

**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.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: CS/SB 86

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Dockery

SUBJECT: Voting Conflicts

DATE: March 31, 2011                      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | McKay   | Roberts        | GO        | Fav/CS |
| 2. | _____   | _____          | JU        | _____  |
| 3. | _____   | _____          | EE        | _____  |
| 4. | _____   | _____          | RC        | _____  |
| 5. | _____   | _____          | _____     | _____  |
| 6. | _____   | _____          | _____     | _____  |

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill prohibits a member of the Legislature from participating in, and/or voting upon, certain legislation. The new provision would also require the member to publicly state to the body or the committee to which the member belongs, prior to consideration of the legislation, the interests which give rise to the voting conflict. The bill would also require disclosure of the specific nature of those interests in a memorandum filed with either the Secretary of the Senate or Clerk of the House of Representatives and placed in the journal of the house of which the legislator is a member. The bill requires that a member of the Legislature vote on the annual General Appropriations Act and disclose any conflict that he or she may have with a line-item appropriation contained in the act.

The bill also creates qualified blind trusts for the Governor, Lieutenant Governor, and members of the Cabinet. The bill establishes that covered public officials who placed assets in a qualified blind trust would be exempted from certain conflicts of interests and voting conflicts concerning the property placed into the trust. The bill contains the minimum requirements for the blind trust

to be deemed a qualified blind trust by the Commission on Ethics (“Commission”).<sup>1</sup> The bill also prohibits certain conduct of the trustee and the official. The bill requires that a qualified blind trust be filed with the Commission on Ethics within five business days of its execution.

The bill also permits the Commission on Ethics to initiate investigations when it has received reliable and publicly disseminated information. The bill also permits the Commission to initiate investigations when it receives a written referral from the Governor, the Chief Financial Officer, a state attorney, the executive director of the Department of Law Enforcement, or the statewide prosecutor. The bill requires a vote of seven members of the Commission to initiate an investigation.

This bill substantially amends section 112.3143 of the Florida Statutes, and creates ss. 112.31435 and 112.3142 of the Florida Statutes.

## II. Present Situation:

### Voting Conflicts

Under Section 112.3143(2), Florida Statutes, no state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, 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. The law does not prohibit a state public officer from participating in any matter.

Conversely, county, municipal, and other local officers are prohibited from voting on any measure which would inure to his/her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained, other than an agency; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the officer. In the event of a conflict, the county, municipal, and other local officers are required to publicly state to the assembly the nature of the officer's interests in the matter from which he or she is abstaining prior to the vote being taken. Additionally, the county, municipal, and other local officers are required to 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. Appointed public officers are also prohibited from participating in a matter when the matter would inure to the special private gain or loss of one of the enumerated people unless the appointed public officer first discloses his or her interest in the matter.<sup>2</sup>

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<sup>1</sup> The Commission on Ethics is provided for in Article II, Section 8, of the Florida Constitution, and s. 112.320, F.S. Pursuant to s. 112.321(1), F.S., the Commission is composed of nine members.

<sup>2</sup> Section 112.3143(4), F.S.

Violations of the voting conflicts laws are subject to the penalties contained in s. 112.317, F.S. Those penalties range from censure to removal from office and may also include a civil penalty not to exceed \$10,000.

### **Investigations by the Commission on Ethics**

Section 112.324, F.S., authorizes the Commission to investigate complaints alleging a violation of the Code of Ethics for Public Officers and Employees<sup>3</sup> (“Code of Ethics”) and/or Article II, Section 8 of the Florida Constitution. Currently, the Commission only has the authority to begin an investigation upon receipt of a sworn complaint.<sup>4</sup> A complaint is confidential until the Commission either dismisses the complaint for a lack of legal sufficiency or makes a determination whether probable cause exists.<sup>5</sup> If the Commission determines that a complaint is legally insufficient, a public report is issued explaining why the complaint is legally insufficient and ordering the complaint be dismissed. If the Commission finds that there is no probable cause to believe an alleged violation of the Code occurred, the Commission issues a public report dismissing the complaint.<sup>6</sup> If the Commission finds probable cause, the respondent can either dispose of the complaint via stipulation or have a trial before the Division of Administrative Hearings.<sup>7</sup> Section 112.324, F.S., also establishes the procedure for the imposition of penalties by the appropriate disciplinary authority.

