

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 Committee on Community Affairs

BILL: CS/CS/SB 846

INTRODUCER: Community Affairs Committee; Ethics and Elections Committee; and Senator Latvala

SUBJECT: Governmental Ethics

DATE: March 5, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 846 contains ethical reforms for several quasi-governmental entities. The changes will apply to:

- The Florida Clerk of Courts Operation Corporation;
- Enterprise Florida, Inc.;
- The divisions, including any corporations created to carry out its missions, of Enterprise Florida, Inc.; and
- The Florida Development Finance Corporation.

Among those changes, the bill makes clear that members of the governing bodies of those entities are subject to certain standards of conduct, anti-nepotism provisions, voting conflicts, and post-service lobbying restrictions. A two year post-service prohibition on lobbying is also applied to members of Citizens Property Insurance Corporation.

The bill requires elected municipal officers to complete 4 hours of annual ethics, public records, and open meetings training.

The financial disclosure laws are amended to provide a mechanism for the Commission on Ethics (Commission) to initiate proceedings, without having first received a complaint, against a person who has failed or refused to file their annual financial disclosure form and has accrued the maximum automatic fine. If the Commission initiates a proceeding, it would determine whether the failure to file was willful and, if so, recommend to the appropriate person or governing board

that the officer be removed from office. Additionally, the bill amends how the Commission collects unpaid automatic fines for failure to file annual financial disclosure by making wage garnishment possible under certain circumstances.

The bill requires certain citizen support and direct support organizations to adopt a code of ethics and specifies that certain provisions must be included in the code of ethics.

The bill also regulates those who lobby certain independent special districts by creating a statute that closely resembles the legislative lobbying provisions in s. 11.045, F.S., and the executive branch lobbying provisions in s. 112.3215, F.S. The bill requires lobbyists to register in a district's lobbying registration system, and provides jurisdiction to the Commission concerning complaints alleging violations of the new requirements.

The bill has an effective date of July 1, 2014.

II. Present Situation:

For purposes of this analysis, the present situation will be addressed in the Effect of Proposed Changes section below.

III. Effect of Proposed Changes:

Quasi-Governmental Entities

Florida Clerks of Court Operations Corporation

Present Situation: The Florida Clerks of Court Operations Corporation is created as a “**public corporation**” in s. 28.35, F.S.¹ Membership consists of each of the Florida Clerks of Circuit Court. The Corporation is governed by an executive council which is composed of eight Clerks who are elected by the members, a designee of the President of the Florida Senate, a designee of the Speaker of the Florida House of Representatives, and a designee of the Chief Justice of the Florida Supreme Court. The Clerks of the Circuit Court are subject to the Code of Ethics for Public Officers and Employees in part III, ch. 112, F.S., (“Code of Ethics”) in their official capacities as Clerks of Circuit Court.

It is not clear that the members of the Executive Council would be subject to the Code of Ethics in that capacity.² A public corporation like this Corporation would not be an “agency” unless there is specific language to that effect. In the case of this Corporation, s. 28.35(1)(c), F.S., states:

The corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The corporation is not subject to chapter 120.

¹ Section 28.35(1)(a), F.S.

² Unless otherwise specified, the various provisions of the Code of Ethics only apply to public officers and public employees. Those provisions contemplate service to an “agency.” For purposes of the Code of Ethics, the term “agency” means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state herein; or any public school, community college, or state university. See, s. 112.312(2), F.S.

Political subdivisions are, in fact, an “agency” pursuant to s. 112.312(2), F.S. However, in the context of s. 28.35(1)(c), F.S., it appears that that phrase is used only to exempt the Corporation from corporate income tax. Moreover, if the Legislature intended to subject these types of entities to the Code of Ethics, in whole or in part, it has historically done so expressly.³

Effect of the Bill: The bill clarifies that members of the Florida Clerks of Court Operations Corporation Executive Council are subject to the standards of conduct in s. 112.313, F.S., the “anti-nepotism” provision in s. 112.3135, F.S., and the voting conflicts standard applicable to state officers in s. 112.3143(2), F.S. The bill clarifies that, for purposes of those sections, the members of the Executive Council are public officers or employees. Finally, members of the Executive Council are prohibited from representing others for compensation before the Corporation for a period of two years after the end of their service on the Council.⁴

