

**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 Judiciary Committee

BILL: CS/SB 1220

INTRODUCER: Ethics and Elections Committee and Senator Constantine

SUBJECT: Ethics/Public Officers and Employees

DATE: March 31, 2008 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Goodwin</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Treadwell</u>	<u>Maclure</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| 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:**

The bill clarifies and revises portions of Florida’s Code of Ethics. These changes are summarized as follows:

- The bill expands the definition of “business entity” to include the term “company.”
- The bill adds to the existing anti-nepotism laws by providing that a public official cannot appoint or hire a relative to a position in an agency if the official is a member of the collegial body that controls the agency. It also makes the penalty provisions of s. 112.317, F.S., applicable to the public official and the relative. However, an exception to the penalty provisions is available to the official if a collegial body hires or appoints the official’s relative and the official does not participate in the decision to hire or appoint.
- The bill revises the voting and participation conflicts provisions of s. 112.3143, F.S., by:
  - Expanding the disclosure requirements for state and local officers by requiring that a state or local officer must disclose *all* his or her interests and *all* of the

interests of any relative, business associate, or principal of which the officer has knowledge when a conflict exists.

- Adding a corporate principal's sibling to the list of persons and entities for which a special, private gain or loss may not be obtained without triggering the applicability of the conflict provisions of s. 112.3143, F.S.
  - Expanding a current exemption for local officers to state officers by providing that if the special gain or loss would inure to the state officer's principal and that principal is an agency, the benefit would not trigger the applicability of the provisions of s. 112.3143, F.S.
  - Providing that the participation prohibitions and disclosure requirements that currently only apply to appointed state and local officers are also applicable to elected local officers.
- The bill revises the financial disclosure provisions of s. 112.3145, F.S., by expanding the definition of "local officer" to include appointed members of community redevelopment agency boards and finance directors of local governments or other political subdivisions. The bill also requires persons to disclose the statutory method used to calculate their interests on the financial disclosure form required by s. 112.3145, F.S.
  - The bill revises the gift and honoraria provisions of the Code of Ethics by:
    - Expanding the definition of "procurement employee" to include executive and judicial branch agency employees. It also clarifies this definition by providing that a "procurement employee" is a person who has participated in the procurement process within the past 12 months.
    - Defining the term "vendor" as a "business entity doing business with an agency such as renting, leasing or selling any realty, goods, or services."
    - Prohibiting reporting individuals and procurement employees from:
      - Soliciting a gift from a vendor.
      - Knowingly accepting a gift from a vendor in excess of \$100.
      - Knowingly accepting an honorarium from a vendor.
    - Prohibiting vendors from giving gifts to reporting individuals and procurement employees in excess of \$100 and giving honoraria to these persons.
  - The bill revises the executive lobbying laws of s. 112.3215, F.S., by giving the Commission on Ethics (commission) the authority to investigate complaints alleging prohibited expenditures. The commission may investigate a lobbyist or principal when it receives information from a sworn complaint or a random audit of reports indicating a possible violation.

- The bill provides a civil fine not to exceed \$5,000 for persons who fail to disclose or who provide false information pursuant to executive lobbying law. This civil penalty is in addition to other penalties that may be assessed pursuant to s. 112.3215, F.S.
- The bill creates s. 112.3136, F.S., which provides that the officers, directors, and certain employees of a business entity that contract with a political subdivision to be the chief administrative officer of the subdivision shall be treated as public officers and employees for the purpose of the conduct, financial disclosure, gift, and honoraria provisions of the code.
- The bill expands the penalty provisions of s. 112.317, F.S., to include persons who are not public officers and employees, yet to whom the Code of Ethics still applies. The penalties include public censure and reprimand, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received because of the violation.
- The bill makes the Governor the disciplinary official of persons who are not public officers and employees, yet still must comply with the Code of Ethics.

The bill creates section 112.3136 and substantially amends the following sections of the Florida Statutes: 112.312, 112.3135, 112.3143, 112.3145, 112.3148, 112.3149, 112.317, 112.3215, 112.324, and 411.01.

