Ethics & Elections Committee

Wednesday, January 25, 2006
1:00 PM – 2:30 PM
306 HOB

Allan G. Bense
Speaker

Ronald Reagan
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Ethics & Elections Committee

Start Date and Time:	Wednesday, January 25, 2006 01:00 pm
End Date and Time:	Wednesday, January 25, 2006 02:30 pm
Location:	306 HOB
Duration:	1.50 hrs

Consideration of the following bill(s):

HB 125 Voter Registration by Evers
HB 435 Code of Ethics for Public Officers and Employees by Ross
HB 493 Ethics for Public Officers and Employees by Ryan

NOTICE FINALIZED on 01/13/2006 09:31 by Morgan.Alyssa

HB 125

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 125 Voter Registration
SPONSOR(S): Evers and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee		West	Mitchell
2) Agriculture & Environment Appropriations Committee			
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

HB 125 would require commercial subagents of the Fish and Wildlife Conservation Commission (FWCC) that sell resident hunting, fishing, or combination licenses or trapping permits to offer voter registration forms to those purchasing a license or permit. Subagents who fail to provide voter registration forms face a civil penalty of $500 for the first infraction, $1,000 for the second and $2,500 for each infraction thereafter.

County supervisors of elections would be responsible for identifying and sending the appropriate number of voter registration forms to the subagents. Supervisors who fail to send the registration forms face fines that are similar to those imposed on subagents.

HB 125 is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty

This bill would require private company employees to distribute voter registration forms or face civil penalties. Because of personal belief, some individuals, may not want to be involved in voter registration activities.

B. EFFECT OF PROPOSED CHANGES:

HB 125 enhances the opportunities of Florida residents to register to vote and keep their registration current.

It is unclear how the definition of "third party voter registration organization" in s. 97.027(36), F.S., will be applied to FWCC subagents.

> *(36) "Third-party registration organization" means any person, entity, or organization soliciting or collecting voter registration applications. A third-party voter registration organization does not include:*
> *(a) A political party;*
> *(b) A person who seeks only to register to vote or collect voter registration applications from that person's spouse, child, or parent; or*
> *(c) A person engaged in registering to vote or collecting voter registration applications as an employee or agent of the division, supervisor of elections, Department of Highway Safety and Motor Vehicles, or a voter registration agency.*

If a subagent is considered a "third party voter registration organization," then it will be subject to the rules and penalties described in s. 97.0575, F.S., including:

- naming a registered agent to be filed with the Division of Elections;
- listing officers and people responsible for day to day operations;
- filing each quarter where they have conducted voter registration; and
- the imposition of fines on all officers of the company and persons collecting registrations ranging from $500-$5,000, plus applicable criminal penalties, if a registration is not delivered to the supervisor within ten days.

If FWCC subagents were added to the definition of a "voter registration agency" under s. 97.021(40)[1], F.S., the following would be required of them:

- acceptance of voter registrations from each license applicant (ss. 97.053, 97.058(1), F.S.);
- the date for a valid initial voter registration application is the date the application is received by the subagent (s. 97.053, F.S.);
- development of a form that each applicant will answer in regard to voter registration (s. 97.058(2) F.S.);

[1] Section 97.021(40), F.S., defines "voter registration agency" as "any office that provides public assistance, any office that serves persons with disabilities, any center for independent living, or any public library."

- forwarding completed registrations to the applicable supervisor within 5 days (s. 97.058(6), F.S.);
- retention of any declinations to register for 2 years (s. 97.058(8), F.S.);
- no showing of political preference when registering persons (s. 97.058(8), F.S.); and
- oversight by the FWCC of the conduct of subagents in regard to voter registration (s. 97.058(10), F.S.).

The Department of State (Department) raised the following concerns with HB 125:

- **Regulations/compliance:** The Department is concerned that FWCC subagents would not be bound by the regulations governing the Department of State, the supervisors of elections, voter registration agencies, or third-party voter registration organizations. They are especially concerned that the subagents would not be regulated in regards to promoting undue political influence and turning in voter registration timely.

- **Notice:** The bill contains no mechanism for supervisors of elections to receive an initial list or updates of subagents so that they can provide these subagents with voter registration applications.

- **Responsibilities**: FWCC subagents will be responsible for giving certain persons an "opportunity to register to update a voter registration record." This would cause problems with persons not buying a license and receiving a voter registration, potentially making the subagent a "third-party voter registration organization." The bill is unclear as to whether the subagent will simply hand out registration forms or also be required to receive completed forms and forward them to the supervisors. The subagents are not given a timeline for sending registrations to the supervisors of elections. No one is charged with the responsibility to train the subagents.

  Duties of the supervisors of elections are unclear. The bill does not make clear the supervisors responsibility in regards to training the subagents or to the supplying and picking up of registrations. The bill does not cover how the supervisor is to know when registration forms are needed. .

- **Authority to Assess:** The bill does not address who would assess civil penalties. Under subsection (2) of section 372.574, F.S., which is unamended by the bill, the FWCC or any other law enforcement agency has the authority to enforce the statute.

- **Cost:** There is a cost associated to the supervisors with providing copies of voter registration applications to all the subagents.

- **Unintended Exposure to Criminal Penalties:** Under the bill, a supervisor of elections could potentially be subject to criminal sanctions. Under subsection (1)(d) of section 372.574, F.S., any person who violates any provision of section 372.574, F.S., is subject to 2nd degree misdemeanor charges. The bill does not amend this subsection to create an exception for the newly-created provision.

- **Legislative Intent**: The bill's effect is somewhat contrary to the recent trends and legislative interest in monitoring the flow of voter registration applications and activities. This past year, the Legislature specifically enacted section 97.0575, F.S., to address wide-spread complaints during the 2004 general election year that third-party voter registration groups were diverting and culling information from completed registration applications before turning them in to the supervisors of elections' offices, and that these organizations were either failing to submit them timely or not submitting them at all.

C. SECTION DIRECTORY:

Section 1 amends s. 375.574, F.S., to require subagents of the FWCC to conduct voter registration activity and provides penalties for non-compliance.

Section 2 provides the effective date as upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

There would be little if any, extra expense to the Department or supervisors, as they are currently responsible for reaching out to citizens in order to educate them on voting and elections, and to enhance voter registration opportunities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There will be some impact on the subagents that must provide the voter registration forms and for training on voter registration. Some commercial enterprises may feel that the civil penalties of up to $5,000 imposed on third-party voter registration organizations do not warrant engaging in the sale of hunting and fishing licenses.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to voter registration; amending s.
3 372.574, F.S.; requiring subagents appointed by the Fish
4 and Wildlife Conservation Commission for the sale of
5 hunting, fishing, and trapping licenses and permits to
6 provide individuals seeking such licenses and permits the
7 opportunity to register to vote or to update a voter
8 registration; requiring supervisors of elections to
9 provide such subagents with the necessary voter
10 registration applications; providing penalties; providing
11 an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Subsection (4) is added to section 372.574,
16 Florida Statutes, to read:
17 372.574 Appointment of subagents for the sale of hunting,
18 fishing, and trapping licenses and permits; voter registration
19 duties.--
20 (4)(a) All subagents appointed under this section shall
21 provide the opportunity to register to vote or to update a voter
22 registration record to each individual who comes to the subagent
23 to purchase any resident hunting license, fishing license,
24 combination license, or trapping permit. Each subagent shall
25 provide each individual with a voter registration application,
26 which shall be provided to the subagent by the voter
27 registration office in the subagent's county.
28 (b) Within 30 days after the effective date of this act,

29 each supervisor of elections shall provide an appropriate supply
30 of voter registration applications to each subagent in that
31 supervisor's county and thereafter at the request of the
32 subagent along with appropriate contact information for each
33 subagent to request additional applications.
34 (c) Failure to comply with any provision of this
35 subsection by any subagent or supervisor of elections shall
36 constitute a civil infraction subject to a minimum fine of $500
37 for the first infraction, $1,000 for the second infraction, and
38 $2,500 for each subsequent infraction.
39 Section 2. This act shall take effect upon becoming a law.

HB 435

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 435 Code of Ethics for Public Officers and Employees
SPONSOR(S): Ross
TIED BILLS: **IDEN./SIM. BILLS:** SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee		West	Mitchell
2) Governmental Operations Committee			
3) Fiscal Council			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

HB 435 requires employees of quasi-governmental entities to follow the same ethics rules as those of government agencies. The bill would affect all partners and other professionals in a firm that consults or contracts with a quasi-governmental entity. These firms would be prevented from conducting any other business for two years with the quasi-governmental entity. In addition, such firms would be prohibited from conducting business with any other customers that do business with or are regulated by the same quasi-governmental entity.

