



The Florida Senate

Interim Project Summary 98-22

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Committee on Executive Business, Ethics and Elections

Senator Charlie Crist, Chairman

A REVIEW OF SELECTED PROVISIONS OF THE ETHICS LAWS

SUMMARY

This report recommends that the Legislature consider several changes to Florida's Code of Ethics (Part III, Chapter 112, Florida Statutes), particularly in the area of full and limited financial disclosure. The report also suggests specific changes in the areas of gifts law, sanctions for witness tampering in Commission on Ethics' investigations and proceedings, and the use of confidential public information for profit. Finally, the report addresses a statutory ambiguity in connection with ethics violations by current state legislators.

BACKGROUND

The Code of Ethics for Public Officers and Employees is found in Part III of Chapter 112, Florida Statutes. In adopting the Code, the Legislature stated the goals of the ethics laws, which are geared to promoting the public interest and maintaining the respect of the people for their government. To protect against conflicts of interest, the Code establishes standards of conduct for elected officials and government employees. In addition, the Code is intended to ensure that public officials are independent and impartial and that such officials not use their public office for private gain. The Code also attempts to balance the rights of officials as private citizens by not creating laws which "impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve." As part of its oversight function, it is incumbent upon the Legislature to periodically review the laws to ensure that the stated goals are being maintained.

In 1967, Florida became the first state to enact a Code of Ethics and Conduct for Public Officers and Employees. A minor component of that landmark legislation was a requirement that an officer disclose a ten percent (10%) or greater ownership interest in a business entity

transacting business with the state or a business subject to the regulation of the state.

In 1974, the Legislature strengthened the conflict of interest prohibitions and enacted provisions which required public officers and candidates for such offices to file limited financial disclosure statements.

In 1976, Florida voters adopted the "Sunshine Amendment," the first successful constitutional initiative measure. The Sunshine Amendment includes a requirement that all elected constitutional officers and candidates for those offices (and other public officers, candidates, and employees as provided by law) must file "full and public disclosure" of financial interests by July 1 of each year. Art. II, s. 8, Fla. Const.

The filing consists of a sworn statement showing net worth and identifying each asset and liability exceeding \$1,000 in value, along with either a copy of the reporting individual's most recent federal income tax return or a sworn statement identifying each separate source and amount of income which exceeds \$1,000.

In contrast, persons required to file "limited" financial disclosure pursuant to statute must disclose the reporting individual's sources and types of financial interests, such as the names of employers and addresses of real property holdings. However, no dollar values are required to be listed.

In 1983, in response to concerns of non-compliance raised by the Florida Commission on Ethics, the Legislature enacted a formal financial disclosure notification system. Since the introduction of the notification system, the number of persons required to file full or limited disclosure has grown from 26,670 (1984) to 41,395 (1997).

METHODOLOGY

Committee staff initially reviewed House Concurrent Resolution 4829 (1998), which proposed to establish an interim task force to study and recommend changes to Florida's ethics laws. Although the Resolution failed to pass, it did outline a number of potential subject areas for review. Staff also met with the Executive Director of the Commission on Ethics, and examined the Commission staff's legislative "wish list." After reviewing these, staff selected some of the more important issues for inclusion in this report.

Subsequently, committee staff reviewed the relevant ethics provisions in Florida law. Staff also surveyed other major states concerning their financial disclosure laws. Finally, staff solicited written comments from a number of interested parties, including the Florida Association of Counties, Florida League of Cities, Common Cause of Florida, the League of Women Voters, and private lawyers who represent special districts and parties charged with ethics violations.

FINDINGS

Financial Disclosure

Number/Scope of Persons Required to File

In 1997, 2,215 persons were required to file full financial disclosure; 39,130 persons were required to file limited disclosure.

In Florida, all elected constitutional officers and candidates for such offices are required to file full financial disclosure.

In addition, "local officers," "specified state employees," and "state officers," as defined by statute, are required to file limited disclosure. These categories embrace a vast number of positions, ranging from mayors and local pollution control directors to members of the Board of Regents and upper level employees in the Office of the Governor or other cabinet member.

The terms "local officer" and "specified state employee" also embrace purchasing agents with the power to make purchases *exceeding \$1,000*. In 1990, the Legislature amended the contracting statutes, raising the Category One purchasing threshold from \$600 to \$5,000. Staff recommends raising the financial disclosure threshold

for purchasing agents to \$5,000 to accord with the state's contracting categories.

One group *not required to file* under current law is former officers and employees --- persons whose office or employment ends prior to December 31 of a given calendar year. Critics have charged that this is a "major loophole" in the financial disclosure law. Staff recommends that these former officers and employees be required to file on July 1 of the year following their departure from public office or employment.

Information Which Must Be Disclosed

Form 6, the full financial disclosure, requires a detailed description of each asset, liability, or source of income over \$1,000, and its value. Also, Form 6 requires the filer to state his or her net worth.

