

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Ethics and Elections Committee

BILL: CS/SB 524

INTRODUCER: Ethics and Elections Committee and Senator Fasano

SUBJECT: State Public Officials

DATE: March 20, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 524 requires cabinet members, the Governor, and the Lieutenant Governor to place all personal investments that are in any form of property traded on a national or regional exchange into either a qualified blind trust or a publicly traded mutual fund prior to taking office, unless the property is already in a publicly traded mutual fund. The new language provides for specific prohibitions and requirements regarding the acquisition and management of property publicly traded on a national or regional exchange while in office, and provides a specific procedure that must be followed if the trust is revoked while the public official is still in office. The committee substitute requires that the trust meet certain requirements in order for the trust to be considered a “qualified blind trust.” The committee substitute allows the public official to place other forms of property in the blind trust. The new language also provides a safe harbor provision for officials who place financial interests into the blind trust.

The committee substitute provides an exemption for cabinet members, the Governor and the Lieutenant Governor serving in office on the effective date of the bill for the remainder of his or her current term of office unless the official files a irrevocable statement with the Ethics Commission indicating that he or she wishes to be subject to the provisions of the bill.

Committee Substitute for Senate Bill 524 takes effect on July 1, 2007.

This bill creates section 112.3142 of the Florida Statutes.

II. Present Situation:

Currently, the Florida Ethics Code does not specifically regulate the personal stock and bond investments of the Governor, Lieutenant Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. However, the Florida Ethics Code contains specific prohibitions on the conduct of public officers and employees, some of which are briefly summarized as follows:

- Public officers, agency employees, local government attorneys, and candidates for nomination or election are prohibited from soliciting or taking anything of value on the basis that it would influence their official action, vote, or judgment.¹
- Agency employees and public officers are prohibited from doing business with one's agency. This provision also prohibits a public officer or employee, acting in a private capacity, from renting, leasing, or selling any realty, goods, or services to the officer's or employee's own agency. An exception to this prohibition exists for a legislator's district office which is located on property owned by the legislator or in the legislator's place of business.²
- Agency employees, public officers, local government attorneys and the spouses and minor children of such employees, officers, and attorneys are prohibited from accepting compensation or anything of value when the employee, officer or attorney knows or should know that the compensation or thing of value was given to influence the official actions of said employee, officer, or attorney.³
- Public officers, agency employees, and local government attorneys are prohibited from using their official positions, duties, or resources in order to provide a benefit for themselves or others.⁴
- Public officers and agency employees are prohibited, with exceptions, from being employed by or having a contract with an agency or business that is involved in a business relationship with the agency to which the public officer or employee belongs. This statute also prohibits public officers and employees from having a job or a contract that would create a continual conflict of interest between the officer's or employee's private interests and public duties or would impede the officer's or employee's public duties.⁵
- Current and former public officers, agency employees, and local government attorneys are prohibited from using inside information gained through public office or employment to benefit himself, herself, or any other person or entity.⁶

¹ Section 112.313(2), Florida Statutes.

² Section 112.313(3), Florida Statutes.

³ Section 112.313(4), Florida Statutes.

⁴ Section 112.313(6), Florida Statutes.

⁵ Section 112.313(7), Florida Statutes.

⁶ Section 112.313(8), Florida Statutes.

- Commonly referred to as the two-year “revolving door” prohibition, legislative members, appointed state officers, and statewide elected officers are prohibited from personally representing another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years after the individual vacates his or her office. Legislative members are also prohibited from representing another person or entity for compensation before any state agency during his or her term of office unless the representation is before a judicial tribunal or concerns the negotiation of a settlement after a lawsuit has been filed. This subsection also prohibits agency employees from representing for compensation another person or entity before the agency with which he or she was employed for a period of two years after the individual vacates his or her position.⁷

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 524 requires cabinet members, the Governor, and the Lieutenant Governor to place all personal investments that are in any form of property publicly traded on a national or regional exchange into a qualified blind trust or a publicly traded mutual fund prior to taking office, unless the property is already in a publicly traded mutual fund. The committee substitute also allows these public officials to voluntarily place other forms of property into the qualified blind trust. While in office, these public officials cannot willingly acquire any personal investment that is publicly traded on a national or regional exchange unless it is in the form of a publicly traded mutual fund. If a public official, while in office, acquires a financial interest in property that is publicly traded on a national or regional exchange, other than an interest in a publicly traded mutual fund, due to circumstances beyond his or her control, the official must immediately sell the interest or place the interest in a qualified blind trust.