## II. Present Situation:

### Objective of Ethics Code

The Florida Ethics Code (Code of Ethics) is premised upon three general objectives.<sup>1</sup> 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.”<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>

The Legislature has set forth policies through which these objectives are to be achieved. One example is that “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.”<sup>5</sup> The Code of Ethics also states that “public officers and employees, state and local, are agents of the people and hold their

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<sup>1</sup> Section 112.311, F.S.

<sup>2</sup> Section 112.311(1), F.S.

<sup>3</sup> Section 112.311(2), F.S.

<sup>4</sup> Section 112.311(3), F.S.

<sup>5</sup> Section 112.311(5), F.S.

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.”<sup>6</sup>

### **Business Entities**

In forming the parameters of conduct mandated for public officers and employees, the Code of Ethics encompasses business entities. Currently, the term “business entity” is defined as meaning “any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual or trust, whether fictitiously named or not, doing business in this state.”<sup>7</sup>

### **Conduct Governing Public Officers and Employees**

The Code of Ethics addresses an array of conduct by current and former government employees and officials. Briefly, some of the prohibited conduct includes prohibiting public officers, agency employees, local government attorneys, and candidates for nomination or election from soliciting or accepting anything of value in return for influencing an act, duty, or the judgment of the public officer, employee, attorney or candidate.<sup>8</sup> The Code of Ethics prohibits agency employees and public officers from doing business or holding employment or contractual relationships with one’s own agency.<sup>9</sup> Public officers, agency employees, local government attorneys and certain family members are prohibited from receiving unauthorized compensation known to be given to influence the actions of the public officer, employee, or attorney acting in his or her official capacity.<sup>10</sup> Moreover, public officers, agency employees, and local government attorneys may not “corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.”<sup>11</sup>

With exception, public officers and agency employees are prohibited from holding employment or a contract with a business entity or agency that is regulated or does business with the agency for which the officer or employee works.<sup>12</sup> These officers and employees also may not hold employment or have a contractual relationship that creates a recurring conflict of interest between an officer or employee’s private interest and public duty or that obstructs the performance of a public duty.<sup>13</sup>

Current and former public officers, agency employees, and local government attorneys are prohibited from disclosing information for their personal benefit or the personal benefit of other persons or business entities if the information is learned because of the person’s position and is

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<sup>6</sup> Section 112.311(6), F.S.

<sup>7</sup> Section 112.312(5), F.S.

<sup>8</sup> Section 112.313(2), F.S.

<sup>9</sup> Section 112.313(3), (7) F.S.

<sup>10</sup> Section 112.313(4), F.S.

<sup>11</sup> Section 112.313(6), F.S.

<sup>12</sup> Section 112.313(7), F.S.

<sup>13</sup> *Id.*

not available to the public.<sup>14</sup> State agency employees along with employees of a county, municipality, special taxing district, or other political subdivision are prohibited from becoming members of the entity which he or she serves as an employee of the entity.<sup>15</sup>

Public officials may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, any individual who is a relative of the public official to a position in the agency in which the official is serving or over which the official exercises jurisdiction.<sup>16</sup> Conversely, individuals who are relatives of a public official may not be appointed, employed, promoted, or advanced to a position in the agency in which the official is serving or over which the official exercises jurisdiction.<sup>17</sup> Various penalties for violation of this section include impeachment, removal from office, suspension from office, or public censure and reprimand.<sup>18</sup>

### **Voting When a Conflict Exists**

State public officers are not prohibited from voting on any issue presented before them in their official capacity.<sup>19</sup> However, if the issue upon which a vote is being taken would provide a special private gain or loss to the officer, or the officer knows would provide a special private gain or loss to the officer's principal, relative, or business associate, the public officer must disclose the nature of his or her interest in a public written memorandum.<sup>20</sup> The memorandum must be filed within 15 days after the vote occurs on the issue and incorporated into the meeting minutes.<sup>21</sup>

Local public officers are prohibited from voting in their official capacity on an issue that would provide a special private gain or loss to the public officer, or that the public officer knows would provide a special private gain or loss to the officer's principal (except an agency as defined in s. 112.312(2), F.S.), relative, or business associate.<sup>22</sup> Prior to the vote, the public officer must publicly inform the group about the reason for his or her vote abstention, and has 15 days after the vote to file a written memorandum that discloses the nature of his or her interest.<sup>23</sup> This memorandum is public and must be incorporated into the minutes of the meeting.<sup>24</sup> An exception to this particular voting prohibition exists for community redevelopment agency commissioners and independent special tax district officers elected on a one-acre, one-vote basis.<sup>25</sup>

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<sup>14</sup> Section 112.313(8), F.S.

