

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PIE 17-03 Local Government Ethics Reform

SPONSOR(S): Public Integrity & Ethics Committee

TIED BILLS: PCB PIE 17-04 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Ethics Committee	18 Y, 0 N	Kiner	Rubottom

SUMMARY ANALYSIS

The bill makes numerous changes to Florida's Code of Ethics for Public Officers and Employees (Code) as it relates to local government officers, employees, and lobbyists. Specifically, the bill creates or amends ethics provisions related to the following:

- Requires city commissioners serving municipalities with \$5 million or more in total revenue, and candidates for such offices, to file a full and public disclosure of their financial interests in lieu of the less detailed form of disclosure required under current law;
- Corrects an oversight with respect to the Code's prohibition on conflicting employment or contractual relationships;
- Requires special district governing board members to annually complete four hours of ethics training, a requirement that mirrors the current law applicable to constitutional officers and elected municipal officers;
- Strengthens the law on voting conflicts of interest by requiring local officers that must abstain from voting on a measure due to a voting conflict of interest to disclose the conflict prior to participating in the measure;
- Adds school districts to the list of governmental entities that may withhold salary-related payments for failure to timely file disclosure of financial interests;
- Requires a person who wishes to lobby certain local governmental entities to register as a lobbyist with the Commission on Ethics;
- Expands the Commission on Ethics's duty to render advisory opinions.

The bill may have an indeterminate fiscal impact on the state, local governments, and the private sector.

The bill has an effective date of July 1, 2017. Section 9 becomes effective October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Code of Ethics for Public Officers and Employees (Code) is set forth in part III, chapter 112, F.S. Foremost among the goals of the Code of Ethics is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.¹ While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.²

The Code contains provisions that establish standards for the conduct of elected and appointed officials and government employees related, but not limited to, the following:

- Prohibited actions or conduct – including prohibitions on the solicitation or acceptance of gifts, unauthorized compensation, misuse of public position, disclosure or use of certain information, solicitation or acceptance of honoraria;
- Prohibited employment and business relationships – including prohibitions on dual public employment, doing business with one's agency, as well as conflicting employment or contractual relationships;
- Misuse of public position;
- Anti-nepotism;
- Post-office holding/post-employment restrictions;
- Voting conflicts of interest;
- Ethics training; and
- Financial disclosure.

These Code provisions apply not only to officials and employees of state entities, but also to local government officers and employees.

Full and Public Disclosure of Financial Interests (Sections 1, 5, and 7)

Current Law

The Florida Constitution requires all elected constitutional officers, candidates for such offices, and statewide elected officers, to file a full and public disclosure of their financial interests.³ Other public officers, candidates, and public employees may be required to file a full and public disclosure of their financial interests as determined by law.⁴

Pursuant to the constitution, 'full and public disclosure of financial interests' means the reporting individual must disclose his or her net worth and the value of each asset and liability in excess of \$1,000.⁵ The disclosure must be accompanied with either a sworn statement with this information or a copy of the reporting individual's most recent federal income tax return.⁶ Pursuant to general law, the Florida Commission on Ethics (Commission) has prescribed by rule FORM 6 to be used to make the required full and public financial disclosure.⁷

¹ S. 112.311(1), F.S.

² S. 112.311(4), F.S.

³ FLA CONST., art. II, ss. 8(a) and 8(i)(2).

⁴ FLA CONST., art. II, s. 8(a)

⁵ FLA. CONST., art. II, s. 8(i)(1), (2).

⁶ Id.

⁷ S. 112.3144(5), F.S.

According to the Commission, and as articulated on the form, individuals holding the following positions must file FORM 6: governor; lieutenant governor; cabinet members; legislators; state attorneys; public defenders; clerks of circuit courts; sheriffs; tax collectors; property appraisers; supervisors of elections; county commissioners; elected superintendents of schools; district school board members; Jacksonville City Council members (including mayor); compensation claims judges; Duval County superintendent of schools; Florida Housing Finance Corporation Board members; Florida Prepaid College Board members; and each expressway authority, transportation authority (except the Jacksonville Transportation Authority), bridge authority, or toll authority created pursuant to Chapter 348 or 343, F.S., or any other general law.

