

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7021 PCB PIE 17-03 Local Government Ethics Reform
SPONSOR(S): Government Accountability Committee; Public Integrity & Ethics Committee, Metz
TIED BILLS: CS/HB 7023 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Ethics Committee	18 Y, 0 N	Kiner	Rubottom
1) Appropriations Committee	27 Y, 0 N	Delaney	Leznoff
2) Government Accountability Committee	21 Y, 0 N, As CS	Moore	Williamson

SUMMARY ANALYSIS

The bill makes numerous changes to Florida's Code of Ethics for Public Officers and Employees (Code) as it relates to local government officers, employees, and lobbyists. Specifically, the bill:

- Requires city commissioners serving municipalities with \$10 million or more in total revenue for three consecutive years to file a full and public disclosure of their financial interests in lieu of the less detailed form of disclosure required under current law;
- Corrects an oversight with respect to the Code's prohibition on conflicting employment or contractual relationships;
- Requires special district governing board members to annually complete four hours of ethics training, a requirement that mirrors the current law applicable to constitutional officers and elected municipal officers;
- Requires local officers that must abstain from voting on a measure due to a conflict of interest to disclose the conflict prior to participating in the measure;
- Adds school districts to the list of governmental entities that must withhold salary-related payments from employees for failure to timely file a disclosure of financial interests;
- Requires a person who wishes to lobby certain local governmental entities to register as a lobbyist with the Commission on Ethics (Commission); and
- Provides that local government ordinances that require registration are preempted by the Local Government Lobbyist Registration System established by the Commission.

The bill has a projected fiscal impact on the state of approximately \$456,702.72 in fiscal year 2017-18 to develop a system to track and publish lobbyist registrations online. However, no additional appropriation is necessary as the Commission has sufficient carryforward funds to cover any such costs until revenue from fees begin to be received on October 1, 2018. In addition, there is an indeterminate fiscal impact on local governments and the private sector. See the Fiscal Analysis section for further detail.

The bill has an effective date of July 1, 2017. Section 9 becomes effective October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Code of Ethics for Public Officers and Employees (Code) is set forth in part III, chapter 112, F.S. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.¹ While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.²

The Code contains provisions that establish standards for the conduct of elected and appointed officials and government employees including, but not limited to, the following:

- Prohibited actions or conduct – including prohibitions on the solicitation or acceptance of gifts, unauthorized compensation, misuse of public position, disclosure or use of certain information, and solicitation or acceptance of honoraria;
- Prohibited employment and business relationships – including prohibitions on dual public employment, doing business with one’s agency, as well as conflicting employment or contractual relationships;
- Misuse of public position;
- Anti-nepotism;
- Post-office holding/post-employment restrictions;
- Voting conflicts of interest;
- Ethics training; and
- Financial disclosure.

These Code provisions apply not only to officials and employees of state entities, but also to local government officers and employees.

Full and Public Disclosure of Financial Interests

Current Law

The Florida Constitution requires all elected constitutional officers, candidates for such offices, and statewide elected officers, to file a full and public disclosure of their financial interests.³ Other public officers, candidates, and public employees may be required to file a full and public disclosure of their financial interests as determined by law.⁴

Pursuant to the Constitution, the term “full and public disclosure of financial interests” means the reporting individual must disclose his or her net worth and the value of each asset and liability in excess of \$1,000.⁵ The disclosure must be accompanied by either a sworn statement with this information or a copy of the reporting individual’s most recent federal income tax return.⁶

¹ S. 112.311(1), F.S.

² S. 112.311(4), F.S.

³ FLA CONST., art. II, ss. 8(a) and 8(i)(2).

⁴ FLA CONST., art. II, s. 8(a)

⁵ FLA. CONST., art. II, s. 8(i)(1), (2).

⁶ *Id.*

Pursuant to general law, the Commission on Ethics (Commission) has created by rule CE Form 6 to be used to make the required full and public financial disclosure.⁷

According to the Commission, and as articulated on the form, individuals holding the following positions must file CE Form 6: governor; lieutenant governor; cabinet members; legislators; state attorneys; public defenders; clerks of circuit courts; sheriffs; tax collectors; property appraisers; supervisors of elections; county commissioners; elected superintendents of schools; district school board members; Jacksonville City Council members (including mayor); compensation claims judges; Duval County superintendent of schools; Florida Housing Finance Corporation Board members; Florida Prepaid College Board members; and each expressway authority, transportation authority (except the Jacksonville Transportation Authority), bridge authority, or toll authority created pursuant to Chapter 348 or 343, F.S., or any other general law.⁸