Enterprise Florida, Inc. and its Divisions:

Present Situation: Enterprise Florida, Inc., is created in s. 288.901, F.S., as a non-profit corporation. It is expressly provided that Enterprise Florida, Inc., is “not a unit or entity of state government.” The members of the Board of Directors of Enterprise Florida, Inc., are composed of various state officers and private individuals.⁵

Notwithstanding that Enterprise Florida, Inc., is not a unit or entity of state government, the Legislature has provided that the members of its Board are subject to the anti-nepotism provision in s. 112.3135, F.S., the voting conflicts standard applicable to statewide officers in s. 112.3143(2), F.S., and the standards of conduct in s. 112.313, F.S. However, s. 288.901(1)(c), F.S., specifically exempts members of the Board from the prohibition on “quid pro quo” gifts in s. 112.313(2), F.S.⁶ Finally, members of the Board who are not otherwise required to file annual financial disclosure are required to file an Annual Statement of Financial Interests pursuant to s. 112.3145, F.S.

The statutes are silent concerning application of any provisions of the Code of Ethics to the Divisions of Enterprise Florida authorized pursuant to s. 288.92, F.S.

Effect of the Bill: The bill prohibits members of the Board from accepting “quid pro quo” gifts as provided in s. 112.313(2), F.S. The members of the Board of Directors would be prohibited from representing others for compensation before the Corporation for a period of two years after the end of their service on the Board of Directors pursuant to s. 112.313(9), F.S.⁷

³ See, for example, s. 627.351(6)(d)3., F.S.

⁴ By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. The Executive Council of the Florida Clerk of Courts Operations Corporation does not appear to fit into any of the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of “including s. 112.313(9), F.S.” is intended to clarify that the two year lobbying prohibition therein applies to members of the Executive Council.

⁵ Section 288.901(5)-(7), F.S.

⁶ Section 112.313(2), F.S., prohibits solicitation or acceptance of anything of value when based upon any understanding that the officer’s vote, official action, or judgment would be influenced by the gift.

⁷ By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. Neither the Board of Directors of Enterprise Florida nor the officers and agents of its divisions fit into any of the

The officers and agents of the Divisions of Enterprise Florida, and corporations created to carry out its mission, would be subject to the standards of conduct in s. 112.313, F.S., the anti-nepotism provision in s. 112.3135, F.S., and the voting conflicts standard applicable to statewide officers in s. 112.3143(2), F.S. As with the members of the Board of Directors, the officers of the Divisions of Enterprise Florida (including corporations created to carry out its mission) are prohibited from representing others for compensation before Enterprise Florida, Inc. for a period of two years after the end of their service pursuant to s. 112.313(9), F.S. These ethics standards would apply to:

- Officers of the Divisions of Enterprise Florida;
- Officers of subsidiaries of Enterprise Florida;
- Officers of corporations created to carry out the missions of Enterprise Florida; and
- Officers of corporations that Enterprise Florida is required to contract with by law.

Florida Development Finance Corporation

Present Situation: The Florida Development Finance Corporation is created in s. 288.9604, F.S., to assist businesses interested in moving into Florida with obtaining financing and other economic information and services.⁸ The Corporation is “created a public body corporate and politic” and is “constituted as a public instrumentality.” The Board of Directors is composed of five members selected by the Governor who were nominated by Enterprise Florida, Inc.”⁹ The statutes are silent as to the applicability of the Code of Ethics to the members of the Board of Directors of the Florida Development Finance Corporation.

