

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: SPB 7064

INTRODUCER: For consideration by Ethics and Elections Committee

SUBJECT: Ethics/Public Officers & Employees

DATE: February 16, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Rubinas</u>		Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Proposed Senate Bill 7064 clarifies and revises portions of Florida’s Code of Ethics. It expands the definition of “business entity” to include the term “company.” It makes the conduct, financial disclosure, gift, and honoraria provisions of the ethics code applicable to certain employees and officers of a private entity that contracts with a political subdivision to serve as the chief administrative officer of that subdivision. The bill creates a new penalty provision that applies to persons who are subject to the ethics code but who are not considered public officers and employees. The bill also makes the Governor the disciplinary official for these persons.

The bill prohibits local public officers from participating in the discussion of issues that would provide a benefit to the officer or the officer knows would provide a benefit to the officer’s principal (except agencies as defined in section 112.312(2)), relative, or business associate. The bill also amends existing language by requiring that where disclosure is required concerning voting conflicts, the officer must not only disclose his or her interests, but the interests of the officer’s principal (except agencies as defined in section 112.312(2)), relative, or business associate, if some private benefit would inure to one or all of them.

The bill expands the definition of local officer in section 112.3145, F.S., to include appointed members of a community redevelopment agency board, a finance director of a local government or other political subdivision, and a special master of a political subdivision that has adjudicatory authority over personal or property rights. The language also requires those who must disclose their financial interests under section 112.3145, F.S., to disclose on the reporting form whether a percentage threshold or dollar threshold amount is used to calculate the person’s financial interests.

The bill clarifies the definition of “procurement employee” for the purposes of the gift and honoraria provisions of sections 112.3148 and 112.3149, F.S. The new language also places vendors doing business with a reporting individual’s or procurement employee’s agency within the category of entities and persons who may not give gifts over a specified dollar amount or from whom the individual or employee may not solicit or knowingly accept gifts over a specified dollar amount. With regard to the honoraria provisions of section 112.3149, F.S., a reporting individual or employee may not accept an honorarium from a vendor doing business with the individual’s or employee’s agency and the vendor may not give an honorarium to the individual or employee.

Proposed Senate Bill 7064 makes the procedures and penalties that apply to executive branch lobbyists mirror those applicable to legislative lobbyists by allowing the ethics commission to investigate complaints alleging prohibited expenditures have been made and to investigate executive lobbyists or principals when a sworn complaint is received or upon the occurrence of a random audit of executive lobbying reports. The bill would also apply a non-criminal penalty to persons who fail to disclose material facts or who provide false information when required to disclose information under the executive lobbying laws.

This bill shall take effect on January 1, 2008.

This bill creates section 112.3136 and substantially amends the following sections of the Florida Statutes: 112.312, 112.3143, 112.3145, 112.3148, 112.3149, 112.317, 112.3215, 112.324, and 411.01.

II. Present Situation:

Objective of Ethics Code

Section 112.311, F.S., articulates three general objectives in the formation of the ethics code. The first is that the public interest “requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.”¹ Second, “the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve.”² Third, “it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions ... be regularly disclosed to the people.”³

The Legislature has also set forth policies through which the objectives are to be achieved. One example is that “no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest.”⁴ The code also states that “public

¹ Section 112.311(1), Florida Statutes.

² Section 112.311(2), Florida Statutes.

³ Section 112.311(3), Florida Statutes.

⁴ Section 112.311(5), Florida Statutes.

officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public,” and are “bound to observe, in their official acts, the highest standards of ethics consistent with this code ... regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.”⁵

