

# 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.)

BILL: CS/CS/SB 304

SPONSOR: Committee on Fiscal Policy, Committee on Ethics and Elections, Senator Saunders and others

SUBJECT: Ethics

DATE: March 4, 1999

REVISED: 03/10/99

---

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable/CS</u>
2.	<u>Hayes</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

---

## I. Summary:

The bill contains several changes to Florida's Code of Ethics, particularly in the area of full and limited financial disclosure. The bill also makes changes with regard to: Florida's gifts law; quarterly reporting of clients represented before agencies for a fee; ethical standards of conduct for current and former public officers and agency employees; penalties for ethics violations; executive branch lobbying; confidentiality of tax information as it relates to Ethics Commission investigations; witness tampering in Ethics Commission proceedings and investigations; immunity for witnesses in Ethics Commission proceedings; and, the authority of the Ethics Commission to initiate investigations. Finally, the bill clears up an ambiguity in the law concerning the proper sanctioning authority in the case of a current state legislator who commits an act in violation of the Code of Ethics prior to joining the Legislature.

This bill substantially amends the following sections of the Florida Statutes: 112.312, 112.313, 112.3144, 112.3145, 112.3148, 112.3149, 112.317, 112.3215, 112.324, 213.053, 440.442, 914.21, creates s. 112.3232, and repeals ss. 112.3151, 112.322(9), 839.08, 839.09, 839.091, 839.10 F.S.

## II. Present Situation:

This original bill was derived from an interim project of the Ethics and Elections Committee, entitled "A Review of Selected Provisions of the Ethics Laws," Report No. 98-22 (October 1998). However, the bill has been amended and the committee substitute includes a number of topics outside the scope of the original interim project.

The Code of Ethics for Public Officers and Employees is found in Part III of Chapter 112, Florida Statutes. In adopting the Code, the Legislature stated the goals of the ethics laws, which are geared to promoting the public interest and maintaining the respect of the people for their

government. To protect against conflicts of interest, the Code establishes standards of conduct for elected officials and government employees.

### Financial Disclosure

#### *Who must file?*

In 1997, over 41,000 persons were required to file full (2,215) or limited (39,130) financial disclosure.

In Florida, all elected constitutional officers and candidates for such offices are required to file full financial disclosure. Art. II, s. 8, Fla. Const.; s. 112.3144, F.S. (1997).

In addition, “local officers,” “specified state employees,” and “state officers,” as defined by statute, are required to file limited disclosure. s. 112.3145, F.S. (1997). These categories embrace a vast number of positions, ranging from mayors and local pollution control directors to members of the Board of Regents and upper level employees in the Office of the Governor or other cabinet member.

The term “local officer” embraces any appointed member of a board, commission, authority, community college district, or council, excluding those which are “an advisory body.” s. 112.3145(1)(a)2., F.S. (1997). In order to qualify for the statutory exemption from filing as a member of an “advisory body,” the body’s powers, jurisdiction, and authority must be “*solely* advisory.” s. 112.312(1), 112.3145(1)(a)1., 112.3145(1)(c)2., F.S. (1997); CEO 87-75, 87-38, 84-71, 84-65, 84-58, 75-143. This has led to the situation where officers from relatively minor boards have been required to file limited disclosure. For example, the Ethics Commission has determined that members of the following boards are subject to financial disclosure:

- Municipal and county library boards (power to establish and enforce regulations governing library privileges)
- Winter Park Sidewalk Art Festival Commission (empowered to conduct the festival)
- Town of Belleair Tennis Board (power to establish rules for town tennis courts and rules governing schedules for use of the courts)

CEO 87-38, 84-71, 84-65, 84-58, 75-143.

The terms “local officer” and “specified state employee” also embrace purchasing agents with the power to make purchases *exceeding \$1,000*. In 1990, the Legislature amended the contracting statutes, raising the Category One purchasing threshold from \$600 to \$5,000. Ch. 90-268, s. 12, at 1947, Laws of Fla. However, no corresponding change was made to the \$1,000 financial disclosure threshold.

One group *not required to file* under current law is *former* officers and employees --- persons whose office or employment ends prior to December 31 of a given calendar year. Critics have charged that this is a “major loophole” in the financial disclosure law.

