

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 853 Local Government Ethics Reform

SPONSOR(S): Sirois

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Elections Committee	18 Y, 0 N	Pardo	Rubottom
2) Local Administration & Veterans Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill makes numerous changes to Florida's Code of Ethics for Public Officers and Employees (Code) as it relates to local government officers, employees, and lobbyists. Specifically, the bill:

- Specifies that a material interest in a business is included in the Code's prohibition on conflicting employment or contractual relationships;
- Requires special district governing board members to annually complete four hours of ethics training, a requirement that mirrors the current law applicable to constitutional officers and elected municipal officers;
- Requires local officers that must abstain from voting on a measure due to a conflict of interest to disclose the conflict prior to participating in the measure;
- Requires elected mayors and member of the governing body of a municipality with \$10 million or more in total revenue for three consecutive years to file a full and public disclosure of their financial interests in lieu of the less detailed form of disclosure required under current law;
- Requires Dept. of Financial Services to file a verified report with the Legislature and Commission annually showing the total revenues for each municipality in each of the 3 previous fiscal years and whether the municipality timely filed its annual financial report;
- Requires officer or members who are required to complete annual ethics training to provide name of training provider on their statement of financial interest.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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.¹ While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.²

The Code contains provisions that establish standards for the conduct of elected and appointed officials and government employees including, but not limited to, the following:

- Prohibited actions or conduct – including prohibitions on the solicitation or acceptance of gifts, unauthorized compensation, misuse of public position, disclosure or use of certain information, and solicitation or acceptance of honoraria;
- Prohibited employment and business relationships – including prohibitions on dual public employment, doing business with one's agency, as well as conflicting employment or contractual relationships;
- Misuse of public position;
- Anti-nepotism;
- Post-office holding/post-employment restrictions;
- Voting conflicts of interest;
- Ethics training; and
- Financial disclosure.

These Code provisions apply not only to officials and employees of state entities, but also to local government officers and employees.

Full and Public Disclosure of Financial Interests

Current Law

The Florida Constitution requires all elected constitutional officers, candidates for such offices, and statewide elected officers, to file a full and public disclosure of their financial interests.³ Other public officers, candidates, and public employees may be required to file a full and public disclosure of their financial interests as determined by law.⁴

Pursuant to the Constitution, the term "full and public disclosure of financial interests" means the reporting individual must disclose his or her net worth and the value of each asset and liability in excess of \$1,000.⁵ The disclosure must be accompanied by either a sworn statement with this information or a copy of the reporting individual's most recent federal income tax return.⁶ Pursuant to general law, the Commission on Ethics (Commission) has created by rule CE Form 6 to be used to make the required full and public financial disclosure.⁷

¹ S. 112.311(1), F.S.

² S. 112.311(4), F.S.

³ FLA CONST., art. II, ss. 8(a) and 8(i)(2).

⁴ FLA CONST., art. II, s. 8(a)

⁵ FLA. CONST., art. II, s. 8(i)(1).

⁶ *Id.*

⁷ Rule 34-8.002, F.A.C.

According to the Commission, and as articulated on the form, individuals holding the following positions must file CE Form 6: governor; lieutenant governor; cabinet members; legislators; state attorneys; public defenders; clerks of circuit courts; sheriffs; tax collectors; property appraisers; supervisors of elections; county commissioners; elected superintendents of schools; district school board members; Jacksonville City Council members (including mayor); compensation claims judges; Duval County superintendent of schools; Florida Housing Finance Corporation Board members; Florida Prepaid College Board members; and each expressway authority, transportation authority (except the Jacksonville Transportation Authority), bridge authority, or toll authority created pursuant to Chapter 348 or 343, F.S., or any other general law.⁸

Reporting individuals are required to file CE Form 6 annually with the Commission by July 1.⁹ Additionally, candidates for a constitutional office are required to make a full and public disclosure of their financial interests at the time of qualifying.¹⁰

While elected city commissioners may have similar authority and spending power as county commissioners and other public officers that are required to file CE Form 6, state law only requires city commissioners to file CE Form 1, which is a less detailed form of financial disclosure.¹¹ Elected municipal officers, and candidates for such offices, must file this form at the time of qualifying and annually by July 1.¹²

Florida law requires municipalities to annually submit a financial report to the Department of Financial Services (DFS).¹³ DFS in turn verifies the data and publishes a report on its website showing, among other things, municipal revenues,¹⁴ expenditures, and long-term debt.¹⁵

Effect of Proposed Changes

The bill requires an elected mayor or city commissioner serving a municipality that had \$10 million or more in total revenue for the three consecutive years ending prior to the year the disclosure covers to file the more detailed CE Form 6 annually, beginning with the 2021 filing year. Each mayor and commissioner must continue to file a CE Form 6 until the municipality has less than \$10 million in total revenue for three consecutive fiscal years. For purposes of these requirements, the verified report that DFS files with the Commission must be the sole basis to determine whether a municipality has \$10 million or more in total revenue. However, a municipality that has not had its annual financial report certified on or before November 30 of the year in which it is due must be considered to have \$10 million or more in total revenue for such year. If a report not certified by DFS is subsequently certified, the certified report must be used in any disclosure period beginning after the report is certified.

