

**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.)

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Prepared By: The Professional Staff of the Committee on Ethics and Elections

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BILL: SB 1474

INTRODUCER: Senator Abruzzo

SUBJECT: Public Officers and Employees

DATE: March 14, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	<b>Pre-meeting</b>
2.			CA	
3.			AP	

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**I. Summary:**

SB 1474 provides the Florida Commission on Ethics (“Commission”) with authority to interpret and provide advice on certain standards of conduct that are adopted pursuant to s. 112.326, F.S. The bill also provides the Commission jurisdiction to hear complaints and impose penalties concerning violations of certain standards of conduct adopted pursuant to s. 112.326, F.S. The bill also expands the prohibition on lobbyist contingency fees in s. 112.3217, F.S., to lobbyists of local governments. The bill specifies that complaint procedures of a local ethics commission must conform with the procedures used by the Commission as provided in s. 112.324, F.S. SB 1474 specifies that if a political subdivision or agency has adopted a standard of conduct equivalent to a standard of conduct in Article II, s. 8, of the State Constitution, or in the Code of Ethics for Public Officers and Employees in Part III, Chapter 112, Florida Statutes, (“Code of Ethics”) complaints and requests for advisory opinions must be made to the Commission.

The bill has an effective date of July 1, 2014.

**II. Present Situation:**

The Florida Commission on Ethics was created pursuant to Article II, s. 8, Florida Constitution, in s. 112.320, F.S. Pursuant to s. 112.322(1), F.S., the Commission’s duty is to receive and investigate sworn complaints of violation of the Code of Ethics and any other breach of the public trust, as provided in Art. II, s. 8(f), Florida Constitution. Upon request, the Commission is also required to render advisory opinions to establish the standard of public duty.<sup>1</sup> Penalties for a violation of the Code of Ethics or a breach of the public trust include censure and reprimand, salary forfeiture, fines and restitution, nullification of contracts, suspension, termination of employment, or removal from office.<sup>2</sup> While the Code of Ethics authorizes the governing body

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<sup>1</sup> Section 112.322(3)(a), F.S.

<sup>2</sup> Section 112.317, F.S.

of political subdivisions and agencies to adopt additional or more stringent standards of conduct that do not conflict with the state Code of Ethics,<sup>3</sup> the Commission was not given jurisdiction over those standards.

The Code of Ethics prohibits paying, giving, or receiving, in whole or in part, contingency fees. Pursuant to s. 112.3217, F.S., a contingency fee is a fee, bonus, commission, or nonmonetary as compensation which is dependent or in any way contingent on the enactment, defeat, modification, or other outcome of any specific executive branch action. A person who violates that section commits a first degree misdemeanor, punishable as provided in s. 775.082, F.S. or 775.083, F.S. Lobbyists would be subject to the following additional penalties:

- required to forfeit the contingency fee, which shall be deposited in the Executive Branch Lobby Registration Trust Fund;
- reprimand;
- censure;
- prohibit the violator from lobbying all agencies for a period not to exceed 2 years; and
- additional civil penalties of up to \$5,000 pursuant to s. 112.3215, F.S.

Pursuant to s. 112.326, F.S., the governing body of any political subdivision, by ordinance, or agency, by rule, is permitted to impose additional or more stringent standards of conduct and disclosure requirements than are contained in the Code of Ethics. The governing body of a political subdivision or agency may not adopt standards of conduct and disclosure requirements that conflict with the Code of Ethics.

### **III. Effect of Proposed Changes:**

#### **Jurisdiction and Duties of the Commission on Ethics**

SB 1474 amends the jurisdiction and duties of the Commission relating to political subdivisions or agencies that have adopted standards of conduct equivalent to a standard of conduct in the Code of Ethics or that would constitute a breach of the public trust pursuant to Art. II, s. 8, of the State Constitution. Under the bill, complaints and opinion requests concerning those standards must be made to the Commission. The Commission is provided the authority to proceed on such complaints and render such opinions. The bill specifies that the applicable statute of limitations is 5 years for such violations. Under the bill, violations of local codes of ethics which are adopted pursuant to s. 112.326, F.S., and which are not in conflict with the state Code of Ethics would be punished as provided in s. 112.317, F.S.

Additionally, SB 1474 provides that the Commission shall be the official custodian of records, and any related documents, alleging a violation of a local code of ethics adopted pursuant to s. 112.326, F.S. The bill also permits the Commission to prepare materials to assist persons in complying with a standard of conduct in a local code that is equivalent to a standard in the state Code of Ethics.

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<sup>3</sup> Section 112.326, F.S.

### **Contingency Fees**

SB 1474 expands the prohibition on contingency fees to ban contingency fees for enactment, defeat, modification, or other outcome of any specific local government action. Violations would be a first degree misdemeanor punishable as provided in s. 775.082, F.S. or 775.083, F.S. Lobbyists would be subject to the following additional penalties:

- required to forfeit the contingency fee, which shall be deposited in the Executive Branch Lobby Registration Trust Fund;
- reprimand;
- censure;
- prohibit the violator from lobbying all agencies for a period not to exceed 2 years; and
- additional civil penalties of up to \$5,000 pursuant to s. 112.3215, F.S.

### **Additional Requirements by Political Subdivisions**

SB 1474 allows electors of a political subdivision to impose on its own officers and employees additional or more stringent standards of conduct than are required in the Code of Ethics. The bill also requires local ethics commissions or agencies to have the similar complaint-related procedures as are used by the Commission on Ethics.

## **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:**

SB 1474 requires the Florida Commission on Ethics to serve as the custodian of records of all complaints alleging a violation of a local code of ethics. It also requires the Commission to investigate and make public reports on complaints alleging violations of

local codes that are equivalent to the standards of conduct in the Code of Ethics. The number of complaints that it would be required to receive and investigate pursuant to this bill is not known. Therefore, the fiscal impact on the Commission is indeterminate.

#### **VI. Technical Deficiencies:**

The bill (lines 38-39) permits imposition of the penalties in s. 112.317, F.S., for a violation of a local code of ethics which is adopted pursuant to s. 112.326, F.S., which is not in conflict with the state Code of Ethics. It appears that this was intended to allow the imposition of penalties for violations of local standards of conduct that are equivalent to standards in the state Code of Ethics. A conforming change is recommended here.

The bill (lines 138-143) require all complaints alleging a violation of a local code of ethics adopted pursuant to s. 112.326, F.S., to be filed with the Commission. That provision also requires that the Commission be the official custodian of records for complaints, and related documents, alleging a violation of a local code of ethics adopted pursuant to s. 112.326, F.S. It appears that the scope of these provisions was intended to be limited to complaints alleging a violation of a local standard of conduct that is equivalent to a standard in the state Code of Ethics.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 112.317, 112.3217, 112.322, 112.3231, 112.324, and 112.326.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

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

None.

##### **B. Amendments:**

None.