*What information must be filed?*

Form 6, the full financial disclosure, requires a detailed description of each asset, liability, or source of income over \$1,000, and its value. Also, Form 6 requires the filer to state his or her net worth.

Form 1, the limited disclosure, generally requires the disclosure of the reporting individual's primary and secondary sources of income, location or description of real property owned, description of certain intangible property, and name of each creditor to whom the individual owed an amount which exceeded his or her net worth. However, Form 1 differs from Form 6 in that it does not require the disclosure of any specific dollar amounts.

Neither form requires the filer to report contingent liabilities --- for example, liability in a pending lawsuit or liabilities incurred as a partner, joint venturer, or similar position. Typically, before a bank will make a substantial loan to a partnership or joint venture, it will require the partners or joint venturers to personally "guarantee" the loan. The Commission on Ethics staff has recommended that the law be amended to require disclosure of these contingent liabilities which arise from express guaranty agreements.

Likewise, neither form requires the filer to identify the name and address of "business associates." The Code of Ethics defines the term "business associate" as:

Any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange (closely-held corporation), or co-owner of property.

s. 112.312(4), F.S. (1997).

*How should the required information be reported?*

Full disclosure on Form 6 requires the official or candidate to report his or her net worth, assets and liabilities (exceeding \$1,000), and primary and secondary sources of income (if the reporting individual elects not to file a copy of his or her federal tax return) with *specific dollar values*. Reporting specific dollar values can be problematic because there can be as much as a six-month gap between the date of valuation and the actual filing. Officials and candidates filing Form 6 must sign an oath at the end of the form stating that the information provided is accurate. Thus, if an official reports his or her net worth on Form 6 as \$1 million dollars and it can be shown that the official's actual net worth on December 31 of the reporting period was \$1,000,750, the official will technically be in violation of the oath and could be the target of an ethics complaint.

Although Form 1 *does not require* the reporting of any specific dollar amounts, Form 1 has its own set of problems. The law requires that Form 1 mandate the reporting of certain items based on percentage calculations. However, the Commission on Ethics has told staff that such percentage calculations can be confusing to the average filer. The result is often incomplete or incorrect data.

*Where should the reports be filed?*

Officers required to file full and public disclosure, and state officers and specified state employees required to file limited disclosure, file with the Secretary of State's office. Local officers are required to file limited disclosure with their local supervisor of elections. Candidates must also file a copy of their disclosure at the time of qualifying for office.

*What are the penalties for filing late or failing to file?*

The deadline for filing full and limited disclosure is July 1 of each year. No later than June 1, the Secretary of State or the supervisor of elections, as appropriate, must mail a copy of the appropriate form and instructions to every individual required to make full or limited disclosure. For those who miss the July 1 filing deadline, the law provides that certified notice of the delinquency be sent by August 1, and offers an extended grace period for filing through September 1. Failure to file by September 1 is a violation of the Code of Ethics. *Only upon receipt of a complaint* may the Commission on Ethics investigate and determine such a violation and recommend a penalty. There is no automatic or other penalty associated with failure to file or late filing *in the absence of a complaint being filed against the reporting individual*.

The Commission is also authorized to grant extensions of time for filing disclosures on an individual basis for good cause.

In 1997, over seven percent (7%) of those required to file full or limited disclosure (3,030 out of 41,345) filed after September 1 or did not file at all. Of the 94 complaints found by the Commission to be legally sufficient, only 8 related to full or limited financial disclosure. That means that over 3,000 persons violated the Code in 1997 and incurred no penalty.

If a complaint is filed and a person is found to have violated the Code, the Commission may recommend any one of a series of penalties detailed in s. 112.317, ranging from a civil penalty of up to \$10,000 to removal or impeachment from office.

*Amended Filings*

Florida law does not contain any specific mechanism authorizing the filing of an amended financial disclosure form. However, there is little incentive to do so since the chance of having a complaint filed for a public disclosure violation is very remote.

