

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 847                      Citizens' Right to Honest Government  
**SPONSOR(S):** Representative Goodlette  
**TIED BILLS:**    **IDEN./SIM. BILLS:** HB 3, SB 2030

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections	6 Y, 0 N w/CS	Mitchell	Randle
2) Procedures			
3) Appropriations			
4)			
5)			

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**SUMMARY ANALYSIS**

HB 847 creates the "Citizens Right to Honest Government Act," providing criminal penalties for official misconduct, misuse of official position, disclosure or use of confidential criminal justice information and tampering with the bid process.

HB 847 is almost identical to CS/HB 147 which was introduced by Representatives Bean, Ball and Seiler during the 2002 Legislative Session. It passed four committees and the full House by a vote of 117-0 but died in the Senate.

HB 847 is effective October 1, 2003.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

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

This bill creates new criminal penalties and increases penalties for certain existing crimes.

### B. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Public Corruption Study Commission

Governor Bush signed Executive Order 99-237 on September 15, 1999, establishing the Public Corruption Study Commission (Commission). The fifteen-member Commission was charged with completing a comprehensive review of current laws, policies and procedures relating to Florida's response to public corruption, and to prepare specific recommendations on how Florida might better prevent and respond to acts of public corruption.<sup>1</sup>

The Committee on Crime and Punishment drafted proposed committee bills during both the 2000 and 2001 legislative sessions which incorporated many of the commission's recommendations. Neither bill passed the legislature.

##### Bribery; Misuse of Public Office

Chapter 838, Florida Statutes, pertains to bribery and the misuse of public office. This chapter defines the following terms relating to the misuse of a public office by a public servant: benefit,<sup>2</sup> pecuniary benefit,<sup>3</sup> harm,<sup>4</sup> public servant,<sup>5</sup> government,<sup>6</sup> and corruptly.<sup>7</sup>

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<sup>1</sup> In its final report, the Commission recommended revisions to chapter 838, Florida Statutes, relating to criminal violations by public servants; amending Florida's public records exemptions relating to offenses involving public servants; continuing funding to Florida's state or local law enforcement agencies for the investigation of public corruption; enhancing the role of the State Comptroller in the state contracting process; amending chapter 287, Florida Statutes, to include a "convicted vendor list"; revising chapter 112, Florida Statutes, requiring mandatory training of elected public officials; strengthening the Code of Ethics for public officers and employees; and elevating many criminal violations by public servants to second-degree felonies. Florida Public Corruption Study Commission, Executive Summary of Commission's Recommendations, December 14, 1999.

<sup>2</sup> "Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested." s. 838.014(1), F.S.

<sup>3</sup> "Pecuniary benefit" is a benefit in the form of any commission, gift, gratuity, property, commercial interest, or any other thing of economic value." s. 838.014(2), F.S.

<sup>4</sup> "Harm" means loss, disadvantage, or injury to the person affected, including loss, disadvantage, or injury to any other person in whose welfare he or she is interested." s. 838.014(3), F.S.

<sup>5</sup> "Public servant" means any public officer, agent, or employee of government, whether elected or appointed, including, but not limited to, any executive, legislative, or judicial officer; any person who holds an office or position in a political party or

Section 838.015, Florida Statutes, relates specifically to bribery.<sup>8</sup> Any individual who is prosecuted under this section is guilty of a felony of the third degree, which is punishable as provided for in sections 775.082, 775.083, or section 775.084, Florida Statutes.<sup>9</sup> This chapter also provides for the crimes of commercial bribe receiving<sup>10</sup> and commercial bribery<sup>11</sup>; both crimes are also classified as third degree felonies.

Section 838.016, Florida Statutes, pertains to unlawful compensation or reward for official behavior. It is a third degree felony for any person corruptly to give or offer to any public servant any benefit not authorized by law; or for any public servant to request, solicit, accept or agree to accept any benefit not authorized by law:

- for the past, present, or future performance or nonperformance or violation of any act; or
- for the past present, or future exertion of any influence upon any other public servant regarding any act or omission

which the person believes to have been or the public servant represents to have been either within the official discretion of the public servant, in violation of a public duty, or in the performance of a public duty.<sup>12</sup>

### Perjury in an Official Proceeding

Chapter 837, Florida Statutes, pertains to perjury. Section 837.02, Florida Statutes, provides that it is a third degree felony for a person to make a false statement that he or she does not believe to be true,

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political party committee, whether elected or appointed; and any person participating as a special master, receiver, auditor, juror, arbitrator, umpire, referee, consultant, administrative law judge, hearing officer, or hearing examiner, or person acting on behalf of any of these, in performing a governmental function; but the term does not include witnesses. Such term shall include a candidate for election or appointment to any such office, including any individual who seeks or intends to occupy any such office. It shall include any person appointed to any of the foregoing offices or employments before and after he or she qualifies.” s. 838.014(4), F.S.