Reporting individuals are required to file CE Form 6 annually with the Commission by July 1.⁹ Additionally, candidates for a constitutional office are required to make a full and public disclosure of their financial interests at the time of qualifying.¹⁰

While elected city commissioners may have similar authority and spending power as county commissioners and other public officers that are required to file CE Form 6, state law only requires city commissioners to file CE Form 1, which is a less detailed form of financial disclosure.¹¹ Elected municipal officers, and candidates for such offices, must file this form at the time of qualifying and annually by July 1.¹²

Florida law requires municipalities to annually submit a financial report to the Department of Financial Services (DFS).¹³ DFS in turn verifies the data and publishes a report on its website showing, among other things, municipal revenues,¹⁴ expenditures, and long-term debt.¹⁵

Effect of Proposed Changes

The bill requires a city commissioner serving a municipality that had \$10 million or more in total revenue for the three consecutive years ending prior to the year the disclosure covers to file the more detailed CE Form 6 annually, beginning with the 2017 filing year. Each commissioner must continue to file a CE Form 6 until the municipality has less than \$10 million in total revenue for three consecutive fiscal years. For purposes of these requirements, the verified report that DFS files with the Commission must be the sole basis to determine whether a municipality has \$10 million or more in total revenue. However, a municipality that has not had its annual financial report certified on or before November 30 of the year in which it is due must be considered to have \$10 million or more in total revenue for such year. If a report not certified by DFS is subsequently certified, the certified report must be used in any disclosure period beginning after the report is certified.

⁷ S. 112.3144(5), F.S.; *see also* Rule 34-8.002, F.A.C.

⁸ Rule 34-8.003, F.A.C.

⁹ Rule 34-8.002, F.A.C.

¹⁰ S. 99.061(5), F.S.

¹¹ S. 112.3145(3), F.S.; *see also* Rule 34-8.202, F.A.C.

¹² Rule 34-8.202, F.A.C.

¹³ S. 218.32(1), F.S.

¹⁴ According to DFS, for purposes of the annual financial reporting requirement, “revenue” includes ad valorem taxes; local option taxes; utility service taxes; local business taxes, permits, fees and special assessments; federal, state and local grants; state revenue sharing; service charges; court filing fees, fines and forfeitures; interest and dividends; increase in fair value of investments; rents and royalties; sale of surplus materials; contributions and donations; settlements; other miscellaneous revenues.

¹⁵ S. 218.32(2), F.S.

The bill requires DFS to annually by December 1 file a verified report with the Legislature and Commission showing the total revenues for each municipality in each of the prior three fiscal years and whether the municipality timely filed its annual financial report. The verified report must also indicate each municipality having no certified annual financial report in each such year.

Based on data provided by DFS, the number of municipalities that reported \$10 million or more in total revenue in recent years was as follows:

- FY 2013 (October 1, 2012 – September 30, 2013) – 214
- FY 2014 (October 1, 2013 – September 30, 2014) – 214
- FY 2015 (October 1, 2014 – through September 30, 2015) – 215

Conflicting Employment or Contractual Relationships

Current Law

The Code prohibits a public officer or agency employee from having an employment or contractual relationship with a business entity or agency that is subject to the regulation of, or is doing business with, his or her agency.¹⁶ The law further prohibits a public officer or agency employee from having an employment or a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.¹⁷

However, the Code does contain exceptions to these prohibitions relating to special taxing districts and drainage districts;¹⁸ legislative bodies where regulatory power resides in another agency or is strictly through enactment of laws or ordinances;¹⁹ and lawful or required practice in particular profession or occupation.²⁰ The Code also contains several exemptions to these prohibitions related to:

- Appointed advisory board members;²¹
- When business transactions in a county or municipality are transacted under a rotation system;²²
- When business is awarded under a system of sealed, competitive bidding and certain criteria are met;²³

¹⁶ S. 112.313(7), F.S.

¹⁷ *Id.*

¹⁸ “When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict *per se*. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.” S. 112.313(7)(a)1., F.S.

¹⁹ “When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.” S. 112.313(7)(a)2., F.S.

²⁰ “This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.” S. 112.313(7)(b), F.S.

²¹ “The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person.” S.112.313(12), F.S.

²² “Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.” S.112.313(12)(a), F.S.

