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 Committee on Ethics and Elections

BILL: SB 846

INTRODUCER: Senator Latvala

SUBJECT: Governmental Ethics

DATE: February 14, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 846 contains ethical reforms for several quasi-governmental entities. Specifically, the changes will apply to:

- The Florida Clerk of Courts Operation Corporation;
- Enterprise Florida, Inc.;
- The divisions, including any corporations created to carry out its missions, of Enterprise Florida, Inc.;
- The Florida Development Finance Corporation; and
- Space Florida.

Among those changes, the bill makes clear that members of the governing bodies of those entities are subject to certain standards of conduct, anti-nepotism provisions, voting conflicts, and post-service lobbying restrictions. A two year post-service prohibition on lobbying is also applied to members of Citizens Property Insurance Corporation.

The bill also requires elected municipal officers to complete 4 hours of annual ethics, public records, and open meetings training. The bill provides that all officers subject to the training requirement must certify their completion of the requirement on their annual financial disclosure form. The bill clarifies that failure to certify completion of the hours is not an immaterial, inconsequential, or de minimis error or omission.

The bill further amends the financial disclosure laws by providing a mechanism for the Commission on Ethics to initiate proceedings, without having first received a complaint, against a person who has failed or refused to file their annual financial disclosure form and has accrued the maximum automatic fine. If the Commission initiates a proceeding, it would determine whether the failure to file was willful and, if so, recommend to the appropriate person or governing board that the officer be removed from office. The bill also clarifies the provisions

concerning complaints that allege an immaterial, inconsequential, or de minimis error or omission.

The bill amends the provisions that were passed as part of Senate Bill 2 last year providing the Commission additional tools to collect unpaid automatic fines for failure to file annual financial disclosure. Specifically, the bill clarifies that there are two separate processes available. The first provision codifies the common law right of employers to withhold salary-related payments as it would be applicable to public officers and employees. Under this provision, the bill authorizes withholding an amount up to the entire amount of any salary-related payment. The bill provides an exception for current public officers and employees whose public salary is his or her primary source of income, and that withholding the full amount of the fine owed would present an undue hardship. Under those circumstances, the entity paying the salary-related payment would be authorized to reduce the withholding to not less than ten percent of the salary-related payment. The bill clarifies that this process is separate and distinct from the ability to garnish wages by moving those provisions to a newly created statute.

SB 846 requires certain citizen support and direct support organizations to adopt a code of ethics and specifies that certain provisions must be included in the code of ethics. The bill also authorizes those organizations to adopt additional or more stringent standards of conduct and disclosure requirements than are contained in the state's Code of Ethics for Public Officers and Employees. Those organizations are required to conspicuously post their code of ethics on their website.

The bill also regulates those who lobby certain independent special districts by creating a statute that essentially mirrors the legislative lobbying provisions in s. 11.045, F.S., and the executive branch lobbying provisions in s. 112.3215, F.S. The bill will require:

- lobbyists to register for each principal represented;
- prohibit unregistered lobbyists from representing clients before special districts;
- file quarterly compensation reports;
- require special districts to maintain those filings and make them available to the public;
- impose fines for failing to file the quarterly compensation reports;
- prohibit expenditures from lobbyists;
- provide jurisdiction to the Commission concerning complaints alleging violations of the new requirements; and
- require the districts to adopt procedures and forms to implement the new system.

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

II. Present Situation:

For purposes of this analysis, the present situation will be addressed in the Effect of Proposed Changes section below.

III. Effect of Proposed Changes:

QUASI-GOVERNMENTAL ENTITIES

Florida Clerks of Court Operations Corporation:

Current law:

The Florida Clerks of Court Operations Corporation is created as a "***public corporation***" in s. 28.35, F.S.[1] Its membership consists of each of the Florida Clerks of Circuit Court. The Corporation is governed by an executive council which is composed of eight Clerks who are elected by the members, a designee of the President of the Florida Senate, a designee of the Speaker of the Florida House of Representatives, and a designee of the Chief Justice of the Florida Supreme Court. The Clerks of the Circuit Court are subject to the Code of Ethics for Public Officers and Employees in Part III, Chapter 112, Florida Statutes, ("Code of Ethics") in their official capacities as Clerks of Circuit Court.