*Notice to the DCA*

By November 1 of each year, the Commission must provide the Department of Community Affairs ("DCA") with a list of the names of special district local officers delinquent in their financial disclosure filing. s. 112.322(9), F.S. (1997). Unfortunately, DCA does not take any action with the list, making its preparation and transmission a ministerial task which serves no practical purpose.

### Quarterly Disclosure of Paid Representations Before Agencies

All elected constitutional officers, state officers, local officers, and specified state employees must file a quarterly report of the names of clients represented for a fee or commission before agencies at their level of government. s. 112.3145(4), F.S. (1997). The report is due 15 days after the last day of the quarter.

### Standards of Conduct

Section 112.313, F.S., contains a laundry list of proscribed conduct and activities in which a public officer, agency employee, or, in some cases, a local government attorney may not participate.

Subsection (8) prohibits any public officer, agency employee, or local government attorney from disclosing or using “inside public information,” information gained by reason of his or her official position, for personal gain. The subsection, by its express terms, does not appear to apply to *former* officers or employees.

Subsection (3), the “doing business with” provision, generally prohibits an agency employee or public officer acting in an official capacity from purchasing/renting goods or services for his or her agency from any business entity in which the agency employee or public officer is an officer or employee, or in which the employee or officer has a material interest.

Subsection (7), dealing with conflicting employment or contractual relationships, provides:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or agency which is subject to the regulation of, or doing business with, an agency of which he or she is an officer or employee ... nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

s. 112.313(7), F.S. (1997). This “conflict of interest” provision prohibits a public officer or employee from also being employed by a business entity: 1) subject to the regulation of; or, 2) doing business with, the officer’s or employee’s agency. The provision also prohibits a public officer from having any employment or contractual relationship which would present a continuing or recurring conflict of interest or which would impede the full and faithful discharge of the officer’s public duties.

Subsection (12) contains a number of exemptions to the “doing business with” and the “conflict of interest” provisions (together, the “conflicts provisions”). The “sole source exemption” provides there is not a conflict where a business entity involved in a transaction with an agency is the “only source of supply” within a political subdivision of the officer or employee and there is full disclosure by the officer or employee of his interest in the business entity prior to the purchase, sale, leasing, or other business transaction. s. 112.313(12)(e), F.S. (1997).

Another conflicts exemption allows a county or municipal officer to serve as an officer, director, or stockholder of a bank that is acting as a depository of agency funds, provided the agency records indicate that the governing body of the agency has determined that such officer has not favored such bank over other qualified banks. s. 112.313(12)(g), F.S. (1997). However, the statute does not specify what actions the agency must take in order to show that there has been no favoritism in selecting a bank depository.

Still another exemption provides there is no conflict where an officer or employee in his or her private capacity purchases goods or services from a business entity doing business with his or her agency, so long as the price and terms are available to similarly situated members of the general public. s. 112.313(12)(I), F.S. (1997). However, the exemption does not *specifically* require that the goods or services *themselves* necessarily be available to the general public.

Yet another exemption, this one in subsection (15), provides that a public officer may maintain an employment relationship with a tax-exempt entity which is contracting with his or her agency provided the officer did not participate in the agency's decision to contract or enter into a business relationship with the entity.

Subsection (16) defines "local government attorney" as an individual who routinely serves as the attorney for local government unit, such as a city, county, or special district, with certain exceptions. The subsection goes on to detail restrictions and conflicts exemptions applicable to local government attorneys.

## Gifts

### *Valuation of Gifts*

#### 1) Reimbursement Period

Florida's Code of Ethics prohibits a reporting individual from accepting a gift from a lobbyist or principal valued at more than \$100. s. 112.3148(4), F.S. (1997). In addition, most gifts valued at more than \$100 from someone other than a principal or lobbyist must be reported in the quarter following receipt of the gift. s. 112.3148(8)(a), F.S. (1997). In determining the value of a gift, the reporting individual may deduct any compensation reimbursed to the donor. s. 112.3148(7)(b), F.S. (1997); Rule 34-13.500(3), F.A.C. However, there is *no specific deadline* in the law stating the date by which the reimbursement must be made by the reporting individual or received by the donor.