HB 435 is effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill adds new ethical oversight previously limited to state government to quasi-public entities and all private corporations and consultants that do business with these quasi-public entities. As such, the bill expands the reach of state government to many of the employees of companies that do business with quasi-public entities.

Safeguard individual liberty – The bill as drafted could eliminate the freedom of private business employees to do business with a large part of their customer base.

B. EFFECT OF PROPOSED CHANGES:

The employees of quasi-public entities will be required to follow the same ethics standards as employees of state agencies. This includes the rules of state employees for:

- solicitation of gifts under s. 112.313(2), F.S.
- the prohibition against one's relatives doing business with the agency under s. 112.313(3), F.S.
- the prohibition against representing another person or entity for compensation before the agency for two years after vacation of their position. s. 112.313(9)(a)4., F.S.

If these employees are not somehow "grandfathered" in under existing law, they may be required to vacate their positions before this bill becomes law.

Under the bill, section 112.313 (7)(c), F.S., would be added to read:

> (c) An owner or officer of an entity that acts as a consultant or contractor for a quasi-public entity, and any employee of such consultant or contractor the duties of whose position are managerial, policymaking, or professional in nature, is subject to this subsection in the same manner as a public officer or employee of an agency unless specifically exempted by statute.

The bill may have implications for government contractors such as utilities, technology companies, accounting firms, planning firms and law firms. If one part of a company has a contract to do business with a quasi-public entity, no other part of that company would be able to do business with anyone that also contracted or does business with that same quasi-public entity.

Section 112.313(9)(c), F.S., could prevent a consultant or contractor from doing any further business with a quasi-public entity or anyone else that does business with the quasi-public entity for two years after any contract has been completed. Contractors may not be able to complete their contract requirements without violating the provisions of this bill.

It is unclear from the bill what authority the Commission on Ethics will have to investigate consultants and contractors under s. 112.324, F.S. It is also unclear if any penalties are imposed under s. 112.317, F.S., for violations of the new requirements.

The bill appears to be designed to address some of the recent alleged ethical problems with quasi-public entities like Citizens Property Insurance which serves as the state's insurer of last resort for Floridians who cannot otherwise obtain property insurance and PRIDE that runs prison industries. The goal of the bill seems to be to maintain public confidence in the institutions that establish and carry out public policy. State law currently imposes limitations on public officers and employees, to

prevent them from giving themselves lucrative outside contracts with the companies they run. The bill would extend these restrictions to quasi-public entities and the private consultants and contracting companies that do business with them.

C. SECTION DIRECTORY:

Section 1 amends s. 112.312, F.S., to add quasi-public entities to the definition of agency and then defines a quasi-public entity.

Section 2 amends s.112.313, F.S., requires that consultants or contractors and employees that are partners or professionals that do business with quasi-public entities will not be able to do any more business with the quasi-public entity or any of their other contractors for two years following the end of their contract.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

Each quasi-public entity will need to make major changes in how they conduct business.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to the code of ethics for public officers
3 and employees; amending s. 112.312, F.S.; redefining the
4 term "agency" and defining the term "quasi-public entity";
5 amending s. 112.313, F.S.; applying provisions of the code
6 of ethics which prohibit conflicting employment or
7 contractual relationships and limit permissible
8 representations following termination of office or
9 employment to owners, officers, and employees of
10 consultants and contractors for certain entities created
11 pursuant to law for a public purpose; providing penalties;
12 providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Subsection (2) of section 112.312, Florida
17 Statutes, is amended, present subsections (21) through (24) of
18 that section are renumbered as subsections (22) through (25),
19 respectively, and a new subsection (21) is added to that section
20 to read:
21 112.312 Definitions.--As used in this part and for
22 purposes of the provisions of s. 8, Art. II of the State
23 Constitution, unless the context otherwise requires:
24 (2) "Agency" means any state, regional, county, local, or
25 municipal government entity of this state, whether executive,
26 judicial, or legislative; any department, division, bureau,
27 commission, authority, or political subdivision of this state
28 therein; <u>any quasi-public entity;</u> or any public school,

29 community college, or state university.
30 (21) "Quasi-public entity" means an entity that is not the
31 state, a political subdivision of the state, a municipality, or
32 a department, division, bureau, commission, or authority
33 subordinate to the state, a political subdivision of the state,
34 or a municipality and that has been created by a government
35 entity pursuant to law to accomplish a public purpose.
36 Section 2. Subsections (7) and (9) of section 112.313,
37 Florida Statutes, are amended to read:
38 112.313 Standards of conduct for public officers,
39 employees of agencies, and local government attorneys.--
40 (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--
41 (a) No public officer or employee of an agency shall have
42 or hold any employment or contractual relationship with any
43 business entity or any agency which is subject to the regulation
44 of, or is doing business with, an agency of which he or she is
45 an officer or employee, excluding those organizations and their
46 officers who, when acting in their official capacity, enter into
47 or negotiate a collective bargaining contract with the state or
48 any municipality, county, or other political subdivision of the
49 state; nor shall an officer or employee of an agency have or
50 hold any employment or contractual relationship that will create
51 a continuing or frequently recurring conflict between his or her
52 private interests and the performance of his or her public
53 duties or that would impede the full and faithful discharge of
54 his or her public duties.
55 1. When the agency referred to is that certain kind of
56 special tax district created by general or special law and is

57 limited specifically to constructing, maintaining, managing, and
58 financing improvements in the land area over which the agency
59 has jurisdiction, or when the agency has been organized pursuant
60 to chapter 298, then employment with, or entering into a
61 contractual relationship with, such business entity by a public
62 officer or employee of such agency shall not be prohibited by
63 this subsection or be deemed a conflict per se. However, conduct
64 by such officer or employee that is prohibited by, or otherwise
65 frustrates the intent of, this section shall be deemed a
66 conflict of interest in violation of the standards of conduct
67 set forth by this section.
68 2. When the agency referred to is a legislative body and
69 the regulatory power over the business entity resides in another
70 agency, or when the regulatory power which the legislative body
71 exercises over the business entity or agency is strictly through
72 the enactment of laws or ordinances, then employment or a
73 contractual relationship with such business entity by a public
74 officer or employee of a legislative body shall not be
75 prohibited by this subsection or be deemed a conflict.
76 (b) This subsection shall not prohibit a public officer or
77 employee from practicing in a particular profession or
78 occupation when such practice by persons holding such public
79 office or employment is required or permitted by law or
80 ordinance.
81 <u>(c) An owner or officer of an entity that acts as a</u>
82 <u>consultant or contractor for a quasi-public entity, and any</u>
83 <u>employee of such consultant or contractor the duties of whose</u>
84 <u>position are managerial, policymaking, or professional in</u>

85 nature, is subject to this subsection in the same manner as a
86 public officer or employee of an agency unless specifically
87 exempted by statute.
88 (9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR
89 LEGISLATORS, ~~AND~~ LEGISLATIVE EMPLOYEES, AND OTHER PERSONS.--
90 (a)1. It is the intent of the Legislature to implement by
91 statute the provisions of s. 8(e), Art. II of the State
92 Constitution relating to legislators, statewide elected
93 officers, appointed state officers, and designated public
94 employees.
95 2. As used in this paragraph:
96 a. "Employee" means:
97 (I) Any person employed in the executive or legislative
98 branch of government holding a position in the Senior Management
99 Service as defined in s. 110.402 or any person holding a
100 position in the Selected Exempt Service as defined in s. 110.602
101 or any person having authority over policy or procurement
102 employed by the Department of the Lottery.
103 (II) The Auditor General, the director of the Office of
104 Program Policy Analysis and Government Accountability, the
105 Sergeant at Arms and Secretary of the Senate, and the Sergeant
106 at Arms and Clerk of the House of Representatives.
107 (III) The executive director of the Legislative Committee
108 on Intergovernmental Relations and the executive director and
109 deputy executive director of the Commission on Ethics.
110 (IV) An executive director, staff director, or deputy
111 staff director of each joint committee, standing committee, or
112 select committee of the Legislature; an executive director,

