

STORAGE NAME: h0181s1.rc

DATE: January 27, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
RULES & CALENDAR
ANALYSIS**

BILL #: CS/HB 181

RELATING TO: Ethics/Financial Disclosure

SPONSOR(S): Committee on Rules & Calendar; Representatives Arnall and Feeney

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) RULES & CALENDAR (PC) YEAS 16 NAYS 0

(2)

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I. SUMMARY:

The bill contains several changes to Florida's Code of Ethics, particularly in the area of full and limited financial disclosure. Under CS/HB 181, persons who are required to file full and public disclosure of financial interests must file a final disclosure statement within 60 days of leaving their public position for the period between January 1 of the year in which they leave office and the last day of office or employment, unless within that period they take another public position requiring financial disclosure under s. 8. Art. II of the State Constitution, or otherwise are required to file full and public disclosure for the final disclosure period. The bill clarifies that persons who have made a full and public disclosure of financial interests for any calendar or fiscal year are not exempt from the final filing requirement.

For purposes of limited financial disclosure, the bill requires former state and local officers or specified state employees to file a final financial disclosure statement within 60 days of leaving their public position for the period between January 1 of the year in which they leave office and the last day of office or employment, unless within that period they take another public position requiring financial disclosure under s. 8. Art. II of the State Constitution, or otherwise are required to file full and public disclosure for the final disclosure period. The bill clarifies that persons who have filed a disclosure for any calendar or fiscal year are not exempt from the final filing requirement. In addition, the bill redefines "local officer" and "state officer", respectively, to include individuals who have been elected to, but have yet to assume the responsibilities of public office.

The bill also redefines a "reporting individual" with respect to reporting and prohibited receipt of gifts to include a candidate or an individual who has been elected to, but has yet to assume the responsibilities of public office.

CS/HB 181 specifies that certain financial disclosure statements are "public records." The bill also directs the Commission on Ethics to prescribe forms for financial disclosure statements.

This bill does not appear to have a significant fiscal impact on state or local governments.

The bill shall be effective on becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

The Code of Ethics for Public Officers and Employees is found in Part III of Chapter 112, Florida Statutes. The Code is designed to promote the public interest and to maintain 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 1998, over 41,996 persons were required to file full (2,203) or limited (39,793) 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. (1999). Referred to by the Commission on Ethics as "Form 6".

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. (1999). Referred to by the Commission on Ethics as "Form 1". 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 members.

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. Furthermore, the definitions of "local officer" or "state officer" do not include individuals who have been elected to, but have yet to assume a public office.

The deadline for annual filing of full and limited disclosure (Forms 1 and 6) is July 1 of each year (except for non-incumbent candidates who are required to file at the time of qualifying). 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 for certified notice of delinquency and an extended grace period for filing through September 1.

Failure to file by September 1 or filing after September 1 is a violation of the Code of Ethics. Upon receipt of a complaint, the Commission of Ethics investigates and determines such a violation, and may recommend a penalty. While there are no criminal penalties for violation of the Code of Ethics, penalties for violation of those laws may include: impeachment, removal from office or employment suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received. Candidates for public office who are found in violation of the Code of Ethics may be subject to one or more of the following penalties: disqualification from being on the ballot, public censure, reprimand, or a civil penalty not to exceed \$10,000. s. 112.317, F.S. (1999).

Gifts

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. Critics have characterized this as a major loophole, since the period following a successful election seems precisely the time when public scrutiny should be at its most vigilant.

Public Records

Presently, certain statements required under the Code of Ethics for Public Officials are "public records." s. 112.3146, F.S. (1999). Statements required under the full and public disclosure of financial interests are not specifically referenced as such.

C. EFFECT OF PROPOSED CHANGES:

Financial Disclosure

Who must file?

The bill closes the "former officer/employee" loophole by requiring covered persons to file financial disclosures within 60 days of leaving their offices.

Specifically, the bill amends s. 112.3144, F.S. (1999), mandating that persons who are required to file full and public disclosure of financial interests file a final disclosure statement within 60 days of leaving their public position for the period between January 1 of

the year in which they leave office and the last day of office or employment, unless within that period they take another public position requiring financial disclosure under s. 8. Art. II of the State Constitution, or otherwise are required to file full and public disclosure for the final disclosure period.

