

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 Subcommittee on Ethics and Elections

BILL: SB 1560

INTRODUCER: Senator Thrasher and Senator Gaetz

SUBJECT: An act relating to ethical requirements for public officers

DATE: January 18, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Favorable
2.			RC	
3.			HE	
4.				
5.				
6.				

I. Summary:

Senate Bill 1560 provides that a member of the Legislature may not work for, or contract with, a state university or State College System institution while in office or for two years after leaving office. This restriction does not apply to members working for a state university or State College System institution on July 1, 2012.

Senate Bill 1560 authorizes public officers to place their assets in a blind trust. The blind trust must meet certain minimum requirements concerning the contents of the trust agreement and who can serve as trustee. If a public officer places assets in a blind trust, those assets would not give rise to certain conflicts of interest and voting conflicts. The public officer would be required to make certain disclosures concerning the blind trust on his or her annual financial disclosure. The bill also limits the communications between the public officer and the trustee. Finally, the public officer is required to file a notice of the blind trust with the Commission.

Senate Bill 1560 also creates an initial screening process for financial disclosure filings of elected constitutional officers. The bill requires 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 Commission would be required 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.

Senate Bill 1560 also requires two additional public officers to file an annual statement of financial interests.

This bill creates s. 112.3131, F.S., and s. 112.3142, F.S. Also, the bill amends s. 112.3144, F.S., and s. 112.3145, F.S.

II. Present Situation:

Restrictions on Legislators:

Members of the Florida Legislature are subject to the standards of conduct within Article II, s. 8, Florida Constitution, and the Code of Ethics for Public Officers and Employees in Part III, Chapter 112, Florida Statutes. Several provisions are specifically applicable to members of the Legislature. For example, members of the Florida Legislature are prohibited from personally representing any person or entity for compensation before any state agency other than judicial tribunals.¹ Members of the Legislature are also prohibited from personally representing another person or entity for compensation before their former agency for a period of two years after leaving office.² Additionally, members are subject to the legislative expenditure ban in s. 11.045, F.S. However, there are currently no prohibitions on members being employed with state government, local government, or any other political subdivision of the state.

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.

A. Blind Trusts

One recommendation of the Nineteenth Statewide Grand Jury was to allow public officers to create a blind trust in order to avoid certain conflicts of interest. Currently, there is no provision of the Florida Statutes addressing the use of blind trusts by public officers.

B. New Financial Disclosure Filers

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. This filing requirement is 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.

¹ Article II, s. 8(e), Florida Constitution, and s. 112.313(9), F.S.

² *Id.*

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.

III. Effect of Proposed Changes:**Restrictions on Legislators:**

Senate Bill 1560 creates s. 112.3131, F.S., which prohibits a member of the Legislature from being employed by, or contracting with, a state university³ or a Florida College System institution⁴. The bill also prohibits a member of the Legislature from having employment or a contractual relationship with a state university or Florida College System institution for a period of two years after leaving office.

³ The term "state university" is defined in s. 1000.21(6), F.S., and includes the University of Florida, Florida State University, the University of South Florida, among others.

⁴ The term "Florida College System institution" is defined in s. 1000.21(3), F.S., and includes Brevard Community College, Tallahassee Community College, Polk State College, among others.

Members who serve in the Legislature **and** have employment with a state university or a Florida College System institution on July 1, 2012 are “grandfathered out.” This “grandfathering” applies to the member’s current term on the effective date of the bill. Before seeking reelection, the member must surrender his or her employment with the state university or Florida College System institution.

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 officer no later than 5:00 p.m. on July 1. 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:

A. Blind Trusts

Senate Bill 1560 permits public officers to create a blind trust and place their assets into the blind trust. When a public officer places assets into a blind trust, the public officer gives the trustee the authority to dispose of the assets and the public officer must not attempt to influence or exert control over decisions regarding the management of the trust. However, the public officer may make requests for distributions, communicate with the trustee concerning his or her financial needs, and provide instructions to sell certain assets originally placed in the trust if the public officer is subsequently prohibited by law from holding the assets. The public officer would also

be entitled to enough information from the trustee to prepare their personal income tax statements. The public officer would be required to disclose the blind trust as an asset on his or her financial disclosure form. The public officer would also be required to disclose as primary income any income exceeding the thresholds for reporting.

Senate Bill 1560 also specifies that certain relatives and other individuals may not serve as a trustee. The bill also specifies that the trust agreement must contain a statement of purpose namely, to remove control and knowledge of the investments so that conflicts between the grantor's responsibilities as a public officer and his or her private interests will be eliminated. The trust agreement must also give the trustee complete control over the assets including the power to dispose of and acquire property. The agreement must also specify that communications concerning the trust holdings or sources of income are prohibited. The agreement must also specify that the trust tax return is to be prepared by the trustee and information relating to the trust is not to be disclosed to the public officer.

The public officer must notify the Florida Commission on Ethics that the trust was created within 5 business days. The notice to the Commission must set forth the date the agreement was executed; the name and address of the trustee; and acknowledgement that he or she has agreed to serve as the trustee. Under the provisions of the bill, public officers would not have to have their blind trusts "qualified" by the Commission on Ethics.

The benefit of creating a blind trust is that the assets placed in the trust would not give rise to certain conflicts of interests. Specifically, assets in the trust would not create a violation of the prohibition on doing business with one's own agency in s. 112.313(3), F.S.; would not give rise to a conflicting employment or contractual relationship which would be prohibited in s. 112.313(7), F.S.; and the assets in the blind trust would not give rise to a voting conflict of interests under s. 112.3143, F.S.

B. New Financial Disclosure Filers

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.

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:

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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.