

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1113 Code of Ethics for Public Officers and Employees

SPONSOR(S): Patterson

TIED BILLS: IDEN./SIM. BILLS: SB 1220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Ethics & Elections</u>	<u>7 Y, 0 N</u>	<u>Mitchell</u>	<u>Mitchell</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u></u>	<u>Mitchell</u>	<u>Tinker</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

HB 1113 represents the 2008 legislative package of the Commission on Ethics (Commission). Subsection (8) of s.112.322, F.S., relating to the duties and powers of the Commission, provides:

It shall be the further duty of the commission to submit to the Legislature from time to time a report of its work and recommendations for legislation deemed necessary to improve the code of ethics and its enforcement.

To that end, the Commission has made its recommendations in HB 1113.

The bill is effective January 1, 2009.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill appears to implicate one of the House principles in that it does not appear to “provide limited government.” Instead it enhances disclosure, reporting and prohibitions for public officers and employees.

B. EFFECT OF PROPOSED CHANGES:

Subsection (8) of s.112.322, F.S., relating to the duties and powers of the Commission, provides:

It shall be the further duty of the commission to submit to the Legislature from time to time a report of its work and recommendations for legislation deemed necessary to improve the code of ethics and its enforcement.

To that end, the Commission has made its recommendations for 2008 in HB 1113, as set forth below.

Definition of “Business Entity”

The Commission has had an inquiry asking whether a “limited liability company” (LLC) would be a “business entity” as that term is defined in the Code of Ethics. The term is not clearly included, although an LLC might be deemed to be a corporation, firm, enterprise, or association. There is no doubt that an LLC should be considered a “business entity.” Section 112.312, F.S., is amended to include a company in the definition of “business entity.”

Employment of Relatives

The Commission has reviewed a situation where a public official’s relative was appointed to a position by the board on which the official served, with the official abstaining from voting. Current law prohibits the appointment of the relative, but would hold only the abstaining official responsible.

Section 112.3135, F.S., is amended to provide that a public official may not make an appointment, employment, promotion, or advancement of a relative, or advocate a relative for appointment, employment, promotion, or advancement in or to any entity over which the collegial body has jurisdiction. If a prohibited appointment, employment, promotion, or advancement occurs, *both* the official and the relative shall be subject to penalties under s. 112.317, F.S. (penalties section of the Code of Ethics). However, if the appointment, employment, promotion, or advancement is made by the collegial body without the official’s participation, only the relative is subject to penalties.

Contracts with Political Subdivisions

In a series of complaints from the cities of Southwest Ranches, Midway, and Edgewater, the Commission concluded that, where a corporation was appointed/contracted to serve as the chief executive or administrative officer of a political subdivision, the officers and employees of the corporation are not public officers or employees who would be subject to the standards of conduct in the Code of Ethics.

A newly created s. 112.3136, F.S., provides that when a political subdivision contracts with a private entity to serve as the chief administrative officer, the employees, directors, and officers of that private entity who perform the functions of the chief administrative officer or employee of the political subdivision are subject to the same ethical standards as public officers and employees who perform the same functions. Section 112.3136, F.S., applies the financial reporting requirements for local officers found in s. 112.3145, F.S., to these contractual officers and employees. It categorizes these persons as "reporting individuals" for the purposes of the gift and honoraria provisions of ss. 112.3148, F.S., and 112.3149, F.S. Section 112.3136, F.S., also applies the conduct provisions of s. 112.313, F.S., to these officers and employees and their "agency." "Agency," as used in that section, is the political subdivision that they contractually serve.

Voting Conflicts

There have been several recently publicized situations involving local officials participating in discussion and attempting to influence agency decisions even though they had a voting conflict that precluded them from voting on the matter. One of these officials was convicted of criminal activity arising out of this conduct. In addition, the Commission has reviewed a situation where the official voted on a matter that benefited the corporate "sibling" of his employer.

State and Local Officers

The bill expands the disclosure requirements of s. 112.3143, F.S., for state and local officers to make it clear that when the officer has a voting conflict he or she should disclose all bases for the conflict, whether based on the officer's own interests or on the interests of the officer's principal, relative, or business associate, whenever one or all of those interests exist.

State Officers

The bill makes it clear that there is a specific exception to the voting conflicts law for state officers if a conflict arises because the officer's principal will gain a special benefit, but the principal is an agency as defined in s. 112.312(2), F.S. Currently, a similar exception exists in statute for local officers.

Local Officers

With respect to local elected officers, current law provides that when a conflict of interest exists, the officer may not vote on the issue, but is not prohibited from participating in discussion on the issue or trying to influence the decision. However, disclosure of the voting conflict is required before the vote is taken. Further, if the local officer is appointed, he or she may only participate in discussion on or try to influence the issue if he or she discloses the conflict of interest prior to such participation.

