

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1435 Public Officers and Employees

**SPONSOR(S):** Public Integrity & Ethics Committee, Williamson and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Ethics Committee	14 Y, 0 N, As CS	Kiner	Rubottom
2) Oversight, Transparency & Public Management Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The bill amends Florida law to allow a state employee to receive gifts or compensation in certain circumstances.

The Florida Code of Ethics and other statutory gift and expenditure bans prohibit a number of state employees and state officials from receiving gifts or donations, no matter the purpose of the funds. The bill allows gifts or compensation, regardless of value, to be solicited or accepted by the following, so long as the employee or official, or his or her child, has suffered serious bodily injury or has been diagnosed with a serious disease or illness:

- A non-elected state employee or agency official required, pursuant to Article II, section 8 of the Florida Constitution or s. 112.3145, F.S., to file full or limited public disclosure of his or her financial interests;
- A state procurement employee; or
- A legislative employee.

The bill requires any gift or compensation to be used toward expenses directly incurred, or in connection with, the care and treatment of the employee or official, or his or her child. The reporting requirements of s. 112.3148, F.S., apply to any such gifts.

The bill is effective July 1, 2020.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### ***Current Situation***

Florida's Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code) is set forth in part III, chapter 112, F.S. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.<sup>1</sup> The Code contains provisions that establish standards for the conduct of elected and appointed officials and government employees. Among these standards are the regulation of the solicitation and acceptance of gifts.

The Commission on Ethics is the body that receives and investigates complaints alleging a violation of the Code.

##### Public Employee Gifts

Gifts to public officers and employees are regulated pursuant to s. 112.3148, F.S. "Gift" is defined in s. 112.312(12)(a), (b), (c), and (d), F.S., and encompasses nearly anything of value. Under s. 112.3148(3), F.S., a reporting individual or procurement employee is prohibited from *soliciting* any gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee, a lobbyist who lobbies the reporting individual's or procurement employee's agency, or an employer, principal, partner or firm of such lobbyist where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employer, or any member of the immediate family of a reporting individual or procurement employee.

A "reporting individual" is anyone who is required to file financial disclosure, including candidates.<sup>2</sup> A "procurement employee" is an employee of an officer, department, board, commission, or council of the executive or judicial branch of state government who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in s. 287.012, F.S., if the cost of such services or commodities exceeds \$10,000 in any year.<sup>3</sup>

Additionally, a reporting individual or procurement employee is prohibited from knowingly *accepting* a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee, a lobbyist lobbying their agency, or an employer, principal, partner or firm of a lobbyist if the gift is valued over \$100.<sup>4</sup> A vendor doing business with the reporting individual's or procurement employee's agency; a political committee; a lobbyist who lobbies the reporting individual's or procurement employee's agency; the partner, firm, principal, or employer of such lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from *giving*, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or procurement employee or any other person on his or her behalf.<sup>5</sup>

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<sup>1</sup> S. 112.311(1), F.S.

<sup>2</sup> S. 112.3148(2)(d), F.S.

<sup>3</sup> S. 112.3148(2)(e), F.S.

<sup>4</sup> S. 112.3148(4), F.S.

<sup>5</sup> S. 112.3148(5)(a), F.S.

If a vendor, political committee, lobbyist, or an employer, principal, partner or firm of a lobbyist gives a gift valued between \$25 and \$100 to a reporting individual or procurement employee, the donor of the gift is required to report the gift on a quarterly basis using a CE Form 30.<sup>6</sup>

Each reporting individual or procurement employee must file a statement (Form 9, Quarterly Gift Disclosure) with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less.<sup>7</sup> Gifts from relatives, gifts prohibited from being accepted, and gifts required to be disclosed elsewhere are not reported on Form 9. The form need not be filed if no such gift was received during the calendar quarter.

#### Gifts from Certain Political Committees

Political committees are statutory entities authorized in s. 106.03, F.S., to engage in certain political activities. Currently, s. 112.3148, F.S., prohibits a reporting individual or procurement employee from soliciting a “gift” from a political committee. “Gift” is defined in s. 112.312(12)(a), (b), (c), and (d), F.S., and encompasses nearly anything of value. However, there are some items in that definition which are specifically excluded from the definition of “gift,” the most significant of which is a campaign contribution or expenditure regulated by Chapter 106 and/or federal law.<sup>8</sup>

Current law also prohibits a reporting individual or procurement employee from accepting anything over \$100 in value.<sup>9</sup> If a reporting individual or procurement employee accepts a “gift” valued less than \$100, but greater than \$25, the political committee must disclose the gift by filing a CE Form 30 with the Florida Commission on Ethics, or in the case of a gift to a reporting individual of the legislative branch, the Office of Legislative Services.<sup>10</sup>

#### Executive Branch Expenditure Ban

The “Executive Branch Expenditure Ban” is found in s. 112.3215, F.S. The “Executive Branch Expenditure Ban” requires lobbyists to register with the Commission on Ethics prior to engaging in lobbying the executive branch. Each lobbying firm is required to make certain disclosures and is required to maintain records corroborating those disclosures.