The bill requires DFS to annually by December 1 file a verified report with the Legislature and Commission showing the total revenues for each municipality in each of the prior three fiscal years and whether the municipality timely filed its annual financial report. The verified report must also indicate each municipality having no certified annual financial report in each such year.

⁸ Rule 34-8.003, F.A.C.

⁹ Rule 34-8.002, F.A.C.

¹⁰ S. 99.061(5), F.S.

¹¹ S. 112.3145(3), F.S.; *see also* Rule 34-8.202, F.A.C.

¹² Rule 34-8.202, F.A.C.

¹³ S. 218.32(1), F.S.

¹⁴ According to DFS, for purposes of the annual financial reporting requirement, “revenue” includes ad valorem taxes; local option taxes; utility service taxes; local business taxes, permits, fees and special assessments; federal, state and local grants; state revenue sharing; service charges; court filing fees, fines and forfeitures; interest and dividends; increase in fair value of investments; rents and royalties; sale of surplus materials; contributions and donations; settlements; other miscellaneous revenues.

¹⁵ S. 218.32(2), F.S.

Based on data provided by DFS, the number of municipalities that reported \$10 million or more in total revenue in recent years was as follows:

- FY 2016 – 224
- FY 2017 – 226
- FY 2018 – 225
- FY 2019 – 229

Conflicting Employment or Contractual Relationships

Current Law

The Code prohibits a public officer or agency employee from having an employment or contractual relationship with a business entity or agency that is subject to the regulation of, or is doing business with, his or her agency.¹⁶ The Code further prohibits a public officer or agency employee from having an employment or a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.¹⁷

However, the Code does contain exceptions to these prohibitions relating to special taxing districts and drainage districts;¹⁸ legislative bodies where regulatory power resides in another agency or is strictly through enactment of laws or ordinances;¹⁹ and lawful or required practice in particular profession or occupation.²⁰ The Code also contains several exemptions to these prohibitions related to:

- Appointed advisory board members;²¹
- When business transactions in a county or municipality are transacted under a rotation system;²²
- When business is awarded under a system of sealed, competitive bidding and certain criteria are met;²³

¹⁶ S. 112.313(7), F.S.

¹⁷ *Id.*

¹⁸ “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 this section.” S. 112.313(7)(a)1., F.S.

¹⁹ “When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.” S. 112.313(7)(a)2., F.S.

²⁰ “This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.” S. 112.313(7)(b), F.S.

²¹ “The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person.” S.112.313(12), F.S.

²² “Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.” S.112.313(12)(a), F.S.

²³ “The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and: (1) the official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder; (2) the official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and (3) the official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or

- Purchases or sales for legal advertising, utilities service, or passage on a common carrier;²⁴
- Emergency purchases that must be made to protect public health, safety, or welfare;²⁵
- When the business entity involved is the only source of supply within the political subdivision and there is full disclosure by the officer or employee;²⁶
- When the aggregate of such transactions does not exceed \$500 in a calendar year;²⁷
- When business transacted is the deposit of agency funds in a bank of which a county, city, or district official is an officer, director, or stockholder, so long as agency records show that the governing body has determined that the member did not favor his or her bank over other qualified banks;²⁸
- When the public officer or employee purchases in a private capacity goods or services from an entity regulated by, or doing business with, his or her agency, at a price and under terms available to similarly situated members of the general public;²⁹ and
- When the elected public officer is employed by a tax exempt organization contracting with his or her agency and the officer's employment is not directly or indirectly compensated as a result of such contract or business relationship and the officer has in no way participated in the agency's decision to contract or to enter into the business relationship with his or her employer. In addition, the officer must abstain from voting on any matter that may come before the agency involving the officer's employer, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining, and file the required written memorandum.³⁰

In its annual reports to the Legislature for the past several years, the Commission has recommended the Code be amended. Specifically, the Commission has advised that, under the current law, a public officer or agency employee may create a fictitious legal entity and subsequently use the entity to enter into an employment or contractual relationship that would be prohibited if the public officer or agency employee acted as an individual.³¹

Effect of Proposed Changes

As recommended by the Commission on Ethics, the bill provides that if a public officer or employee of an agency holds a material interest in a business entity or is an officer, a director, or a member who manages such an entity, contractual relationships held by the business entity are deemed to be held by the public officer or employee. As such, if a public officer or employee holds a material interest in a business entity other than a publicly traded entity, or is an officer, a director, or a member who manages such an entity, it would be a violation of the Code for the business entity to have a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The bill relies upon the current law definition of "material interest" in the Code of Ethics, which means "direct or indirect ownership of more than five percent of the total assets or capital stock of any business entity."³² For purposes of the definition, indirect ownership does not include ownership by a spouse or minor child.³³

employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business." S.112.313(12)(b), F.S.

²⁴ S. 112.313(12)(c), F.S.

²⁵ S. 112.313(12)(d), F.S.

