

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: PCS/SB 902

INTRODUCER: Ethics and Elections Committee and Senator Alexander

SUBJECT: Governance

DATE: April 20, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Pre-meeting
2.			WPSC	
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill is an omnibus bill dealing with responsible government. It incorporates the current version of Senate Bills 1980, 1706, 734, and 1076 dealing with public corruption and government contracting, and adds a provision regarding Florida Elections Commission procedures.

Major provisions of the bill include:

- Authorizing the Elections Commission to consider and determine the issue of ‘willfulness’ in an informal hearing *any time after probable cause is found*, upon request.
- Allowing a county to enact criminal ordinances imposing standards of conduct and disclosure requirements punishable by a fine of up to \$1,000 or up to 1 year in jail.
- Enhancing the authority of the Legislature over agency contracting that affects the state budget; prohibiting agencies, with exceptions, from obligating the state through certain types of contractual clauses, and requiring advance notice to the Governor and Legislature before entering certain high-value or no-cost contracts; specifying contractual language addressing the state’s ability to terminate contracts, which must be included in all executive and judicial contracts, and creating misdemeanor penalties for agency employees who willfully violate these provisions; requiring that acceptance or rejection of contract deliverables be in writing, and prohibiting agencies from entering into lease or deferred payment purchases of greater than \$500,000 without legislative approval; requiring agency heads, their equivalents, or designated senior management staff to sign contracts worth more than \$25,000, and to certify compliance with applicable contracting provisions for all contracts with terms of greater than 12 months.

- Re-classifying most felony criminal offenses committed by one who is acting or purporting to act in the performance of official duties up one degree of severity, *unless* acting or purporting to act in the performance of official duties is a necessary element of the *underlying* crime; for purposes of the Criminal Punishment Code in Chapter 921, re-designating such offenses one level above their current ranking by the bill.
- Making it a third degree felony under the Official Misconduct statute for a public servant with corrupt intent to participate in a matter within the public servant's duties, and in furtherance of the corrupt intent, willfully fail to make a financial disclosure that is required by state law, *provided* the amount at of the undisclosed financial interest or benefit or private gain or loss is valued at \$10K or more; otherwise, the violation is punishable as a first degree misdemeanor; for purposes of the Criminal Punishment Code in Chapter 921, re-designating the felony offense of Official Misconduct from a Level 4 to a Level 5 offense.

The bill takes effect July 1, 2010.

This bill substantially amends, creates, or transfers the following sections of the Florida Statutes: 106.25, 125.69, 216.011, 216.023, 216.311, 216.312, 216.313, 287.0582, 287.063, 287.064, 376.3075, 403.1837, 775.0876, 838.022, and 921.0022.

II. Present Situation:

The bill combines, with a few amendments, the sum and substance of the current version of the following Senate Bills: 1980, 1706, 734, and 1076. It also amends section 106.25(3), relating to determinations of "willfulness" by the Florida Elections Commission.

Section 106.25(3), F.S. – Elections Commission

Section 106.25(3), F.S., currently provides that a respondent may request that the Commission conduct an informal hearing to consider and determine whether the respondent acted "willfully," but there is some debate as to whether a respondent can make the request after a case has been sent to the Division of Administrative Hearings ("DOAH").

SB 1980 – County Ethics Ordinances

The Florida Constitution specifically provides for four types of local governments: counties, municipalities, school districts, and special districts. The 67 counties are subdivisions of the state, and provide a variety of core services through constitutional officers (county commissioners, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the court) pursuant to authority granted in the constitution and consistent with general law.¹ The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.² Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the

¹ Art. VIII, § 1, Fla. Const.

² Art. VIII, § 1(f), Fla. Const.

electors.³ Each county ordinance is required to be filed with the Secretary of State and becomes effective at such time as provided by law.⁴ The Florida Constitution further provides that persons violating county ordinances shall be prosecuted and punished as provided by law.⁵

Counties⁶ also have statutory authority to enact ordinances. Section 125.69, F.S., states that violations of county ordinances are to be prosecuted in the same manner as misdemeanors. Such violations must be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney of the state and on conviction will be punished by a fine not to exceed \$500 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment. However, a county may specify, by ordinance, a violation of a county ordinance which is punishable by a fine in an amount exceeding \$500, but not exceeding \$2,000 per day, if the county must have authority to punish a violation of that ordinance by a fine in an amount greater than \$500 in order for the county to carry out a federally mandated program.

