

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

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

Proposal #: P 98

Relating to: GENERAL PROVISIONS, Ethics in government

Introducer(s): Commissioner Kruppenbacher

Article/Section affected:

Date: December 6, 2017

	REFERENCE	ACTION
1.	<u>EE</u>	<u>Pre-meeting</u>
2.	<u>GP</u>	<u></u>

I. SUMMARY:

Proposal #98 amends Section 8 of Article II of the State Constitution to prohibit members of the Legislature from attempting to influence, involve themselves in, or vote on any legislation or attempt to influence or involve themselves in any business of the state or its political subdivisions which will directly inure to his or her benefit or to the benefit of his or her immediate family.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Ethics in Government – General

Ethics in government covers a broad range of concepts regarding the appropriate behavior of elected officials and public employees. The National Conference on State Legislatures (NCSL) lists governmental ethics under the following broad categories:

- Conflict of Interest
- Financial Disclosure
- Gift Restrictions
- Lobbyist Regulation
- Oversight/Ethics Commissions and Committees
- Staff Ethics

Conflict of Interest – General

NCSL provides the following information under Conflict of Interest Definitions:

“Whether it be in state constitution, statute or rule, all states address the potential of conflicts of interests for legislators. Definitions usually specify that a legislator may not have a personal or private interest or gain in a financial way by votes and in their legislative duties. States differ on how to handle the conflict.” NCSL also provides a table listing the conflict of interest provisions for each state.

Ethics in Government – Florida

Florida Commission on Ethics

Florida’s Constitution and state law provide that the Florida Commission on Ethics (Commission) is the independent body charged with receiving and investigating sworn complaints involving Florida’s constitutional ethics provisions, as well as any other violation of Florida’s Code of Ethics for Public Officers and Employees. While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation. Instead, whenever the Commission finds probable cause exists that an ethics violation has occurred, the commission is required to submit its findings, along with a recommended penalty, to the statutorily designated official who may impose punishment. The Commission must make such submission to the Senate President or Speaker of the House, whichever is applicable, in any case concerning a former legislator who is alleged to have violated a provision applicable to former legislators or whose alleged conduct occurred while a member of the Legislature. In the case of a former statewide elected officer, the commission is required to make such submission to the Governor.

Florida State Constitution – Conflict of Interest

Article II of Florida’s State Constitution is entitled General Provisions, and Section 8 of this Article is entitled Ethics in Government. Subsection (c) of this section reads:

“Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.”

Subsection (h) of this section reads:

“This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.”

Florida State Law – Conflict of Interest Provisions

Codified in state law as Part III of Chapter 112, Florida Statutes, is the Code of Ethics for Public Officers and Employees. Section 112.312(8), Florida Statutes, provides the following definition:

““Conflict” or “conflict of interest” means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.”

Per the 2018 Florida Commission on Ethics Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees (Guide), Section 112.3143, Florida Statutes, provides for the following:

- State public officers are prohibited from voting in an official capacity on any measure which they know would inure to their own special private gain or loss. A state public officer who abstains, or who votes on a measure which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, must make every reasonable effort to file a memorandum of voting conflict with the recording secretary in advance of the vote. If that is not possible, it must be filed within 15 days after the vote occurs. The memorandum must disclose the nature of the officer's interest in the matter.
- No appointed state or local officer shall participate in any matter which would inure to the officer's special private gain or loss, the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, without first disclosing the nature of his or her interest in the matter. The memorandum of voting conflict (Commission Form 8A or 8B) must be filed with the meeting's recording officer, be provided to the other members of the agency, and be read publicly at the next meeting.
- If the conflict is unknown or not disclosed prior to the meeting, the appointed official must orally disclose the conflict at the meeting when the conflict becomes known. Also, a written memorandum of voting conflict must be filed with the meeting's recording officer within 15 days of the disclosure being made and must be provided to the other members of the agency, with the disclosure being read publicly at the next scheduled meeting.

Also per the Guide, Section 112.313(6), Florida Statutes, and Section 112.313(7), Florida Statutes, provide for the following:

- Public officers and employees, and local government attorneys are prohibited from corruptly using or attempting to use their official positions or the resources thereof to obtain a special privilege or benefit for themselves or others.
- A public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties. Limited exceptions to this prohibition have been created in the law for legislative bodies, certain special tax districts, drainage districts, and persons whose professions or occupations qualify them to hold their public positions.

Under current law, a serving public officer who violates any of Florida's constitutional ethics provisions or a provision of the Code may be subject to one or more of the following civil penalties:

- Impeachment.
- Removal from office.
- Suspension from office.
- Public censure and reprimand.
- Forfeiture of no more than one-third of his or her salary per month for no more than 12 months.
- A civil penalty not to exceed \$10,000.
- Restitution of any pecuniary benefits received because of the violation committed.

Rules of the Florida House of Representatives (2016 – 2018)

House Rule 15 is entitled "ETHICS AND CONDUCT OF MEMBERS." Rule 15.3(a) reads:

- A member may neither solicit nor accept anything that reasonably may be construed to improperly influence the member's official act, decision, or vote.

Rule 15.4(c) reads:

- (A member shall) Not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the member or any other person when such activity is in substantial conflict with the duties of a member of the House.