Reporting individuals are required to file FORM 6 annually with the Commission by July 1. Additionally, candidates for a constitutional office are required to make a full and public disclosure of their financial interests at the time of qualifying.⁸

While elected city commissioners may have similar authority and spending power as county commissioners and other public officers that are required to file FORM 6, state law only requires city commissioners to file FORM 1, which is a less detailed form of financial disclosure.⁹ Elected municipal officers, and candidates for such office, must file this form at the time of qualifying and annually by July 1.

Florida law¹⁰ requires municipalities to annually submit a financial report to the Department of Financial Services. The Department of Financial Services in turn verifies the data and publishes a report on its website showing, among other things, municipal revenues¹¹, expenditures, and long-term debt.¹²

Effect of Proposed Changes

The bill requires all city commissioners serving municipalities with \$5 million or more in total revenue to file the more detailed Form 6 annually, beginning with the 2017 filing year.

The bill also requires a candidate for city commission in a municipality with \$5 million or more in total revenue to file a Form 6 with his or her qualifying papers.

For purposes of these requirements, whether a municipality has \$5 million or more in total revenue will be determined based on the municipality's annual financial report filed with the Department of Financial Services for the fiscal year immediately prior to the year the financial disclosure covers.

Based on data provided by the Department of Financial Services, the number of municipalities that reported \$5 million or more in total revenue were the following:

- FY 2013 (October 1, 2012 – September 30, 2013) – 254
- FY 2014 (October 1, 2013 – September 30, 2014) – 250
- FY 2015 (October 1, 2014 – through September 30, 2015) – 204

Conflicting Employment or Contractual Relationships (Section 2)

Current Law

⁸ S. 99.061, F.S.

⁹ S. 112.3145, F.S.

¹⁰ S. 218.32, F.S.

¹¹ According to the Department of Financial Services, For purposes of the annual financial reporting requirement, 'revenue' includes Ad Valorem Taxes; Local Option Taxes; Utility Service Taxes; Local Business Taxes, Permits, Fees and Special Assessments; Federal, State and Local Grants; State Revenue Sharing; Service Charges; Court Filing Fees, Fines and Forfeitures; Interest and Dividends; Increase in Fair Value of Investments; Rents and Royalties; Sale of Surplus Materials; Contributions and Donations; Settlements; Other Miscellaneous Revenues."

¹² Id.

The Code of Ethics for Public Officers and Employees (Code) prohibits a public officer or agency employee from having an employment or contractual relationship with a business entity or agency that is subject to the regulation of, or is doing business with, his or her agency.¹³ The law further prohibits a public officer or agency employee from having an employment or a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.¹⁴

However, the Code does contain the exceptions to these prohibitions relating to special taxing districts and drainage districts¹⁵; legislative bodies where regulatory power resides in another agency or is strictly through enactment of laws or ordinances¹⁶; and lawful or required practice in particular profession or occupation¹⁷. The Code also contains several exemptions to these prohibitions relating to appointed advisory board members¹⁸; when business transactions in a county or municipality are transacted under a rotation system¹⁹; business is awarded under a system of sealed, competitive bidding and certain criteria is met²⁰; purchases or sales for legal advertising, utilities service, passage on a common carrier²¹; emergency purchases that must be made to protect public health, safety, or welfare²²; the business entity involved is the only source of supply within the political subdivision and there is full disclosure by the officer or employee²³; when the aggregate of such transactions does not exceed \$500 in a calendar year²⁴; when business transacted is the deposit of agency funds in a bank of which a county, city, or district official is an officer, director, or stockholder, so long as agency records show that the governing body has determined that the member did not favor his or her bank over other qualified banks²⁵; when the public officer or employee purchases in a private capacity goods or

¹³ S. 112.313(7), F.S.

¹⁴ *Id.*

¹⁵ “When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict *per se*. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.” *See* s. 112.313(7)(a)1., F.S.

¹⁶ “When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.” *See* s. 112.313(7)(a)2., F.S.

¹⁷ “This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.” *See* s. 112.313(7)(b), F.S.