²⁶ S. 112.313(12)(e), F.S.

²⁷ S. 112.313(12)(f), F.S.

²⁸ S. 112.313(12)(g), F.S.

²⁹ S. 112.313(12)(i), (j), F.S.

³⁰ S. 112.313(15), F.S.

³¹ Florida Commission on Ethics 2020 Legislative Recommendations.

³² S. 112.312(15), F.S.

³³ *Id.*

Mandatory Annual Ethics Training

Current Law

Current Florida law requires “constitutional officers” and elected municipal officers to annually complete four hours of ethics training that, at a minimum, addresses s. 8, Art. II of the State Constitution, the Code, and Florida law on public records and public meetings.³⁴

Pursuant to the Code, the term “constitutional officer” includes the following officers: the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer (CFO), the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.³⁵

Each officer that is subject to the annual ethics training requirement must certify on his or her disclosure of financial interests reporting form that he or she has completed the required training.³⁶ However, the Commission does not collect any information on the provider(s) of such training.

Although special district³⁷ governing board members are covered by the Code’s provisions, state law does not require these individuals to receive annual ethics training.³⁸

Additionally, the Code requires the Commission to adopt rules establishing minimum course content for the portion of an ethics training class that addresses the constitutional ethics provisions and the Code.³⁹ The Commission’s current rule⁴⁰ requires course content to include one or more of the following subjects:

- Doing business with one's own agency;
- Conflicting employment or contractual relationships;
- Misuse of position;
- Disclosure or use of certain information;
- Gifts and honoraria, including solicitation and acceptance of gifts, and unauthorized compensation;
- Post-officeholding restrictions;
- Restrictions on the employment of relatives;
- Voting conflicts when the constitutional officer is a member of a collegial body and votes in his or her official capacity;
- Financial disclosure requirements, including the automatic fine and appeal process;
- Commission procedures on ethics complaints and referrals; and
- The importance of and process for obtaining advisory opinions rendered by the Commission.

³⁴ S. 112.3142(2), F.S.

³⁵ S. 112.3142(1), F.S.

³⁶ SS. 112.3144(1) and 112.3145(5), F.S.

³⁷ Section 189.012(6), F.S., defines a “special district” as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.”

³⁸ See s. 112.3142(1), F.S.

³⁹ S. 112.3142(2)(d), F.S.

⁴⁰ Rule 34-7.025., F.A.C.

Effect of Proposed Changes

Beginning January 1, 2022, the bill requires special district governing board members (elected and appointed) and water management district board members to receive the same annual ethics training currently required for constitutional officers and elected municipal officers.

In addition, beginning January 1, 2022, the bill requires each officer subject to the annual ethics training requirement to provide the training provider's name on his or her annual financial disclosure form.

Finally, the bill repeals the statutory requirement that the Commission adopt a rule on minimum course content, and instead codifies the Commission's current rule in statute.

Voting Conflicts of Interest

Current Law

Florida law prohibits a county officer, municipal officer, or other local public officer from voting on any measure that would inure to his or her special private gain or loss;⁴¹ which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.⁴²

In such cases, the officer is required, prior to the vote being taken, to publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.⁴³

While the law prohibits the officer from voting on the measure, the officer is not prohibited from participating in the measure and is not explicitly required to disclose his or her conflict prior to his or her participation.

The term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.⁴⁴

Effect of Proposed Changes

The bill clarifies that the voting conflict prohibition that currently applies to county, municipal, and other local public officers also applies to governing board members of a special district or school district. The bill also requires a county officer, municipal officer, other local public officer, or governing board member of a special district or school district who must abstain from voting

⁴¹ The term "special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer or his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer or his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer or his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered. S. 112.3143(1)(d), F.S.

⁴² S. 112.3143(3)(a), F.S.

⁴³ *Id.*

⁴⁴ S. 112.3143(1)(b), F.S.

on a measure due to a conflict of interest to disclose the conflict prior to participating on the measure.

B. SECTION DIRECTORY:

Section 1 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 2 amends s. 112.3142, F.S., relating to ethics training for specified constitutional officers and elected municipal officers.

Section 3 amends s. 112.3143, F.S., relating to voting conflicts.

Section 4 amends s. 112.3144, F.S., relating to full and public disclosure of financial interests.

Section 5 amends s. 112.3145, F.S., relating to disclosure of financial interests and clients represented before agencies.

Section 6 provides that certain changes made by the bill relating to financial disclosure apply to disclosures filed for the 2021 calendar year and all subsequent calendar years.

Section 7 amends s. 218.32, F.S., relating to annual financial reports of local governmental entities.

Section 8 provides an effective date of July 1, 2021, except as otherwise expressly provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires elected municipal officers serving municipalities with \$10 million or more in total revenue for three consecutive fiscal years to file CE Form 6 in lieu of the currently required CE Form 1. The expense to the Commission associated with mailing these individuals a CE Form 6 instead of a CE Form 1 is indeterminate, but likely insignificant and can be absorbed by current resources.

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:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor does it require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES