

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1377 CS Ethics
SPONSOR(S): Ryan
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1944, SB 2008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Everhart</u>	<u>Everhart</u>
2) <u>Ethics & Elections Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Transportation & Economic Development Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill contains numerous changes recommended by the Commission on Ethics (Commission). The bill proposes to:

- Prohibit government employees from working in political campaigns while on duty.
- Allow Select Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years. However, no former employee may immediately lobby on a matter in which the employee participated while employed by a government agency.
- Change the method for disclosing assets and liabilities.
- Decrease the maximum penalty for late filing financial disclosure statements from \$1,500 to \$300, and allow the Commission to waive a penalty when the person did not receive proper notice.
- Require disclosure of gifts by those leaving employment by July 1; a postmark by midnight on the due date constitutes a timely filed disclosure.
- Allow the Attorney General to file suit to recoup agency costs for collecting penalties.
- Allow unemployed state employees to work for the private entity who assumes the employees' former duties.
- Clarify the Commission's rule-making authority specifying that lobbyists may appeal fines resulting from untimely filings of expense reports.
- Suspend a lobbyist's registration if the lobbyist fails to pay a fine, until the fine is paid or waived.

The bill may have an indeterminate, though likely minimal, fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the Commission on Ethics rulemaking authority.

Promote personal responsibility – The bill requires principled behavior by those serving in the public domain, which in effect requires more personal responsibility. Individuals who are employed by the public are held to a higher standard and should work to ensure that their office is not used for personal gain.

B. EFFECT OF PROPOSED CHANGES:

The Commission on Ethics (Commission) is a non-paid, appointive body consisting of nine members who serve two-year terms. The Governor appoints, and the Senate confirms, five of the members. The Speaker of the House of Representatives and the President of the Senate each make two appointments.¹ The Commission serves "as the guardian of the standards of conduct for the officers and employees" of state and local government.²

In the fall of 1999, Governor Bush appointed a Public Corruption Study Commission, which met, heard testimony, and recommended a number of changes to Florida's criminal and ethics laws. Of those ethics proposals relating to this bill, the 2000 Legislature did not adopt the recommendations described in the next two paragraphs³

"In order to promote confidence in the ethics process and provide for greater uniformity of enforcement of the ethics laws, the Commission recommended in 2003 to:

- 1) Amend the penalties section of the Code of Ethics to allow the Attorney General to recover costs, attorney's fees, expert witness fees, or other costs of collection incurred in trying to collect a penalty that has been imposed.*
- 2) Amend the penalties section of the Code of Ethics to allow restitution to be made to the violator's public agency, rather than only to the State's General Revenue Fund."*

The bill authorizes the Attorney General to recover costs associated with collecting a penalty. In addition, the Commission may recommend whether to pay a restitution penalty to the employing agency or to the General Revenue Fund.

"In order to eliminate problems and inconsistencies between the criminal laws and the ethics laws, the Commission recommended that the law be amended to:

- 3) Specify that witness tampering... also applies to tampering with witnesses in an Ethics Commission proceeding.*
- 4) Repeal the provision in the Code of Ethics that makes it a misdemeanor to reveal the existence or contents of a confidential ethics proceeding, as it was declared unconstitutional by the federal courts."*

The bill extends witness tampering prohibitions to include tampering with witnesses in a Commission proceeding. It removes the unconstitutional misdemeanor penalty for revealing the intent to file a complaint or the contents of a complaint or relevant documents.

¹ Section 112.321, F.S.

² Section 112.320, F.S..

³ Commission on Ethics, Legislative Committee Issue Paper provided by Bonnie Williams to House Governmental Operations staff March 23, 2005

"In order to tighten potential loopholes in the ethics laws that have come to light over the past few years, the Commission recommended that the law be amended to:

- 5) Clarify that the "inside information" prohibition covers situations where one leaves public office or employment and then uses the inside information for personal gain, and not just situations where one remains in public office or employment and uses that information.*
- 6) Adopt a standard similar to Federal law, which prohibits former employees from participating in a matter in a way that is adverse to their former agency where the employee had participated personally and substantially in the employee's official capacity. Attorneys are subject to a similar restriction, under Bar regulations. Otherwise, for example, a Dept. of Revenue employee involved in a taxpayer case could possibly quit the Department and work for the taxpayer, against the Department, on the same case.*
- 7) Assure that the "revolving door" limitation for local elected officials prohibits them from lobbying during the two-year period not just their former colleagues, but also employees of the agencies they formerly headed."*

The bill clarifies that using "insider Information" applies also to former employees and officers. It also prohibits executive branch employees from leaving an agency and then lobbying that agency on a matter on which they worked. The bill applies the two-year lobbying prohibition to local officials prohibiting them from lobbying the entire government body and employees, not just prohibiting them from lobbying the body on which they served. The bill also extends the ethics provisions to include OPS employees.