Under the “Executive Branch Expenditure Ban,” an official, member, or employee of the executive branch is prohibited from *accepting*, directly or indirectly, an expenditure from a lobbyist or principal.<sup>11</sup> For purposes of this prohibition, the terms “agency official” or “employee” mean any individual who is required by law to file full or limited public disclosure of his or her financial interests. For purposes of this prohibition, the term “expenditure” means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term “expenditure” does not include contributions or expenditures reported pursuant to ch. 106, F.S., or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or an affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4). A lobbying firm is subject to a fine of up to \$5,000 for violating the “Executive Branch Expenditure Ban.”<sup>12</sup>

#### Legislative Branch Expenditure Ban

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<sup>6</sup> S. 112.3148(5)(b), F.S.

<sup>7</sup> S. 112.3148(6), F.S.

<sup>8</sup> S. 112.312(12)(b)2., F.S.

<sup>9</sup> S. 112.3148(4), F.S.

<sup>10</sup> S. 112.3148(5)(b), F.S.

<sup>11</sup> S. 112.3215(6)(a), F.S.

<sup>12</sup> S. 112.3215(10), F.S.

Section 11.045, F.S., contains provisions requiring legislative lobbying registration and contains the “Legislative Branch Expenditure Ban.” Section 11.045(4)(a), F.S., provides in pertinent part, that “no lobbyist or principal shall make, directly or indirectly, and no member or employee of the legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.”

A “principal” is defined as “the person, firm, corporation, or other entity which has employed or retained a lobbyist.”<sup>13</sup> For purposes of this statute, the term “expenditure” means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying.<sup>14</sup> The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).<sup>15</sup> The term “lobbying” means “influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.”<sup>16</sup>

The following penalties can be imposed for violation of the Legislative Branch Expenditure Ban:

- A fine of not more than \$5,000;
- Reprimand;
- Censure;
- Probation; or
- Prohibition on lobbying for a period not to exceed 24 months.<sup>17</sup>

#### Cumulative Effects

The effect of these statutory gift bans is to reduce the universe of donors a state employee could receive financial assistance from in the event of catastrophic medical expenses necessitated by the treatment of severe illness or injury.

#### ***Effect of Proposed Changes***

The bill amends the Florida Code of Ethics, including the Executive Branch Expenditure Ban, and the Legislative Branch Expenditure Ban to allow a lobbyist, his or her principal, partner, firm, employer, or another on the lobbyist’s behalf, a vendor to provide, and a state employee or non-elected official to solicit or receive gifts or compensation in certain circumstances.

The bill amends the statutory section prohibiting the receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees. The bill language allows a reporting individual, not including any elected officer, or a procurement employee to accept any gift or compensation, regardless of value, if the reporting individual or procurement employee, or his or her child, has suffered serious bodily injury or has been diagnosed with a serious disease or illness.

The term “serious bodily injury” is defined in the bill to mean an injury that consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ and requires care and treatment for an extended period of time. In the bill, the term “serious disease or illness” is defined to mean any disease or illness, including cancer, which causes significant functional impairment requiring care and treatment for an extended period of time.

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<sup>13</sup> S. 11.045(1)(i), F.S.

<sup>14</sup> S. 11.045(1)(c), F.S.

<sup>15</sup> Id.

<sup>16</sup> S. 11.045(1)(e), F.S.

<sup>17</sup> S. 11.045(7), F.S.

The bill requires any gift or compensation to be used toward expenses directly incurred, or in connection with, the care and treatment of the reporting individual, procurement employee, or his or her child. Reporting requirements, such as the filing of a CE FORM 9 or CE FORM 30, of the section apply to any such gifts.

The bill also amends the Legislative Branch Expenditure Ban to allow a lobbyist or principal to make, and a legislative employee to accept, an expenditure for a donation toward the care and treatment of a serious bodily injury or a serious disease or illness of the employee or his or her child. Any such expenditure must be in accordance with the same requirements and limitations governing the receipt of such gifts added in section 1 of the bill.

In like fashion, the bill amends the Executive Branch Expenditure Ban to also allow a lobbyist or principal to make, and a non-elected agency official or employee to accept, an expenditure for a donation toward the care and treatment of a serious bodily injury or a serious disease or illness of the official or employee or his or her child. The amended statutory section defines “agency official” or “employee” to mean an individual who is required by law to file full or limited public disclosure of his or her financial interests. Similarly, any such expenditure must be in accordance with the same requirements and limitations governing the receipt of such gifts added in section 1 of the bill.

The bill will take effect on July 1, 2020.

**B. SECTION DIRECTORY:**

**Section 1** amends s. 112.3148, F.S., relating to reporting and prohibited receipt of gifts by reporting individuals and procurement employees.

**Section 2** amends s. 11.045, F.S., relating to the Legislative Branch expenditure ban;

**Section 3** amends s. 112.3215, F.S., relating to the Executive Branch expenditure ban;

**Section 4** provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Thursday, February 6, 2020, the Public Integrity & Ethics Committee adopted an amendment to HB 1435 and subsequently reported the bill favorably. The amendment clarified that a vendor doing business with the reporting individual's or procurement employees' agency, a lobbyist who lobbies a reporting individual's agency, the partner, firm, employer, or principal of a lobbyist, or another of such person's behalf, may *provide* a gift or compensation, and a reporting individual or procurement employee may *solicit* any gift or compensation to be used toward expenses directly incurred, or in connection with, the care and treatment of such employee.

The bill analysis is drafted to CS/HB 1435.