113 staff director, executive assistant, analyst, or attorney of the
114 Office of the President of the Senate, the Office of the Speaker
115 of the House of Representatives, the Senate Majority Party
116 Office, Senate Minority Party Office, House Majority Party
117 Office, or House Minority Party Office; or any person, hired on
118 a contractual basis, having the power normally conferred upon
119 such persons, by whatever title.
120 (V) The Chancellor and Vice Chancellors of the State
121 University System; the general counsel to the Board of Regents;
122 and the president, vice presidents, and deans of each state
123 university.
124 (VI) Any person having the power normally conferred upon
125 the positions referenced in this sub-subparagraph.
126 <u>(VII) Any employee of a quasi-public entity, the duties of</u>
127 <u>whose position are managerial, policymaking, or professional in</u>
128 <u>nature.</u>
129 b. "Appointed state officer" means any member of an
130 appointive board, commission, committee, council, or authority
131 of the executive or legislative branch of state government whose
132 powers, jurisdiction, and authority are not solely advisory and
133 include the final determination or adjudication of any personal
134 or property rights, duties, or obligations, other than those
135 relative to its internal operations.
136 c. "State agency" means an entity of the legislative,
137 executive, or judicial branch of state government over which the
138 Legislature exercises plenary budgetary and statutory control.
139 3. No member of the Legislature, appointed state officer,
140 or statewide elected officer shall personally represent another

141 person or entity for compensation before the government body or
142 agency of which the individual was an officer or member for a
143 period of 2 years following vacation of office. No member of the
144 Legislature shall personally represent another person or entity
145 for compensation during his or her term of office before any
146 state agency other than judicial tribunals or in settlement
147 negotiations after the filing of a lawsuit.
148 4. No agency employee shall personally represent another
149 person or entity for compensation before the agency with which
150 he or she was employed for a period of 2 years following
151 vacation of position, unless employed by another agency of state
152 government.
153 5. Any person violating this paragraph shall be subject to
154 the penalties provided in s. 112.317 and a civil penalty of an
155 amount equal to the compensation which the person receives for
156 the prohibited conduct.
157 6. This paragraph is not applicable to:
158 a. A person employed by the Legislature or other agency
159 prior to July 1, 1989;
160 b. A person who was employed by the Legislature or other
161 agency on July 1, 1989, whether or not the person was a defined
162 employee on July 1, 1989;
163 c. A person who was a defined employee of the State
164 University System or the Public Service Commission who held such
165 employment on December 31, 1994;
166 d. A person who has reached normal retirement age as
167 defined in s. 121.021(29), and who has retired under the
168 provisions of chapter 121 by July 1, 1991; or

169 e. Any appointed state officer whose term of office began
170 before January 1, 1995, unless reappointed to that office on or
171 after January 1, 1995.
172 (b) In addition to the provisions of this part which are
173 applicable to legislators and legislative employees by virtue of
174 their being public officers or employees, the conduct of members
175 of the Legislature and legislative employees shall be governed
176 by the ethical standards provided in the respective rules of the
177 Senate or House of Representatives which are not in conflict
178 herewith.
179 (c) An owner or officer of an entity that acts as a
180 consultant or contractor for a quasi-public entity, and any
181 employee of such consultant or contractor the duties of whose
182 position are managerial, policymaking, or professional in
183 nature, is subject to this subsection in the same manner as a
184 member of the Legislature or an agency employee unless
185 specifically exempted by statute.
186 Section 3. This act shall take effect July 1, 2006.

HB 493

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 493 Ethics for Public Officers and Employees
SPONSOR(S): Ryan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee		Shaffer	Mitchell
2) Governmental Operations Committee			
3) Fiscal Council			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

HB 493 clarifies and revises portions of the Ethics Code of the State of Florida, and provides for additional restrictions on the conduct of current and former government employees and elected officials. The bill:

- Prohibits government employees from working in political campaigns.
- Prohibits government employees from using information gained while in government employment, except governmental practices or procedures.
- Extends prohibition against representing a client before one's former agency to OPS employees.
- Amends the two-year "revolving door" prohibition against representing a client before one's former agency to "grandfather-in" agency employees who have continuously held a position until leaving state employment that was transferred to the Selected Exempt Service from Career Service System under chapter 2001-43, Laws of Florida.
- Changes the method for disclosing assets and liabilities.
- Requires disclosure of gifts by those leaving employment by July 1; a postmark by midnight on the due date constitutes a timely filed disclosure.
- Allows the Attorney General to file suit to recoup agency costs for collecting penalties.
- Allows unemployed state employees to work for the private entity who assumes the employees' former duties.
- Clarifies the Commission on Ethics' (Commission) rule-making authority specifying that lobbyists may appeal fines resulting from untimely filings of expense reports.
- Suspends a lobbyist's registration if the lobbyist fails to pay a fine; until the fine is paid or waived. Written notice must be sent to suspended lobbyist.
- Prohibits agency employees who participated personally and substantially on a matter from representing or advising any entity other than the state for compensation.

The bill may have an indeterminate, though likely minimal, fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

In 2005, an almost identical version of this bill passed the House and Senate (HB 1377 by Ryan). The bill was vetoed by the Governor. No official comment was received from the Governor's office regarding the changes made to the bill language in response to his veto letter at the time of publication of this analysis. The bill sponsor attempts to address the Governor's concerns with HB 493.

HB 493 is effective October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill increases the rulemaking authority of the Commission.

Provide Personal Responsibility – The bill requires principled behavior by those serving in the public sector, which in effect requires more personal responsibility.

B. EFFECT OF PROPOSED CHANGES:

Background

The Code of Ethics for Public Officers and Employees, ch. 112, Part III, F.S., sets forth certain requirements and guidelines governing the conduct of public officers and employees. Section 112.311, F.S., outlines three basic objectives in the Code of Ethics:

- The first is the public interest "requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist."
- The second recognizes that "government must attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve."
- Third, "in order to preserve and maintain the integrity of the governmental process, it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions ... be regularly disclosed to the people."

Section 112.311(5), F.S., declares that the policy of the state be "that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest."

Section 112.311(6), F.S., states "that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public," and are "bound to observe, in their official acts, the highest standards of ethics consistent with this code ... regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern."

Section 112.313, F.S., provides a person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the governing body of which the person was an officer for a period of two years after vacating that office. This has been interpreted to apply to only to former office holders lobbying current office holders.

Section 112.313, F.S., also provides public officers, agency employees, and local government attorneys are barred from disclosing or using information not available to the public and gained by reason of his or her official position for his or her personal gain or benefit, or for the personal gain or benefit of any other person or business entity.

Section 112.3145, F.S. provides office holders are required to file yearly statements of their personal financial interests. The failure to file a timely report results in a fine of $25 per day, with a maximum aggregate penalty of $1,500. Any reporting person may appeal or dispute a fine, and

may base the appeal upon unusual circumstances surrounding the failure to file on the designated due date. The person is entitled to a hearing before the ethics commission, which is permitted to waive the fine in whole or in part for good cause shown.

Section 112.317, F.S., provides violations of any provision of the ethics code can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.

The Commission has the duty of receiving and investigating sworn complaints of violations of the Code of Ethics. Section 112.324, F.S., provides that the Commission is only authorized to investigate alleged violations of the Code of Ethics upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person. Section 112.322, F.S., provides in an investigation, the Commission has the power to subpoena, and currently, witnesses subpoenaed by the Commission are paid mileage and witness fees as authorized for witnesses in civil cases.

Effects of Proposed Changes

A bill (HB 1377 by Ryan) nearly identical to the current bill was passed in 2005, but was vetoed by the Governor. HB 493 attempts to address the Governor's concerns.

The bill prohibits all state and political subdivisions employees from participating in political campaign for an elective office while on duty.

The bill amends the prohibition against using "inside" information gained while in a public position to benefit oneself or another to clarify that it applies to former employees and officers, except for information relating exclusively to governmental practices or procedures. The bill also clarifies the application of the "revolving door" prohibition against representing a client before one's former agency to OPS state employees.

The bill amends the two-year "revolving door" prohibition against representing a client before one's former agency to "grandfather-in" agency employees who have continuously held a position until leaving state employment that was transferred to the Selected Exempt Service from Career Service System under chapter 2001-43, Laws of Florida. The bill requires the conflict of interest disclosure statement that is applicable for competitive bidding be filed with the Ethics Commission instead of the Department of State. The bill also prohibits local elected officials from personally representing another person or entity for compensation before the government body or agency which they were on officer of for 2 years after leaving office.

The bill requires that the certified reminder mailing sent in July each year by the supervisors of elections have a return receipt, allowing the Commission to determine whether the mailing was actually received and by whom. The bill also allows the Commission to waive the penalty for failure to timely file a statement of financial interests only when the person did not receive proper notice of the requirements of filing an annual disclosure.

