

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Ethics and Elections Committee

BILL: SB 2646

SPONSOR: Senator Sebesta

SUBJECT: Legislative Lobbying

DATE: March 16, 2005

REVISED: 03/21/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>GA</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 2646 modifies the registration and reporting requirements that govern legislative lobbyists.

Some of the more important provisions of the bill include:

- Requiring lobbyists to report *compensation* from principals.
- Expanding the reporting of lobbying expenditures to require detailed information of *individual* expenditures, in addition to the current *aggregate* reporting by category.
- Requiring each designated lobbyist to select the *industry group classification* that most accurately describes the principal's main business from prescribed categories.
- Mandating the reporting of the principal's *general and specific areas of lobbying interest*.
- Modifying the periodic reporting schedule for activity reports (compensation, expenditures, and areas of lobbying interest) from *semi-annually to quarterly*.
- Authorizing the creation of an online, *electronic filing system* for quarterly activity reports and requiring lobbyists to file quarterly activity reports electronically with the Division of Legislative Information Services; directing the division to provide activity report information on a web site accessible to the public.

- Authoring the Auditor General to audit compensation-reporting information and provide a final audit report to a designated committee in each chamber.

The bill takes effect on January 1, 2006.

This bill amends sections 11.045 and 11.45, and creates section 11.0455 of the Florida Statutes.

II. Present Situation:

Florida is the most populous state in the country without a legislative lobbying compensation reporting requirement.¹

In 2004, Florida had 2,041 legislative lobbyists registered to represent 2,845 principals. The total number of registration for the year was 7,915, as one lobbyist often registers to represent multiple principals and must file a separate registration for each one.

Florida's legislative lobbyists (and principals through their designated lobbyists) must register annually² and report lobbying "expenditures" twice per year;³ salaries, however, are expressly not considered "expenditures" under Florida law.⁴ Thus, compensation for lobbying services is not reported.

Lobbying "expenditures," essentially payments, distributions, or anything of value made by a lobbyist or principal for the purpose of lobbying, are reported *in the aggregate* in 10 broad categories to the Division of Legislative Information Services' Lobbying Registration Office ("LRO").⁵ Individual expenditures are not reported to the LRO.

Legislative lobbyists filed 7,445 expenditure reports for activities in the first half of 2004, and 7,543 for the second half.

Florida does not have electronic filing for registration or semi-annual expenditure reports; paper registration and reports are required. Consequently, the LRO manually aggregates: the expenditures for each reporting period, for each principal with multiple lobbyists; and, each principal's total annual lobbying expenditures.⁶

¹ California, Texas, and New York are the largest states by size of population; all three states require some form of lobbying compensation reporting.

² Each lobbyist registration must include a free-form, general description of the lobbyist's area of legislative interest on behalf of the principal. No categories of interest are prescribed for the lobbyist to select from.

As a result, descriptions tend to be generic (i.e., issues pertaining to clients) and mostly without any practical value in providing the public notice of the general lobbying interests of each principal.

³ Expenditure reports are due 45 days after the end of each semi-annual reporting period. Section 11.045(3)(d), F.S. Reporting for the period January 1 through June 30 is due no later than August 14; reporting for the period July 1 through December 31 is due no later than February 14.

⁴ Section 11.045(3)(a), F.S.

⁵ Sections 11.045(1)(c), 11.045 (3)(a), F.S. Categories of expenditures on the report are: (1) Food & Beverage; (2) Entertainment; (3) Research; (4) Communication; (5) Media Advertising; (6) Publications; (7) Travel; (8) Lodging; (9) Special Events; (10) Other. Section 11.045(3)(a), F.S.

⁶ Florida law directs the Division to perform these calculations. Section 11.045(3)(c), F.S.

This aggregate expenditure information, as well as monetary information contained in the expenditure reports, are available from the LRO in hard-copy form upon request, but are not currently available online. The only tangible online information (from the standpoint of providing public notice of special interest activities) is the name and address of principals and lobbyists, along with the affiliation between lobbyists and principals.⁷

III. Effect of Proposed Changes:

Section 1. Substantive Changes. [amending s. 11.045, F.S.]