- Purchases or sales for legal advertising, utilities service, or passage on a common carrier;²⁴
- Emergency purchases that must be made to protect public health, safety, or welfare;²⁵
- When the business entity involved is the only source of supply within the political subdivision and there is full disclosure by the officer or employee;²⁶
- When the aggregate of such transactions does not exceed \$500 in a calendar year;²⁷
- When business transacted is the deposit of agency funds in a bank of which a county, city, or district official is an officer, director, or stockholder, so long as agency records show that the governing body has determined that the member did not favor his or her bank over other qualified banks;²⁸
- When the public officer or employee purchases in a private capacity goods or services from an entity regulated by, or doing business with, his or her agency, at a price and under terms available to similarly situated members of the general public;²⁹ and
- When the elected public officer is employed by a tax exempt organization contracting with his or her agency and the officer's employment is not directly or indirectly compensated as a result of such contract or business relationship and the officer has in no way participated in the agency's decision to contract or to enter into the business relationship with his or her employer. In addition, the officer must abstain from voting on any matter that may come before the agency involving the officer's employer, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining, and file the required written memorandum.³⁰

In its annual reports to the Legislature for the past several years, the Commission has recommended that the law be amended. Specifically, the Commission has advised that, under the law, a public officer or agency employee may create a fictitious legal entity and subsequently use the entity to enter into an employment or contractual relationship that would be prohibited if the public officer or agency employee acted as an individual.³¹

Effect of Proposed Changes

The bill provides that if a public officer or employee of an agency holds a material interest in a business entity or is an officer, a director, or a member who manages such an entity, contractual relationships held by the business entity are deemed to be held by the public officer or employee. As such, if a public officer or employee holds a material interest in a business entity other than a publicly traded entity, or is an officer, a director, or a member who manages such an entity, it would be a violation of the Code for the business entity to have a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

²³ “The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and: (1) the official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder; (2) the official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and (3) the official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.” S.112.313(12)(b), F.S.

²⁴ S. 112.313(12)(c), F.S.

²⁵ S. 112.313(12)(d), F.S.

²⁶ S. 112.313(12)(e), F.S.

²⁷ S. 112.313(12)(f), F.S.

²⁸ S. 112.313(12)(g), F.S.

²⁹ S. 112.313(12)(i), (j), F.S.

³⁰ S. 112.313(15), F.S.

³¹ Florida Commission on Ethics 2017 Legislative Proposals.

The bill uses the current law definition of “material interest,” which means “direct or indirect ownership of more than five percent of the total assets or capital stock of any business entity.”³² For purposes of the definition, indirect ownership does not include ownership by a spouse or minor child.³³

Mandatory Annual Ethics Training

Current Law

Current Florida law requires “constitutional officers” and elected municipal officers to annually complete four hours of ethics training that, at a minimum, addresses s. 8, Art. II of the State Constitution, the Code, and Florida law on public records and public meetings.³⁴

Pursuant to the Code, the term “constitutional officer” includes the following officers: the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer (CFO), the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.³⁵

Each officer that is subject to the annual ethics training requirement must certify on his or her disclosure of financial interests reporting form that he or she has completed the required training.³⁶ However, the Commission does not collect any information on the provider(s) of such training.

Although special district³⁷ governing board members are covered by the Code’s provisions, state law does not require these individuals to receive annual ethics training.³⁸

Additionally, the Code requires the Commission to adopt rules establishing minimum course content for the portion of an ethics training class that addresses the constitutional ethics provisions and the Code.³⁹ The Commission’s current rule⁴⁰ requires course content to include one or more of the following subjects:

- Doing business with one's own agency;
- Conflicting employment or contractual relationships;
- Misuse of position;
- Disclosure or use of certain information;
- Gifts and honoraria, including solicitation and acceptance of gifts, and unauthorized compensation;
- Post-officeholding restrictions;
- Restrictions on the employment of relatives;
- Voting conflicts when the constitutional officer is a member of a collegial body and votes in his or her official capacity;

³² S. 112.312(15), F.S.

³³ *Id.*

³⁴ S. 112.3142(2), F.S.

³⁵ S. 112.3142(1), F.S.

³⁶ SS. 112.3144(1) and 112.3145(4), F.S.

³⁷ Section 189.012(6), F.S., defines a “special district” as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.”

³⁸ *See* s. 112.3142(1), F.S.

³⁹ S. 112.3142(2)(c), F.S.