It is not clear that the members of the Executive Council would be subject to the Code of Ethics in that capacity.[2] A public corporation like this Corporation would not be an "agency" unless there is specific language to that effect. In the case of this Corporation, s. 28.35(1)(c), F.S., states:

> The corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The corporation is not subject to chapter 120.

Political subdivisions are, in fact, an "agency" pursuant to s. 112.312(2), F.S. However, in the context of s. 28.35(1)(c), F.S., it appears that that phrase is used only to exempt the Corporation from corporate income tax. Moreover, if the Legislature intended to subject these types of entities to the Code of Ethics, in whole or in part, it has historically done so expressly.[3]

Effect of Proposed Changes:

The bill clarifies that members of the Florida Clerks of Court Operations Corporation Executive Council are subject to the standards of conduct in s. 112.313, F.S., the anti-nepotism" provision in s. 112.3135, F.S., and the voting conflicts standard applicable to state officers in s. 112.3143(2), F.S. The bill clarifies that, for purposes of those sections, the members of the Executive Council are public officers or employees. Finally, the bill provides that members of the Executive Council are prohibited from representing others for compensation before the Corporation for a period of two years after the end of their service on the Council.[4]

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[1] *Section 28.35(1)(a), F.S.*

[2] Unless otherwise specified, the various provisions of the Code of Ethics only apply to public officers and public employees. Those provisions contemplate service to an "agency." For purposes of the Code of Ethics, the term "agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state herein; or any public school, community college, or state university. See, *s. 112.312(2), F.S.*

[3] See, for example, *s. 627.51(6)(d)3, Florida Statutes.*

[4] By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. The Executive Council of the Florida Clerk of Courts Operations Corporation does not appear to fit into any of

Enterprise Florida, Inc. and its Divisions:

Current law:

Enterprise Florida, Inc., is created in s. 288.901, F.S., as a non-profit corporation. It is expressly provided that Enterprise Florida, Inc., is “not a unit or entity of state government.” The members of the Board of Directors of Enterprise Florida, Inc., is composed of various state officers and private individuals.[5]

Notwithstanding that Enterprise Florida, Inc., is not a unit or entity of state government, the Legislature has provided that the members of its Board of Directors are subject to the anti-nepotism provision in s. 112.3135, F.S., the voting conflicts standard applicable to statewide officers in s. 112.3143(2), F.S., and the standards of conduct in s. 112.313, Florida Statutes. However, s. 288.901(1)(c), F.S. specifically exempts members of the Board of Directors from the prohibition on “quid pro quo” gifts in s. 112.313(2), F.S.[6] Finally, members of the Board of Directors who are not otherwise required to file annual financial disclosure are required to file an Annual Statement of Financial Interests pursuant to s. 112.3145, F.S.

The statutes are silent concerning application of any provisions of the Code of Ethics to the Divisions of Enterprise Florida authorized pursuant to s. 288.92, F.S.

Effect of Proposed Changes:

SB 846 prohibits members of the Board of Directors from accepting “quid pro quo” gifts as provided in s. 112.313(2), F.S. The bill also provides that members of the Board of Directors would be prohibited from representing others for compensation before the Corporation for a period of two years after the end of their service on the Board pursuant to s. 112.313(9), F.S.[7]

The bill subjects the officers and agents of the Divisions of Enterprise Florida, and corporations created to carry out its mission, to the standards of conduct in s. 112.313, F.S., the anti-nepotism provision in s. 112.3135, F.S., and the voting conflicts standard applicable to statewide officers in s. 112.3143(2), F.S. As with the members of the Board of Directors, the officers and agents of the Divisions of Enterprise Florida (including corporations created to carry out its mission) are prohibited from representing others for compensation before the Corporation for a period of two years after the end of their service pursuant to s. 112.313(9).

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the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of “including s. 112.313(9), F.S.” is intended to clarify that the two year lobbying prohibition therein applies to members of the Executive Council.

[5] *Section 288.901(5)-(7), F.S.*

[6] Section 112.313(2), F.S. prohibits solicitation or acceptance of anything of value when based upon any understanding that the officer’s vote, official action, or judgment would be influenced by the gift.