¹⁸ “The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person.” *See* 112.313(12), F.S.

¹⁹ “Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.” *See* 112.313(12)(a), F.S.

²⁰ “The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and: (1) the official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder; (2) the official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and (3) the official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.” *See* 112.313(12)(b), F.S.

²¹ S. 112.313(12)(c), F.S.

²² S. 112.313(12)(d), F.S.

²³ S. 112.313(12)(e), F.S.

²⁴ S. 112.313(12)(f), F.S.

²⁵ S. 112.313(12)(g), F.S.

services from an entity regulated by, or doing business with, his or her agency, at a price and under terms available to similarly situated members of the general public²⁶, and when elected public officer is employed by a tax exempt organization contracting with his or her agency and officer's employment is not directly or indirectly compensated as a result of such contract or business relationship, the officer has in no way participated in the agency's decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise, and the officer abstains from voting on any matter which may come before the agency involving the officer's employer, publicly states to the assembly the nature of the officer's interest in the matter from which he or she is abstaining, and files the required written memorandum²⁷.

In its annual reports to the Legislature for the past several years, the Florida Commission on Ethics (Commission) has recommended the law be amended. Specifically, the Commission has advised that, under the law, a public officer or agency employee may create a fictitious legal entity and subsequently use the entity to enter into an employment or contractual relationship that would be prohibited if the public officer or agency employee acted as an individual.²⁸

Effect of Proposed Changes

The bill provides that if a public officer or employee of an agency holds a material interest in a business entity or is an officer, a director, or a member who manages such an entity, contractual relationships held by the business entity are deemed to be held by the public officer or employee. As such, if a public officer or employee holds a material interest in a business entity other than a publicly traded entity, or is an officer, a director, or a member who manages such an entity, it would be a violation for the business entity to have a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The bill uses the current law definition of 'material interest' which means "direct or indirect ownership of more than five percent of the total assets or capital stock of any business entity. For the purposes of this act, indirect ownership does not include ownership by a spouse or minor child."

Mandatory Annual Ethics Training (Sections 3, 5, 6, and 7)

Current Law

Current Florida law requires 'constitutional officers' and elected municipal officers to annually complete four hours of ethics training that, at a minimum, addresses s. 8, Art. II of the state constitution, the Code of Ethics for Public Officers and Employees (Code), and the Florida law on public records and public meetings.²⁹

Pursuant to the Code, the term 'constitutional officer' includes the following officers: 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.³⁰

Each officer that is subject to the annual ethics training requirement must certify on his or her disclosure of financial interests reporting form that he or she has completed the required

²⁶ S. 112.313(12)(i), (j), F.S.

²⁷ S. 112.313(15), F.S.

²⁸ Florida Commission on Ethics 2017 Legislative Proposals.

²⁹ S. 112.3142, F.S.

³⁰ Id.

training.³¹ However, the Commission does not collect any information on the provider(s) of such training.

Although special district³² governing board members are covered by the Code's provisions, state law does not require these individuals to receive annual ethics training.

Additionally, the Code requires the Commission on Ethics (Commission) to adopt rules establishing minimum course content for the portion of an ethics training class which addresses the constitutional ethics provisions and the Code. The Commission's current rule³³ requires course content to include one or more of the following subjects:

- 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;
- 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.

Effect of Proposed Changes

The bill requires special district governing board members (elected and appointed) and water management district board members to receive annual ethics training which, at a minimum, addresses s. 8, Art. II of the state constitution, the Code of Ethics for Public Officers and Employees (Code), and the Florida law on public records and public meetings.

Beginning January 1, 2018, the bill also requires each officer subject to the annual ethics training requirement to provide the training provider's name on his or her annual financial disclosure form.

Finally, the bill repeals the statutory requirement that the Commission adopt a rule on minimum course content into statute, and instead codifies the Commission's current rule in statute.

Voting Conflicts of Interest (Section 4)

Current Law

Florida law prohibits a county officer, municipal officer, or other local public officer, from voting on any measure that would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is

³¹ SS. 112.3144(1) and 112.3145(4), F.S.