Effect of the Bill: While an argument could be made that the Florida Development Finance Corporation is subject to the entire Code of Ethics, the enabling legislation does not clearly state that any provision of the Code of Ethics applies to the Corporation. As noted above, the Legislature has historically expressly made entities like this subject to the Code in whole or in part. The Legislature has not done so in this case. So, the bill clarifies that members of the Florida Development Finance Corporation Board of Directors are subject to the standards of conduct in s. 112.313, F.S., the “anti-nepotism” provision in s. 112.3135, F.S., and the voting conflicts standard applicable to state officers in s. 112.3143(2), F.S. The bill clarifies that, for purposes of those sections, the members of the Board of Directors are public officers or employees. Finally, members of the Board of Directors would be prohibited from representing others for compensation before the Corporation for a period of two years after the end of their service on the Board.¹⁰

Citizens Property Insurance Corporation

Present Situation: Citizens Property Insurance Corporation is created in s. 627.351(6), F.S., to ensure there is an orderly market for property insurance for Floridians. Pursuant to

definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of “including s. 112.313(9), F.S.,” is intended to clarify that the two year lobbying prohibition therein applies to members of the Board.

⁸ Section 288.9602, F.S.

⁹ Section 288.9604(2), F.S.

¹⁰ By its own terms, s. 112.313(9), F.S., applies to various officers and employees throughout three branches of state government. The Florida Development Finance Corporation Board of Directors does not appear to fit into any of the definitions limiting the scope of s. 112.313(9), F.S. While stylistically unusual, the use of “including s. 112.313(9), F.S.” is intended to clarify that the two year lobbying prohibition therein applies to members of the Board of Directors.

s. 627.351(6)(d)3., F.S., senior managers and members of the Board of Governors are subject to the Code of Ethics and are required to file annual financial disclosure pursuant to s. 112.3145, F.S.

Effect of the Bill: The bill subjects the Executive Director of Citizens Property Insurance Corporation to the Code of Ethics, and the financial disclosure requirement. The bill prohibits a former Executive Director, or former member of the Board of Governors, from representing another person or entity before the corporation for a period of two years after leaving. Additionally, a former Executive Director, or former member of the Board of Governors may not enter employment or a contractual relationship with an insurer that entered into a take-out bonus agreement with the Corporation while he or she served, for a period of two years.

Annual Ethics Training

Present Situation: Currently, constitutional officers are required to complete a minimum of four hours of ethics training annually.¹¹ The law requires training in ethics, public records, and open meetings laws. In accordance with statutory requirement, the Commission has promulgated rules specifying what provisions of Florida's ethics laws must be covered.¹²

Effect of the Bill: The bill requires elected municipal officers to complete the required ethics training. Beginning January 1, 2015, all officers subject to the training requirement must certify completion of the requirement on their annual financial disclosure forms. The bill provides that an officer who assumes office after March 31 is not subject to the ethics training requirement until the following year. However, a person who assumes office on or before March 31 is required to complete ethics training in the year in which he or she assumes office. Finally, the bill specifies that failure to affirm completion of the ethics training requirement does not constitute an immaterial, inconsequential, or de minimis error or omission. Therefore, a person who fails to indicate he or she completed the ethics training requirement does not get the opportunity to amend their form. Rather, the complaint proceedings begin immediately.

Financial Disclosure

Present Situation: Pursuant to ss. 112.3144 and 112.3145, F.S., certain public officers are required to file financial disclosure annually. Failure to file financial disclosure results in an automatic fine of \$25 per day, up to a maximum of \$1,500. If a filer fails to pay the fine as required by law, the unpaid fine can be given to a collections agency for collection, money may be withheld from the filer's public paycheck, or the Commission on Ethics, or its collection agency, can seek garnishment of the filer's private wages.

Currently, the Commission on Ethics may not initiate an investigation into alleged violations of the financial disclosure laws, or any other laws, without having first received a complaint.

Effect of the Bill: The bill amends the financial disclosure laws by providing a mechanism for the Commission on Ethics to initiate proceedings, without having first received a complaint, against

¹¹ Section 112.3142, F.S.

¹² Rule 34-7.025, F.A.C.

a person who has failed or refused to file their annual financial disclosure form and has accrued the maximum automatic fine. These complaints would follow the same procedure in place for any other ethics complaint made to the Commission. If the Commission initiates a proceeding, it would determine whether the failure to file was willful and, if so, enter an order recommending that the officer be removed from office. The bill also clarifies the provisions concerning complaints that allege an immaterial, inconsequential, or de minimis error or omission. The linguistic changes are not intended to affect the current process for complaints alleging an immaterial, inconsequential, or de minimis error or omission. That process, passed as part of SB 2 in 2013, requires the Commission to allow the filer a chance to amend his or her financial disclosure form if the Commission receives a complaint after August 25 alleging only an immaterial, inconsequential, or de minimis error or omission. The bill clarifies that the Department of State is only required to send an incumbent's financial disclosure form upon qualifying.

