

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 620

INTRODUCER: Senators DiCeglie and Yarborough

SUBJECT: Conflicting Employment or Contractual Relationships for Public Officers or Employees

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cleary	Roberts	EE	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 620 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, 2023.

II. Present Situation:

Code of Ethics: Conflicting Employment or Contractual Relationship

Section 112.313, F.S., specifies standards of conduct for public officers,¹ employees of agencies,² 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

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.

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 A violation of this subsection is deemed a violation of the Code of Ethics (Code)⁴ and subjects the violator to enforcement and penalty provisions of the Code.⁵

There is an exception to the above prohibitions in s. 112.313(7)(a)1, F.S., which provides that when the agency referred to is that 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 (drainage and water control districts), 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 the subsection or be deemed a conflict per se.⁶ However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, s. 112.313, F.S., shall be deemed a conflict of interest in violation of the standards of conduct set forth by s. 112.313, F.S. Therefore, a public officer and/or employee is still subject to the other provisions of the Code and conduct that violates the other provisions of the Code subjects these officers and/or employees to the enforcement provisions and penalties of the Code.⁷

Currently, there are several other exceptions to these prohibitions relating to legislative bodies where regulatory power resides in another agency or is strictly through enactment of laws or ordinances,⁸ and lawful or required practice in a particular profession or occupation.⁹ The Code also contains several exemptions to these prohibitions related to:

- Appointed advisory board members;¹⁰
- When business transactions in a county or municipality are conducted under a rotation system;¹¹

³ Section 112.313(7), F.S.; *see also* Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and employees*, p. 6, located at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023221> (last visited March 2, 2023)

⁴ *See* Pt. III, ch.112, F.S.

⁵ *See* s. 112.317, F.S.

⁶ *See* ch. 75-208, Laws of Florida (Legislature amended s. 112.313, F.S. in 1975, creating the limited exemption for these special tax districts, which became law October 1, 1975).

⁷ *Id.*; *see* Pt. III, ch. 112, F.S.

⁸ Section 112.313(7)(a)2, F.S. (“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 legislative body shall not be prohibited by this subsection or be deemed a conflict.”)

⁹ Section 112.313(7)(b), F.S. (“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.”)

¹⁰ Section 112.313(12), F.S. (“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.”)

¹¹ Section 112.313(12)(a), F.S. (“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.”)

- When business is awarded under a system of sealed, competitive bidding and certain criteria are met;¹²
- Purchases or sales for legal advertising, utilities service, or passage on a common carrier;¹³
- Emergency purchases that must be made to protect public health, safety, or welfare;¹⁴
- When the business entity involved is the only source of supply with the political subdivision and there is a full disclosure by the officer or employee;¹⁵
- When the aggregate of such transactions do not exceed \$500 in a calendar year;¹⁶
- 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 qualified banks;¹⁷
- When the transaction is made pursuant to s. 1004.22 or s. 1004.23 and is specifically approved by the president and the chair of the university board of trustees;¹⁸
- 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;¹⁹ 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.²⁰

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 189.012(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 special purpose or

¹² Section 112.313(12)(b), F.S. (“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 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.”)

¹³ Section 112.313(12)(c), F.S.

¹⁴ Section 112.313(12)(d), F.S.

¹⁵ Section 112.313(12)(e), F.S.

¹⁶ Section 112.313(12)(f), F.S.

¹⁷ Section 112.313(12)(g), F.S.

¹⁸ Section 112.313(12)(h), F.S.

¹⁹ Section 112.313(12)(i),(j), F.S.

²⁰ Section 112.313(15), F.S.

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), as of March 2, 2023, there are currently 1,922 special districts.²¹ 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.²² The table below summarizes the top five specialized functions out of the 78 specialized functions of the 1,922 special districts²³:

Special District Function	Number
Community Development	899
Community Redevelopment	223
Housing Authority	91
Drainage and/or Water Control	82
Fire Control and Rescue	63

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 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 impeded the full and faithful discharge of the official’s public duties.

Therefore, public officers and employees of the above special tax districts for land improvements and drainage water control districts would not be able to enter into a contract or employment with an agency or business entity regulated or doing business with his or her public agency. Such contracts or employment would now be deemed a per se conflict and such public officers and employees of the public agency would be subject to the enforcement and penalty provisions for violations of the Code of Ethics, unless a separate exemption or exception under the Code applied.