The bill requires, by October 1 of each year, all supervisors of elections must certify to the Commission a list of names and addresses of all persons who have failed to timely file a statement of financial interests. Current law requires such certification by November 15. The bill also provides the $1,500 limitation on automatic fines for failing to file a financial statement does not limit the civil penalty that may be imposed if the statement is filed more than 60 after the deadline.

The bill requires gift disclosure forms to be filed for the last portion of one's term of office or employment, and allows quarterly gift disclosure forms to be considered timely-filed if they are postmarked on or before the due date. The bill also requires honorarium-expense disclosure forms to be filed for the last portion of one's term of office or employment.

The bill allows restitution to be paid by the violator to an agency that was damaged by the violation, rather than just to the State. Further, when the Attorney General is required to collect a penalty through a civil action in court, the Attorney General's costs and fees of collecting the penalty to be assessed against the violator. The bill allows the Commission to recommend that any restitution penalty be paid either to agency where the employee worked, where the officer was deemed to be an employee, or to the General Revenue Fund. The bill deletes s. 112.317(6), F.S., which the federal courts have declared unconstitutional (this section provided that breaching confidentiality of an ethics proceeding was a misdemeanor).

Further, the bill eases existing post-employment restrictions for State employees whose jobs are privatized and who then go to work for the private entity. The bill adds a prohibition to keep State executive branch employees from leaving government and then switching sides to represent a client before their former agency in connection with the same matter in which they participated personally and substantially while an agency employee. The bill prohibits a former agency employee from representing or advising for compensation any entity other than the state in any matter in which the employee participated personally and substantially.

The bill prohibits an individual who qualifies as a lobbyist under s. 11.045, F.S., or s. 112.3215, F.S., or a local government charter, or ordinance from serving on the commission except for those individuals who are members of the commission on October 1, 2006, until the expiration of their current term. A member of the commission may not lobby any state or local government entity as provided by s. 11.045, F.S., or s. 112.3215, F.S., or a local government charter, or ordinance. The same exception for members of the commission on October 1, 2006, applies.

The bill clarifies the Commission's rule-making authority regarding appeals of fines for untimely expense report filings, and automatically suspends the registration of a lobbyist who has failed to pay a fine until the fine is paid or waived (as currently is done for legislative lobbyists), unless an appeal of the fine is pending before the Commission. The Commission must provide a written suspension notice to each lobbyist whose registration has been automatically suspended.

The bill allows witnesses required by the Commission to testify outside the county of their residences to receive per diem and travel expenses reimbursed at the State rate.

Finally, the bill amends s. 914.21, F.S., to include in the definition of an "official investigation" any investigation conducted by the Commission.

C. SECTION DIRECTORY:

Section 1 amends s. 104.31, F.S., prohibiting employees of the state and its political subdivisions from participating in a political campaign, for which there are penalties.

Section 2 amends s. 112.313, F.S., prohibiting certain disclosures by a former public officer, agency employee, or local government attorney, for which there are penalties; redefining the term "employee" to include certain other-personal-services employees for certain postemployment activities; exempting certain agency employees from applicability of postemployment restrictions; providing an exemption from provisions prohibiting conflicts in employment to a person who, after serving on an advisory board, files a statement with the Commission on Ethics relating to a bid or submission.

Section 3 amends s. 112.3144, F.S., specifying how assets valued in excess of a specified amount are to be reported by a reporting individual.

Section 4 amends s. 112.3145, F.S., requiring that a delinquency notice be sent to certain officeholders by certified mail, return receipt requested.

Section 5 amends s. 112.3147, F.S., deleting provisions relating to the reporting of assets valued in excess of a specified amount, to conform.

Section 6 amends s. 112.3148, F.S., providing requirements for persons who have left office or employment as to filing a report relating to gifts; providing requirements relating to the deadline for and timeliness of gift reports.

Section 7 amends s. 112.3149, F.S., requiring that a report of honoraria by a person who left office or employment be filed by a specified date.

Section 8 amends s. 112.317, F.S., authorizing the commission to recommend a restitution penalty be paid to the agency of which the public officer was a member or by which the public employee was employed or to the General Revenue Fund; authorizing the Attorney General to recover costs for filing suit to collect penalties and fines; deleting provisions imposing a penalty for the disclosure of information concerning a complaint or an investigation.

Section 9 amends s. 112.3185, F.S., providing additional standards for state agency employees relating to procurement of goods and services by a state agency; authorizing an employee whose position was eliminated to engage in certain contractual activities; prohibiting former employees from certain specified activities.

Section 10 amends s. 112.321, F.S., prohibiting an individual who qualifies as a lobbyist from serving on the commission; prohibiting a member of the commission from lobbying any state or local governmental entity; providing exceptions for individuals who are members of the commission on the effect date of the act until the expiration of their current terms.

Section 11 amends s. 112.3215, F.S., requiring the commission to adopt a rule detailing the grounds for waiving a fine and the procedures to be followed when a lobbyist fails to timely file his or her report; requiring automatic suspension of a lobbyists registration if the fine is not timely paid; requiring the commission to provide written notice to any lobbyist whose registration is automatically suspended.

Section 12 amends s. 112.322, F.S., authorizing travel and per diem expenses for certain witnesses

Section 13 amends s. 914.21, F.S., redefining the terms "official investigation" and "official proceeding," for purposes of provision relating to tampering with witnesses, to include an investigation by the commission;

Section 14 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   An officer or employee violating ch. 112, F.S., could be required to pay a civil or restitution penalty to the agency for which the violating officer was a member or the employee was employed, or pay the penalty to the General Revenue Fund. The attorney general is entitled to collect any costs, attorney's fees, expert witness fees, or other costs incurred in bringing a civil action to recover such penalties.

2. Expenditures:

A witness, required to travel outside the county of his or her residence in order to testify before the Commission, is entitled to per diem and travel expenses at the same rate as state employees.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate, though probably not significant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Commission may adopt rules to provide the grounds for waiving a fine and the procedures associated with appealing that fine when a lobbyist fails to timely file a report. Current law already authorizes the Commission to adopt a rule to provide a procedure for notifying a lobbyist who fails to timely file a report.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable

1 A bill to be entitled
2 An act relating to ethics for public officers and
3 employees; amending s. 104.31, F.S.; prohibiting employees
4 of the state and its political subdivisions from
5 participating in a political campaign, for which there are
6 penalties; amending s. 112.313, F.S.; prohibiting certain
7 disclosures by a former public officer, agency employee,
8 or local government attorney, for which there are
9 penalties; redefining the term "employee" to include
10 certain other-personal-services employees for certain
11 postemployment activities; exempting certain agency
12 employees from applicability of postemployment
13 restrictions; providing an exemption from provisions
14 prohibiting conflicts in employment to a person who, after
15 serving on an advisory board, files a statement with the
16 Commission on Ethics relating to a bid or submission;
17 amending s. 112.3144, F.S.; specifying how assets valued
18 in excess of a specified amount are to be reported by a
19 reporting individual; amending s. 112.3145, F.S.;
20 requiring that a delinquency notice be sent to certain
21 officeholders by certified mail, return receipt requested;
22 amending s. 112.3147, F.S.; deleting provisions relating
23 to the reporting of assets valued in excess of a specified
24 amount, to conform; amending s. 112.3148, F.S.; providing
25 requirements for persons who have left office or
26 employment as to filing a report relating to gifts;
27 providing requirements relating to the deadline for and
28 timeliness of gift reports; amending s. 112.3149, F.S.;

29 requiring that a report of honoraria by a person who left
30 office or employment be filed by a specified date;
31 amending s. 112.317, F.S.; authorizing the commission to
32 recommend a restitution penalty be paid to the agency of
33 which the public officer was a member or by which the
34 public employee was employed or to the General Revenue
35 Fund; authorizing the Attorney General to recover costs
36 for filing suit to collect penalties and fines; deleting
37 provisions imposing a penalty for the disclosure of
38 information concerning a complaint or an investigation;
39 amending s. 112.3185, F.S.; providing additional standards
40 for state agency employees relating to procurement of
41 goods and services by a state agency; authorizing an
42 employee whose position was eliminated to engage in
43 certain contractual activities; prohibiting former
44 employees from certain specified activities; amending s.
45 112.321, F.S.; prohibiting an individual who qualifies as
46 a lobbyist from serving on the commission; prohibiting a
47 member of the commission from lobbying any state or local
48 governmental entity; providing exceptions for individuals
49 who are members of the commission on the effective date of
50 the act until the expiration of their current terms;
51 amending s. 112.3215, F.S.; requiring the commission to
52 adopt a rule detailing the grounds for waiving a fine and
53 the procedures to be followed when a lobbyist fails to
54 timely file his or her report; requiring automatic
55 suspension of a lobbyist's registration if the fine is not
56 timely paid; requiring the commission to provide written