<sup>15</sup> Section 112.313(10), F.S.

<sup>16</sup> Section 112.3135(2)(a), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 112.317(1)(a), (b), F.S.

<sup>19</sup> Section 112.3143(2), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Section 112.3143(3)(a), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Section 112.3143(3)(b), F.S.

### **Participating When a Conflict Exists**

Appointed public officers are prohibited from participating in any issue that would provide a special private gain or loss to the officer, or that the officer knows would provide a special private gain or loss to the officer's principal, business associate, or relative unless the officer discloses his or her interest prior to participation.<sup>26</sup> The officer must disclose his or her interest in a public, written memorandum prior to the meeting at which discussion of the issue will take place.<sup>27</sup> The disclosure must be filed prior to the meeting with the meeting's record keeper and incorporated into the minutes, as well as distributed to members immediately upon filing and read publicly at the next meeting.<sup>28</sup> If the disclosure is not made or the conflict is not known prior to the meeting, the disclosure must be made orally at the meeting when it is known to exist.<sup>29</sup> A public, written memorandum must then be filed stating the disclosure within 15 days after oral disclosure was made, and the disclosure shall be incorporated into the minutes.<sup>30</sup> The disclosure must be distributed to members immediately upon filing and read publicly at the next meeting.<sup>31</sup>

### **Financial Disclosure**

State and local officers, specified state employees, and candidates seeking qualification for state or local office are required to file statements disclosing their personal financial interests. Specified state employees and officeholders are required to file these disclosures on a yearly basis.<sup>32</sup> Filers are required either to use a dollar threshold or a percentage threshold in calculating financial interests for disclosure purposes.<sup>33</sup> State officers and specified state employees must file these statements with the Commission on Ethics.<sup>34</sup> Local officers must file statements of financial interests with the supervisor of elections in the officer's county of permanent residence. If the officer has no permanent residence, the statement must be filed with the supervisor of elections in the county where the officer's agency maintains its headquarters.<sup>35</sup> Persons seeking to qualify as candidates for local public office must file the statement of financial interest with the officer before whom they qualify for office.<sup>36</sup>

### **Gift and Honoraria**

The Code of Ethics includes laws relating to the acceptance or solicitation of gifts and honoraria. According to the gift law, reporting individuals and procurement employees, as defined in the statute, are prohibited from soliciting gifts from political committees, committees of continuous existence, lobbyists who lobby the reporting individual's or procurement employee's agency, or

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<sup>26</sup> Section 112.3143(4), F.S.

<sup>27</sup> Section 112.3143(4)(a), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 112.3143(4)(b), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> Section 112.3143(4), F.S.

<sup>32</sup> Section 112.3145(2)(b), F.S.

<sup>33</sup> Section 112.3145(3), F.S.; Florida Commission on Ethics, Statement of Financial Interests for the year 2007, [http://www.ethics.state.fl.us/FORMS/2007\\_Form1i.pdf](http://www.ethics.state.fl.us/FORMS/2007_Form1i.pdf) (last visited on March 29, 2008).