⁴⁰ Rule 34-7.025., F.A.C.

- Financial disclosure requirements, including the automatic fine and appeal process;
- Commission procedures on ethics complaints and referrals; and
- The importance of and process for obtaining advisory opinions rendered by the Commission.

Effect of Proposed Changes

Beginning January 1, 2018, the bill requires special district governing board members (elected and appointed) and water management district board members to receive the same annual ethics training currently required for constitutional officers and elected municipal officers.

In addition, beginning January 1, 2018, the bill requires each officer subject to the annual ethics training requirement to provide the training provider's name on his or her annual financial disclosure form.

Finally, the bill repeals the statutory requirement that the Commission adopt a rule on minimum course content, and instead codifies the Commission's current rule in statute.

Voting Conflicts of Interest

Current Law

Florida law prohibits a county officer, municipal officer, or other local public officer from voting on any measure that would inure to his or her special private gain or loss;⁴¹ which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.⁴²

In such cases, the officer is required, prior to the vote being taken, to publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.⁴³

While the law prohibits the officer from voting on the measure, the officer is not prohibited from participating in the measure and is not explicitly required to disclose his or her conflict prior to his or her participation.

⁴¹ The term "special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer or his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer or his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer or his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered. S. 112.3143(1)(d), F.S.

⁴² S. 112.3143(3)(a), F.S.

⁴³ *Id.*

The term “public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.⁴⁴

Effect of Proposed Changes

The bill clarifies that the voting conflict prohibition that currently applies to county, municipal, and other local public officers also applies to governing board members of a special district or school district. The bill also requires a county officer, municipal officer, other local public officer, or governing board member of a special district or school district who must abstain from voting on a measure due to a conflict of interest to disclose the conflict prior to participating on the measure.

Collection Methods for Unpaid Financial Disclosure Fines

Current Law

The Code authorizes the Commission to withhold wages and seek garnishment in order to collect unpaid financial disclosure fines.⁴⁵ Prior to referring such a fine to DFS, the Commission must attempt to determine whether the filer is a current public officer or employee.⁴⁶ If the person is currently a public officer or employee, the Commission may notify the CFO or the governing body of the appropriate county, municipality, or special district of the total amount of the fine owed to the Commission by the individual.⁴⁷ After receipt and verification of the notice from the Commission, the CFO or the appropriate governing body is required to begin withholding the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment.⁴⁸ The withheld payments must be remitted to the Commission until the fine is satisfied.⁴⁹ Additionally, the CFO or appropriate governing body may retain an amount from each withheld payment to cover administrative costs incurred to comply with these requirements.⁵⁰

In the event that the Commission determines the individual owing a fine is no longer a public officer or employee or if the Commission is unable to make such a determination, the Commission must wait for six months after the order becomes final.⁵¹ After that period of time, the Commission may seek garnishment.⁵² Additionally, the Commission may refer the unpaid fine to a collection agency.⁵³ The collection agency may utilize any collection methods provided by law.⁵⁴ The statute of limitations for an unpaid financial disclosure fine is 20 years.⁵⁵ Once recovered, previously unpaid financial disclosure fines are deposited into general revenue.⁵⁶

Effect of Proposed Changes

The bill expressly requires school districts to withhold public salary-related payments after receiving notice from the Commission that an employee has an unpaid financial disclosure fine, including an amount to cover any administrative costs incurred by the school district to comply with the requirement.

⁴⁴ S. 112.3143(1)(b), F.S.

⁴⁵ S. 112.31455(2), F.S.

⁴⁶ S. 112.31455(1), F.S.

⁴⁷ *Id.*

⁴⁸ S. 112.31455(1)(a), F.S.

⁴⁹ *Id.*

⁵⁰ S. 112.31455(2)(b), F.S.

⁵¹ S. 112.31455(2), F.S.

⁵² *Id.*

⁵³ S. 112.31455(3), F.S.

⁵⁴ *Id.*

⁵⁵ S. 112.31455(4), F.S.

⁵⁶ S. 112.3144(5)(e), F.S.