The bill clarifies that persons who have made a full and public disclosure of financial interests for any calendar or fiscal year are not exempt from the final filing requirement. This clarification is the result of Commission on Ethics' staff input and will prevent a person from claiming to be exempt from the final disclosure requirement by virtue of having made a full and public disclosure for the applicable calendar or fiscal year. Current law allows for a general exemption, except for candidates.

The bill redefines "local officer" and "state officer" under ss. 112.3145(1)(a) and (c), F.S. (1999), respectively, to include individuals who have been elected to, but have yet to assume the responsibilities of public office. This change is also the result of Commission on Ethics' staff input, and will require local and state officers who are elected but who have not officially taken office to make a financial disclosure for the interim period between their election and the date they officially take office. This will require such persons to disclose, for example, consulting or related contracts with persons or entities that may have an interest in the local or state officer's agency.

The bill also amends s. 112.3145, F.S. (1999), to require former state and local officers or specified state employees to file a final financial disclosure statement within 60 days of leaving their public position for the period between January 1 of the year in which they leave office and the last day of office or employment, unless within that period they take another public position requiring financial disclosure under s. 8. Art. II of the State Constitution, or otherwise are required to file full and public disclosure for the final disclosure period.

The penalty provisions of s. 112. 317, F.S. (1999) would apply to the final filing requirements provided for in this bill.

Gifts

Applicability to Successful Candidates in the "Gap" Period

The bill redefines a "reporting individual" under s. 112.3148, F.S. (1999), to include a candidate or an individual who has been elected to, but has yet to assume the responsibilities of public office. This will require such persons to report gifts received for the interim period between their election and the date they officially take office. It will also bring them under the blanket gift solicitation prohibitions of s. 112.3148, F.S. (1999). For purposes of this section, the "agency" of such an individual is the agency to which the candidate seeks election, or in the case of an individual elected to but yet to formally take office, the agency in which the individual has been elected to serve.

Public Records

The bill classifies all statements made pursuant to s. 112.3144, F.S. (1999), relating to full and public disclosure of financial interests, "public records" and requires that disclosures made pursuant to s. 112.3144, F.S. (1999), be made on forms prescribed by the Commission on Ethics.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 112.3144, F.S. (1999), mandating that persons who are required to file full and public disclosure of financial interests file a final disclosure statement within 60 days of leaving their public position for the period between January 1 of the year in which they leave office and the last day of office or employment, unless within that period they take another public position requiring financial disclosure under s. 8. Art. II of the State Constitution, or otherwise are required to file full and public disclosure for the final disclosure period. Also provides that persons who have made a full and public disclosure for the applicable calendar or fiscal year must still file their final disclosure.

Section 2. Amends s. 112.3145, F.S. (1999), requiring former state and local officers or specified state employees to file a final financial disclosure statement within 60 days of leaving their public position for the period between January 1 of the year in which they leave office and the last day of office or employment, unless within that period they take another public position requiring financial disclosure under s. 8. Art. II of the State Constitution, or otherwise are required to file full and public disclosure for the final disclosure period. Also modifies definitions of "local officer" and "state officer" to include individuals who have been elected to, but have not yet officially assumed the responsibilities of public office.

Section 3. Amends s. 112.3146, F.S. (1999), to classify all statements made pursuant to s. 112.3144, F.S. (1999) as "public records."

Section 4. Amends s. 112.3147, F.S. (1999), to require that disclosures made pursuant to s. 112.3144, F.S. (1999), be made on forms prescribed by the Commission on Ethics.

Section 5. Amends s. 112.3148, F.S. (1999), to include within the definition of "reporting individual" candidates or any individual who has been elected to, but has yet to officially assume the responsibilities of, public office. Clarifies that the "agency" of such an individual is the agency to which the candidate seeks election, or in the case of an individual elected to but yet to formally take office, the agency in which the individual has been elected to serve.

Section 6. Provides that the bill shall be effective on becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Under HB 181, the Commission on Ethics anticipated that it would incur a recurring cost of approximately \$5,000 per year associated with forms development and printing and indicated that it was prepared to absorb this cost. CS/HB 181 eliminates the notice exemption with respect to final disclosure filing requirements. It has not been determined what, if any, the fiscal impact of this change will have on the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any county or municipality.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

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PAGE 7

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 19, 2000, the Committee on Rules & Calendar passed HB 181 with one amendment. CS/HB 181 removes the notification exemption for final financial disclosures (full and public financial disclosure and limited financial disclosure).

VII. SIGNATURES:

COMMITTEE ON RULES & CALENDAR:

Prepared by:

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