

By Senator Fasano

11-159-07

1 A bill to be entitled
2 An act relating to the code of ethics for
3 public officers and employees; amending s.
4 112.312, F.S.; redefining the terms "agency"
5 and "corruptly"; defining the term
6 "quasi-public entity"; amending s. 112.313,
7 F.S.; providing for the provisions of the code
8 which prohibit doing business with one's
9 agency, prohibit conflicting employment or
10 contractual relationships, and limit
11 permissible representations following
12 termination of office or employment to apply to
13 officers and employees of quasi-public
14 entities; providing penalties; amending s.
15 112.317, F.S.; providing specified penalties
16 for quasi-public officers, former quasi-public
17 officers, and agency employees; providing for
18 procedure against certain complaints filed with
19 malicious intent against quasi-public officers
20 or employees; amending s. 112.324, F.S.;
21 requiring the Commission on Ethics to report
22 findings on investigations of quasi-public
23 officers and employees and former quasi-public
24 officers and employees to the Governor;
25 amending s. 420.5061, F.S.; conforming a
26 cross-reference; providing for the management
27 of certain financial interests by a member of
28 the Cabinet; providing for certain provisions
29 in the Code of Ethics to apply to the
30 management of such financial interests;
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1 providing for severability; providing an
2 effective date.

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

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

12 WHEREAS, officers and employees of quasi-public
13 entities created for a public purpose must be prohibited from
14 breaching the public trust for personal gain and must be held
15 to the same code of ethics as public officers and employees,
16 NOW, THEREFORE,

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

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

25 112.312 Definitions.--As used in this part and for
26 purposes of the provisions of s. 8, Art. II of the State
27 Constitution, unless the context otherwise requires:

28 (2) "Agency" means any state, regional, county, local,
29 or municipal government entity of this state, whether
30 executive, judicial, or legislative; any department, division,
31 bureau, commission, authority, or political subdivision of

1 | this state therein; any quasi-public entity; or any public
2 | school, community college, or state university.

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

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

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

16 | 112.313 Standards of conduct for public officers,
17 | employees of agencies, and local government attorneys.--

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

1 to any political subdivision or any agency thereof, if he or
2 she is serving as an officer or employee of that political
3 subdivision. The foregoing shall not apply to district offices
4 maintained by legislators when such offices are located in the
5 legislator's place of business or when such offices are on
6 property wholly or partially owned by the legislator. This
7 subsection shall not affect or be construed to prohibit
8 contracts entered into prior to:

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

14 RELATIONSHIP.--

15 (a) No public officer or employee of an agency shall
16 have or hold any employment or contractual relationship with
17 any business entity or any agency which is subject to the
18 regulation of, or is doing business with, an agency of which
19 he or she is an officer or employee, excluding those
20 organizations and their officers who, when acting in their
21 official capacity, enter into or negotiate a collective
22 bargaining contract with the state or any municipality,
23 county, or other political subdivision of the state; nor shall
24 an officer or employee of an agency have or hold any
25 employment or contractual relationship that will create a
26 continuing or frequently recurring conflict between his or her
27 private interests and the performance of his or her or
28 quasi-public public duties or that would impede the full and
29 faithful discharge of his or her public or quasi-public
30 duties.
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1 1. When the agency referred to is that certain kind of
2 special tax district created by general or special law and is
3 limited specifically to constructing, maintaining, managing,
4 and financing improvements in the land area over which the
5 agency has jurisdiction, or when the agency has been organized
6 pursuant to chapter 298, then employment with, or entering
7 into a contractual relationship with, such business entity by
8 a public officer or employee of such agency shall not be
9 prohibited by this subsection or be deemed a conflict per se.
10 However, conduct by such officer or employee that is
11 prohibited by, or otherwise frustrates the intent of, this
12 section shall be deemed a conflict of interest in violation of
13 the standards of conduct set forth by this section.

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

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

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

31 2. As used in this paragraph:

1 a. "Employee" means:

2 (I) Any person employed in the executive or
3 legislative branch of government holding a position in the
4 Senior Management Service as defined in s. 110.402 or any
5 person holding a position in the Selected Exempt Service as
6 defined in s. 110.602 or any person having authority over
7 policy or procurement employed by the Department of the
8 Lottery.

9 (II) The Auditor General, the director of the Office
10 of Program Policy Analysis and Government Accountability, the
11 Sergeant at Arms and Secretary of the Senate, and the Sergeant
12 at Arms and Clerk of the House of Representatives.