[7] By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. Neither the Board of Directors of Enterprise Florida nor the officers and agents of its divisions fit into any of the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of “including s. 112.313(9), F.S.” is intended to clarify that the two year lobbying prohibition therein applies to members of the Board.

Florida Development Finance Corporation

Current law:

The Florida Development Finance Corporation is created in s. 288.9604, F.S., to assist businesses interested in moving into Florida with obtaining financing and other economic information and services.[8] The Corporation is "created a public body corporate and politic" and is "constituted as a public instrumentality." The Board of Directors is composed of 5 members selected by the Governor who were nominated by Enterprise Florida, Inc."[9] The statutes are silent as to the applicability of the Code of Ethics to the members of the Board of Directors of the Florida Development Finance Corporation.

Effect of Proposed Changes:

While an argument could be made that the Florida Development Finance Corporation is subject to the entire Code of Ethics, the enabling legislation does not clearly state that any provision of the Code of Ethics applies to the Corporation. As noted above, the Legislature has historically expressly made entities like this subject to the Code in whole or in part. The Legislature has not done so in this case. So, the bill clarifies that members of the Florida Development Finance Corporation Board of Directors are subject to the standards of conduct in s. 112.313, F.S., the anti-nepotism" provision in s. 112.3135, F.S., and the voting conflicts standard applicable to state officers in s. 112.3143(2), F.S. The bill clarifies that, for purposes of those sections, the members of the Board of Directors are public officers or employees. Finally, the bill provides that members of the Board of Directors are prohibited from representing others for compensation before the Corporation for a period of two years after the end of their service on the Board.[10]

Space Florida

Current law:

Space Florida is an independent special district, body politic and corporate, and a subdivision of the State created to promote the aerospace industry in Florida.[11] It is governed by a Board of Directors with thirteen members appointed to the Board of Directors of Enterprise Florida pursuant to s. 288.901(5)(a)7, F.S., and the Governor or his designee.[12] While there can be an argument made that Space Florida is an agency whose officers and employees are subject to the Code of Ethics, the enabling legislation does not specifically state that the Code of Ethics applies to the members of the Board of Directors. As noted above, the Legislature has historically expressly made entities like this subject to the Code in whole or in part.

[8] *Section 288.9602, F.S.*
[9] *Section 288.9604(2), F.S.*
[10] By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. The Florida Development Finance Corporation Board of Directors does not appear to fit into any of the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of "including s. 112.313(9), F.S." is intended to clarify that the two year lobbying prohibition therein applies to members of the Board of Directors.
[11] *Section 331.302(1), F.S.*
[12] *Section 331.3081, F.S.*

Effect of Proposed Changes:

SB 846 clarifies that members of the Space Florida Board of Directors are subject to the standards of conduct in s. 112.313, F.S., the anti-nepotism" provision in s. 112.3135, F.S., and the voting conflicts standard applicable to state officers in s. 112.3143(2), F.S. The bill clarifies that, for purposes of those sections, the members of the Board of Directors are public officers or employees. Finally, the bill provides that members of the Board of Directors are prohibited from representing others for compensation before the Corporation for a period of two years after the end of their service on the Board.[13]

Citizens Property Insurance Corporation

Current law:

Citizens Property Insurance Corporation is created in s. 627.351(6), F.S., to ensure there is an orderly market for property insurance for Floridians. Pursuant to s. 627.351(6)(d)3., F.S., senior managers and members of the Board of Governors are subject to the Code of Ethics and are required to file annual financial disclosure pursuant to s. 112.3145, F.S.

Effect of Proposed Changes:

SB 846 prohibits former members of the Board of Governors from representing another person or entity before the corporation for a period of two years after leaving the Board of Governors. Additionally, a former member of the Board of Governors may not enter employment or a contractual relationship with an insurer that entered into a take-out bonus agreement with the Corporation while he or she was on the Board for a period of two years.