#### 2) Method of Calculating Value

Florida's Code of Ethics requires the method for calculating the value of a gift to be the actual cost to the donor, less taxes and gratuities, and, with respect to personal services provided by the donor, the reasonable and customary charge that is regularly charged in the community in which the service is provided. s. 112.3148(7)(a), F.S. (1997).

### 3) Charitable Contributions

In determining the value of a gift of an admission ticket, reporting individuals are authorized to deduct the portion of the ticket which represents a charitable contribution, but the admission ticket must be provided by the charitable organization. s.112.3148(7)(k), F.S. (1997).

#### *Exemptions*

The Code of Ethics exempts certain governmental entities from the prohibition of giving a gift having a value in excess of \$100 to a reporting individual if a public purpose can be shown for the gift. s. 112.3148(6)(a), F.S. (1997).

#### *Applicability to Successful Candidates in the “Gap” Period*

In addition to embracing a variety of state and local employees, the gifts portion of the Code of Ethics for Public Officials applies to candidates for public office as well as to elected state and local officers. The gifts law *does not apply* to non-incumbents in the gap period immediately after election but prior to actually taking office. This has been characterized as a major loophole, since the period following a successful election seems precisely the time when public scrutiny should be at its most vigilant.

#### *Judges of Compensation Claims*

There is an ambiguity under current law concerning whether the Chief Judge and subordinate judges of compensation claims are subject to the gift prohibitions and reporting requirements in the Code of Judicial Conduct or the Code of Ethics (Part III, Chapter 112, Florida Statutes). With the exception of things like commercial loans, gifts from relatives, and ordinary social hospitality, the Code of Judicial Conduct precludes a judge from accepting a gift from a donor who “has come or (is) likely to come or whose interests have come or are likely to come” before the judge. Canon 5D(5), Code of Judicial Conduct. Gifts of over \$100 from donors not meeting this definition must be reported by the judge annually to the Secretary of State, with a copy provided to the Judicial Qualifications Commission.

#### Commission on Ethics Investigations and Proceedings

The Commission on Ethics has a wide array of investigatory powers, including subpoena power, over persons and documents and the administration of oaths. The Commission staff has recommended that the state’s witness tampering statutes be extended to include Commission proceedings. The witness tampering statutes currently apply in: proceedings before a judge or court or grand jury; proceedings before the Legislature; and, proceedings before a federal agency which are authorized by law.

Another issue surrounding Commission witnesses is immunity. There is currently no mechanism in statute authorizing the Commission to seek a grant of immunity when a witness refuses to talk because of possible self-incrimination. In some instances, witnesses to a public official’s ethics violation are entitled to claim a fifth amendment privilege because of the possibility of prosecution for their actions, which can limit the public’s access to the truth of what happened.

The Public Service Commission currently has authority to seek a grant of judicial immunity. See s. 350.124, F.S. (1997).

The Commission does not have the authority to investigate ethics violations on its own authority. It can only pursue an investigation upon receipt of a written complaint. s. 112.324(1), F.S. (1997).

Currently, the Commission does not have access to confidential tax information maintained by the Department of Revenue (“DOR”), including information contained in returns, reports, accounts, or declarations filed by persons subject to tax. Access is limited to such persons as the Auditor General, Comptroller, Insurance Commissioner, Treasurer, property appraiser or tax collector, certain employees of the Department of Education, and some federal agencies like the Internal Revenue Service. s. 213.053, F.S. (1997). Any tax information provided by the DOR to such persons and agencies is confidential and exempt from public records law.

#### Penalties for Ethics Violations

The Attorney General must bring suit to collect unpaid civil or restitution penalties assessed for an ethics violation. s. 112.317(2), F.S. (1997). However, there is no provision in law allowing the Attorney General to collect the fees and costs of bringing the suit.

Similarly, there is no provision in law specifically designating how monies from restitution penalties are to be allocated. They currently are deposited to the General Revenue Fund of the state.

