

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 735 Government Accountability

**SPONSOR(S):** Andrade

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 734

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N, As CS	Roy	Darden
2) Ethics, Elections & Open Government Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Code of Ethics for Public Officers and Employees (Code of Ethics) establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.

Current law requires lobbyists to register to lobby the executive and legislative branches of state government. Lobbyists must annually register for each principal represented and to indicate the entities to be lobbied. Lobbyists who do not follow registration and reporting requirements may be subject to penalties, includes fines and being prohibited from lobbying for a period of time. There are currently no provisions in state law governing lobbying requirements for local governments, although many local governments have adopted their own lobbying requirements.

Public officers, state agency employees, local government attorneys, and candidates for office are prohibited from soliciting or accepting anything of value. including a gift, loan, reward, promise of future employment, favor, or service, based upon an understanding that their vote, official action, or judgment would be influenced.

State agencies and political subdivisions must report any grant or gift over \$50,000 from any foreign source and are prohibited from receiving grants from a country that has been designated as a "foreign country of concern" or any entity controlled by such a country.

The bill:

- Prohibits public officers, state agency employees, local government attorneys, and candidates for office from soliciting or accepting anything of value from a foreign country of concern;
- Establishes requirements for lobbying counties, municipalities, and special districts that mirror requirements for lobbying the executive branch; and
- Prohibits counties, municipalities, and school districts from renewing or extending the employment contracts of certain senior employees during the eight-month period preceding a general election, unless the renewal or extension is approved by a unanimous vote of the governing board.

The bill may have a fiscal impact on state and local governments. See Fiscal Comments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### The Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)<sup>1</sup> establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.<sup>2</sup> The Code of Ethics pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, and the Commission on Ethics (Commission).<sup>3</sup>

##### Commission on Ethics

The Commission was created by the Legislature in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.<sup>4</sup> The State Constitution and state law designate the Commission as the independent commission provided for in s. 8(f), Art. II of the state constitution.<sup>5</sup> Constitutional duties of the Commission consist of conducting investigations and making public reports on all breach of trust complaints towards public officers or employees not governed by the judicial qualifications commission.<sup>6</sup> In addition to its constitutional duties, the Commission, in part:

- Renders advisory opinions to public officials;<sup>7</sup>
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;<sup>8</sup>
- Administers the executive branch lobbying registration and reporting law;<sup>9</sup>
- Maintains financial disclosure filings of constitutional officers and state officers and employees;<sup>10</sup> and
- Administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure.<sup>11</sup>

##### Lobbyist Registration and Compensation Reporting

Lobbyists must register to lobby the executive branch and the legislative branch in Florida. Executive branch lobbying is regulated by the Code of Ethics and administered by the Commission.<sup>12</sup> Legislative branch lobbying is regulated primarily by Joint Rule of the Florida Legislature and administered by the Office of Legislative Services.<sup>13</sup> Both registration systems require lobbyists to annually register for each principal<sup>14</sup> represented and to indicate the entities to be lobbied.<sup>15</sup> In addition, lobbying firms must file

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<sup>1</sup> See Pt. III, Ch. 112, F.S.; see also Art. II, s. 8(h)(1), FLA. CONST.

<sup>2</sup> Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited Jan. 22, 2024).

<sup>3</sup> See Pt. III, Ch. 112, F.S.

<sup>4</sup> Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited Jan. 22, 2024); See also S. 112.320, F.S.

<sup>5</sup> Article II, s. 8(i)(3), FLA. CONST.; S. 112.320, F.S.

<sup>6</sup> Article II, s. 8(f), FLA. CONST.

<sup>7</sup> S. 112.322(3)(a), F.S.

<sup>8</sup> S. 112.322(2)(b), F.S.

<sup>9</sup> S. 112.3215 and 112.32155, F.S.

<sup>10</sup> S. 112.3144, F.S.

<sup>11</sup> S. 112.31455, F.S.; see also Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited Jan. 9, 2024).

<sup>12</sup> S. 112.3215, F.S.

<sup>13</sup> S. 11.045, F.S. and Joint Rule 1.

<sup>14</sup> S. 112.3215(1)(i), F.S.

<sup>15</sup> S. 112.3215(3), F.S.; Joint Rule 1.2

quarterly compensation reports.<sup>16</sup> Both the Commission and the Legislature have instituted electronic registration and compensation reporting.<sup>17</sup> Executive branch lobbyists, however, must supply a written oath to complete each registration as well as a signed statement of authority from the principal.<sup>18</sup>

State agency employees and employees of legislative and judicial branch entities acting in the normal course of their duties are exempt from executive branch lobbying registration.<sup>19</sup> However, local government officers and employees must register to lobby the state executive branch.

