

official, member, or employee,”³ shall “knowingly accept, directly or indirectly, any expenditure.”⁴ (Emphasis added.) The *legislative* lobbying expenditure ban also set-out a limited exemption for floral arrangements and other celebratory items given to legislators and displayed in chambers on the opening day of regular session.⁵

Prior to the expenditure ban enactment in 2005, food and beverages provided to legislators, agency officials, and employees by lobbyists and/or principals were governed by the **gift law** in Chapter 112, Florida Statutes, which provided:

1. Gifts of more than \$100 from a lobbyist/principal were prohibited.
2. Gifts of more than \$25 through \$100 were permissible, but had to be reported quarterly on expenditure forms by the lobbyist or principal.
3. Gifts of \$25 or less were permissible and did not need to be reported.⁶

For purposes of valuing gifts, food and beverages *not consumed at a single sitting or meal* and which were provided by a donor on the same day were considered a single gift.⁷ Similarly, food and beverages *consumed at a single sitting or meal* were considered a single gift valued at the total cost of the food and beverages provided at that sitting or meal.⁸

The gifts law provided for gift splitting on a *pro rata* basis in two distinct scenarios. First, the value of food and beverages provided to *several* legislators, agency officials, and staffers could be attributed on a *pro rata* basis among all the recipients. If the food and beverage was provided at a function for more than 10 people, the value of the gift to each individual was the total value of the food and beverages provided divided by the total number of persons invited to the function, unless the items were purchased on a per person basis.⁹

Similarly, a single gift of food and beverages could be provided by *multiple donors* to a single legislator, agency official, or staffer and the total cost split between the donors on a *pro rata* basis.¹⁰ Such creative accounting often managed to avoid expenditure reporting altogether and/or transform otherwise-prohibited gifts in excess of \$100 into permissible ones. For example, a 2008 Advisory Opinion of the Florida Commission on Ethics provides that it is permissible for five lobbyists/principals to each contribute \$25 toward a \$125 ticket for a city commissioner to attend a social event.¹¹ Even though the value of the *overall* gift (\$125) exceeded the \$100 lobbyist/principal cap, the gift was not deemed prohibited because the value of the gift given by

³ Section 112.3215(6)(a), F.S.

⁴ Id.; § 11.045(4)(a), F.S. Given the use of the conjunctive “and,” the courts have determined that the Act does not bar all lobbying expenditures, but only those expenditures that are made for lobbying purposes and are accepted by an official. See e.g., Florida Ass’n of Professional Lobbyists, Inc., et al. v. Div. of Legislative Information Svcs., et al., 525 F.3d 1073, 1078-79 (11th Cir. 2008).

⁵ Section 11.045(4)(a), F.S.

⁶ Section 112.3148(4)(5), F.S. Although the gift law is still in effect today, it has been mostly superseded with respect to lobbyist/principal interactions with legislators/staff by the stricter legislative and executive-branch lobbying expenditure bans. Thus, the gift law will be referred to in this section in the past tense.

⁷ Section 112.3148 (7)(f), F.S.

⁸ Id.

⁹ Section 112.3148(7)(j), F.S.

¹⁰ Rule 34-13.510, F.A.C.

¹¹ CEO 08-19 (2008) (see Question #4)

each lobbyist/principal was only \$25.¹² The Commission concluded, however, that the city commissioner would have to report the gift since it exceeded \$100 and there is another provision of the gifts law that requires reporting of most gifts that exceed that amount.¹³

III. Effect of Proposed Changes:

Senate Bill 1506 creates an exemption to the legislative lobbying expenditure ban for food or beverages consumed by a legislator:

1. At an event, meeting, or function held for the sole purpose of providing information on legislative, community, or governmental issues or having a specific education component; or,
2. Associated with an organizational, governmental, professional, or public interest function or reception.

The bill limits the allowable food and beverage expenditure to a “total value” of \$20, and provides that the food and beverages must be consumed at the event, meeting, function, or reception.

First and foremost, the food and beverage exemption in the bill is crafted so broadly that it would be difficult to envision many real-world or “created” situations where the exemption would not arguably apply --- including everything from a private dinner meeting between a lobbyist and a legislator to a formal trade association dinner at a hotel or conference center.