Florida law provides that any person who discloses his or her intention to file a complaint or discloses the existence or contents of a complaint which has been filed with the Commission commits a misdemeanor of the first degree. s. 112.317(6), F.S. (1997). It is also a first-degree misdemeanor to disclose the existence or contents of any document in connection with a confidential preliminary investigation by the Commission until the document becomes a public record. *Id.* However, in 1989, the 11th Circuit held these provisions of Florida law violated free speech guarantees. *Doe v. Gonzalez*, 723 F.Supp. 690 (S.D.Fla. 1988), *aff’d*, 886 F.2d 1323 (11th Cir. 1989). Staff is not aware of the provision having been enforced since that time.

Chapter 839, Florida Statutes, entitled “Offenses by Public Officers and Employees,” contains several sections criminalizing certain specific conflicts of interest involving public officials in the area of public works contracts. ss. 839.08, 839.09, 839.091, and 839.10, F.S. (1997). These sections were adopted prior to the Legislature’s enactment of landmark ethics legislation in 1967, which was “intended to deal pervasively with the subject matter of conflict between the official duties and private interests of public officials and employees.” *Oldham v. Rooks*, 361 So.2d 140, 142 (Fla. 1978); Chapter 67-469, Laws of Florida. The Florida Supreme Court has held that a similar conflicts provision in Chapter 839 was repealed by implication when the Legislature adopted Part III of the Code of Ethics. *Oldham*, 361 So.2d at 141. The same logic should prevail with regard to sections 839.08, 839.09, 839.091, and 839.10, Florida Statutes.

#### Jurisdictional Ambiguity Concerning Sanctioning of State Legislators



There is a statutory ambiguity involving the sanctioning of state legislators who violate the Code of Ethics. Specifically, the situation involves a current legislator who committed the alleged breach of ethics while a public officer or employee *prior* to joining the Legislature.

#### Executive Branch Lobbying

Persons lobbying executive agencies are required to register with the Commission on Ethics, and must file quarterly expenditure reports. s. 112.3215, F.S. (1997). There is a \$50/day fine for late-filed reports, with no cap or limit to the amount of the fine. Upon receipt of a notice of payment due from the Commission, a late filer has 20 days to pay or appeal the fine to the Commission. First-time filers are given a waiver, provided they file the required report within 20 days after receipt of a notice that the reports were not timely filed.

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

#### Financial Disclosure

##### *Who must file?*

Committee Substitute for Committee Substitute for Senate Bill 304 adopts a new approach toward reducing limited disclosure filings by members of relatively minor boards and commissions. Instead of presuming that all officers must file *unless* the agency is solely advisory and has a limited budget, the bill defines the specific type of board members who must file. Under the bill, appointed members of the following boards, councils, commissions, authorities, or other bodies of local governmental units, special districts, or school districts, must file:

- a) the governing body of a political subdivision, if appointed;
- b) an expressway authority or transportation authority established by law;
- c) a community college or junior college district board of trustees;
- d) a board having the power to enforce local code provisions;
- e) a planning or zoning board, board of adjustment, board of appeals, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such groups who have only the power to make recommendations to planning or zoning boards;
- f) a pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or,
- g) any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

Committee Substitute for Committee Substitute for Senate Bill 304 also raises the filing threshold for state and local purchasing agents from \$1,000 to \$5,000, to accord with the state's contracting categories. The Ethics Commission staff estimates that raising the bar to \$5,000 will

*reduce* the overall number of financial disclosure filings by at least 2,250, probably more, including a number of local positions such as school principals and others empowered to make relatively minor purchasing decisions.

Conversely, CS/CS/SB 304 *expands* the number of filers by requiring *former* officers and employees to file a final full or limited disclosure for the portion of the year during which the person was in government service, within 60 days of their departure date --- unless within the 60 days they take another position subject to the same or a greater level of financial disclosure. There is no penalty for failure to file this final statement.

*What information must be filed?*

The bill provides that if a filer is a guarantor on a loan, such liability, though contingent in nature, must be factored in as a “liability” for the purpose of the reporting requirements.

Also, CS/CS/SB 304 requires all filers to identify the name of each “business associate,” along with:

- the name and address of the business; and,
- a description of the principal type of business conducted.

The reporting of business associates could serve to identify potential conflicts of interest.

*How should the required information be reported?*

Committee Substitute for Committee Substitute for Senate Bill 304 requires Form 6 full disclosure filers to report net worth, as well as assets and liabilities exceeding \$1,000, in specified dollar categories as opposed to by specific dollar amount.