<sup>34</sup> Section 112.3145(2)(c), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 112.3145(2)(c), F.S.

the lobbyist's partner, firm, principal, or employer if the gift is for the personal benefit of the individual, employee, or an immediate family member.<sup>37</sup> These same individuals and employees and anyone on their behalf are prohibited from knowingly accepting gifts from the prohibited individuals, committees, and entities listed previously if the person accepting the gift knows its value to be more than \$100, unless the gift is for a charity or governmental entity.<sup>38</sup> The prohibited individuals, committees, and entities listed previously are also prohibited from giving a reporting individual, procurement employee, or anyone on their behalf a gift valued more than \$100, unless the gift is for a charity or governmental entity.<sup>39</sup>

With regard to the honoraria law, reporting individuals and procurement employees may not solicit an honorarium that is related to their public office or duties.<sup>40</sup> They are prohibited from knowingly accepting an honorarium from political committees, committees of continuous existence, a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the lobbyist's partner, firm, principal, or employer.<sup>41</sup> These individuals, committees, and entities are also prohibited from giving an honorarium to a reporting individual or a procurement employee.<sup>42</sup>

### **Executive Branch Lobbying Laws**

Chapter 112 of the Florida Statutes includes the executive branch lobbying regulations and penalties. These statutes regulate executive lobbyist activities and give the Florida Commission on Ethics the authority to investigate formal complaints filed with it alleging that a person to whom the law applies either failed to register, failed to submit a compensation report, or knowingly submitted false information in a report or registration required by the law.<sup>43</sup> The law also allows the commission to investigate any lobbying firm, agency, officer, or employee upon receipt of a sworn complaint or random audit of reports that indicates a possible violation other than a late-filed report.<sup>44</sup>

### **Penalties**

The penalty provisions in the Code of Ethics provide certain penalties for current and former public officers, current and former public employees, and candidates who violate the code. The penalties for current officers include impeachment, removal, suspension, public censure and reprimand, forfeiture of a portion of salary, a civil fine not to exceed \$10,000, or restitution.<sup>45</sup> For employees, the penalties include dismissal, suspension, demotion, reduction in salary level, forfeiture of a portion of salary, a civil fine not to exceed \$10,000, restitution, or public censure and reprimand.<sup>46</sup> Candidates can be disqualified from appearing on the ballot, or can be publicly

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<sup>37</sup> Section 112.3148(3), F.S.

<sup>38</sup> Section 112.3148(4), F.S.

<sup>39</sup> Section 112.3148(5), F.S.

<sup>40</sup> Section 112.3149(2), F.S.

<sup>41</sup> Section 112.3149(3), F.S.

<sup>42</sup> Section 112.3149(4), F.S.

<sup>43</sup> Section 112.3215(8)(a), F.S.

<sup>44</sup> Section 112.3215(8)(c), F.S.

<sup>45</sup> Section 112.317(1)(a), F.S.

<sup>46</sup> Section 112.317(1)(b), F.S.

censured, reprimanded, or receive a civil fine not to exceed \$10,000.<sup>47</sup> Former officers and employees can face public censure and reprimand, a civil penalty of up to \$10,000, or restitution.<sup>48</sup> If a complaint is filed alleging misconduct, and, after an investigation, the commission finds that a violation has occurred, the commission must report its findings and recommend certain action to the appropriate disciplinary official or body, which holds the power to invoke the Code of Ethics's penalty provisions.<sup>49</sup>

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

The bill clarifies and revises portions of Florida's Code of Ethics (Code of Ethics).

#### **Business Entities**

The bill expands the definition of business entity to include "company" within its meaning in order to clear up any perceived ambiguity as to whether the current definition excluded application of the Code of Ethics to limited liability companies.

#### **Restriction on Employment of Relatives**

Section 112.3135, F.S., is amended, adding that a public official cannot appoint, employ, promote, or advance a relative to a position in an agency if the official is a member of the collegial body which controls the agency. If a prohibited appointment, employment, promotion, or advancement occurs, both the official and the individual shall be subject to penalties under s. 112.317, F.S. However, if the appointment, employment, promotion, or advancement is made by the collegial body without the official's participation, only the individual shall be subject to these penalties.

#### **Voting and Participating Conflicts**

##### *State and Local Officers*

The bill expands the disclosure requirements of s. 112.3143, F.S., for state and local officers beyond just the officer's own interests to include the interests of the officer's principal, relative, or business associate, whenever one or all of those interests exist. The bill also adds a corporate principal's sibling to the list of entities for which a special private gain or loss may not be obtained without triggering the applicability of the conflict provisions of s. 112.3143, F.S., if the state or local officer is retained by the corporate principal.