Compensation reporting is subject to random audits and, in the case of executive branch lobbying firms, certain findings of are reported to the Commission for investigation.<sup>20</sup>

The executive branch lobbyist registration and reporting law provides specific procedures for its enforcement.<sup>21</sup> The Commission reports probable cause findings to the Governor and Cabinet for appropriate action, which can include a fine up to \$5,000 and prohibition from lobbying for up to two years.<sup>22</sup> A person accused of violating the lobbyist registration law may also request a hearing within 14 days of the mailing of the probable cause notification.<sup>23</sup>

There are currently no provisions in state law governing lobbying requirements for local governments, although many local governments have adopted their own lobbying requirements.<sup>24</sup>

### Gifts and Contracts

Public officers, state agency employees, local government attorneys, and candidates for office are prohibited from soliciting or accepting anything of value. including a gift, loan, reward, promise of future employment, favor, or service, based upon an understanding that their vote, official action, or judgment would be influenced.<sup>25</sup>

Any state agency or political subdivision which receives any gift or grant with a value of \$50,000 or more from any foreign source must disclose such gift or grant to the Department of Financial Services within 30 days.<sup>26</sup> Such disclosure must include the date of the gift or grant, the amount of the gift or grant, and the name and country of residence or domicile of the foreign source.<sup>27</sup>

A state agency, political subdivision, or public school authorized to expend state-appropriated funds or levy ad valorem taxes may not participate in any agreement with or accept any grant from a foreign country of concern, or any entity controlled by a foreign country of concern which:

- Constrains the freedom of contract of such public entity;
- Allows the curriculum or values of a program in the state to be directed or controlled by the foreign country of concern; or
- Promotes an agenda detrimental to the safety or security of the United States or its residents.<sup>28</sup>

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<sup>16</sup> S. 112.3215(5)(a)1., F.S.; Joint Rule 1.4

<sup>17</sup> S. 112.32155, F.S.; Joint Rule 1.1(2)(f)

<sup>18</sup> S. 112.3215(3), F.S.

<sup>19</sup> S. 112.3215(1)(h)2., F.S.

<sup>20</sup> S. 112.3215(8)(c), F.S.

<sup>21</sup> S. 112.3215(8) and (9), F.S.

<sup>22</sup> S. 112.3215(9) and (10), F.S.

<sup>23</sup> S. 112.3215(9), F.S.

<sup>24</sup> See e.g. Palm Beach County, *Lobbying Regulations*, [https://discover.pbcgov.org/legislativeaffairs/pages/lobbying\\_regulations.aspx](https://discover.pbcgov.org/legislativeaffairs/pages/lobbying_regulations.aspx) (last visited Jan. 22, 2024), Collier County Clerk of Circuit Court, *Lobbying Registration*, <https://collierclerk.com/board-records-vab/lobbyist-registration/> (last visited Jan 22, 2024), City of Tallahassee, *Lobbyists*, <https://www.talgov.com/doingbusiness/lobbyists> (last visited Jan. 22, 2024).

<sup>25</sup> S. 112.313(2), F.S.

<sup>26</sup> S. 286.101(2), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> S. 288.860(2), F.S. A "foreign country of concern" is defined as People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of those nations. S. 288.860(1). F.S.

Before the execution of any cultural exchange agreement with a foreign country of concern, the substance of the agreement must be shared with federal agencies concerned with protecting national security or enforcing trade sanctions, embargoes, or other restrictions under federal law.<sup>29</sup> If such federal agency provides information suggesting that such agreement promotes an agenda detrimental to the safety or security of the United States or its residents, the public entity may not enter into the agreement.<sup>30</sup>

## **Effect of Proposed Changes**

### Foreign Country of Concern

The bill prohibits public officers, state agency employees, local government attorneys, or candidates for office from soliciting or accepting anything of value, including includes gifts, loans, rewards, promises of future employment, favors, or services from a foreign country of concern. .

### Local Government Lobbying

The bill establishes requirements for lobbying before counties, municipalities, and special districts. These requirements largely mirror provisions of current law regulating lobbying the executive branch. The bill defines “lobby,” “lobbyist,” and “principal” as those terms are defined for the purposes of lobbying the executive branch.

The bill prohibits a person from lobbying a county, municipality, or special district unless they are a registered lobbyist with that local governmental entity. The registration is due upon the lobbyist’s initial retention and is renewable on a calendar year basis. The lobbyist must provide a statement signed by the principal or representative of the principal, stating the registrant is authorized to represent the principal, and must designates the principal’s main business. The statement must also authorize the registrant pursuant to a classification system approved by the local governmental entity. Changes to the information provided for registration must be disclosed within 15 days after the change occurs by filing a new registration form. The registration form must require each lobbyist to disclose the:

- Lobbyist’s name and business address;
- Name and business address of each principal represented; and
- Existence of any direct or indirect business association, partnership, or financial relationship the lobbyist has with any officer or employee of the local government entity that he or she intends to lobby.

