

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 Rules Subcommittee on Ethics and Elections

BILL: SB 1322
 INTRODUCER: Senator Jones
 SUBJECT: Legislative Lobbying Expenditures
 DATE: April 5, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Favorable
2.	_____	_____	RC	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1322 allows members and employees of the Legislature to accept an expenditure valued at less than \$100 from lobbyists and principals; expenditures over \$100 may only be accepted with prior written permission of the President of the Senate or Speaker of the House of Representatives, whichever is appropriate. An expenditure valued up to \$25 dollars is not required to be reported. A member or employee must disclose, however, any expenditure received from a lobbyist or principal which is valued over \$25. Members and employees are still prohibited from soliciting or accepting an honorarium. The practice of “gift-splitting” under the “old gifts law” is prohibited; valuation principles from the “old gifts law” and the ability to pay down an expenditure within 90 days, however, are incorporated.

This bill substantially amends Section 11.045, F.S., Section 112.3148, F.S., and Section 112.3149, F.S.

II. Present Situation:

Until 2005, members and employees of the Legislature were governed by the provisions of the Code of Ethics for Public Officers and Employees concerning gifts¹ and honoraria.² In 2005, the Legislature enacted the legislative lobbying provisions in s. 11.045, F.S. That section contains what is known as the legislative branch expenditure ban. The essence of the expenditure ban is that it prohibits a member or employee of the Legislature from accepting any expenditure from a lobbyist. The ban applies regardless of value. The expenditure ban, with limited exceptions, is an

¹ Section 112.3148, F.S.

² Section 112.3149, F.S.

absolute bar. For most purposes, the expenditure ban has superseded the “old gifts law”³ and honorarium law⁴ with respect to legislative members and employees.⁵

The “old gifts law” in Section 112.3148, F.S., regulates gifts given by lobbyists to reporting individuals and procurement employees. For purposes of s. 112.3148, the term reporting individuals includes members of the Legislature.⁶ Under that law, the term “lobbyist” means any natural person who, for compensation, seeks or sought during the preceding twelve months, to influence the governmental decision making of the member or the Legislature. Section 112.3148, F.S., prohibits a member of the Legislature from soliciting any gift from a political committee, a committee of continuous existence, or lobbyist, or the partner firm, employer, or principal of such lobbyist.⁷ The prohibition on soliciting a gift applies regardless of the value of the gift. Section 112.3148, F.S., also prohibits a member from knowingly accepting any gift in excess of \$100 from a lobbyist. A member is not prohibited from accepting a gift from a lobbyist if the gift is valued between \$25 and \$100. However, the lobbyist who gave the gift is required to disclose the gift on a disclosure form provided by the Commission on Ethics. Section 112.3148 also requires other gift reporting.

The honorarium law is contained in Section 112.3149, F.S., which prohibits a member of the Legislature from soliciting an honorarium related to his or her public office or duties. That section also prohibits a member from knowingly accepting an “honorarium” from a political committee, a committee of continuous existence as defined in s. 106.011, from a lobbyist who lobbies the Legislature, or the employer, principal, partner, or firm of such a lobbyist. “Honorarium” is defined as a payment of money or anything of value, directly or indirectly, to a reporting individual or procurement employee, or to any other person on his or her behalf, as consideration for: a speech, address, oration, other oral presentation by the reporting individual or procurement employee, or a writing by the reporting individual or procurement employee, other than a book, which has been or is intended to be published. However, a member is not prohibited from accepting the actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event, including event registration fees, for the member and his or her spouse. Section 112.3149, F.S., also contains a disclosure requirement.

The expenditure ban in s. 11.045(4)(a), F.S., provides that no lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session. The term “expenditure” means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The following do not constitute an expenditure: contributions or expenditures reported pursuant to Chapter 106 of the Florida Statutes or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made

³ Section 112.3148, F.S.

⁴ Section 112.3149, F.S.

⁵ For example, members and employees are still required to report certain gifts over \$100. Section 112.3148(8), F.S.

⁶ Because the scope of the bill is limited to members of the Legislature, this analysis will focus only on how each law applies to members of the Legislature.

