

CHAMBER ACTION

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1 The Ethics & Elections Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the code of ethics for public officers  
7 and employees; amending s. 112.312, F.S.; revising  
8 definitions of the terms "agency" and "corruptly";  
9 defining the term "quasi-public entity"; amending s.  
10 112.313, F.S.; applying provisions of the code which  
11 prohibit doing business with one's agency, prohibit  
12 conflicting employment or contractual relationships, and  
13 limit permissible representations following termination of  
14 office or employment to officers and employees of quasi-  
15 public entities; providing penalties; amending s. 112.317,  
16 F.S.; providing specified penalties for quasi-public  
17 officers, former quasi-public officers, and agency  
18 employees; providing for procedure against certain  
19 complaints filed with malicious intent against quasi-  
20 public officers or employees; amending s. 112.324, F.S.;  
21 requiring the Commission on Ethics to report findings on  
22 investigations of quasi-public officers and employees and  
23 former quasi-public officers and employees to the

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24 Governor; providing for severability; providing an  
25 effective date.

26  
27 WHEREAS, the people of Florida through Article II, Section  
28 8 of the Florida Constitution require that individuals holding  
29 offices or employment on behalf of the state do so in public  
30 trust, and

31 WHEREAS, the Legislature has determined persons in  
32 positions of public trust must meet the highest level of  
33 professionalism and ethical standards and that the law shall  
34 protect against any conflict of interest, and

35 WHEREAS, officers and employees of quasi-public entities  
36 created for a public purpose must be prohibited from breaching  
37 the public trust for personal gain and must be held to the same  
38 code of ethics as public officers and employees, NOW, THEREFORE,

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Subsections (2) and (9) of section 112.312,  
43 Florida Statutes, are amended, present subsections (21) through  
44 (24) are renumbered as subsections (22) through (25),  
45 respectively, and a new subsection (21) is added to that  
46 section, to read:

47 112.312 Definitions.--As used in this part and for  
48 purposes of the provisions of s. 8, Art. II of the State  
49 Constitution, unless the context otherwise requires:

50 (2) "Agency" means any state, regional, county, local, or  
51 municipal government entity of this state, whether executive,

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52 judicial, or legislative; any department, division, bureau,  
53 commission, authority, or political subdivision of this state  
54 therein; any quasi-public entity; or any public school,  
55 community college, or state university.

56 (9) "Corruptly" means done with a wrongful intent and for  
57 the purpose of obtaining, or compensating or receiving  
58 compensation for, any benefit resulting from some act or  
59 omission of a public or quasi-public servant which is  
60 inconsistent with the proper performance of his or her public or  
61 quasi-public duties.

62 (21) "Quasi-public entity" means an entity that has been  
63 created by a government entity pursuant to law to accomplish a  
64 public purpose and that is not a state or local government  
65 entity.

66 Section 2. Subsection (3), paragraph (a) of subsection  
67 (7), and paragraph (a) of subsection (9) of section 112.313,  
68 Florida Statutes, are amended to read:

69 112.313 Standards of conduct for public officers,  
70 employees of agencies, and local government attorneys.--

71 (3) DOING BUSINESS WITH ONE'S AGENCY.--No employee of an  
72 agency acting in his or her official capacity as a purchasing  
73 agent, or public officer acting in his or her official capacity,  
74 shall either directly or indirectly purchase, rent, or lease any  
75 realty, goods, or services for his or her own agency from any  
76 business entity of which the officer or employee or the  
77 officer's or employee's spouse or child is an officer, partner,  
78 director, or proprietor or in which such officer or employee or  
79 the officer's or employee's spouse or child, or any combination