Conduct Governing Public Officers and Employees

The Code of Ethics addresses an array of conduct by current and former government employees and officials. Briefly, some of the prohibited conduct includes prohibiting public officers, agency employees, local government attorneys, and candidates for nomination or election from soliciting or accepting anything of value in return for influencing an act, duty, or the judgment of the public officer, employee, attorney or candidate.⁶ The code prohibits agency employees and public officers from doing business with one’s own agency.⁷ Public officers, agency employees, local government attorneys and certain family members are prohibited from receiving unauthorized compensation known to be given to influence the actions of the public officer, employee or attorney acting in his or her official capacity.⁸ Also, public officers, agency employees, and local government attorneys may not “corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.”⁹ With exception, public officers and employees are prohibited from holding employment or a contract with a business entity or agency that is regulated or does business with the agency for which the officer or employee works. These officers and employees also may not hold employment or have a contractual relationship that creates a recurring conflict of interest between an officer’s or employee’s private interest and public duty or that obstructs the performance of a public duty.¹⁰ Current and former public officers, agency employees, and local government attorneys are prohibited from disclosing information for his or her personal benefit or the personal benefit of other persons or business entities if the information is learned because of the person’s position and not available to the public.¹¹ State agency employees along with employees of a county, municipality, special taxing district, or other political subdivision are prohibited from becoming members of the entity which he or she serves as an employee of the entity.¹²

Voting When a Conflict Exists

State public officers are not prohibited from voting on any issue coming before them in their official capacity. However, if the issue upon which a vote is being taken would provide a private benefit to the officer, or the officer knows it would provide a benefit to the officer’s principal, relative, or business associate, the public officer must disclose the nature of his or her interest in

⁵ Section 112.311(6), Florida Statutes.

⁶ Section 112.313(2), Florida Statutes.

⁷ Section 112.313(3), Florida Statutes.

⁸ Section 112.313(4), Florida Statutes.

⁹ Section 112.313(6), Florida Statutes.

¹⁰ Section 112.313(7), Florida Statutes.

¹¹ Section 112.313(8), Florida Statutes.

¹² Section 112.131(10), Florida Statutes.

a public written memorandum, which must be filed within 15 days after the vote occurs on the issue and incorporated into the meeting minutes.¹³

Local public officers are prohibited from voting in their official capacity on an issue that would provide a private benefit to the public officer, or that the public officer knows would provide a private benefit to the officer's principal (except an agency as defined in section 112.312(2)), relative, or business associate. Prior to the vote, the public officer must publicly inform the group about the reason for his or her vote abstention, and has 15 days after the vote to file a written memorandum that discloses the nature of his or her interest. This memorandum is public and must be incorporated into the minutes of the meeting.¹⁴ An exception to this particular voting prohibition exists for community redevelopment agency commissioners and independent special tax district officers elected on a one-acre, one-vote basis.¹⁵

Participating When a Conflict Exists

Appointed public officers are prohibited from participating in any issue that would provide a private benefit to the officer, or that he or she knows would provide a private benefit to the officer's principal, business associate, or relative unless the officer discloses his or her interest prior to participation. The officer must disclose his or her interest in a public, written memorandum prior to the meeting at which discussion of the issue will take place. The disclosure must be filed with the record keeper of the meeting and incorporated into the minutes. The disclosure must be distributed to members immediately upon filing and read publicly at the next meeting. If the disclosure is not made or the conflict is not known prior to the meeting, the disclosure must be made orally at the meeting when it is known to exist. A public, written memorandum must then be filed stating the disclosure within 15 days after oral disclosure was made, and the disclosure shall be incorporated into the minutes. The disclosure must be distributed to members immediately upon filing and read publicly at the next meeting.¹⁶

Financial Disclosure

State and local officers, specified state employees, and candidates seeking qualification for state or local office are required to file statements disclosing their personal financial interests. Specified state employees and officeholders are required to file these disclosures on a yearly basis. Filers are required either to use a dollar threshold or a percentage threshold in calculating financial interests for disclosure purposes.¹⁷

Gift and Honoraria

The Code of Ethics includes laws relating to the acceptance or solicitation of gifts and honoraria. According to the gift law, reporting individuals and procurement employees, as defined in the statute, are prohibited from soliciting gifts from political committees, committees of continuous existence, lobbyists who lobby the reporting individual's or procurement employee's agency, or

¹³ Section 112.3143(2), Florida Statutes.

¹⁴ Section 112.3143(3)(a), Florida Statutes.

¹⁵ Section 112.3143(3)(b), Florida Statutes.

¹⁶ Section 112.3143(4), Florida Statutes.

