

Bill No. SB 718

Amendment No. 1

| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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The Committee on Rules and Calendar recommended the following amendment:

Senate Amendment (with title amendment)

On page 6, between lines 18 and 19,

insert:

Section 2. Section 112.3215, Florida Statutes, is amended to read:

112.3215 Lobbyists before the Executive Branch or the Constitution Revision Commission; registration and reporting; investigation by commission.--

(1) For the purposes of this section:

(a) "Agency" means 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.

(b) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying.

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1 (c) "Fund" means the Executive Branch Lobby
2 Registration Trust Fund.

3 (d) "Lobbies" means seeking, on behalf of another
4 person, to influence an agency with respect to a decision of
5 the agency in the area of policy or procurement or an attempt
6 to obtain the goodwill of an agency official or employee.
7 "Lobbies" also means influencing or attempting to influence,
8 on behalf of another, the Constitution Revision Commission's
9 action or nonaction through oral or written communication or
10 an attempt to obtain the goodwill of a member or employee of
11 the Constitution Revision Commission.

12 (e) "Lobbyist" means a person who is employed and
13 receives payment, or who contracts for economic consideration,
14 for the purpose of lobbying, or a person who is principally
15 employed for governmental affairs by another person or
16 governmental entity to lobby on behalf of that other person or
17 governmental entity. "Lobbyist" does not include a person who
18 is:

19 1. An attorney, or any person, who represents a client
20 in a judicial proceeding or in a formal administrative
21 proceeding conducted pursuant to chapter 120 or any other
22 formal hearing before an agency, board, commission, or
23 authority of this state.

24 2. An employee of an agency or of a legislative or
25 judicial branch entity acting in the normal course of his or
26 her duties.

27 3. A confidential informant who is providing, or
28 wishes to provide, confidential information to be used for law
29 enforcement purposes.

30 4. A person who lobbies to procure a contract pursuant
31 to chapter 287 which contract is less than the threshold for

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1 CATEGORY ONE as provided in s. 287.017(1)(a).

2 (f) "Principal" means the person, firm, corporation,
3 or other entity which has employed or retained a lobbyist.

4 (2) The Executive Branch Lobby Registration Trust Fund
5 is hereby created within the commission to be used for the
6 purpose of funding any office established to administer the
7 registration of lobbyists lobbying an agency, including the
8 payment of salaries and other expenses. The trust fund is not
9 subject to the service charge to General Revenue provisions of
10 chapter 215. All annual registration fees collected pursuant
11 to this section shall be deposited into such fund.

12 (3) A person may not lobby an agency until such person
13 has registered as a lobbyist with the commission. Such
14 registration shall be due upon initially being retained to
15 lobby and is renewable on a calendar year basis thereafter.
16 Upon registration the person shall provide a statement signed
17 by the principal or principal's representative that the
18 registrant is authorized to represent the principal. The
19 registration shall require the lobbyist to disclose, under
20 oath, the following information:

21 (a) Name and business address;

22 (b) The name and business address of each principal
23 represented;

24 (c) His or her area of interest;

25 (d) The agencies before which he or she will appear;

26 and

27 (e) The existence of any direct or indirect business
28 association, partnership, or financial relationship with any
29 employee of an agency with which he or she lobbies, or intends
30 to lobby, as disclosed in the registration.

31 (4) The annual lobbyist registration fee shall be set

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1 by the commission by rule, not to exceed \$40 for each
2 principal represented.

3 (5)(a) A registered lobbyist must also submit to the
4 commission, biannually ~~quarterly~~, a signed expenditure report
5 summarizing all lobbying expenditures by the lobbyist and the
6 principal for each six-month period during any portion of
7 which the lobbyist is registered. All expenditures made by
8 the lobbyist and the principal for the purpose of lobbying
9 must be reported. Reporting of expenditures shall be on an
10 accrual basis. The report of such expenditures must identify
11 whether the expenditure was made directly by the lobbyist,
12 directly by the principal, initiated or expended by the
13 lobbyist and paid for by the principal, or initiated or
14 expended by the principal and paid for by the lobbyist. The
15 principal is responsible for the accuracy of the expenditures
16 reported as lobbying expenditures made by the principal. The
17 lobbyist is responsible for the accuracy of the expenditures
18 reported as lobbying expenditures made by the lobbyist.
19 Expenditures made must be reported by the category of the
20 expenditure, including, but not limited to, the categories of
21 food and beverages, entertainment, research, communication,
22 media advertising, publications, travel, and lodging. Lobby
23 expenditures do not include a lobbyist's or principal's
24 salary, office expenses, and personal expenses for lodging,
25 meals, and travel.

