

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: CS/CS/SB 734

INTRODUCER: Committee on Ethics and Elections, Committee on Community Affairs, and Senator Ingoglia

SUBJECT: Government Accountability

DATE: February 6, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Cleary</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 734 makes various changes related to ethics regulations for local governments. Specifically, the bill:

- Prohibits certain state and local officials from soliciting or accepting anything of value from a foreign country of concern.
- Establishes requirements for lobbyist registration for individuals lobbying local governments by:
 - Requiring a person to register as a lobbyist solely with the State Commission on Ethics if he or she wishes to lobby a county, municipality, or special district.
 - Making the State Commission on Ethics solely responsible for naming persons registered to lobby a county, municipality, or special district in a public database and requiring the State Commission on Ethics to publish registrations of such persons on its website.
 - Mandating that all required documentation and information involving the filing, amending, or canceling of a registration to become a lobbyist to lobby a county, municipality, or special district be filed with the State Commission on Ethics.
 - Requiring that the State Commission on Ethics be the entity to receive and investigate all complaints involving violations of the lobbying registration requirements to lobby a county, municipality, or special district.
 - Requiring that the State Commission on Ethics report its findings and recommendations from its investigations of complaints to the chief executive officer of the applicable county or municipality, or the governing body of the special district.

- Allowing the chief executive officer of the county or municipality, or the governing body of the special district, to enforce the State Commission on Ethics' findings and recommendations involving complaints.
- Making the bill provisions preempt and supersede any ordinary charter provision that establishes a lobbyist registration program adopted before July 1, 2024.
- Provides that certain local government employee contracts shall not be renewed, extended, or renegotiated within 8 months of a general election for members of the applicable governing body.

The bill takes effect July 1, 2024.

II. Present Situation:

Commission on Ethics

The Commission on Ethics (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.¹ The Florida Constitution and state law designate the Commission as the independent commission provided for in s. 8(g), Art. II of the Florida Constitution.² 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.³ In addition to constitutional duties, the Commission, in part:

- Renders advisory opinions to public officials;⁴
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;⁵
- Administers the Executive Branch Lobbying Registration and Reporting Law;⁶
- Maintains financial disclosure filings of constitutional officers and state officers and employees;⁷ and
- Administers automatic fines for public officers and employees who fail to timely file a required annual financial disclosure.⁸

Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)⁹ establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially, not using their office for private gain other than compensation

¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, p. 1, available at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023310> (last visited January 31, 2024); *see also* s. 112.320, F.S.

² Section (8)(j)(3), art. II, Fla. Const.; s. 112.320, F.S.

³ Section (8)(g), art. II., Fla. Const.

⁴ Section 112.322(3)(a), F.S.

⁵ Section 112.322(2)(b), F.S.

⁶ Sections 112.3215 and 112.32155, F.S.

⁷ Section 112.3144, F.S.

⁸ Sections 112.3144, 112.3145, and 112.31455, F.S.

⁹ *See* pt. III. Ch. 112, F.S.

provided by law.¹⁰ The Code of Ethics addresses various issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, and the Commission on Ethics, among others.¹¹

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 the understanding that their vote, official action, or judgment would be influenced.¹² 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.¹³

A “foreign country of concern” is defined as the 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.¹⁴

Lobbyist Registration and Compensation Reporting

Lobbyist must register to lobby the executive branch or the legislative branch in Florida. Executive branch lobbying is regulated by the Code of Ethics and administered by the Commission.¹⁵ Legislative branch lobbying is regulated primarily by Joint Rule of the House and Senate and administered by the Office of Legislative Services.¹⁶ Both registration systems require lobbyists to register annually for each principal represented and to indicate the entities to be lobbied.¹⁷ In addition, lobbying firms must file quarterly compensation reports.¹⁸ Both the Commission and the Legislature have instituted electronic registration and compensation reporting.¹⁹ Executive branch lobbyists, however, must supply a written oath to complete each registration as well as a signed statement of authority from the principal.²⁰

¹⁰ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, p. 1, available at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023310> (last visited January 31, 2024)

¹¹ See pt. III. 112, F.S.

¹² Section 112.313(2), F.S.

¹³ Section 288.860(2), F.S.