A local governmental entity may accept a completed legislative branch or executive branch lobbyist registration form instead of creating their own. The governmental entity must make lobbyist registrations available to the public and maintain a website with a database of currently registered lobbyists and principals. A lobbyist must send a written statement to the governmental entity canceling the registration for a principal upon termination of the lobbyist’s representation. The governmental entity may establish an annual lobbyist registration fee not to exceed \$40 for each principal represented and may only use registration fees to administer lobbyist registration requirements.

Each local governmental entity is required to be diligent in determining if a lobbyist is properly registered and may not knowingly authorized a person who is not registered to lobby the governmental entity.

If a county or municipality has received a sworn complaint alleging a lobbyist or principal failed to register with the governmental entity or knowingly submitted false information, a Commission on Ethics and Public Trust established by the local governmental entity must investigate the lobbyist or principal. If the local government has not established a Commission on Ethics and Public Trust, the complaint must be investigated by the Commission on Ethics. The commission must provide the chief executive officer of the county or municipality with a report of its findings and recommendations arising out of any

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<sup>29</sup> S. 288.860(2)(c), F.S.

<sup>30</sup> *Id.*

investigation conducted and the officer may enforce the findings and recommendations. The bill creates a similar provision for special districts, with investigations conducted by the Commission on Ethics and any report and enforcement by the governing body of the special district.

The bill provides that counties and municipalities may adopt ordinances and special districts may adopt rules, to establish procedures to govern the registration of lobbyists, including requirement forms and setting a lobbyist registration fee.

The bill does not supersede any ordinance or charter provision establishing a lobbyist registration program adopted before July 1, 2024, but to the extent of any conflict between those ordinances and the provisions of the bill, the provisions of the bill prevail. The bill specifies that a local governmental entity may adopt additional or more stringent disclosure requirement that the ones provided by the bill as long as those requirements do not conflict with the provisions of the bill.

#### Local Government Employment Contracts

The bill prohibits the governing body of a county from renewing or extending the employment contract of a county administrator or county attorney during the eight months preceding a general election for county mayor, if applicable, or for members of the governing body of the county unless the governing body approves such renewal or extension by a unanimous vote.

The bill creates similar prohibitions for governing bodies of municipalities, prohibiting the renewal or extension of the employment contract of a chief executive officer or city attorney, and for district school boards, prohibiting the renewal or extension of the employment contract of an appointed superintendent or general counsel.

#### B. SECTION DIRECTORY:

- Section 1: Amends s. 112.313, F.S. relating to standards of conduct for public officers, employees or agencies, and local government attorneys.
- Section 2: Creates s. 112.3262, F.S., relating to lobbying before counties, municipalities, and special districts.
- Section 3: Amends 125.73, F.S., relating to county administrator.
- Section 4: Creates s. 125.75, F.S., relating to contract for the county attorney.
- Section 5: Amends s. 166.021, F.S., relating to municipal powers.
- Section 6: Amends s. 1001.50, F.S., relating to superintendents employed under Art. IX of the State Constitution.
- Section 7: Creates s. 1012.336, F.S., relating to general counsels of district school boards.
- Section 8: Amends s. 112.061, F.S., conforming cross-references.
- Section 9: Reenacts s. 28.35(1)(b), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 10: Reenacts s. 112.3136(1), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 11: Reenacts s. 112.3251, F.S., incorporating amendments made to s. 112.313, F.S.
- Section 12: Reenacts s. 288.012(6)(d), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 13: Reenacts s. 288.8014(4), F.S., incorporating amendments made to s. 112.313, F.S.

- Section 14: Reenacts s. 288.9604(3)(a), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 15: Reenacts s. 295.21(4)(d), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 16: Reenacts s. 406.06(5), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 17: Reenacts s. 447.509(1)(d), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 18: Reenacts s. 627.311(5)(m), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 19: Reenacts s. 1002.33(26)(a), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 20: Reenacts s. 1002.333(6)(f), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 21: Reenacts s. 1002.83(9), F.S., incorporating amendments made to s. 112.313, F.S.
- Section 22: Provides an effective date of July 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill may increase expenditures by the Commission on Ethics to the extent complaints are received for violations of local government lobbying requirements in jurisdictions that have not established a local Commission on Ethics and Public Trust. The bill may increase expenditures for local governments that do not currently require lobbyist registration, but those local government may also see an increase in revenue due to lobbyist registration fees.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires counties and municipalities to establish a lobbying registration and reporting system. However, an exception may apply as the bill allows counties and municipalities to charge a lobbyist registration fee to defray the costs of operating the lobbying registration system.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the bill in that it removed a provision concerning quorum requirements for municipal governing bodies which would have allowed members of a governing body to be considered present at meetings through the use of technology under certain conditions.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.