Rule 15.5 reads:

- A member may not corruptly use or attempt to use the member's official position or any property or resource which may be within the member's trust in a manner contrary to the trust or authority placed in the member, either by the public or by other members, for the purpose of securing a special privilege, benefit, or exemption for the member or for others. A member may not solicit or accept an employment offer or investment advice arising out of legislative activities or political activities engaged in while he or she is a member of, or candidate for, the House. A member may not enter into any investment, joint venture, or other profitmaking relationship with or advised by a lobbyist or principal, except that a member may buy or sell listed, publicly traded securities of a principal unless in violation of Rule 15.6. For purposes of this rule, "investment, joint venture, or other profitmaking relationship" does not include an employment relationship or professional partnership or similar venture engaging the professional services of the member.

Rules of the Florida Senate (2016-2018)

Within Rule 1, Part Four is entitled “Legislative Conduct and Ethics” and covers Rules 1.35 through 1.43. Rule 1.36 reads:

- A Senator shall not accept anything that will improperly influence his or her official act, decision, or vote.

Rule 1.38 reads:

- A Senator shall not use his or her influence as a Senator in any issue that involves substantial conflict between his or her personal interest and his or her duties in the public interest.

Rule 1.39 reads:

- (1) Abstention on matters of special private gain or loss.—A Senator may not vote on any matter that the Senator knows would inure to the special private gain or loss of the Senator. The Senator must disclose the nature of the interest in the matter from which the Senator is required to abstain.
(2) Disclosure on matters of special private gain or loss to family or principals.—When voting on any matter that the Senator knows would inure to the special private gain or loss of:
 - (a) 1. Any principal by whom the Senator or the Senator’s spouse, parent, or child is retained or employed;
2. Any parent organization or subsidiary of a corporate principal by which the Senator is retained or employed; or
3. An immediate family member or business associate of the Senator, the Senator must disclose the nature of the interest of such person in the outcome of the vote.
 - (b) For the purpose of this Rule, the term:
 - 1. “Immediate family member” means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.
 - 2. “Business associate” means any person or entity engaged in or carrying on a business enterprise with the Senator as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.

2017 Florida Legislative Session

During the 2017 Session of the Florida Legislature, the House of Representatives submitted for consideration proposed changes Florida law to strengthen public officer and employee conduct regarding solicitation and negotiation of conflicting and potentially conflicting income producing relationships. House Bill (HB) 7083 was an omnibus ethics reform bill that among other changes contained the following provisions:

- Prohibited public officers and employees from soliciting an employment or contractual relationship from entities with whom they are prohibited from entering into conflicting employment and contractual relationships.
- Imposed the following restrictions on statewide elected officers and legislators:
 - Prohibited solicitation of employment or investment advice arising out of official duties.
 - Prohibited solicitation and acceptance of investment advice or profitmaking arrangements (other than employment) from lobbyists or lobbyists' employers or principals.

HB 7083 passed the House on April 20, 2017 by a vote of 118-1 but was not considered in the Senate.

2018 Florida Legislative Committee Meetings

During committee meetings leading up to the 2018 Session of the Florida Legislature, the House of Representatives has submitted for consideration HB 7007, an omnibus ethics reform bill which contains ethics provisions similar to last year's HB 7083. HB 7007 passed the House Public Integrity and Ethics Committee on November 7, 2017 by a vote of 18-0, and as of December 5, 2017 is available for assignment to other committees or to the calendar of bills available for consideration by the full House. As of December 5, 2017 there is no similar companion bill filed in the Senate.

B. EFFECT OF PROPOSED CHANGES:

Proposal #98 would add a new subsection to Section 8 of Article II of the Florida State Constitution to read:

“A member of the legislature may not attempt to influence, involve themselves in, or vote on any legislation or attempt to influence or involve themselves in any business of the state or its political subdivisions which will directly inure to his or her benefit or to the benefit of his or her immediate family.”

Florida Commission on Ethics Analysis

The Florida Commission on Ethics has scheduled a meeting for December 8, 2017. Included on the agenda for this meeting is Item IX, Constitution Revision Proposals. Included in the meeting materials for this item is a memo dated November 20, 2017 to Commission Members from the Executive Director. The subject of the memo is Constitution Revision Commission (CRC) request, and it provides information on each of the current four CRC proposals to amend the ethics provisions of the Florida Constitution. Regarding the changes made by this proposal (#98), the memo states:

“This proposal would prohibit members of the Legislature from attempting to influence, involving themselves in, or voting on any legislation directly inuring to the member's benefit or that of the member's immediate family. Pursuant to Section 112.3143, state public officers, including legislators, must abstain on measures that would inure to their

own special private gain or loss. They may vote, but must disclose a voting conflict of interest, if the measure would inure to the special private gain or loss of a relative, principal by whom they are retained or the corporate parent or subsidiary thereof, or business associate.

This proposal would also prohibit members of the Legislature from attempting to influence or involving themselves in, any business of the state or its political subdivisions which would inure to the benefit of the member or the member's immediate family. To this is addressed in current law at all, it would be through the application of the conflicts law in Section 112.313(7) or the misuse of position provision in Section 112.313(6)."

C. FISCAL IMPACT:

To the extent that the change made by this proposal resulted in greater or fewer reported ethics complaints than is currently the case, there could be an indeterminate fiscal impact based on the related change in the workload of the Florida Commission on Ethics. There may be an indeterminate negative fiscal impact to the legislators and members of their immediate families who would be impacted by the change made by this proposal.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.