The covered public official or any person having a beneficial interest in the trust may request the trustee to make distributions of cash or unspecified assets from the trust. However, the official or interested person may not have any other direct or indirect communication with the trustee about the trust unless the communication is in writing and related to either:

- A trust distribution request that does not specify if the distribution should be made in cash or in kind;
- The general financial needs of the official or interested person, including the need to maximize income or long term capital gain;
- Notifying the trustee of a new law or regulation that prohibits the official from holding a certain asset and directing that the trust not hold the prohibited asset; or
- Informing the trustee to sell an original asset of the trust because the public official has determined that the asset creates a conflict or the appearance of a conflict due to duties assumed by the public official after the trust was created.

The covered public official and any other person having a beneficial interest in the trust may not attempt to influence or control trust asset management or obtain information about trust holdings

⁷ Section 112.313(9), Florida Statutes.

including a copy of the trust's tax return or any related information, except as otherwise provided.

In order for a blind trust to be deemed "qualified," the following requirements must be met:

- The trust must be established by the public official.
- The trustee must not be an elected or appointed public officer or employee, or a relative of the covered public official, as defined in section 112.312(21), F.S.
- The trustee cannot be a person who either has been appointed by the public official to serve in an agency or has been appointed by a public officer or employee supervised by the public official.
- The trust agreement must contain a clear statement of its purpose which is to remove control and knowledge of the investment of trust assets so no conflicts of interest will arise between the covered public official and his or her private interests.
- The trust agreement must give the trustee complete discretionary authority over trust management which includes the power to sell or acquire trust assets without consulting with or notifying the public official or any other person having a beneficial interest in the trust.
- The trust agreement must prohibit communication, except as otherwise provided, about trust holdings or sources of income between the trustee and the covered public official or any other person having a beneficial interest in the trust unless the communication is limited to cash value or net income or loss and does not identify any trust holding.
- The trust agreement must provide that the trustee, or the trustee's designee, prepare the trust's tax return, and any information related to the trust's tax return may not be provided to the covered public official or anyone having a beneficial interest in the trust, except as otherwise provided.
- The trust agreement must allow the trustee to inform the public official of the minimum information required by federal tax law regarding the disposition date and value of any original investment or real property interest so the official can provide that information on the official's tax return.
- The trust agreement must prohibit the trustee from revealing to the covered public official or any person having a beneficial interest in the trust any information concerning any replacement assets in the trust, with the exception of the minimum tax information necessary for the covered public official or any person have a beneficial interest in the trust to file his or her income taxes as long as the information does not describe or identify any individual sources of income.

- The trust agreement must prohibit the trustee from investing any trust assets in business entities that the trustee knows are regulated or do significant amount of business with the covered public official's public agency.
- The trust agreement must provide that the trust is not effective until it is approved by the Ethics Commission.
- The trust can only contain readily marketable assets and must be approved by the commission as meeting all requirements

A copy of the blind trust agreement must be filed with the Ethics Commission no later than 5 days after execution and must include:

- A list of the assets placed in the trust.
- The date when the agreement was executed.
- The trustee's name and address.
- A separate statement signed by the trustee under penalty of perjury which certifies that the trustee will not reveal any unauthorized trust information to the covered public official or any person having a beneficial interest in the trust, and that to the best of the trustee's knowledge, the blind trust agreement qualifies as such under this section.

The official must report the interest in the blind trust as an asset and its value if value is required to be reported on his or her financial disclosure statement. The official must report the blind trust as a primary source of income on his or her financial disclosure statement and the amount of income if income is required to be reported. However, the official is not required to report as a secondary source of income any source of income to the blind trust.

The committee substitute provides a safe harbor provision for a covered public official who has a blind trust that meets all requirements by exempting the official from any conflict of interest arising under sections 112.313(3) and 112.313(7), or any voting conflict of interest arising under section 112.3143, with regard to any financial interest in the blind trust.

If the covered public official revokes the trust while in serving in a position that requires financial disclosure or obtains knowledge of any replacement assets added to the trust, the public official must file an amendment to his or her most recent financial interest statement. The amendment must be filed within 60 days after the revocation or addition date of the replacement assets. The amendment must disclose the previously unreported pro rata share of the trust's interests in investments or income derived from any such investments. Once an asset is replaced and the public official is aware of the replacement, the asset will be treated as if it were an original asset of the trust.

The committee substitute provides an exemption for cabinet members, the Governor and the Lieutenant Governor serving in office on the effective date of the bill for the remainder of his or her current term of office unless the official files a irrevocable statement with the Ethics Commission indicating that he or she wishes to be subject to the provisions of the bill.

Committee Substitute for Senate Bill 524 takes effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
