HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 0 N, w/CS	Everhart	Everhart
2) Ethics & Elections Committee	9 Y, 0 N, w/CS	Wiggins	Mitchell
3) Transportation & Economic Development Appropriations Committee	12 Y, 0 N	McAuliffe	Gordon
4) State Administration Council	7 Y, 0 N, w/CS	Wiggins	Bussey
5)			

SUMMARY ANALYSIS

HB 1377 clarifies and revises portions of the ethics code of the state of Florida, and provides for additional restrictions on the conduct of current and former government employees and elected officials. The bill:

- Prohibits government employees from working in political campaigns while on duty.
- Allows 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.
- Changes the method for disclosing assets and liabilities.
- Requires disclosure of gifts by those leaving employment by July 1; a postmark by midnight on the due date constitutes a timely filed disclosure.
- Allows the Attorney General to file suit to recoup agency costs for collecting penalties.
- Allows unemployed state employees to work for the private entity who assumes the employees' former duties.
- Clarifies the Commission on Ethic's (Commission) rule-making authority specifying that lobbyists may appeal fines resulting from untimely flings of expense reports.
- Suspends 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.

HB 1377 is effective July 1, 2005.

See "Amendments/Committee Substitute & Combined Bill Changes" section for amendments adopted in the State Administration Council, on April 20, 2005, at the request of the Commission on Ethics.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

Promote personal responsibility – The bill requires principled behavior by those serving in the public domain, which in effect requires more personal responsibility.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida's Code of Ethics for Public Officers and Employees, ch. 112, Part III, provides requirements and guidelines for public employees and officers. Section 112.311, F.S., articulates three general objectives in the formation of the ethics code. The first is that the public interest "requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist." Second, "the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve." Third, "it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions … be regularly disclosed to the people."

Section 112.311, F.S., further provides "no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest." The code also states that "public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public," and are "bound to observe, in their official acts, the highest standards of ethics consistent with this code … regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern."

The Code of Ethics itself addresses an array of conduct by current and former government employees and officials. Section 112.313, F.S., provides public officers, agency employees, and local government attorneys are barred from disclosing or using information not available to the 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.

Section 112.313, F.S., further provides a person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the governing body of which the person was an officer for a period of two years after vacating that office. This has been interpreted to apply to only to former office holders lobbying current office holders.

Section 112.3145, F.S. provides office holders are required to file yearly statements of their personal financial interests. The failure to file a timely report results in a fine of $25 per day, with a maximum aggregate penalty of $1,500. Any reporting person may appeal or dispute a fine, and may base the appeal upon unusual circumstances surrounding the failure to file on the designated due date. The person is entitled to a hearing before the ethics commission, which is permitted to waive the fine in whole or in part for good cause shown.

Section 112.317, F.S., provides violations of any provision of the ethics code can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.

The Commission on Ethics has the duty of receiving and investigating sworn complaints of violations of the code of ethics. Section 112.324, F.S., provides the commission is only authorized to investigate alleged violations of the ethics code upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person. Section 112.322, F.S., provides in an investigation, the commission has the power to subpoena, and currently, witnesses subpoenaed by the commission are paid mileage and witness fees as authorized for witnesses in civil cases.

Effects of Proposed Changes

The bill prohibits all state or political subdivision employees from participating in political campaign for an elective office while on duty or within any period of time the employee is expected to perform services for which the employee receives compensation from the state or political subdivision.

The bill amends the prohibition against using "inside" information gained while in a public position to benefit oneself or another to clarify that it applies to former employees and officers, except for information relating exclusively to governmental practices or procedures. The bill also clarifies the application of the "revolving door" prohibition against representing a client before one's former agency to OPS state employees.

The bill amends the two-year “revolving door” prohibition against representing a client before one’s former agency to "grandfather-in" agency employees whose positions were transferred to the Selected Exempt Service from Career Service System under the “Service First” law. The bill requires the conflict of interest disclosure statement that is applicable for competitive bidding be filed with the Ethics Commission instead of the Department of State. The bill further, applies the two-year prohibition for former local elected officials to representations before the entire government body or agency they served (which would include staff), rather than just the body of which they were a member.

The bill requires that the certified reminder mailing sent in July each year by the Supervisors of Elections have a return receipt, allowing the Commission to determine whether the mailing was actually received and by whom. The bill also allows the Commission to waive the penalty for failure to timely file a statement of financial interests only when the person did not receive proper notice of the requirements of filing an annual disclosure.

The bill requires, by October 1 of each year, all supervisors of elections must certify to the Commission a list of names and addresses of all persons who have failed to timely file a statement of financial interests. Current law requires such certification by November 15. The bill also provides the $1,500 limitation on automatic fines for failing to file a financial statement does not limit the civil penalty that may be imposed if the statement is filed more than 12 days (current law provides for 60 days) after the deadline.

The bill requires gift disclosure forms to be filed for the last portion of one’s term of office or employment, and allows quarterly gift disclosure forms to be considered timely-filed if they are postmarked on or before the due date. The bill also requires honorarium-expense disclosure forms to be filed for the last portion of one’s term of office or employment.

The bill allows restitution to be paid by the violator to an agency that was damaged by the violation, rather than just to the State. Further, when the Attorney General is required to collect a penalty through a civil action in court, the Attorney General’s costs and fees of collecting the penalty to be assessed against the violator. The bill deletes s. 112.317(6), F.S., which the federal courts have declared unconstitutional (this used to make it a misdemeanor to breach the confidentiality of an ethics proceeding).

Further, the bill eases existing post-employment restrictions for State employees whose jobs are privatized and who then go to work for the private entity. The bill adds a prohibition to keep State executive branch employees from leaving government and then switching sides to represent a client before their former agency in connection with the same matter in which they participated while an agency employee.

The bill clarifies the Commission's rule-making authority regarding appeals of fines for untimely expense report filings, and automatically suspends the registration of a lobbyist who has failed to pay a fine until the fine is paid or waived (as currently is done for legislative lobbyists). The bill allows witnesses required by the Commission to testify outside the county of their residences to receive per diem and travel expenses reimbursed at the State rate.

Finally, the bill amends s. 914.21, F.S., to include in the definition of an "official investigation" any investigation conducted by the Commission.

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 likely 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 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 a Committee Substitute. The amendment clarified the language relating to the prohibition against state and local government employees from working on political campaigns while at work.

The Ethics & Elections Committee adopted two amendments on April 6, 2005, and passed the bill with a Committee Substitute. The first amendment returns the fines for filing late financial disclosure reports to current law and matches up the House Bill with its Senate companion (CS/SB 1944). The second amendment clarifies the oath on financial disclosure expenditures to include the language that the information included on any forms or attachments is true, accurate, and complete, in all material aspects, to the best of their knowledge.

The State Administration Council adopted three amendments on April 20, 2005, and passed the bill with a Committee Substitute. The amendments were adopted at the request of the Commission on Ethics.

- The first amendment returns the original statute language regarding the number of days a disclosure may be filed late before a civil penalty can be imposed.
- The second amendment requires the Commission to provide a written suspension notice to each lobbyist whose registration has been automatically suspended.
- The third amendment changes the effective date of the bill to October 1, 2005, in order to allow the Commission to print new materials with the changes required in this bill.