26 (b) A principal who is represented by two or more
27 lobbyists shall designate one lobbyist whose expenditure
28 report shall include all lobbying expenditures made directly
29 by the principal and those expenditures of the designated
30 lobbyist on behalf of that principal as required by paragraph
31 (a). All other lobbyists registered to represent that

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1 principal shall file a report pursuant to paragraph (a). The
2 report of lobbying expenditures by the principal shall be made
3 pursuant to the requirements of paragraph (a). The principal
4 is responsible for the accuracy of figures reported by the
5 designated lobbyist as lobbying expenditures made directly by
6 the principal. The designated lobbyist is responsible for the
7 accuracy of the figures reported as lobbying expenditures made
8 by that lobbyist.

9 (c) For each reporting period the commission shall
10 aggregate the expenditures of all lobbyists for a principal
11 represented by more than one lobbyist. Further, the commission
12 shall aggregate figures that provide a cumulative total of
13 expenditures reported as spent by and on behalf of each
14 principal for the calendar year.

15 (d) The reporting statements shall be filed no later
16 than 45 days after the end of each reporting period and shall
17 include the expenditures for the period from January 1 through
18 ~~March 31, April 1 through~~ June 30, and July 1 through
19 ~~September 30, and October 1 through~~ December 31, respectively.

20 (e) Reports shall be filed not later than 5 p.m. of
21 the report due date. However, any report that is postmarked
22 by the United States Postal Service no later than midnight of
23 the due date shall be deemed to have been filed in a timely
24 manner, and a certificate of mailing obtained from and dated
25 by the United States Postal Service at the time of the
26 mailing, or a receipt from an established courier company
27 which bears a date on or before the due date, shall be proof
28 of mailing in a timely manner.

29 (f) The commission shall provide by rule a procedure
30 by which a lobbyist who fails to timely file a report shall be
31 notified and assessed fines. The rule shall provide for the

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1 following:

2 1. Upon determining that the report is late, the
3 person designated to review the timeliness of reports shall
4 immediately notify the lobbyist as to the failure to timely
5 file the report and that a fine is being assessed for each
6 late day. The fine shall be \$50 per day per report for each
7 late day up to a maximum of \$5,000 per late report.

8 2. Upon receipt of the report, the person designated
9 to review the timeliness of reports shall determine the amount
10 of the fine due based upon the earliest of the following:

11 a. When a report is actually received by the lobbyist
12 registration and reporting office.

13 b. When the report is postmarked.

14 c. When the certificate of mailing is dated.

15 d. When the receipt from an established courier
16 company is dated.

17 3. Such fine shall be paid within 30 ~~20~~ days after
18 ~~receipt of~~ the notice of payment due is transmitted by the
19 lobbyist registration office, unless appeal is made to the
20 commission. The moneys shall be deposited into the Executive
21 Branch Lobby Registration Trust Fund.

22 4. A fine shall not be assessed against a lobbyist the
23 first time any reports for which the lobbyist is responsible
24 are not timely filed. However, to receive the one-time fine
25 waiver, all reports for which the lobbyist is responsible must
26 be filed within 30 ~~20~~ days after the ~~receipt of~~ notice that
27 any reports have not been timely filed is transmitted by the
28 lobbyist registration office. A fine shall be assessed for any
29 subsequent late-filed reports.

30 5. Any lobbyist may appeal or dispute a fine, based
31 upon unusual circumstances surrounding the failure to file on

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1 the designated due date, and may request and shall be entitled
2 to a hearing before the commission, which shall have the
3 authority to waive the fine in whole or in part for good cause
4 shown. Any such request shall be made within 30 ~~20~~ days after
5 ~~receipt of~~ the notice of payment due is transmitted by the
6 lobbyist registration office. In such case, the lobbyist
7 shall, within the 30-day ~~20-day~~ period, notify the person
8 designated to review the timeliness of reports in writing of
9 his or her intention to bring the matter before the
10 commission.

11 6. The person designated to review the timeliness of
12 reports shall notify the commission of the failure of a
13 lobbyist to file a report after notice or of the failure of a
14 lobbyist to pay the fine imposed.

15 7. Notwithstanding any provision of ch. 120, any fine
16 imposed under this subsection that is not waived by final
17 order of the commission and that remains unpaid more than 60
18 days after the notice of payment due or more than 60 days
19 after the commission renders a final order on the lobbyist's
20 appeal shall be collected by the Department of Banking and
21 Finance as a claim, debt, or other obligation owed to the
22 state, and the department may assign the collection of such
23 fine to a collection agent as provided in s. 17.20.

24 (g) The commission shall adopt a rule which allows
25 reporting statements to be filed by electronic means, when
26 feasible.

27 (h) Each lobbyist and each principal shall preserve
28 for a period of 4 years all accounts, bills, receipts,
29 computer records, books, papers, and other documents and
30 records necessary to substantiate lobbying expenditures. Any
31 documents and records retained pursuant to this section may be

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1 inspected under reasonable circumstances by any authorized
2 representative of the commission. The right of inspection may
3 be enforced by appropriate writ issued by any court of
4 competent jurisdiction.