Section 112.326, F.S., makes it clear that the statutory standards proscribing ethics for public officers and employees do not prohibit the governing body of any political subdivision, by ordinance, or agency, by rule, from imposing on its own officers and employees additional or more stringent standards of conduct and disclosure requirements as long as they do not conflict with the statutory provisions.

CS/SB 1706 – State Financial Matters

Planning and Budgeting

Chapter 216 of the Florida Statutes, relating to planning and budgeting, provides guidelines to the Governor, the judicial branch, and state agencies for developing and submitting legislative budget requests and administering legislative appropriations.

Pursuant to s. 216.011(1)(qq), F.S., a “state agency” or “agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of Chapters 215 and 216, F.S., “state agency” or “agency” includes state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms “state agency” or “agency” include the judicial branch.

Section 216.177, F.S., requires agencies to give the Legislature certain notice of budget actions. If the presiding officers or the chair and vice chair of the Legislative Budget Commission find that the agency action is contrary to legislative intent and policy or exceeds delegated authority, those persons may object to the action – requiring the Governor to void the action until the Commission or the Legislature addresses the issue.

³ Art. VIII, § 1(g), Fla. Const.

⁴ Art. VIII, § 1(i), Fla. Const.

⁵ Art. VIII, § 1(j), Fla. Const.

⁶ Sections 125.66 to 125.69, F.S.

Section 216.311, F.S., provides that no agency or branch of state government may contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated to such agency or branch unless specifically authorized by law. Any contract or agreement in violation of this provision is null and void, and anyone who willfully violates the provision is guilty of a first degree misdemeanor.

Procurement

Chapter 287, F.S., specifies the requirements for agency procurement of commodities and services.

Section 287.017, F.S., specifies the purchasing categories, which are thresholds linked to other requirements in Chapter 287, F.S., as follows:

- Category One \$15,000
- Category Two \$25,000
- Category Three \$50,000
- Category Four \$150,000
- Category Five \$250,000

Section 287.0582, F.S., denotes the annual appropriation contingency statement that must be included in any contract lasting longer than one fiscal year for the purchase of a service or tangible personal property: “The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.”

Section 287.063, F.S., specifies the preaudit review and approval process required for deferred-payment commodity contracts. The section establishes a maximum interest rate, and prohibits appropriated funds from being used to acquire equipment through a lease or deferred-payment purchase arrangement, unless it is approved by the Chief Financial Officer as economically prudent and cost-effective. The CFO is required to adopt rules relating to the approval process. For purposes of this section, deferred-payment commodity contracts for replacing the state accounting and cash management systems may include equipment, accounting software, and implementation and project management services.

Section 287.064, F.S., specifies the requirements for consolidated financing of deferred-payment purchases. Among other provisions, the section provides that deferred-payment commodity contracts for replacing the state accounting and cash management systems may include equipment, accounting software, and implementation and project management services.

CS/SB 734 – Enhanced Criminal Penalties for Public Corruption

The Palm Beach County Grand Jury was convened to consider matters of public corruption in both 2009 and 2010. Several recommendations of the Grand Jury focused on the need for more and better criminal statutes at the state level to help combat misconduct and unlawful acts by public officials.

The Grand Jury specifically recommended that the Legislature pass a sentencing enhancement for crimes committed “under color of law.”

Enhancements for the purpose of charging and penalizing crimes generally occur by reclassifying a criminal act to a higher level of offense if certain facts apply. For example, what amounts to a simple first-degree misdemeanor battery can be reclassified and charged as battery upon a person 65 years of age or older at the third-degree felony level. The prosecutor must prove not only the elements of the battery offense but the additional element of the age of the victim at the time of the offense. Other enhancements occur when a defendant has been convicted of a particular crime and is subsequently convicted of committing the same crime. For example, a person who has a prior conviction for simple (misdemeanor) battery and who commits a second or subsequent simple battery commits a third degree felony battery for charging and sentencing purposes. In that case, the prosecutor would have to prove the elements of the (second or subsequent) simple battery and then show that the prior conviction for battery exists.