### **Blind Trusts**

Currently, there is no provision of the Florida Statutes addressing the use of blind trusts by public officers and employees.

## **III. Effect of Proposed Changes:**

### **Voting Conflicts**

Senate Bill 86 creates an exception to the general rule in Section 112.3143(2), Florida Statutes, that state public officers may vote in an official capacity on any matter. The bill prohibits a member of the Legislature from voting upon or participating<sup>8</sup> in any legislation that would inure to his or her special private gain or loss or that he or she knows would inure to the special private gain or loss of his or her relative. The bill would also require the member to publicly state to the body or committee to which the member belongs, before any consideration of the legislation, all of his or her interests in the legislation or all of the relative’s interests in the legislation which are known to the member. The member must disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs. The memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

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<sup>3</sup> The Code of Ethics is contained in Part III, Chapter 112, Florida Statutes.

<sup>4</sup> Section 112.324(1), F.S.

<sup>5</sup> Section 112.324(2), F.S.

<sup>6</sup> Section 112.324(3), F.S.

<sup>7</sup> Id.

<sup>8</sup> Under the bill, the term “participate” means any attempt, other than casting a vote, to influence the passage, defeat, or amendment of legislation by oral or written communication made by a legislator or at such legislator’s request.

Senate Bill 86 also prohibits a member of the Legislature from participating in any legislation that he or she knows would inure to the special private gain or loss of a principal by whom he or she is retained, the parent organization or subsidiary of a corporate principal by which he or she is retained, a business associate, an employer, or a board upon which the member sits. The member is required to publicly state to the body or committee all of the interests of such principals, parent organizations or subsidiaries of a corporate principal, business associates, employers, or board which are known to the member prior to any consideration of the legislation. The member must disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs. The bill requires that the memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

The bill provides that a member of the Legislature must vote on the annual General Appropriations Act and disclose any conflict that he or she may have with a line-item appropriation contained in that act.

### **Investigations by the Commission on Ethics**

The bill amends s. 112.324, F.S., by providing two new methods for the Commission to initiate investigations without the receipt of a sworn written complaint. First, the bill requires the Commission to investigate an alleged violation of the Code of Ethics or violation of Article II, Section 8 of the Florida Constitution upon receipt of reliable and publicly disseminated information. The Commission staff may not undertake a formal investigation other than the collection of publicly disseminated information before a determination of sufficiency by the Commission. The determination of sufficiency must be approved by a vote of seven members of the Commission. The second new method for the Commission to initiate an investigation is based upon a written referral of a possible violation from the Governor, the Chief Financial Officer, a state attorney, the executive director of the Department of Law Enforcement, or the statewide prosecutor. To initiate investigations based upon such a written referral, an affirmative vote of seven members of the Commission is required. Once an investigation based upon a written referral or reliable publicly disseminated information is approved by the Commission, the investigation and subsequent proceedings are conducted in the same manner as those concerning a sworn written complaint.

### **Blind Trusts**

SB 86 permits “covered public officials” to create and place assets into a “qualified blind trust.” The bill defines the term “covered public officials” as the Governor, Lieutenant Governor, or a member of the Cabinet.” Under the bill, if a public official holds an economic interest in a qualified blind trust, he or she does not have certain conflicts of interest concerning the economic interests in the trust. Specifically, the assets in the trust would not give rise to a violation of the prohibitions in the Code of Ethics concerning doing business with one’s own agency,<sup>9</sup>

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<sup>9</sup> Section 112.313(3), F.S.

conflicting employment or contractual relationships,<sup>10</sup> or voting conflicts.<sup>11</sup> The official cannot attempt to influence or exercise any control over decisions regarding the management of the trust. Neither the official nor anyone with a beneficial interest in the trust may make any effort to obtain information concerning the trust. The bill permits the beneficiaries of the trust to request distributions of cash. The bill also permits the following written communications: a request for a distribution from the trust not specifying whether it is to be made in cash or in kind; the general financial interests and needs of the covered public official or other interested person; the notification of the trustee of a law or regulation subsequently applicable which prohibits the official from holding an asset and which directs that the asset not be held by the trust; or, directions to sell all of an asset initially placed in the trust which creates a conflict of interest or the appearance of a conflict due to the subsequent assumption of duties by the official.