Form 1, the limited disclosure, generally requires the disclosure of the reporting individual's primary and secondary sources of income, location or description of real property owned, description of certain intangible property, and name of each creditor to whom the individual owed an amount which exceeded his or her net worth. However, Form 1 differs from Form 6 in that it does not require the disclosure of any specific dollar amounts.

Neither form requires the filer to report contingent liabilities --- liabilities incurred as a partner, joint venturer, or similar position. The Commission on Ethics staff has recommended that the law be amended to require disclosure of these contingent liabilities.

Likewise, neither form requires the filer to identify the name and address of "business associates," as defined in the Code of Ethics. Staff believes the reporting of business associates could serve to identify potential conflicts of interest.

Finally, the statutory definition of liability specifically excludes credit card and retail installment debt. The proliferation of the use of credit cards and revolving consumer debt over the past two decades has led to an increase in personal bankruptcy filings. A credit card disclosure requirement would serve to identify those individuals in dire financial straits, and thus more prone to corruption.

Method of Calculating Information

Full disclosure on Form 6 requires the official or candidate to report his or her net worth, assets and liabilities (exceeding \$1,000), and primary and secondary sources of income (if the reporting individual elects not to file a copy of his or her federal tax return) with *specific dollar values*. Reporting specific dollar values can be problematic because there can be as much as a six-month gap between the date of valuation and the actual filing. Officials and candidates filing Form 6 must sign an oath at the end of the form stating that the information provided is accurate. Thus, if an official reports his or her net worth on Form 6 as \$1 million dollars and it can be shown that the official's actual net worth on December 31 of the reporting period was \$1,000,750, the official will technically be in violation of the oath and could be the target of an ethics complaint.

The problem with Form 6 can be remedied by requiring reporting by specific dollar *category* instead of specific dollar *amounts*.

Although Form 1 does not require the reporting of any specific dollar amounts, Form 1 has its own set of problems. The law requires that Form 1 mandate the reporting of certain items based on percentage calculations which can be confusing to the average filer. Staff recommends replacing the percentage calculations with *specific dollar amount thresholds*, as appropriate. This should result in more reliable data.

Filing Locations

Individuals required to file full or limited financial disclosure must do so either with the Secretary of State's office, the local supervisor of elections, or both.

Committee staff believes that the filing administration should be transferred from the Secretary of State's office to the Commission on Ethics. Filings with local supervisors of elections would remain unaffected. Transferring the filings will better enable Commission staff to respond to problems and questions which arise in connection with the filings. In addition, were the Legislature to adopt some form of mandatory or discretionary review of filings, as recommended in this report, it makes sense for the Commission to have the filings since its staff has the expertise to perform this function.

Compliance/Penalties for Late Filers and Non-Filers

Currently, the Commission on Ethics may only proceed against an individual who files after the grace period (September 1) or fails to file altogether *if it receives a complaint*. It cannot initiate an investigation on its own authority.

In 1997, over seven percent (7%) of those required to file full or limited disclosure (3,030 out of 41,345) filed after September 1 or did not file at all. Of the 94 complaints found by the Commission to be legally sufficient, only 8 related to full or limited financial disclosure. That means that over 3,000 persons violated the Code in 1997 and incurred no penalty. The compliance problem has historically been most pervasive with local officers required to file limited disclosure on Form 1, and the 1997 figures continue this historical trend.

To remedy this situation, staff recommends that the Legislature establish an automatic fine system for those who fail to file by September 1. The fine system could include a cap on the maximum penalty which may be assessed.

Review of Filings

There is currently no review of full or limited disclosure filings in the absence of a complaint being filed. The majority of states have some sort of mandatory review procedure. Committee staff recommends that the Commission on Ethics be required to review all Form 6 filings and randomly audit Form 1 filings for basic sufficiency, completeness, and accuracy.

Gifts

Reimbursement Period

Florida law prohibits a reporting individual from accepting a gift from a lobbyist or principal valued at more than \$100. s. 112.3148(4), F.S. (1997). In addition, most gifts valued at more than \$100 from someone other than a principal or lobbyist must be reported in the quarter following receipt of the gift. s. 112.3148(8)(a), F.S. (1997). In determining the value of a gift, the reporting individual may deduct any compensation reimbursed to the donor. s. 112.3148(7)(b), F.S. (1997); Rule 34-13.500(3), F.A.C. However, there is *no specific deadline* in the law

delineating *when* the reimbursement must be made by the reporting individual or received by the donor.

Staff recommends that the Legislature establish a definite period during which reimbursement may be made. Ideally, the reimbursement cut-off date could be linked to the filing date, the last day of the quarter following that in which the gift was accepted. This would be easier than implementing a new statutorily-created date, since many reporting individuals are already familiar with this date as the deadline for completing administrative issues relating to gifts received in the previous quarter.