³² Section 189.012(6), F.S., defines a 'special district' as "a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality."

³³ Rule 34-7.025, F.A.C.

retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.³⁴

In such cases, the officer is required, prior to the vote being taken, to publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.

While the law prohibits the officer from voting on the measure, the officer is not prohibited from participating in the measure and is not explicitly required to disclose his or her conflict prior to his or her participation.

Pursuant to current law, the term 'public officer' includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

Effect of Proposed Changes

The bill requires a county officer, municipal officer, other local public officer, governing board member of a special district or school district, or appointed public officer that must abstain from voting on a measure due to a conflict of interest to disclose the conflict prior to participating on the measure.

Collection Methods for Unpaid Financial Disclosure Fines (Section 8)

Current Law

The Code of Ethics for Public Officers and Employees (Code) authorizes the Commission on Ethics (Commission) to withhold wages and seek garnishment in order to collect unpaid financial disclosure fines.³⁵ Prior to referring such a fine to the Department of Financial Services (DFS), the Commission must attempt to determine whether the filer is a current public officer or employee.³⁶ If the person is currently a public officer or employee, the Commission may notify the Chief Financial Officer (CFO) or the governing body of the appropriate county, municipality, or special district of the total amount of the fine owed to the Commission by the individual. After receipt and verification of the notice from the Commission, the CFO or the appropriate governing body is required to begin withholding the lesser of ten percent or the maximum amount allowed under federal law from any salary-related payment. The withheld payments must be remitted to the Commission until the fine is satisfied. Additionally, the CFO or appropriate governing body may retain an amount from each withheld payment to cover administrative costs incurred to comply with these requirements. In the event that the Commission determines the individual owing a fine is no longer a public officer or employee or if the Commission is unable to make such a determination, the Commission must wait for six months after the order becomes final. After that period of time, the Commission may seek garnishment. Additionally, the Commission may refer the unpaid fine to a collection agency.³⁷ The collection agency may utilize any collection methods provided by law. The statute of limitations for an unpaid financial disclosure fine is 20 years.³⁸ Once recovered, previously unpaid financial disclosure fines are deposited into general revenue.

Effect of Proposed Changes

The bill expressly requires school districts to withhold public salary-related payments after receiving notice from the Commission that an employee has an unpaid fine, including a portion to cover any administrative costs incurred by the school district to comply with the requirement.

³⁴ S. 112.3143, F.S.

³⁵ S. 112.31455, F.S.

³⁶ S. 112.31455(1), F.S.

³⁷ S. 112.31455(3), F.S.

³⁸ S. 112.31455(4), F.S.

Lobbying Before Governmental Entities (Sections 9 and 10)

Current Law

Florida law requires a person who wishes to lobby the executive branch to register as a lobbyist with the Commission on Ethics prior to lobbying.³⁹ Similarly, the Florida Legislature, by rule, requires a lobbyist who wishes to lobby either house of the legislature to register with the Lobbyist Registration Office in the Office of Legislative Services.⁴⁰ In addition to these registration requirements, lobbying firms must file quarterly compensation reports for each quarter in which at least one of their lobbyists were registered to represent a principal.⁴¹

As of February 2017, there were over 1,300 lobbyists registered to lobby the executive branch on behalf of over 3,300 principals, representing over 8,900 total registrations.⁴² As of February 2017, there were over 1,800 lobbyists registered to lobby the legislature on behalf of over 3,600 principals, representing over 10,000 total registrations.⁴³ In total, there were over 150 lobbyists registered to lobby only the executive branch, over 600 registered to lobby only the legislature, and over 1,200 registered to lobby both the executive branch and the legislature.⁴⁴ Currently, the executive branch has 1.5 FTEs to administer registrations, including oath authorization, and compensation reports. The legislature has 2 FTEs to administer registrations and compensation reports.

