

STORAGE NAME: h0809.rc

DATE: March 3, 2000

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

BILL #: HB 809

RELATING TO: Ethics

SPONSOR(S): Representative Arnall

TIED BILL(S):

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

(1) RULES & CALENDAR (PC)

(2)

(3)

(4)

(5)

I. SUMMARY:

HB 809 modifies the definition of "gift" for purposes of Florida's gifts laws 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. The bill also adopts a new approach toward limited disclosure filings by members of minor boards and commissions by clearly defining the specific type of board members who must file.

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

The bill has an effective date of January 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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"/> |

For any principle that received a "no" above, please explain:

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.

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. Florida's Code of Ethics prohibits a reporting individual from accepting a gift from a lobbyist, from a partner, firm, employer, or principal of the lobbyist, or from a political committee or committee of continuous existence valued at more than \$100. s. 112.3148, F.S. (1999).

Each person required to file limited financial disclosure, full financial disclosure, and each State procurement employee must file a Quarterly Gift Disclosure (FORM 9), with the Secretary of State on the last day of any calendar quarter following the calendar quarter in which he or she received a gift worth over \$100 (other than gifts received from relatives, gifts prohibited from being accepted, gifts primarily associated with his or her business or employment, and gifts otherwise required to be disclosed). The form need not be filed if no such gift was received during the calendar quarter. s. 112.3148, F.S. (1999).

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. (1999); Rule 34-13.500(3), F.A.C. There is no statutory deadline by which the reimbursement must be made by the individual or received by the donor. Thus, situations have arisen where reimbursement was made only after a significant amount of time had passed, leading to the public perception that no payment was ever intended and that a gift was actually made but not timely reported.

The penalty for violating the Code of Ethics 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).

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).

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). 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.

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. (1999). 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. (1999); 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 financial 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.

C. EFFECT OF PROPOSED CHANGES:

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 part of a gift's value. The net effect of this provision is that gifts required to be reported (valued 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.

The bill also clarifies that if the consideration given by the donee to the donor is a promise to repay, the promise must be made in writing and legally enforceable through the courts.

HB 809 adopts a new approach toward limited disclosure filings by boards and commissions with relatively minor powers or limited ability to significantly impact private rights and interests. 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 or commission member who must file. Under the bill, appointed members of the following boards, councils, commissions, authorities, or other bodies of local government units, special districts, or school districts, must file:

- the governing body of a political subdivision, if appointed;
- an expressway authority or transportation authority established by law;
- a community college or junior college district board of trustees;
- a board having the power to enforce local code provisions;
- 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;
- 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
- 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 (this allows a local government to "opt in" for other appointive boards).

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

STORAGE NAME: h0809.rc

DATE: March 3, 2000

PAGE 5

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:

On September 15, 1999, Governor Jeb Bush signed Executive Order 99-237 establishing the Public Corruption Study Commission. The fifteen-member commission was tasked to complete a comprehensive review of current laws, policies and procedures related to Florida's response to public corruption, and prepare specific recommendations on how Florida might better prevent and respond to acts of public corruption. The provisions of this bill were included in the task force's final recommendations.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

STORAGE NAME: h0809.rc

DATE: March 3, 2000

PAGE 6

VII. SIGNATURES:

COMMITTEE ON RULES & CALENDAR:

Prepared by:

Staff Director:

Dawn Roberts

R. Philip Twogood, Ph.D.