Second, there is no provision in the bill limiting the amount that a single lobbyist/principal can provide to a legislator/staffer in a single day at *multiple* events, meetings, functions, and receptions. In the absence of a gifts-law-like provision valuing all food and beverages received from the same donor on the same day as a single gift,¹⁴ a single lobbyist/principal could provide *unlimited* food and beverages to a legislator/staffer, *provided* it is done at separate meetings, functions, etc. --- with the maximum \$20 limit resetting each time.

Third, it is unclear whether the bill’s \$20 aggregate limit on the “total value” of allowable food and beverages represents:

- a) The total amount a legislator can accept at a single meeting or event from *all* lobbyists/principals; or,
- b) The total amount that a legislator can accept from *each lobbyist or principal* at a meeting or event.

Under the latter scenario, which seems the correct one given the structure of the section, there is a good argument that the bill would allow for the type of *pro rata*, bill splitting formerly used under the gift law. Thus, *multiple* lobbyists/principals could provide a legislator/staffer with

¹²Further, because the value of the gift given by each lobbyist/principal did not exceed \$25, the lobbyist/principal need not report any expenditure. *Id.*

¹³*Id.*; see also, § 112.3148, F.S. (requiring individuals to report, with limited exception, gifts worth more than \$100).

¹⁴Section 112.3148(7)(f), F.S.

unlimited amounts of food and beverages at a *single* meeting, function, etc., *provided* the *pro rata* share attributable to each lobbyist/principal did not exceed \$20. (Any legislator/staffer receiving food and beverages in excess of \$100 would still need to report the expenditure to the Florida Commission on Ethics, however, which would tend to discourage gifts exceeding this amount.¹⁵)

Fourth, Senate Bill 1506 makes no provision for how to value food and beverages provided at a large function, reception, or event. In the absence of a gifts-law-like provision allowing the lobbyist/principal to estimate per-person value in advance based on the number of invitees to an event, the bill would appear to require valuation based on the number of persons who *actually attend an event*. This has the potential to wreak havoc from an event-planning perspective.

Along the same lines, it is unclear how the bill's provisions would impact the "Free and Open Public Events" exception in current Senate rule (and concurrent House policy). Senate Rule 9.8, predicated on a Florida law that is *silent* with respect to lobbying expenditures for food and beverages, provides:

Expenditures directly associated with events that are held within the Capitol complex, out-of-doors or under temporary shelter, open to the general public, widely and publicly noticed, free to all, not ticketed, and for which equal and totally unobstructed access to the general public is provided, are not prohibited expenditures made by lobbyists or principals, or when accepted by legislators or legislative employees.

The Rule would likely need to be revised or abolished to incorporate the new statutory changes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ Florida's gifts law still requires legislators/staffers, with limited exception, to report gifts received in excess of \$100. Section 112.3148(8), F.S.

D. Other Constitutional Issues:

The courts have upheld the constitutionality of the legislative and executive branch lobbying expenditure bans.¹⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Lobbyists and principals might incur additional lobbying expenditures. The precise fiscal impact is indeterminate at this time, but could be substantial.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

When the Legislature adopted the legislative lobbying expenditure ban back in 2005, the same bill also enacted a similar provision governing *executive branch lobbying*.¹⁷ Senate Bill 1506 does not speak to the executive branch lobbying expenditure ban.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 597388 by Ethics and Elections on March 26, 2009:

Clarifies that a legislator or legislative employee may only accept an aggregate total of \$20 worth of food and beverages per day from all lobbyists and principals combined.

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

¹⁶ *Florida Ass'n of Professional Lobbyists, Inc., et al. v. Div. of Legislative Information Svcs., et al.*, 525 F.3d at 1078-79 (11th Cir. 2008) (holding that the legislative and executive branch lobbying expenditure bans do not violate federal due process as void for vagueness).

¹⁷ Ch. 2005-359, § 5, at 19, Laws. Of Fla. (codified at 112.3215 (6)(a), F.S.)