

1                   A bill to be entitled  
2           An act relating to criminal justice; amending s. 112.313,  
3           F.S.; providing criminal penalties for certain violations  
4           of standards of conduct for public officials in addition  
5           to existing penalties; amending s. 287.175, F.S.;  
6           conforming a provision relating to penalties for  
7           violations relating to standards of conduct for public  
8           officials to changes made by this act; creating s.  
9           775.0862, F.S.; defining the term "under color of law";  
10          providing for reclassification of offenses committed if  
11          the commission of the offense was furthered or facilitated  
12          by a person acting under color of law; providing an  
13          exception; providing for ranking of reclassified offenses  
14          for purposes of the offense severity ranking chart;  
15          amending s. 838.022, F.S.; defining the term "willfully";  
16          prohibiting a public servant from willfully depriving one  
17          or more individuals or the government of the right to have  
18          the public servant's duties performed honestly by  
19          committing specified acts; providing penalties; amending  
20          s. 914.04, F.S.; providing for use of certain immunized  
21          testimony or evidence produced for purposes of  
22          prosecutions for falsification or obstruction of justice  
23          committed while giving such testimony or producing such  
24          evidence; providing that testimony or production of  
25          evidence pursuant to a grand jury subpoena may be received  
26          against a person for all purposes and without limitation  
27          provided that before testifying or producing such evidence

28 | specified provisions are withdrawn and the witnesses is  
 29 | advised of specified rights; providing an effective date.  
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31 | Be It Enacted by the Legislature of the State of Florida:  
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33 | Section 1. Subsections (2), (4), and (6) of section  
 34 | 112.313, Florida Statutes, are amended to read:

35 | 112.313 Standards of conduct for public officers,  
 36 | employees of agencies, and local government attorneys.--

37 | (2) SOLICITATION OR ACCEPTANCE OF GIFTS.--No public  
 38 | officer, employee of an agency, local government attorney, or  
 39 | candidate for nomination or election shall solicit or accept  
 40 | anything of value to the recipient, including a gift, loan,  
 41 | reward, promise of future employment, favor, or service, based  
 42 | upon any understanding that the vote, official action, or  
 43 | judgment of the public officer, employee, local government  
 44 | attorney, or candidate would be influenced thereby. In addition  
 45 | to being subject to penalties under s. 112.317, a person who  
 46 | violates this subsection commits a misdemeanor of the first  
 47 | degree, punishable as provided in s. 775.082 or s. 775.083.

48 | (4) UNAUTHORIZED COMPENSATION.--No public officer,  
 49 | employee of an agency, or local government attorney or his or  
 50 | her spouse or minor child shall, at any time, accept any  
 51 | compensation, payment, or thing of value when such public  
 52 | officer, employee, or local government attorney knows, or, with  
 53 | the exercise of reasonable care, should know, that it was given  
 54 | to influence a vote or other action in which the officer,  
 55 | employee, or local government attorney was expected to

56 | participate in his or her official capacity. In addition to  
 57 | being subject to penalties under s. 112.317, a person who  
 58 | violates this subsection commits a misdemeanor of the first  
 59 | degree, punishable as provided in s. 775.082 or s. 775.083.

60 | (6) MISUSE OF PUBLIC POSITION.--No public officer,  
 61 | employee of an agency, or local government attorney shall  
 62 | corruptly use or attempt to use his or her official position or  
 63 | any property or resource which may be within his or her trust,  
 64 | or perform his or her official duties, to secure a special  
 65 | privilege, benefit, or exemption for himself, herself, or  
 66 | others. This section shall not be construed to conflict with s.  
 67 | 104.31. In addition to being subject to penalties under s.  
 68 | 112.317, a person who violates this subsection commits a  
 69 | misdemeanor of the first degree, punishable as provided in s.  
 70 | 775.082 or s. 775.083.

71 | Section 2. Section 287.175, Florida Statutes, is amended  
 72 | to read:

73 | 287.175 Penalties.--A violation of this part or a rule  
 74 | adopted hereunder, pursuant to applicable constitutional and  
 75 | statutory procedures, constitutes misuse of public position as  
 76 | defined in s. 112.313(6), and is punishable as provided in s.  
 77 | 112.313 or s. 112.317. The Chief Financial Officer shall report  
 78 | incidents of suspected misuse to the Commission on Ethics, and  
 79 | the commission shall investigate possible violations of this  
 80 | part or rules adopted hereunder when reported by the Chief  
 81 | Financial Officer, notwithstanding the provisions of s. 112.324.  
 82 | Any violation of this part or a rule adopted hereunder shall be  
 83 | presumed to have been committed with wrongful intent, but such

84 presumption is rebuttable. Nothing in this section is intended  
 85 to deny rights provided to career service employees by s.  
 86 110.227.