Each lobbyist registration program has a dedicated trust fund whereby registration fees must be used to administer the program. The executive branch lobbyist registration fee is \$25 per principal, although by statute, the fee may be up to \$40 per principal.⁴⁵ The legislature's annual lobbyist registration fee is \$50 for the first registration and \$20 for each additional registration. If a lobbyist is registering before only one chamber, the annual fee is \$25 for the first registration and \$10 for each additional registration. As of February 2017, the Executive Branch Lobbyist Registration Trust Fund had \$1,135,123 cash on hand, while the Legislative Lobbyist Registration Trust Fund had \$1,379,440 cash on hand.

Executive Branch Lobbyist Registration Trust Fund										
	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY11-12	FY12-13	FY 13-14	FY 14-15	FY 15-16
Beginning Cash Balance	595,084	631,757	733,949	833,081	901,796	944,303	1,002,123	1,052,516	1,060,646	967,265
Revenues Collected	182,600	201,525	201,025	189,515	194,175	205,025	201,825	230,530	261,830	254,250
Disbursements	145,927	99,333	101,893	120,800	151,668	147,206	151,432	222,400	355,210	216,183
Excess (Deficiency) of Revenue over Disbursements	36,673	102,192	99,132	68,715	42,507	57,819	50,393	8,130	(93,380)	38,067
Ending Cash Balance	631,757	733,949	833,081	901,796	944,303	1,002,123	1,052,516	1,060,646	967,265	1,005,333
Legislative Branch Lobbyist Registration Trust Fund										
	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY11-12	FY12-13	FY 13-14	FY 14-15	FY 15-16
Beginning Cash Balance	792,074	797,934	838,507	889,603	936,720	993,658	1,117,279	1,230,248	1,270,080	1,230,775
Revenues Collected	254,137	252,435	256,746	245,680	246,545	260,580	247,845	265,830	278,600	283,355
Disbursements	248,277	211,862	205,650	198,563	189,606	136,959	134,877	225,998	317,905	223,197

³⁹ S. 112.3215, F.S.

⁴⁰ Joint Rule 1.1(1)

⁴¹ SS. 11.045(3)(a)1. and 112.3215(5)(a)1., F.S.

⁴² See statistics on registered lobbyists on the Florida Lobbyist Registration & Compensation website at www.floralobbyist.gov (last viewed 2/24/2017).

⁴³ Id.

⁴⁴ Id.

⁴⁵ Rule 34-12.200, F.A.C., implementing s. 112.3215(4), F.S.

Excess (Deficiency) of Revenue over Disbursements	5,860	40,573	51,096	47,117	56,938	123,621	112,968	39,832	(39,305)	60,158
Ending Cash Balance	797,934	838,507	889,603	936,720	993,658	1,117,279	1,230,248	1,270,080	1,230,775	1,290,933

During the 2016 Organization Session, the Florida House of Representatives adopted its rules for the 2016 – 2018 term. Rule 17.1(h) requires lobbyists to disclose the issues upon which they intend to lobby the House, while Rule 17.1(i) requires disclosure of public entity lobbying contracts. As of February 2017, over 1,100 lobbyists have disclosed over 22,000 issues on behalf of over 2,300 principals, while over 350 public entity lobbying contracts have been submitted by over 70 lobbying firms. The Public Integrity & Ethics Committee has one full-time staff member to assist with issue and contract disclosures.

As of 2014, Florida law requires a lobbyist who wishes to lobby before one of Florida’s five water management districts to register as a lobbyist with said district.⁴⁶ The law requires the applicable water management district to make lobbyist registrations available to the public, including on its website if the district maintains one.⁴⁷ To administer the registration process, each water management district is authorized to charge a registration fee of up to \$40 per principal.⁴⁸ The Southwest Florida Water Management District (SFWMD) developed its lobbyist registration system database in-house and administers each of the other four water management district lobbyist registration programs at no charge to the water management district or registered lobbyist(s).

Florida has 67 counties, 400+ municipalities, and over 1,500 special districts. While the Florida Code of Ethics for Public Officers and Employees provides minimum standards of conduct and disclosure for officers and employees covered under the Code, local governments have authority to enact ordinances providing for more stringent standards – provided these ordinances do not conflict with the Code’s provisions.⁴⁹ At least 13 counties⁵⁰ have ordinances requiring lobbyists to register, report compensation, or both. An informal staff review uncovered at least 26 municipalities with ordinances requiring lobbyists to register with the municipality prior to lobbying. However, the total number of counties, municipalities, or special districts that require lobbyist registration is unknown.