5 (6) A lobbyist shall promptly send a written statement
6 to the commission canceling the registration for a principal
7 upon termination of the lobbyist's representation of that
8 principal. Notwithstanding this requirement, the commission
9 may remove the name of a lobbyist from the list of registered
10 lobbyists if the principal notifies the office that a person
11 is no longer authorized to represent that principal. Each
12 lobbyist is responsible for filing an expenditure report for
13 each period during any portion of which he or she was
14 registered, and each principal is responsible for seeing that
15 an expenditure report is filed for each period during any
16 portion of which the principal was represented by a registered
17 lobbyist.

18 (7) The commission shall investigate every sworn
19 complaint that is filed with it alleging that a person covered
20 by this section has failed to register, has failed to submit
21 an expenditure report, or has knowingly submitted false
22 information in any report or registration required in this
23 section. All proceedings, the complaint, and other records
24 relating to the investigation are confidential and exempt from
25 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
26 State Constitution, and any meetings held pursuant to an
27 investigation are exempt from the provisions of s. 286.011(1)
28 and s. 24(b), Art. I of the State Constitution either until
29 the alleged violator requests in writing that such
30 investigation and associated records and meetings be made
31 public or until the commission determines, based on the

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1 investigation, whether probable cause exists to believe that a
2 violation has occurred.

3 (8) If the commission finds no probable cause to
4 believe that a violation of this section occurred, it shall
5 dismiss the complaint, whereupon the complaint, together with
6 a written statement of the findings of the investigation and a
7 summary of the facts, shall become a matter of public record,
8 and the commission shall send a copy of the complaint,
9 findings, and summary to the complainant and the alleged
10 violator. If the commission finds probable cause to believe
11 that a violation occurred, it shall report the results of its
12 investigation to the Governor and Cabinet and send a copy of
13 the report to the alleged violator by certified mail. Such
14 notification and all documents made or received in the
15 disposition of the complaint shall then become public records.
16 Upon request submitted to the Governor and Cabinet in writing,
17 any person whom the commission finds probable cause to believe
18 has violated any provision of this section shall be entitled
19 to a public hearing. Such person shall be deemed to have
20 waived the right to a public hearing if the request is not
21 received within 14 days following the mailing of the probable
22 cause notification. However, the Governor and Cabinet may on
23 its own motion require a public hearing and may conduct such
24 further investigation as it deems necessary.

25 (9) If the Governor and Cabinet finds that a violation
26 occurred, it may reprimand the violator, censure the violator,
27 or prohibit the violator from lobbying all agencies for a
28 period not to exceed 2 years.

29 (10) Any person, when in doubt about the applicability
30 and interpretation of this section to himself or herself in a
31 particular context, may submit in writing the facts of the

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1 situation to the commission with a request for an advisory
2 opinion to establish the standard of duty. An advisory
3 opinion shall be rendered by the commission and, until amended
4 or revoked, shall be binding on the conduct of the person who
5 sought the opinion, unless material facts were omitted or
6 misstated in the request.

7 (11) Agencies shall be diligent to ascertain whether
8 persons required to register pursuant to this section have
9 complied. An agency may not knowingly permit a person who is
10 not registered pursuant to this section to lobby the agency.

11 (12) Upon discovery of violations of this section an
12 agency or any person may file a sworn complaint with the
13 commission.

14 (13) The commission shall adopt rules to administer
15 this section, which shall prescribe forms for registration and
16 expenditure reports, procedures for registration, and
17 procedures that will prevent disclosure of information that is
18 confidential as provided in this section.

19
20 (Redesignate subsequent sections.)

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22

23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Delete everything before the enacting clause

26

27 and insert:

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A bill to be entitled

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An act relating to lobbying; amending s.

30

11.045, F.S.; revising procedures for

31

appointing a designated lobbyist to represent a

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1 principal that is represented by two or more
2 lobbyists; requiring that a lobbyist file an
3 expenditure report for each period during which
4 the lobbyist is registered; requiring a
5 principal that retains a lobbyist to ensure
6 that expenditure reports are properly filed
7 with the Division of Legislative Information
8 Services within the Office of Legislative
9 Services; revising the period for filing
10 expenditure reports; deleting a requirement
11 that certain supplemental reports be filed;
12 limiting the amount of certain fines that may
13 be assessed against a lobbyist; revising the
14 period for paying fines; authorizing the
15 President of the Senate and the Speaker of the
16 House of Representatives to waive the required
17 filing of an expenditure report; providing for
18 the automatic suspension of a lobbyist's
19 registration following failure to pay a fine;
20 amending s. 112.3215, F.S.; modifying the
21 definition of lobbyist for purpose of lobbying
22 before the Executive Branch or the Constitution
23 Revision Commission; requiring registered
24 lobbyists to submit biannual expenditure
25 reports; modifying dates for filing such
26 reports; providing a fine of up to a maximum of
27 \$5,000 per late report per day; extending time
28 period for payment of such fine and for waiver
29 and appeals; requiring the Department of
30 Banking and Finance to collect such fines as
31 claims of the state; authorizing the department

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to assign collection to a collection agent;
providing responsibility of lobbyists and
principals for filing expenditure reports;
providing an effective date.