87 Section 3. Section 775.0862, Florida Statutes, is created  
 88 to read:

89 775.0862 Acting under color of law to facilitate crime;  
 90 reclassification.--

91 (1) As used in this section, the term "under color of law"  
 92 means action based on public authority or position or the  
 93 assertion of such authority or position.

94 (2) The penalty for any felony or misdemeanor shall be  
 95 reclassified as provided in this subsection if the commission of  
 96 such felony or misdemeanor was furthered or facilitated by a  
 97 person acting under color of law:

98 (a) A misdemeanor of the second degree is reclassified to  
 99 a misdemeanor of the first degree.

100 (b) A misdemeanor of the first degree is reclassified to a  
 101 felony of the third degree.

102 (c) A felony of the third degree is reclassified to a  
 103 felony of the second degree.

104 (d) A felony of the second degree is reclassified to a  
 105 felony of the first degree.

106 (e) A felony of the first degree is reclassified to a life  
 107 felony.

108 (3) This section does not apply to a misdemeanor or felony  
 109 that has conduct "under color of law" as an element of the  
 110 offense.

111           (4) For purposes of sentencing under chapter 921, a felony  
 112 offense that is reclassified under this section is ranked one  
 113 level above the ranking under s. 921.0022 or s. 921.0023 of the  
 114 offense committed.

115           Section 4. Section 838.022, Florida Statutes, is amended  
 116 to read:

117           838.022 Official misconduct.--

118           (1)~~(2)~~ For the purposes of this section:

119           (a) The term "public servant" does not include a candidate  
 120 who does not otherwise qualify as a public servant.

121           (b) The term "willfully" means to act intentionally with  
 122 the specific intent to commit an illegal act.

123           (c)~~(b)~~ An official record or official document includes  
 124 only public records.

125           (2)~~(1)~~ It is unlawful for a public servant, with corrupt  
 126 intent to obtain a benefit for any person or to cause harm to  
 127 another, to:

128           (a) Falsify, or cause another person to falsify, any  
 129 official record or official document;

130           (b) Conceal, cover up, destroy, mutilate, or alter any  
 131 official record or official document or cause another person to  
 132 perform such an act; or

133           (c) Obstruct, delay, or prevent the communication of  
 134 information relating to the commission of a felony that directly  
 135 involves or affects the public agency or public entity served by  
 136 the public servant.

137           (3) It is unlawful for a public servant to willfully  
 138 deprive one or more individuals or the government of the right  
 139 to have the public servant's duties performed honestly by:

140           (a) Failing to disclose a direct or indirect financial  
 141 interest in a public matter within the public servant's official  
 142 duties; or

143           (b) Failing to disclose a fact or information otherwise  
 144 required to be disclosed by law, custom, or statute concerning  
 145 an official act.

146           ~~(4)(3)~~ Any person who violates this section commits a  
 147 felony of the third degree, punishable as provided in s.  
 148 775.082, s. 775.083, or s. 775.084.

149           Section 5. Section 914.04, Florida Statutes, is amended to  
 150 read:

151           914.04 Witnesses; person not excused from testifying or  
 152 producing evidence in certain prosecutions on ground testimony  
 153 might incriminate him or her; use of testimony given or evidence  
 154 produced.--

155           (1) No person who has been duly served with a subpoena or  
 156 subpoena duces tecum shall be excused from attending and  
 157 testifying or producing any book, paper, or other document  
 158 before any court having felony trial jurisdiction, grand jury,  
 159 or state attorney upon investigation, proceeding, or trial for a  
 160 violation of any of the criminal statutes of this state upon the  
 161 ground or for the reason that the testimony or evidence,  
 162 documentary or otherwise, required of the person may tend to  
 163 convict him or her of a crime or to subject him or her to a  
 164 penalty or forfeiture, but no testimony so given or evidence so

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165 produced shall be received against the person upon any criminal  
166 investigation or proceeding. Such testimony or evidence,  
167 however, may be received against the person upon any criminal  
168 investigation or proceeding for perjury, falsification, or  
169 obstruction of justice committed while giving such testimony or  
170 producing such evidence or for any perjury, falsification, or  
171 obstruction of justice subsequently committed.

172 (2) Notwithstanding subsection (1), testimony or  
173 production of any book, paper, or other document pursuant to a  
174 grand jury subpoena may be received against a person for all  
175 purposes and without limitation provided that prior to  
176 testifying or producing such evidence:

177 (a) The witness is informed that the provisions of  
178 subsection (1) regarding immunized testimony are withdrawn; and

179 (b) The witness has been advised of his or her due process  
180 right against self-incrimination pursuant to the Fifth Amendment  
181 to the United States Constitution and s. 9, Art. I of the State  
182 Constitution.

183 Section 6. This act shall take effect July 1, 2010.