²¹ See Florida Department of Economic Opportunity, *Official List of Districts: Special Purpose Totals (10)(c)*, <https://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts>. (last visited March 2, 2023)

²² *Id.* (The Florida Department of Economic Opportunity’s Official List of Special Districts located on its website allows visitors to generate customized lists of special districts but provides the following disclaimer, “Special Purpose Totals: Be aware that many special districts have similar purposes but are grouped separately because they were established under different statutes . . . Additionally, many special districts have more than one special purpose; therefore, adding the number of special districts in this category will not provide accurate state totals.”)

²³ *Id.*

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill does not expressly state the effect that eliminating the exemptions found in subsection (7)(a)1. would have on existing contracts based on the existing exemption for certain special tax districts and drainage and water control districts. The bill does not state whether the elimination of the exemption has a prospective or retroactive effect. The bill does not state whether the elimination of the exemption applies only to contracts entered into after July 1, 2023, the bill's effective date, or whether the bill's prohibitions also applies to existing current contracts or employment in effect when the exemption allowed such contracts. If the act applies retroactively, affecting existing contracts by now prohibiting such contracts, and by now subjecting public officers and employees to prosecution for violations under the Code of Ethics, this may raise legal issues under the Contracts Clause of the United States²⁴ and Florida Constitutions.²⁵

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.

²⁴ U.S. Const. art. I, s. 10. cl. 1 (“No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender In Payments of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.”); *see Ogden v. Saunders*, 25 U.S. (12 Wheat) 213 (1827) (The Constitution seeks to protect private rights from state interference by limiting the states’ power to enact legislation that alters existing contract rights.); *see Home Bldg & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 428 (1934) (But, the Supreme Court has held that the Contract Clause does not generally prevent states from enacting laws to protect the welfare of their citizens.)

²⁵ Fla. Const. art. I, s. 10 (“No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”)

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. Another factor is whether the proposed bill will retroactively affect and prohibit existing employment or contractual relationships allowed under the current exemption and, if so, the number of the existing relationships that will be affected.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Line 17 of SB 620 creates a new reference to the conflict of interest law currently found in s. 112.313(7)(a), F.S. Given the longstanding nature of this law and its many references to complaints, formal opinions, and court cases, the Commission on Ethics recommends not renaming s. 112.313(7)(a), F.S. as s. 112.313(7)(a)1, F.S.. Instead, the Commission recommends the Legislature consider, under line 44 of SB 620, renaming the exemption noted as 2, be renamed to 1.²⁶

The proposed changes in this bill to s. 112.313(7)(a) will affect s. 189.031(6), F.S., and s. 190.007(1), F.S., which cross-references the current exemption under s. 112.313(7), F.S. for these special tax districts. The Legislature may wish to also amend these other statutes to address these technical deficiency by deleting references to s. 112.313(7), F.S., from these statutes.²⁷

VII. Related Issues:

SB 620 does not expressly state that the bill applies prospectively, thus, transforming existing employment or contractual relationships, which were not unethical when initiated under the exemption under the current law, into a violation of the Code of Ethics. A question arises regarding administrative enforcement of the Code's penalties against public officials now considered violating the Code by having employment or contractual relationships that are now prohibited under this bill. In a criminal context, such an ex post facto law could implicate

²⁶ See Agency Bill Analysis for Bill HB 199, Conducted by Florida Commission on Ethics, <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=30312&yr=2023> (last viewed March 2, 2023) (HB 199 is identical to SB 620)

²⁷ See s. 189.031(6), F.S. ("For purposes of s. 8(h)(2), Art. II of the State Constitution, a board member or a public employee of a special district does not abuse his or her public position if the board member or public employee commits an act or omission that is authorized under **s. 112.313(7)**, (12), (15), or (16) or s. 112. 3143(3)(b)" (Emphasis added)); see s. 190.007(1), F.S. (For purposes of s. 8(h)(2), Art. II of the State Constitution, a board member or a public employee of a district does not abuse his or her public position if the board member or public employee commits an act or omission that is authorized under subsection, **s. 112.313(7)**, (12), (15), or (16), or s. 112.3143(3)(b)," (Emphasis added))

constitutional concerns. Notice issues may arise if administrative enforcement actions are pursued based on these past contracts or employment.

VIII. Statutes Affected:

This bill substantially amends section 112.313, Florida Statutes.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