With regard to limited disclosure filings, the bill replaces certain percentage filing thresholds with specific dollar thresholds, including:

- Secondary Sources of Income: changed from more than 5% of gross income to more than \$2,500.
- Intangible Personal Property: changed from more than 10% of total assets to more than \$10,000.
- Liabilities: changed from liabilities which exceed net worth to liabilities exceeding \$10,000.

Even with these changes, no specific dollar amounts need to be reported for those filing Form 1 limited disclosure.

*Where should the reports be filed?*

Under the bill, the Commission on Ethics will assume the administration of the financial disclosure filing system formerly performed by the Secretary of State's office. The Commission will not assume any of the administrative duties currently being performed by the supervisors of elections. Persons currently required to file with their local supervisor of elections will continue to do so.

In addition, the bill transfers administrative duties from the Secretary of State to the Commission with respect to gift and honoraria disclosures pursuant to ss. 112.3148 and 112.3149, Florida Statutes.

*What are the penalties for filing late or failing to file?*

The bill sets up an automatic fine, or "parking ticket," system for those filing late (after September 1) or failing to file altogether.

Delinquent filers under the bill incur a \$25 per day late-filing fine, up to a maximum automatic fine of \$1,500. The penalty cap does not limit any other penalty which may be imposed by the Commission if the financial disclosure statement is filed more than 60 days after September 1 and a complaint is filed.

The delinquency notice sent no later than August 1 must include a statement of the applicable fines for failure to file by September 1.

The Commission must calculate late-filing fines and notify delinquent persons. Those receiving a notice of fine must pay it within 30 days from the date of the notice or request a hearing with the Commission. The Commission is empowered to waive the fine upon a finding of unusual circumstances. The bill provides that any unpaid claim more than 60 days old, or any claim not paid within 60 days after the Commission renders a final order on an appeal of the fine, is to be submitted to the Department of Banking & Finance for assignment to a collection agent.

The bill also repeals s. 112.3151, F.S., which authorizes the Commission to grant extensions of time for filing disclosures.

*Amended Filings*

The bill requires the Commission to adopt rules and forms to provide for the filing of amended full and limited financial disclosure. However, the bill does not provide immunity for those who file an amended disclosure statement.

*Notice to DCA*

The bill deletes the requirement that the Commission provide a list of special district local officers delinquent in filing financial disclosure.

Quarterly Disclosure of Paid Representations Before Agencies

The bill amends the reporting dates for filing quarterly reports from 15 days after the last day of the quarter to the last day of the following quarter.

### Standards of Conduct

The bill closes a potential loophole under the conflict of interest restrictions that allow some to do indirectly what they are prohibited from doing directly, simply by forming a business entity. The amendment would preclude an officer or employee from having an employment or contractual relationship, either directly or *indirectly*, with a business entity subject to the regulation of, or doing business with, the officer's or employee's agency. The term "indirect" is defined as owning a majority interest in the business entity. The change is intended to cover situations where the public officer or employee does not have a direct contractual relationship with the regulated entity, but rather owns all or a majority interest of a business entity that has the contractual relationship with the regulated entity.

The bill extends the "inside information" prohibition applicable to current public officers, agency employees, and local government attorneys to *former* officers, agency employees, and local government attorneys. Under the bill, no current or former officer, agency employee, or local government employee may use inside information gained through public office or employment for personal gain, excluding information "relating exclusively to governmental practices or procedures."

The bill intends to prohibit an elected official from going to work for a tax-exempt entity which is contracting with his or her agency if he or she voted on matters benefiting the entity within one year of the time the job offer was extended. Under current law, an official can go to work for such an entity the day after voting on a contract between his or her agency and the entity. However, it is not clear that the language of the bill accomplishes the intended purpose.

The bill clarifies that prohibitions relating to a "local government attorney" apply only to the *primary* city or county attorney, rather than any assistant who may also represent the unit of government.

The bill also clarifies that the "sole source exemption" to the conflicts provisions applies only where the business entity is the sole source for the *particular item* that is being purchased. Currently, the exemption applies if the business is "the only source of supply," which is ambiguous on the question of exactly *what* is being supplied that is subject to the exemption.

