

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 199 Conflicting Employment or Contractual Relationships for Public Officers or Employees

SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Hunschofsky and Daley

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 620

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics, Elections & Open Government Subcommittee	18 Y, 0 N, As CS	Poreda	Toliver
2) Local Administration, Federal Affairs & Special Districts Subcommittee	17 Y, 0 N	Roy	Darden
3) State Affairs Committee	18 Y, 0 N	Poreda	Williamson

SUMMARY ANALYSIS

The Code of Ethics for Public Officers and Employees (Code of Ethics) 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. However, there are exceptions, including a limited exception for public officers and employees of water control districts and certain kinds of special taxing districts that are limited to constructing, maintaining, managing, and financing improvements in the land area over which the district has jurisdiction, which specifically allows public officers and employees of those entities to be employed by, and enter into contractual relationship with business entities or agencies subject to the regulation of, or doing business with the district.

The Code of Ethics requires constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies to complete four hours of ethics training annually that, at a minimum, addresses s. 8, Art. II of the State Constitution, the Code of Ethics, and Florida law on public records and public meetings.

The bill clarifies the exception for public officers or employees of a water control district or a special tax district created by general or special law that is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, by specifying that conduct that constitutes a misuse of public position or violates the prohibition on disclosing information that is not otherwise available to the public for their own personal benefit would be considered an impermissible conflict of interest.

The bill also requires four hours of annual ethics training for elected local officers of independent special districts, provides requirements for such training, specifies training content, and provides a schedule for when such training must be completed.

The bill does not appear to have a fiscal impact on either state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)¹ establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.² The Code of Ethics pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, the Commission on Ethics (Commission), among others.³

Conflicting Employment or Contractual Relationship

The Code of Ethics 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.⁴ Current law 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.⁵ The Code of Ethics contains several exceptions to these prohibitions.

Special District Exception

The Code of Ethics allows public officers and public employees of water control districts and special tax districts created by general or special law that are limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, to be employed by, or enter into a contractual relationships with business entities that are subject to the regulation of, or doing business with those special districts.⁶ However, the Code of Ethics goes on to provide that conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, the conflicting employment or contractual relationship provision of the code is deemed a conflict of interest and is a violation of the code.

Legislative Body Exception

When the agency at issue is a legislative body and regulatory power resides in another agency or is exercised strictly through enactment of laws or ordinances, then the Code of Ethics allows the public officer or public employee to be employed by, or have a contractual relationship with a business entity that is subject to the regulation of, or is doing business with that legislative body.⁷

¹ See Part III, Chapter 112, F.S.

² Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited March 9, 2023)

³ See Part III, Chapter 112, F.S.

⁴ Section 112.313(7), F.S.

⁵ *Id.*

⁶ Section 112.313(7)(a)1., F.S.

⁷ Section 112.313(7)(a)2., F.S.

Legally Required or Permitted Profession or Occupation Exception

The Code of Ethics provides that the general prohibition does 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.⁸

Other Exceptions

The Code of Ethics includes exemptions relating to certain objectively fair or *de minimis* procurements, certain disclosed relationships, an emergency purchase or contract, certain non-profit employment, and other comparable exceptions.⁹

Misuse of Public Position

The Code of Ethics prohibits public officers, employees of an agency, or local government attorneys from corruptly using or attempting to use his or her official position, or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.¹⁰

Disclosure or Use of Certain Information

Current or former public officers, employees of an agency, or local government attorneys are prohibited by the Code of Ethics from disclosing or using information not available to the general public and gained by reason of his or her official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.¹¹ The prohibition does not apply to information relating exclusively to governmental practices.¹²

Mandatory Annual Ethics Training

Current law requires constitutional officers,¹³ elected municipal officers, and commissioners of community redevelopment agencies to complete four hours of ethics training annually that, at a minimum, addresses s. 8, Art. II of the State Constitution, the Code of Ethics, and Florida law on public records and public meetings.¹⁴ Each officer 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.¹⁵

The Code of Ethics applies to the governing boards of special districts, but the ethics training requirements do not apply to such boards.¹⁶ The Department of Economic Opportunity may provide training for newly elected or appointed special district governing board members as its budget may permit, and must include instruction on the Code of Ethics; however, the training is not required.¹⁷

⁸ Section 112.313(7)(b), F.S.

⁹ Sections 112.313(12) and (15), F.S.

¹⁰ Section 112.313(6), F.S.

¹¹ Section 112.313(8), F.S.

¹² *Id.*

¹³ “Constitutional officers” includes the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, 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.” Section 112.3142(1), F.S.

¹⁴ Section 112.3142(2), F.S.

¹⁵ Sections 112.3144(1) and 112.3145(5), F.S.

¹⁶ 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, that has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or rule of the Governor and Cabinet. The term does not include a school district, community college district, special improvement district created pursuant to s. 285.17, F.S., municipal service taxing or benefit unit as specified in s. 125.01, F.S., or board that provides electrical service and is a political subdivision of a municipality or is part of a municipality.

¹⁷ Section 189.063(1), F.S.

Additionally, the Code of Ethics 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 of Ethics.¹⁸ The Commission's current rule requires course content to include one or more of the following subjects:¹⁹

- 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-office holding 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.

Effect of the Bill

The bill clarifies the exception for public officers or employees of a water control district or a special tax district created by general or special law that is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, by specifying conduct that constitutes a misuse of public position or violates the prohibition on disclosing information that is not otherwise available to the public for their own personal benefit would be considered an impermissible conflict of interest.

The bill requires elected local officers of independent special districts, and persons appointed to fill those seats if vacant, to complete four hours of ethics training annually.²⁰ The training must address, at a minimum, s. 8, Art. II of the Florida Constitution, the Code of Ethics, and the public records and public meetings laws of the state. The bill allows the training requirement to be met by completing a continuing legal education class or other continuing professional education class or seminar if the required subject matter is covered therein.

The bill also clarifies that elected local officers of independent special districts that assume their office on or before March 31, must complete their annual ethics training by December 31 of the year their term begins; however, if their term starts after March 31, they are not required to complete the required ethics training until December 31 of the following year.

B. SECTION DIRECTORY:

Section 1 amends s. 112.313, F.S., relating to the 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, elected municipal officers, and commissioners.

Section 3 provides an effective date of July 1, 2023.

¹⁸ Section 112.3142(2)(d), F.S.

¹⁹ Rule 34-7.025, F.A.C.

²⁰ An "independent special district" means a special district that is not a dependent special district under s. 189.12(2), F.S. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality. Section 189.012(3), F.S.

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 expenditures 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 March 14, 2023, the Ethics, Elections & Open Government Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in that instead of removing the existing conflicting employment and contractual relationship exemption for certain special tax districts and water control districts, it clarified that certain conduct is still prohibited regardless of the exemption, such as misuse of public position and disclosing information that is not otherwise available to the

public for their own personal benefit. The PCS also required elected local officers of independent special districts to undergo four hours of annual ethics training.

The analysis is drafted to the committee substitute adopted by the Ethics, Elections & Open Government Subcommittee.