- a. Maintains the current timetables for lobbying registration (annually) but modifies the schedule for periodic reporting of compensation, expenditures, and lobbying interests, from semi-annually to quarterly filing.
- b. Defines lobbyist “compensation” broadly to include any “payment, distribution, loan, advance, reimbursement, deposit, salary, fee, retainer, or anything of value provided or owed to a lobbyist for the purpose of lobbying.”
- c. Requires the *designated* lobbyist of each principal at registration to designate the industry group classification that *most accurately describes* the principal’s business from a number of prescribed categories (i.e., Agriculture, Education, Insurance).
- d. Returns to a modified version of the 1978 requirement that the lobbyist provide both a *general description*⁸ and a *specific description*⁹ of their area of legislative lobbying interest on behalf of each principal. This is required both at registration and on quarterly *activity* reports.¹⁰
- e. Requires all lobbyists to report compensation, expenditures, and areas of lobbying interest on each quarterly *activity* report.
- f. Mandates that each activity report contain not only *aggregate expenditures* allocated to one of 10 categories (i.e., Food & Beverage, Entertainment, Lodging, Travel), but that each *individual* expenditure (except legislative-wide “open” events) be detailed with the name and address of the person *to whom* the expenditure was made; the amount, date, and purpose of the expenditure; and the name and title of legislator or other person *for whom* the expenditure was made.

⁷ The web site also contains instructional materials such as forms, guides to filing, and applicable laws and rules. (<http://www.flsenate.gov/Lobbyist/index.cfm?Submenu=1&Tab=lobbyist>).

⁸ The *general description* is selected from a check-box list of prescribed categories (i.e., Agriculture, Telecommunications, Pari-mutuel, Natural Resources, etc.).

⁹ For each designated area of general interest, the lobbyist must also describe the *specific sub-issue(s)* lobbied. (For example, a lobbyist for a concrete manufacturer company might identify “Environmental” as the sole category of general interest, with the specific issue lobbied being “water quality discharge standards for cement plants.”)

¹⁰ The general description on quarterly activity reports also requires the lobbyist to make a good faith estimate of the percentage of lobbying time spent on each designated category of legislative interest.

- g. Expands the current requirement that the Division of Legislative Information Services annually and semi-annually aggregate total *expenditures* for each principal with multiple lobbyists, to require aggregation annually and by *quarter* of both expenditure and compensation information.
- h. Specifically adds “ledgers,” “e-mails,” and “federal tax information” to an already extensive list of items enumerated in statute that must be retained by lobbyists and principals in order to support lobbying expenditures and compensation reported.

Section 2. Online Electronic Reporting Requirement. [amending s. 11.045(3), F.S., as amended by section 1 of this Act]

Effective April 1, 2006, Section 11.045(3), F.S., is amended to include a reference to new s. 11.0455, F.S., (created in Section 3 of the bill), which mandates electronic filing of quarterly lobbying activity reports. This section also contains conforming changes.

Section 3. Online Electronic Reporting. [creating s. 11.0455, F.S.]

- a. *Effective April 1, 2006*, requires the division to have in place an online reporting system for filing quarterly lobbying activity reports of expenditures, compensation, and areas of lobbying interest. The electronic filing system will be Internet-based, and permit direct entry and upload of lobbying activity report information.
- b. *Effective April 1, 2006*, requires the Division to disseminate information on lobbying compensation, expenditures, industry group classifications, and areas of lobbying interests on its web site.

Section 4. Enforcement. [amends s. 11.45, F.S.]

Effective May 15, 2006, requires the Auditor General to randomly audit one percent (1%) of the quarterly activity reports filed, for the limited purpose of determining whether compensation has been accurately reported (approximately 300 audits annually); authorizes the Auditor General to conduct audits of compensation reporting pursuant to the Auditor General’s own authority or as directed by the Committee on Legislative Auditing; requires the Auditor General to provide a final audit report to the appropriate committee in the Senate and House for further action.