Committee Substitute for Committee Substitute for SB 304 clarifies that the conflicts exemption allowing a county or municipal officer to serve as an officer, director, or stockholder of a bank that is acting as a depository of agency funds, applies only where the agency has *investigated and formally* determined that the official "has not favored such bank over other qualified banks." A question has arisen in several Ethics Commission cases concerning whether the agency undertook this determination before using the bank as a depository. The bill specifies what is required for an agency to show that there has been no favoritism in selecting a bank depository.

The bill also clarifies that the language used in many of the exemptions in s. 112.313(12), F.S., applies only to exempt conflicts arising under the second part of s. 112.313(7), F.S., the "doing business with" prohibition, and not the "subject to the regulation of" part of the prohibition.

Finally, CS/CS/SB 304 clarifies that the exemption allowing an officer or employee to privately purchase goods or services from a business entity doing business with his or her agency so long as the price and terms are available to similarly situated members of the general public. Without more specific language in the exemption, the Commission would have to conclude that a city mayor could have the city's cable TV franchisee install a satellite dish in his yard by paying the cost paid by the cable company, even though the cable company did not regularly install satellite dishes for the public. The bill limits the exemption to situations where the business entity regularly sells the type of goods or services being purchased by the officer or employee to the general public.

## Gifts

### *Valuation of Gifts*

#### 1) Reimbursement Period

The bill modifies the definition of gift and changes the valuation laws to establish a 90-day period during which a reporting individual may reimburse a donor for all or a part of a gift's value. This has the effect that most gifts (other than those from family members, lobbyists or principals) in excess of \$100 given in a specific calendar quarter for which reimbursement is not made by the end of the next subsequent calendar quarter *must be reported* in that subsequent calendar quarter.

#### 2) Method of Calculating Value

Committee Substitute for Committee Substitute for Senate Bill 304 changes the method for calculating the value of gifts from actual cost to the donor to fair market value. This is to address the issue of collectibles, and items that the donor may have purchased at an insignificant cost originally but have accrued value over time, such as art work.

#### 3) Charitable Contributions

The bill modifies the gift law in determining the value of a gift of an admission ticket by authorizing the reporting individual to deduct the portion of the ticket which represents a charitable contribution, regardless of whether the donor is a charitable organization or any individual. The modification does not affect the valuation of the gift. Usually, the value of the gift to the reporting individual is the cost of the meal. The change is to the donor, by allowing anyone to give the gift of an admission ticket and not just charitable organizations.

## *Exemptions*

The bill modifies the gift law by adding the Technological Research and Development Authority, a quasi-governmental entity, to the current list of governmental entities that can give a gift over \$100 to a reporting individual if a public purpose can be shown for the gift.

### *Applicability to Successful Candidates in the “Gap” Period*

CS/CS/SB 304 extends the provisions of the gifts law to cover successful, non-incumbent, former candidates in the “gap” period, the period immediately following the election but prior to officially assuming the responsibilities of office. Incumbents who win reelection are already covered by the gifts law in the gap. The bill also clarifies that the gifts law applies to non-incumbent candidates prior to the date of the election.

### *Judges of Compensation Claims*

The bill resolves the ambiguity in current law by requiring the Chief Judge and judges of compensation claims to follow the gift prohibitions in Canon 5D(5)(h) of the Code of Judicial Conduct rather than the Code of Ethics. Committee Substitute for Senate Bill 304 requires the judge to annually report gifts over \$100 from disinterested parties to the Commission on Ethics. However, the judge would still be required under Canon 6B(2) to report the same information to the Secretary of State and the Judicial Qualifications Commission, unless: 1) the Supreme Court modifies the Code of Judicial Conduct to require reporting to the Commission instead of the Secretary of State; or, 2) the bill passes the Legislature by a two-thirds vote of each house. See section 2, Art. V, Florida Constitution.

### Commission on Ethics Investigations and Proceedings

The bill extends the state’s witness tampering laws to include Ethics Commission proceedings and investigations. The bill also enables the Commission, when a witness refuses to talk because of possible self-incrimination, to consult with the appropriate state attorney and then apply to the chief judge of the circuit for a judicial grant of immunity.

