

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 Rules

BILL: CS/CS/SB 544

INTRODUCER: Rules Committee; Ethics and Elections Committee; and Senator Braynon

SUBJECT: Legislative Lobbying Requirements

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.	McVaney	McVaney	GO	Favorable
3.	Carlton	Phelps	RC	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 544 clarifies that the use of a public facility or public property provided from a governmental entity to a legislator for a public purpose is not an expenditure for purposes of the "legislative expenditure ban" in s. 11.045, F.S., regardless of whether the governmental entity is a principal. Unlike the current Rules of the Florida Senate Rules and Administrative Policy Manual of the Florida House of Representatives, this statutory exception does not include any requirement for approval by the presiding officers prior to the expenditure being made between the governmental entity and the legislator.

The bill also amends the "Legislative Expenditure Ban" in s. 11.045, F.S., by providing that a Legislator or legislative employee may, under certain circumstances, accept:

- Individual servings of nonalcoholic beverages; or,
- An unsolicited meal, beverages, or event or meeting registration fee.

The bill requires that the houses of the Legislature must adopt rules for reporting, within 15 days after attending the scheduled meeting, the following information:

- The date of the event;
- The name of the organization hosting the event;

- The topic or topics about which the member or employee spoke; and,
- The value of the meal accepted.

Finally, the changes made to s. 11.045(4), F.S., will expire on June 30, 2015.

This bill substantially amends s. 11.045, Florida Statutes.

II. Present Situation:

Section 11.045, F.S., contains provisions requiring legislative lobbying registration and legislative lobbyist compensation reports, and it contains the “legislative expenditure ban.”

Section 11.045(4)(a), F.S., provides in pertinent part, 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 . . .” A “principal” is defined as “the person, firm, corporation, or other entity which has employed or retained a lobbyist.”¹ This appears to include governmental entities such as municipalities, counties, water management districts, universities, and colleges.

For purposes of this statute, 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 term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).²

The term “lobbying” means “influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.”³

The following penalties can be imposed for violation of the legislative expenditure ban:

- A fine of not more than \$5,000;
- Reprimand;
- Censure;
- Probation; and/or
- Prohibition on lobbying for a period not to exceed 24 months.⁴

¹ Section 11.045(1)(i), F.S.

² Section 11.045(1)(c), F.S.

³ Section 11.045(1)(e), F.S.

⁴ Section 11.045(7), F.S.

Section 11.045(5), F.S., requires each house of the legislature to provide by rule a procedure for determining the applicability and interpretation of this section. To that end, the Florida Senate has adopted Senate Rule 9.8.

The pertinent portion of that Rule for this legislation is contained in Senate Rule 9.8, Part 1, section one, exception 6. The text of the rule reads:

6. Government to Government Expenditures

Real property or a facility owned or operated by a state or local public agency or entity that is a lobbying principal and transportation to, from, and at the location provided by that agency or entity may, with the prior approval of the respective state legislative presiding officer or his or her designee, be used without payment, by a member, committee, or staff of the Legislature for a public legislative purpose. Such purposes include publicly noticed legislative committee meetings and site visits to operations conducted by the public agency or entity. Allowable free uses also specifically include legislative district offices and sub-offices and the normally attendant utilities, parking, janitorial services, building maintenance, and telecommunications equipment and services common to a government building in which the office is located. Allowable free use does not extend to sports or entertainment venues; does not include food, beverages, or entertainment; and does not include free parking privileges at any location other than a district office or sub-office.

The Florida House of Representatives has included a similar approval process in its policies.⁵

III. Effect of Proposed Changes:

CS/CS/SB 544 creates a statutory exception to the definition of “expenditure” for a “government-to-government use.” The Committee Substitute states that a “government-to-government use” is the “use of a public facility or public property that is made available by one governmental entity to a legislator for a public purpose, regardless of whether either is required to register any person as a lobbyist.”

This statutory exception does not include the requirement of approval by the presiding officers currently contained in the both the Senate Rules and Administrative Policy Manual for the House of Representatives.

The bill also allows a member or employee of the Legislature to accept individual servings of nonalcoholic beverages provided by a lobbyist or a principal as a courtesy to attendees of a meeting.

The bill also allows a member or employee of the Legislature who is attending a scheduled meeting of an established membership organization that is a principal of a lobbyist as a featured

⁵Florida House of Representatives, “Administrative Policy Manual” dated November 2012, pages 9 and 10.

speaker, moderator, or participant of a panel discussion, to accept a meal, beverages, or event or meeting registration fee if they were not solicited by the member or employee. For purposes of this exemption, the established membership organization cannot have a membership that is primarily composed of lobbyists. If a member or employee accepts a meal, beverages, or event or meeting registration fee at such an event, he or she must file a report with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after attending the meeting. The report must contain, at a minimum, the date of the event, the name of the organization hosting the event, the topic or topics about which the member or employee spoke, and the value of the meal accepted. The bill clarifies that this report also satisfies the reporting requirement of s. 112.3149(6), F.S., concerning expenses related to the honorarium event. Each house of the Legislature must establish rules for such reporting and provide for publication on its website.

Finally, the bill provides that the changes made to s. 11.045(4), F.S., will expire on June 30, 2015. The statute will revert to the language in law on April 7, 2013. However, any amendments to s. 11.045(4), F.S., enacted by other legislation will continue to operate to the extent that they are not dependent upon the changes made this bill.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The “old” gifts law in Section 112.3148, F.S., which predates the “Legislative Expenditure Ban,” prohibits certain gifts in excess of \$100 to reporting individuals (anyone required to file financial disclosure, including legislators) and procurement employees. Section 112.3148, F.S., exempts gifts given by a state, county, and municipal governments (and certain other governmental organizations) valued at more than \$100 if a public purpose can be shown. Current law requires annual disclosure of such gifts on a CE Form 10. Because both s. 11.045, F.S., and s. 112.3148, F.S., apply to members of the Legislature, it is important to note that, if a member or employee were to accept use of a public facility or public property from a governmental entity as authorized by the bill, the member or employee would be required to disclose the gift on a CE Form 10.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Rules on April 9, 2013:

CS/CS/SB 544 differs from the original bill by permitting legislators and employees of the Legislature to accept individual servings of nonalcoholic beverages at a meeting. The bill also permits a member or legislative employee to accept a meal or beverage at, or admission fee for, a scheduled meeting of an established membership organization whose membership is not composed primarily of lobbyists. The bill requires specific items to be reported when a member or employee attends a scheduled meeting of an established membership organization. This report, which must be published on the website of the member's/employee's house, satisfies the requirement for disclosing honorarium-related expenses pursuant to s. 112.3149(6), F.S. Finally, the bill provides that the changes made to s. 11.045(4), F.S., by this act will expire after June 30, 2015. The statute will revert to the language as it existed on April 7, 2013. At reversion, the text will also include any amendments to s. 11.045(4) made by other law to the extent that they are not dependent upon the changes made herein.

CS by Ethics and Elections on March 11, 2013:

The CS differs from the original bill by permitting expenditures by a governmental entity, which are made for a public purpose, to a legislator rather than to another governmental entity.

B. Amendments:

None.