<sup>6</sup> “Government’ includes the state government and any city or county government or any branch, political subdivision, or agency of the state, county, or city government.” s. 838.014(5), F.S.

<sup>7</sup> “Corruptly’ means done with a wrongful intent and for the purpose of obtaining or compensating or receiving compensation for any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.” s. 838.014(6), F.S.

<sup>8</sup> “Bribery’ means corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.” s. 838.015(1), F.S.

<sup>9</sup> Under sections 775.082 and 775.083, Florida Statutes, a third degree felony is punishable by a term of imprisonment not to exceed 5 years, and a maximum fine of \$5,000. Section 775.084, Florida Statutes, relates to habitual felony offenders. If a habitual felony offender is convicted of a third degree felony, such offender may be sentenced for a term not exceeding 10 years.

<sup>10</sup> “A person commits the crime of commercial bribe receiving if the person solicits, accepts, or agrees to accept a benefit with intent to violate a statutory or common-law duty to which that person is subject as: an agent or employee of another; a trustee, guardian, or other fiduciary; a lawyer, physician, accountant, appraiser, or other professional adviser; an officer, director, partner, manager, or other participant in the direction of the affairs of an organization; or an arbitrator or other purportedly disinterested adjudicator or referee.” s. 838.15, F.S.

<sup>11</sup> “A person commits the crime of commercial bribery if, knowing that another is subject to a duty described in s. 838.15(1) and with intent to influence the other person to violate that duty, the person confers, offers to confer, or agrees to confer a benefit on the other.” s. 838.16, F.S.

<sup>12</sup> s. 838.016, F.S.

under oath in an official proceeding in regard to any material matter. If the proceeding relates to the prosecution of a capital felony, the offense is a second degree felony.<sup>13</sup>

### Offenses by Public Officers and Employees

Chapter 839, Florida Statutes, pertains to official misconduct. "Official misconduct" means "the commission of the following acts by a public servant, with corrupt intent to obtain a benefit for himself or herself or another or to cause unlawful harm to another: knowingly falsifying, or causing another to falsify, any official record or official document."<sup>14</sup> "Corrupt" is defined as "done with knowledge that the act is wrongful and with improper motives."<sup>15</sup>

### Office of Statewide Prosecution and the Statewide Grand Jury

Section 16.56, Florida Statutes, creates the Office of Statewide Prosecution. This office is authorized to investigate and prosecute offenses, including bribery. This section does not specifically state that the Office of Statewide Prosecution may investigate and prosecute offenses in violation of chapter 838, Florida Statutes, pertaining to bribery and misuse of public office, yet by referencing the general term "bribery" it can be reasonably inferred that violations of chapter 838, Florida Statutes, would fall within the current prosecutorial responsibilities of the Office of Statewide Prosecution.

Section 905.34, Florida Statutes, pertains to the powers and duties of the statewide grand jury. This section of statute limits the jurisdiction of the statewide grand jury to particular offenses. The jurisdiction of the statewide grand jury includes those offenses classified as bribery. This section does not specifically state that the jurisdiction of the statewide grand jury includes those offenses in violation of chapter 838, Florida Statutes, yet it can be reasonably inferred that such violations would fall within the current jurisdiction of the statewide grand jury.

### Criminal Punishment Code; Offense Severity Ranking Chart

Chapter 921, Florida Statutes, deals with the sentencing of criminals. Section 921.0022, Florida Statutes, contains the offense severity ranking chart, which must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998.<sup>16</sup> The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses. Each felony offense is assigned to a level according to the severity of the offense. The offenses of bribery, public servants receiving unlawful compensation, commercial bribe receiving, and commercial bribery are classified as level 3 offenses in the Criminal Punishment Code.

### Proposed Changes

#### Bribery; Misuse of Public Office

This bill makes various changes to Chapter 838, Florida Statutes, pertaining to bribery and the misuse of public office. HB 847 amends the following definitions in section 838.014, Florida Statutes:

- *Benefit* – This bill deletes the definition of "pecuniary benefit" and adds that language to the definition of "benefit." Thus, a "benefit" is to include "any commission, gift, gratuity, property, commercial interest, or any other thing of economic value."

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<sup>13</sup> Under sections 775.082 and 775.083, Florida Statutes, a second degree felony is punishable by a term of imprisonment not to exceed 15 years, and a maximum fine of \$10,000.

<sup>14</sup> s. 839.25(1), F.S.

<sup>15</sup> s. 839.25, F.S.

<sup>16</sup> s. 921.0022(1), F.S.

