

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Operations Committee

BILL: CS/SB 322

INTRODUCER: Governmental Operations Committee and Senator Constantine

SUBJECT: Political Subdivisions/Officer and Employee Conduct

DATE: February 7, 2008 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Senate Bill 322 applies the conduct, financial disclosure, gift, and honoraria provisions of the Code of Ethics for Public Officers and Employees, Part III of ch. 112, Florida Statutes, to the employees, directors, and officers of private entities that perform the functions of a political subdivision's chief administrative officer or employee. The bill creates a new penalty provision applicable to persons who are subject to the Code of Ethics but are not considered public officers or employees. The bill also makes the Governor the disciplinary official for these persons.

This bill shall take effect on July 1, 2008.

This bill creates section 112.3136 and substantially amends sections 112.317 and 112.324 of the Florida Statutes.

II. Present Situation:

Part III of ch. 112, Florida Statutes, 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.¹ The code prohibits agency employees and public officers from doing business with one's own agency.² 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.³ 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."⁴ 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.⁵ 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.⁶ 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.⁷

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.⁸

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 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

¹ Section 112.313(2), F.S.

² Section 112.313(3), F.S.

³ Section 112.313(4), F.S.

⁴ Section 112.313(6), F.S.

⁵ Section 112.313(7), F.S.

⁶ Section 112.313(8), F.S.

⁷ Section 112.313(10), F.S.

⁸ Section 112.3145, F.S.

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.⁹

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.¹⁰

Penalties

The penalty provisions in the Code of Ethics 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 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.¹¹ 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.¹²

In a series of determinations beginning in 1977, the Commission on Ethics ruled that ". . . the Code of Conduct for Public Officers and Employees do(es) not apply to a person whose relationship with a governmental entity is as an 'independent contractor,' rather than as a public officer or employee."¹³ These conclusions were restated in Public Reports issued by the commission in response to complaints 05-098 and 05-060; 06-102, 06-107, and 06-118 (Consolidated); and 07-108. Citing its earlier reasoning, the commission dismissed complaints when the underlying relationship proved to be one of contractor rather than employee.

On January 29, 2008, in electronic correspondence to the Senate Committee on Ethics and Elections, the Executive Director of the Commission on Ethics indicated the following:

"As a result of these cases, particularly the Southwest Ranches situation, the Ethics Commission has been recommending the changes proposed in SB 322, which would

⁹ Section 112.3148, F.S.

¹⁰ Section 112.3149, F.S.

¹¹ Section 112.317, F.S.

¹² Section 112.324, F.S..

¹³ CEO 81-61, September 17, 1981. See also CEO 77-60; CEO 77-76; CEO 78-65; and CEO 81-48.

modify the Code of Ethics to cover situations where the position of chief executive officer of a political subdivisions (city manager, e.g.) has been privatized."

III. Effect of Proposed Changes:

Contracts with Political Subdivisions

Section 112.3136, F.S., provides that when a political subdivision contracts with a private entity to serve as the chief administrative officer, the employees, directors, and officers of the private entity who perform the functions of the chief administrative officer or employee of the political subdivision are ethically accountable to the public. Section 112.3136, F.S., applies the financial reporting requirements for local officers found in s. 112.3145, F.S., to these contractual officers and employees. It categorizes these persons as "reporting individuals" for the purposes of the gift and honoraria provisions of ss. 112.3148 and 112.3149, F.S. Section 112.3136, F.S., also applies the conduct provisions of s. 112.313, F.S., 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 s. 112.313(3), F.S., which prohibits doing business with one's agency.

Penalties

Section 112.317, F.S., 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 s. 112.3215, F.S.), but to whom the Ethics Code applies. According to the new language of s. 112.317, F.S., these persons would be subject to a public censure and reprimand, a civil penalty not to exceed \$10,000, 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, F.S., 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 s. 112.3215, F.S., from this classification.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The use of contract vendors for the private delivery of public services is not new and much has been written on the subject. Perhaps the largest single example of this on a public enterprise level is the City of Weston, Florida. That unit of government contracts all of its municipal services to other public and private entities and maintains a contractor workforce numbering some 400. Unlike the results in the above-cited cases, however, that city and its public officers and employees act as the administrative head and contract managers.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The Committee Substitute clarifies that the standards of conduct applied to the named individuals does not extend any other privilege of public employment to them.

B. Amendments:

None.