The 10-20-Life statute (s. 775.087(2)(a), F.S.) allows for enhancement of the penalty if a firearm is possessed or used in the commission of certain crimes. The jury must make the finding that the defendant possessed or used the firearm while committing the crime *either* by finding him guilty of a crime that involves a firearm *or* by answering a specific question on the verdict form so indicating.⁷ The 10-20-Life statute requires reclassification of felonies committed with a firearm to a higher degree where the use of a firearm is not an essential element of the underlying offense.⁸

The Florida Criminal Code generally classifies felonies as criminal offenses punishable by more than one year of incarceration in a state correctional institution.⁹ Felonies are further classified as:

- Capital: punishable by death or life imprisonment without parole.
- Life: for most offenses, punishable by life imprisonment, and a fine of up to \$15,000.
- 1st Degree: punishable by imprisonment for a term not exceeding 30 years, or when specified by statute not exceeding life imprisonment, and a fine of up to \$10,000.
- 2nd Degree: punishable by imprisonment not exceeding 15 years, and a fine of up to \$10,000.
- 3rd Degree: punishable by imprisonment not exceeding 5 years, and a fine of up to \$5,000.

The Criminal Punishment Code applies to all but capital felonies, and contains an offense severity ranking chart that designates offenses into certain “levels” from 1 to 10 based on severity, that are then used to determine the lowest permissible sentence for a particular offense.

There are currently no enhanced criminal classifications or felony sentencing penalties for criminal acts committed “under color of law,” that is, for wrongful conduct based on public

⁷ *Dallas v. State*, 898 So.2d 163 (Fla. 4th DCA 2005).

⁸ *Id.*

⁹ s. 775.08, F.S.

authority or position or the assertion of such that does not form an element of the underlying crime.

CS/SB 1076 – Official Misconduct

Palm Beach County Grand Jury Presentment

The Palm Beach County Grand Jury convened in 2009 and 2010 for the purpose of reviewing local public corruption and possibly identifying measures that could be taken to shore up the public trust in government. Out of the investigations came suggestions for the Legislature to enhance current state laws aimed at deterring public corruption. Among those suggestions was the passage of the “Restoring Faith in Public Office Act” aimed at public servants who, with corrupt intent, willfully fail to make required financial disclosures.

Official Misconduct

Section 838.022, F.S., the official misconduct statute, currently makes it a third degree felony for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to engage in certain forms of misconduct related to the handling of official public records or documents or to interfere with communications regarding the commission of a felony involving the servant’s public agency or entity.

The term “with corrupt intent” is defined as “acting knowingly and dishonestly for a wrongful purpose.”¹⁰ There is currently no disclosure component to the official misconduct statute.

Ethical Conduct Laws for 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.¹¹ The code prohibits agency employees and public officers from doing business with one’s own agency.¹² 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.¹³ 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.”¹⁴ With certain exceptions, 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

¹⁰ s. 838.014(4), F.S.

¹¹ s. 112.313(2), F.S.

¹² s. 112.313(3), F.S.

¹³ s. 112.313(4), F.S.

¹⁴ s. 112.313(6), F.S.

private interest and public duty or that obstructs the performance of a public duty.¹⁵ 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.¹⁶ 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.¹⁷

Voting When a Conflict Exists

State public officers are not prohibited from voting on any issue presented before them in their official capacity. However, if the issue upon which a vote is being taken would provide a special private gain or loss to the officer, or if the officer knows it would provide a special private gain or loss to the officer's principal, relative, or business associate, the public officer must disclose the nature of his or her interest in a public, written memorandum, which must be filed within 15 days after the vote occurs on the issue and incorporated into the meeting minutes.¹⁸

Local public officers are prohibited from voting in their official capacity on an issue that would provide a special private gain or loss to the public officer, or that the public officer knows would provide a special private gain or loss to the officer's principal (except an agency as defined in s. 112.312(2), F.S.), relative, or business associate. Prior to the vote, the public officer must publicly inform the group about the reason for his or her vote abstention, and has 15 days after the vote to file a written memorandum that discloses the nature of his or her interest. This memorandum is public and must be incorporated into the minutes of the meeting.¹⁹ An exception to this particular voting prohibition exists for community redevelopment agency commissioners and independent special tax district officers elected on a one-acre, one-vote basis.²⁰

Participating When a Conflict Exists

Appointed public officers are prohibited from participating in any issue that would provide a special private gain or loss to the officer, or that the officer knows would provide a special private gain or loss to the officer's principal, business associate, or relative unless the officer discloses his or her interest prior to participation. The officer must disclose his or her interest in a public, written memorandum prior to the meeting at which discussion of the issue will take place. The disclosure must be filed prior to the meeting with the meeting's record keeper and incorporated into the minutes. The disclosure must be distributed to members immediately upon filing and read publicly at the next meeting. If the disclosure is not made or the conflict is not known prior to the meeting, the disclosure must be made orally at the meeting when it is known to exist. A public, written memorandum must then be filed stating the disclosure within 15 days after oral disclosure was made, and the disclosure shall be incorporated into the minutes. The disclosure must be distributed to members immediately upon filing and read publicly at the next meeting.²¹

¹⁵ s. 112.313(7), F.S.

