

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 Rules Committee

BILL: CS/SB 2088

INTRODUCER: Rules Subcommittee on Ethics and Elections, Rules Committee, and Senator Gaetz

SUBJECT: Ethics

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.	Carlton	Phelps	RC	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends the voting conflicts law by prohibiting a member of the Legislature from voting on certain legislation. It also requires a member to publicly state to the body or the committee to which the member belongs, prior to consideration of the legislation, all of the interests which give rise to the voting conflict. The bill would also require disclosure of the specific nature of those interests in a memorandum filed with either the Secretary of the Senate or Clerk of the House of Representatives within 15 days after the vote. The memorandum would be published in the journal of the house of which the legislator is a member.

The bill amends the financial disclosure laws applicable to elected constitutional officers by requiring the Florida Commission on Ethics (“Commission”) to review timely-filed financial disclosures of elected constitutional officers, along with any supporting documents provided, to determine if the filing is sufficient. The bill requires the Commission to notify filers whether their disclosures are sufficient by July 31, and provides 30 days for the official to correct the filing without penalty. Also, if information is omitted from the form which is required to be disclosed, and that information was contained in the supporting documentation filed with the Commission but was not caught by the Commission, the officer shall not be liable for fines or penalties.

Finally, the bill incorporates recommendations made by the Nineteenth Statewide Grand Jury on Public Corruption (“Grand Jury”). Specifically, the bill amends the definition of the term “gift” so that campaign contributions made pursuant to federal elections laws are not a gift. Also, the bill requires two additional types of public servant to file an annual statement of financial interests pursuant to s. 112.3145, F.S. In addition, the bill implements the Grand Jury recommendations concerning use of the term “corruptly” in the criminal bribery and misuse of public position provisions.

This bill substantially amends the following sections of the Florida Statutes: s. 112.312, F.S., s. 112.3143, F.S., s. 112.3144, F.S., s. 112.3145, F.S., s. 838.015, F.S., s. 838.016, F.S., and s. 838.022, F.S. The bill also creates s. 112.31435, F.S. Finally, the bill repeals s. 838.014(4), F.S.

II. Present Situation:

Voting Conflicts:

Under Section 112.3143(2), Florida Statutes, no state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.

Conversely, county, municipal, and other local officers are prohibited from voting on any measure which would inure to his/her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained, other than an agency; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the officer. In the event of a conflict, the county, municipal, and other local officers are required to publicly state to the assembly the nature of the officer's interests in the matter from which he or she is abstaining prior to the vote being taken. Additionally, the county, municipal, and other local officers are required to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.

Financial Disclosure:

Currently, all elected constitutional officers and candidates for such offices are required by Art. II, s. 8 of the State Constitution, to file a full and public disclosure of their financial interests annually. The annual full and public disclosure is also required of all statewide elected officers and any other officers, candidates, and employees as determined by law. Currently, the financial disclosure requirements are contained in s. 112.3144, F.S., and s. 112.3145, F.S. Section

112.3144, F.S., is the implementing language for the full and public disclosure of financial interests required of the constitutionally specified officers and candidates.

The Commission serves as the depository for the financial disclosure filings of state officers or employees. Those who serve at a local level file their financial disclosure with the local supervisor of elections. The Commission and supervisors of elections are statutorily required to assist each other in identifying those subject to the financial disclosure requirement, providing notice to those individuals, and tracking receipt of financial disclosures. In the event that an individual fails to timely file his or her financial disclosure, the Commission imposes an automatic fine of \$25 per day for failure to timely file financial disclosure. The automatic fine is capped at \$1,500. Neither the Commission nor the supervisor of elections is required to examine the financial disclosure filings.

If a filer is uncertain about whether he or she is required to disclose information, the filer may contact the Commission for guidance. Usually, the Commission's staff can answer simple questions by telephone or letter. In some circumstances, staff may not be able to provide such informal guidance. The Commission's staff will usually provide the filer the "safe harbor" advice to disclose the information or will advise the filer to seek a formal opinion from the Commission at its next available meeting. Upon receipt of the guidance, the onus is on the filer to include the information on their original form or, if necessary, file an amendment form. A member of the public can file a complaint with the Commission alleging that the person failed to disclose information which they were legally obligated to disclose. That complaint follows the same procedure as any complaint alleging a violation of one of the standards of conduct in the Code of Ethics. In the event that the Commission finds the filer in violation, he or she is subject to the penalties in s. 112.317, F.S.

Nineteenth Statewide Grand Jury Recommendations:

On November 30, 2009, Governor Crist convened the Grand Jury to review the ethics laws for possible improvement and to investigate any potential criminal activity within the Grand Jury's jurisdiction. On December 17, 2010, the Grand Jury issued a 124-page report interim report. The report contains various findings of fact, explanation of current ethics laws, and suggestions for improvement of those laws.

One recommendation was to clarify what constitutes a "gift." Currently, the definition of gifts for purposes of the Code of Ethics is located in s. 112.312(12), F.S. That section also identifies certain things which are specifically excluded from the definition of "gift." Currently, campaign contributions regulated by state law are specifically excluded from the definition of "gift." The exemption, which must be narrowly construed, does not include campaign contributions given which are reported pursuant to federal law. The Grand Jury recommended fixing this omission.