Effect of Proposed Changes

Beginning October 1, 2018, the bill requires a person to electronically register as a lobbyist with the Commission on Ethics prior to lobbying a ‘governmental entity.’ Under the bill’s provisions, a ‘governmental entity,’ includes a county, municipality, water management district, school district, hospital district, children’s services district, expressway authority, port authority, or special district.⁵¹

The bill also provides definitions for the terms ‘lobby,’ ‘lobbies,’ and ‘lobbyist.’ Pursuant to the bill’s provisions, the term ‘lobby’ or ‘lobbies’ does not include making application for or seeking approval of an application for a license, permit, or waiver of a regulation so long as the issuance or granting of such application does not require legislative discretion. Among other exclusions, the term ‘lobbyist’ does not include a person who lobbies to procure a contract which is less than \$20,000 or a contract procured

⁴⁶ S. 112.3261, F.S.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ S. 112.326, F.S.

⁵⁰ Alachua, Broward, Collier, Duval, Hillsborough, Lake, Lee, Leon, Miami-Dade, Orange, Palm Beach, Pinellas, and St. Lucie counties.

⁵¹ Section 189.012(6), F.S., defines a ‘special district’ as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.”

pursuant to s. 287.056, F.S., which is the state purchasing agreement and state term contract procurement statute.

The bill requires the lobbyist to disclose his or her name, email address, business address, the name and business address of each registered principal, and each local governmental entity he or she intends to lobby on behalf of each principal. The bill also requires the lobbyist to disclose the existence of any direct or indirect business association, partnership, or financial relationship with an official or employee of the governmental entity he or she intends to lobby.

To administer the registration program, the bill requires the Commission to establish a registration fee by rule. Pursuant to the bill's provisions, the fee may not exceed \$40 per principal.

If the Commission on Ethics receives a first complaint against any person, or receives any complaint prior to January 1, 2020, the bill requires the Commission to issue a warning letter directing the person who is the subject of the complaint to the obligations of lobbyists under the local government lobbyist registration provision. The Commission must dismiss the complaint. Outside of these two instances, if the Commission finds a person to have violated the registration requirement, the bill provides for a civil penalty not to exceed \$500 for a first violation. A second or subsequent violation committed within twelve months after a first violation has occurred will subject the lobbyist to a civil penalty between \$1000 or, at the governmental entity's discretion, a one year suspension from lobbying the entity associated with the violation.

By January 1, 2018, the bill requires each local governmental entity that has an ordinance or rule placing more stringent obligations with respect to lobbyist registration, reporting, or other lobbyist conduct to forward the Commission on Ethics a copy of such ordinance and any associated form that has been designated to facilitate compliance with such ordinance or rule. By January 1, 2019, the bill requires each local governmental entity to conform its registration system, if any, to accommodate regular receipt of lobbyist registration data from the Commission on Ethics. This data exchange will assist each local governmental entity in retaining whatever more stringent standards it has in place.

Commission on Ethics Advisory Opinions (Section 11)

Current Law

Florida law requires the Commission on Ethics (Commission) to render a binding advisory opinion to any public officer, candidate for public office, or public employee, in doubt about the applicability and interpretation of the state constitution's ethics provisions or the provisions of the Code of Ethics for Public Officers and Public Employees (Code) to himself or herself in a particular context.⁵²

Since 2010, the Commission has issued the following numbers of advisory opinions:

- CY 2016 – 15 opinions (13 by local officers, employees, or local government attorneys)
- CY 2015 – 15 opinions (12 by local officers, employees, or local government attorneys)
- CY 2014 – 32 opinions (12 by local officers, employees, or local government attorneys)
- CY 2013 – 26 opinions (19 by local officers, employees, or local government attorneys)
- CY 2012 – 23 opinions (15 by local officers, employees, or local government attorneys)
- CY 2011 – 24 opinions (24 by local officers, employees, or local government attorneys)
- CY 2010 – 25 opinions (21 by local officers, employees, or local government attorneys)

Effect of Proposed Changes

The bill expands the Commission's duty to render advisory opinions to include the new provisions and changes to current law made by the bill.