The bill amends the provisions that were passed as part of SB 2 in 2013 providing the Commission additional tools to collect unpaid automatic fines for failure to file annual financial disclosure. Specifically, the bill clarifies that there are two separate processes available. The first provision codifies the common law right of employers to withhold salary-related payments as it would be applicable to public officers and employees.¹³ Under this provision, the bill authorizes withholding an amount up to the entire amount of any salary-related payment and any additional amount from the next salary-related payment necessary to pay off any remaining balance of the fine. There is an exception for current public officers and employees whose public salary is his or her primary source of income, and that withholding the full amount of the fine owed would present an undue hardship. Under those circumstances, the entity paying the salary-related payment would be authorized to reduce the withholding to not less than ten percent of the salary-related payment. The bill clarifies that this process is separate and distinct from the ability to garnish wages by moving those provisions to a newly created statute.

Citizen Support Organizations and Direct Support Organizations

Present Situation: Currently, s. 112.326, F.S., authorizes the governing body of any political subdivision, by ordinance, or agency, by rule, to impose upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of the Code of Ethics.

Effect of the Bill: The bill requires citizen support and direct support organizations to adopt a code of ethics and specifies that certain provisions must be included in the code of ethics. Specifically, the code of ethics adopted must contain the standards of conduct in s. 112.313, F.S.¹⁴ Those organizations are authorized to adopt additional or more stringent standards of conduct and disclosure requirements than are contained in the state's Code of Ethics for Public

¹³ See, e.g. *Atwater v. Roudebush*, 42 F.Supp. 622 (D.C. IL, 1976).

¹⁴ Section 112.313, F.S., contains the major standards of conduct including, but not limited to: Solicitation and acceptance of anything of value under certain circumstances; doing business with one's own agency; misuse of public position, certain employment or contractual relationships; disclosure of certain information learned by virtue of one's public position in order to benefit oneself or others; and several other provisions.

Officers and Employees. Citizen support and direct support organizations are required to conspicuously post their code of ethics on their website.

Independent Special Districts

Present Situation: Special districts are local units of special purpose government, within limited geographical areas, which are utilized to manage, own, operate, maintain, and finance basic capital infrastructure, facilities, and services. According to the Official List of Special Districts maintained by the Department of Economic Opportunity (DEO),¹⁵ there are 1,008 independent special districts and 644 dependent special districts. All special districts must comply with the requirements of the Uniform Special District Accountability Act of 1989 which was enacted by the Legislature to reform and consolidate laws relating to special districts. The Act provides for the definitions, creation, operation, financial report, taxation and non-ad valorem assessments, elections and dissolution of most special districts.

Currently, there are no provisions of law that require lobbyists to register before lobbying special independent districts. Also, there is no requirement that the lobbyists disclose the identity of those who retained them or the compensation paid to the lobbyist for his or her services. Finally, there is no provision that is an outright ban on lobbyists giving anything of value to those who run or serve on boards of independent special districts.

Currently, the only applicable laws regulating what can be given to those who run or serve on boards of independent special districts are:

- the prohibition against “quid pro quo” gifts, regardless of value;¹⁶
- the prohibition against unauthorized compensation, regardless of value;¹⁷ and
- the “old” gifts law, which prohibits solicitation and acceptance of gifts from certain individuals, including lobbyists, over \$100 in value.¹⁸

Section 112.3148, F.S., also imposes certain disclosure requirements on the lobbyist and public officers and employees.

Effect of the Bill: The bill regulates those who lobby certain independent special districts by creating a statute that essentially mirrors the legislative lobbying provisions in s. 11.045, F.S., and the executive branch lobbying provisions in s. 112.3215, F.S. The bill applies to expressway authorities, port authorities, water management districts, hospital districts, children’s services districts, or independent special districts with annual revenues of \$5 million that exercise ad valorem taxing authority. Specifically, the bill will:

- Require the districts to maintain a lobbyist registration system.
- Require lobbyists of those districts to register prior to lobbying.
- Prohibit unregistered lobbyists from representing clients before districts.
- Require lobbyists to notify the district that their representation of a principal has ended.