13 (III) The executive director of the Legislative
14 Committee on Intergovernmental Relations and the executive
15 director and deputy executive director of the Commission on
16 Ethics.

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

27 (V) The Chancellor and Vice Chancellors of the State
28 University System; the general counsel to the Board of
29 Regents; and the president, vice presidents, and deans of each
30 state university.

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1 (VI) Any person, including an other-personal-services
2 employee, having the power normally conferred upon the
3 positions referenced in this sub-subparagraph.

4 b. "Appointed state officer" means any member of an
5 appointive board, commission, committee, council, or authority
6 of the executive or legislative branch of state government
7 whose powers, jurisdiction, and authority are not solely
8 advisory and include the final determination or adjudication
9 of any personal or property rights, duties, or obligations,
10 other than those relative to its internal operations.

11 c. "State agency" means an entity of the legislative,
12 executive, or judicial branch of state government over which
13 the Legislature exercises plenary budgetary and statutory
14 control.

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

25 4. An agency employee, including an agency employee
26 who was employed on July 1, 2001, in a Career Service System
27 position that was transferred to the Selected Exempt Service
28 System under chapter 2001-43, Laws of Florida, may not
29 personally represent another person or entity for compensation
30 before the agency with which that agency employee ~~he or she~~
31 was employed for a period of 2 years following vacation of

1 position, unless employed by another agency of state
2 government.

3 5. An officer of a quasi-public entity or an employee
4 of a quasi-public entity who performs managerial,
5 policymaking, or professional duties may not personally
6 represent another person or entity for compensation before the
7 agency with which that officer or employee was employed for a
8 period of 2 years following vacation of position, unless the
9 officer or employee is employed by another agency as defined
10 in s. 112.312(2).

11 ~~6.5-~~ Any person violating this paragraph shall be
12 subject to the penalties provided in s. 112.317 and a civil
13 penalty of an amount equal to the compensation which the
14 person receives for the prohibited conduct.

15 ~~7.6-~~ This paragraph is not applicable to:

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

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

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

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

27 e. Any appointed state officer whose term of office
28 began before January 1, 1995, unless reappointed to that
29 office on or after January 1, 1995; ~~or-~~

30 f. Any officer or employee of a quasi-public entity
31 whose term of office or employment began before July 1, 2007,

1 unless reappointed as an officer to that office on or after
2 July 1, 2007.

3 (b) In addition to the provisions of this part which
4 are applicable to legislators and legislative employees by
5 virtue of their being public officers or employees, the
6 conduct of members of the Legislature and legislative
7 employees shall be governed by the ethical standards provided
8 in the respective rules of the Senate or House of
9 Representatives which are not in conflict with this section
10 ~~herewith.~~

11 Section 3. Subsections (1) and (7) of section 112.317,
12 Florida Statutes, are amended to read:

13 112.317 Penalties.--

14 (1) Violation of any provision of this part,
15 including, but not limited to, any failure to file any
16 disclosures required by this part or violation of any standard
17 of conduct imposed by this part, or violation of any provision
18 of s. 8, Art. II of the State Constitution, in addition to any
19 criminal penalty or other civil penalty involved, shall, under
20 applicable constitutional and statutory procedures, constitute
21 grounds for, and may be punished by, one or more of the
22 following:

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

- 24 1. Impeachment.
- 25 2. Removal from office.
- 26 3. Suspension from office.
- 27 4. Public censure and reprimand.
- 28 5. Forfeiture of no more than one-third salary per
29 month for no more than 12 months.
- 30 6. A civil penalty not to exceed \$10,000.

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1 7. Restitution of any pecuniary benefits received
2 because of the violation committed. The commission may
3 recommend that the restitution penalty be paid to the agency
4 of which the public officer was a member or to the General
5 Revenue Fund.

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

- 9 1. Dismissal from employment.
10 2. Suspension from employment for not more than 90
11 days without pay.
12 3. Demotion.
13 4. Reduction in salary level.
14 5. Forfeiture of no more than one-third salary per
15 month for no more than 12 months.

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

17 7. Restitution of any pecuniary benefits received
18 because of the violation committed. The commission may
19 recommend that the restitution penalty be paid to the agency
20 by which the public employee was employed, or of which the
21 officer was deemed to be an employee, or to the General
22 Revenue Fund.

23 8. Public censure and reprimand.

24 (c) In the case of a candidate who violates the
25 provisions of this part or s. 8(a) and (i), Art. II of the
26 State Constitution:

- 27 1. Disqualification from being on the ballot.
28 2. Public censure.
29 3. Reprimand.
30 4. A civil penalty not to exceed \$10,000.