##### *State Officers*

The bill provides a specific exception for state officers if a conflict arises because the officer's principal will obtain a special private gain or loss 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.

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<sup>47</sup> Section 112.317(1)(c), F.S.

<sup>48</sup> Section 112.317(1)(d), F.S.

<sup>49</sup> Section 112.324, F.S.



### *Local Officers*

With respect to local officers, current law provides that when a conflict of interest exists, the local officer may not vote on the issue but is not prohibited from participating in discussion on the issue. 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 the issue if he or she discloses the conflict of interest prior to such participation.

The bill prohibits *all* local officers from participating in the discussion on any issue that would provide a special private 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 must indicate the nature of all of the local officer's interests in the matter and the nature of all of the interest of the principals, relatives, or business associates which are known to the official, and must be made in a written memorandum. If disclosure is not made before the meeting, it must be made orally at the meeting when a conflict becomes known, and filed by memorandum within 15 days after the oral disclosure is made.

### **Financial Disclosure**

The definition of "local officer" is amended to include any appointed member of a community redevelopment agency board and the finance director of a local government, or other political subdivision. This section is also amended to mandate that the reporting person specify which statutory calculating method was used to calculate the person's financial interests.

### **Gifts and Honoraria**

The bill defines "vendor" in the statutes governing gifts and honoraria 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 the statutes governing gifts and honoraria by including employees of judicial and executive agencies. Also, the applicable individuals must not just participate in any part of the procurement process as outlined by the current definition, but must have done so within the preceding 12 months. The cost of the procured services or commodities must exceed \$10,000 in any fiscal year, rather than \$1,000, as is currently provided by law.

Reporting individuals or procurement employees are prohibited from soliciting gifts from a vendor doing business with the reporting individual's or procurement employee's agency 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 reporting individual's or procurement employee's agency if the gift has over a \$100 value. The new language also prohibits these vendors from giving gifts either directly or indirectly that have a value in excess of \$100 to a reporting individual or procurement employee or anyone on his or her behalf.

In addition to the solicitation prohibition, reporting individuals or procurement employees are prohibited from knowingly accepting an honorarium from a vendor doing business with the reporting individual's or procurement employee's agency. These vendors are also prohibited from giving an honorarium to a reporting individual or procurement employee.

### **Executive Branch Lobbying Regulations**

Section 112.3215, F.S., is amended so that the executive branch lobbying regulations mirror the legislative lobbying regulations. The amended language would allow the Commission on Ethics to investigate a complaint alleging that a person to whom the law is applicable made a prohibited expenditure. It would also allow the Commission on Ethics to investigate not only a lobbying firm, agency, officer, or employee, but also an executive lobbyist, or principal upon receipt of a sworn complaint or random audit of lobbying reports that indicates 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 lobbying law who knowingly fails to disclose a material fact or who provides false information on any report required in accordance with the lobbying law or rules. This penalty is in addition to any other penalty assessed by the Governor or Cabinet under subsection (10) of the existing law.

### **Contracts with Political Subdivisions**

A new section in the Code of Ethics is created to provide that when a political subdivision contracts with a private business entity to serve as the chief administrative officer, the private business entity's directors, officers, and certain employees are ethically accountable to the public and subject to the same ethical standards as public officers and employees who perform the same functions, yet work directly for a political subdivision. This section mandates that the officers and directors of the entity will be treated as public officers and employees along with any business entity employee who acts as the chief administrative officer or employee of the political subdivision.

This new section also 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 and 112.3149, F.S. The conduct provisions of s. 112.313, F.S., are also applied to these officers and employees and their "agency" as used in that section and political subdivision which they serve. However, the contract through which the private entity performs the administrative functions for the political subdivision is exempted from ss. 112.313(3) and 112.313(7), F.S., which prohibit doing business with one's agency and entering into a conflicting employment or contractual relationship with one's agency, respectively.

