

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: Judiciary Committee

BILL: CS/CS/SBs 1944 & 2008

SPONSOR: Judiciary Committee, Ethics and Elections Committee, Senators Posey and Sebesta

SUBJECT: Ethics; Public Officers & Employees

DATE: April 28, 2005

REVISED: _____

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

I. Summary:

Committee Substitute 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.

The committee substitute 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.

The proposed language amends the prohibition against using inside information gained while in a public position to benefit oneself or another, clarifying that the prohibition applies to former employees and officers--except for information relating exclusively to governmental practices or procedures. The "revolving door" prohibition against representing a client before one's former agency is revised to make the prohibition applicable to other-personal-services (OPS) employees and to exempt from prohibition's applicability any agency employees whose positions were transferred from Career Service status to Select Exempt Service status under the "Service First" law. Additionally, the committee substitute applies the two-year prohibition for former local elected officials representing another person or entity to prohibit representation before the government body *or agency* they served (which would include staff), rather than just the body of which they were a member.

The committee substitute revises filing of the conflict of interest disclosure statement that is applicable for competitive bidding as follows:

- Provides for filing form with the Commission on Ethics (the commission) instead of the Department of State;
- Changes the method for valuing assets, and liabilities relating to assets, held as a joint tenant with the right of survivorship;
- 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; and
- Deletes language that would be inconsistent with proposed revisions in Section 3 of the committee substitute.¹

The committee substitute requires gift disclosure forms to be filed for the last portion of one's term of office or employment and allows quarterly gift disclosure forms to be considered timely-filed if they are postmarked on or before the due date. Also, the proposed language requires honorarium-expense disclosure forms to be filed for the last portion of one's term of office or employment.

The committee substitute allows the commission to recommend payment of restitution for a violation of the Code of Ethics to be paid to an agency that was damaged by the violation, rather than just to the state. In addition, 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 are to be assessed against the violator. Section 112.317(6), F.S., is also revised to remove language which the federal courts have declared unconstitutional (this used to make it a misdemeanor to breach the confidentiality of an ethics proceeding).

The language further revises post-employment restrictions to allow state employees whose jobs are privatized to work for a private entity under certain circumstances. A prohibition is added to keep state executive branch employees from leaving government and then representing a client before their former agency in connection with the same matter in which they participated while an agency employee.

The committee substitute revises the commission's rule-making authority regarding appeals of fines for untimely executive branch or Constitutional Revision Commission lobbyist expense report filings and 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).

The revisions also allow 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 and make it a crime to tamper with witnesses in a commission proceeding.

The committee substitute 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, a state attorney, the executive director of the Department of Law Enforcement, or the statewide prosecutor. This authority would be limited to situations where the commission unanimously agrees to investigate.

¹ See proposed revisions to s. 112.3144, F.S.

This committee substitute substantially amends the following sections of the Florida Statutes: 104.31, 112.313, 112.3144, 112.3145, 112.3147, 112.3148, 112.3149, 112.317, 112.3185, 112.3215, 112.322, 112.324, and 914.21.

II. Present Situation:

Section 112.311, F.S., 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.”² 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.”³ 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.”⁴

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.”⁵ The Code of Ethics 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.”⁶

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.⁷

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 two years after vacating that office.⁸ This has been interpreted to apply to only to former office holders lobbying current office holders.

² s. 112.311(1), F.S.

³ s. 112.311(2), F.S.

⁴ s. 112.311(3), F.S.

⁵ s. 112.311(5), F.S.

⁶ s. 112.311(6), F.S.

⁷ s. 112.313(8), F.S.

⁸ s. 112.313(14), F.S.

Office holders are required to file annual 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 Commission on Ethics (the commission), which is permitted to waive the fine in whole or in part for good cause shown.⁹

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.¹⁰

The commission 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.¹¹ In an investigation, the commission has the power to subpoena; witnesses subpoenaed by the commission are paid mileage and witness fees as authorized for witnesses in civil cases.¹²

III. Effect of Proposed Changes:

Committee Substitute for Committee Substitute for combined Senate Bills 1944 and 2008 extends the restrictions on campaign work by public officials; clarifies and revises portions of the Code of Ethics; provides additional restrictions on the conduct of current and former government employees and elected officials relating to lobbying; and revises procedures with relation to investigations by the Commission on Ethics (the commission). The proposed legislation would also revise filing requirements for financial interests and clients represented before agencies; filing requirements for gifts; and filing requirements for honorarium-expense forms. Additionally, the language revises restrictions on state employees going to work for a private entity when their job is privatized by the state and allows an exception from the revolving door prohibition for Career Service employees who were transferred to Select Exempt Status.

