

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: CS/SB 620

INTRODUCER: Ethics and Elections Committee and Senators DiCeglie and Yarborough

SUBJECT: Conflicting Employment or Contractual Relationships for Public Officers or Employees

DATE: March 15, 2023 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cleary	Roberts	EE	Fav/CS
2.			GO	
3.			RC	

Please See Section IX. For Additional Information

COMMITTEE SUBSTITUTE – Substantial Changes

I. Summary:

CS/SB 620 maintains a limited exception for public officers and employees of qualifying special tax districts from the general prohibition in the Code of Ethics that prohibits public officials from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. The bill clarifies that these public officers and public employees of special tax districts are still regulated by and must still comply with conduct provisions of the Code of Ethics and specifies certain conduct that will constitute an impermissible conflict of interest and be deemed a violation of the Code of Ethics.

The bill also:

- Requires that beginning January 1, 2024, local elected officers of independent special districts and each person who is appointed to fill a vacancy for an unexpired term of such office must complete 4 hours of ethics training covering specified materials.
- Provides that an elected local officer of an independent special district assuming a new office or term of office after March 31 is not required to complete the ethics training for the calendar year in which their term of office began.

This bill takes effect July 1, 2023.

II. Present Situation:

Code of Ethics: Conflicting Employment or Contractual Relationship

Section 112.313, F.S., specifies standards of conduct for public officers,¹ employees of agencies,² and local government attorneys. Pursuant to s. 112.313(7), F.S., a public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.³ A violation of this subsection is deemed a violation of the Code of Ethics (Code)⁴ and subjects the violator to enforcement and penalty provisions of the Code.⁵

There is an exception to the above prohibitions in s. 112.313(7)(a)1, F.S., which provides that when the agency referred to is that kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298 (drainage and water control districts), then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by the subsection or be deemed a conflict per se.⁶ However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, s. 112.313, F.S., shall be deemed a conflict of interest in violation of the standards of conduct set forth by s. 112.313, F.S. Therefore, a public officer and/or employee is still subject to the other provisions of the Code and conduct that violates the other provisions of the Code subjects these officers and/or employees to the enforcement provisions and penalties of the Code.⁷

Currently, there are several other exceptions to these prohibitions relating to legislative bodies where regulatory power resides in another agency or is strictly through enactment of laws or

¹ Pursuant to s. 112.313(1), F.S., the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

² Pursuant to s. 112.312(2), F.S., "agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

³ Section 112.313(7), F.S.; *see also* Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and employees*, p. 6, located at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023221> (last visited March 14, 2023)

⁴ *See* pt. III, ch.112, F.S.

⁵ *See* s. 112.317, F.S.

⁶ *See* ch. 75-208, Laws of Florida (Legislature amended s. 112.313, F.S. in 1975, creating the limited exemption for these special tax districts, which became law October 1, 1975).

⁷ *Id.*; *see* pt. III, ch. 112, F.S.

ordinances,⁸ and lawful or required practice in a particular profession or occupation.⁹ The Code also contains several exemptions to these prohibitions related to:

- Appointed advisory board members;¹⁰
- When business transactions in a county or municipality are conducted under a rotation system;¹¹
- When business is awarded under a system of sealed, competitive bidding and certain criteria are met;¹²
- Purchases or sales for legal advertising, utilities service, or passage on a common carrier;¹³
- Emergency purchases that must be made to protect public health, safety, or welfare;¹⁴
- When the business entity involved is the only source of supply with the political subdivision and there is a full disclosure by the officer or employee;¹⁵
- When the aggregate of such transactions do not exceed \$500 in a calendar year;¹⁶
- When business transacted is the deposit of agency funds in a bank of which a county, city, or district official is an officer, director, or stockholder, so long as agency records show that the governing body has determined that the member did not favor his or her bank over qualified banks;¹⁷
- When the transaction is made pursuant to s. 1004.22 or s. 1004.23 and is specifically approved by the president and the chair of the university board of trustees;¹⁸

⁸ Section 112.313(7)(a)2, F.S. (“When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of legislative body shall not be prohibited by this subsection or be deemed a conflict.”)

⁹ Section 112.313(7)(b), F.S. (“This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.”)

¹⁰ Section 112.313(12), F.S. (“The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person.”)

¹¹ Section 112.313(12)(a), F.S. (“Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.”)

¹² Section 112.313(12)(b), F.S. (“The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and: (1) the official or the official’s spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder; (2) the official or the official’s spouse or child has in no way used or attempted to use the official’s influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and (3) the official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official’s interest, or the interest of the official’s spouse or child, and the nature of the intended business.”)

¹³ Section 112.313(12)(c), F.S.

¹⁴ Section 112.313(12)(d), F.S.

¹⁵ Section 112.313(12)(e), F.S.