B. SECTION DIRECTORY:

⁵² S. 112.322(3), F.S.
STORAGE NAME: pcb03a.PIE
DATE: 2/24/2017

Section 1 amends s. 99.061, F.S., relating to the method of qualifying for nomination or election to federal, state, county, or district office.

Section 2 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 3 amends s. 112.3142, F.S., relating to ethics training for specified constitutional officers and elected municipal officers.

Section 4 amends s. 112.3143, F.S., relating to voting conflicts.

Section 5 amends s. 112.3144, F.S., relating to full and public disclosure of financial interests.

Section 6 amends s. 112.3145, F.S., relating to disclosure of financial interests and clients represented before agencies.

Section 7 provides that certain changes made by the act relating to financial disclosure apply to disclosures filed for the 2017 calendar year and all subsequent calendar years.

Section 8 amends s. 112.31455, F.S., relating to collection methods for unpaid automatic fines for failure to timely file disclosure of financial interests.

Section 9 repeals s. 112.3261, F.S., relating to lobbying before certain government entities.

Section 10 creates s. 112.32612, F.S., relating to lobbying before governmental entities.

Section 11 expands the Commission on Ethics's duty to render advisory opinions.

Section 12 specifies that the act fulfills an important state interest.

Section 13 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires the Commission on Ethics to establish an annual registration fee to administer the local government lobbyist registration system. Pursuant to the bill's provisions, the registration fee may not exceed \$40 per principal. The revenue generated from annual registrations will be used to administer the registration program, including the payment of salaries and other expenses.

2. Expenditures:

The bill requires elected municipal officers serving municipalities with \$5 million or more in total revenue to file FORM 6 in lieu of the currently required FORM 1. The expense to the Commission on Ethics associated with mailing these individuals FORM 6 instead of FORM 1 is indeterminate, but may likely be *de minimis* or have no fiscal impact.

The bill requires a lobbyist to register with the Commission on Ethics prior to lobbying certain local governmental entities. The bill requires the Commission on Ethics to make these registrations public on its website. The cost of administering the registration process and uploading lobbyist registration information to the Internet is indeterminate. However, to administer the local government lobbyist registration program, the bill provides for a lobbyist registration fee of up to \$40 per principal.

By comparison, as of February 2017, there were over 1,300 lobbyists registered to lobby the executive branch on behalf of over 3,300 principals, representing over 8,900 total registrations.⁵³ As of February 2017, there were over 1,800 lobbyists registered to lobby the legislature on behalf of over 3,600 principals, representing over 10,000 total registrations.⁵⁴ In total, there were over 150 lobbyists registered to lobby only the executive branch, over 600 registered to lobby only the legislature, and over 1,200 registered to lobby both the executive branch and the legislature.⁵⁵ Currently, the executive branch has 1.5 FTEs to administer registrations, including oath authorization, and compensation reports. The legislature has 2 FTEs to administer registrations and compensation reports.

Each lobbyist registration program has a dedicated trust fund whereby registration fees must be used to administer the program. The executive branch lobbyist registration fee is \$25 per principal, although by statute, the fee may be up to \$40 per principal.⁵⁶ The legislature's annual lobbyist registration fee is \$50 for the first registration and \$20 for each additional registration. If a lobbyist is registering before only one chamber, the annual fee is \$25 for the first registration and \$10 for each additional registration. As of February 2017, the Executive Branch Lobbyist Registration Trust Fund had \$1,135,123 cash on hand, while the Legislative Lobbyist Registration Trust Fund had \$1,379,440 cash on hand.