Section 1

The “Little Hatch Act” is expanded to prohibit all state employees, or employees of any political subdivision, from being involved in political campaigns while on duty.

Section 2

The prohibition against using “inside” information gained while in a public position to benefit oneself or another is amended to clarify that it applies to former employees and officers and that it does not apply to the use of information relating exclusively to governmental practices or procedures.

⁹ s. 112.3145(6)(f)3., F.S.

¹⁰ s. 112.317, F.S.

¹¹ s. 112.324(1), F.S.

¹² s. 112.322(4), F.S.

The “revolving door” prohibition against representing a client before one’s former employer-agency is clarified to provide that the prohibition applies to other-personal-services (OPS) state employees.

The two-year revolving door prohibition against representing a client before one’s former agency is revised to create an exception to the prohibition’s application for agency employees whose positions were transferred from Career Service status to Selected Exempt Service status under the “Service First” law. Without this exception, section (I) of the definition of “employee” would capture these employees and make the provision apply to them though it did not apply to them when they were initially hired.¹³

The conflict of interest disclosure statement that is applicable for competitive bidding must now be filed with the commission instead of the Department of State.

The two-year prohibition on former local elected officials from representing another person or entity is revised to apply to representation 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

Financial interest reporting requirements for certain persons under the Code of Ethics are revised to provide a 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. The committee substitute provides that any *asset* valued in excess of \$1,000 be reported as a percentage of ownership where the asset is held jointly and as 100 percent where the asset is held jointly with the right of survivorship. If reporting *liabilities*, the same valuation is used; however, the value is based on a percentage of the liability instead of the asset.

Section 4

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

Section 5

The committee substitute deletes language that would be inconsistent with revisions to s. 112.3144, F.S., relating to valuation of jointly held assets and liabilities.

Section 6

The committee substitute provides that a gift disclosure form must now be filed for the last portion of one’s term of office or employment when an employee leaves during the calendar year covered by the report.

Quarterly gift disclosure forms will be considered timely-filed if they are postmarked on or before the due date. Additionally, proof of mailing in a timely manner can be achieved by obtaining a certificate of mailing from the United States Post Office or a receipt from an established carrier.

¹³ See s. 112.313(9)(a)2.a.(I), F.S.

Section 7

Honorarium-expense disclosure forms must now be filed for the last portion of one's term of office or employment in a similar manner to those filed under s. 112.3148(6)(d), F.S., as revised by the committee substitute.

Section 8

The commission may now recommend that restitution paid for a violation of the Code of Ethics be paid to an agency that was damaged by the violation, rather than just to the State. Additionally, the committee substitute provides for the Attorney General's costs and fees of collecting the a penalty to be assessed against the violator when the Attorney General is required to collect a penalty for violation of the Code of Ethics through a civil action in court.

The committee substitute removes the language of Section 112.317(6), F.S., which the federal courts have declared unconstitutional (this used to make it a misdemeanor to breach the confidentiality of an ethics proceeding).

Section 9

Revisions to the current restriction on post-employment for agency employees modify restrictions for State employees whose jobs are privatized and who then go to work for the private entity.

A prohibition is added to keep state executive branch employees from leaving government and then representing a client before their former agency in connection with the same matter in which they participated while an agency employee.

Section 10

The commission's rule-making authority regarding appeals of fines for untimely expense report filings is clarified. Additionally, the committee substitute provides that the registration of a lobbyist who has failed to pay a fine is automatically suspended until the fine is paid or waived (as currently is done for legislative lobbyists).

Section 11

The committee substitute provides for witnesses required by the commission to testify outside the county of their residences to receive per diem and travel expenses to be reimbursed at the State rate.

Section 12

The proposed language 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, a state attorney, the executive director of the Department of Law Enforcement, or the statewide prosecutor. This authority would be limited to situations where the commission unanimously agrees to investigate.

Section 13

The committee substitute makes it a crime to tamper with witnesses in an Ethics Commission proceeding.

Section 14

The committee substitute provides an effective date of October 1, 2005.

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 Ethics 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:

None.

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