57 notice to any lobbyist whose registration is automatically
58 suspended; amending s. 112.322, F.S.; authorizing travel
59 and per diem expenses for certain witnesses; amending s.
60 914.21, F.S.; redefining the terms "official
61 investigation" and "official proceeding," for purposes of
62 provisions relating to tampering with witnesses, to
63 include an investigation by the commission; providing an
64 effective date.
65
66 Be It Enacted by the Legislature of the State of Florida:
67
68 Section 1. Present subsections (2) and (3) of section
69 104.31, Florida Statutes, are renumbered as subsections (3) and
70 (4), respectively, and a new subsection (2) is added to that
71 section to read:
72 104.31 Political activities of state, county, and
73 municipal officers and employees.--
74 <u>(2) An employee of the state or any political subdivision</u>
75 <u>may not participate in any political campaign for an elective</u>
76 <u>office while on duty.</u>
77 Section 2. Subsection (8), paragraph (a) of subsection
78 (9), paragraph (b) of subsection (12), and subsection (14) of
79 section 112.313, Florida Statutes, are amended to read:
80 112.313 Standards of conduct for public officers,
81 employees of agencies, and local government attorneys.--
82 (8) DISCLOSURE OR USE OF CERTAIN INFORMATION.--No <u>current</u>
83 <u>or former</u> public officer, employee of an agency, or local
84 government attorney shall disclose or use information not

85 available to members of the general public and gained by reason
86 of his or her official position, except for information relating
87 exclusively to governmental practices, for his or her personal
88 gain or benefit or for the personal gain or benefit of any other
89 person or business entity.
90 (9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR
91 LEGISLATORS AND LEGISLATIVE EMPLOYEES.--
92 (a)1. It is the intent of the Legislature to implement by
93 statute the provisions of s. 8(e), Art. II of the State
94 Constitution relating to legislators, statewide elected
95 officers, appointed state officers, and designated public
96 employees.
97 2. As used in this paragraph:
98 a. "Employee" means:
99 (I) Any person employed in the executive or legislative
100 branch of government holding a position in the Senior Management
101 Service as defined in s. 110.402 or any person holding a
102 position in the Selected Exempt Service as defined in s. 110.602
103 or any person having authority over policy or procurement
104 employed by the Department of the Lottery.
105 (II) The Auditor General, the director of the Office of
106 Program Policy Analysis and Government Accountability, the
107 Sergeant at Arms and Secretary of the Senate, and the Sergeant
108 at Arms and Clerk of the House of Representatives.
109 (III) The executive director of the Legislative Committee
110 on Intergovernmental Relations and the executive director and
111 deputy executive director of the Commission on Ethics.
112 (IV) An executive director, staff director, or deputy

113 staff director of each joint committee, standing committee, or
114 select committee of the Legislature; an executive director,
115 staff director, executive assistant, analyst, or attorney of the
116 Office of the President of the Senate, the Office of the Speaker
117 of the House of Representatives, the Senate Majority Party
118 Office, Senate Minority Party Office, House Majority Party
119 Office, or House Minority Party Office; or any person, hired on
120 a contractual basis, having the power normally conferred upon
121 such persons, by whatever title.
122 (V) The Chancellor and Vice Chancellors of the State
123 University System; the general counsel to the Board of Regents;
124 and the president, vice presidents, and deans of each state
125 university.
126 (VI) Any person, including an other-personal-services
127 employee, having the power normally conferred upon the positions
128 referenced in this sub-subparagraph.
129 b. "Appointed state officer" means any member of an
130 appointive board, commission, committee, council, or authority
131 of the executive or legislative branch of state government whose
132 powers, jurisdiction, and authority are not solely advisory and
133 include the final determination or adjudication of any personal
134 or property rights, duties, or obligations, other than those
135 relative to its internal operations.
136 c. "State agency" means an entity of the legislative,
137 executive, or judicial branch of state government over which the
138 Legislature exercises plenary budgetary and statutory control.
139 3. No member of the Legislature, appointed state officer,
140 or statewide elected officer shall personally represent another

141 person or entity for compensation before the government body or
142 agency of which the individual was an officer or member for a
143 period of 2 years following vacation of office. No member of the
144 Legislature shall personally represent another person or entity
145 for compensation during his or her term of office before any
146 state agency other than judicial tribunals or in settlement
147 negotiations after the filing of a lawsuit.
148 4. No agency employee shall personally represent another
149 person or entity for compensation before the agency with which
150 he or she was employed for a period of 2 years following
151 vacation of position, unless employed by another agency of state
152 government.
153 5. Any person violating this paragraph shall be subject to
154 the penalties provided in s. 112.317 and a civil penalty of an
155 amount equal to the compensation which the person receives for
156 the prohibited conduct.
157 6. This paragraph is not applicable to:
158 a. A person employed by the Legislature or other agency
159 prior to July 1, 1989;
160 b. A person who was employed by the Legislature or other
161 agency on July 1, 1989, whether or not the person was a defined
162 employee on July 1, 1989;
163 c. A person who was a defined employee of the State
164 University System or the Public Service Commission who held such
165 employment on December 31, 1994;
166 d. A person who has reached normal retirement age as
167 defined in s. 121.021(29), and who has retired under the
168 provisions of chapter 121 by July 1, 1991; ~~or~~

169 e. Any appointed state officer whose term of office began
170 before January 1, 1995, unless reappointed to that office on or
171 after January 1, 1995; or~~.~~
172 f. An agency employee who continuously has held a position
173 that was transferred from the Career Service System to the
174 Selected Exempt Service System under chapter 2001-43, Laws of
175 Florida, until leaving state employment.
176 (12) EXEMPTION.--The requirements of subsections (3) and
177 (7) as they pertain to persons serving on advisory boards may be
178 waived in a particular instance by the body which appointed the
179 person to the advisory board, upon a full disclosure of the
180 transaction or relationship to the appointing body prior to the
181 waiver and an affirmative vote in favor of waiver by two-thirds
182 vote of that body. In instances in which appointment to the
183 advisory board is made by an individual, waiver may be effected,
184 after public hearing, by a determination by the appointing
185 person and full disclosure of the transaction or relationship by
186 the appointee to the appointing person. In addition, no person
187 shall be held in violation of subsection (3) or subsection (7)
188 if:
189 (b) The business is awarded under a system of sealed,
190 competitive bidding to the lowest or best bidder and:
191 1. The official or the official's spouse or child has in
192 no way participated in the determination of the bid
193 specifications or the determination of the lowest or best
194 bidder;
195 2. The official or the official's spouse or child has in
196 no way used or attempted to use the official's influence to

197 persuade the agency or any personnel thereof to enter such a
198 contract other than by the mere submission of the bid; and
199 3. The official, prior to or at the time of the submission
200 of the bid, has filed a statement with the Commission on Ethics
201 ~~Department of State~~, if the official is a state officer or
202 employee, or with the supervisor of elections of the county in
203 which the agency has its principal office, if the official is an
204 officer or employee of a political subdivision, disclosing the
205 official's interest, or the interest of the official's spouse or
206 child, and the nature of the intended business.
207 (14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.--A
208 person who has been elected to any county, municipal, special
209 district, or school district office may not personally represent
210 another person or entity for compensation before the government
211 ~~governing~~ body or agency of which the person was an officer for
212 a period of 2 years after vacating that office.
213 Section 3. Present subsections (4), (5), and (6) of
214 section 112.3144, Florida Statutes, are renumbered as
215 subsections (5), (6), and (7), respectively, paragraph (g) of
216 present subsection (4) is amended, and a new subsection (4) is
217 added to that section, to read:
218 112.3144 Full and public disclosure of financial
219 interests.--
220 (4)(a) With respect to reporting, on forms prescribed
221 under this section, assets valued in excess of $1,000 that the
222 reporting individual holds jointly with another person, the
223 amount reported shall be based on the reporting individual's
224 legal percentage of ownership in the property. However, assets