¹⁴ Section 288.860(1)(a), F.S.

¹⁵ Section 112.3215, F.S.

¹⁶ Section 11.045, F.S. and Joint Rule 1.

¹⁷ Section 112.3215(3), F.S.; Joint Rule 1.2.

¹⁸ Section 112.3215(5)(a)1., F.S.; Joint Rule 1.4.

¹⁹ Section 112.32155, F.S.; Joint Rule 1.1(2)(f)

²⁰ Section 112.3215(3), F.S.

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.²¹ However, local government officers and employees must register to lobby the state executive branch.

Compensation reporting is subject to random audits, and findings of non-compliance are reported to the Commission, in the case of executive branch lobbying firms, for investigation.²²

The executive branch lobbyist registration law provides specific procedures for its enforcement.²³ 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.²⁴ A person accused of violating the lobbyist registration law may request a hearing within 14 days of the mailing of the probable cause notification.²⁵

Local Government Employees

Local governments have broad authority to contract with or employ personnel for the wide variety of tasks they accomplish. This authority is limited only narrowly by statute, which generally forbids the payment of extra compensation and sets limits on severance pay for all employees of a governmental unit.²⁶ Severance pay may not exceed 20 weeks' compensation, and must not be granted when the employee has been fired for misconduct.²⁷

County Administrator

Counties are required to employ a county administrator, who acts as the administrative head of the county and is responsible for the administration of all departments of the county government.²⁸ The county administrator is appointed by a majority of the board of county commissioners and must reside within the county during his or her tenure.²⁹ The board of county commissioners fixes the county administrator's compensation.³⁰

School Superintendents

A school superintendent, the administrative head of a district school board, may be either appointed by the district school board or elected for four-year terms.³¹ A district school board must enter into an employment contract with an appointed district school superintendent which provides a reasonable salary not exceeding \$225,000 in total remuneration.³² These contracts are

²¹ Section 112.3215(1)(h)(2), F.S.

²² Section 112.3215(8)(c), F.S.

²³ Section 112.3215(8)-(9), F.S.

²⁴ Section 112.3215(9)-(10), F.S.

²⁵ Section 112.3215(9), F.S.

²⁶ Section 215.425, F.S.

²⁷ Section 215.425(4), F.S.

²⁸ Section 125.73(1), F.S.

²⁹ Section 125.73(2), F.S.

³⁰ Section 125.73(3), F.S.

³¹ Article IX, s. 5, FLA. CONST. Districts may decide which system to use, changing from one to the other by referendum.

³² Sections 1001.50(3) and (5), F.S.

subject to the provisions of law limiting bonuses and severance pay.³³ An elected superintendent is not an employee, and he or she receives a statutory salary similarly to other elected officials.³⁴

Local Government Attorneys and Municipal Chief Executive Officers

While local governments are not required by law to employ an attorney, and municipalities are not required to employ a chief executive officer,³⁵ the practice of hiring such personnel is common, such that these roles are referred to by various statutes.³⁶ These roles may be full time employees, fulfilled through contract work as needed, or divided into several smaller roles, as needed by the local government.

III. Effect of Proposed Changes:

Section 1 amends s. 112.313, F.S., to prohibit public officers, state agency employees, local government attorneys, or candidates for office from soliciting or accepting anything of value, including gifts, loans, rewards, promises of future employment, favors, or services from a foreign country of concern.

Section 2 creates s. 112.3262, F.S., to establish requirements for lobbying before counties, municipalities, and special districts. These requirements largely mirror provisions of current law regulating lobbying of the executive branch.

The bill provides that a person may not lobby a county, municipality, or special district unless he or she is registered as a lobbyist with the State Commission on Ethics. Such registration must be completed upon the person's initial retention as a lobbyist, may be renewed annually thereafter, and must be filed under oath on a lobbyist registration form used by the State Commission on Ethics. The bill makes the State Commission on Ethics solely responsible for naming persons registered to lobby a county, municipality, or special district in a public database and must publish the registrations of such persons on the State Commission on Ethics' website.