¹⁶ s. 112.313(8), F.S.

¹⁷ s. 112.313(10), F.S.

¹⁸ s. 112.3143(2), F.S.

¹⁹ s. 112.3143(3)(a), F.S.

²⁰ s. 112.3143(3)(b), F.S.

²¹ s. 112.3143(4), F.S.

Penalties

The Code of Ethics provides 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.²² 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.²³

III. Effect of Proposed Changes:

The act takes effect July 1, 2010. The specific changes are as follows:

Section 106.25(3), F.S. – Florida Elections Commission

Section 1 authorizes the Elections Commission, at the request of a respondent, to consider and determine the issue of ‘willfulness’ in an informal hearing *any time after probable cause is found*, including after a case has been sent to DOAH.

SB 1980 – County Ethics Ordinances

Section 2 amends s. 125.69, F.S., to specifically authorize any county to enact ordinances imposing standards of conduct and disclosure requirements for the county's officers and employees punishable by a fine of up to \$1,000 or a term of imprisonment in the county jail not to exceed 1 year.

CS/SB 1706 – State Financial Matters

Section 3 amends s. 216.011, F.S., to provide a definition of a new appropriations category “lease or lease/purchase of equipment”.

Section 4 amends s. 216.023, F.S., to require each state agency to provide in its legislative budget request specific information regarding contracts granting concessions to other parties.

Section 5 amends s. 216.311, F.S., by providing that for ss. 216.311- 216.313, F.S., “contracts” and “agreements” include all related amendments, renewals, and extensions, and by specifying

²² s. 112.317, F.S.

²³ s. 112.324, F.S.

additional types of contracts that may not be entered into by an agency or branch of state government.

Pursuant to s. 216.311(1), F.S., an agency or branch of state government may not enter into a contract that:

- Requires the state to pay liquidated damages or early termination fees resulting from a breach or early termination of the contract based on a legislative action to provide less than full funding of a contract.
- Requires the state to pay interest, other than interest paid under the prompt pay law, to another party because the agency or branch has insufficient budget authority to pay the underlying obligation of the contract or agreement in the current year.
- Binds the state to make future-year payments to offset payments not made in a prior year due to the insufficiency of current-year appropriations, unless the Legislature expressly authorizes the agency or branch to enter into such contract or agreement.
- Grants any party the right to collect and retain fees or revenues from persons or entities not party to the contract, unless the agency is specifically authorized by law to enter into such contracts.

The limitations of s. 216.311(1), F.S., will not apply to:

- The Department of Transportation, when, the department enters into a contract necessary to implement a project contained in the adopted work program or a public-private partnership.
- The Department of Transportation, when, in order to spend funds appropriated for the approved 5-year work program, it enters into contracts that require liquidated damages clauses.
- The Department of Management Services, when, in order to administer the state group insurance program, it enters into contracts that permit providers and insurers to collect premiums and copayments from participants in the group insurance program.
- The Agency for Health Care Administration, when, in order to administer the state Medicaid plan and Florida Healthy Kids program, it enters into contracts that permit providers to collect premiums and copayments.
- The Department of Environmental Protection, when, in order to administer the state parks system, it enters into contracts that require the payment of liquidated damages or early termination fees if the vendor has made significant capital improvements to state property and the costs of such improvements are amortized over no more than a 3 year period.

The bill provides that an agency may not enter into a lease or lease purchase for tangible personal property for more than \$500,000, or a term of greater than one fiscal year, unless the lease or agreement is expressly authorized by the Legislature or the Legislative Budget Commission has approved a transfer of budget authority to the lease or lease/purchase of equipment appropriations category. This provision will not apply to the State Board of Administration's investment duties.

Any contract or agreement in violation of these provisions is null and void, and a public officer or employee who willfully enters into a contract in violation of these provisions commits a first degree misdemeanor.

