

By the Committee on Ethics and Elections; and Senator Fasano

582-2132-07

1 A bill to be entitled
2 An act relating to state public officials;
3 creating s. 112.3142, F.S.; providing
4 legislative intent; defining the term "covered
5 public official"; requiring a covered public
6 official before taking office to place all of
7 his or her personal investments traded on a
8 national or regional exchange into a publicly
9 traded mutual fund or a qualified blind trust;
10 providing for after-acquired financial
11 interests; prohibiting a conflict of interest
12 with respect to a blind trust; prohibiting a
13 covered public official from attempting to
14 influence or exercise any control over
15 decisions regarding the management of the blind
16 trust; authorizing certain communications with
17 the trustee of the blind trust; requiring the
18 covered public official to report the blind
19 trust on his or her financial disclosure
20 statement; setting forth the requirements for a
21 qualifying blind trust; requiring that a copy
22 of the qualified blind trust agreement be filed
23 with the Commission on Ethics within a
24 specified period; providing for the revocation
25 of a qualified blind trust; creating an
26 exemption for certain public officials;
27 providing an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 112.3142, Florida Statutes, is
2 created to read:

3 112.3142 Qualified blind trusts.--

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

14 (2) As used in this section, the term "covered public
15 official" means the Governor, the Lieutenant Governor, and
16 each member of the Cabinet as specified in s. 4, Art. IV of
17 the State Constitution.

18 (3)(a) A covered public official shall, before taking
19 office, place all of his or her personal investments in any
20 form of property publicly traded on a national or regional
21 exchange, other than interests in publicly traded mutual
22 funds, into a publicly traded mutual fund or qualified blind
23 trust.

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

29 (c) If the covered public official acquires a
30 financial interest in any form of property that is publicly
31 traded on a national or regional exchange, other than an

1 interest in publicly traded mutual funds, during the covered
2 public official's term of office due to events or actions
3 beyond his or her control, he or she shall immediately sell
4 the financial interest or place the financial interest in a
5 qualified blind trust.

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

9 (4) If a covered public official holds a financial
10 interest in a qualified blind trust that meets the
11 requirements of this section, he or she will not have a
12 conflict of interest that is prohibited under s. 112.313(3) or
13 s. 112.313(7), or a voting conflict of interest under s.
14 112.3143, with respect to that financial interest.

15 (5) Except as otherwise provided in this section, the
16 covered public official and any other person having a
17 beneficial interest in a qualified blind trust may not attempt
18 to influence or exercise any control over decisions regarding
19 the management of assets in the qualified blind trust or make
20 any effort to obtain information with respect to the holdings
21 of the trust, including obtaining a copy of any trust tax
22 return filed or any related information.

23 (6) Except for communications that consist solely of
24 requests for distributions of cash or other unspecified assets
25 of a qualified blind trust, the covered public official or any
26 other person having a beneficial interest in the blind trust
27 may not have any direct or indirect communication with the
28 trustee with respect to the trust unless such communication is
29 in writing and unless it relates to:

1 (a) A request for a distribution from the trust which
2 does not specify whether the distribution must be made in cash
3 or in kind;

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

8 (c) Notifying the trustee of a new law or regulation
9 applicable to the covered public official which prohibits the
10 covered public official from holding a certain asset and which
11 notification directs that the asset not be held by the trust;
12 or

13 (d) Directing the trustee to sell all of an asset
14 placed in the trust by the covered public official at the time
15 the blind trust was established which, in the determination of
16 the covered public official, creates a conflict of interest or
17 the appearance of a conflict due to the subsequent assumption
18 of duties by the public official.

19 (7) The covered public official shall report as an
20 asset on his or her financial disclosure statement the
21 interest in the blind trust and its value if value is required
22 to be reported. The covered public official shall also report
23 the blind trust as a primary source of income on his or her
24 financial disclosure statement and the amount if the amount of
25 income is required to be reported. The covered public official
26 shall not be required to report as a secondary source of
27 income on his or her financial disclosure statement any source
28 of income to the blind trust.

29 (8) A qualified blind trust must be established by the
30 covered public official and meet the following requirements:
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1 (a) The person or entity appointed as the trustee must
2 not be:

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

5 2. A person who is an elected or appointed public
6 officer or a public employee; or

7 3. A person who has been appointed to serve in an
8 agency by the covered public official or by a public officer
9 or public employee supervised by the covered public official.

10 (b) The trust agreement establishing the blind trust
11 must:

12 1. Contain a clear statement of its purpose, which is
13 to remove from the covered public official control and
14 knowledge of investment of trust assets so that any conflicts
15 between the covered public official's responsibilities as a
16 public official and his or her private interests will be
17 eliminated;

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

23 3. Prohibit communication between the trustee and the
24 covered public official and any other person having a
25 beneficial interest in the trust concerning the holdings or
26 sources of income of the trust, except for amounts of cash
27 value or net income or loss if such report does not identify
28 any asset or holding except as provided in this section;

29 4. Provide that the trust tax return must be prepared
30 by the trustee or his or her designee, and that any related
31 information may not be disclosed to the covered public

1 official or to any other beneficiary except as provided in
2 this section;

3 5. Permit the trustee to notify the covered public
4 official of the date of disposition and value at disposition
5 of any original investment or interests in real property to
6 the extent required by federal tax law so that information can
7 be reported on the covered public official's applicable tax
8 return;

9 6. Prohibit the trustee from disclosing to the covered
10 public official and any other person having a beneficial
11 interest in the trust any information concerning replacement
12 assets to the trust, except for the minimum tax information
13 which is necessary in order for the covered public official
14 and others having a beneficial interest to file their income
15 taxes and which does not describe or identify the individual
16 sources of income;

17 7. Provide that the trustee may not invest trust
18 assets in business entities that he or she knows are regulated
19 by or do a significant amount of business with the covered
20 public official's public agency; and

21 8. Provide that the trust is not effective until it is
22 approved by the commission.

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

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

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

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

1 (b) The date the agreement was executed;
2 (c) The name and address of the trustee; and
3 (d) A separate statement signed by the trustee, under
4 penalty of perjury, certifying that he or she will not reveal
5 any information related to the trust to the covered public
6 official or any other person having a beneficial interest in
7 the qualified blind trust other than information that is
8 authorized under this section, and that, to the best of the
9 trustee's knowledge, the submitted blind trust agreement
10 complies with this section.

11 (10) If the qualified blind trust is revoked while the
12 covered public official is serving in a position requiring
13 financial disclosure pursuant to this part, or if the covered
14 public official learns of any replacement assets that have
15 been added to the trust, the covered public official must file
16 an amendment to his or her most recent financial disclosure
17 statement no later than 60 days after the date of revocation
18 or the addition of the replacement assets. The covered public
19 official must disclose the previously unreported pro rata
20 share of the trust's interests in investments or income
21 derived from such investments. For purposes of this section,
22 any replaced asset of which the covered public official learns
23 must be treated as though the asset were an original asset of
24 the trust.

25 Section 2. A covered public official serving in office
26 on the effective date of this act shall not be subject to the
27 provisions of this act for the remainder of his or her current
28 term of office, unless the covered public official files an
29 irrevocable statement with the commission expressing his or
30 her intent to be subject to the provisions of this act.

31 Section 3. This act shall take effect July 1, 2007.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 524

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 act.