The bill provides that upon receipt of a sworn complaint alleging that an individual has either failed to register or knowingly submitted false information in a report or registration, the State Commission on Ethics must investigate the allegations and provide findings and recommendations for the local government to act upon. The bill allows the chief executive officer of the county or municipality, or the governing body of the special district, to enforce the State Commission on Ethics' findings and recommendations involving complaints.

The bill's provisions preempt and supersede any ordinary charter provision that establishes a lobbyist registration program adopted before July 1, 2024.

Sections 3, 4, 5, 6, and 7 amend ss. 125.73, 125.75, 166.021, 1001.50, and 1012.366, F.S., to provide that certain local government employee contracts shall not be renewed, extended, or

³³ Section 1001.50(2), F.S.

³⁴ Section 1001.47, F.S.

³⁵ Often referred to as a city or town manager.

³⁶ See, e.g., ss. 193.116 (referring to "the chief executive officer of each municipality"), 194.035 (referring to a school board attorney), and 409.2554 (referring to county and city attorneys), F.S.

renegotiated within 8 months of a general election for members of the applicable governing body, except upon unanimous vote of the governing body. The bill applies this provision to:

- County administrators;
- County attorneys;
- Municipal chief executive officers;
- Municipal attorneys;
- School superintendents; and
- School board district attorneys.

The remainder of the bill revises cross-references and incorporates the amendments made by the bill.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandate provisions of Article VII, section 18(a) of the Florida Constitution provide in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Article VII, section 18(d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an “insignificant fiscal impact” are exempt from the mandate requirements, which for Fiscal Year 2024-2025 is forecast at approximately \$2.3 million.^{37,38} The bill makes local governments responsible for determining whether persons required to register with the State Commission on Ethics have complied with the law. Further, the local governments are charged, in their discretion, to enforce the State Commission on Ethics’ findings and recommendations. However, local government oversight costs associated with the bill are speculative and not readily estimable for purposes of determining whether the exemption for bills having an insignificant fiscal impact applies.

If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

³⁷ Article VII, s. 18(d), FLA. CONST.

³⁸ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 24, 2024).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impacts:

The State Commission on Ethics, in regards to CS/CS/SB 734, estimates it will incur costs associated with the implementation, operation and maintenance of the lobbyist registration system in the form of numerous new filers.³⁹ The State Commission on Ethics expects an increase in call volume to their office in assistance with the new registration requirements and estimates it is likely that the State Commission on Ethics will need to hire 1-2 new employees to administer the program.⁴⁰ The State Commission

³⁹ See Florida Commission on Ethics, *Agency Bill Analysis Request, SB 734*, Jan. 25, 2023, on file with the Florida Senate Committee on Ethics and Elections; See also s. 112.3215(2), F.S. The Executive Branch Lobby Trust Fund has been created within the State Commission on Ethics to be used for the purpose of funding any office established to administer the registration of lobbyists lobbying an agency, including the payment of salaries and other expenses. All annual registration fees collected for the purpose of running the Executive Branch Lobby Registration system must be deposited into the fund; See s. 112.3215(4), F.S. Persons wishing to lobby an agency must register annually as a lobbyist with the State Commission on Ethics and pay an annual lobbyist registration fee, set by State Commission on Ethics, by Rule, not to exceed \$40, for each principal represented. Under s. 112.3215(1)(a), F.S. “Agency” is specifically defined to mean “the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch. In addition, ‘agency’ shall mean the Constitution Revision Commission as provided by s. 2, Art. XI of the State Constitution.” Because s. 112.3215, F.S., specifically applies to the registration and reporting of lobbying before an executive branch agency or the Constitution Revision Commission, and since the statutes language specifically states that the Executive Branch Lobby Registration Trust Fund applies for the purpose of specifically funding the running of the Executive Branch lobbying system, it is unclear if the State Commission on Ethics could use these funds to manage and run the new lobbying registration for local governments. Further, the State Commissions on Ethics’ authority to collect an annual lobbying registration fee appears to be granted solely for lobbyists registering for the Executive Branch Lobbyist Registration System. Because all the annual lobbyist registration fees listed under s. 112.3215(4), F.S., are specifically required to be deposited into the Executive Branch Lobby Registration Trust Fund for the purpose of operating the Executive Branch Lobbyist Registration System, Therefore, it is unclear that the State Commission on Ethics has the authority to require lobbyists for local governments to pay an annual registration fee, without additional statutory authority.

