

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Ethics and Elections Committee

BILL: CS/SB's 1944 and 2008

SPONSOR: Ethics and Elections Committee, Senators Posey and Sebesta

SUBJECT: Ethics; Public Officers & Employees

DATE: April 5, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubinas	Rubinas	EE	Fav/Combined CS
2.	_____	_____	JU	_____
3.	_____	_____	GO	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for combined Senate Bills 1944 and 2008 clarifies and revises portions of the ethics code of the state of Florida, and provides for additional restrictions on the conduct of current and former government employees and elected officials.

Section 1.

Extends the "Little Hatch Act" to prohibit all state employees, or employees of any political subdivision, from being involved in political campaigns while on duty.

Section 2.

Amends the prohibition against using "inside" information gained while in a public position to benefit oneself or another to clarify that it applies to former employees and officers--except for information relating exclusively to governmental practices or procedures.

Clarifies the application of the "revolving door" prohibition against representing a client before one's former agency to OPS state employees.

Amends 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 Selected Exempt Service from Career Service System under the "Service First" law.

Requires the conflict of interest disclosure statement that is applicable for competitive bidding be filed with the Ethics Commission instead of the Department of State.

Applies the two-year prohibition for former local elected officials to representations before the entire government body or agency they served (which would include staff), rather than just the body of which they were a member.

Section 3.

Changes the method for valuing assets, and liabilities relating to assets, that are held by the reporting person as a joint tenant with the right of survivorship.

Section 4.

Requires that the certified reminder mailing sent in July each year by the Supervisors of Elections have a return receipt, allowing the Commission to determine whether the mailing was actually received and by whom.

Allows the Commission to waive the penalty for failure to timely file a statement of financial interests only when the person did not receive proper notice of the requirements of filing an annual disclosure.

Section 5.

A technical amendment that deletes language that would be inconsistent with Section 3 of the bill.

Section 6.

Requires gift disclosure forms to be filed for the last portion of one's term of office or employment.

Allows quarterly gift disclosure forms to be considered timely-filed if they are postmarked on or before the due date.

Section 7.

Requires honorarium-expense disclosure forms to be filed for the last portion of one's term of office or employment.

Section 8.

Allows restitution to be paid by the violator to an agency that was damaged by the violation, rather than just to the State.

Allows, when the Attorney General is required to collect a penalty through a civil action in court, the Attorney General's costs and fees of collecting the penalty to be assessed against the violator.

Removes the language of Section 112.317(6), Florida Statutes, which the federal courts have declared unconstitutional (this used to make it a misdemeanor to breach the confidentiality of an ethics proceeding).

Section 9.

Eases existing post-employment restrictions for State employees whose jobs are privatized and who then go to work for the private entity.

Adds a prohibition to keep State executive branch employees from leaving government and then switching sides to represent a client before their former agency in connection with the same matter in which they participated while an agency employee.

Section 10.

Clarifies the Commission's rule-making authority regarding appeals of fines for untimely expense report filings.

Automatically suspends the registration of a lobbyist who has failed to pay a fine until the fine is paid or waived (as currently is done for legislative lobbyists).

Section 11.

Allows witnesses required by the Commission to testify outside the county of their residences to receive per diem and travel expenses reimbursed at the State rate.

Section 12.

Gives the Commission authority to investigate situations without having to receive a complaint, but only if it has received reliable and publicly disseminated information indicating a violation of the ethics laws, or if referred by the Governor, the Chief Financial Officer, as State Attorney, FDLE, or the Statewide Prosecutor. This authority would be limited to situations where the Commission unanimously agrees to investigate.

Section 13.

Makes it a crime to tamper with witnesses in an Ethics Commission proceeding.

Section 14.

The act shall take effect on October 1, 2005.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: s. 104.31; s. 112.313; s. 112.3144; s. 112.3145; s. 112.3147; s. 112.3148; s. 112.3149; s. 112.317; s. 112.3185; s. 112.3215; s. 112.322; s. 112.324; and s. 941.21.

II. Present Situation:

Section 112.311, Florida Statutes, articulates three general objectives in the formation of the ethics code. The first is that the public interest "requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist."¹ Second, "the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve."² Third, "it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions ... be regularly disclosed to the people."³

¹ Section 112.311(1), Florida Statutes.

² Section 112.311(2), Florida Statutes.

³ Section 112.311(3), Florida Statutes.

The Legislature has also set forth policies through which the objectives are to be achieved. One is that “no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest.”⁴ The code also states that “public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public,” and are “bound to observe, in their official acts, the highest standards of ethics consistent with this code ... regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.”⁵

The Code of Ethics itself addresses an array of conduct by current and former government employees and officials. Currently, public officers, agency employees, and local government attorneys are barred from disclosing or using information not available to the public and gained by reason of his or her official position for his or her personal gain or benefit, or for the personal gain or benefit of any other person or business entity.⁶

A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the governing body of which the person was an officer for a period of 2 years after vacating that office.⁷ This has been interpreted to apply to only to former office holders lobbying current office holders.

Office holders are required to file yearly statements of their personal financial interests. The failure to file a timely report results in a fine of \$25 per day, with a maximum aggregate penalty of \$1,500. Any reporting person may appeal or dispute a fine, and may base the appeal upon unusual circumstances surrounding the failure to file on the designated due date. The person is entitled to a hearing before the ethics commission, which is permitted to waive the fine in whole or in part for good cause shown.⁸

Violations of any provision of the ethics code result can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.⁹

The Commission on Ethics has the duty of receiving and investigating sworn complaints of violations of the code of ethics. The commission is only authorized to investigate alleged violations of the ethics code upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person.¹⁰ In an investigation, the

⁴ Section 112.311(5), Florida Statutes.

⁵ Section 112.311(6), Florida Statutes.

⁶ Section 112.313(8), Florida Statutes.

⁷ Section 112.313(14), Florida Statutes.

⁸ Section 112.3145, Florida Statutes.

⁹ Section 112.317, Florida Statutes.

¹⁰ Section 112.324(1), Florida Statutes.

commission has the power to subpoena, and currently, witnesses subpoenaed by the commission are paid mileage and witness fees as authorized for witnesses in civil cases.¹¹

III. Effect of Proposed Changes:

Section 1.

Extends the "Little Hatch Act" to prohibit all state employees, or employees of any political subdivision, from being involved in political campaigns while on duty.

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¹¹ Section 112.322(4), Florida Statutes.

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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:

None.

C. Government Sector Impact:

There will be indeterminate costs associated with payment of state per diem and travel for commission witnesses required to travel outside their county of residence to testify in commission proceedings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

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