

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: CS/SB 1076

INTRODUCER: Ethics and Elections Committee, Senators Gelber, Rich and others

SUBJECT: Official misconduct; standards of conduct

DATE: April 8, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	JU	_____
4.	_____	_____	WPSC	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

Committee Substitute for Senate Bill 1076 makes it a third degree felony for a public servant with corrupt intent to participate or abstain 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 or county or local ordinance regarding the matter at issue. However, if the amount of the undisclosed financial interest, benefit, or private gain or loss is valued at \$10,000 or more, the public servant commits a second degree felony.

Committee Substitute for Senate Bill 1076 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.

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."

The bill takes effect July 1, 2010.

This bill substantially amends sections 838.022 and 921.0022 of the Florida Statutes.

II. Present Situation:

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."¹ 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.² The code prohibits agency employees and public officers from doing business with one's own agency.³ 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.⁴ 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."⁵ 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 private interest and public duty or that obstructs the performance of a public duty.⁶ 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.⁷ State agency employees along with employees of a county, municipality, special

¹ § 838.014(4), F.S.

² § 112.313(2), F.S.

³ § 112.313(3), F.S.

⁴ § 112.313(4), F.S.

⁵ § 112.313(6), F.S.

⁶ § 112.313(7), F.S.

⁷ § 112.313(8), F.S.

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.⁸

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 the officer knows 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.⁹

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.¹⁰ 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.¹¹

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.¹²

Financial Disclosure

In Florida, all elected constitutional officers and candidates for such offices are required to file full financial disclosure with the Florida Commission on Ethics.¹³ In addition, "local officers," "specified state employees," and "state officers," as defined by statute, are required to file

⁸ § 112.313(10), F.S.

⁹ § 112.3143(2), Florida Statutes.

¹⁰ § 112.3143(3)(a), Florida Statutes.

¹¹ § 112.3143(3)(b), Florida Statutes.

¹² § 112.3143(4), Florida Statutes.

¹³ Art. II, s. 8, Fla. Const.; § 112.3144, F.S.

limited disclosure.¹⁴ 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 members.

Persons filing Form 1 limited financial disclosure must report certain items, such as liabilities, secondary sources of income, and intangible assets, based on percentage calculations or actual dollar values. Form 6 full financial disclosure filers must provide even more financial information, including certain assets and liabilities exceeding \$1,000.

Gift and Honoraria

The Code of Ethics includes laws relating to the acceptance or solicitation of gifts and honoraria. Reports are required for persons regulated by the gift law who make gifts with a value between \$25 and \$100. The report must be filed each calendar quarter for the previous calendar quarter in which the gift was made. The gift law sets forth the specific content and filing requirements for the report.¹⁵ In addition to the reporting requirements regarding gifts within a specific monetary value range, reporting individuals and procurement employees, as defined in the statute, are prohibited from soliciting gifts from political committees, 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 listed previously 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 listed previously are also prohibited from giving a reporting individual, procurement employee, or anyone on their behalf a gift valued at more than \$100, unless the gift is for a charity or governmental entity.¹⁶

With regard to the honoraria law and its reporting requirements, reporting individuals and procurement employees are prohibited from knowingly accepting an honorarium from political committees, committees 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 are also prohibited from giving an honorarium to a reporting individual or a procurement employee.¹⁷

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

¹⁴ § 112.3145, F.S.

¹⁵ § 112.3148(6), F.S.

¹⁶ § 112.3148, F.S.

¹⁷ § 112.3149, F.S.

reprimand, a civil penalty of up to \$10,000, or restitution.¹⁸ 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.¹⁹

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1076 provides a short title naming the language in the bill the "Restoring Faith in Public Office Act." Committee Substitute for SB 1076 makes it a third degree felony for a public servant with corrupt intent to participate or abstain 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 or county or local ordinance regarding the matter at issue. However, if the amount of the undisclosed financial interest, benefit, or private gain or loss is valued at \$10,000 or more, the public servant commits a second degree felony.

Committee Substitute for Senate Bill 1076 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.

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 section 838.022, F.S., if that candidate does not otherwise qualify as a public servant as defined above.²⁰

A third degree felony is punishable by a term of imprisonment not to exceed five years,²¹ and a fine not to exceed \$5,000.²² 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.²³

¹⁸ § 112.317, F.S.

¹⁹ § 112.324, F.S.

²⁰ § 838.022(2)(a), F.S.

²¹ § 775.082(3)(d), F.S.

A second degree felony is punishable by a term of imprisonment not to exceed fifteen years,²⁴ and fine not to exceed \$10,000.²⁵ However, if the person is a habitual felony offender, a second degree felony is punishable by a prison term not to exceed thirty years.²⁶

In addition to criminalizing local ordinances that require disclosure of a financial interest, benefit, or private gain or loss, the language of the bill criminalizes portions of chapter 112, F.S., such as the financial disclosure requirements of ss. 112.3144 and 112.3145, F.S., the gift and honoraria reporting requirements of ss. 112.3148 and 112.3149, F.S., and the voting conflicts disclosure requirements of s. 112.3143, F.S. These requirements are duties of a public servant and are disclosures that relate to a financial interest, benefit, or a special private gain or loss.

Committee Substitute for Senate Bill 1076 takes effect July 1, 2010.

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:

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

²² § 775.083(1)(c), F.S.

²³ § 775.084(4)(a)3., F.S.

²⁴ § 775.082(3)(c), F.S.

²⁵ § 775.083(1)(b), F.S.

²⁶ § 775.084(4)(a)2., F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Elections Committee on April 12, 2010:

Committee Substitute for SB 1076 makes it a third degree felony for a public servant with corrupt intent to participate or abstain 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 or county or local ordinance regarding the matter at issue. However, if the amount of the undisclosed financial interest, benefit, or private gain or loss is valued at \$10,000 or more, the public servant commits a second degree felony.

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- B. **Amendments:**

None.