CS/CS/SB 304 expands the authority of the Commission to initiate ethics investigations on its own authority:

- Upon receipt of reliable and publicly disseminated information; and,
- Where at least seven of the members of the commission deem sufficient to indicate a breach of the public trust.

The bill authorizes the Commission access to otherwise confidential tax information maintained by the Department of Revenue (“DOR”), including information contained in returns, reports, accounts, or declarations filed by persons subject to tax.

### Penalties for Ethics Violations

The bill entitles the Attorney General to fees and costs for bringing suit to collect a civil or restitution penalty resulting from an ethics violation.

The bill allows the Commission to recommend that any restitution penalty be paid to the violator’s agency *or* the General Revenue Fund of the state.

The bill also removes a provision of law prohibiting the disclosure of confidential documents or the contents of a complaint filed, or to be filed, with the Ethics Commission. The provision in question, section 112.317(6), F.S., was held facially unconstitutional in violation of the First Amendment in *Doe v. Gonzalez*, 723 F.Supp. 690 (S.D.Fla. 1988), *aff'd*, 886 F.2d 1323 (11th Cir. 1989).

CS/CS for Senate Bill 304 explicitly repeals ss. 839.08, 839.09, 839.091, and 839.10, Florida Statutes, criminalizing specific conflicts of interest with regard to supplies and public works contracts. The Florida Supreme Court has held that similar provisions were repealed by implication when the Legislature adopted Part III of the Code of Ethics, per *Oldham v. Rooks*, 361 So.2d 140 (Fla. 1978).

#### Jurisdictional Ambiguity Concerning Sanctioning of State Legislators

The bill clarifies that the proper sanctioning authority in the case of a *current* state legislator who commits an act violative of the Code of Ethics prior to joining the Legislature is vested with the house in which the legislator serves.

#### Executive Branch Lobbying

The bill modifies the quarterly expenditure reporting requirements to semi-annual reporting, and modifies the reporting dates and periods accordingly. The bill also cuts the late-filing fine in half, from \$50/day to \$25/day, and imposes a \$1,500 ceiling on fines. Also, CS/SB 304 modifies the time frames for late-filers to respond to Commission notices of payment due, from 20 days after receipt of the payment due to 30 days from the date the notice is transmitted. In addition, the bill provides that any fine not waived by the Commission which remains unpaid more than 60 days after the notice of payment due or more than 60 days after the Commission renders a final order on a lobbyist appeal shall be submitted to the Department of Banking & Finance for assignment to a collection agent. Finally, the bill makes each lobbyist and principal responsible for insuring that an expenditure report is filed where the lobbyist only represents a principal for a portion of the reporting period.

#### **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:

Persons who file full or limited disclosure after September 1 will be subject to automatic fines in the amount of \$25 for each day late up to a maximum of \$1,500, unless waived by the Ethics Commission.

C. Government Sector Impact:

The General Revenue Fund will be increased with the receipt of automatic fines (see above). The Commission estimates the additional revenue at \$100,000 per year for FY 2000-2001 and FY 2001-2002.

The bill transfers the administration of the financial disclosure filing system, as well as the gift and honoraria disclosures, to the Ethics Commission from the Secretary of State. The bill also creates an automatic fine system. The Commission estimates that \$193,956 General Revenue will be required to implement the new responsibilities of the bill.

<b>Ethics Commission</b>	<b>FY 99-00</b>	<b>FY 00-01</b>	<b>FY 01-02</b>
<b>Non-Recurring/Start-Up Effects</b>	\$110,725		
<b>Recurring Costs (Includes 3 FTE)</b>	83,231	128,302	132,151
<b>Total</b>	<b>\$193,956</b>	<b>\$128,302</b>	<b>\$132,151</b>

The Secretary of State has included a reduction issue of 1 FTE and \$49,717 General Revenue in the Department's FY 99-00 Legislative Budget Request based on transferring the administrative responsibilities of financial disclosure to the Ethics Commission.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



**VIII. Amendments:**

---

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

---