- *Corruptly or with corrupt intent* – This bill amends the definition of “corruptly” to state: “Corruptly or with corrupt intent means done with knowledge that the act is wrongful.” This amended definition changes the current definition by removing the phrase “for the purpose of obtaining or compensating or receiving compensation for any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.”
- *Harm* – This bill amends the definition of “harm” to include “pecuniary” in the description of the type of loss involved.
- *Public Servant* – This bill amends the definition of “public servant” to include:
 

Any officer, director, partner, manager, representative, or employee of a *nongovernmental entity* that is authorized by law or contract to perform a governmental function or provide a governmental service on behalf of a state, county, municipal, or special district agency or entity to the extent that the individual’s conduct relates to the performance of the governmental function or provision of the governmental service. (emphasis added)

The addition of “any officer, director, . . . or employee of a *nongovernmental entity*” to the definition of public servant appears to include private entities and employees traditionally not considered to be public servants. In addition, the activities that may be considered government functions or services is potentially subject to varied opinions.

Current law provides that the penalty for bribery is a third degree felony. Current law also provides that any individual who receives unlawful compensation or reward for official behavior commits a third degree felony. HB 847 increases such penalties to second degree felonies, and changes the rankings of these crimes in the offense severity ranking chart<sup>17</sup> from level 1 offenses to level 7 offenses. As an example of how this change would affect prison sentences, a person with no prior criminal record who is convicted of one count of a level 1 third degree felony would face a sentence ranging from a nonstate prison sanction to five years in state prison. The same person convicted of a level 7 second degree felony would face a sentence ranging from 21 months to fifteen years in prison, absent a downward departure.<sup>18</sup>

Current law also provides for the crimes of commercial bribe receiving and commercial bribery. HB 847 repeals the sections that establish these crimes.<sup>19</sup>

### Offenses by Public Officers and Employees

HB 847 repeals the current provision provided for in chapter 839, Florida Statutes, pertaining to official misconduct and creates a new section of law pertaining to official misconduct. Additionally, this bill creates additional areas of law relating to criminal misuse of official position; disclosure or use of confidential criminal justice information; bid tampering; status of confidential informants and confidential sources; and attorney’s fees.

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<sup>17</sup> Section 921.0022, F.S., contains the offense severity ranking chart, which must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense.

<sup>18</sup> See s. 921.0024, F.S.

<sup>19</sup> Section 838.15, F.S., creating the crime of commercial bribery and providing definitions, was found “invalid” under *Roque v. State*, 664 So. 2d 928, 930 (Fla. 1995). The Florida Supreme Court stated: “We have declared similar statutes invalid on various grounds . . . Some were impermissibly vague or were subject to arbitrary application. The present statute suffers from similar ills.” *Id.* at 929.

*Official Misconduct* – This bill creates section 838.022, Florida Statutes, titled “official misconduct”, which provides that it is unlawful for a public servant with corrupt intent to obtain a benefit for any person or to cause harm to another, to

1. Falsify, or cause another person to falsify, any official record or official document.
2. Conceal, cover up, destroy, mutilate, or alter any official record or official document. The terms official record and official document includes only public records.
3. Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant; or

This bill provides that a violation of this section is a second degree felony and classifies the crime as a level 7 offense in the offense severity ranking chart. In addition, this section provides that an official record or official document includes only public records. Moreover, for purposes of this section, HB 847 provides that a candidate is not included within the term “public servant.”

*Criminal Misuse of Official Position* - This bill creates section 838.20, Florida Statutes, which provides that it is unlawful for any public official or public employee to corruptly use or attempt to use his or her official position or any public property or public resource that is within his or her trust to establish any business relationship between the public servant’s own agency and any business entity in which the public servant receives or has an expectation of receiving a benefit.

HB 847 provides that any violation of section 838.20 is a second degree felony and classifies the crime as a level 7 offense in the offense severity ranking chart.

*Disclosure of Confidential Criminal Justice Information* - This bill creates section 838.21, Florida Statutes, which provides that it is a third degree felony for a public servant with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information,<sup>20</sup> or to disclose or use information regarding either the efforts to secure or the issuance of a warrant or subpoena when such information is not available to the general public and is gained by reason of the public servant’s official position. This bill classifies this crime as a level 6 offense in the offense severity ranking chart.

*Bid-tampering* – This bill creates section 838.22, Florida Statutes, which prohibits a public servant, with corrupt intent to influence or attempt to influence the competitive bidding<sup>21</sup> process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, from

1. Disclosing material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed;

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<sup>20</sup> Section 119.011, F.S., defines criminal intelligence information as “information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.” This section defines criminal investigative information as “information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.”

<sup>21</sup> This bill defines the term “bid” to include a response to an “invitation to bid” or “request for proposal”.

2. Establishing a bid specification, contract specification, request for proposal, invitation to bid, or other material aspect of the competitive bidding process that provides an unfair competitive advantage to any person who submits a bid; or
3. Altering or amending a submitted bid, documents, or other materials supporting a submitted bid, or bid results for the purpose of providing an unfair competitive advantage to any person who submits a bid.