225 that are held jointly with right of survivorship must be
226 reported at 100 percent of the value of the asset. For purposes
227 of this subsection, a reporting individual is deemed to own a
228 percentage of a partnership that is equal to the reporting
229 individual's interest in the capital or equity of the
230 partnership.
231 (b)1. With respect to reporting, on forms prescribed under
232 this section, liabilities valued in excess of $1,000 for which
233 the reporting individual is jointly and severally liable, the
234 amount reported shall be based on the reporting individual's
235 percentage of liability rather than the total amount of the
236 liability. However, liability for a debt that is secured by
237 property owned by the reporting individual but that is held
238 jointly with right of survivorship must be reported at 100
239 percent of the total amount owed.
240 2. A separate section of the form shall be created to
241 provide for the reporting of the amounts of joint and several
242 liability of the reporting individual not otherwise reported in
243 subparagraph 1.
244 (5)~~(4)~~ Forms for compliance with the full and public
245 disclosure requirements of s. 8, Art. II of the State
246 Constitution shall be created by the Commission on Ethics. The
247 commission shall give notice of disclosure deadlines and
248 delinquencies and distribute forms in the following manner:
249 (g) The notification requirements and fines of this
250 subsection do not apply to candidates or to the first filing
251 required of any person appointed to elective constitutional
252 office or other position required to file full and public

253 disclosure, unless the person's name is on the commission's
254 notification list and the person received notification from the
255 commission. The appointing official shall notify such newly
256 appointed person of the obligation to file full and public
257 disclosure by July 1. The notification requirements and fines of
258 this subsection do not apply to the final filing provided for in
259 subsection (6) ~~(5)~~.
260 Section 4. Paragraph (c) of subsection (6) of section
261 112.3145, Florida Statutes, is amended to read:
262 112.3145 Disclosure of financial interests and clients
263 represented before agencies.--
264 (6) Forms for compliance with the disclosure requirements
265 of this section and a current list of persons subject to
266 disclosure shall be created by the commission and provided to
267 each supervisor of elections. The commission and each supervisor
268 of elections shall give notice of disclosure deadlines and
269 delinquencies and distribute forms in the following manner:
270 (c) Not later than 30 days after July 1 of each year, the
271 commission and each supervisor of elections shall determine
272 which persons required to file a statement of financial
273 interests in their respective offices have failed to do so and
274 shall send delinquency notices by certified mail, return receipt
275 requested, to these ~~such~~ persons. Each notice shall state that a
276 grace period is in effect until September 1 of the current year;
277 that no investigative or disciplinary action based upon the
278 delinquency will be taken by the agency head or commission if
279 the statement is filed by September 1 of the current year; that,
280 if the statement is not filed by September 1 of the current

281 year, a fine of $25 for each day late will be imposed, up to a
282 maximum penalty of $1,500; for notices sent by a supervisor of
283 elections, that he or she is required by law to notify the
284 commission of the delinquency; and that, if upon the filing of a
285 sworn complaint the commission finds that the person has failed
286 to timely file the statement within 60 days after September 1 of
287 the current year, such person will also be subject to the
288 penalties provided in s. 112.317.
289 Section 5. Section 112.3147, Florida Statutes, is amended
290 to read:
291 112.3147 Forms.--
292 ~~(1)~~ All information required to be furnished by ss.
293 112.313, 112.3143, 112.3144, 112.3145, 112.3148, and 112.3149
294 and by s. 8, Art. II of the State Constitution shall be on forms
295 prescribed by the Commission on Ethics.
296 ~~(2)(a) With respect to reporting assets valued in excess~~
297 ~~of $1,000 on forms prescribed pursuant to s. 112.3144 which the~~
298 ~~reporting individual holds jointly with another person, the~~
299 ~~amount reported shall be based on the reporting individual's~~
300 ~~legal percentage of ownership in the property, except that~~
301 ~~assets held jointly with the reporting individual's spouse shall~~
302 ~~be reported at 100 percent of the value of the asset. For~~
303 ~~purposes of this subsection, a reporting individual is deemed to~~
304 ~~own an interest in a partnership which corresponds to the~~
305 ~~reporting individual's interest in the capital or equity of the~~
306 ~~partnership.~~
307 ~~(b)1. With respect to reporting liabilities valued in~~
308 ~~excess of $1,000 on forms prescribed pursuant to s. 112.3144 for~~

309 ~~which the reporting individual is jointly and severally liable,~~
310 ~~the amount reported shall be based upon the reporting~~
311 ~~individual's percentage of liability rather than the total~~
312 ~~amount of the liability, except, a joint and several liability~~
313 ~~with the reporting individual's spouse for a debt which relates~~
314 ~~to property owned by both as tenants by the entirety shall be~~
315 ~~reported at 100 percent of the total amount owed.~~
316 ~~2. A separate section of the form shall be created to~~
317 ~~provide for the reporting of the amounts of joint and several~~
318 ~~liability of the reporting individual not otherwise reported in~~
319 ~~paragraph (a).~~
320 Section 6. Paragraph (d) of subsection (6) and subsection
321 (8) of section 112.3148, Florida Statutes, are amended to read:
322 112.3148 Reporting and prohibited receipt of gifts by
323 individuals filing full or limited public disclosure of
324 financial interests and by procurement employees.--
325 (6)
326 (d) No later than July 1 of each year, each reporting
327 individual or procurement employee shall file a statement
328 listing each gift having a value in excess of $100 received by
329 the reporting individual or procurement employee, either
330 directly or indirectly, from a governmental entity or a direct-
331 support organization specifically authorized by law to support a
332 governmental entity. The statement shall list the name of the
333 person providing the gift, a description of the gift, the date
334 or dates on which the gift was given, and the value of the total
335 gifts given during the calendar year for which the report is
336 made. The reporting individual or procurement employee shall

337 attach to the ~~such~~ statement any report received by him or her
338 in accordance with paragraph (c), which report shall become a
339 public record when filed with the statement of the reporting
340 individual or procurement employee. The reporting individual or
341 procurement employee may explain any differences between the
342 report of the reporting individual or procurement employee and
343 the attached reports. The annual report filed by a reporting
344 individual shall be filed with the financial disclosure
345 statement required by either s. 8, Art. II of the State
346 Constitution or s. 112.3145, as applicable to the reporting
347 individual. The annual report filed by a procurement employee
348 shall be filed with the Commission on Ethics. The report filed
349 by a reporting individual or procurement employee who left
350 office or employment during the calendar year covered by the
351 report shall be filed by July 1 of the year after leaving office
352 or employment at the same location as his or her final financial
353 disclosure statement or, in the case of a former procurement
354 employee, with the Commission on Ethics.
355 (8)(a) Each reporting individual or procurement employee
356 shall file a statement with the Commission on Ethics not later
357 than ~~on~~ the last day of each calendar quarter, for the previous
358 calendar quarter, containing a list of gifts which he or she
359 believes to be in excess of $100 in value, if any, accepted by
360 him or her, for which compensation was not provided by the donee
361 to the donor within 90 days of receipt of the gift to reduce the
362 value to $100 or less, except the following:
363 1. Gifts from relatives.
364 2. Gifts prohibited by subsection (4) or s. 112.313(4).

365 3. Gifts otherwise required to be disclosed by this
366 section.
367 (b) The statement shall include:
368 1. A description of the gift, the monetary value of the
369 gift, the name and address of the person making the gift, and
370 the dates thereof. If any of these facts, other than the gift
371 description, are unknown or not applicable, the report shall so
372 state.
373 2. A copy of any receipt for such gift provided to the
374 reporting individual or procurement employee by the donor.
375 (c) The statement may include an explanation of any
376 differences between the reporting individual's or procurement
377 employee's statement and the receipt provided by the donor.
378 (d) The reporting individual's or procurement employee's
379 statement shall be sworn to by such person as being a true,
380 accurate, and total listing of all such gifts.
381 (e) Statements must be filed not later than 5 p.m. on the
382 due date. However, any statement that is postmarked by the
383 United States Postal Service by midnight on the due date is
384 deemed to have been filed in a timely manner, and a certificate
385 of mailing obtained from and dated by the United States Postal
386 Service at the time of the mailing, or a receipt from an
387 established courier company that bears a date on or before the
388 due date, constitutes proof of mailing in a timely manner.
389 (f) ~~(e)~~ If a reporting individual or procurement employee
390 has not received any gifts described in paragraph (a) during a
391 calendar quarter, he or she is not required to file a statement
392 under this subsection for that calendar quarter.

