

**Philip Claypool**  
**Attorney at Law**

1400 Village Square Blvd  
Ste #3 - 226  
Tallahassee, FL 32312

850.556.5925

claypoollaw@embarqmail.com

**MEMORANDUM**

**TO:** Dan Krassner, Ben Wilcox (Integrity Florida)  
**FROM:** Phil Claypool  
**DATE:** March 17, 2013  
**RE:** House PCB EES 13-02

As with Senate Bill 2, in its current form, the House's Proposed Committee Bill (EES 13-02) contains several provisions that would protect the public and improve governmental ethics in Florida; however, there are several others that serve only to protect the interests of public officials and would take Florida backward.

Notably, the House bill does propose three changes that would improve upon the Senate bill. Unfortunately, there are two areas where the House proposals would recede from SB 2.

Again, I'd have to observe that one step forward but another step back does not make progress.

**First, the good:**

**[Dual Public Positions]**

The House PCB tracks Senate Bill 2, exactly. Regarding elected public officers being offered public employment, the bill would create an entirely new ethical standard to address situations like that involving former Speaker Sansom. It would prohibit an elected public officer (state or local), and even persons who have qualified to run for public office, from being employed with either State or local government in Florida, IF the employment was being offered because of the official's office or candidacy. It would limit public employment that could be accepted by an elected officer to positions that were open and advertised to others who might be interested. Finally, it would

"grandfather in" persons who currently hold both elected public office and public employment, but would prohibit their promotion or advancement if it is given because of the elected position.

**[Ethics training]**

Both bills would require constitutional officers to complete 4 hours of ethics training annually on the State ethics laws, public record laws, and public meeting laws. The Ethics Commission would establish minimum course content. House and Senate rules would provide for ethics training for their members.

**[Electronic Filing of Full Disclosure Forms]**

Both bills are identical here. They would require the Commission to put all the financial disclosure Form 6's (for elected constitutional officers) online, scanned and searchable.

*This would be a cost issue, as getting all these forms online, timely, will require staff and training in public records law exemptions. Each form would have to be reviewed in order to redact, for example, social security numbers, before the form is posted online.*

They also would require the Commission to submit a proposal by 2015 for mandatory, electronic filing of Form 6's.

*This is an idea whose time has come. But it will take a lot of time and money, as well as statutory changes, to realize.*

**[Unpaid Fines & Collections]**

The House PCB is similar to SB 2, but there is one difference in the methods allowed to collect unpaid financial disclosure fines. Under SB 2, the Commission's final order can be recorded as a lien on any real or personal property owned by the late or non-filer. That is left out of the House PCB.

Both would require the Commission to attempt to determine whether the individual is a current public officer or current public employee. If in one of these categories, the CFO or the governing body of the political subdivision is required to withhold money from the agency's payments to the individual.

Both provide that if the Commission determines that the individual is not a current public officer or employee, or if it can't tell, the Commission would be allowed to seek garnishment of wages. The statute of limitations for a financial disclosure fine would be extended to 20 years.

*There are good, practical changes here. However, there will be a cost to the Commission in trying to collect. I would be concerned about costs, as the Commission does not have staff to handle this and does not have statutory authority to hire anyone to handle collections.*

**[Executive Branch Lobbying]**

Both bills are identical. They increase and clarify penalties for violating the Executive Branch lobbyist registration and reporting law.

## **Where the House PCB improves on SB 2:**

### **[Blind Trusts]**

The House PCB improves on SB 2, but still does not include all the safeguards that the Ethics Commission has recommended.

The PCB does require that the trust should contain only readily-marketable assets, so that the trustee is able to sell the assets originally put in the trust by the official. This helps to prevent the official from knowing that that particular piece of land or partnership interest must still be owned by the trust (and thus still benefits the official).

The PCB would require that the trust agreement contain a complete list of assets placed in the trust, and that a copy of the agreement be filed with the Commission within 5 days after it is executed. This accomplishes the goal of having the public be informed of what assets were placed in the trust, which was another of the Commission's recommendations.

*Safeguards from the Commission's recommendations that still are omitted:*

1) *The trustee should be prohibited from investing trust assets in business entities that the trustee knows are regulated by or do a significant amount of business with the official's agency;*

2) *It does not require that the terms of the trust be reviewed and approved by the Commission, as meeting the requirements of the law.*

3) *It does not require the trustee to provide any guarantee that he or she is aware of the requirements of the blind trust law and will comply with them (thus eliminating any possibility that the public could enforce the law against a trustee who passes information to the official).*

### **[Voting Conflicts of Interest]**

The House PCB avoids the main problem in SB 2 – reducing the instances in which an official has a voting conflict of interest – by not defining the term “special private gain or loss.” Thus, the PCB leaves that aspect of the law exactly as it currently is.

Both bills would prohibit State-level officers from voting on a measure that would inure to their special private gain or loss. That is a change in the law. They still would be allowed to vote on matters benefiting their principals, relatives, and business partners but disclose the conflict within 15 days (current law).

They also would allow State and local officials who are attorneys to avoid disclosing confidential or privileged information when disclosing a voting conflict of interest.

*The PCB clears up a real problem in SB 2. I continue to be concerned about the way both bills approach conflicts involving a “principal” by whom the voting official is*

*retained. It is difficult to tell whether the word "principal" is newly defined – if it is, it leaves out one's employer and clients, for instance, so that their gain or loss no longer create a conflict of interest for the official.*

*Also, both bills would require additional proof in order to find a violation – that the State-level official knew the matter would inure to his or her special private gain or loss. Local-level officials are not subject to that same proof.*

### **[Ethics Commission Investigative Authority]**

The PCB differs from SB 2, in that SB 2 would require the Commission to dismiss any complaint or referral if it determines that the violation is a "de minimis violation attributable to inadvertent or unintentional error." It defines "de minimis" as "unintentional and not material in nature." The PCB would allow the Commission to do so, but not require it.