80 of them, has a material interest. Nor shall a public officer or  
 81 employee, acting in a private capacity, rent, lease, or sell any  
 82 realty, goods, or services to the officer's or employee's own  
 83 agency, if he or she is a state or quasi-public entity officer  
 84 or employee, or to any political subdivision or any agency  
 85 thereof, if he or she is serving as an officer or employee of  
 86 that political subdivision. The foregoing shall not apply to  
 87 district offices maintained by legislators when such offices are  
 88 located in the legislator's place of business or when such  
 89 offices are on property wholly or partially owned by the  
 90 legislator. This subsection shall not affect or be construed to  
 91 prohibit contracts entered into prior to:

- 92 (a) October 1, 1975.
- 93 (b) Qualification for elective office.
- 94 (c) Appointment to public office.
- 95 (d) Beginning public employment.
- 96 (7) ~~CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--~~

97 (a) No public officer or employee of an agency shall have  
 98 or hold any employment or contractual relationship with any  
 99 business entity or any agency which is subject to the regulation  
 100 of, or is doing business with, an agency of which he or she is  
 101 an officer or employee, excluding those organizations and their  
 102 officers who, when acting in their official capacity, enter into  
 103 or negotiate a collective bargaining contract with the state or  
 104 any municipality, county, or other political subdivision of the  
 105 state; nor shall an officer or employee of an agency have or  
 106 hold any employment or contractual relationship that will create  
 107 a continuing or frequently recurring conflict between his or her

108 private interests and the performance of his or her public or  
 109 quasi-public duties or that would impede the full and faithful  
 110 discharge of his or her public or quasi-public duties.

111 1. When the agency referred to is that certain kind of  
 112 special tax district created by general or special law and is  
 113 limited specifically to constructing, maintaining, managing, and  
 114 financing improvements in the land area over which the agency  
 115 has jurisdiction, or when the agency has been organized pursuant  
 116 to chapter 298, then employment with, or entering into a  
 117 contractual relationship with, such business entity by a public  
 118 officer or employee of such agency shall not be prohibited by  
 119 this subsection or be deemed a conflict per se. However, conduct  
 120 by such officer or employee that is prohibited by, or otherwise  
 121 frustrates the intent of, this section shall be deemed a  
 122 conflict of interest in violation of the standards of conduct  
 123 set forth by this section.

124 2. When the agency referred to is a legislative body and  
 125 the regulatory power over the business entity resides in another  
 126 agency, or when the regulatory power which the legislative body  
 127 exercises over the business entity or agency is strictly through  
 128 the enactment of laws or ordinances, then employment or a  
 129 contractual relationship with such business entity by a public  
 130 officer or employee of a legislative body shall not be  
 131 prohibited by this subsection or be deemed a conflict.

132 (9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR  
 133 LEGISLATORS, ~~AND~~ LEGISLATIVE EMPLOYEES, AND OTHER PERSONS.--

134 (a)1. It is the intent of the Legislature to implement by  
 135 statute the provisions of s. 8(e), Art. II of the State

136 Constitution relating to legislators, statewide elected  
137 officers, appointed state officers, and designated public  
138 employees.

139 2. As used in this paragraph:

140 a. "Employee" means:

141 (I) Any person employed in the executive or legislative  
142 branch of government holding a position in the Senior Management  
143 Service as defined in s. 110.402 or any person holding a  
144 position in the Selected Exempt Service as defined in s. 110.602  
145 or any person having authority over policy or procurement  
146 employed by the Department of the Lottery.

147 (II) The Auditor General, the director of the Office of  
148 Program Policy Analysis and Government Accountability, the  
149 Sergeant at Arms and Secretary of the Senate, and the Sergeant  
150 at Arms and Clerk of the House of Representatives.

151 (III) The executive director of the Legislative Committee  
152 on Intergovernmental Relations and the executive director and  
153 deputy executive director of the Commission on Ethics.

154 (IV) An executive director, staff director, or deputy  
155 staff director of each joint committee, standing committee, or  
156 select committee of the Legislature; an executive director,  
157 staff director, executive assistant, analyst, or attorney of the  
158 Office of the President of the Senate, the Office of the Speaker  
159 of the House of Representatives, the Senate Majority Party  
160 Office, Senate Minority Party Office, House Majority Party  
161 Office, or House Minority Party Office; or any person, hired on  
162 a contractual basis, having the power normally conferred upon  
163 such persons, by whatever title.

