

## 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) Ethics & Elections Committee	10 Y, 0 N, w/CS	Shaffer	Mitchell
2) Governmental Operations Committee	6 Y, 0 N	Brown/Williamson	Williamson
3) Fiscal Council			
4) State Administration Council			
5) _____			

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### SUMMARY ANALYSIS

The bill clarifies and revises portions of the Code of Ethics 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.
- Allows Selected Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years.
- Changes the method for disclosing assets and liabilities.
- Requires disclosure of gifts by those leaving employment by July 1.
- 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.
- Increases the rulemaking authority of the Commission on Ethics (commission).
- Suspends a lobbyist's registration if the lobbyist fails to pay a fine until the fine is paid or waived.

The bill also entitles a witness required to travel outside the county of his or her residence in order to testify before the commission to per diem and travel expenses at the same rate as state employees. Thus, the bill will have a fiscal impact on state government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

**Promote Personal Responsibility** – The bill requires principled behavior by those serving in the public sector.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Code of Ethics for Public Officers and Employees (code)<sup>1</sup> sets forth certain requirements and guidelines governing the conduct of public officers and employees. Section 112.311, F.S., outlines three basic objectives of the code:

- Requires that the law protect against any conflict of interest and that it establish standards for the conduct of elected officials and government employees.
- Recognizes that government must attract those citizens best qualified to serve.<sup>2</sup>
- Provides that 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 disclosed to the public in order to preserve and maintain the integrity of the government process.

It is the policy of the state that no officer or employee of the state, a local government, or the Legislature have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature that is in substantial conflict with the proper discharge of his or her duties.<sup>3</sup> Public officers and employees of the state or of a local government are agents of the people and hold their positions for the benefit of the public. Such persons are bound to observe, in their official acts, the highest standards of ethics consistent with the code regardless of personal considerations.<sup>4</sup>

A person elected to any county, municipality, 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.<sup>5</sup> This only applies to former office holders lobbying current office holders. Public officers, agency employees, and local government attorneys also are barred from disclosing or using information not available to the public and gained because of that person's official position, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.<sup>6</sup>

Office holders must 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 that appeal upon unusual circumstances surrounding the failure to file on the designated due date. The person is entitled to a

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<sup>1</sup> Chapter 112, Part III, F.S.

<sup>2</sup> 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.

<sup>3</sup> Section 112.311(5), F.S.

<sup>4</sup> Section 112.311(6), F.S.

<sup>5</sup> Section 112.313, F.S.

<sup>6</sup> *Id.*

hearing before the Commission on Ethics (commission), which is permitted to waive the fine in whole or in part for good cause shown.<sup>7</sup>

The commission has the duty of receiving and investigating sworn complaints of violations of the code. The commission is authorized only to investigate alleged violations of the code upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person.<sup>8</sup> The commission has the power to subpoena witnesses.<sup>9</sup> Violations of any provision of the code can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.<sup>10</sup>

HB 1377 CS, which was similar to the current bill, passed the Legislature in 2005 and was vetoed by the Governor.<sup>11</sup> This bill attempts to address the Governor's concerns.

### **Effects of Proposed Changes**

The bill prohibits all state and political subdivision employees from participating in a 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 does not apply to information relating exclusively to governmental practices.

The bill amends the two-year "revolving door" prohibition against representing a client before one's former agency. It allows Selected Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years. The bill also clarifies that the revolving door prohibition against representing a client before one's former agency applies to other-personal-services (OPS) employees.

Conflict of interest disclosure statements (applicable for competitive bidding) must be filed with the commission instead of the Department of State. Local elected officials are prohibited from personally representing another person or entity for compensation before the agency for which they were an officer of for two years after leaving office.

The certified reminder mailing sent in July of each year by the supervisor of elections must have a return receipt. This allows 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.

By October 1 of each year, all supervisors of election must certify to the commission a list of names and addresses of all persons failing to timely file a statement of financial interests. Current law requires such certification by November 15. The bill also provides that a \$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 days after the deadline.

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<sup>7</sup> Section 112.3145, F.S.