*I believe the House version is what the Commission has stated it would accept. Still, it raises the question of who is being protected here – the public or their public officials?*

Both bills would allow the Ethics Commission to investigate possible violations when referred by one of several different officials, thus not requiring those officials to file a complaint with the Commission (and allege that they believe there has been a violation) if they believe a situation should be investigated.

*This has been one of the Commission's recommendations and would be a positive step forward, although still a step short of allowing the Commission to initiate investigations on its own.*

However, the bills also would limit the Commission's jurisdiction to investigate if the complaint or referral is filed within 30 days of an election against a candidate. This extends the 5-day limitation that is in the current law to 30 days.

*This appears to take a step backward – why do public officials need even greater protection?*

### **Where the House PCB falls short of SB 2:**

#### **[Shutting the "Revolving Door"]**

The House PCB is significantly different from the Senate bill. Basically, where the Senate bill enlarges the two-year "revolving door" prohibition for former members of the Legislature in two ways, the PCB would apply the new prohibitions only to the Speaker of the House and the President of the Senate.

[SB 2 extends the current prohibition against legislators personally representing clients before State agencies (for example, executive branch agencies) while in office, until two years after leaving office.

SB 2 also tries to plug a loophole in the current two-year "revolving door" prohibition against personally representing clients before the Legislature after leaving

office. As it is now, the prohibition is only against personally doing the representation before the Legislature; one can be compensated to counsel or advise other people who actually make the appearance, on how to effectively lobby, based on one's recent experience in the Legislature. Under the proposal, members would be prohibited from becoming a partner, principal, or employee of a firm, or acting as a consultant, if it is for the purpose of advising or working on matters that would come before the Legislature, or even to provide networking services with sitting member of the Legislature.

A former Legislator could become employed with a firm whose primary purpose is lobbying the Legislature if he or she receives an opinion from the Ethics Commission that the employment would not violate this standard (presumably, by not involving work on legislative matters).]

### **[Gifts from PC's and CCE's]**

The Senate bill creates an entirely new prohibition against some gifts being given to public officials and their families by Political Committees and Committees of Continuous Existence. But not all gifts – just the ones that are "not primarily related to contributions, expenditures, or other political activities" under Ch. 106. That new prohibition is not in the House PCB

The House PCB seems to create a new problem.

Now, an official now is prohibited from soliciting a gift of any value, and from accepting a gift worth over \$100, from a Political Committee or a CCE; PC's and CCE's also are prohibited from giving a gift worth over \$100 to an official. BUT those prohibitions would be eliminated in the House PCB, with the result that the ethics code would contain no prohibition on gifts from Political Committees and Committees of Continuous Existence.

Both bills also contain some gift law changes from the Ethics Commission's recommendations, redefining which employees are subject to the gift law and adding "vendors" to the group of entities that are prohibited from providing gifts over \$100.

### **Finally, the not-so-good:**

#### **[Financial Disclosure; Fines; Amendments; Investigations]**

The House PCB is identical to SB 2.

Both bills require the Commission to treat an amended disclosure form as if it were the original, so long as the form is filed by Sept. 1<sup>st</sup>. The intent is to allow an official to file an incorrect disclosure, be notified of the error when a citizen has investigated and files a complaint, and then correct the filing without consequence if he or she can by Sept. 1<sup>st</sup>.

*Someone is being protected here! And it isn't the public. Shouldn't officials take personal responsibility for their actions? Already, officials can amend their forms at any time. Shouldn't they treat financial disclosure – which they file under oath and make only because they hold the public trust – as seriously as their income tax returns?*

The bills also prohibit the Commission from acting on a complaint if (1) the

complaint is filed after August 25<sup>th</sup> and (2) the complaint alleges an immaterial, inconsequential OR de minimus error or omission, so long as (3) the filer has been given 30 days to amend his form and correct any errors. Presumably, if the filer corrects the form, the Commission could not act, but that is not clearly written.

*Again, someone is being protected here! And it isn't the public. Further, who among the public and press believe that the Commission has been overreacting on inconsequential matters? And "inconsequential" is usually in the eye of the beholder, of course.*

The bills also would give the filer 60 days to amend their final disclosure form (that is filed within 60 days after leaving office), even if a citizen has investigated and files a complaint alleging that the form was incorrect. In other words, the official has 120 days to file correctly. Also, the Commission could not act if a complaint is filed that alleges an immaterial, inconsequential OR de minimus error or omission, so long as the filer has been given 30 days to amend his form and correct any errors.

*Again, someone is being protected here. And it isn't the public.*

The bills define immaterial, inconsequential, or de minimis as being those cases where "the original filing provided sufficient information for the public to identify potential conflicts of interest."

*How is the Commission, or anyone, to know what is sufficient for the public to identify potential conflicts of interest without investigating to determine exactly what was "sufficient"? Also, what if the error is in valuation – such as listing one's net worth as \$1M when it's really negative? That deprives the public of important information, but that information has nothing to do with potential conflicts of interest.*

Finally, the bills would allow elected officials to use campaign funds or office account monies to pay an attorney or CPA to file the disclosure form. If the attorney or CPA fails to properly disclose information on the form that was provided by the official, it would not violate the Code of Ethics.

*Who is it that needs protection – the public or public officials?*

*There are a lot of proposed changes to the financial disclosure laws in the bill. Unfortunately, most of them are steps backward, guaranteed to protect only public officials and not the public. My understanding is that the public views the Ethics Commission as overly-protecting officials, not overly-prosecuting them.*