

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 Rules

BILL: CS/SB 990

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Ring

SUBJECT: Public Officers and Employees

DATE: April 1, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>McKay</u> | <u>McVaney</u> | <u>GO</u> | <u>Fav/CS</u> |
| 2. | <u>Carlton</u> | <u>Roberts</u> | <u>EE</u> | <u>Favorable</u> |
| 3. | <u>McKay</u> | <u>Phelps</u> | <u>RC</u> | <u>Pre-meeting</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 990 deletes a limited exception to a general prohibition in the Code of Ethics for public officers and employees. As a result, (1) special tax districts created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, and (2) drainage and water control districts, will be subject to the same conflicting employment or contractual relationship prohibition that applies to all other agencies. That prohibition provides that a public officer or employee may not hold any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.

This bill takes effect July 1, 2014.

II. Present Situation:

Code of Ethics: Conflicting Employment or Contractual Relationship

Section 112.313, F.S., specifies standards of conduct for public officers¹, employees of agencies², and local government attorneys. Pursuant to s. 112.313(7), F.S., a public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.³

There is an exception to the above prohibitions in s. 112.313(7)(a)1., which provides that when the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by s. 112.313, F.S.

Special Districts

“Special tax district” is not defined in ch. 112, F.S., or ch. 189, F.S., which provides the general provisions for special districts. Section 189.403(1), F.S., defines a “special district” as a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers.

According to the Special District Information Program at the Florida Department of Economic Opportunity (DEO), there are currently 1,637 special districts.⁴ Not all of these are special *tax* districts, but the DEO data does not break out districts with taxation authority as a subset of all the special districts. The table below summarizes the top five specialized functions out of the 74 specialized functions of the 1,637 special districts:

¹ Pursuant to s. 112.313(1), F.S., the term “public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

² Pursuant to s. 112.312(2), F.S., “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 therein; or any public school, community college, or state university.

³ See also the Florida Commission on Ethics’ GUIDE to the SUNSHINE AMENDMENT and CODE of ETHICS for Public Officers and Employees, p.4, located at <http://www.ethics.state.fl.us/publications/2014%20Guide.pdf>.

⁴ Information available at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm>

| Special District Function | Number |
|----------------------------------|---------------|
| Community development | 575 |
| Community redevelopment | 213 |
| Housing authorities | 93 |
| Drainage and water control | 86 |
| Fire control and rescue | 65 |

III. Effect of Proposed Changes:

The bill deletes s. 112.313(7)(a)1., F.S., which provides a limited exemption from the conflicting employment or contractual relationship prohibition in s.112.313(7)(a), F.S. As a result, the 1) special tax districts created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, and 2) drainage and water control districts, will be subject to the same conflicting employment or contractual relationship prohibition that applies to all other agencies. That prohibition provides that a public officer or employee may not hold any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official’s private interests and public duties or which will impede the full and faithful discharge of the official’s public duties.

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:

Indeterminate, depending on whether the existing limited exemption is enabling employment or contractual relationships that will be prohibited by the repeal of that exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Some enabling statutes for districts currently covered by the exemption may contain similar, if not identical, language. As a result, repeal of s. 112.313(7)(a)1, F.S., would not affect those types of districts unless the corresponding language in the enabling legislation is also repealed.

VII. Related Issues:

The bill does not apply retroactively, which would transform existing employment or contractual relationships, which were not unethical when initiated, into a violation of the ethics code. In a criminal law context, such an ex post facto law might be unconstitutional. The legislature may wish to clarify whether the bill only applies to employment or contractual relationships entered into after the effective date of the bill.

VIII. Statutes Affected:

This bill substantially amends s. 112.313 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 13, 2013:

The CS reverts some grammatical changes made in the original filed bill back to existing statutory language.

B. Amendments:

None.