393 Section 7. Subsection (6) of section 112.3149, Florida
394 Statutes, is amended to read:
395 112.3149 Solicitation and disclosure of honoraria.--
396 (6) A reporting individual or procurement employee who
397 receives payment or provision of expenses related to any
398 honorarium event from a person who is prohibited by subsection
399 (4) from paying an honorarium to a reporting individual or
400 procurement employee shall publicly disclose on an annual
401 statement the name, address, and affiliation of the person
402 paying or providing the expenses; the amount of the honorarium
403 expenses; the date of the honorarium event; a description of the
404 expenses paid or provided on each day of the honorarium event;
405 and the total value of the expenses provided to the reporting
406 individual or procurement employee in connection with the
407 honorarium event. The annual statement of honorarium expenses
408 shall be filed by July 1 of each year for those ~~such~~ expenses
409 received during the previous calendar year. The reporting
410 individual or procurement employee shall attach to the annual
411 statement a copy of each statement received by him or her in
412 accordance with subsection (5) regarding honorarium expenses
413 paid or provided during the calendar year for which the annual
414 statement is filed. The ~~Such~~ attached statement shall become a
415 public record upon the filing of the annual report. The annual
416 statement of a reporting individual shall be filed with the
417 financial disclosure statement required by either s. 8, Art. II
418 of the State Constitution or s. 112.3145, as applicable to the
419 reporting individual. The annual statement of a procurement
420 employee shall be filed with the Commission on Ethics. The

421 statement filed by a reporting individual or procurement
422 employee who left office or employment during the calendar year
423 covered by the statement shall be filed by July 1 of the year
424 after leaving office or employment at the same location as his
425 or her final financial disclosure statement or, in the case of a
426 former procurement employee, with the Commission on Ethics.
427 Section 8. Subsections (1), (2), (6), (7), and (8) of
428 section 112.317, Florida Statutes, are amended to read:
429 112.317 Penalties.--
430 (1) Violation of any provision of this part, including,
431 but not limited to, any failure to file any disclosures required
432 by this part or violation of any standard of conduct imposed by
433 this part, or violation of any provision of s. 8, Art. II of the
434 State Constitution, in addition to any criminal penalty or other
435 civil penalty involved, shall, under ~~pursuant to~~ applicable
436 constitutional and statutory procedures, constitute grounds for,
437 and may be punished by, one or more of the following:
438 (a) In the case of a public officer:
439 1. Impeachment.
440 2. Removal from office.
441 3. Suspension from office.
442 4. Public censure and reprimand.
443 5. Forfeiture of no more than one-third salary per month
444 for no more than 12 months.
445 6. A civil penalty not to exceed $10,000.
446 7. Restitution of any pecuniary benefits received because
447 of the violation committed. The commission may recommend that
448 the restitution penalty be paid to the agency of which the

449 public officer was a member or to the General Revenue Fund.
450 (b) In the case of an employee or a person designated as a
451 public officer by this part who otherwise would be deemed to be
452 an employee:
453 1. Dismissal from employment.
454 2. Suspension from employment for not more than 90 days
455 without pay.
456 3. Demotion.
457 4. Reduction in salary level.
458 5. Forfeiture of no more than one-third salary per month
459 for no more than 12 months.
460 6. A civil penalty not to exceed $10,000.
461 7. Restitution of any pecuniary benefits received because
462 of the violation committed. The commission may recommend that
463 the restitution penalty be paid to the agency by which the
464 public employee was employed, or of which the officer was deemed
465 to be an employee, or to the General Revenue Fund.
466 8. Public censure and reprimand.
467 (c) In the case of a candidate who violates the provisions
468 of this part or s. 8(a) and (i), Art. II of the State
469 Constitution:
470 1. Disqualification from being on the ballot.
471 2. Public censure.
472 3. Reprimand.
473 4. A civil penalty not to exceed $10,000.
474 (d) In the case of a former public officer or employee who
475 has violated a provision applicable to former officers or
476 employees or whose violation occurred before the ~~prior to such~~

477 officer's or employee's leaving public office or employment:
478 1. Public censure and reprimand.
479 2. A civil penalty not to exceed $10,000.
480 3. Restitution of any pecuniary benefits received because
481 of the violation committed. The commission may recommend that
482 the restitution penalty be paid to the agency by which the
483 public employee was employed, or of which the officer was deemed
484 to be an employee, or to the General Revenue Fund.
485 (2) In any case in which the commission finds a violation
486 of this part or of s. 8, Art. II of the State Constitution and
487 the proper disciplinary official or body under s. 112.324
488 imposes ~~recommends~~ a civil penalty or restitution penalty, the
489 Attorney General shall bring a civil action to recover such
490 penalty. No defense may be raised in the civil action to enforce
491 the civil penalty or order of restitution that could have been
492 raised by judicial review of the administrative findings and
493 recommendations of the commission by certiorari to the district
494 court of appeal. The Attorney General shall collect any costs,
495 attorney's fees, expert witness fees, or other costs of
496 collection incurred in bringing the action.
497 ~~(6) Any person who willfully discloses, or permits to be~~
498 ~~disclosed, his or her intention to file a complaint, the~~
499 ~~existence or contents of a complaint which has been filed with~~
500 ~~the commission, or any document, action, or proceeding in~~
501 ~~connection with a confidential preliminary investigation of the~~
502 ~~commission, before such complaint, document, action, or~~
503 ~~proceeding becomes a public record as provided herein commits a~~
504 ~~misdemeanor of the first degree, punishable as provided in s.~~

505 ~~775.082 or s. 775.083.~~
506 (6)~~(7)~~ In any case in which the commission finds probable
507 cause to believe that a complainant has committed perjury in
508 regard to any document filed with, or any testimony given
509 before, the commission, it shall refer such evidence to the
510 appropriate law enforcement agency for prosecution and taxation
511 of costs.
512 (7)~~(8)~~ In any case in which the commission determines that
513 a person has filed a complaint against a public officer or
514 employee with a malicious intent to injure the reputation of
515 such officer or employee by filing the complaint with knowledge
516 that the complaint contains one or more false allegations or
517 with reckless disregard for whether the complaint contains false
518 allegations of fact material to a violation of this part, the
519 complainant shall be liable for costs plus reasonable attorney's
520 fees incurred in the defense of the person complained against,
521 including the costs and reasonable attorney's fees incurred in
522 proving entitlement to and the amount of costs and fees. If the
523 complainant fails to pay such costs and fees voluntarily within
524 30 days following such finding by the commission, the commission
525 shall forward such information to the Department of Legal
526 Affairs, which shall bring a civil action in a court of
527 competent jurisdiction to recover the amount of such costs and
528 fees awarded by the commission.
529 Section 9. Section 112.3185, Florida Statutes, is amended
530 to read:
531 112.3185 Additional standards for state agency employees
532 ~~Contractual services~~.--

533 (1) For the purposes of this section:
534 (a) "Contractual services" shall be defined as set forth
535 in chapter 287.
536 (b) "Agency" means any state officer, department, board,
537 commission, or council of the executive or judicial branch of
538 state government and includes the Public Service Commission.
539 (2) No agency employee who participates through decision,
540 approval, disapproval, recommendation, preparation of any part
541 of a purchase request, influencing the content of any
542 specification or procurement standard, rendering of advice,
543 investigation, or auditing or in any other advisory capacity in
544 the procurement of contractual services shall become or be,
545 while an agency employee, the employee of a person contracting
546 with the agency by whom the employee is employed.
547 (3) No agency employee shall, after retirement or
548 termination, have or hold any employment or contractual
549 relationship with any business entity other than an agency in
550 connection with any contract in which the agency employee
551 participated personally and substantially through decision,
552 approval, disapproval, recommendation, rendering of advice, or
553 investigation while an officer or employee. <u>When the agency</u>
554 <u>employee's position is eliminated and his or her duties are</u>
555 <u>performed by the business entity, this subsection does not</u>
556 <u>prohibit his or her employment or contractual relationship with</u>
557 <u>the business entity if the employee's participation in the</u>
558 <u>contract was limited to recommendation, rendering of advice, or</u>
559 <u>investigation and if the agency head determines that the best</u>
560 <u>interests of the state will be served thereby and provides prior</u>