Another recommendation concerned who is required to file an annual statement of financial interests pursuant to s. 112.3145, F.S. Generally, only those specifically enumerated in that statute are required to file an annual statement of financial interests.¹ This filing requirement is

¹ Section 112.3145(1)(a)2.g., permits a unit of local government to require financial disclosure of individuals if permitted to do so by the enabling legislation or via ordinance or resolution.

less onerous than that required in Article II, s. 8 of the Florida Constitution. Currently, neither members of a community redevelopment agency board nor finance directors of county, municipal, or other political subdivisions are required to file annual financial disclosure. The Grand Jury recommended requiring annual financial disclosure of those individuals.

The final Grand Jury recommendation addressed in the bill concerns crimes such as bribery and criminal misuse of public position. Currently, s. 838.014(4), F.S., defines the term “corruptly.”² “Corruptly” is then incorporated as the requisite mental state for the public corruption offenses in Chapter 838 of the Florida Statutes. The Grand Jury heard testimony that the use of that mental state prevents State Attorneys from being able to try or convict public officers for those offenses. Thus, the Grand Jury concluded that “corruptly” should be stricken from the criminal provisions.

III. Effect of Proposed Changes:

Voting Conflicts:

As previously mentioned, current law provides that no statewide elected officer is prohibited from voting in an official capacity on any matter. The bill creates an exception to the general rule in Section 112.3143(2), F. S., that state public officers may vote in an official capacity on any matter. The bill creates s. 112.31435, F.S., which prohibits a member of the Legislature from voting upon any legislation that would inure to his or her special private gain or loss. The bill also prohibits a member of the Legislature from voting on a matter which he or she knows would inure to the special private gain or loss of his or her relative, business associate, employer, board upon which the member sits, or a principal by whom the member is retained or the parent corporation or subsidiary of a corporate principal by whom the member is retained.

The bill also requires a member to disclose, prior to a vote being taken, all of the interests in the legislation that give rise to the voting conflict. Additionally, the member must disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs. The memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

The bill specifically provides that a member of the Legislature is not prohibited from voting on a General Appropriations Act or implementing legislation on the floor of the Senate or the House of Representatives. The bill also specifically provides that a member is not prohibited from voting on matters that would benefit his or her employer or a board upon which the member sits when the member’s employer or board is a public agency.

Financial Disclosure:

The bill amends s. 112.3144, F.S., concerning the filing of annual full and public disclosure of the interests by elected constitutional officers. Specifically, the bill requires the Commission to review any full and public disclosure of financial interests filed by an elected constitutional

² It is important to note that the definition of “corruptly” in s. 838.014(4), F.S., is different in s. 112.312(9), F.S., which applies to the Code of Ethics.

officer no later than 5:00 p.m. on July 1.³ The Commission is required to compare the form and any other supplemental or supporting documentation provided by the filer to determine whether the filing is sufficient. The Commission must then notify the filer whether his or her disclosure is sufficient. If the filing is sufficient, the Commission accepts the filing and shall consider the disclosure to be filed as of the date received.

If the Commission determines, based upon the full and public disclosure form and supporting or supplemental documents, that the filer omitted information required to be filed, the Commission must notify the filer by certified mail. The notice must be sent within thirty days of July 1 and must state with particularity the reason(s) for the deficiency. The officer must then file a new full and public disclosure of financial interests no later than September 1 of that year. A complaint cannot be filed alleging a violation of s. 112.3144, F.S., based on errors identified by the Commission, unless the filer fails to make the corrections necessary to comply with the disclosure requirement by September 1. If the officer fails to file the corrected form by September 1, he or she remains subject to the automatic fines for failure to timely file his or her disclosure. However, the officer would retain the right to appeal any automatic fine based on the existence of unusual circumstances.

When the filing is determined to be sufficient, the officer is not liable for any fines or penalties related to the filing. However, the exemption from liability for fines or penalties is not intended to apply where the filer omits information necessary for the Commission to make its sufficiency determination. This encourages the officer to disclose any information which would facilitate the Commission's review and prevents withholding information in an effort to receive the exemption.

Nineteenth Statewide Grand Jury Recommendations:

Consistent with the recommendations of the Grand Jury, the bill amends the definition of "gift" in s. 112.312(12), F.S. The bill exempts campaign contributions reported pursuant to federal elections law from the definition of a "gift."

The bill also incorporates two other recommendations of the Grand Jury by amending s. 112.3145, F.S. The first change requires members of a community redevelopment agency board to file annual financial disclosure. The second change requires a finance director of a county, municipality, or other political subdivision to file annual financial disclosure.

Consistent with the Grand Jury's recommendation concerning the criminal bribery and misuse of public position statutes, the bill removes "corruptly" from Chapter 838 of the Florida Statutes. Specifically, the definition of "corruptly" in s. 838.014(4), F.S., is repealed. Then, the phrase "corruptly" is replaced with "knowingly" in s. 838.015, s. 838.016, and s. 838.022 of the Florida Statutes. Thus, the mental state required for those offenses would become "knowingly."

³ If a filing is not received before 5:00 p.m. on July 1, the bill does not require the Commission to conduct a review of the officer's full and public disclosure of financial interests.

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:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Commission on Ethics may incur additional costs related to sufficiency reviews for certain financial disclosure filings, but such amount is indeterminate at this time. Any potential increase in work caused by the sufficiency review could be offset by using seasonal OPS staff for the thirty day period in which the Commission conducts the review.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Rules Subcommittee on Ethics and Elections on April 4, 2011:

The Committee Substitute differs from the original bill in that it: clarifies that a member must disclose when the member knows that the legislation would inure to the special private gain of a business associate, employer, or board upon which the member sits, to

conform; clarifies that a member may vote on legislation that inures to a member's *public* employer, principal, or board without any disclosure.

B. Amendments:

None.