

Bill No. SB 880

Barcode 110406

CHAMBER ACTION

Senate

House

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The Committee on Ethics and Elections (Sebesta) recommended
the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

(2) "Agency" means any state, regional, county, local,
or municipal government entity of this state, whether
executive, judicial, or legislative; any department, division,
bureau, commission, authority, or political subdivision of
this state therein; any quasi-public entity; or any public
school, community college, or state university.

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1 (9) "Corruptly" means done with a wrongful intent and
 2 for the purpose of obtaining, or compensating or receiving
 3 compensation for, any benefit resulting from some act or
 4 omission of a public or quasi-public servant which is
 5 inconsistent with the proper performance of his or her public
 6 or quasi-public duties.

7 (21) "Quasi-public entity" means an entity that has
 8 been created by a government entity pursuant to law to
 9 accomplish a public purpose and that is not a state or local
 10 government entity.

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

14 112.313 Standards of conduct for public officers,
 15 employees of agencies, and local government attorneys.--

16 (3) DOING BUSINESS WITH ONE'S AGENCY.--No employee of
 17 an agency acting in his or her official capacity as a
 18 purchasing agent, or public officer acting in his or her
 19 official capacity, shall either directly or indirectly
 20 purchase, rent, or lease any realty, goods, or services for
 21 his or her own agency from any business entity of which the
 22 officer or employee or the officer's or employee's spouse or
 23 child is an officer, partner, director, or proprietor or in
 24 which such officer or employee or the officer's or employee's
 25 spouse or child, or any combination of them, has a material
 26 interest. Nor shall a public officer or employee, acting in a
 27 private capacity, rent, lease, or sell any realty, goods, or
 28 services to the officer's or employee's own agency, if he or
 29 she is a state or quasi-public entity officer or employee, or
 30 to any political subdivision or any agency thereof, if he or
 31 she is serving as an officer or employee of that political

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1 subdivision. The foregoing shall not apply to district offices
 2 maintained by legislators when such offices are located in the
 3 legislator's place of business or when such offices are on
 4 property wholly or partially owned by the legislator. This
 5 subsection shall not affect or be construed to prohibit
 6 contracts entered into prior to:

- 7 (a) October 1, 1975.
- 8 (b) Qualification for elective office.
- 9 (c) Appointment to public office.
- 10 (d) Beginning public employment.
- 11 (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL
 12 RELATIONSHIP.--

13 (a) No public officer or employee of an agency shall
 14 have or hold any employment or contractual relationship with
 15 any business entity or any agency which is subject to the
 16 regulation of, or is doing business with, an agency of which
 17 he or she is an officer or employee, excluding those
 18 organizations and their officers who, when acting in their
 19 official capacity, enter into or negotiate a collective
 20 bargaining contract with the state or any municipality,
 21 county, or other political subdivision of the state; nor shall
 22 an officer or employee of an agency have or hold any
 23 employment or contractual relationship that will create a
 24 continuing or frequently recurring conflict between his or her
 25 private interests and the performance of his or her public or
 26 quasi-public duties or that would impede the full and faithful
 27 discharge of his or her public or quasi-public duties.

28 1. When the agency referred to is that certain kind of
 29 special tax district created by general or special law and is
 30 limited specifically to constructing, maintaining, managing,
 31 and financing improvements in the land area over which the

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1 agency has jurisdiction, or when the agency has been organized
 2 pursuant to chapter 298, then employment with, or entering
 3 into a contractual relationship with, such business entity by
 4 a public officer or employee of such agency shall not be
 5 prohibited by this subsection or be deemed a conflict per se.
 6 However, conduct by such officer or employee that is
 7 prohibited by, or otherwise frustrates the intent of, this
 8 section shall be deemed a conflict of interest in violation of
 9 the standards of conduct set forth by this section.

10 2. When the agency referred to is a legislative body
 11 and the regulatory power over the business entity resides in
 12 another agency, or when the regulatory power which the
 13 legislative body exercises over the business entity or agency
 14 is strictly through the enactment of laws or ordinances, then
 15 employment or a contractual relationship with such business
 16 entity by a public officer or employee of a legislative body
 17 shall not be prohibited by this subsection or be deemed a
 18 conflict.