561 written approval for the particular employee.
562 (4) No agency employee shall, within 2 years after
563 retirement or termination, have or hold any employment or
564 contractual relationship with any business entity other than an
565 agency in connection with any contract for contractual services
566 which was within his or her responsibility while an employee. If
567 the agency employee's position is eliminated and his or her
568 duties are performed by the business entity, the provisions of
569 this subsection may be waived by the agency head through prior
570 written approval for a particular employee if the agency head
571 determines that the best interests of the state will be served
572 thereby.
573 (5) The sum of money paid to a former agency employee
574 during the first year after the cessation of his or her
575 responsibilities, by the agency with whom he or she was
576 employed, for contractual services provided to the agency, shall
577 not exceed the annual salary received on the date of cessation
578 of his or her responsibilities. ~~The provisions of~~ This
579 subsection may be waived by the agency head for a particular
580 contract if the agency head determines that such waiver will
581 result in significant time or cost savings for the state.
582 (6) No agency employee shall, after retirement or
583 termination, represent or advise for compensation another person
584 or entity, except the state, in any matter in which the employee
585 participated personally and substantially in his or her official
586 capacity through decision, approval, disapproval,
587 recommendation, rendering of advice, investigation, or otherwise
588 while an employee. The term "matter" includes any judicial or

589 other proceeding, application, request for a ruling, or other
590 determination, contract, claim, controversy, investigation,
591 charge, accusation, arrest, or other particular action involving
592 a specific party or parties.
593 (7) ~~(6)~~ No agency employee acting in an official capacity
594 shall directly or indirectly procure contractual services for
595 his or her own agency from any business entity of which a
596 relative is an officer, partner, director, or proprietor or in
597 which the ~~such~~ officer or employee or his or her spouse or
598 child, or any combination of them, has a material interest.
599 (8) ~~(7)~~ A violation of any provision of this section is
600 punishable in accordance with s. 112.317.
601 (9) ~~(8)~~ This section is not applicable to any employee of
602 the Public Service Commission who was so employed on or before
603 December 31, 1994.
604 Section 10. Subsection (1) of section 112.321, Florida
605 Statutes, is amended to read:
606 112.321 Membership, terms; travel expenses; staff.--
607 (1) The commission shall be composed of nine members. Five
608 of these members shall be appointed by the Governor, no more
609 than three of whom shall be from the same political party,
610 subject to confirmation by the Senate. One member appointed by
611 the Governor shall be a former city or county official and may
612 be a former member of a local planning or zoning board which has
613 only advisory duties. Two members shall be appointed by the
614 Speaker of the House of Representatives, and two members shall
615 be appointed by the President of the Senate. Neither the Speaker
616 of the House of Representatives nor the President of the Senate

617 shall appoint more than one member from the same political
618 party. Of the nine members of the commission, no more than five
619 members shall be from the same political party at any one time.
620 No member may hold any public employment. An individual who
621 qualifies as a lobbyist pursuant to s. 11.045 or s. 112.3215 or
622 pursuant to any local government charter or ordinance may not
623 serve as a member of the commission, except that this
624 prohibition does not apply to an individual who is a member of
625 the commission on October 1, 2006, until the expiration of his
626 or her current term. A member of the commission may not lobby
627 any state or local governmental entity as provided in s. 11.045
628 or s. 112.3215 or as provided by any local government charter or
629 ordinance, except that this prohibition does not apply to an
630 individual who is a member of the commission on October 1, 2006,
631 until the expiration of his or her current term. All members
632 shall serve 2-year terms. No member shall serve more than two
633 full terms in succession. Any member of the commission may be
634 removed for cause by majority vote of the Governor, the
635 President of the Senate, the Speaker of the House of
636 Representatives, and the Chief Justice of the Supreme Court.
637 Section 11. Paragraph (f) of subsection (5) of section
638 112.3215, Florida Statutes, is amended to read:
639 112.3215 Lobbyists before the executive branch or the
640 Constitution Revision Commission; registration and reporting;
641 investigation by commission.--
642 (5)
643 (f) The commission shall provide by rule the grounds for
644 waiving a fine, the procedures ~~a procedure~~ by which a lobbyist

645 who fails to timely file a report shall be notified and assessed
646 fines, and the procedure for appealing the fines. The rule shall
647 provide for the following:
648 1. Upon determining that the report is late, the person
649 designated to review the timeliness of reports shall immediately
650 notify the lobbyist as to the failure to timely file the report
651 and that a fine is being assessed for each late day. The fine
652 shall be $50 per day per report for each late day up to a
653 maximum of $5,000 per late report.
654 2. Upon receipt of the report, the person designated to
655 review the timeliness of reports shall determine the amount of
656 the fine due based upon the earliest of the following:
657 a. When a report is actually received by the lobbyist
658 registration and reporting office.
659 b. When the report is postmarked.
660 c. When the certificate of mailing is dated.
661 d. When the receipt from an established courier company is
662 dated.
663 3. Such fine shall be paid within 30 days after the notice
664 of payment due is transmitted by the Lobbyist Registration
665 Office, unless appeal is made to the commission. The moneys
666 shall be deposited into the Executive Branch Lobby Registration
667 Trust Fund.
668 4. A fine shall not be assessed against a lobbyist the
669 first time any reports for which the lobbyist is responsible are
670 not timely filed. However, to receive the one-time fine waiver,
671 all reports for which the lobbyist is responsible must be filed
672 within 30 days after the notice that any reports have not been

673 timely filed is transmitted by the Lobbyist Registration Office.
674 A fine shall be assessed for any subsequent late-filed reports.
675 5. Any lobbyist may appeal or dispute a fine, based upon
676 unusual circumstances surrounding the failure to file on the
677 designated due date, and may request and shall be entitled to a
678 hearing before the commission, which shall have the authority to
679 waive the fine in whole or in part for good cause shown. Any
680 ~~such~~ request shall be made within 30 days after the notice of
681 payment due is transmitted by the Lobbyist Registration Office.
682 In such case, the lobbyist shall, within the 30-day period,
683 notify the person designated to review the timeliness of reports
684 in writing of his or her intention to bring the matter before
685 the commission.
686 6. The person designated to review the timeliness of
687 reports shall notify the commission of the failure of a lobbyist
688 to file a report after notice or of the failure of a lobbyist to
689 pay the fine imposed. <u>The registration of a lobbyist who fails</u>
690 <u>to timely pay a fine is automatically suspended until the fine</u>
691 <u>is paid, unless an appeal of the fine is pending before the</u>
692 <u>commission. The commission shall provide a written suspension</u>
693 <u>notice to each lobbyist whose registration has been</u>
694 <u>automatically suspended.</u>
695 7. Notwithstanding any provision of chapter 120, any fine
696 imposed under this subsection that is not waived by final order
697 of the commission and that remains unpaid more than 60 days
698 after the notice of payment due or more than 60 days after the
699 commission renders a final order on the lobbyist's appeal shall
700 be collected by the Department of Financial Services as a claim,

701 debt, or other obligation owed to the state, and the department
702 may assign the collection of such fine to a collection agent as
703 provided in s. 17.20.
704 Section 12. Subsection (4) of section 112.322, Florida
705 Statutes, is amended to read:
706 112.322 Duties and powers of commission.--
707 (4) The commission has the power to subpoena, audit, and
708 investigate. The commission may subpoena witnesses and compel
709 their attendance and testimony, administer oaths and
710 affirmations, take evidence, and require by subpoena the
711 production of any books, papers, records, or other items
712 relevant to the performance of the duties of the commission or
713 to the exercise of its powers. The commission may delegate to
714 its investigators the authority to administer oaths and
715 affirmations. The commission may delegate the authority to issue
716 subpoenas to its chair, and may authorize its employees to serve
717 any subpoena issued under this section. In the case of a refusal
718 to obey a subpoena issued to any person, the commission may make
719 application to any circuit court of this state which shall have
720 jurisdiction to order the witness to appear before the
721 commission and to produce evidence, if so ordered, or to give
722 testimony touching on the matter in question. Failure to obey
723 the order may be punished by the court as contempt. Witnesses
724 shall be paid mileage and witnesses fees as authorized for
725 witnesses in civil cases<u>, except that a witness who is required</u>
726 <u>to travel outside the county of his or her residence to testify</u>
727 <u>is entitled to per diem and travel expenses at the same rate</u>
728 <u>provided for state employees under s. 112.061, to be paid after</u>

729 the witness appears.
730 Section 13. Subsections (3) and (4) of section 914.21,
731 Florida Statutes, are amended to read:
732 914.21 Definitions.--As used in ss. 914.22-914.24, the
733 term:
734 (3) "Official investigation" means any investigation
735 instituted by a law enforcement agency or prosecuting officer of
736 the state or a political subdivision of the state or the
737 Commission on Ethics.
738 (4) "Official proceeding" means:
739 (a) A proceeding before a judge or court or a grand jury;
740 (b) A proceeding before the Legislature; ~~or~~
741 (c) A proceeding before a federal agency which is
742 authorized by law; or~~.~~
743 (d) A proceeding before the Commission on Ethics.
744 Section 14. This act shall take effect October 1, 2006.