

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1377    Ethics  
**SPONSOR(S):** Ryan  
**TIED BILLS:** None    **IDEN./SIM. BILLS:** SB 1944, SB 2008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Wiggins	Everhart
2) Ethics & Elections Committee			
3) Transportation & Economic Development Appropriations Committee			
4) State Administration Council			
5) _____			

### SUMMARY ANALYSIS

The bill contains several "housekeeping" changes recommended by the Commission on Ethics (Commission). The bill proposes to:

- Prohibit government employees from working in political campaigns while on duty.
- Allow Select Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years. However, no former employee may immediately lobby on a matter in which the employee participated while employed by a government agency.
- Change the method for disclosing assets and liabilities.
- Decrease the maximum penalty for late filing financial disclosure statements from \$1,500, to \$300; and allow the Commission to waive a penalty when the person did not receive proper notice.
- Require disclosure of gifts by those leaving employment by July 1; a postmark by midnight on the due date constitutes a timely filed disclosure.
- Allow the Attorney General to file suit to recoup agency costs for collecting penalties.
- Allow unemployed state employees to work for the private entity who assumes the employees' former duties.
- Clarify the Commission's rule-making authority regarding the lobbyists' appeal of fines for untimely expense report filings.
- Suspend a lobbyist's registration if the lobbyist fails to pay a fine, until the fine is paid or waived.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill increases the Commission on Ethics rulemaking authority.

**Promote personal responsibility** – The bill requires principled behavior by those serving in the public domain, which in effect requires more personal responsibility. Individuals who are employed by the public are held to a higher standard and should work to ensure that their office is not used for personal gain.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Commission on Ethics is a non-paid, appointive body consisting of nine members, one of whom may hold any public employment. Five of the members are appointed by the Governor and confirmed by the Senate. No more than three of the Governor's appointees may be of the same political party, and one must be a former city or county official. The Speaker of the House of Representatives and the President of the Senate each make two appointments to the Commission on Ethics. The two appointments must be persons with different political party affiliations. Members of the Commission on Ethics serve two-year terms and may not serve more than two full terms in succession. A chairman and vice-chairman are selected by the members for one-year terms. Members of the Commission receive reimbursement for travel and per diem expenses while on official Commission business.<sup>1</sup>

The Florida Commission on Ethics is required by statute to compile an annual mailing list of elected and appointed officials and employees subject to filing annual financial disclosure. Section 112.3144(3), Florida Statutes, applies to persons subject to the annual filing of full and public disclosure under Section 8, Article II of the State Constitution, or other state law. These individuals file Commission on Ethics Form 6, Full and Public Disclosure of Financial Interests. Section 112.3145(6), Florida Statutes, applies to local officers, state officers, and specified state employees subject to the annual filing of more limited statement of financial interests. These individuals file Commission on Ethics Form 1, Statement of Financial Interests. The deadline for filing disclosure is July 1 of each year. A grace period is provided until September 1<sup>st</sup> of each year.

Because of recent changes in the financial disclosure laws, only those with the most meaningful positions are required to file annual disclosure. Those who did not file their annual disclosure form (either Form 6 or Form 1) by September 1, 2004, are subject to automatic fines of \$25 for each late day, up to a maximum of \$1,500. Modeled after the automatic fine system in place for campaign finance reports, the law allows the Commission to hear appeals and to waive fines under limited circumstances.

##### **Effect of Bill**

The bill proposes to do the following, among other things:

- Extend the "Little Hatch Act" to prohibit all government employees from being involved in political campaigns while on duty. The changes to s. 104.31, F.S, proposed in the bill are somewhat unclear in their application in certain situations:

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<sup>1</sup> Excerpt taken from the *2004 Annual Report of the Florida Commission on Ethics*.

Any employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty or within any period of time during which he or she receives compensation from the state.

For example, would an employee who is on annual leave be subject to this prohibition?