Lobbying Before Governmental Entities

Current Law

Florida law requires a person who wishes to lobby the executive branch to register as a lobbyist with the Commission prior to lobbying.⁵⁷ Similarly, the Florida Legislature, by rule, requires a lobbyist who wishes to lobby either house of the Legislature to register with the Lobbyist Registration Office in the Office of Legislative Services.⁵⁸ In addition to these registration requirements, lobbying firms must file quarterly compensation reports for each quarter in which at least one of their lobbyists was registered to represent a principal.⁵⁹

As of February 2017, there were over 1,300 lobbyists registered to lobby the executive branch on behalf of over 3,300 principals, representing over 8,900 total registrations.⁶⁰ As of February 2017, there were over 1,800 lobbyists registered to lobby the Legislature on behalf of over 3,600 principals, representing over 10,000 total registrations.⁶¹ In total, there were over 150 lobbyists registered to lobby only the executive branch, over 600 registered to lobby only the Legislature, and over 1,200 registered to lobby both the executive branch and the Legislature.⁶² Currently, the executive branch has 1.5 FTEs to administer registrations, including oath authorizations, and compensation reports. The Legislature has 2 FTEs to administer registrations and compensation reports.

Each lobbyist registration program has a dedicated trust fund whereby registration fees must be used to administer the program. The executive branch lobbyist registration fee is \$25 per principal, although by statute, the fee may be up to \$40 per principal.⁶³ The Legislature's annual lobbyist registration fee is \$50 for the first registration and \$20 for each additional registration. If a lobbyist is registering before only one chamber, the annual fee is \$25 for the first registration and \$10 for each additional registration. As of February 2017, the Executive Branch Lobbyist Registration Trust Fund had \$1,135,123 in cash on hand, while the Legislative Lobbyist Registration Trust Fund had \$1,379,440 in cash on hand.

Executive Branch Lobbyist Registration Trust Fund										
	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Beginning Cash Balance	595,084	631,757	733,949	833,081	901,796	944,303	1,002,123	1,052,516	1,060,646	967,265
Revenues Collected	182,600	201,525	201,025	189,515	194,175	205,025	201,825	230,530	261,830	254,250
Disbursements	145,927	99,333	101,893	120,800	151,668	147,206	151,432	222,400	355,210	216,183
Excess (Deficiency) of Revenue over Disbursements	36,673	102,192	99,132	68,715	42,507	57,819	50,393	8,130	(93,380)	38,067
Ending Cash Balance	631,757	733,949	833,081	901,796	944,303	1,002,123	1,052,516	1,060,646	967,265	1,005,333
Legislative Branch Lobbyist Registration Trust Fund										
	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Beginning Cash Balance	792,074	797,934	838,507	889,603	936,720	993,658	1,117,279	1,230,248	1,270,080	1,230,775
Revenues Collected	254,137	252,435	256,746	245,680	246,545	260,580	247,845	265,830	278,600	283,355
Disbursements	248,277	211,862	205,650	198,563	189,606	136,959	134,877	225,998	317,905	223,197
Excess (Deficiency) of Revenue over Disbursements	5,860	40,573	51,096	47,117	56,938	123,621	112,968	39,832	(39,305)	60,158
Ending Cash Balance	797,934	838,507	889,603	936,720	993,658	1,117,279	1,230,248	1,270,080	1,230,775	1,290,933

⁵⁷ S. 112.3215(3), F.S.

⁵⁸ Joint Rule 1.1(1).

⁵⁹ SS. 11.045(3)(a)1. and 112.3215(5)(a)1., F.S.

⁶⁰ See statistics on registered lobbyists on the Florida Lobbyist Registration & Compensation website at www.floralobbyist.gov (last viewed 2/24/2017).

⁶¹ *Id.*

⁶² *Id.*

⁶³ Rule 34-12.200(2), F.A.C., implementing s. 112.3215(4), F.S.

During the 2016 Organization Session, the Florida House of Representatives adopted its rules for the 2016 – 2018 term. Rule 17.1(h) requires lobbyists to disclose the issues upon which they intend to lobby the House, while Rule 17.1(i) requires disclosure of public entity lobbying contracts. As of February 2017, over 1,100 lobbyists have disclosed over 22,000 issues on behalf of over 2,300 principals, while over 350 public entity lobbying contracts have been submitted by over 70 lobbying firms. The Public Integrity & Ethics Committee has one full-time staff member to assist with issue and contract disclosures.

As of 2014, Florida law requires a lobbyist who wishes to lobby before one of Florida’s five water management districts to register as a lobbyist with said district.⁶⁴ The law requires the applicable water management district to make lobbyist registrations available to the public, including on its website if the district maintains one.⁶⁵ To administer the registration process, each water management district is authorized to charge a registration fee of up to \$40 per principal.⁶⁶ The Southwest Florida Water Management District developed its lobbyist registration system database in-house and administers each of the other four water management district lobbyist registration programs at no charge to the water management district or registered lobbyist(s).