Applicability of Gifts Law to Elected Officers Prior to Taking Office

In addition to embracing a variety of state and local employees, the gifts portion of the Code of Ethics for Public Officials applies to candidates for public office as well as to elected state and local officers. The gifts law *does not apply* to non-incumbents in the gap period immediately after election but prior to actually taking office. This has been characterized as a major loophole, since the period following a successful election seems precisely the time when public scrutiny should be at its most vigilant. Staff recommends extending the gifts law to cover victorious, non-incumbent ex-candidates during the gap period.

Commission on Ethics

Investigatory Powers & Proceedings

The Commission on Ethics has a wide array of investigatory powers, including subpoena power over persons and documents and the administration of oaths. The Commission staff has recommended that the state's witness tampering statutes be extended to include Commission proceedings. The witness tampering statutes currently apply in: proceedings before a judge or court or grand jury; proceedings before the Legislature; and, proceedings before a federal agency which are authorized by law.

Committee staff believes the expansion of the witness tampering laws to include Ethics Commission proceedings is sound. It is important that both Ethics Commission investigations and proceedings be conducted with integrity, and that administrative investigators and fact-finders have access to all the pertinent facts. Witnesses who are threatened or harassed into withholding information or testimony

necessarily hampers these efforts. Therefore, staff endorses the Commission staff's recommendation to extend the state's witness tampering laws to include Commission proceedings and investigations.

Former Officials

Use of Public Inside Information

Florida law prohibits a public officer, agency employee or local government attorney from using confidential information obtained during the course of his or her public service for personal gain. s. 112.313(8), F.S. (1997). However, the prohibition does not appear to apply to *former* public officers or employees.

Staff recommends that the prohibition be extended to explicitly include former public officers, agency employees, and local government attorneys. The distinction is strictly one of timing, and it shouldn't matter whether or not someone who uses "public inside information" for personal gain is still a state employee at the time of realizing the gain.

Statutory Ambiguity Regarding Jurisdiction Over Sanctioning Legislators

There is a statutory ambiguity involving the sanctioning of state legislators who violate the Code of Ethics. Specifically, the situation involves a current legislator who committed the alleged breach of ethics while a public officer or employee *prior* to joining the Legislature.

The Legislature should clarify the statutes to clearly provide that the proper sanctioning authority in a case involving a current legislator who commits a violation prior to joining the Legislature is vested with the house in which the legislator serves. Designating any other sanctioning authority would likely violate Article III, section 2, of the Florida Constitution, which provides that each house of the Legislature shall be the "sole judge" of the qualifications of its members.

RECOMMENDATIONS

The report recommends that the Legislature consider the following statutory changes to the Florida Code of Ethics:

Financial Disclosure

- Raise the filing threshold for state and local purchasing agents from \$1,000 to \$5,000 to conform the financial disclosure statutes with the state's contracting categories. [Form 1]
- Require former officers and employees who leave government service to file a final statement of financial interests by July 1 of the year following their departure date. [Form 1 and Form 6]
- Require filers to disclose liabilities incurred as a result of participation in a partnership, joint venture, or similar business entity. [Form 1 and Form 6]
- Require filers to identify the name and address of "business associates," as defined in s. 112.312(4), F.S. [Form 1 and Form 6]
- Require filers to report revolving credit card/retail installment debt in excess of a certain amount. [Form 1 and Form 6]
- Modify full disclosure to require reporting by *dollar category* as opposed to specific dollar amount. [Form 6]
- Replace the percentage calculations with regard to limited disclosure with statutory dollar amount thresholds, as appropriate, to reduce filer confusion. [Form 1]

- Transfer the filing administration from the Secretary of State's Office to the Commission on Ethics. [Form 1 and Form 6]
- Adopt an automatic fine system for delinquent filers and non-filers, similar to the system used in connection with campaign finance reports. [Form 1 and Form 6]
- Require the Ethics Commission to review all Form 6 filings for basic sufficiency and completeness. Also, require the Commission to perform a random audit of Form 1 filings for the same purpose. [Form 1 and Form 6]

Gifts

- Establish a definite period during which a reporting individual may reimburse a donor for purposes of gift valuation and reporting requirements. Ideally, the deadline for reimbursement could be the last day of the quarter following acceptance of the gift.
- Extend the provisions of the gifts law to cover non-incumbents elected to office for the period immediately following election but prior to taking office.

Commission on Ethics/Witness Tampering

- Extend the state's witness tampering laws, ss. 914.21-914.24, F.S., to include Ethics Commission proceedings and investigations.

Inside Public Information/Former Officials

- Clarify that the current prohibition against a public officer's, employee's, or local government attorney's use of 'public inside information' for personal gain, s. 112.313(8), also applies to *former* public officers, employees, and local government attorneys.

Jurisdictional Ambiguity Concerning Legislators

- Clarify that the proper sanctioning authority in the case of a current state legislator who commits a violative act prior to joining the Legislature is vested with the house in which the legislator serves.

COMMITTEE(S) INVOLVED IN REPORT

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Florida Commission on Ethics

MEMBER OVERSIGHT

Senator Clary & Senator Dyer