The bill specifies that an official using a blind trust is required to report the beneficial interest in the qualified blind trust and its value as an asset on his or her financial disclosure, if the value is required to be disclosed. The official must also report the blind trust as a primary source of income on his or her financial disclosure and the amount of income, if required to be disclosed. The bill provides that the official is not required to report as a secondary source of income any source of income to the blind trust.

The bill specifies the requirements that must be met in order for the trust to be a “qualified blind trust.” The bill specifies that certain relatives, other public officers, people appointed by the covered public official, or by a public officer or employee supervised by the covered public official may not serve as the trustee. The bill also requires that the trust agreement must contain a clear statement of its purpose, namely to remove from the grantor control and knowledge of investment of assets so that a conflict of interests will be eliminated. The trust agreement must also give the trustee complete discretion to manage the trust, including acquiring and disposing of property without consulting or notifying the official or other interested person. The trust agreement must also prohibit communications between the trustee and the official or other person with a beneficial interest in the trust. The trust agreement must also provide that the trustee will prepare that trust tax return and require that any information relating to the trust is not disclosed to the official or any other beneficiary. However, the trust agreement may permit the trustee to notify the covered public official of certain information necessary to complete an individual tax return. The bill also prohibits the trustee from investing in trust assets in business entities that he or she knows are regulated by or do a significant amount of business with the official’s agency. The bill also must provide that it is not effective until approved by the Commission.

The bill also provides that the trust can only contain readily marketable assets. A copy of the trust is required to be filed with the Commission within five business days after execution of the trust agreement. The copy filed with the commission must also include a listing of the assets placed in the trust; the name and address of the trustee; and a separate sworn statement by the trustee that he or she will not reveal any information concerning the trust except as authorized. The trustee’s statement must also state that to the best of his or her knowledge the trust agreement complies with the requirements of the law.

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<sup>10</sup> Section 112.313(7), F.S.

<sup>11</sup> Section 112.3143, F.S.

Finally, the bill provides that if the trust is revoked while the person is a public officer the official must file an amendment to his or her most recent financial disclosure within 60 days. The amended financial disclosure is also required in the event that the official learns of any replacement assets that have been added to the trust. The amendment must detail the previously unreported pro rata share of the trust's interests in investments or income deriving from those investments. If the official learns about any replaced asset, the asset shall be treated as though it were an original asset of the trust.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

Currently, s. 112.324, F.S., exempts from Florida's Public Records and Open Meetings laws a complaint and records relating to the complaint until the Commission determines the complaint is legally insufficient or until the Commission determines whether probable cause exists to believe a violation of the Code of Ethics occurred. The bill expands this exemption to exclude information or written referrals, and documents related to the information or written referrals, from the Public Records and Open Meetings laws. Like the exemption for complaints, the new exemption for information or referrals only applies until the Commission dismisses a complaint for lack of legal sufficiency or the Commission determines whether probable cause exists.

Pursuant to Article I, Section 24 of the state constitution, laws creating or expanding public records exemptions must be created in separate bills, limited to the exemption.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Indeterminate.

##### **C. Government Sector Impact:**

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Governmental Oversight and Accountability on March 30, 2011:**

The CS requires members of the Legislature to vote on the annual General Appropriations Act and requires the member to disclose any conflict he or she has with a line-item appropriation in that act. The CS also permits covered public officials to create a qualified blind trust. If qualified, the blind trust operates to exempt the official from certain conflicts which would otherwise arise from those assets placed into the blind trust. Finally, the CS also allows the Commission on Ethics to investigate alleged violations of the Code of Ethics that it receives through reliable publicly disseminated information or a referral from certain public officers and agencies. Documents and proceedings conducted pursuant to written referrals or reliable publicly disseminated information, and the investigations thereof, are exempt from Public Records/Open Meetings laws until a certain point in the proceedings.

**B. Amendments:**

None.