

RESOLUTION NO. 15 - 2336

A RESOLUTION OF THE TOWN COMMISSION FOR THE TOWN OF SURFSIDE, FLORIDA, SUPPORTING THE CURRENT VERSION OF THE DRAFT BILL ENTITLED MISUSE OF PUBLIC OFFICE ACT; PROVIDING DIRECTION TO THE TOWN CLERK TO TRANSMIT A COPY OF THIS RESOLUTION TO THE OFFICE OF SENATOR GAETZ AND THE OFFICE OF GOVERNOR RICK SCOTT; THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, ALL MUNICIPALITIES IN MIAMI-DADE COUNTY, THE MIAMI-DADE COUNTY LEAGUE OF CITIES, AND FLORIDA LEAGUE OF CITIES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, current legislation regulating ethical violations in the State of Florida has gaps which allow ethical violations to go unpunished; and

WHEREAS, the Town Commission finds that unpunished ethical violations erode public trust in government, which affects all public officials; and

WHEREAS, legislation entitled Misuse of Public Office Act has been proposed for the 2016 session of the Florida Legislature by various Gannett newspapers, including Florida Today, and is being sponsored in the State Senate by Senator Donald J. Gaetz; and

WHEREAS, the stated purpose of the proposed legislation is to address certain provisions in current State law that have prevented law enforcement and State Attorneys from pursuing certain persons suspected of conduct that would constitute unethical or corrupt behavior but for the language in current State law; and

WHEREAS, the Town Commission meeting of the Town of Surfside supports the proposed legislation as currently drafted attached hereto as Exhibit "A".

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above and foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Support. The Town of Surfside supports the current version of the draft bill entitled Misuse of Public Office Act attached hereto as Exhibit "A."

Section 3. Direction to Town Clerk. The Town Clerk is hereby directed to transmit a copy of this Resolution to the Office of Senator Gaetz and the Office of Governor Rick Scott, the Board of County Commissioners of Miami-Dade County, all municipalities in Miami-Dade County, the Miami-Dade County League of Cities, and the Florida League of Cities.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED and **ADOPTED** on this 10th day of November 2015.

Motion by Commissioner Karukin.

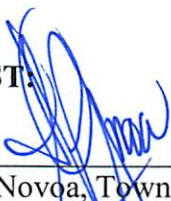
Second by Commissioner Cohen.

FINAL VOTE ON ADOPTION

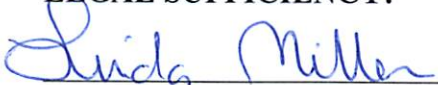
Commissioner Barry R. Cohen	yes
Commissioner Michael Karukin	yes
Commissioner Marta Olchyk	yes
Vice Mayor Eli Tourgeman	yes
Mayor Daniel Dietch	yes



Daniel Dietch, Mayor

ATTEST:


Sandra Novoa, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**


Linda Miller, Town Attorney

Senate Bill 15-_____

An act relating to the abuse of public office; amending Florida Statutes Section 838 otherwise entitled the "Misuse of Public Office Act" by creating a short title; by creating a statement of legislative intent; by deleting s. 838.014 (4) defining "corruptly" or "with corrupt intent;" by creating a new s. 838.014 (4) defining "government entity;" by creating a new s. 838.014 (6) defining "intentionally" and "knowingly;" by creating s. 838.014 (7) defining "non-governmental entity;" by amending s. 838.014 (6) (a) with respect to the definition of a "public servant;" providing for the renumbering of the sections of s. 838.014; amending ss. 838.015 (1), 838.016 (1), 838.016 (2), 838.022 (1), 838.22 (1) and 838.22(2) by the deletion of the words: "corruptly" and "with corrupt intent" and by the insertion therefore of the phrase: "intentionally or knowingly"; and providing for an effective date.

Be it Enacted by the Legislature of the State of Florida:

Section 1. Section 838, Florida Statutes, is amended to read:

838.001 Short title.-- this act may be cited as the Misuse of Public Office Act of 2015.

Section 2. Section 838, Florida Statutes, is amended to read:

838.002 Legislative intent.--

The legislature intends to amend Florida Statute Chapter 838 in order to strengthen the provisions and penalties against corrupt public officials and those persons who either aid and abet public officials or seek through their action to bribe or improperly solicit action or aid from public officials for their own personal gain or that of the public officials. Further, the legislature intends to amend Florida Statutes Section 838.014 to prevent the circumvention of the intent and spirit of the laws which criminalize and punish corruption of public officials and those persons who participate in such corruption. This act facilitates charging and convicting corrupt public officials and those persons who aid and abet them or otherwise participate in such corruption while preserving the constitutional rights of any accused. This act will accomplish the foregoing by amending Florida Statutes s. 838.014 to include officers or employees of governmental entities and representatives of non-governmental entities who have heretofore escaped prosecution for corruption based upon technicalities of non-inclusion in the statute. This act, by including previously un-included individuals who have acted corruptly but have been technically not within the purview of Florida statutes Chapter 838 will act to preserve and promote public trust in the legal system which has all too often let guilty individuals go free or not be charged because they are technically outside the definition of public servant found in Florida Statute s.838.014. Furthermore, this act will strengthen Florida Statutes Chapter 838 by removing the definition and the element of "corruptly" or "with corrupt intent" from all criminal violations

specified therein. The foregoing amendment is just because all criminal statutes already require criminal intent and a higher burden of proof, but under Chapter 838, as currently written, certain individuals are unjustly protected from prosecution.