ANNUAL ETHICS TRAINING

Current Law:

Currently, constitutional officers are required to complete a minimum of four hours of ethics training annually.[14] The law requires training in ethics, public records, and open meetings laws. In accordance with statutory requirement, the Commission has promulgated rules specifying what provisions of Florida's ethics laws must be covered.[15]

Effect of Proposed Changes:

SB 846 requires elected municipal officers to complete the required ethics training. The bill also requires all officers subject to the training requirement to certify completion of the requirement on their annual financial disclosure forms. Finally, the bill specifies that failure to affirm

[13] By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. The Florida Development Finance Corporation Board of Directors does not appear to fit into any of the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of "including s. 112.313(9), F.S." is intended to clarify that the two year lobbying prohibition therein applies to members of the Board of Directors.

[14] *Section 112.3142, F.S.*

[15] *Rule 34-7.025, F.A.C.*

completion of the ethics training requirement does not constitute an immaterial, inconsequential, or de minimis error or omission. Therefore, a person who fails to indicate he or she completed the ethics training requirement does not get the opportunity to amend their form. Rather, the complaint proceedings begin immediately.

FINANCIAL DISCLOSURE

Current Law:

Pursuant to ss. 112.3144 and 112.3145, F.S., certain public officers are required to file financial disclosure annually. Failure to file financial disclosure results in an automatic fine of $25 per day, up to a maximum of $1,500. If a filer fails to pay the fine as required by law, the unpaid fine can be given to a collections agency for collection, money may be withheld from the filer's public paycheck, or the Commission on Ethics, or its collection agency, can seek garnishment of the filer's private wages.

Currently, the Commission on Ethics may not initiate an investigation into alleged violations of the financial disclosure laws, or any other laws, without having first received a complaint.

Effects of Proposed Changes:

SB 846 amends the financial disclosure laws by providing a mechanism for the Commission on Ethics to initiate proceedings, without having first received a complaint, against a person who has failed or refused to file their annual financial disclosure form and has accrued the maximum automatic fine. These complaints would follow the same procedure in place for any other ethics complaint made to the Commission. If the Commission initiates a proceeding, it would determine whether the failure to file was willful and, if so, recommend to the appropriate person or governing board that the officer be removed from office. The bill also clarifies the provisions concerning complaints that allege an immaterial, inconsequential, or de minimis error or omission. The linguistic changes are not intended to effect the current process for complaints alleging an immaterial, inconsequential, or de minimis error or omission. That process, passed as part of Senate Bill 2 last year, requires the Commission to allow the filer a chance to amend his or her financial disclosure form if the Commission receives a complaint after August 25th alleging ***only*** an immaterial, inconsequential, or de minimis error or omission.

The bill amends the provisions that were passed as part of Senate Bill 2 last year providing the Commission additional tools to collect unpaid automatic fines for failure to file annual financial disclosure. Specifically, the bill clarifies that there are two separate processes available. The first provision codifies the common law right of employers to withhold salary-related payments as it would be applicable to public officers and employees.[16] Under this provision, the bill authorizes withholding an amount up to the entire amount of any salary-related payment and any additional amount from the next salary-related payment necessary to pay off any remaining balance of the fine. The bill provides an exception for current public officers and employees whose public salary is his or her primary source of income, and that withholding the full amount of the fine owed would present an undue hardship. Under those circumstances, the entity paying the salary-

[16] See, for example, *Atwater v. Roudebush*, 42 F.Supp. 622 (D.C. IL, 1976).

related payment would be authorized to reduce the withholding to not less than ten percent of the salary-related payment. The bill clarifies that this process is separate and distinct from the ability to garnish wages by moving those provisions to a newly created statute.

CITIZEN SUPPORT ORGANIZATIONS ("CSOs") AND DIRECT SUPPORT ORGANIZATIONS ("DSOs")

Current law:

Currently, s. 112.326, F.S., authorizes the governing body of any political subdivision, by ordinance, or agency, by rule, to impose upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of the Code of Ethics.

Effect of Proposed Changes:

SB 846 requires citizen support and direct support organizations to adopt a code of ethics and specifies that certain provisions must be included in the code of ethics. Specifically, the code of ethics adopted must contain the standards of conduct in s. 112.313, F.S.[17] The bill also authorizes those organizations to adopt additional or more stringent standards of conduct and disclosure requirements than are contained in the state's Code of Ethics for Public Officers and Employees. Those organizations are required to conspicuously post their code of ethics on their website.

