

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 24, 1998 Revised: 04/21/98 \_\_\_\_\_

Subject: Public Officials; Loans

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 1884 makes it a first-degree misdemeanor for any public official to knowingly solicit or accept a loan from any person doing business with the state, except for lending institutions.

This bill creates an unnumbered section of the Florida Statutes.

**II. Present Situation:**

There is currently no *per se* prohibition against a public official soliciting or accepting a loan from anyone doing business with the state.

The Florida Code of Ethics does prohibit a public officer from soliciting or accepting a loan based on an understanding that the loan would influence the vote, official action, or judgment of the public officer. s. 112.313(2), F.S. (1997). Other ethics provisions dealing with the receipt of unauthorized compensation and the misuse of public position could also apply to loan situations. ss. 112.313(4) and 112.313(6), F.S. (1997). Also, a preferential rate on a loan would be considered a "gift," and would be subject to the restrictions and reporting requirements applicable to all gifts under Chapter 112 of the Florida Statutes. ss. 112.312(12)(a)5. and 112.3148, F.S. (1997). Violations of these provisions would fall within the jurisdiction of the Florida Commission on Ethics, and subject the violator to a host of possible penalties. s. 112.317, F.S. (1997). In addition, many of these civil violations have criminal counterparts in other sections of the Florida Statutes, including felony penalties for bribery and unlawful compensation. ss. 838.015 and 838.016, F.S. (1997).

**III. Effect of Proposed Changes:**

Senate Bill 1884 prohibits a public official from knowingly soliciting or accepting a loan from any person doing business with the State, other than a lending institution. The bill defines lending institution to include any bank or trust company, mortgage banker, savings bank, credit union, national banking association, savings and loan association, building and loan association, insurance company, or other financial institution authorized to transact business in Florida.

It is important to note the current civil and criminal provisions which apply to loans received or solicited by a public officer require either a quid pro quo arrangement or some type of intentional, wrongful conduct by the public official in order to determine liability. Senate Bill 1884 requires only that the public official knowingly perform the act - solicit or accept a loan from someone doing business with the State other than a lending institution - in order to give rise to criminal liability.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Executive Business, Ethics and Elections:

Expands the scope of the original bill to prohibit any reporting individual or procurement employee subject to the Florida Code of Ethics, Chapter 112, Florida Statutes, from knowingly soliciting or accepting a gift or loan valued in excess of \$100 from any person who is doing business with, is a party to a contract with, or is employed by, the State of Florida, except for lending institutions and members of the person's immediate family; defines the terms "lending institution" and "immediate family." (WITH TITLE AMENDMENT)

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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