

Bill No. SB 524

Barcode 730860

CHAMBER ACTION

Senate

House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 112.3142, Florida Statutes, is created to read:

112.3142 Qualified blind trusts.--

(1) The Legislature finds that where a trust is created by a public official and the official does not know the identity of the financial interests held by the trust and does not control the interests held by the trust, his or her official actions will not be influenced or appear to be influenced by private considerations. Therefore, the Legislature intends that such trusts be established and operate in a manner that ensures that there is an actual lack of knowledge and control by the official with respect to the interests held in trust.

(2) As used in this section, the term "covered public

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1 official" means the Governor, the Lieutenant Governor, and  
2 each member of the Cabinet as specified in s. 4, Art. IV of  
3 the State Constitution.

4 (3)(a) A covered public official shall, before taking  
5 office, place all of his or her personal investments in any  
6 form of property publicly traded on a national or regional  
7 exchange, other than interests in publicly traded mutual  
8 funds, into a publicly traded mutual fund or qualified blind  
9 trust.

10 (b) During the covered public official's term of  
11 office, he or she may not voluntarily acquire any personal  
12 investment in any form of property which is publicly traded on  
13 a national or regional exchange, except in the form of  
14 publicly traded mutual funds.

15 (c) If the covered public official acquires a  
16 financial interest in any form of property that is publicly  
17 traded on a national or regional exchange, other than an  
18 interest in publicly traded mutual funds, during the covered  
19 public official's term of office due to events or actions  
20 beyond his or her control, he or she shall immediately sell  
21 the financial interest or place the financial interest in a  
22 qualified blind trust.

23 (d) A covered public official may place other forms of  
24 personal investments, as provided in this section, into a  
25 qualified blind trust.

26 (4) If a covered public official holds a financial  
27 interest in a qualified blind trust that meets the  
28 requirements of this section, he or she will not have a  
29 conflict of interest that is prohibited under s. 112.313(3) or  
30 s. 112.313(7), or a voting conflict of interest under s.  
31 112.3143, with respect to that financial interest.

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1       (5) Except as otherwise provided in this section, the  
2 covered public official and any other person having a  
3 beneficial interest in a qualified blind trust may not attempt  
4 to influence or exercise any control over decisions regarding  
5 the management of assets in the qualified blind trust or make  
6 any effort to obtain information with respect to the holdings  
7 of the trust, including obtaining a copy of any trust tax  
8 return filed or any related information.

9       (6) Except for communications that consist solely of  
10 requests for distributions of cash or other unspecified assets  
11 of a qualified blind trust, the covered public official or any  
12 other person having a beneficial interest in the blind trust  
13 may not have any direct or indirect communication with the  
14 trustee with respect to the trust unless such communication is  
15 in writing and unless it relates to:

16       (a) A request for a distribution from the trust which  
17 does not specify whether the distribution must be made in cash  
18 or in kind;

19       (b) The general financial interests and needs of the  
20 covered public official or other person having a beneficial  
21 interest in the trust, including, but not limited to, an  
22 interest in maximizing income or long-term capital gain;

23       (c) Notifying the trustee of a new law or regulation  
24 applicable to the covered public official which prohibits the  
25 covered public official from holding a certain asset and which  
26 notification directs that the asset not be held by the trust;  
27 or

28       (d) Directing the trustee to sell all of an asset  
29 placed in the trust by the covered public official at the time  
30 the blind trust was established which, in the determination of  
31 the covered public official, creates a conflict of interest or

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1 the appearance of a conflict due to the subsequent assumption  
2 of duties by the public official.

3 (7) The covered public official shall report as an  
4 asset on his or her financial disclosure statement the  
5 interest in the blind trust and its value if value is required  
6 to be reported. The covered public official shall also report  
7 the blind trust as a primary source of income on his or her  
8 financial disclosure statement and the amount if the amount of  
9 income is required to be reported. The covered public official  
10 shall not be required to report as a secondary source of  
11 income on his or her financial disclosure statement any source  
12 of income to the blind trust.

13 (8) A qualified blind trust must be established by the  
14 covered public official and meet the following requirements:

15 (a) The person or entity appointed as the trustee must  
16 not be:

17 1. A relative, as defined in s. 112.312(21), of the  
18 covered public official;

19 2. A person who is an elected or appointed public  
20 officer or a public employee; or

21 3. A person who has been appointed to serve in an  
22 agency by the covered public official or by a public officer  
23 or public employee supervised by the covered public official.