<sup>8</sup> Section 112.324, F.S.

<sup>9</sup> Section 112.322, F.S.

<sup>10</sup> Section 112.317, F.S.

<sup>11</sup> The Governor's veto message stated "the bill contains ambiguous language that could unduly punish state employees who seek to transition to the private sector . . . Government employees come into contact daily with actions and issues with which they are not necessarily actively engaged on behalf of the agency; they should not be restricted from future employment in these tangential subject matters as a result. This legislation could have a draconian impact on the ability of State to recruit employees who eventually aspire to return to the private sector. I am also concerned by a provision in the bill that carves out an exemption to lobbying laws for a handful of state employees . . . Florida's lobbying laws should be applied uniformly. Creating exemptions sets a bad precedent." Veto letter by Governor Bush, HB 1377, June 15, 2005.

The bill requires the filing of gift disclosure forms for the last portion of one's term of office or employment, and allows quarterly gift disclosure forms to be considered timely filed if postmarked on or before the due date. Honorarium-expense disclosure forms must be filed for the last portion of one's term of office or employment.

The bill authorizes an agency to receive restitution, paid by the violator, rather than to the state only. 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 such penalty are assessed against the violator. It authorizes the commission to recommend payment of any restitution penalty to the agency where the employee worked, where the officer was deemed 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).

The bill eases existing post-employment restrictions for state employees whose jobs are privatized and who are employed by that private entity.

The bill prohibits an individual who qualifies as a lobbyist under ss. 11.045 or 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 ss. 11.045 or 112.3215, F.S., or a local government charter or ordinance. The same exception applies.

The bill also defines "government body or agency" in various ways, for varying situations. Specifically:

- For a board of county commissioners, "government body or agency" means the commission, the chief administrative officer or employee of the county, and their immediate support staff.
- For any other elected county officer, the phrase includes the office or department headed by that officer and all subordinate employees.
- For an elected municipal officer, the phrase covers the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.
- For an elected special district officer, the phrase refers to the special district.
- For an elected school district officer, the phrase refers to the school district.

The bill increases the commission's rule-making authority regarding the grounds for waiving a fine and the procedure for appealing that fine.

A witness required by the commission to testify outside the county of his or her residence is entitled to per diem and travel expenses reimbursed at the state rate.

Finally, the bill provides that an official investigation includes an investigation instituted by the commission and that an official proceeding includes a proceeding before 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., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 3 amends s. 112.3144, F.S., specifying how a reporting individual reports assets valued in excess of a specified amount.

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., regarding filing a report relating to gifts.

Section 7 amends s. 112.3149, F.S., requiring the filing of a report of honoraria by a specified date.

Section 8 amends s. 112.317, F.S., regarding penalties.

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.

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.

Section 11 amends s. 112.3215, F.S., increasing the rulemaking authority of the commission.

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., amending definitions.

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:**

The bill does not create, modify, amend, or eliminate a local revenue source.

#### **2. Expenditures:**

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 bill increases the rulemaking authority of the commission. The commission must adopt rules to provide 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**

Ethics & Elections Committee

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.

Governmental Operations Committee

At its meeting on March 22, 2006, the Governmental Operations Committee adopted three amendments addressing the following concerns:

- Clarifies the grandfathering clause applying to agency employees who were employed on July 1, 2001 in a Career Service System position that was transferred to the Selected Exempt Service System.
- Defining "government body or agency" in various ways, for varying situations. Specifically:
  - For a board of county commissioners, "government body or agency" means the commission, the chief administrative officer or employee of the county, and their immediate support staff.
  - For any other elected county officer, the phrase includes the office or department headed by that officer and all subordinate employees.
  - For an elected municipal officer, the phrase covers the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.
  - For an elected special district officer, the phrase refers to the special district.
  - For an elected school district officer, the phrase refers to the school district.
- Removes one particular prohibition deemed overly-broad. The prohibition barred former employees from representing any entity for compensation, in any matter in which the employee "participated

personally and substantially in his or her official capacity through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee.”