INDEPENDENT SPECIAL DISTRICTS

Current Law:

Currently, there are no provisions of law that require lobbyists to register before lobbying special independent districts. Also, there is no requirement that the lobbyists disclose the identity of those who retained them or the compensation paid to the lobbyist for his or her services. Finally, there is no provision that is an outright ban on lobbyists giving anything of value to those who run or serve on boards of independent special districts.

Currently, the only applicable laws regulating what is given to those who run or serve on boards of independent special districts are: the prohibition against "quid pro quo" gifts in s. 112.313(2), F.S., regardless of value; the prohibition against unauthorized compensation in s. 112.313(4), F.S, regardless of value.; and the "old" gifts law in s. 112.3148, F.S., which prohibits solicitation and acceptance of gifts from certain individuals, including lobbyists, over $100 in value. Section 112.3148, F.S., also imposes certain disclosure requirements on the lobbyist and public officers and employees.

[17] Section 112.313, F.S., contains the major standards of conduct including, but not limited to: Solicitation and acceptance of anything of value under certain circumstances; doing business with one's own agency; misuse of public position, certain employment or contractual relationships; disclosure of certain information learned by virtue of one's public position in order to benefit oneself or others; and several other provisions.

Effects of Proposed Changes:

SB 846 regulates those who lobby certain independent special districts by creating a statute that essentially mirrors the legislative lobbying provisions in s. 11.045, F.S., and the executive branch lobbying provisions in s. 112.3215, F.S. The bill applies to water management districts, hospital districts, children's services districts, or any other independent special district exercising ad valorem taxing authority. Specifically, the bill will:

- Require lobbyists of those districts to register for each principal represented.
- Prohibit unregistered lobbyists from representing clients before districts.
- The districts will be required to maintain a publicly available list of all registered lobbyists.
- Lobbyists will be required to file quarterly compensation reports, specifying compensation provided or owed to the lobbying firm in the following categories: $0; $1-$49,999; $50,000-$99,999; $100,000-$249,999; $250,000-$499,999; $500,000-$999,999; and $1 million or more.
- Lobbyists will also be required to detail compensation provided or owed to the lobbying firm on their quarterly reports in the following categories: $0; $1-$9,999; $10,000-$19,999; $20,000-$29,999; $30,000-$39,999; $40,000-$9,999; or $50,000 or more. If more than $50,000 is disclosed, the specific dollar amount must be reported, rounded to the nearest thousand dollars.
- Require special districts to maintain those filings and make them available to the public.
- Require district to impose automatic fines of $50 per day, up to a maximum of $5,000, for failing to timely file the quarterly compensation reports.
- Require districts to hear appeals of the automatic fine for failing to file the quarterly compensation reports.
- Authorize districts to waive a fine when the lobbying firm demonstrates good cause for waiving the fine.
- Permits the districts to convert the unpaid fine to a judgment to allow for collection of the unpaid automatic fines.
- Prohibit any expenditure from lobbyists, regardless of value.
- Prohibit payment of compensation for lobbying to a person or entity that is not a lobbying firm.
- Provides that the Commission on Ethics has exclusive jurisdiction of complaints alleging violations of the new requirements.
- Permits lobbyists and lobbying firms to seek an advisory opinion from the Commission on Ethics to establish required conduct.
- Requires the districts to adopt procedures and forms to implement the new lobbying laws.

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:

Section 8 of the bill, concerning lobbying special districts, may result in lobbyists having to pay a fee of up to $40 per principal to the special district. Because the number of lobbyists vary depending on the district, and the permissive nature of the registration fee provision, the actual impact is indeterminate.

C. Government Sector Impact:

SB 846 imposes additional requirements to conduct complaint proceedings related to financial disclosure and independent special district lobbying. The number of additional proceedings that may result is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.35, 112.3142, 112.3144, 112.3145, 112.31455, 288.901, 288.92, 288.9604, 331.3081, and 627.351.

This bill also creates ss. 112.31456, 112.3251, and 112.3261, F.S.

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.