HB 1113 prohibits all local officers from participating in the discussion, or influencing the decision-making, on any issue that would provide a beneficial gain or loss for the officer or the officer's relative, business associate, or principal, (other than an agency as defined in s. 112.312(2), F.S.), of which the officer has knowledge, without first disclosing the nature of his or her interest in the matter. The disclosure shall indicate the nature of all of the local officer's interests in the matter and the nature of all interests of the principals, relatives, or business associates that are known to the official. The disclosure shall be made in a written memorandum and if disclosure is not made before the meeting, it shall be made orally at the meeting when a conflict becomes known, and filed by memorandum within 15 days after the oral disclosure is made. An exception to the voting prohibition is continued for commissioners of community redevelopment agencies created under s. 163.356 or s. 163.357, F.S., and certain officers of independent special tax districts.

Financial Disclosure

The Commission has received several inquiries about why certain state and local government officers/employees are not required to file financial disclosure. Also, many forms do not specify the method of valuing financial interests (filers have the choice of picking either percentage thresholds or dollar thresholds).

Section 112.3145, F.S., is amended to include within the definition of "local officer" any appointed member of a community redevelopment agency board and the finance director of a local government, or other political subdivision. Also, this section is amended to mandate that the reporting person specify which method for valuing financial interests was used on the person's financial disclosure form.

Gifts and Honoraria

Recently, the Commission has considered the question of who is a "procurement employee," as defined for purposes of the gift law. This is a broad category of state employees that are identifiable based only on their particular activities. It would help agencies and these employees if the statute gave a more precise definition of who is a "procurement employee" and for how long.

Also, in some instances a vendor currently doing business with an agency is not the principal of a lobbyist within the past 12 months, even though all would agree that the vendor should not be providing gifts worth over \$100 to the officers and employees of that agency.

Section 112.3148, F.S., is amended to prohibit reporting individuals or procurement employees from soliciting gifts from a vendor doing business with the agency of the reporting individual or procurement employee, if the gift is for the personal benefit of a procurement employee, reporting individual or a family member of the employee or individual. These persons and anyone on their behalf are also prohibited from knowingly accepting, directly or indirectly, gifts from a vendor doing business with the agency of the reporting individual or procurement employee, if the gift exceeds \$100 in value. The language also prohibits these vendors from giving, directly or indirectly, gifts that exceed \$100 in value to a reporting individual or procurement employee, or anyone on his or her behalf.

Section 112.3149, F.S., is amended to prohibit reporting individuals or procurement employees from knowingly accepting an honorarium from a vendor doing business with the agency of the reporting individual or procurement employee. These vendors are also prohibited from giving honoraria to a reporting individual or procurement employee. HB 1113 defines vendor as "a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services."

The bill also clarifies the definition of a "procurement employee" in ss. 112.3148 and 112.3149, F.S., by specifically including employees of judicial and executive agencies within the definition (judicial and executive departments already are included). The bill narrows the definition by limiting a "procurement employee" to one who has participated in any part of the procurement process as outlined by the current definition, but only within the preceding twelve months. The cost of the procured services or commodities must exceed \$10,000 in any fiscal year, rather than \$1,000 within any period, as is currently provided by law.

Executive Branch Lobbying Regulations

The provisions of the Executive Branch Lobbying Law (s. 112.3215, F.S.) regarding procedures and penalties for violations do not parallel those provided in the Legislative Lobby Law (s. 11.045, F.S.). The bill amends s. 112.3215, F.S., to make those provisions consistent with those for lobbying the Legislature.

The amended language would allow the commission to investigate a complaint alleging that a person to whom the law is applicable made a prohibited expenditure. It would also allow the commission to investigate not only a lobbying firm, agency, officer, or employee, but also an executive branch lobbyist or principal upon receipt of a sworn complaint or random audit of lobbying reports that indicate a likely violation of the law, other than a late-filed report. The amended language applies a non-criminal fine not to exceed \$5,000.00 to any person required to register or provide information under the executive branch lobbying law who knowingly fails to disclose a material fact or who provides false information on any required report. This penalty would be in addition to any other penalty assessed by the Governor or Cabinet under subsection (10) of the existing law.

Penalties

Section 112.317, F.S., is amended to include a penalty provision for persons who are not specifically public officers and employees (other than a lobbyist or lobbying firm for violations of s. 112.3215, F.S.), but to whom the ethics code applies. According to the new language of s. 112.317, F.S., these persons would be subject to a public censure and reprimand, a civil penalty not to exceed \$10,000.00, and/or restitution of any pecuniary benefits received because of a violation. The new language also allows the Commission to recommend that restitution be paid to the penalized person's agency or to the General Revenue Fund.