Section 3. Section 838.014, Florida Statutes, is amended to read.

838.014 Definitions.-- As used in this chapter, the term:

(1) "Benefit" means gain or advantage, or anything regarded by the person to be benefitted as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

(2) "Bid" includes a response to an "invitation to bid," "invitation to negotiate," "request for quote," or "request for proposals" as those terms are defined in s. 287.012.

(3) "Commodity" means any goods, merchandise, wares, produce, chose in action, land, article of commerce, or other tangible or intangible property, real, personal, or mixed, for use, consumption, production, enjoyment, or resale.

(4) ~~"Corruptly" or "with corrupt intent" means acting knowingly and dishonestly for wrongful purpose.~~

(4) "Government entity" means the State of Florida, including the judiciary, the legislature and the executive, or any department, agency, bureau, division or agent of the state; municipalities; counties; school boards; special districts; and other local entities created by general or special law or local ordinance; regional planning councils; metropolitan planning organizations; water supply authorities; local health councils; water management districts; and other regional entities that are authorized and created by general or special law.

(5) "Governmental function" or "governmental service" for purposes of Chapter 838 means performing a function or serving a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds.

(6) "Harm" means pecuniary or other loss, disadvantage, or injury to the person affected.

(7) "Intentionally" or "knowingly" means that the act was done with full knowledge, voluntarily, and not because of mistake or accident.

(8) "Non-government entity" means any person, corporation, cooperative, association, partnership, organization, alliance, or similar body, whether operating for profit or not, which is not a "government entity" as that term is defined in s. 838.014 (4).

(9) "Public servant" means:

(a) Any officer or employee of a ~~state, county, municipal, or special district agency or entity~~ governmental entity;

(b) Any legislative or judicial officer or employee;

(c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or

(d) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

(e) Any officer, director, partner, manager, representative, or employee of a non-governmental entity, private corporation, quasi-public corporation, or quasi-public entity, or anyone covered under chapter 119 that is authorized by law or contract to perform a governmental function or provide a governmental service on behalf of the state, county, municipal, or special district agency or entity to the extent that the individual's conduct relates to the performance of the governmental function or provision of the governmental service.

(10) "Service" means any kind of activity performed in whole or in part for economic benefit.

Section 4. Section 838.015 (1) is amended by the deletion of the word: "corruptly" and the insertion therefor of the term: "intentionally or knowingly," to read as follows:

838.015 Bribery.--

(1) "Bribery" means ~~corruptly~~ to intentionally or knowingly give, offer, or promise to any public servant, or, if a public servant, ~~corruptly~~ to intentionally or knowingly request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

Section 5. Section 838.016 (1) and (2) are amended by the deletion of the word: "corruptly" and the insertion therefore of the term: "intentionally or knowingly," to read as follows:

838.016 Unlawful compensation or reward for official behavior.--

(1) It is unlawful for any person ~~corruptly~~ to intentionally or knowingly give, offer, or promise to any public servant, or, if a public servant, ~~corruptly~~ to intentionally or knowingly request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty. Nothing herein shall be construed to preclude a public servant from accepting rewards for services performed in apprehending any criminal.

(2) It is unlawful for any person ~~corruptly~~ to intentionally or knowingly give, offer, or promise to any public servant, or, if a public servant, ~~corruptly~~ to intentionally or knowingly request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

Section 6. Section 838.022 (1) is amended by the deletion of the words: "with corrupt intent" and the insertion therefore of the term: "intentionally or knowingly," to read as follows:

838.022 Official Misconduct.--

(1) It is unlawful for a public servant, ~~with corrupt intent~~ to intentionally or knowingly obtain a benefit for any person or to cause harm to another, to:

Section 7. Section 838.22 (1) and (2) are amended by the deletion of the words: "with corrupt intent" and the insertion therefore of the term: "intentionally or knowingly," to read as follows:

838.22 Bid Tampering.--

- (1) It is unlawful for a public servant, ~~with corrupt intent~~ to intentionally or knowingly influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:

- (2) It is unlawful for a public servant, ~~with corrupt intent~~ to intentionally or knowingly obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.

Section 8. Except as otherwise provided, this act shall take effect July 1, 2015