¹⁷ Section 112.3145, Florida Statutes.

the lobbyist's partner, firm, principal or employer if the gift is for the personal benefit of the individual, employee, or an immediate family member. These same individuals and employees and anyone on their behalf are prohibited from knowingly accepting gifts from the prohibited individuals, committees, and entities listed previously if the person accepting the gift knows its value to be more than \$100, unless the gift is for a charity or governmental entity. The prohibited individuals, committees, and entities listed previously are also prohibited from giving a reporting individual, procurement employee, or anyone on their behalf a gift valued more than \$100, unless the gift is for a charity or governmental entity.¹⁸

With regard to the honoraria law, reporting individuals and procurement employees are prohibited from knowingly accepting an honorarium from political committees, committees of continuous existence, a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the lobbyist's partner, firm, principal or employer. These individuals, committees, and entities are also prohibited from giving an honorarium to a reporting individual or a procurement employee.¹⁹

Business Entities

In forming the parameters of conduct mandated for public officers and employees, the Ethics Code encompasses business entities. Currently, the term "business entity" is defined in the Ethics Code as meaning "any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual or trust, whether fictitiously named or not, doing business in this state."²⁰

Executive Branch Lobbying Regulations

Also included in Chapter 112 are the executive branch lobbying regulations and penalties. These statutes regulate executive lobbyist activities and give the Florida Commission on Ethics the authority to investigate formal complaints filed with it alleging that a person to whom the law applies either failed to register, failed to submit a compensation report, or knowingly submitted false information in a report or registration required by the law. The law also allows the commission to investigate any lobbying firm, agency, officer, or employee upon receipt of a sworn complaints or random audit of reports that indicates a possible violation other than a late-filed report.²¹

Penalties

The penalty provisions in the Ethics Code provide certain penalties for current and former public officers, current and former public employees, and candidates who violate the code. The penalties for current officers include impeachment, removal, suspension, public censure and reprimand, forfeiture of a portion of salary, a civil fine not to exceed \$10,000, or restitution. For employees, the penalties include dismissal, suspension, demotion, reduction in salary level, forfeiture of a portion of salary, a civil fine not to exceed \$10,000, restitution, or public censure

¹⁸ Section 112.3148, Florida Statutes.

¹⁹ Section 112.3149, Florida Statutes.

²⁰ Section 112.312(5), Florida Statutes.

²¹ Section 112.3215, Florida Statutes.

and reprimand. Candidates can be disqualified from appearing on the ballot, or can be publicly censured, reprimanded, or receive a civil fine not to exceed \$10,000. Former officers and employees can face public censure and reprimand, a civil penalty of up to \$10,000, or restitution.²² If a complaint is filed alleging misconduct, and after an investigation, the commission finds that a violation has occurred, the commission must report its findings and recommend certain action to the appropriate disciplinary official or body, which holds the power to invoke the code's penalty provisions.²³

III. Effect of Proposed Changes:

Proposed Senate Bill 7064 expands the definition of business entity in section 112.312(5) to include "company" within its meaning in order to clear up any perceived ambiguity as to whether the current definition excluded application of the code to limited liability companies.

Contracts with Political Subdivisions

Section 112.3136 provides that when a political subdivision contracts with a private entity to serve as the chief administrative officer, the employees, directors, and officers of that private entity who perform the functions of the chief administrative officer or employee of the political subdivision are ethically accountable to the public and subject to the same ethical standards as public officers and employees who perform the same functions yet work directly for a political subdivision. Section 112.3136 applies the financial reporting requirements for local officers found in section 112.3145 to these contractual officers and employees. It categorizes these persons as "reporting individuals" for the purposes of the gift and honoraria provisions of sections 112.3148 and 112.3149. Section 112.3136 also applies the conduct provisions of section 112.313 to these officers and employees and their "agency" as used in that section is the political subdivision which they serve. However, the contract through which the private entity performs the administrative functions for the political subdivision is exempted from section 112.313(3), which prohibits doing business with one's agency.

Voting Conflicts

State and Local Officers

The bill expands the disclosure requirements of section 112.3143 for state and local officers beyond just the officer's own interests to include the interests of the officer's principal, relative, or business associate, whenever one or all of those interests exist.

State Officers

The bill provides a specific disclosure exception for state officers if a conflict arises because the officer's principal will gain a special benefit but the principal is an agency as defined in s. 112.312(2), F.S. Currently, a similar exception exists in statute for local officers.

²² Section 112.317, Florida Statutes.

²³ Section 112.324, Florida Statutes.