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164 (V) The Chancellor and Vice Chancellors of the State  
165 University System; the general counsel to the Board of Regents;  
166 and the president, vice presidents, and deans of each state  
167 university.

168 (VI) Any person having the power normally conferred upon  
169 the positions referenced in this sub-subparagraph.

170 b. "Appointed state officer" means any member of an  
171 appointive board, commission, committee, council, or authority  
172 of the executive or legislative branch of state government whose  
173 powers, jurisdiction, and authority are not solely advisory and  
174 include the final determination or adjudication of any personal  
175 or property rights, duties, or obligations, other than those  
176 relative to its internal operations.

177 c. "State agency" means an entity of the legislative,  
178 executive, or judicial branch of state government over which the  
179 Legislature exercises plenary budgetary and statutory control.

180 3. No member of the Legislature, appointed state officer,  
181 or statewide elected officer shall personally represent another  
182 person or entity for compensation before the government body or  
183 agency of which the individual was an officer or member for a  
184 period of 2 years following vacation of office. No member of the  
185 Legislature shall personally represent another person or entity  
186 for compensation during his or her term of office before any  
187 state agency other than judicial tribunals or in settlement  
188 negotiations after the filing of a lawsuit.

189 4. No agency employee shall personally represent another  
190 person or entity for compensation before the agency with which  
191 he or she was employed for a period of 2 years following

192 vacation of position, unless employed by another agency of state  
193 government.

194 5. No employee of a quasi-public entity the duties of  
195 whose position are managerial, policymaking, or professional in  
196 nature and no officer of a quasi-public entity shall personally  
197 represent another person or entity for compensation before the  
198 agency with which he or she was employed for a period of 2 years  
199 following vacation of position unless employed by another agency  
200 as defined in s. 112.312(2).

201 ~~6.5-~~ Any person violating this paragraph shall be subject  
202 to the penalties provided in s. 112.317 and a civil penalty of  
203 an amount equal to the compensation which the person receives  
204 for the prohibited conduct.

205 ~~7.6-~~ This paragraph is not applicable to:

206 a. A person employed by the Legislature or other agency  
207 prior to July 1, 1989;

208 b. A person who was employed by the Legislature or other  
209 agency on July 1, 1989, whether or not the person was a defined  
210 employee on July 1, 1989;

211 c. A person who was a defined employee of the State  
212 University System or the Public Service Commission who held such  
213 employment on December 31, 1994;

214 d. A person who has reached normal retirement age as  
215 defined in s. 121.021(29), and who has retired under the  
216 provisions of chapter 121 by July 1, 1991; or

217 e. Any appointed state officer whose term of office began  
218 before January 1, 1995, unless reappointed to that office on or  
219 after January 1, 1995.



220 f. Any officer or employee of a quasi-public entity whose  
 221 term of office or employment began before July 1, 2006, unless  
 222 reappointed as an officer to that office on or after July 1,  
 223 2006.

224 Section 3. Subsections (1) and (8) of section 112.317,  
 225 Florida Statutes, are amended to read:

226 112.317 Penalties.--

227 (1) Violation of any provision of this part, including,  
 228 but not limited to, any failure to file any disclosures required  
 229 by this part or violation of any standard of conduct imposed by  
 230 this part, or violation of any provision of s. 8, Art. II of the  
 231 State Constitution, in addition to any criminal penalty or other  
 232 civil penalty involved, shall, pursuant to applicable  
 233 constitutional and statutory procedures, constitute grounds for,  
 234 and may be punished by, one or more of the following:

235 (a) In the case of a public or quasi-public officer:

- 236 1. Impeachment.
- 237 2. Removal from office.
- 238 3. Suspension from office.
- 239 4. Public censure and reprimand.
- 240 5. Forfeiture of no more than one-third salary per month
- 241 for no more than 12 months.
- 242 6. A civil penalty not to exceed \$10,000.
- 243 7. Restitution of any pecuniary benefits received because
- 244 of the violation committed.

