida Statutes. Specifically, the bill:

- Requires elected municipal officials to complete ethics training each calendar year;
- Repeals provisions concerning gift reporting;
- Provides that reporting individuals and procurement employees may obtain an advisory opinion from his or her agency attorney concerning applicability of the gifts law in s. 112.3148, F.S., and the honoraria law in s. 112.3149, F.S.;
- Requires the agency attorney to issue the opinion within 10 days;
- Provides, under certain circumstances, a safe harbor for conduct consistent with the attorney's advisory opinion;
- Imposes an additional penalty between \$1,000 and \$5,000 on complainants who disclose or permit to be disclosed the existence of a complaint and/or the contents of any document associated with the complaint prior to the matter becoming public;
- Requires the Commission to dismiss any complaint when the officer or employee received legal guidance from his or her attorney after consultation and full disclosure of all material facts, and acted in accordance with the guidance offered;
- Permits electors of a political subdivision to impose additional or more stringent standards of conduct on its officers;
- Prohibits one political subdivision from imposing additional or more stringent standards of conduct and disclosure requirements upon the officers and employees of another political subdivision; and
- Provides that members of governmental bodies may abstain from voting on a matter if there is, or appears to be, a conflict of interest established by an additional or more stringent standard imposed by a political subdivision.

The bill is effective July 1, 2014.

II. Present Situation:

The present situation will be addressed in the Effects of Proposed Changes section below.

III. Effect of Proposed Changes:**Annual Ethics Training****Current Law:**

Section 112.3142, F.S., requires 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, continuing legal education classes, other continuing professional education classes, seminars, or other presentations so long as the specific subjects required are covered.

For purposes of s. 112.3142, F.S., “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.

Effects of Proposed Changes:

SB 606 requires elected municipal officials to complete ethics training each calendar year.

Gift Reporting**Current Law:**

Section 112.3148(8), F.S., requires a reporting individual or procurement employee (“RIPE”) to disclose gifts that he or she believes to be in excess of \$100 quarterly. However, a RIPE is not required to report:

- Gifts from relatives;
- Gifts prohibited by s. 112.313(4), F.S.;
- Gifts from lobbyists in excess of \$100; and
- Gifts otherwise required to be disclosed by s. 112.3148, F.S.

Section 112.3148(8), F.S., also specifies the information to be contained on the gift disclosure forms, including the requirement that they be sworn, and that the deadline for filing the quarterly gift disclosure is 5 p.m. on the last date of the quarter. Finally, s. 112.3148(8), F.S., provides an exemption from the reporting requirement if no reportable gift was received during that quarter.

Effects of Proposed Changes:

SB 606 repeals the provisions concerning gift reporting.

Advisory Opinions

Current law:

Currently, pursuant to s. 112.322(3), F.S., the Commission on Ethics is charged with issuance of advisory opinions concerning the provisions of the Code of Ethics for Public Officers and Employees. The Commission can issue advisory opinions in two circumstances:

- to an officer or employee concerned about whether, or how, the ethics laws apply to himself or herself; or
- where a public officer or employee has the authority to hire or terminate an employee, the public officer or employee may request an opinion about conduct of the subordinate employee.

Ethics opinions are binding until amended or revoked, unless material facts were omitted or misstated in the request for the opinion.

Effects of Proposed Changes:

SB 606 provides that reporting individuals and procurement employees may obtain an advisory opinion *from his or her agency attorney* concerning applicability of the gifts law in s. 112.3148 and the honoraria law in s. 112.3149, F.S. The bill requires the agency attorney to issue the opinion within 10 days. The bill provides that the requestor may reasonably rely upon the advisory opinion of his or her agency attorney.

Penalties for Disclosing the Existence or Contents of Complaints

Current law:

Section 112.324(2), F.S., provides that ethics complaints, and all documents associated with an ethics complaint, are confidential and exempt from public records until such time as: the Commission determines that the complaint is legally insufficient to indicate a potential violation of the Code of Ethics; the Commission determines whether probable cause exists; or until waived by the subject of the complaint. However, there are no penalties specified for disclosing the existence of a complaint or the contents of a complaint.

Effect of Proposed Changes:

SB 606 provides an additional penalty between \$1,000 and \$5,000 to be assessed against complainants who willfully disclose or permit to be disclosed the existence of a complaint and/or the contents of any document associated with the complaint prior to the matter becoming public.

Dismissal of Complaints

Current law:

Currently, the Commission is not required by statute to dismiss any complaint.¹ However, the Commission is authorized to dismiss complaints in the following circumstances:

- If the Commission determines that a complaint alleges a de minimis violation attributable to an inadvertent or unintentional error; or
- If the Commission determines that the public interest would not be served by proceeding further.

Effects of Proposed Changes:

SB 606 requires the Commission to dismiss any complaint if it finds that, before the alleged violation occurred, the officer or employee: consulted with his or her agency attorney; provided full and complete written disclosure or made an oral disclosure at a duly noticed public meeting of all material facts relevant to the allegation before the Commission; received a written or oral opinion at a duly noticed public meeting from his or her agency's attorney relating to the allegation before the Commission; and acted in accordance with the opinion.

Additional or More Stringent Standards of Conduct

Current law:

Section 112.326, F.S., provides that the governing body of any political subdivision may, by ordinance, or agency, by rule, impose upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those contained in the Code of Ethics. However, those standards of conduct and disclosure requirements are only permissible if they do not otherwise conflict with the Code of Ethics.

Effects of Proposed Changes:

SB 606 permits electors of a political subdivision to impose additional or more stringent standards of conduct on its officers. The bill also prohibits one political subdivision from imposing additional or more stringent standards of conduct and disclosure requirements upon the officers and employees of another political subdivision.

Abstention from Voting

Current law:

Section 286.012, F.S., prohibits a member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted from abstaining except

¹ Section 112.324(11)-(12), F.S.

when, he or she has, or appears to have, a possible conflict of interest under the provisions of ss. 112.311, 112.313, or 112.3143, F.S. In such cases, said member shall comply with the disclosure requirements of s. 112.3143, F.S.

The law does not permit abstention based upon additional or more stringent standards of conduct or disclosure requirements established by a political subdivision pursuant to s. 112.326, F.S.

Effects of Proposed Changes:

In addition to current law, SB 606 would allow members of governmental bodies to abstain from voting on a matter if there is, or appears to be, a conflict of interest proscribed in an additional or more stringent standard of conduct imposed by a political subdivision pursuant to s. 112.326, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill authorizes an additional penalty ranging from \$1,000 to \$5,000 for disclosing the existence of any complaint or disclosing contents of complaint-related documents. Political speech is protected by the First Amendment to the U.S. Constitution and Article I, Section 4, Florida Constitution. To the extent that disclosure of some of the contents of a complaint may be considered protected political speech, this provision may be constitutionally suspect as a prior restraint upon free speech on an “as applied” basis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires agency attorneys to issue advisory opinions under certain circumstances. Agencies may have retained an attorney on an independent contractor basis who bill on an hourly rate. It is not known how many requests for an advisory opinion might be generated. Thus, the fiscal impact on government is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.3142, 112.3148, 112.3149, 112.317, 112.322, 112.326, and 286.012.

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

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

None.

B. Amendments:

None.