

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Ethics and Elections Committee

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BILL: CS/SB 880

INTRODUCER: Ethics and Elections Committee and Senator Fasano

SUBJECT: Ethics/ Public Officers and Employees

DATE: April 18, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
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6.	_____	_____	_____	_____

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## I. Summary:

Committee Substitute for Senate Bill 880 is an ethics measure that brings quasi-public entity officers and employees under the regulation of Florida's ethics code. Some of the more significant provisions of the bill include:

- Expanding the definition of "Agency" to include quasi-public entities making quasi-public entity officers and employees subject to a majority of the same ethical standards and prohibitions to which agency officers and employees must currently adhere including the prohibition against doing business with one's own agency contained in section 112.313(3), F.S. and the conflict of interest prohibitions of section 112.313(7), F.S.
- Applying the two-year revolving door prohibition of section 112.313(9), F.S. to quasi-public entity officers and employees and providing an exemption for those officers and employees already in office or employed by July 1, 2006.
- Applying the penalty provisions of section 112.317 to quasi-public officers and employees, and giving the Florida Commission on Ethics the authority to investigate complaints filed pursuant to Chapter 112, F.S., against quasi-public officers and employees.
- Requiring Cabinet members to place all personal investments into either a publicly traded mutual fund or blind trust during their term of office and providing specific prohibitions regarding the acquisition and management of those interests while in office.

This CS takes effect July 1, 2006.

This CS substantially amends the following sections of the Florida Statutes: s. 112.312, s. 112.313, s. 112.317, and s. 112.324.

## II. Present Situation:

Currently, the Florida Ethics Code does not specifically regulate quasi-public entities as defined in Senate Bill 880. However, the Florida Ethics Code contains the following prohibitions:

- Section 112.313(3), F.S., currently prohibits agency employees and public officers from doing business with one's agency. This provision also prohibits a public officer or employee, acting in a private capacity, from renting, leasing, or selling any realty, goods, or services to the officer's or employee's own agency. An exception to this prohibition exists for a legislator's district office which is located on property owned by the legislator or in the legislator's place of business.
- Section 112.313(4), F.S., currently prohibits agency employees, public officers, local government attorneys and the spouses and minor children of such employees, officers, and attorneys from accepting compensation or anything of value when the employee, officer or attorney knows or should know that the compensation or thing of value was given to influence the official actions of said employee, officer, or attorney.
- Section 112.313(6), F.S., prohibits a public officer, agency employee, or local government attorney from using his or her official position or duties in order to provide a benefit for himself, herself, or others.
- Section 112.313(7), F.S., prohibits public officers and agency employees, with exceptions, from being employed by or having a contract with an agency or business that is involved in a business relationship with the agency to which the public officer or employee belongs. This statute also prohibits public officers and employees from having a job or a contract that would create a continual conflict of interest between the officer or employee's private interests and public duties or would impede the officer or employee's public duties.
- Section 112.313(8), F.S., prohibits public officers, agency employees, and local government attorneys from using inside information gained through public office or employment to benefit himself, herself, or any other person or entity.
- Section 112.313(9), F.S., commonly referred to as the two-year "revolving door" prohibition, prohibits legislative members, appointed state officers, and statewide elected officers from personally representing another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years after the individual vacates his or her office. Legislative members are also prohibited from representing another person or entity for compensation before any state agency during his or her term of office unless the representation is before a judicial tribunal or concerns the negotiation of a settlement after a lawsuit has been filed. This subsection also prohibits agency employees from representing for compensation another person or entity before the agency with which he or she was employed for a period of two years after the individual vacates his or her position.

### III. Effect of Proposed Changes:

#### Section 1.

- Amends section 112.312, F.S.; expands the definition of “Agency” to include the term “quasi-public entity.” The practical effect of this change subjects quasi-public entity officers and employees to a majority of the same ethical standards and prohibitions to which agency officers and employees must adhere including the prohibitions regarding the solicitation or acceptance of gifts under s. 112.313(2), F.S., the prohibition with doing business with one’s agency under s. 112.313(3), F.S., the prohibition against disclosure or use of certain information under 112.313(8), F.S., and the prohibition involving misuse of public position under 112.313(6), F.S.
- Expands the definition of “Corruptly” to apply to quasi-public servants and quasi-public duties.
- Defines the term “quasi-public entity” as an entity that has been created by a government entity pursuant to law to accomplish a public purpose and that is not a state or local government entity.

#### Section 2.

- Amends section 112.313(3), F.S.; expands the prohibition of preventing a public officer or employee, acting in a private capacity, from renting, leasing, or selling any realty, goods, or services to the officer’s or employee’s own agency to apply to quasi-public entity officers and employees.
- Amends section 112.313(7), F.S.; prohibits quasi-public entity officers and employees from having a job or a contract that would create a continual conflict of interest between the officer or employee’s private interests and duties for the quasi-public entity or would impede the officer or employee’s duties for the quasi-public entity.
- Amends section 112.313(9), F.S.; applies the two-year “revolving door” prohibition to quasi-public entity officers and employees whose duties are managerial, policymaking, or professional in nature. The CS applies an exemption to this provision for quasi-public entity officers and employees who are serving in office prior to July 1, 2006. However, this exemption would not apply to those officers who are reappointed on or after July 1, 2006.

Section 3. Amends section 112.317, F.S.; expands the penalty provisions of this section to make them applicable to quasi-public officers and employees and former quasi-public officers and employees whose violation occurred prior to leaving office or employment. The CS also expands the procedures applicable to persons who file complaints with malicious intent against public officers and employees to also include complaints filed with malicious intent against quasi-public officers and employees.

Section 4. Amends section 112.324(8)(d), F.S.; gives the Florida Commission on Ethics the authority to investigate complaints filed against the officers or employees of quasi-public entities and provides the commission with the authority to report its findings to the Governor, who may invoke the applicable penalty provisions of part III, chapter 112, F.S., with regard to quasi-public officers and employees.

Section 5. Creates a provision that requires Cabinet members to place all personal investments into a publicly traded mutual fund or blind trust during his or her term of office. This section provides that if a financial interest is acquired beyond the control of the member during his or her term of office and is prohibited by 112.313, F.S., the member must immediately sell the interest or place it in a blind trust. The proposed language prohibits members from attempting to exercise or influence the blind trust management and it prohibits members from being engaged in activity that involves their financial interests and violates s. 112.313, FS.

Section 6. Provides a severability clause for the CS.

Section 7. Provides that the effective date of the CS is July 1, 2006.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS does not provide a definition of “personal investment” in Section 5 of the bill and this term is not defined in section 112.312, F.S. Thus, the practical effect of this language would require Cabinet members to place all tangible as well as intangible personal investments in a publicly traded mutual fund or blind trust. This would require a member to divest all tangible personal investments and reinvest those investments in a publicly traded mutual fund or place them in a blind trust.

**C. Government Sector Impact:**

The proposed language in the CS will expand the duties of the Florida Commission on Ethics to include the investigation of any complaints filed regarding any alleged wrongdoing by quasi-public officers and employees.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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