24 (b) The trust agreement establishing the blind trust  
25 must:

26 1. Contain a clear statement of its purpose, which is  
27 to remove from the covered public official control and  
28 knowledge of investment of trust assets so that any conflicts  
29 between the covered public official's responsibilities as a  
30 public official and his or her private interests will be  
31 eliminated;

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1           2. Give the trustee complete discretion to manage the  
2 trust, including, but not limited to, the power to dispose of  
3 and acquire trust assets without consulting or notifying the  
4 covered public official or any other person having a  
5 beneficial interest in the trust;

6           3. Prohibit communication between the trustee and the  
7 covered public official and any other person having a  
8 beneficial interest in the trust concerning the holdings or  
9 sources of income of the trust, except for amounts of cash  
10 value or net income or loss if such report does not identify  
11 any asset or holding except as provided in this section;

12           4. Provide that the trust tax return must be prepared  
13 by the trustee or his or her designee, and that any related  
14 information may not be disclosed to the covered public  
15 official or to any other beneficiary except as provided in  
16 this section;

17           5. Permit the trustee to notify the covered public  
18 official of the date of disposition and value at disposition  
19 of any original investment or interests in real property to  
20 the extent required by federal tax law so that information can  
21 be reported on the covered public official's applicable tax  
22 return;

23           6. Prohibit the trustee from disclosing to the covered  
24 public official and any other person having a beneficial  
25 interest in the trust any information concerning replacement  
26 assets to the trust, except for the minimum tax information  
27 which is necessary in order for the covered public official  
28 and others having a beneficial interest to file their income  
29 taxes and which does not describe or identify the individual  
30 sources of income;

31           7. Provide that the trustee may not invest trust

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1 assets in business entities that he or she knows are regulated  
2 by or do a significant amount of business with the covered  
3 public official's public agency; and

4 8. Provide that the trust is not effective until it is  
5 approved by the commission.

6 (c) The trust must contain only readily marketable  
7 assets that are free of any restriction with respect to their  
8 transfer or sale.

9 (d) The trust must be approved by the commission as  
10 meeting the requirements of this section.

11 (9) A copy of the qualified blind trust agreement must  
12 be filed with the commission no later than 5 business days  
13 after the agreement is executed and must include:

14 (a) A listing of the assets placed in the trust;

15 (b) The date the agreement was executed;

16 (c) The name and address of the trustee; and

17 (d) A separate statement signed by the trustee, under  
18 penalty of perjury, certifying that he or she will not reveal  
19 any information related to the trust to the covered public  
20 official or any other person having a beneficial interest in  
21 the qualified blind trust other than information that is  
22 authorized under this section, and that, to the best of the  
23 trustee's knowledge, the submitted blind trust agreement  
24 complies with this section.

25 (10) If the qualified blind trust is revoked while the  
26 covered public official is serving in a position requiring  
27 financial disclosure pursuant to this part, or if the covered  
28 public official learns of any replacement assets that have  
29 been added to the trust, the covered public official must file  
30 an amendment to his or her most recent financial disclosure  
31 statement no later than 60 days after the date of revocation

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1 or the addition of the replacement assets. The covered public  
 2 official must disclose the previously unreported pro rata  
 3 share of the trust's interests in investments or income  
 4 derived from such investments. For purposes of this section,  
 5 any replaced asset of which the covered public official learns  
 6 must be treated as though the asset were an original asset of  
 7 the trust.

8 Section 2. This act shall take effect July 1, 2007.

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11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete everything before the enacting clause

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15 and insert:

16 A bill to be entitled  
 17 An act relating to state public officials;  
 18 creating s. 112.3142, F.S.; providing  
 19 legislative intent; defining the term "covered  
 20 public official"; requiring a covered public  
 21 official before taking office to place all of  
 22 his or her personal investments traded on a  
 23 national or regional exchange into a publicly  
 24 traded mutual fund or a qualified blind trust;  
 25 providing for after-acquired financial  
 26 interests; prohibiting a conflict of interest  
 27 with respect to a blind trust; prohibiting a  
 28 covered public official from attempting to  
 29 influence or exercise any control over  
 30 decisions regarding the management of the blind  
 31 trust; authorizing certain communications with

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1 the trustee of the blind trust; requiring the  
2 covered public official to report the blind  
3 trust on his or her financial disclosure  
4 statement; setting forth the requirements for a  
5 qualifying blind trust; requiring that a copy  
6 of the qualified blind trust agreement be filed  
7 with the Commission on Ethics within a  
8 specified period; providing for the revocation  
9 of a qualified blind trust; providing an  
10 effective date.

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