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

22 (a)1. It is the intent of the Legislature to implement
 23 by statute the provisions of s. 8(e), Art. II of the State
 24 Constitution relating to legislators, statewide elected
 25 officers, appointed state officers, and designated public
 26 employees.

27 2. As used in this paragraph:

28 a. "Employee" means:

29 (I) Any person employed in the executive or
 30 legislative branch of government holding a position in the
 31 Senior Management Service as defined in s. 110.402 or any

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1 person holding a position in the Selected Exempt Service as
2 defined in s. 110.602 or any person having authority over
3 policy or procurement employed by the Department of the
4 Lottery.

5 (II) The Auditor General, the director of the Office
6 of Program Policy Analysis and Government Accountability, the
7 Sergeant at Arms and Secretary of the Senate, and the Sergeant
8 at Arms and Clerk of the House of Representatives.

9 (III) The executive director of the Legislative
10 Committee on Intergovernmental Relations and the executive
11 director and deputy executive director of the Commission on
12 Ethics.

13 (IV) An executive director, staff director, or deputy
14 staff director of each joint committee, standing committee, or
15 select committee of the Legislature; an executive director,
16 staff director, executive assistant, analyst, or attorney of
17 the Office of the President of the Senate, the Office of the
18 Speaker of the House of Representatives, the Senate Majority
19 Party Office, Senate Minority Party Office, House Majority
20 Party Office, or House Minority Party Office; or any person,
21 hired on a contractual basis, having the power normally
22 conferred upon such persons, by whatever title.

23 (V) The Chancellor and Vice Chancellors of the State
24 University System; the general counsel to the Board of
25 Regents; and the president, vice presidents, and deans of each
26 state university.

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

29 b. "Appointed state officer" means any member of an
30 appointive board, commission, committee, council, or authority
31 of the executive or legislative branch of state government

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1 whose powers, jurisdiction, and authority are not solely
 2 advisory and include the final determination or adjudication
 3 of any personal or property rights, duties, or obligations,
 4 other than those relative to its internal operations.

5 c. "State agency" means an entity of the legislative,
 6 executive, or judicial branch of state government over which
 7 the Legislature exercises plenary budgetary and statutory
 8 control.

9 3. No member of the Legislature, appointed state
 10 officer, or statewide elected officer shall personally
 11 represent another person or entity for compensation before the
 12 government body or agency of which the individual was an
 13 officer or member for a period of 2 years following vacation
 14 of office. No member of the Legislature shall personally
 15 represent another person or entity for compensation during his
 16 or her term of office before any state agency other than
 17 judicial tribunals or in settlement negotiations after the
 18 filing of a lawsuit.

19 4. No agency employee shall personally represent
 20 another person or entity for compensation before the agency
 21 with which he or she was employed for a period of 2 years
 22 following vacation of position, unless employed by another
 23 agency of state government.

24 5. No employee of a quasi-public entity the duties of
 25 whose position are managerial, policymaking, or professional
 26 in nature and no officer of a quasi-public entity shall
 27 personally represent another person or entity for compensation
 28 before the agency with which he or she was employed for a
 29 period of 2 years following vacation of position unless
 30 employed by another agency as defined in s. 112.312(2).

31 ~~6.5.~~ Any person violating this paragraph shall be

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1 subject to the penalties provided in s. 112.317 and a civil
2 penalty of an amount equal to the compensation which the
3 person receives for the prohibited conduct.

4 ~~7.6.~~ This paragraph is not applicable to:

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

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

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

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

16 e. Any appointed state officer whose term of office
17 began before January 1, 1995, unless reappointed to that
18 office on or after January 1, 1995; ~~or~~

19 f. Any officer or employee of a quasi-public entity
20 whose term of office or employment began before July 1, 2006,
21 unless reappointed as an officer to that office on or after
22 July 1, 2006.

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

25 112.317 Penalties.--

26 (1) Violation of any provision of this part,
27 including, but not limited to, any failure to file any
28 disclosures required by this part or violation of any standard
29 of conduct imposed by this part, or violation of any provision
30 of s. 8, Art. II of the State Constitution, in addition to any
31 criminal penalty or other civil penalty involved, shall,

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1 pursuant to applicable constitutional and statutory
2 procedures, constitute grounds for, and may be punished by,
3 one or more of the following:

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

- 5 1. Impeachment.
- 6 2. Removal from office.
- 7 3. Suspension from office.
- 8 4. Public censure and reprimand.
- 9 5. Forfeiture of no more than one-third salary per
10 month for no more than 12 months.
- 11 6. A civil penalty not to exceed \$10,000.
- 12 7. Restitution of any pecuniary benefits received
13 because of the violation committed.

