

By Senator Fasano

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1 A bill to be entitled

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

22
23 Be It Enacted by the Legislature of the State of Florida:

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

27 112.3142 Qualified blind trusts.--

28 (1) The Legislature finds that when a public official's
29 financial interests are placed in a qualified blind trust so that

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30 the official does not know the identity of the financial
31 interests held by the trust and does not control the interests
32 held by the trust, his or her official actions will not be
33 influenced or appear to be influenced by private considerations.
34 Therefore, the Legislature intends that such trusts be
35 established and operate in a manner that ensures that there is an
36 actual lack of knowledge and control by the official with respect
37 to the interests held in trust.

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

42 (3) (a) A covered public official shall, before taking
43 office, place all of his or her personal investments in any form
44 of property publicly traded on a national or regional exchange,
45 other than interests in publicly traded mutual funds, into a
46 publicly traded mutual fund or qualified blind trust.

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

52 (c) If the covered public official acquires a financial
53 interest in any form of property that is publicly traded on a
54 national or regional exchange, other than an interest in publicly
55 traded mutual funds, during the covered public official's term of
56 office due to events or actions beyond his or her control, he or
57 she shall immediately sell the financial interest or place the
58 financial interest in a qualified blind trust.

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

62 (4) If a covered public official holds a financial interest
63 in a qualified blind trust that meets the requirements of this
64 section, he or she will not have, with respect to that financial
65 interest, a conflict of interest prohibited under s. 112.313(3)
66 or s. 112.313(7) or a voting conflict of interest prohibited
67 under s. 112.3143.

68 (5) Except as otherwise provided in this section, the
69 covered public official and any other person having a beneficial
70 interest in a qualified blind trust may not attempt to influence
71 or exercise any control over decisions regarding the management
72 of assets in the qualified blind trust or make any effort to
73 obtain information with respect to the holdings of the trust,
74 including obtaining a copy of any trust tax return filed or any
75 related information.

76 (6) Except for communications that consist solely of
77 requests for distributions of cash or other unspecified assets of
78 a qualified blind trust, the covered public official or any other
79 person having a beneficial interest in the blind trust may not
80 have any direct or indirect communication with the trustee with
81 respect to the trust unless such communication is in writing and
82 unless it relates to:

83 (a) A request for a distribution from the trust which does
84 not specify whether the distribution must be made in cash or in
85 kind;

86 (b) The general financial interests and needs of the
87 covered public official or other person having a beneficial

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88 interest in the trust, including, but not limited to, an interest
89 in maximizing income or long-term capital gain;

90 (c) Notifying the trustee of a new law or rule applicable
91 to the covered public official which prohibits the covered public
92 official from holding a certain asset and which notification
93 directs that the asset not be held by the trust; or

94 (d) Directing the trustee to sell all of an asset placed in
95 the trust by the covered public official at the time the blind
96 trust was established which, in the determination of the covered
97 public official, creates a conflict of interest or the appearance
98 of a conflict due to a subsequent assumption of duties by the
99 public official.

100 (7) The covered public official shall report as an asset on
101 his or her financial disclosure statement his or her financial
102 interest in the qualified blind trust and its value if value is
103 required to be reported. The covered public official shall also
104 report the qualified blind trust as a primary source of income on
105 his or her financial disclosure statement and the amount if the
106 amount of income is required to be reported. The covered public
107 official is not required to report as a secondary source of
108 income on his or her financial disclosure statement any source of
109 income to the qualified blind trust.

110 (8) A qualified blind trust established by a covered public
111 official must meet the following requirements:

112 (a) The person or entity appointed as the trustee must not
113 be:

114 1. A relative, as defined in s. 112.312, of the covered
115 public official;

116 2. A person who is an elected or appointed public officer

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117 or a public employee; or

118 3. A person who has been appointed to serve in an agency by
119 the covered public official or by a public officer or public
120 employee supervised by the covered public official.

121 (b) The trust agreement establishing the qualified blind
122 trust must:

123 1. Contain a clear statement of its purpose, which is to
124 remove from the covered public official any control or knowledge
125 of investment of trust assets so that any conflicts between the
126 covered public official's responsibilities as a public official
127 and his or her private interests will be eliminated;

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

133 3. Prohibit communication between the trustee and the
134 covered public official and any other person having a beneficial
135 interest in the trust concerning the holdings or sources of
136 income of the trust, except for amounts of cash value or net
137 income or loss if such report does not identify any asset or
138 holding except as provided in this section;

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

143 5. Permit the trustee to notify the covered public official
144 of the date of disposition and value at disposition of any
145 original investment or interests in real property to the extent

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146 required by federal tax law so that information can be reported
147 on the covered public official's applicable tax return;

148 6. Prohibit the trustee from disclosing to the covered
149 public official or any other person having a beneficial interest
150 in the trust any information concerning replacement assets to the
151 trust, except for the minimum tax information necessary in order
152 for the covered public official and others having a beneficial
153 interest to file income taxes so long as the information does not
154 describe or identify the individual sources of income;

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

159 8. Provide that the trust is not effective until it is
160 approved by the commission.

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

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

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

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

170 (b) The date the agreement was executed;

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

172 (d) A separate statement signed by the trustee, under
173 penalty of perjury, certifying that he or she will not reveal any
174 information related to the trust to the covered public official,

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175 or any other person having a beneficial interest in the qualified
176 blind trust, other than information authorized under this
177 section, and that, to the best of the trustee's knowledge, the
178 submitted blind trust agreement complies with this section.

179 (10) If the qualified blind trust is revoked while the
180 covered public official is serving in a position requiring
181 financial disclosure pursuant to this part, or if the covered
182 public official learns of any replacement assets that have been
183 added to the trust, the covered public official must file an
184 amendment to his or her most recent financial disclosure
185 statement no later than 60 days after the date of revocation or
186 the addition of the replacement assets. The covered public
187 official must disclose the previously unreported pro rata share
188 of the trust's interests in investments or income derived from
189 such investments. For purposes of this section, any replaced
190 asset of which the covered public official learns must be treated
191 as though the asset were an original asset of the trust.

192 Section 2. A covered public official serving in office on
193 July 1, 2008, is not subject to the provisions of this act for
194 the remainder of his or her current term of office unless the
195 covered public official files an irrevocable statement with the
196 commission expressing his or her intent to be subject to the
197 provisions of this act.

198 Section 3. This act shall take effect July 1, 2008.