Florida has 67 counties, more than 400 municipalities, and over 1,500 special districts. While the Code provides minimum standards of conduct and disclosure for officers and employees covered under the Code, local governments have authority to enact ordinances providing for more stringent standards – provided these ordinances do not conflict with the Code’s provisions.⁶⁷ At least 13 counties⁶⁸ have ordinances requiring lobbyists to register, report compensation, or both. An informal staff review uncovered at least 26 municipalities with ordinances requiring lobbyists to register with the municipality prior to lobbying. However, the total number of counties, municipalities, and special districts that require lobbyist registration is unknown.

Effect of Proposed Changes

The bill repeals the provisions in current law regarding the registration requirements for lobbyists wishing to lobby water management districts.

Beginning October 1, 2018, the bill requires a person to electronically register as a lobbyist with the Commission prior to lobbying a “governmental entity.” Under the bill’s provisions, a “governmental entity,” includes a county, municipality, water management district, school district, hospital district, children’s services district, expressway authority, port authority, or special district.

The bill also provides definitions for the terms “lobbying,” and “lobbyist.” Pursuant to the bill’s provisions, the term “lobbying” means seeking, on behalf of another person, to influence a governmental entity with respect to a decision of the entity in an area of policy or procurement or an attempt to obtain the goodwill of an official or employee of a governmental entity. The term does not include representing a client in any stage of applying for or seeking approval of an application for a license, permit, or waiver of a regulation or other administrative action, or opposition to such action, provided such action does not require legislative discretion and is subject to judicial review by petitioning for writ of certiorari.

⁶⁴ S. 112.3261(2), F.S.

⁶⁵ S. 112.3261(3), F.S.

⁶⁶ S. 112.3261(5), F.S.

⁶⁷ S. 112.326, F.S.

⁶⁸ Alachua, Broward, Collier, Duval, Hillsborough, Lake, Lee, Leon, Miami-Dade, Orange, Palm Beach, Pinellas, and St. Lucie counties.

The term “lobbyist” means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of such person or governmental entity. The term does not include a person who:

- Represents a client in a judicial proceeding or in a formal administrative proceeding before a governmental entity.
- Is an officer or employee of an agency acting in the normal course of his or her duties.
- Consults under contract with the governmental entity and communicates with the entity’s governing body or governing body employee regarding issues related to the scope of services in his or her contract.
- Is an employee, officer, or board member of a homeowners’ association, condominium association, or neighborhood association when addressing, in his or her capacity as an employee, officer, or board member of such association, an issue impacting the association or its members.
- Is a confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.
- Is an expert witness who is retained or employed by an employer, principal, or client to provide only scientific, technical, or other specialized information provided in agenda materials or testimony only in public hearings, so long as the expert identifies the employer, principal, or client at the hearing.
- Seeks to procure a contract that is less than \$20,000 or a contract procured pursuant to s. 287.056, F.S., which governs state purchasing agreements and state term contracts.

The term “principally employed for governmental affairs” means that one of the employee’s principal or most significant responsibilities to the employer is overseeing the employer’s various governmental relationships or representing the employer in its contacts made with an officer or employee of a governmental entity.

The term “principal” means the person, firm, corporation, or other entity that has employed or retained a lobbyist.

The bill requires the Commission to create a Local Government Lobbyist Registration System (system) to register lobbyists who wish to lobby governmental entities. Beginning October 1, 2018, the bill preempts any governmental entity rule or ordinance that requires lobbyist registration and replaces such rule or ordinance with the system. However, a governmental entity may adopt a rule or ordinance to regulate lobbyist conduct and may require compensation reporting, disclosure of contacts made with an officer or employee of a governmental entity, or any other activity related to lobbyist conduct, other than registration. The bill prohibits a governmental entity from charging any fee for registration of lobbyists and principals. The bill also prohibits a governmental entity from charging other fees in the enforcement of lobbyist regulation except as may be reasonable and necessary to cover the cost of such enforcement.

The bill requires a lobbyist to disclose his or her full legal name, birth month, e-mail address, telephone number, and business address; the name, e-mail address, telephone number, and business address of each registered principal; and the name of each governmental entity he or she lobbies or intends to lobby on behalf of each principal. The bill also requires the lobbyist to disclose any direct or indirect business association, partnership, or financial relationship with an official or employee of a governmental entity he or she lobbies or intends to lobby.

