

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EES 14-01 Ethics Training for Public Officers

SPONSOR(S): Ethics & Elections Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| Orig. Comm.: Ethics & Elections Subcommittee | 11 Y, 0 N | Davison | Marino |

SUMMARY ANALYSIS

Article II, section 8 of the Florida Constitution imposes various ethics requirements on elected constitutional officers, public officers, public employees, and candidates for constitutional or public office. In 2013, the Legislature passed a law explicitly requiring certain constitutional officers to complete four hours of ethics training each year that addresses, at a minimum, article II, section 8 of the Constitution, the Code of Ethics for Public Officers and Employees, and the state's public records and meetings laws. However, the requirement for annual ethics training was not explicitly applied to elected municipal officers.

The bill requires elected municipal officers to complete four hours of ethics training each calendar year that meets the same requirements as ethics training for constitutional officers. According to the League of Cities, there are approximately 2,200 elected municipal officers in the state.

In addition, beginning January 1, 2015, the bill requires each officer who is subject to the training requirement, including constitutional officers and elected municipal officers, to certify on the officer's financial disclosure that he or she has completed the required training. The bill states that failure to affirm completion of annual ethics training does not constitute an immaterial, inconsequential, or de minimis error or omission. Therefore, after August 31, an officer would not be permitted to "cure" the failure to affirm completion of the training on a financial disclosure if a complaint is filed regarding the failure to affirm.

Lastly, the bill provides that if a constitutional officer or elected municipal officer assumes a new office or new term of office on or before March 31, the officer must complete the annual training on or before December 31 of the year in which the term began. If the officer assumes a new office after March 31, the officer is not required to complete the ethics training for the calendar year in which he or she assumes office.

While the bill requires elected municipal officers to satisfy an annual ethics training requirement, the bill does not require the state or municipalities to pay for the training. Therefore, the bill does not appear to have a fiscal impact on state or local governments. The bill may, however, have a minimal negative fiscal impact on elected municipal public officers who may pay for annual training, instead of taking free courses offered by the Commission on Ethics, and an indeterminate positive fiscal impact on private providers of ethics training courses.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Ethics Training Requirement

Article II, section 8 of the Florida Constitution imposes various ethics requirements on elected constitutional officers, public officers, public employees, and candidates for constitutional or public office. For purpose of determining who must file annual financial disclosures, the Commission on Ethics (Commission) has identified elected constitutional officers as: the Governor; the Lieutenant Governor; the members of the cabinet; the members of the Legislature; the Justices of the Supreme Court; the judges of the district courts of appeal, circuit courts, and county courts; state attorneys; public defenders; clerks of the circuit courts; sheriffs; county tax collectors, property appraisers and supervisors of elections; county commissioners; all elective officers in a chartered county government if their duties consist of performing the duties of any of the above constitutional officers; elected wardens of schools; and members of district school boards.¹

In 2013, the Legislature passed a law requiring certain constitutional officers to complete four hours of ethics training each year.² While the Florida Statutes do not provide a definition of “constitutional officer,” the law specifies that constitutional officers subject to the training requirement include the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.³ The ethics training must address, at a minimum, article II, section 8 of the Florida Constitution, the Code of Ethics for Public Officers and Employees,⁴ and the state’s public records and meetings laws.⁵ However, the law does not explicitly apply the annual training requirement to elected municipal officers.

This requirement may be met by completing a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.⁶ The Commission has promulgated rules to implement this training requirement.⁷ To satisfy the requirement, an individual must receive training on Florida’s public records and meetings laws and at least one topic concerning ethics requirements for public officers and employees.⁸ The rules specify the following ethics topics may be used to meet the requirement:

- Doing business with one's own agency;
- Conflicting employment or contractual relationships;
- Misuse of position;
- Disclosure or use of certain information;
- Gifts and honoraria, including solicitation and acceptance of gifts, and unauthorized compensation;
- Post-officeholding restrictions;
- Restrictions on the employment of relatives;

¹ ch. 34-8.003, F.A.C.

² ch. 2013-38, L.O.F.; s. 112.3142(1), F.S. (2013).

³ s. 112.3142(1), F.S. (2013).

⁴ The Code of Ethics for Public Officers and Employees contains various provisions regarding both prohibited actions or conduct by public officers and employees as well as disclosures that these individuals must make.

⁵ s. 112.3142(2)(a), F.S. (2013).

⁶ s. 112.3142(2)(a), F.S. (2013).

⁷ ch. 34-7.025, F.A.C.

⁸ *Id.*

- Voting conflicts when the constitutional officer is a member of a collegial body and votes in his or her official capacity;
- Financial disclosure requirements, including the automatic fine and appeal process;
- Commission procedures on ethics complaints and referrals; and
- The importance of and process for obtaining advisory opinions rendered by the Commission.⁹

In 2013, the Commission presented live educational training programs to forty groups and organizations, such as newly-elected school superintendents and clerks of court, supervisors of elections, and the Florida Sheriffs Association.¹⁰

Individuals and groups or organizations may also pursue online training resources. The Commission provides six free training modules, prepared by Commission staff, on its website.¹¹ Topics include voting conflicts for both state and local officers, gifts for local government officials, ethics laws, financial disclosure laws, and gift laws. The six free modules, three video and three audio, provide four hours and twenty-five minutes of ethics training. The Commission also provides links to fee-based¹² training opportunities and states, “Other training opportunities involving the staff of the Commission on Ethics will be added to this page as they arise. Check back often.”¹³ Additionally, the Commission has opined that any knowledgeable person or entity may provide the training, but that the training could not be “satisfied by a self-directed learning program consisting of the official’s review of materials he or she selects independently.”¹⁴

The law requires each house of the Legislature to provide for ethics training pursuant to its rules.¹⁵

Constitutional officers are not required to certify or report whether they have met the ethics training requirement.