Section 6 creates s. 216.312, F.S., relating to the reporting of contract expenditures. The bill requires notification of the terms and conditions of a contract to the Governor, the President of the Senate, and the Speaker of the House of Representatives 30 days before an executive or judicial branch officer or employee enters into the following types of contracts:

- A contract or agreement which requires payments by the state in excess of \$10 million in any fiscal or calendar year.
- A contract or agreement which requires minimal or no payments by the state, or authorizes the other party to make expenditures in anticipation of revenues.
- A contract or agreement which requires initial expenditures by the other party and for which the other party will not receive payment from the state within 180 days after the expenditure.

The bill specifies that execution of any contract or agreement described in this section is an action or proposed action that is subject to the provisions of s. 216.177(2)(b), F.S.

Section 7 transfers s. 287.0582, F.S., to s. 216.313, F.S., and amends it to provide that an executive or judicial branch officer or employee may not enter into a contract for the purchase of services or tangible personal property unless the contract identifies the specific appropriation from which payment in the first year of the contract will be made, or unless the Legislature expressly authorizes entering into such a contract without a specific appropriation of funds.

The bill also requires that executive and judicial branch contracts contain specified statements that:

- The state's performance and obligation to pay under the contract is contingent upon an annual appropriation by the Legislature.
- The contract may be terminated by the state upon 10 days' written notice if funding for the contract is specifically eliminated pursuant to:
 - A deficit reduction plan implemented by the Governor or the Chief Justice or by an act of the Legislature after certification pursuant to section 216.221, F.S., that a deficit will occur in the General Revenue Fund; or
 - A deficit reduction plan implemented by the Governor or Chief Justice pursuant to section 216.221(10), F.S., or by an act of the Legislature, after a determination by the Chief Financial Officer that a deficit will occur with respect to the appropriations from a specific trust fund in the current fiscal year.

The bill provides that a contract that exceeds \$25,000²⁴ must be signed by the agency head, executive director, or chief judge, as appropriate, or a designated senior management employee, and a contract that exceeds 12 months may not be executed unless an agency head, executive director, or chief judge or a designated senior management employee determines that the contract is in compliance with Chapter 216, F.S., and certifies such compliance in writing in the contract. A contract that exceeds \$250,000²⁵ must require the written acceptance or rejection of contract deliverables.

Contracts in violation of s. 216.313, F.S., are null and void, and any officer or employee who willfully enters into a contract in violation of this section commits a first degree misdemeanor.

²⁴ Category Two from the purchasing categories in s. 287.017(1), F.S.

²⁵ Category Five from the purchasing categories in s. 287.017(1), F.S.

Sections 8 and 9 amend ss. 287.063 and 287.064, F.S., to prohibit an agency from entering into a lease or deferred payment purchase for the acquisition of equipment, or a master equipment financing agreement, costing greater than \$500,000, unless the Legislature has expressly authorized such an agreement in the General Appropriations Act or the Legislative Budget Commission has approved a transfer of budget authority to the appropriations category for deferred payment commodity contracts. The bill also deletes provisions that allow deferred payment commodity contracts for replacing the state accounting and cash management systems to include equipment, accounting software, and implementation and project management services.

Sections 10 and 11 amend ss. 376.3075 and 403.1837, F.S., to correct cross references and make technical changes.

Section 12 provides that the law applies to all initial contracts, amendments to contracts, and extensions or renewals of contracts which are executed on or after July 1, 2010.

CS/SB 734 - Enhanced Criminal Penalties for Public Corruption

Section 13 reclassifies most felony criminal offenses committed by one who is acting or purporting to act in the performance of official duties up one degree of severity, *unless* acting or purporting to act in the performance of official duties is a necessary element of the *underlying* crime.

Specifically, the section provides for the reclassification when a felony offense is furthered or facilitated by a person acting or purporting to act in the performance of his or her official duties under any law, ordinance, or regulation.

So, for example, violating the law by committing the offense of official misconduct in s. 838.022, F.S., which necessarily requires proof of corrupt conduct by a “public servant” in the performance of certain public duties, would not result in a reclassification while a public employee who uses his or her public position to aid or abet someone in the commission of Medicaid provider fraud in violation of s. 409.920, F.S., would be reclassified.