- Amend the two-year “revolving door” prohibition against representing a client before one’s former agency to “grandfather-in” agency employees whose positions were transferred to the Select Exempt Service from Career Service System under the “Service First” law.
- Change the method for disclosing assets and liabilities with regard to assets that are held by the reporting person as a joint tenant with rights of survivorship.
- Change the automatic penalty for late filing annual financial disclosure statements from the current \$25 per day up to a maximum of \$1,500, to a maximum of \$300, and allow the Commission to waive a penalty only when the person did not receive proper notice.

The automatic penalty for elected constitutional officers would remain capped at \$1,500.

- Require that certified reminder mailing sent in July of each year have a return receipt requested, allowing the Commission to determine if the mailing was actually received and by whom.
- Require disclosure of gifts given to individuals who left employment by July 1 of the year leaving office; quarterly gift disclosure statements would be considered filed in a timely manner, if postmarked by midnight on the due date.
- Allow the Attorney General to collect a penalty through a civil action in court to recoup his costs and fees of collecting the penalty and assessed against the violator.
- Ease existing post-employment restrictions for state employees whose jobs are privatized and who then go to work for the entity who assumes their former duties.
- Prohibit state employees from leaving government and consequently representing a client before their former agency in connection with a matter in which they participated as a former employee.
- Clarify the Commission’s rule-making authority regarding the appeal of fines for untimely expense report filings for lobbyists before the Executive Branch or Constitution Revision Commission.
- Automatically suspend a lobbyist’s registration if they have failed to pay a fine until the fine is paid or waived.

The bill authorizes the payment of per diem, at the state rate, to witnesses who testify before the Commission on Ethics outside of the county of their residence after they have testified. Currently, witnesses are reimbursed in Commission proceedings in the same manner as witnesses in civil cases.

The bill makes it a criminal offense, as provided in s. 914.22, F.S., to tamper with witnesses in a Commission proceeding.

#### C. SECTION DIRECTORY:

Section 1 amends s. 104.31, F.S., prohibiting state or political subdivision employees from participating in political campaigns during on-duty hours or certain other hours.

Section 2 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 3 amends s. 112.3144, F.S., providing for reporting of assets held by joint tenancy, joint tenancy with right of survivorship, and partnership and reporting of certain liabilities.

Section 4 amends s. 112.3145, F.S., relating to disclosure of financial interests and clients represented before agencies.

Section 5 amends s. 112.3147, F.S., deleting a redundant provision.

Section 6 amends s. 112.3148, F.S., relating to reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.

Section 7 amends s. 112.3149, F.S., requiring gift disclosure statements of individuals who left office or employment during the calendar year to be filed by a date certain.

Section 8 amends s. 112.317, F.S., relating to penalties.

Section 9 amends s. 112.3185, F.S., relating to contractual services.

Section 10 amends s. 112.3215, F.S., relating to lobbyists before the executive branch or the Constitution Revision Commission regarding registration, reporting, and investigations by the Commission on Ethics.

Section 11 amends s. 112.322, F.S., revising provisions relating to payment of witnesses.

Section 12 amends s. 914.21, F.S., revising definitions.

Section 13 provides an effective date of July 1, 2005.

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

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

An officer or employee violating chapter 112, F.S., could be required to pay a civil or restitution penalty to the agency for which the violating officer was a member or the employee was employed, or pay such penalty to the General Revenue Fund. The attorney general is entitled to collect any costs, attorney's fees, expert witness fees, or other costs incurred in bringing a civil action to recover such penalties.

#### **2. Expenditures:**

A witness, who is required to travel outside the county of his or her residence in order to testify before the Commission on Ethics, is entitled to per diem and travel expenses at the same rate provided state employees.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate, though probably not significant.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Commission on Ethics may adopt rules to provide the grounds for waiving a fine and the procedures associated with appealing that fine when a lobbyist fails to timely file a report. Current law already authorizes the commission to adopt a rule to provide a procedure for notifying a lobbyist who fails to timely file a report.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.