⁴⁰ *Id.*

on Ethics also has indicated it will need to build the database and website enhancement necessary to implement the local lobbyist registration program, which may have staffing costs among the other incurred expenditures.⁴¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Commission on Ethics has noted issues regarding implementation of the lobbyist registration as provided by the bill, including technology systems costs, personnel requirements, and logistical complications of receiving jurisdiction over local registration laws and complaints.⁴²

The bill requires lobbyists of a municipality, county, or special district to register with the State Commission on Ethics using the State Commission on Ethics' registration forms. Currently, registration is only electronic for legislative lobbying. Executive branch lobbying registration does not mandate electronic registration but most registration is done electronically. The State Commission on Ethics has a paper form available on its website, but it is rarely used in executive branch registration and is specific in its application to executive branch agencies.⁴³

The bill language provides that the State Commission on Ethics can accept complaints and process them in accordance with s. 112.324., F.S. It states that the State Commission on Ethics is to provide the municipality, county, or special district with a report of its findings and recommendations. The Commission has noted that it believes there are not any statutes relating to penalty recommendations pertaining to local lobbyists in s. 112.317., F.S.⁴⁴

Further, the State Commission on Ethics has asked for an extension of the bill's effective date of July 1, 2024, because the Commission will be in the midst of implementing the new electronic filing system for Form 1 financial disclosures.⁴⁵ The State Commission on Ethics estimates an additional 36,000 Form 1 filers at the state and local level will begin filing electronically with the Commission with the deadline for filers being July 1.⁴⁶ The State Commission on Ethics believes a later effective date would allow the Commission more time to prepare for a successful implementation of the local lobbyist registration process.⁴⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.313, 125.73, 125.75, 166.021, 1001.50, and 112.061.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*, The paper form for executive branch lobbying is found at:

https://www.ethics.state.fl.us/Documents/Forms/EBLR_Form20.pdf?cp=202421

⁴⁴ See Florida Commission on Ethics, *Staff Analysis* for SB 734, February 5, 2024, on file with the Florida Senate Committee on Ethics.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

This bill creates the following sections of the Florida Statutes: 112.3262 and 1012.336.

This bill reenacts the following sections of the Florida Statutes: 28.35, 112.3136, 112.3251, 288.012, 288.8014, 288.9604, 295.21, 406.06, 447.509, 627.311, 1002.33, 1002.333, and 1002.83.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 29, 2024:

The committee substitute revises provisions related to local lobbying registration to remove the requirement that local governments utilize the executive branch electronic infrastructure for registrations, instead permitting the use of forms already in place for executive or legislative lobbying. The amendment also removes provisions of the bill permitting members of governing boards of municipalities to be “present” at official meetings without physical presence.

CS/CS by Ethics and Elections on February 5, 2024:

CS/CS/SB 734 makes the following revisions:

- Requires a person to register as a lobbyist solely with the State Commission on Ethics if he or she wishes to lobby a county, municipality, or special district.
- Makes the State Commission on Ethics solely responsible for naming persons registered to lobby a county, municipality, or special district in a public database and requires the Commission to publish registrations of such persons on its website.
- Mandates all required documentation and information involving the filing, amending, or canceling of a registration to become a lobbyist to lobby a county, municipality, or special district be filed with the State Commission on Ethics.
- Removes the provision allowing a county, municipality, or special district to establish an annual lobbyist registration fee, not to exceed \$40, for each principal represented, to be used by the local government to maintain and operate the lobbying registration system for local governments.
- Requires that the State Commission on Ethics be the entity to receive and investigate all complaints, involving violations of the lobbying registration requirements to lobby a county, municipality, or special district.
- Requires the State Commission on Ethics to report its findings and recommendations from its investigations of complaints to the chief executive officer of the applicable county or municipality, or the governing body of the special district.
- Allows the chief executive officer of the county or municipality, or the governing body of the special district, to enforce the State Commission on Ethics’ findings and recommendations involving complaints.
- Makes the bill’s provisions preempt and supersede any ordinary charter provision that establishes a lobbyist registration program adopted before July 1, 2024.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
