

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 435 CS

Code of Ethics for Public Officers and Employees

SPONSOR(S): Ross

TIED BILLS:

IDEN./SIM. BILLS: SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	10 Y, 0 N, w/CS	West	Mitchell
2) Governmental Operations Committee			
3) Fiscal Council			
4) State Administration Council			
5) _____			

SUMMARY ANALYSIS

HB 435 requires employees of quasi-governmental entities to follow the same ethics rules as those of government agencies. The bill would affect all partners and other professionals in a firm that consults or contracts with a quasi-governmental entity. These firms would be prevented from conducting any other business for two years with the quasi-governmental entity. In addition, such firms would be prohibited from conducting business with any other customers that do business with or are regulated by the same quasi-governmental entity.

HB 435 is effective July 1, 2006.

NOTE: The Ethics & Elections Committee adopted a strike-all amendment on January 25, 2006, which substantially modifies the bill. See Part IV for a complete description of the amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill adds new ethical oversight previously limited to state government to quasi-public entities and all private corporations and consultants that do business with these quasi-public entities. As such, the bill expands the reach of state government to many of the employees of companies that do business with quasi-public entities.

Safeguard individual liberty – The bill may adversely impact the ability of private business employees to conduct business with a large part of their customer base.

B. EFFECT OF PROPOSED CHANGES:

The employees of quasi-public entities will be required to follow the same ethics standards as employees of state agencies. This includes the rules of state employees for:

- solicitation of gifts under s. 112.313(2), F.S.
- the prohibition against one's relatives doing business with the agency under s. 112.313(3), F.S.
- the prohibition against representing another person or entity for compensation before the agency for two years after vacation of their position. s. 112.313(9)(a)4., F.S.

If these employees are not somehow "grandfathered" in under existing law, they may be required to vacate their positions before this bill becomes law.

Under the bill, s. 112.313(7)(c), F.S., would be added to read:

(c) An owner or officer of an entity that acts as a consultant or contractor for a quasi-public entity, and any employee of such consultant or contractor the duties of whose position are managerial, policymaking, or professional in nature, is subject to this subsection in the same manner as a public officer or employee of an agency unless specifically exempted by statute.

The bill may have implications for government contractors such as utilities, technology companies, accounting firms, planning firms and law firms. If one part of a company has a contract to do business with a quasi-public entity, no other part of that company would be able to do business with anyone that also contracted or does business with that same quasi-public entity.

Section 112.313(9)(c), F.S., could prevent a consultant or contractor from doing any further business with a quasi-public entity or anyone else that does business with the quasi-public entity for two years after any contract has been completed. Contractors may not be able to complete their contract requirements without violating the provisions of this bill.

It is unclear from the bill what authority the Commission on Ethics will have to investigate consultants and contractors under s. 112.324, F.S. It is also unclear if any penalties are imposed under s. 112.317, F.S., for violations of the new requirements.

The bill appears to be designed to address some of the recent alleged ethical problems with quasi-public entities such as Citizens Property Insurance which serves as the state's insurer of last resort for Floridians who cannot otherwise obtain property insurance.

State law currently imposes limitations on public officers and employees, to prevent them from giving themselves lucrative outside contracts with the companies they run. The bill would extend these restrictions to quasi-public entities and the private consultants and contracting companies that do business with them.

C. SECTION DIRECTORY:

Section 1 amends s. 112.312, F.S., to add quasi-public entities to the definition of agency and then defines a quasi-public entity.

Section 2 amends s. 112.313, F.S., requires that consultants or contractors and employees that are partners or professionals that do business with quasi-public entities will not be able to do any more business with the quasi-public entity or any of their other contractors for two years following the end of their contract.

Section 3 provides an effective date of July 1, 2006.

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:

Each quasi-public entity will need to make major changes in how they conduct business.

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 & COMBINED BILL CHANGES

The Ethics & Elections Committee adopted a strike-all amendment on January 25, 2006, which substantially modifies the bill and restricts its application. The amendment places employees of quasi-public entities under many of the same restrictions imposed on state government employees.

The definition of "quasi-public entity" in the original bill was considered to be overly broad. The definition was narrowed in the strike-all to mean:

an entity that has been created by a government entity pursuant to law to accomplish a public purpose and that is not a state or local government entity.

These new restrictions will mean that employees of quasi-public entity, including their spouses and children, would not be able to purchase, rent, or lease any realty, goods or services to the agency for which they work. An employee whose duties are managerial, policymaking, or professional in nature and no officer of a quasi-public entity shall be able to represent another person or entity for compensation for two years after vacation of her position.

Employees and officers employed or appointed before July 1, 2006, will be grandfathered into the old rules.

The amendment does not impose new regulations on consultants or contractors of quasi-public entities. Employees and appointed policymakers in city and county-implemented quasi-public entities will not be able to do business with an entity for which they served.