Local Officers

With respect to local officers, current law provides that when a conflict of interest exists, the local officer may not vote on the issue but is not prohibited from participating in discussion on the issue. However, disclosure of the voting conflict is required before the vote is taken. Further, if the local officer is appointed, he or she may only participate in discussion on the issue if he or she discloses the conflict of interest prior to such participation.

Proposed Senate Bill 7064 prohibits all local officers, elected or appointed, from participating in the discussion on any issue that would provide a beneficial gain or loss for the officer or the officer's relative, business associate, or principal, other than an agency as defined in section 112.312(2), of which the officer has knowledge. An exception is made for commissioners of community redevelopment agencies created under section 163.356 or section 163.357 and independent special tax district officers elected on a one-acre, one-vote basis.

Financial Disclosure

Section 112.3145 is amended to include within the definition of "local officer" any appointed member of a community redevelopment agency board, the finance director of a local government, or other political subdivision, and a special master for a political subdivision who has adjudicatory authority over personal or property rights. Also, this section is amended to mandate that the reporting person specify which method for valuing financial interests was used on the person's financial disclosure form.

Gifts and Honoraria

Section 112.3148 is amended to prohibit reporting individuals or procurement employees from soliciting gifts from a vendor doing business with the reporting individual's or procurement employee's agency if the gift is for the personal benefit of a procurement employee, reporting individual or a family member of the employee or individual. These persons and anyone on their behalf are also prohibited from knowingly accepting, directly or indirectly, gifts from a vendor doing business with the reporting individual's or procurement employee's agency if the gift has over a \$100 value. The language also prohibits these vendors from giving either directly or indirectly gifts that have a value in excess of \$100 to a reporting individual or procurement employee or anyone on his or her behalf.

Section 112.3149 is amended to prohibit reporting individuals or procurement employees from knowingly accepting an honorarium from a vendor doing business with the reporting individual's or procurement employee's agency. These vendors are also prohibited from giving honorarium to a reporting individual or procurement employee.

The bill also clarifies the definition of a procurement employee in sections 112.3148 and 112.3149, F.S., by including employees of judicial and executive agencies within the definition. Also, the applicable individuals must not just participate in any part of the procurement process as outlined by the current definition, but must have done so within the preceding twelve months. The cost of the procured services or commodities must exceed \$10,000 in any fiscal year, rather than \$1,000, as is currently provided by law.

Executive Branch Lobbying Regulations

Section 112.3215 is amended so that the executive branch lobbying regulations mirror the legislative lobbying regulations. The amended language would allow the commission to investigate a complaint alleging that a person to whom the law is applicable made a prohibited expenditure. It would also allow the commission to investigate not only a lobbying firm, agency, officer, or employee, but also an executive lobbyist, or principal upon receipt of a sworn complaint or random audit of lobbying reports that indicate a likely violation of the law, other than a late-filed report. The amended language applies a non-criminal fine not to exceed \$5,000.00 to any person required to register or provide information under the executive lobbying law who knowingly fails to disclose a material fact or who provides false information on any report required in accordance with the lobbying law or rules. This penalty is in addition to any other penalty assessed by the Governor or Cabinet under subsection (10) of the existing law.

Penalties

Section 112.317 is amended to include a penalty provision for persons who are not specifically public officers and employees (other than a lobbyist or lobbying firm for violations of section 112.3215), but to whom the ethics code applies. According to the new language of section 112.317, these persons would be subject to a public censure and reprimand, a civil penalty not to exceed \$10,000.00, and/or restitution of any pecuniary benefits received because of a violation. The new language also allows the Ethics Commission to recommend that restitution be paid to the penalized person's agency or to the General Revenue Fund.

Section 112.324 is amended to provide that the Governor is to be the disciplinary official of any person to whom the ethics code applies, but who is not a public officer or employee. The new language excludes a lobbyist or lobbying firm for violations of section 112.3215 from this classification.

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

It appears that section two of the bill contains a scrivener's error which would actually prohibit state public officers from voting in an official capacity on any matter. Staff would recommend the following technical amendment to correct this error:

On page 3, lines 8-9, delete those lines and insert:

A ~~No~~ state public officer is not prohibited from voting in an official capacity on any matter.

Staff would also recommend a title amendment to resolve some deficiencies which exist currently.

VI. Related Issues:

None.

VII. 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.