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

- 17 1. Dismissal from employment.
- 18 2. Suspension from employment for not more than 90
19 days without pay.
- 20 3. Demotion.
- 21 4. Reduction in salary level.
- 22 5. Forfeiture of no more than one-third salary per
23 month for no more than 12 months.
- 24 6. A civil penalty not to exceed \$10,000.
- 25 7. Restitution of any pecuniary benefits received
26 because of the violation committed.

27 8. Public censure and reprimand.
28 (c) In the case of a candidate who violates the
29 provisions of this part or s. 8(a) and (i), Art. II of the
30 State Constitution:

- 31 1. Disqualification from being on the ballot.

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2. Public censure.

3. Reprimand.

4. A civil penalty not to exceed \$10,000.

(d) In the case of a former public or quasi-public officer or employee who has violated a provision applicable to former officers or employees or whose violation occurred prior to such officer's or employee's leaving public or quasi-public office or employment:

1. Public censure and reprimand.

2. A civil penalty not to exceed \$10,000.

3. Restitution of any pecuniary benefits received because of the violation committed.

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

Section 4. Paragraph (d) of subsection (8) of section

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1 112.324, Florida Statutes, is amended to read:

2 112.324 Procedures on complaints of violations; public
3 records and meeting exemptions.--

4 (8) If, in cases pertaining to complaints other than
5 complaints against impeachable officers or members of the
6 Legislature, upon completion of a full and final investigation
7 by the commission, the commission finds that there has been a
8 violation of this part or of s. 8, Art. II of the State
9 Constitution, it shall be the duty of the commission to report
10 its findings and recommend appropriate action to the proper
11 disciplinary official or body as follows, and such official or
12 body shall have the power to invoke the penalty provisions of
13 this part, including the power to order the appropriate
14 elections official to remove a candidate from the ballot for a
15 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the
16 State Constitution:

17 (d) Except as otherwise provided by this part, the
18 Governor, in the case of any other public or quasi-public
19 officer, public or quasi-public employee, former public or
20 quasi-public officer or public employee, candidate, or former
21 candidate.

22 Section 5. If any provision of this act or the
23 application thereof to any individual or circumstance is held
24 invalid, such invalidity shall not affect other provisions or
25 applications of this act which can be given effect without the
26 invalid provision or application, and to this end the
27 provisions of this act are to be severable.

28 Section 6. This act shall take effect July 1, 2006.
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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

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5 and insert:

6 A bill to be entitled

7 An act relating to the code of ethics for

8 public officers and employees; amending s.

9 112.312, F.S.; revising definitions of the

10 terms "agency" and "corruptly"; defining the

11 term "quasi-public entity"; amending s.

12 112.313, F.S.; applying provisions of the code

13 which prohibit doing business with one's

14 agency, prohibit conflicting employment or

15 contractual relationships, and limit

16 permissible representations following

17 termination of office or employment to officers

18 and employees of quasi-public entities;

19 providing penalties; amending s. 112.317, F.S.;

20 providing specified penalties for quasi-public

21 officers, former quasi-public officers, and

22 agency employees; providing for procedure

23 against certain complaints filed with malicious

24 intent against quasi-public officers or

25 employees; amending s. 112.324, F.S.; requiring

26 the Commission on Ethics to report findings on

27 investigations of quasi-public officers and

28 employees and former quasi-public officers and

29 employees to the Governor; providing for

30 severability; providing an effective date.

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1 WHEREAS, the people of Florida through Article II,
2 Section 8 of the Florida Constitution require that individuals
3 holding offices or employment on behalf of the state do so in
4 public trust, and

5 WHEREAS, the Legislature has determined persons in
6 positions of public trust must meet the highest level of
7 professionalism and ethical standards and that the law shall
8 protect against any conflict of interest, and

9 WHEREAS, officers and employees of quasi-public
10 entities created for a public purpose must be prohibited from
11 breaching the public trust for personal gain and must be held
12 to the same code of ethics as public officers and employees,

13 NOW, THEREFORE,

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