¹⁶ Section 112.313(12)(f), F.S.

¹⁷ Section 112.313(12)(g), F.S.

¹⁸ Section 112.313(12)(h), F.S.

- When the public officer or employee purchases in a private capacity goods or services from an entity regulated by, or doing business, with his or her agency, at a price and under terms available to similarly situated members of the general public;¹⁹ and
- When the elected public officer is employed by a tax exempt organization contracting with his or her agency and the officer’s employment is not directly or indirectly compensated as a result of such contract or business relationship and the officer has in no way participated in the agency’s decision to contract or to enter into the business relationship with his or her employer. In addition, the officer must abstain from voting on any matter that may come before the agency involving the officer’s employer, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining, and file the required written memorandum.²⁰

Special Districts

“Special tax district” is not defined in ch. 112, F.S., or in ch. 189, F.S., which provides the general provisions for special districts. Section 189.012(6), F.S., defines a “special district” as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.” The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers.

According to the Special District Information Program at the Florida Department of Economic Opportunity (DEO), as of March 14, 2023, there are currently 1,926 special districts.²¹ Not all of these are special tax districts, but the DEO data does not break out districts with taxation authority as a subset of all the special districts.²² The table below summarizes the top five specialized functions out of the 78 specialized functions of the 1,926 special districts²³:

Special District Function	Number
Community Development	904
Community Redevelopment	222
Housing Authority	91
Drainage and/or Water Control	82
Fire Control and Rescue	63

¹⁹ Section 112.313(12)(i),(j), F.S.

²⁰ Section 112.313(15), F.S.

²¹ See Florida Department of Economic Opportunity, *Official List of Districts: Special Purpose Totals (10)(c)*, <https://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts>. (last visited March 14, 2023)

²² *Id.* (The Florida Department of Economic Opportunity’s Official List of Special Districts located on its website allows visitors to generate customized lists of special districts but provides the following disclaimer, “Special Purpose Totals: Be aware that many special districts have similar purposes but are grouped separately because they were established under different statutes . . . Additionally, many special districts have more than one special purpose; therefore, adding the number of special districts in this category will not provide accurate state totals.”)

²³ *Id.*

Ethics Training

All constitutional officers, all elected municipal officers, and each commissioner of a community redevelopment agency (CRA) created under part III. 163, F.S., must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the Florida Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings law of Florida.²⁴ This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subject is covered by the class.²⁵

A constitutional officer or elected municipal officer assuming a new office or a new term of office after March 31 is not required to complete ethics training for the calendar year in which his or her term of office began.²⁶

III. Effect of Proposed Changes:

The CS clarifies the limited exception for public officers and employees of qualifying special tax districts under s. 112.313(7)(a)1, F.S., from the general prohibition under (7)(a) that prohibits public officials from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency.

Specifically, the bill states that the conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of s. 112.313, F.S., includes conduct that violates s. 112.313(6), F.S. (regarding misuse of public position)²⁷ and conduct that violates s. 112.313(8), F.S. (regarding disclosure or use of certain information).²⁸

In addition, the CS:

- Requires that beginning January 1, 2024, local elected officers of independent special districts and each person who is appointed to fill a vacancy for an unexpired term of such office must complete 4 hours of ethics training covering specified materials.
- Provides that an elected local officer of an independent special district assuming a new office or term of office after March 31 is not required to complete the ethics training for the calendar year in which their term of office began.

²⁴ Section 112.3142(2)(a)-(c), F.S.

²⁵ *Id.*

²⁶ Section 112.3142(2)(e), F.S.

²⁷ (6) Misuse of Public Position.- “No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which 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. This section shall not be construed to conflict with s. 104.31.”

²⁸ (8) Disclosure or Use of Certain Information.- “A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official 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.”

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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. Statutes Affected:

This bill substantially amends section 112.313 of the Florida Statutes.

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

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

CS by Ethics and Elections on March 14, 2023:

- The CS maintains the exemption under s. 112.313(7)(a)1., F.S., for public officers and employees of qualifying special tax districts from the general prohibition under (7)(a), that prohibits public officials from conducting business with or being employed by a business or agency that is being regulated by or doing business with his or her public agency.
- The CS maintains that these public officers and public employees of special tax districts are still regulated by and must still comply with conduct provisions of the Code of Ethics and specifies certain conduct that will constitute an impermissible conflict of interest and be deemed a violation of the Code of Ethics.
- The CS requires that beginning January 1, 2024, local elected officers of independent special districts and each person who is appointed to fill a vacancy for an unexpired term of such office must complete 4 hours of ethics training covering specified materials. Further, an elected local officer of an independent special district assuming a new office or term of office after March 31 is not required to complete the ethics training for the calendar year in which their term of office began.

B. Amendments:

None.