Section 112.324, F.S., is amended to provide that the Governor will be the disciplinary official of any person to whom the ethics code applies, but who is not a public officer or employee. The new language excludes a lobbyist or lobbying firm for violations of s. 112.3215, F.S., from this classification.

Early Learning Coalitions

In a technical amendment, the bill amends s. 411.01(5), F.S., to change an existing reference to s. 112.3143, F.S., in order to track the changes made to that section by the bill.

C. SECTION DIRECTORY:

NOTE: The Section Directory reflects a description of the sections of HB 1113 *after* adoption of two amendments in the Committee on Ethics and Elections on March 20, 2008. Substitute Amendment 1 deleted section 2 of the original bill (subsequent sections will be renumbered). Those amendments will travel with the bill to the Economic Expansion and Infrastructure Council.

Section 1. Amends subsection (5) of s. 112.312, F.S., to expand the definition of business entity to include a limited liability company (LLC).

Section 2. Amends subsection (2) of s. 112.3135, F.S., to clarify the restrictions on the employment of relatives by public officials. The subsection provides that if a prohibited appointment, employment, promotion or advancement occurs, both the official and the individual are subject to a variety of penalties provided in s. 112.317, F.S. If the official does not participate in

the prohibited appointment, employment, promotion or advancement, only the individual is subject to the penalties provided in s. 112.317, F.S.

Section 3. Amends s. 112.3143, F.S., to clarify the provisions governing voting conflicts. The change in this section addresses a situation when a state or local public official votes on a matter that benefits the corporate “sibling” of his employer and imposes a requirement for local elected officials to disclose their conflicts before making any attempt to influence the matter.

Section 4. Amends subsection (1) and (3) of s. 112.3145, F.S., to include certain local officers in the limited financial disclosure requirements. The list of those required to file would include appointed officers of community redevelopment agency boards and finance directors of a county, municipality or other political subdivision. It further provides that a person filing the limited financial disclosure must indicate on the statement whether the person is using the percentage threshold or dollar threshold.

Section 5. Amends subsections (2), (3) and (4), s. 112.3148, F.S., to clarify the gift requirements for procurement employees. Only employees that have participated in the procurement of contractual services of commodities in excess of \$10,000 within the preceding 12 months would now be included in the gift law provisions. The change would also prohibit vendors doing business with an agency from providing gifts in excess of \$100 to reporting individuals or procurement employees, even though the vendor may not have been acting as a principal with a lobbyist.

Section 6. Amends subsections (1), (3) and (4) of s. 112.3149, F.S., to clarify that reporting individuals and procurement employees are prohibited from knowingly accepting honoraria from vendors doing business with the individual’s agency, and such vendors are prohibited from giving honoraria to such individuals.

Section 7. Amends subsection (8) of and adds new subsection (11) to s. 112.3215, F.S., to make the provisions of the executive branch lobbying law consistent with those of the legislative branch.

Section 8. Creates s. 112.3136, F.S., to provide that officers and employees of business entities serving as chief administrative officers of political subdivisions shall be treated as public officers and employees for the purpose of certain sections. Those sections are s. 112.313, F.S., (standards of conduct for public officers, agency employees, and local government attorneys), s. 112.3145, F.S. (limited financial disclosure), s. 112.3148, F.S., and 112.3149, F.S. (gift and honoraria laws).

Section 9. Amends subsection (1) of s. 112.317, F.S., to include penalties for persons listed in section 9 above who are acting or serving as chief administrative or executive officers or employees of a political subdivision. The penalties may include one or more of the following: public censure and reprimand, a civil penalty of up to \$1,000, or restitution to be paid to the agency or the General Revenue Fund.

Section 10. Amends subsection (8) of s. 112.324, F.S., to include persons listed in section 9 above in the reporting procedures of the Commission following a finding of a violation of part III of chapter 112 (Code of Ethics) or s. 8, Art. II, State Constitution.

Section 11. Conforming change to s. 411.01, F.S., for members of early learning coalitions.

Section 12. Provides an effective date of January 1, 2009.

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:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Committee on Ethics and Elections adopted three amendments, offered by the sponsor, on March 20, 2008, which are reflected in the analysis above.

At the Commission's request, Amendment 1 deletes the provisions relating to requirements for local government attorneys when providing advice to local government entities.

Amendment 2 adds a statutory cross reference (s. 112.313(7), F.S.) that was missing from the original bill.

At the Commission's request, Amendment 3 clarifies the anti-nepotism provisions and addresses concerns raised by the Florida League of Cities. It provides that an official and the relative are subject to penalties for a prohibited appointment, employment, etc. of the relative, but exempts the official if he or she *does not participate* in the hiring.

Those amendments are traveling with the bill.