### **Penalties**

A penalty provision is included 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 Code of Ethics applies. According to the new language in the bill, these persons would be subject to a public censure and reprimand, a civil penalty not to exceed \$10,000, or restitution of any pecuniary benefits received because of a violation. The new language also allows the

Commission on Ethics to recommend that restitution be paid to the penalized person's agency or to the General Revenue Fund.

Under the bill, the Governor is 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.

#### **School Readiness Programs; Early Learning Coalitions**

The bill makes a technical correction to a cross-reference in this section of law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The implementation of the bill may increase the number of financial disclosure filings. However, any fiscal impact from this increase should be minimal.

#### **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 Ethics and Elections Committee on March 11, 2008:**

Committee Substitute for Senate Bill 1220 clarifies and revises portions of Florida's Code of Ethics. These changes are summarized as follows:

- Expands the definition of “business entity” to include the term “company.”
- Adds to the existing anti-nepotism laws by providing that a public official cannot appoint or hire a relative to a position in an agency if the official is a member of the collegial body that controls the agency. It also makes the penalty provisions of s. 112.317, F.S., applicable to the public official and the relative; however, an exception to the penalty provisions is available to the official if a collegial body hires or appoints the official's relative and the official does not participate in the decision to hire or appoint.
- Revises the voting and participation conflicts provisions of s. 112.3143, F.S., by:
  - Expanding the disclosure requirements for state and local officers by requiring that a state or local officer must disclose *all* his or her interests and *all* of the interests of any relative, business associate, or principal of which the officer has knowledge when a conflict exists.
  - Adding a corporate principal's sibling to the list of persons and entities for which a special, private gain or loss may not be obtained without triggering the applicability of the conflict provisions of s. 112.3143, F.S.
  - Expanding a current exemption for local officers to state officers by providing that if the special gain or loss would inure to the state officer's principal and that principal is an agency, the benefit would not trigger the applicability of the provisions of s. 112.3143, F.S.
  - Providing that the participation prohibitions and disclosure requirements that currently only apply to appointed state and local officers are also applicable to elected local officers.
- Revises the financial disclosure provisions of s. 112.3145, F.S., by expanding the definition of “local officer” to include appointed members of community redevelopment agency boards and finance directors of local governments or other political subdivisions. The committee substitute also requires persons to disclose the statutory method used to calculate their interests on the financial disclosure form required by s. 112.3145, F.S.
- Revises the gift and honoraria provisions of the Code of Ethics by:

- Expanding the definition of “procurement employee” to include executive and judicial branch agency employees. It also clarifies this definition by providing that a “procurement employee” is a person who has participated in the procurement process within the past 12 months.
- Defining the term “vendor” as a “business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.”
- Prohibiting reporting individuals and procurement employees from:
  - Soliciting a gift from a vendor.
  - Knowingly accepting a gift from a vendor in excess of \$100.
  - Knowingly accepting an honorarium from a vendor.
- Prohibiting vendors from giving gifts to reporting individuals and procurement employees in excess \$100 and giving honoraria to these persons.
- Expands the executive lobbying laws of s. 112.3215, F.S., by giving the Commission on Ethics the authority to investigate complaints alleging prohibited expenditures and investigate a lobbyist or principal when it receives information from a sworn complaint or a random audit of reports indicating a possible violation.
- Provides a civil fine not to exceed \$5,000 for persons who fail to disclose or who provide false information pursuant to the executive lobbying law. This civil penalty is addition to other penalties that may be assessed pursuant to s. 112.3215, F.S.
- Creates s. 112.3136, F.S., which provides that the officers, directors, and certain employees of a business entity that contracts with a political subdivision to be the chief administrative officer of the subdivision shall be treated as public officers and employees for the purpose of the conduct, financial disclosure, gift, and honoraria provisions of the code.
- Expands the penalty provisions of s. 112.317, F.S., to include persons who are not public officers and employees yet to whom the Ethics Code still applies. The penalties include public censure and reprimand, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received because of the violation.
- Makes the Governor the disciplinary official of persons who are not public officers and employees yet still must comply with Florida’s Code of Ethics.

**B. Amendments:**

None.