

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 Ethics and Elections Committee

BILL: SB 252
 INTRODUCER: Senator Constantine
 SUBJECT: Local Government/Code of Ethics
 DATE: January 5, 2009 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Kruse | Rubinas | EE | Favorable |
| 2. | _____ | _____ | GO | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Senate Bill 252 applies the conduct, financial disclosure, gift, and honoraria provisions of the Code of Ethics for Public Officers and Employees, Part III of Chapter 112, F.S., to the employees, directors, and officers of private entities that perform the functions of a political subdivision’s chief administrative officer or employee. The bill creates a new penalty provision applicable to persons who are subject to the Code of Ethics but are not considered public officers or employees. The bill also makes the Governor the disciplinary official for these persons.

This bill shall take effect on July 1, 2009.

This bill creates section 112.3136 and substantially amends sections 112.317 and 112.324 of the Florida Statutes.

II. Present Situation:

Conduct Governing Public Officers and Employees

Florida’s Code of Ethics for Public Officers and Employees 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.¹ The code prohibits agency employees and public officers from doing business with one’s own

¹ § 112.313(2), F.S.

agency.² 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.³ Also, 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.”⁴ With exception, public officers and 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. These officers and employees also may not hold employment or have a contractual relationship that creates a recurring conflict of interest between an officer’s or employee’s private interest and public duty or that obstructs the performance of a public duty.⁵ Current and former public officers, agency employees, and local government attorneys are prohibited from disclosing information for his or her personal benefit or the personal benefit of other persons or business entities if the information is learned because of the person’s position and not available to the public.⁶ 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.⁷

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.⁸

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 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. 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. The prohibited individuals, committees, and entities listed previously are also prohibited from giving

² § 112.313(3), F.S.

³ § 112.313(4), F.S.

⁴ § 112.313(6), F.S.

⁵ § 112.313(7), F.S.

⁶ § 112.313(8), F.S.

⁷ § 112.313(10), F.S.

⁸ § 112.31345, F.S.

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.⁹

With regard to the honoraria law, reporting individuals and procurement employees 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. These individuals, committees, and entities are also prohibited from giving an honorarium to a reporting individual or a procurement employee.¹⁰

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. 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. Candidates can be disqualified from appearing on the ballot, or can be publicly censured, reprimanded, or receive a civil fine not to exceed \$10,000. Former officers and employees can face public censure and reprimand, a civil penalty of up to \$10,000, or restitution.¹¹ If a complaint is filed alleging misconduct, and after an investigation, the Ethics 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's penalty provisions.¹²

Independent Contractors

In a series of determinations beginning in 1977, the Commission on Ethics ruled that "the Code of Conduct for Public Officers and Employees do[es] not apply to a person whose relationship with a governmental entity is as an 'independent contractor,' rather than as a public officer or employee."¹³ These conclusions were restated in Public Reports issued by the commission in response to complaints 05-098 and 05-060; 06-102, 06-107, and 06-118 (Consolidated); and 07-108. Citing its earlier reasoning, the commission dismissed complaints when the underlying relationship proved to be one of contractor rather than employee.

III. Effect of Proposed Changes:

Contracts with Political Subdivisions

Section 112.3136 provides that when a political subdivision contracts with a private entity to serve as the chief administrative officer, the employees, directors, and officers of the private

⁹ § 112.3148, F.S.

¹⁰ § 112.3149, F.S.

¹¹ § 112.317, F.S.

¹² § 112.324, F.S.

¹³ CEO 81-61, September 17, 1981. See also CEO 77-60; CEO 77-76; CEO 78-65; and CEO 81-48.

entity who perform the functions of the chief administrative officer or employee of the political subdivision are ethically accountable to the public. Section 112.3136 applies the financial reporting requirements for local officers found in section 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 sections 112.3148, F.S., and 112.3149, F.S. Section 112.3136 also applies the conduct provisions of section 112.313, F.S., to these officers and employees and their “agency” as used in that section is the political subdivision which they serve. However, the contract through which the private entity performs the administrative functions for the political subdivision is exempted from sections 112.313(3) and (7), F.S., which prohibit doing business with one’s agency and conflicting employment or contractual relationships.

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 section 112.3215, F.S.), but to whom the Code of Ethics applies. According to the new language of section 112.317, F.S., 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 Ethics 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 is to be the disciplinary official of any person to whom the Code of Ethics applies, but who is not a public officer or employee. The new language excludes a lobbyist or lobbying firm for violations of section 112.3215, F.S., from this classification.

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:

None.

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.)

None.

B. Amendments:

None.