Section 838.22, Florida Statutes, also states that it is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services. Furthermore, it is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate either of the above provisions. Lastly, it is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant acting in violation of either of the above provisions.

Any person who violates any of the provisions of section 838.22, Florida Statutes, commits a second degree felony. HB 847 classifies this crime as a level 7 offense in the offense severity ranking chart.

*Status of Confidential Informants and Confidential Sources* - This bill creates section 838.23, Florida Statutes, which provides that persons who provide information regarding suspected criminal violations by public servants shall be considered a confidential informant or source under section 119.07(3)(c), Florida Statutes<sup>22</sup>. Therefore, any information revealing the identity of the confidential informant or source is exempt from public records disclosure.

*Attorney's Fees* - This bill creates section 838.24, Florida Statutes, which provides that if a public servant is arrested or prosecuted for an alleged violation of Chapter 838, Florida Statutes, and the charges are dismissed or the public servant is acquitted, the public servant may petition the employing agency to award attorney's fees for the costs of the public servant's defense. The employing agency is authorized to award the attorney's fees only if the agency finds that the public servant's actions were connected to the performance of his or her official duties and served a public purpose.

#### Perjury in an Official Proceeding

Current law provides for particular felonies for any individual who makes a false statement under oath in an official proceeding. Section 837.02, Florida Statutes, provides that it is a third degree felony for a person to make a false statement which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter. If the proceeding relates to the prosecution of a capital felony, the offense is a second degree felony. This bill adds an additional offense to be classified as perjury: a public servant who commits perjury in an official proceeding on a material matter that relates to his or her duties or actions as a public servant. HB 847 provides that this crime is a second degree felony and ranked as a level 7 offense in the offense severity ranking chart.

#### Office of Statewide Prosecution and the Statewide Grand Jury

Currently, sections 16.56 and 905.34, Florida Statutes, pertain to the powers and duties of the Office of Statewide Prosecution and the statewide grand jury, respectively. Although it can be reasonably inferred that any violations of Chapter 838, Florida Statutes, relating to bribery and the misuse of public office, would fall under the investigative and prosecutorial responsibilities of these entities, current law does not explicitly state that either the Office of Statewide Prosecution or the statewide grand jury can investigate any violations of Chapter 838, Florida Statutes. HB 847 expands the jurisdiction of both the

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<sup>22</sup> Section 119.07(3)(c), F.S., states that "[a]ny information revealing undercover personnel of any criminal justice agency is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution."

Office of Statewide Prosecution and the statewide grand jury to specifically include any violations of Chapter 838, Florida Statutes

The bill repeals section 838.15, 838.16, and 839.25, Florida Statutes.

The bill amends section 112.3173, 112.534, 117.01, and 121.091, Florida Statutes, to conform with the repeals provided for in the bill.

C. SECTION DIRECTORY:

See "Effect of Proposed Changes" above.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:



C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Subcommittee on Ethics and Elections adopted a strike-all amendment to HB 847 at its March 27, 2003 meeting. The amendment makes a number of changes in the definitions of the bill:

Redefines "benefit" to include "any commission, gift, gratuity, property, commercial interest, or any other thing of economic value *greater than \$100.*" (This change appears to exempt items that are valued at \$100 or less).

Redefines "bid" to include an "*invitation to negotiate*" and "*request for a quote.*"

Redefines "corruptly" or "with corrupt intent" to mean "*doing knowingly and dishonestly for a wrongful purpose.*"

Redefines "harm" to mean "*pecuniary or other loss, disadvantage, or injury to the person affected.*"

Redefines "public servant" by deleting from the bill:

*Any officer, director, partner, manager, representative, or employee of a nongovernmental entity that is authorized by law or contract to perform a governmental function or provide a governmental service on behalf of a state, county, municipal, or special district agency or entity to the extent that the individual's conduct relates to the performance of the governmental function or provision of the governmental service.* (emphasis added)

*Jurors* who are performing governmental functions from the definition of "public servant".

Under section 838.22, Florida Statutes, relating to bid tampering, the amendment deletes the provision making it unlawful to "establish a bid specification, contract specification, request for proposal, invitation to bid, or other material aspect of the competitive bidding process that provides an unfair competitive advantage to any person who submits a bid." The amendment also clarifies that altering or amending a submitted bid or supporting materials must be done for the purpose of *intentionally* providing a competitive advantage in order to be unlawful.

The amendment deletes new section 838.24, Florida Statutes, which would have awarded attorney's fees to public servants if criminal charges were dismissed or the public servant was acquitted.

HB 847, as originally drafted, added section 837.02, Florida Statutes, to provide that it is a third degree felony for a person to make a false statement which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter. The strike-all amendment clarifies that any public servant who *gives false testimony*, rather than who makes a false statement is subject to criminal punishment.