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

- 6 1. Public censure and reprimand.
- 7 2. A civil penalty not to exceed \$10,000.
- 8 3. Restitution of any pecuniary benefits received
- 9 because of the violation committed. The commission may
- 10 recommend that the restitution penalty be paid to the agency
- 11 of the public or quasi-public officer or employee or to the
- 12 General Revenue Fund.

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

1 Section 4. Paragraph (d) of subsection (8) of section
2 112.324, Florida Statutes, is amended to read:

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

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

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

23 Section 5. Section 420.5061, Florida Statutes, is
24 amended to read:

25 420.5061 Transfer of agency assets and
26 liabilities.--Effective January 1, 1998, all assets and
27 liabilities and rights and obligations, including any
28 outstanding contractual obligations, of the agency shall be
29 transferred to the corporation as legal successor in all
30 respects to the agency. The corporation shall thereupon become
31 obligated to the same extent as the agency under any existing

1 | agreements and be entitled to any rights and remedies
2 | previously afforded the agency by law or contract, including
3 | specifically the rights of the agency under chapter 201 and
4 | part VI of chapter 159. The corporation is a state agency for
5 | purposes of s. 159.807(4)(a). Effective January 1, 1998, all
6 | references under Florida law to the agency are deemed to mean
7 | the corporation. The corporation shall transfer to the General
8 | Revenue Fund an amount which otherwise would have been
9 | deducted as a service charge pursuant to s. 215.20(1) if the
10 | Florida Housing Finance Corporation Fund established by s.
11 | 420.508(5), the State Apartment Incentive Loan Fund
12 | established by s. 420.5087(7), the Florida Homeownership
13 | Assistance Fund established by s. 420.5088(4), the HOME
14 | Investment Partnership Fund established by s. 420.5089(1), and
15 | the Housing Predevelopment Loan Fund established by s.
16 | 420.525(1) were each trust funds. For purposes of s. 112.313,
17 | the corporation is deemed to be a continuation of the agency,
18 | and the provisions thereof are deemed to apply as if the same
19 | entity remained in place. Any employees of the agency and
20 | agency board members covered by s. 112.313(9)(a)7. ~~s.~~
21 | ~~112.313(9)(a)6.~~ shall continue to be entitled to the exemption
22 | in that subparagraph, notwithstanding being hired by the
23 | corporation or appointed as board members of the corporation.
24 | Effective January 1, 1998, all state property in use by the
25 | agency shall be transferred to and become the property of the
26 | corporation.

27 | Section 6. (1) A member of the Cabinet shall, during
28 | his or her term of office, place all his or her personal
29 | investments in a publicly traded mutual fund or a blind trust
30 | at a financial institution. If such member acquires a
31 | financial interest that is prohibited by s. 112.313, Florida

1 Statutes, during his or her term of office due to events or
2 actions beyond his or her control, he or she shall immediately
3 sell such financial interest or place it in a blind trust at a
4 financial institution.

5 (2) A member of the Cabinet may not:

6 (a) Attempt to influence or exercise any control over
7 decisions regarding the management of assets in a blind trust
8 that is created pursuant to subsection (1).

9 (b) Engage, directly or indirectly, in an activity
10 involving any financial interest of that member which violates
11 s. 112.313, Florida Statutes.

12 Section 7. If any provision of this act or its
13 application to any individual or circumstance is held invalid,
14 such invalidity does not affect other provisions or
15 applications of this act which can be given effect without the
16 invalid provision or application, and to this end the
17 provisions of this act are severable.

18 Section 8. This act shall take effect July 1, 2007.

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21 SENATE SUMMARY

22 Revises definitions of the terms "agency" and
23 "corruptly." Defines the term "quasi-public entity."
24 Applies provisions of the code which prohibit doing
25 business with one's agency, prohibit conflicting
26 employment or contractual relationships, and limit
27 permissible representations following termination of
28 office or employment to officers and employees of
29 quasi-public entities. Provides penalties. Provides
30 specified penalties for quasi-public officers, former
31 quasi-public officers, and agency employees. Provides for
procedure against certain complaints filed with malicious
intent against quasi-public officers or employees.
Requires the Commission on Ethics to report findings on
investigations of quasi-public officers and employees and
former quasi-public officers and employees to the
Governor. Provides for the management of certain
financial interests by a member of the Cabinet. Provides
for certain provisions in the Code of Ethics to apply to
the management of such financial interests. Provides for
severability.