The initial lobbyist registration is due upon being retained to lobby and is renewable annually on the anniversary of the lobbyist’s registration or in the month of the lobbyist’s birth as selected by the lobbyist at the time of registration. The Commission must request authorization from the principal using the principal’s name, business address, e-mail address, and telephone number to confirm that the registrant is authorized to represent the principal. The principal or principal’s representative must

identify and designate its main type of business pursuant to the North American Industry Classification System six digit numerical code that most accurately describes the principal's main business. Registration is incomplete until the Commission receives the principal's authorization and the registration fee. Any changes to the registration information must be disclosed within 15 days. A lobbyist must promptly notify the Commission in writing upon termination of representation of a principal.

The bill requires the Commission to establish an annual lobbyist registration fee that may not exceed:

- \$20 for each principal represented for one county and the governmental entities therein or one multi-county governmental entity; and
- \$5 for each additional county and the governmental entities therein or each multi-county governmental entity.

The Commission must also publish a directory of all lobbyist registrations on the Internet. In addition, the bill authorizes the Commission to adopt rules to establish procedures to administer the registration system, including the staggering of registration renewal dates based on the lobbyist's birth month or anniversary date of registration at the option of the lobbyist, the adoption of forms, method of registering specific entities lobbied, exchange of information with local governmental entities, and the establishment of fees.

The bill also requires a governmental entity to use reasonable efforts to ascertain whether a lobbyist has registered and prohibits a governmental entity from knowingly authorizing an unregistered lobbyist to lobby the entity.

The bill requires the Commission to investigate every sworn complaint that is filed with it alleging that a person required to register as a lobbyist has failed to do so or that a person has knowingly submitted false information in a registration. If the Commission finds no probable cause to believe that a violation of the section occurred, it must dismiss the complaint and send a copy of the complaint, findings, and summary to the complainant and the alleged violator. If the Commission does find probable cause to believe that a violation occurred, it must report the results of its investigation to the Governor and send a copy of the report to the alleged violator by certified mail. Upon written request submitted to the Governor, an alleged violator must be entitled to a public hearing. Such person must be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the copy of the report. However, the Governor may require a public hearing and may conduct such further investigation as he or she deems necessary. If the Governor finds that a violation occurred, he or she may reprimand the violator, censure the violator, or assess a civil penalty against the violator.

If the Commission receives a first complaint against a lobbyist alleging he or she has violated the registration requirement, or receives any complaint against a lobbyist prior to January 1, 2020, the bill requires the Commission to issue a warning letter to the lobbyist directing him or her to consult the obligations of lobbyists under the registration requirements. The Commission must then dismiss the complaint. On or after January 1, 2020, if the Commission finds that a lobbyist has violated the registration requirement, the bill provides for a civil penalty not to exceed \$500 for a first violation. A second or subsequent violation committed within 12 months after a first violation has occurred will subject the lobbyist to a civil penalty between \$200 and \$1000 or a one-year suspension from lobbying any governmental entity associated with the violation. A governmental entity may impose additional civil penalties not to exceed \$500 per violation and may suspend the lobbyist from lobbying on its behalf for up to two years.

By January 1, 2018, the bill requires each governmental entity that has an ordinance or rule placing more stringent obligations with respect to lobbyist compensation reporting, or other lobbyist conduct to forward to the Commission a copy of such ordinance and any associated form that has been designated to facilitate compliance with such ordinance or rule. Beginning January 1, 2019, the bill

encourages each governmental entity to conform its registration system, if any, to accommodate regular receipt of lobbyist registration data from the Commission. This data exchange will assist each governmental entity in retaining whatever more stringent standards it has in place.

B. SECTION DIRECTORY:

Section 1 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 2 amends s. 112.3142, F.S., relating to ethics training for specified constitutional officers and elected municipal officers.

Section 3 amends s. 112.3143, F.S., relating to voting conflicts.

Section 4 amends s. 112.3144, F.S., relating to full and public disclosure of financial interests.

Section 5 amends s. 112.3145, F.S., relating to disclosure of financial interests and clients represented before agencies.

Section 6 provides that certain changes made by the bill relating to financial disclosure apply to disclosures filed for the 2017 calendar year and all subsequent calendar years.

Section 7 amends s. 112.31455, F.S., relating to collection methods for unpaid automatic fines for failure to timely file disclosure of financial interests.

