

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1089

Local Government

**SPONSOR(S):** Kiar

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 252

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|    | <b>REFERENCE</b>  | <b>ACTION</b>    | <b>ANALYST</b> | <b>STAFF DIRECTOR</b> |
|----|---|------------------|----------------|-----------------------|
| 1) | Military & Local Affairs Policy Committee               | 14 Y, 0 N        | Nelson         | Hoagland              |
| 2) | Governmental Affairs Policy Committee                   | 10 Y, 0 N        | Haug           | Williamson            |
| 3) | Economic Development & Community Affairs Policy Council | 15 Y, 0 N        | Nelson         | Tinker                |
| 4) | Government Accountability Act Council                   | 11 Y, 1 N, As CS | Mitchell       | Hansen                |
| 5) |   |                  |                |                       |

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### SUMMARY ANALYSIS

HB 1089 amends Florida's Code of Ethics for Public Officers and Employees to provide that officers, directors and employees of a business entity serving as the chief administrative officer or employee of a political subdivision will be treated as public officers or employees for the purposes of:

- standards of conduct,
- limited financial disclosure, and
- gift and honoraria laws.

The bill also provides penalties for violations of the Code by these persons, to include: public censure and reprimand, a civil penalty of up to \$10,000, or restitution of pecuniary benefits paid to the political subdivision or the General Revenue Fund, and designates the Governor as their disciplinary official.

The bill does not have a fiscal impact.

The bill has an effective date of July 1, 2009.

The Florida Commission on Ethics' 2008 legislative package, represented by HB 1113, included numerous recommendations, including the provisions contained in HB 1089. HB 1113 passed the House by a 117-0 vote, but died in messages during the 2008 session.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### The Code of Ethics for Public Officers and Employees / Florida Commission on Ethics

The Code for Public Officers and Employees (Code), adopted by the Legislature as part III of ch. 112, F.S., contains standards of conduct and disclosures applicable to public officers, employees, candidates, lobbyists, and others in Florida state and local government.

The Florida Commission on Ethics (Commission), a nine-member board of political appointees, is responsible for rendering legally binding advisory opinions interpreting the ethics laws, implementing the State's financial disclosure laws, and issuing public reports on complaints on breaches of public trust.

Section 112.322(8), F.S., provides:

It shall be the further duty of the commission to submit to the Legislature from time to time a report of its work and recommendations for legislation deemed necessary to improve the code of ethics and its enforcement.

The Commission's 2008 legislative package, represented by HB 1113, included numerous recommendations, including the provisions contained in HB 1089. HB 1113 passed the House, but died in messages during the 2008 session.

##### Standards of Conduct

Section 112.313, F.S., provides standards of conduct for public officers, employees of agencies and local government attorneys. The Code prohibits specified conduct by these individuals, including:

- solicitation or acceptance of gifts;
- doing business with one's agency;
- unauthorized compensation;
- misuse of public position;
- conflicting employment or contractual relationships; and

- disclosure or use of certain information.

## 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 an annual basis.<sup>1</sup>

## Gifts

The Code includes laws relating to the acceptance or solicitation of gifts. According to the gift law, reporting individuals and procurement employees, as defined in the statute, are prohibited from soliciting gifts from political committees or 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 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 also cannot give 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>2</sup>

## Honoraria

The honoraria law prohibits reporting individuals and procurement employees from knowingly accepting an honorarium from a political committee or committee 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 also are prohibited from giving an honorarium to a reporting individual or a procurement employee.<sup>3</sup>

## Penalties

The Code contains penalty provisions 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.<sup>4</sup> If a complaint is filed alleging misconduct and the Commission finds that a violation has occurred, it reports its findings and may recommend disciplinary action to the official or body that holds the power to invoke the Code's penalty provisions.<sup>5</sup>

## Independent Contractors

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<sup>1</sup> Sections 112.3144 and 112.3145, F.S.

<sup>2</sup> Section 112.3148, F.S.

<sup>3</sup> Section 112.3149, F.S.

<sup>4</sup> Section 112.317, F.S.

<sup>5</sup> Section 112.324, F.S.

The Commission previously has opined that the Code does not apply to a person whose relationship with a governmental entity is as an “independent contractor,” rather than as a public officer or employee.<sup>6</sup>

### **Effect of Proposed Changes**

The bill creates s. 112.3136, F.S., in the Code to provide that officers, directors and employees of a business entity serving as the chief administrative officer or employee of a political subdivision will be treated as public officers or employees for purposes of:

- s. 112.313, F.S. (standards of conduct for public officers, agency employees, and local government attorneys);
- s. 112.3145, F.S. (limited financial disclosure);
- s. 112.3148, F.S. (reporting and prohibited receipt of gifts); and
- s. 112.3149, F.S. (solicitation and disclosure of honoraria).

Thus, the bill extends these provisions of the Code to individuals who serve local governments in specified capacities through contractual relationships with business entities.

The bill also amends s. 112.317, F.S., to include penalties for violations by these persons, to include one or more of the following:

- public censure and reprimand,
- a civil penalty of up to \$10,000, or
- restitution of pecuniary benefits paid to the political subdivision or the General Revenue Fund.

It also amends 112.324, F.S., to make the Governor their disciplinary official.

The bill is effective July 1, 2009.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 112.3136, F.S., relating to standards of conduct for officers and employees of entities serving as the chief administrative officer of a political subdivision.

**Section 2:** Amends s. 112.317, F.S., relating to penalties.

**Section 3:** Amends s. 112.324, F.S., relating to procedures on complaints of violations.

**Section 4:** Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

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<sup>6</sup> See, CEO 81-61.

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear; to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

At its April 2, 2009, meeting, the Government Accountability Act Council adopted a technical amendment that makes two terms in the bill consistent with current references in the Code. The amendment also matches up the bill with the Senate bill. Specifically, the amendment changes the term "local officers" to "a local officer," and "reporting individuals" to "a reporting individual."