⁷ The term “gift” for purposes of the Code of Ethics for Public Officers and Employees is defined in s. 112.312(12), F.S.

by or to a political party, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. 527 or 26 U.S.C. 501(c)(4).

The Senate adopted the provisions of the legislative branch expenditure law, the gifts law, and the honorarium law in Senate Rule 9.8. That rule provides guidance on whether it is permissible for a member or employee to accept a gift, honorarium, or expenditure. It also provides the test for determining whether an indirect expenditure is legal. Finally, the rule contains examples and answers to frequently asked questions concerning what is permissible for a member or employee to accept.

III. Effect of Proposed Changes:

Senate Bill 1322 relocates some of the overlapping or duplicative prohibitions concerning what a member or employee of the Legislature may accept into s. 11.045, F.S. However, the bill maintains the requirement that members and employees of the Legislature file a quarterly gift disclosure form with the Commission, unless the gift is required to be reported pursuant to s. 11.045, F.S. The bill allows members and employees of the Legislature to accept an expenditure valued at less than \$100 from lobbyists and principals; expenditures over \$100 may only be accepted with prior written permission of the President of the Senate or Speaker of the House or Representatives, whichever is appropriate. An expenditure valued up to \$25 dollars is not required to be reported. A member or employee must disclose, however, any expenditure received from a lobbyists and principals which is valued over \$25.

The bill amends the definition of “expenditure” in s. 11.045(1)(d), F.S., by providing the member or employee ninety days to provide equal or greater consideration for the expenditure. The bill also provides that certain things are not “expenditures.” These items are currently excluded from being a “gift” for purposes of the prohibition in s. 112.3148, F.S.⁸ The bill adopts the longstanding valuation principals used to determine the value of a gift in s. 112.3148(7), F.S., for purposes of valuing an expenditure. The bill prohibits a member or employee from “gift-splitting” by attributing a pro rata share of the expenditure when received from multiple lobbyists and/or principals. Rather, the value of the expenditure is the total amount of the expenditure.

The bill requires the member or employee to file a quarterly statement containing a disclosure of all expenditures accepted from a lobbyist or principal which he or she believes to be in excess of \$25 in value. If the member or employee provided compensation within ninety days which reduces the value of the item received to \$25 or less, the member or employee is not required to file the quarterly disclosure for that item. The bill does not require disclosure of expenditures from a relative. The disclosure required must describe the expenditure, the monetary value of the expenditure, the name and address of the lobbyist or principal making the expenditure, and the date the expenditure was received. If any of this information is not known or is not applicable, other than the expenditure description and purpose, the member must state that the information is not known or is not applicable. If the member or employee was provided a receipt, he or she is required to attach the receipt to the disclosure. The disclosure may also explain any differences between the member’s or employee’s statement and the receipt provided by the donor. In the event that the member does not receive any expenditure during that quarter, he or she is not

⁸ Section 112.312(12)(b), F.S.

required to file a disclosure for that quarter. The bill also provides that the disclosures shall be filed in accordance with the rules of the member's respective house of the Legislature.

Specifically, the bill prohibits a member or employee from soliciting, directly or indirectly, an honorarium⁹ or expenditure from a lobbyist or principal for the personal benefit of the member or employee, another member or employee, or the member's or employee's relative. This prohibition applies regardless of the value of the honorarium or expenditure. The bill also prohibits a lobbyist or principal from making a direct or indirect honorarium to a member or employee of the Legislature. The bill prohibits a member or employee from knowingly accepting, directly or indirectly, an honorarium. Finally, the bill prohibits a member or employee from accepting an expenditure in excess of \$100 from a lobbyist. However, a member or employee may accept a legitimate expenditure valued in excess of \$100 if it is made in connection with the member's public office or the employee's public employment and he or she obtains prior written approval from the President of the Senate or the Speaker of the House of Representatives, as appropriate. A member or employee is not prohibited from accepting an expenditure from a relative.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Legislative lobbyists and principals may incur additional lobbying expenditures. The amount of those expenditures is indeterminate.

C. Government Sector Impact:

None.

⁹ The bill adopts the definition of an honorarium currently in s. 112.3149, F.S., for purposes of s. 11.045, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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:

None.

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