245 (b) In the case of an employee of an agency or a person  
 246 designated as a public officer by this part who otherwise would  
 247 be deemed to be an employee:

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- 248 1. Dismissal from employment.
- 249 2. Suspension from employment for not more than 90 days  
250 without pay.
- 251 3. Demotion.
- 252 4. Reduction in salary level.
- 253 5. Forfeiture of no more than one-third salary per month  
254 for no more than 12 months.
- 255 6. A civil penalty not to exceed \$10,000.
- 256 7. Restitution of any pecuniary benefits received because  
257 of the violation committed.
- 258 8. Public censure and reprimand.
- 259 (c) In the case of a candidate who violates the provisions  
260 of this part or s. 8(a) and (i), Art. II of the State  
261 Constitution:
- 262 1. Disqualification from being on the ballot.
- 263 2. Public censure.
- 264 3. Reprimand.
- 265 4. A civil penalty not to exceed \$10,000.
- 266 (d) In the case of a former public or quasi-public officer  
267 or employee who has violated a provision applicable to former  
268 officers or employees or whose violation occurred prior to such  
269 officer's or employee's leaving public or quasi-public office or  
270 employment:
- 271 1. Public censure and reprimand.
- 272 2. A civil penalty not to exceed \$10,000.
- 273 3. Restitution of any pecuniary benefits received because  
274 of the violation committed.

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275 (8) In any case in which the commission determines that a  
276 person has filed a complaint against a public or quasi-public  
277 officer or employee with a malicious intent to injure the  
278 reputation of such officer or employee by filing the complaint  
279 with knowledge that the complaint contains one or more false  
280 allegations or with reckless disregard for whether the complaint  
281 contains false allegations of fact material to a violation of  
282 this part, the complainant shall be liable for costs plus  
283 reasonable attorney's fees incurred in the defense of the person  
284 complained against, including the costs and reasonable  
285 attorney's fees incurred in proving entitlement to and the  
286 amount of costs and fees. If the complainant fails to pay such  
287 costs and fees voluntarily within 30 days following such finding  
288 by the commission, the commission shall forward such information  
289 to the Department of Legal Affairs, which shall bring a civil  
290 action in a court of competent jurisdiction to recover the  
291 amount of such costs and fees awarded by the commission.

292 Section 4. Paragraph (d) of subsection (8) of section  
293 112.324, Florida Statutes, is amended to read:

294 112.324 Procedures on complaints of violations; public  
295 records and meeting exemptions.--

296 (8) If, in cases pertaining to complaints other than  
297 complaints against impeachable officers or members of the  
298 Legislature, upon completion of a full and final investigation  
299 by the commission, the commission finds that there has been a  
300 violation of this part or of s. 8, Art. II of the State  
301 Constitution, it shall be the duty of the commission to report  
302 its findings and recommend appropriate action to the proper

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303 disciplinary official or body as follows, and such official or  
304 body shall have the power to invoke the penalty provisions of  
305 this part, including the power to order the appropriate  
306 elections official to remove a candidate from the ballot for a  
307 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the  
308 State Constitution:

309 (d) Except as otherwise provided by this part, the  
310 Governor, in the case of any other public or quasi-public  
311 officer, public or quasi-public employee, former public or  
312 quasi-public officer or public employee, candidate, or former  
313 candidate.

314 Section 5. If any provision of this act or the application  
315 thereof to any individual or circumstance is held invalid, such  
316 invalidity shall not affect other provisions or applications of  
317 this act which can be given effect without the invalid provision  
318 or application, and to this end the provisions of this act are  
319 to be severable.

320 Section 6. This act shall take effect July 1, 2006.