

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 493 CS

Ethics for Public Officers and Employees

**SPONSOR(S):** Ryan

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Ethics &amp; Elections Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Shaffer</u>	<u>Mitchell</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

HB 493 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 bill:

- Prohibits government employees from working in political campaigns.
- Prohibits government employees from using information gained while in government employment, except governmental practices or procedures.
- Extends prohibition against representing a client before one's former agency to OPS employees.
- Amends the two-year "revolving door" prohibition against representing a client before one's former agency to "grandfather-in" agency employees who have continuously held a position until leaving state employment that was transferred to the Selected Exempt Service from Career Service System under chapter 2001-43, Laws of Florida.
- Changes the method for disclosing assets and liabilities.
- Requires disclosure of gifts by those leaving employment by July 1; a postmark by midnight on the due date constitutes a timely filed disclosure.
- Allows the Attorney General to file suit to recoup agency costs for collecting penalties.
- Allows unemployed state employees to work for the private entity who assumes the employees' former duties.
- Clarifies the Commission on Ethics' (Commission) rule-making authority specifying that lobbyists may appeal fines resulting from untimely filings of expense reports.
- Suspends a lobbyist's registration if the lobbyist fails to pay a fine; until the fine is paid or waived. Written notice must be sent to suspended lobbyist.
- Prohibits agency employees who participated personally and substantially on a matter from representing or advising any entity other than the state for compensation.

In 2005, a similar bill passed the House and Senate (HB 1377 by Ryan). The bill was vetoed by the Governor over a very few limited concerns. The bill sponsor has attempted to address those concerns in HB 493.

HB 493 is effective October 1, 2006.

**NOTE: AN AMENDMENT WAS ADOPTED ON JANUARY 25, 2006. SEE PART IV OF THIS ANALYSIS.**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill increases the rulemaking authority of the Commission.

**Provide Personal Responsibility** – The bill requires principled behavior by those serving in the public sector, which in effect requires more personal responsibility.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Code of Ethics for Public Officers and Employees, ch. 112, Part III, F.S., sets forth certain requirements and guidelines governing the conduct of public officers and employees. Section 112.311, F.S., outlines three basic objectives in the Code of Ethics:

- The first is 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.”
- The second recognizes that “government must attract those citizens best qualified to serve. Thus, 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.”
- Third, “in order to preserve and maintain the integrity of the governmental process, 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.”

Section 112.311(5), F.S., declares that the policy of the state be “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.”

Section 112.311(6), F.S., 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.”

Section 112.313, F.S., provides 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. This has been interpreted to apply to only to former office holders lobbying current office holders.

Section 112.313, F.S., also provides 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.

Section 112.3145, F.S. provides 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.

Section 112.317, F.S., provides violations of any provision of the ethics code can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.

The Commission has the duty of receiving and investigating sworn complaints of violations of the Code of Ethics. Section 112.324, F.S., provides that the Commission is only authorized to investigate alleged violations of the Code of Ethics upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person. Section 112.322, F.S., provides in an investigation, the 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.

### **Effects of Proposed Changes**

A bill (HB 1377 by Ryan) nearly identical to the current bill was passed in 2005, but was vetoed by the Governor. HB 493 attempts to address the Governor's concerns.

The bill prohibits all state and political subdivisions employees from participating in political campaign for an elective office while on duty.

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

The bill amends the two-year "revolving door" prohibition against representing a client before one's former agency to "grandfather-in" agency employees who have continuously held a position until leaving state employment that was transferred to the Selected Exempt Service from Career Service System under chapter 2001-43, Laws of Florida. The bill 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. The bill also prohibits local elected officials from personally representing another person or entity for compensation before the government body or agency which they were an officer of for 2 years after leaving office.

The bill 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. The bill also 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.

The bill requires, by October 1 of each year, all supervisors of elections must certify to the Commission a list of names and addresses of all persons who have failed to timely file a statement of financial interests. Current law requires such certification by November 15. The bill also provides the \$1,500 limitation on automatic fines for failing to file a financial statement does not limit the civil penalty that may be imposed if the statement is filed more than 60 after the deadline.

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

The bill allows restitution to be paid by the violator to an agency that was damaged by the violation, rather than just to the State. Further, 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. The bill allows the Commission to recommend that any restitution penalty be paid either to agency where the employee worked, where the officer was deemed to be an employee, or to the General Revenue Fund. The bill deletes s. 112.317(6), F.S., which the federal courts have declared unconstitutional (this section provided that breaching confidentiality of an ethics proceeding was a misdemeanor).