"Following the adoption of Chapters 2000-243, 258, and 232, Laws of Florida, we (Commission's Legislative Committee) have discovered several areas that could use legislative touch-up, including the following:

- 8) Adopt more detailed descriptions of the Commission's rule-making authority for standards for appealing the daily fines imposed under the financial disclosure law and the executive branch lobbyist reporting law. While the existing standards may not be insufficient, it would be helpful to have as precise a description of the Commission's rule-making authority as possible, in order to avoid possible rule challenges under the APA.*
- 9) Apply the disclosure requirements of Form 10 (reporting gifts from governmental entities, gifts from direct support organizations, and honorarium event-related expenses) to the final portion of one's term in office. Provide a specific filing deadline in the law for these final disclosures.*
- 10) Although the filing location for the disclosure and gift forms was changed from the Secretary of State to the Ethics Commission, the filing location for Form 3A (competitive bid exemption) was left with the Secretary of State. Section 112.313(12)(b)3, F.S., should be amended to have this form filed with us, too.*
- 11) The statutory requirements relating to Form 6 (Full Disclosure) are written in Sec. 112.3144. For no apparent reason, the new law placed some of the new reporting requirements for this disclosure in Sec. 112.3147(2), where nobody thinks to look for them, so the new requirements should be moved to the appropriate statutory location".*

The bill clarifies the Commission's rule-making authority by specifying that lobbyists may appeal fines. It requires filing financial disclosure forms for the last quarter of the term or office or employment. It declares a filing is timely if postmarked by midnight of the due date. The bill changes the location for filing conflict of interest forms from the State of State to the Commission. It also moves the provisions relating to financial disclosure and gifts from 112.3147 to 112.3144, F.S., for clarity.

"A number of issues have arisen since the 2000 amendments to the disclosure law that weren't taken up by the Legislature. These include the following:

- 12) The move toward privatizing State functions has given rise to concerns about the application of the post-employment (revolving door) provisions in the Code of Ethics. [Sec. 112.313(9)(a) contains the two-year ban on representing persons or entities before one's former agency, and Sec. 112.3185 contains several prohibitions against going to work for an entity contracting with one's former agency and a limit on how much an agency can pay a former employee through a*

subsequent contract.] Should these prohibitions apply to a State employee whose job is being privatized and, if so, how? Last year's recommendations included provisions that grandfathered-in employees whose positions were transferred to Selected Exempt Service through the Governor's "Service First" initiative, and proposed modifications to the post-employment restrictions in Section 112.3185.

- 13) *The Advocates have asked about the possibility of increasing witness fees, to enable them to more fairly compensate witnesses who might have to travel significant distances to public hearings. Currently, the fee, as provided in Section 112.322(4), is \$.05 per mile.*
- 14) *Much of the Commission's focus lately has been on financial disclosure fine appeals. The Legislative Committee recommends the following approach to increase compliance with the disclosure laws while bring more fairness to the process. Elected constitutional officers and other who are required to file the more detailed disclosure on Form 6 should remain under the current system of fines--\$25 per day up to a cap of \$1,500, with additional penalties possible if a complaint were filed, and with the appeal grounds and process remaining the same. For those who are required to file limited disclosure on Form 1, the deadline would remain September 1st, but anyone who does not file by that date would receive an automatic, flat fine of \$300. The only ground for appeal would be a failure of notice. As is currently the situation, any person who does not file at all would be subject to additional penalties if a complaint were filed."*

The bill allows Selected Exempt employees moved from Career Service by Service First to lobby immediately after terminating state employment, with approval of the agency head for whom they worked. It authorizes per diem and travel reimbursement for witnesses testifying on ethics charges outside of their county. It also decreases the maximum penalty from \$1,500 to \$300 for a late filed financial disclosure form.

C. SECTION DIRECTORY:

Section 1 amends s. 104.31, F.S., prohibiting state or political subdivision employees from participating in political campaigns during on-duty hours or certain other hours.

Section 2 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 3 amends s. 112.3144, F.S., providing for reporting of assets held by joint tenancy, joint tenancy with right of survivorship, and partnership and reporting of certain liabilities.

Section 4 amends s. 112.3145, F.S., relating to disclosure of financial interests and clients represented before agencies.

Section 5 amends s. 112.3147, F.S., deleting a redundant provision.

Section 6 amends s. 112.3148, F.S., relating to reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.

Section 7 amends s. 112.3149, F.S., requiring gift disclosure statements of individuals who left office or employment during the calendar year to be filed by a date certain.

Section 8 amends s. 112.317, F.S., relating to penalties.

Section 9 amends s. 112.3185, F.S., relating to contractual services.

Section 10 amends s. 112.3215, F.S., relating to lobbyists before the executive branch or the Constitution Revision Commission regarding registration, reporting, and investigations by the Commission on Ethics.

Section 11 amends s. 112.322, F.S., revising provisions relating to payment of witnesses.

Section 12 amends s. 914.21, F.S., revising definitions.

Section 13 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

An officer or employee violating chapter 112, F.S., could be required to pay a civil or restitution penalty to the agency for which the violating officer was a member or the employee was employed, or pay the penalty to the General Revenue Fund. The attorney general is entitled to collect any costs, attorney's fees, expert witness fees, or other costs incurred in bringing a civil action to recover such penalties.

2. Expenditures:

A witness, required to travel outside the county of his or her residence in order to testify before the Commission, is entitled to per diem and travel expenses at the same rate as state employees.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate, though probably not significant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Commission on Ethics may adopt rules to provide the grounds for waiving a fine and the procedures associated with appealing that fine when a lobbyist fails to timely file a report. Current law

already authorizes the commission to adopt a rule to provide a procedure for notifying a lobbyist who fails to timely file a report.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Governmental Operations Committee adopted an amendment on March 24, 2005, and passed the bill with CS. The amendment clarified the language relating to the prohibition against state and local government employees from working on political campaigns while at work.