The bill requires the Commission on Ethics to render advisory opinions regarding the Code of Ethics and its application to any public officer, candidate for public office, or public employee as a result of the bill's provisions. The fiscal impact to the Commission on Ethics is indeterminate, but likely insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

By January 1, 2018, the bill requires each local governmental entity that has an ordinance or rule placing more stringent obligations with respect to lobbyist registration, reporting, or other lobbyist conduct to forward the Commission on Ethics a copy of such ordinance and any associated form that has been designated to facilitate compliance with such ordinance or rule. By January 1, 2019, the bill requires each local governmental entity to conform its registration system, if any, to accommodate regular receipt of lobbyist registration data from the Commission on Ethics. This data exchange will assist each local governmental entity in retaining whatever more stringent standards it has in place. The fiscal impact on local governments with respect to these provisions is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's provisions require a person who wishes to lobby certain local governmental entities to register with the Commission on Ethics. The bill also requires the Commission on Ethics to establish an annual lobbyist registration fee, up to \$40 for each principal represented. The extent to which a lobbyist or lobbying firm will pass the registration costs on to principals, some of which may be private sector entities, is unknown.

D. FISCAL COMMENTS:

None.

⁵³ See statistics on registered lobbyists on the Florida Lobbyist Registration & Compensation website at www.floridalobbyist.gov (last viewed 2/24/2017).

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Rule 34-12.200, F.A.C., implementing s. 112.3215(4), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments with ordinances or rules placing more stringent obligations with respect to lobbyist registration, reporting, or other lobbyist conduct to forward the Commission on Ethics a copy of such ordinance and any associated form that has been designated to facilitate compliance with such ordinance or rule. By January 1, 2019, the bill requires each local governmental entity to conform its registration system, if any, to accommodate regular receipt of lobbyist registration data from the Commission on Ethics. An exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission on Ethics to establish an annual lobbyist registration fee by rule. The bill also authorizes the Commission on Ethics to adopt rules to establish procedures to govern the electronic registration of lobbyists, including the adoption of forms and the exchange of information with local governmental entities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 14, 2017, the Public Integrity & Ethics Committee adopted a strike-all amendment to PCB PIE 17-03 and subsequently reported the bill favorably as amended. The strike-all amendment made several revisions to PCB PIE 17-03, including the following:

- Revised the phrases “each candidate for an elected municipal office” and “elected municipal officer” to “each candidate for the governing body of a municipality” and “every member of the governing board of a municipality,” respectively, to ensure the provision only captures city commissioners and not other elected municipal officers.
- Revised the phrase “municipality that had \$5 million or more in total revenue as determined by the most recent annual financial report submitted to the Department of Financial Services in accordance with s. 218.32” to “municipality that had \$5 million or more in total revenue as determined by the annual financial report submitted to Department of Financial Services in accordance with s. 218.32 for the fiscal year ending prior to the year the disclosure covers.”
- Broaden the scope of the provision requiring elected special district governing board members to complete 4 hours of annual ethics training to also include appointed special district governing board members and water management district board members.
- Revised the provision on providing ethics training information to only require the training provider’s name in lieu of requiring the training provider’s name and the date the training was completed.
- Removed the provision allowing the general counsel of an agency or entity having an officer subject to the ethics training requirement to provide ethics training provider information on behalf of the officer.
- Revised the provision requiring a lobbyist who wishes to lobby a local governmental entity to register as a lobbyist with the Commission on Ethics by:
 - Requiring electronic registration;
 - Including all special districts and not just independent special districts in the definition of ‘governmental entity’.

- Providing the term “lobby” or “lobbies” does not include making application for or seeking approval of an application for a license, permit, or waiver of a regulation so long as the issuance or granting of such application does not require legislative discretion.
- Requiring a lobbyist to provide his or her email address upon registering.
- Requiring the Commission to make local government lobbyist registration available on the Internet rather than specific the information must be available on the Commission’s website.
- Requiring the Commission to issue a warning letter and dismiss a first complaint or any complaint received before January 1, 2020, for a lobbyist’s failure to register.
- Revising the term “fine” to “civil penalty.”
- Revises the civil penalty for a second or subsequent violation from “not to exceed \$1,000” to “not less than \$200 and not greater than \$1,000.”
- Authorizing, but not requiring, local government entities to impose additional civil penalties for a second or subsequent violation.
- Authorizing a person who is unsure whether he or she is required to register as a lobbyist to request a binding advisory opinion from the Commission on Ethics.