¹⁵ The Special District Information Program within the DEO serves as the clearinghouse for special district information, and maintains a list of special districts categorized by function.

¹⁶ Section 112.313(2), F.S.

¹⁷ Section 112.313(4), F.S.

¹⁸ Section 112.3148, F.S.

- Authorize districts to accept the same forms that are used by lobbyists to register with the Legislature or Executive Branch.
- Provides that complaints alleging a violation of the new requirements would be sent to the Commission on Ethics.
- Authorizes districts to establish a fee of up to \$40.
- Requires moneys collected to be used for administration of the lobbyist registration system.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires elected municipal officers to complete a 4 hour ethics training, and certify completion of the requirement on their annual financial disclosure forms. Often the county or city attorney already provides this training for new officers. Article VII, section 18(a) of the Florida Constitution limits the Legislature when attempting to pass any general law that requires a local government to take action that requires an expenditure of money.¹⁹ However, Article VII, section 18(d) of the Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact.²⁰ An insignificant fiscal impact means an amount not greater than ten cents times the average statewide population for the applicable fiscal year.²¹ The fiscal impact of the bill on local governments has not been estimated, but the bill appears to be exempt.

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:

Section 8 of the bill, concerning lobbying special districts, may result in lobbyists having to pay a fee of up to \$40 per principal to the special district. Because the number of lobbyists vary depending on the district, and the permissive nature of the registration fee provision, the actual impact is indeterminate.

¹⁹ FLA. CONST. art. VII, s. 18(a).

²⁰ FLA. CONST. art. VII, s. 18(d).

²¹ As of April 1, 2013, the total state population is estimated to be 19,259,543. University of Florida, Bureau of Economic and Business Research, *Florida Estimates of Population 2013* (Apr. 1, 2013), at 21.

C. Government Sector Impact:

The bill imposes additional requirements to conduct complaint proceedings related to financial disclosure and independent special district lobbying. The number of additional proceedings that may result is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.35, 112.3142, 112.3144, 112.3145, 112.31455, 288.901, 288.92, 288.9604, and 627.351.

This bill also creates the following sections of the Florida Statutes: 112.31456, 112.3251, and 112.3261.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on March 5, 2014:

- Narrows the scope of the lobbying restrictions imposed on independent special districts by providing applicability solely to expressway authorities, port authorities, water management districts, hospital districts, children's services districts, or independent special districts with annual revenues of \$5 million which exercise ad valorem taxing authority.
 - Those districts would be required to maintain a lobbyist registration system.
 - Lobbyists may not lobby those districts until they are registered.
 - Lobbyists are required to notify the district when their representation of a principal has ended.
 - Districts are permitted to accept the same forms used by lobbyists to register with the Legislature or Executive Branch.
 - Districts can establish a fee of up to \$40, to be used to maintain their lobbyist registration system.
 - Provisions related to quarterly compensation reports, and an expenditure ban have been removed.
- Limits the number of Form 6 financial disclosures that the Department of State is required to send to the Commission.
- Removes references to Space Florida.
- Extends the same ethics standards that apply to the Board of Enterprise Florida to other Officers throughout Enterprise Florida.

- Extends the ethics standards and post service standards that apply to the members of the Board of Directors of Citizens to the Executive Director of Citizens.

CS by Ethics and Elections on February 17, 2014:

- Provides that the requirement to certify completion of annual ethics training on financial disclosure forms is effective January 1, 2015;
- Subjects expressway authorities and port authorities to the lobbying provisions concerning independent special districts;
- Requires moneys collected pursuant to the special district lobbying provisions to be used solely for administration of those provisions; and
- Provides that those who assume office after March 31 do not have to complete annual ethics training until the next calendar year. Those assuming office on or before March 31 are required to complete ethics training prior to the end of the year in which they assume office.

B. Amendments:

None.