The reclassification scheme provided in the bill is as follows:

- 3rd degree felony becomes a 2nd degree felony
- 2nd degree felony becomes a 1st degree felony
- 1st degree felony becomes a life felony

For purposes of the Criminal Punishment Code in Chapter 921, such reclassified offenses are designated one level above their current ranking by the bill.

CS/SB 1076 – Official Misconduct

Sections 14 and 15 make it a third degree felony for a public servant with corrupt intent to participate in a matter within the public servant’s duties, and in furtherance of the corrupt intent,

willfully fail to make a financial disclosure that is required by state law, *provided* the amount at of the undisclosed financial interest or benefit or private gain or loss is valued at \$10K or more; otherwise, the violation is punishable as a first degree misdemeanor. This third degree felony act is re-designated, along with other third degree felonies pursuant to the official misconduct statute, from a Level 4 to a Level 5 offense under the Criminal Punishment Code.

The section defines the term “participate” as voting, deciding, advocating, opposing, or attempting to influence the decision or result by oral or written communication, whether made by the public servant or at the servant’s direction.

This section of the bill defines the term “financial disclosure” as any disclosure relating to financial interests, foreseeable financial benefits, or special private gain or loss to the public servant or the public servant’s relatives. The bill specifically states that the term “relative” has the same meaning as defined in s. 112.3143(1), F.S. “Relative” is defined in s. 112.3143(1), F.S., as “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.”

A “public servant” is defined in section 838.014(6), F.S., as:

any officer or employee of a state, county, municipal, or special district agency or entity, or any legislative or judicial officer or employee, or any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a government function.

A candidate is specifically excluded from the definition of “public servant” as used in s. 838.022, F.S., if that candidate does not otherwise qualify as a public servant as defined above.²⁶

A third degree felony is punishable by a term of imprisonment not to exceed five years,²⁷ and a fine not to exceed \$5,000.²⁸ However, if the person is a habitual felony offender, a third degree felony is punishable by a term of imprisonment not to exceed 10 years.²⁹ In addition, a public officer convicted of a felony is deemed to have vacated his or her office.³⁰

A first degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year,³¹ and a fine not to exceed \$1,000.³²

Section 16 makes the bill effective July 1, 2010.

²⁶ s. 838.022(2)(a), F.S.

²⁷ s. 775.082(3)(d), F.S.

²⁸ s. 775.083(1)(c), F.S.

²⁹ s. 775.084(4)(a)3., F.S.

³⁰ Art. VI, s. 4(a), FLA CONST.; s. 114.01(1)(j), F.S.

³¹ s. 775.082(4)(a), F.S.

³² s. 775.083(1)(d), F.S.

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:

Section 106.25(3), F.S. – Florida Elections Commission

Allowing the Commission to proceed with willfulness determinations in informal hearings after a probable cause determination is made may result in more costs for such hearings. The precise fiscal impact is likely to be insignificant.

SB 1980 – County Ethics Ordinances

A county enacting an ordinance under this provision may generate revenues through additional fines. Conversely, the county may lose money by imprisoning violators.

CS/SB 1706 – State Financial Matters

It is unclear whether prohibiting contracts with liquidated damages clauses may act to discourage vendors from doing business with the state, or cause vendors to increase their pricing in order to account for any perceived increases in their risk.

Though the bill creates new misdemeanor offenses, it is not expected to have a prison bed impact. The bill has not been reviewed by the Criminal Justice Impact Conference.

CS/SB 734 – Enhanced Criminal Penalties for Public Corruption

The Criminal Justice Impact Conference reviewed this bill on February 23, 2010, and found its impact to be indeterminate.

CS/SB 1076 – Official Misconduct

The Criminal Justice Impact Conference (CJIC) reviewed SB 1076 on February 23, 2010, and determined the fiscal impact to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:**CS/SB 1706 – State Financial Matters**

Section 255.25(3)(e), F.S., allows an agency to reimburse a landlord for tenant improvements, if the agency terminates the lease before expiration. The new section 216.311(2)(b), F.S., appears to prohibit this kind of payment, and it is unclear whether the “specifically authorized by law” language in s. 216.311(2)(a), F.S., would permit it.

Section 216.312(2), F.S., does not define “minimal” payments, which could lead to differing interpretations.

Section 216.313(3)(a), F.S., is also partially duplicative of a requirement contained in s. 287.058(2), F.S., that agency heads sign contracts with value of greater than \$25,000. Read broadly, this provision may require an agency head to sign purchase orders.

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.