Training Affirmation on Financial Disclosure Forms

The Florida Constitution requires local officers, state officers, specified state employees, and all constitutional officers to file an annual financial disclosure with the Commission by July 1.¹⁶ An amended financial disclosure filed before September 1 must be treated as the original filing, regardless of whether a complaint regarding the financial disclosure has been filed.¹⁷ If a complaint is filed after August 25 alleging an immaterial, inconsequential, or de minimis error or omission, the Commission must give the filer 30 days to “cure” the financial disclosure before taking any action on the complaint, other than notifying the filer of the complaint.¹⁸ An error or omission is immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest.¹⁹

Effect of Proposed Changes

⁹ *Id.*

¹⁰ Annual Report to the Florida Legislature For Calendar Year 2013, at pp. 14-15, available at <http://www.ethics.state.fl.us/publications/2013%20Annual%20Report.pdf>.

¹¹ Florida Commission on Ethics, <http://www.ethics.state.fl.us/> (follow “Training” hyperlink).

¹² The “Ethics Package” provided by the Florida Institute of Government costs \$85.00 and satisfies the four hour requirement. http://iog.fsu.edu/events/online_training/index.html. A link is also provided to the Florida Bar’s website which provides electronic course media and materials for purchase.

¹³ Florida Commission on Ethics, <http://www.ethics.state.fl.us/> (follow “Training” hyperlink).

¹⁴ CEO 13-15 at p. 2.

¹⁵ s. 112.3142(3), F.S.

¹⁶ s. 112.3144, F.S. (2013); s. 112.3145, F.S. (2013).

¹⁷ s. 112.3144(7)(a), F.S. (2013); s. 112.3145(9)(a), F.S. (2013).

¹⁸ *Id.*

¹⁹ s. 112.3144(7)(c), F.S. (2013); s. 112.3145(9)(c), F.S. (2013).

Beginning January 1, 2015, the bill requires elected municipal officers to complete four hours of ethics training each calendar year that meets the same requirements as ethics training for constitutional officers. According to the League of Cities, there are approximately 2,200 elected municipal officers in the state.²⁰

The bill also requires each officer who is subject to the ethics training requirement, including constitutional officers and elected municipal officers, to certify on the officer's financial disclosure that he or she has completed the required training. Failure to affirm completion of annual ethics training does not constitute an immaterial, inconsequential, or de minimis error or omission. Therefore, after August 31, an officer would not be permitted to "cure" the failure to affirm completion of the training on a financial disclosure if a complaint is filed regarding the failure.

Lastly, the bill provides that it is the Legislature's intent that a constitutional officer or elected municipal officer required to complete the ethics training receive the training as close as possible to the date he or she assumes office. If the constitutional officer or elected municipal officer assumes a new office or new term of office on or before March 31, the officer must complete the annual training on or before December 31 of the year in which the term began. If the officer assumes a new office after March 31, the officer is not required to complete the ethics training for the calendar year in which he or she assumes office.

The bill also clarifies that the four hours of ethics training required each year is per *calendar* year.

B. SECTION DIRECTORY:

Section 1: amends s. 112.3142, F.S.; requires elected municipal officers to participate in annual ethics training; provides legislative intent.

Section 2: amends s. 112.3144, F.S.; requires each public officer required to participate in annual ethics training to certify completion on his or her financial disclosure; provides that failure to certify completion of annual ethics training on a disclosure does not constitute an immaterial, inconsequential, or de minimis error or omission.

Section 3: amends s. 112.3145, F.S.; requires each public officer required to complete annual ethics training to certify completion on his or her statement of financial interests; provides that failure to certify completion of annual ethics training on a disclosure does not constitute an immaterial, inconsequential, or de minimis error or omission.

Section 4: provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: As a result of the 2013 legislation enacting the training requirement for constitutional officers, the Commission adopted rules and developed training. The Commission is not expected to incur additional costs as a result of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

²⁰ Information provided during telephone conversation on March 13, 2014, with Kraig Conn, Deputy General Counsel, Florida League of Cities.

2. Expenditures: While this bill requires elected municipal officers to complete annual ethics training, it does not require municipalities to spend funds to provide the training. However, municipalities may elect to do so. If a municipality does not pay for or otherwise provide the annual training, there may be a negative fiscal impact on its elected officers if they do not choose to take free courses offered by the Commission but choose to pay the cost from personal funds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill may have a positive fiscal impact on private providers of ethics training if elected municipal officers choose to enroll in private courses to satisfy the annual training requirement. According to the League of Cities, there are approximately 2,200 elected municipal officers in the state.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill requires each elected municipal officer to complete four hours of ethics training every calendar year. Pursuant to Article VII, section 18(a), Florida Constitution, a mandate includes a general bill requiring counties or municipalities to spend funds. While this bill requires elected municipal officers to complete annual ethics training, it does not require a municipality to spend funds to provide the training. Therefore, this bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY:

In the 2013 legislation enacting the training requirement, the Legislature granted the Commission rulemaking authority to promulgate rules specifying which provisions of the ethics laws must be covered in ethics training. The Commission adopted such rules. Those rules may need to be revised to include elected municipal officers, but additional rulemaking authority is not provided or necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.