(Section 1 of the bill authorizes the committee in each chamber responsible for lobbying to investigate a lobbyist upon receipt of audit information indicating a possible violation of the compensation reporting requirements [excluding a violation for a late-filed report, for which the statutes already contain automatic fines]).

Section 5. Implementation Schedule.

The bill provides that the first lobbying activity reports subject to the new reporting requirements are due by May 15, 2006, for the reporting period January 1, 2006, to March 31, 2006.

Section 6. The effective date of the bill is January 1, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

This bill is linked to Senate Bill 2644, a public records bill that exempts passwords, user identifications, draft reports, and files associated with the electronic filing of quarterly lobbying activity reports created in section 3 of this bill.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Senate Bill 2646 will require lobbyists to keep more extensive records and to file more items at registration and on quarterly activity reports. In addition, moving from a semi-annual to quarterly filing period for activity reports will likely double a lobbyist's current administrative costs. The precise cost of these items has not been determined.

C. Government Sector Impact:*Mandatory Auditing*

Section 4 of the bill requires the Auditor General to audit 1 percent (1%) of the quarterly activity reports; this translates to approximately 300 audits annually. The Auditor General's staff estimates that this will cost \$300,000 (plus travel and incidental costs) if four (4) certified public accountants perform the audits, and \$250,000 (plus travel and incidental costs) if one (1) certified public accountant oversees three paraprofessional staff (i.e., bookkeepers). The Auditor General's staff recommends using the four (4) licensed CPAs, as this is more consistent with current practices and provides a higher degree of reliability.

Electronic Reporting System

The cost of creating and operating the electronic reporting system authorized in Section 3 of the bill is indeterminate. The Office of Legislative Information Technology Services (OLITS) estimated last year that it would take 90 working days to develop an online expenditure reporting and dissemination application in accordance with the current

expenditure reporting requirements (semi-annual reporting; reporting of aggregate expenditures by category), with a total hardware and software cost of approximately \$17,200.¹¹ The Division of Legislative Information Services at that time believed it could administer the system with no increase in current staffing levels. The changes mandated by Senate Bill 2646 require lobbyists to file much more information at more frequent intervals than under current law; it is unclear whether OLITS' cost estimates would apply with equal force to the reporting and online dissemination system created in the bill.

VI. Technical Deficiencies:

The phrase, "Except as otherwise provided," should precede the text in section 6 of the bill, to take account of varying effective dates in the directory language of other sections.

VII. Related Issues:

Senate Bill 2646 contains many of the recommendations in the interim project report entitled, *Survey of Lobbying Fees and Compensation Regulation*, Report No. 2005-13 (Florida Senate) (February 2005). Extensive background information, findings, and qualified staff recommendations can be found in the report.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹¹ Lobbyist Registration Office, Staff Analysis of Feasibility of Online Filing and Dissemination of Expenditure Reporting Information, p. 4-5 (April 5, 2004). Outsourcing the job would be considerably more expensive, costing anywhere from \$115K to \$173K (average expected price of \$144K). *Id.*

VIII. Summary of Amendments:

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In addition to making several technical and clarifying changes, including the one noted in Section VI of this analysis, the strike-all amendment principally extends the scope of the original bill to include both legislative and **executive branch lobbying**; the original bill addresses exclusively *legislative* lobbying. This amendment takes the proposed changes in the original bill for legislative lobbying and creates similar, and in many cases parallel, requirements in the executive lobbying context (i.e., quarterly activity report filing, detailed individual expenditure reporting, compensation reporting, creating an electronic reporting system for filing executive lobbying quarterly activity reports). Of course, there remain some differences between the two lobbying systems even as amended, differences that relate primarily to jurisdiction. For example, registration and quarterly activity reporting for *executive* lobbying remains within the Florida Commission on Ethics; *legislative* lobbyists file with the Division of Legislative Information Services. Similarly, with regard to enforcement, the Auditor General forwards all final audit reports on lobbying compensation reporting to the Ethics Commission for *executive* lobbyists, and to the Legislature for *legislative* lobbyists. (WITH TITLE AMENDMENT)

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