Further, the bill eases existing post-employment restrictions for State employees whose jobs are privatized and who then go to work for the private entity. The bill 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 personally and substantially while an agency employee. The bill prohibits a former agency employee from representing or advising for compensation any entity other than the state in any matter in which the employee participated personally and substantially.

The bill prohibits an individual who qualifies as a lobbyist under s. 11.045, F.S., or s. 112.3215, F.S., or a local government charter, or ordinance from serving on the commission except for those individuals who are members of the commission on October 1, 2006, until the expiration of their current term. A member of the commission may not lobby any state or local government entity as provided by s. 11.045, F.S., or s. 112.3215, F.S., or a local government charter, or ordinance. The same exception for members of the commission on October 1, 2006, applies.

The bill clarifies the Commission's rule-making authority regarding appeals of fines for untimely 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), unless an appeal of the fine is pending before the Commission. The Commission must provide a written suspension notice to each lobbyist whose registration has been automatically suspended.

The bill 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.

Finally, the bill amends s. 914.21, F.S., to include in the definition of an "official investigation" any investigation conducted by the Commission.

#### C. SECTION DIRECTORY:

Section 1 amends s. 104.31, F.S., prohibiting employees of the state and its political subdivisions from participating in a political campaign, for which there are penalties.

Section 2 amends s. 112.313, F.S., prohibiting certain disclosures by a former public officer, agency employee, or local government attorney, for which there are penalties; redefining the term "employee" to include certain other-personal-services employees for certain postemployment activities; exempting certain agency employees from applicability of postemployment restrictions; providing an exemption from provisions prohibiting conflicts in employment to a person who, after serving on an advisory board, files a statement with the Commission on Ethics relating to a bid or submission.

Section 3 amends s. 112.3144, F.S., specifying how assets valued in excess of a specified amount are to be reported by a reporting individual.

Section 4 amends s. 112.3145, F.S., requiring that a delinquency notice be sent to certain officeholders by certified mail, return receipt requested.

Section 5 amends s. 112.3147, F.S., deleting provisions relating to the reporting of assets valued in excess of a specified amount, to conform.

Section 6 amends s. 112.3148, F.S., providing requirements for persons who have left office or employment as to filing a report relating to gifts; providing requirements relating to the deadline for and timeliness of gift reports.

Section 7 amends s. 112.3149, F.S., requiring that a report of honoraria by a person who left office or employment be filed by a specified date.

Section 8 amends s. 112.317, F.S., authorizing the commission to recommend a restitution penalty be paid to the agency of which the public officer was a member or by which the public employee was employed or to the General Revenue Fund; authorizing the Attorney General to recover costs for filing suit to collect penalties and fines; deleting provisions imposing a penalty for the disclosure of information concerning a complaint or an investigation.

Section 9 amends s. 112.3185, F.S., providing additional standards for state agency employees relating to procurement of goods and services by a state agency; authorizing an employee whose position was eliminated to engage in certain contractual activities; prohibiting former employees from certain specified activities.

Section 10 amends s. 112.321, F.S., prohibiting an individual who qualifies as a lobbyist from serving on the commission; prohibiting a member of the commission from lobbying any state or local governmental entity; providing exceptions for individuals who are members of the commission on the effect date of the act until the expiration of their current terms.

Section 11 amends s. 112.3215, F.S., requiring the commission to adopt a rule detailing the grounds for waiving a fine and the procedures to be followed when a lobbyist fails to timely file his or her report; requiring automatic suspension of a lobbyist's registration if the fine is not timely paid; requiring the commission to provide written notice to any lobbyist whose registration is automatically suspended.

Section 12 amends s. 112.322, F.S., authorizing travel and per diem expenses for certain witnesses

Section 13 amends s. 914.21, F.S., redefining the terms "official investigation" and "official proceeding," for purposes of provision relating to tampering with witnesses, to include an investigation by the commission;

Section 14 provides an effective date of October 1, 2006.

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

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

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

An officer or employee violating ch. 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 the 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, required to travel outside the county of his or her residence in order to testify before the Commission, is entitled to per diem and travel expenses at the same rate as 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 revenue source.

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 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**

The Ethics & Elections Committee adopted an amendment to the bill on January 25, 2006. The amendment changes section 112.3215, F.S., so that it tracks similar language in section 11.045, F.S., which was added by SB 6-B during Special Session 2005 B. HB 493 had been filed before SB 6-B was enacted.

The amendment further amends subsection (5) of section 112.3215, F.S., to clarify that lobbyist registrations for all “partners, owners, officers, or employees” are automatically suspended until a fine is paid or waived.