Section 8 amends s. 112.3148, F.S., relating to reporting a prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.

Section 9 repeals s. 112.3261, F.S., relating to lobbying before certain government entities.

Section 10 amends s. 218.32, F.S., relating to annual financial reports of local governmental entities.

Section 11 creates s. 112.3262, F.S., relating to lobbying before governmental entities.

Section 12 specifies that the act fulfills an important state interest.

Section 13 provides an effective date of July 1, 2017, except as otherwise expressly provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires the Commission to establish an annual registration fee, effective October 1, 2018, to administer the local government lobbyist registration system. Pursuant to the bill's provisions, the registration fee may not exceed \$20 for each principal represented for one county and governmental entities therein or one multi-county governmental entity and may not exceed \$5 for each additional county and the governmental entities therein or multi-county governmental entity. The revenue generated from annual registrations will be used to administer the registration program, including the payment of salaries and other expenses.

2. Expenditures:

The bill requires elected municipal officers serving municipalities with \$10 million or more in total revenue for three consecutive fiscal years to file CE Form 6 in lieu of the currently required CE Form 1. The expense to the Commission associated with mailing these individuals a CE Form 6

instead of a CE Form 1 is indeterminate, but likely insignificant and can be absorbed by current resources.

The bill requires a lobbyist to register with the Commission prior to lobbying certain local governmental entities, effective October 1, 2018. The Commission is required to make these registrations public on the Internet. Expenses associated with administering the registration process will not be incurred until fiscal year 2018-19. However, the Office of Legislative Information Technology Services projects the cost to develop an online system, to track and report such registrations, is approximately \$456,702.72, the bulk of which will be expended in fiscal year 2017-18. The Commission has sufficient carryforward funds to cover any such expenses until revenues from fees are received.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

By January 1, 2018, the bill requires each local governmental entity that has an ordinance or rule placing more stringent obligations with respect to lobbyist registration, reporting, or other lobbyist conduct to forward to the Commission a copy of such ordinance and any associated form that has been designated to facilitate compliance with such ordinance or rule. By January 1, 2019, the bill requires each local governmental entity to conform its registration system, if any, to accommodate regular receipt of lobbyist registration data from the Commission. This data exchange will assist each local governmental entity in retaining whatever more stringent standards it has in place. The fiscal impact on local governments with respect to these provisions is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's provisions require a person who wishes to lobby certain local governmental entities to register with the Commission. The bill also requires the Commission to establish an annual lobbyist registration fee, up to \$20 for each principal represented for one county and governmental entities therein or one multi-county governmental entity and may not exceed \$5 for each additional county and the governmental entities therein or multi-county governmental entity. The extent to which a lobbyist or lobbying firm will pass the registration costs on to principals, some of which may be private sector entities, is unknown, but likely insignificant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments with ordinances or rules placing more stringent obligations with respect to lobbyist registration, reporting, or other lobbyist conduct to forward to the Commission a copy of such ordinance and any associated form that has been designated to facilitate compliance with such ordinance or rule. By January 1, 2019, the bill also requires each local governmental entity to conform its registration system, if any, to accommodate regular receipt of lobbyist registration data from the Commission and prohibits such entities from charging a fee for such registration. An exemption may apply if the bill results in an insignificant fiscal impact to county and municipal governments. In addition, an exception may apply because the bill

includes legislative findings that the bill fulfills an important state interest and the bill applies to all persons similarly situated.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission to establish an annual lobbyist registration fee that does not exceed \$20 for each principal represented for one county and governmental entities therein or one multi-county governmental entity and may not exceed \$5 for each additional county and the governmental entities therein or multi-county governmental entity. The bill also authorizes the Commission to adopt rules to establish procedures to govern the electronic registration of lobbyists, including the adoption of forms and the exchange of information with local governmental entities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 14, 2017, the Public Integrity & Ethics Committee adopted a strike-all amendment to PCB PIE 17-03 and subsequently reported the bill favorably as amended. The strike-all amendment made several revisions to PCB PIE 17-03, including the following:

- Revised the phrases “each candidate for an elected municipal office” and “elected municipal officer” to “each candidate for the governing body of a municipality” and “every member of the governing board of a municipality,” respectively, to ensure the provision only captures city commissioners and not other elected municipal officers.
- Revised the phrase “municipality that had \$5 million or more in total revenue as determined by the most recent annual financial report submitted to DFS in accordance with s. 218.32” to “municipality that had \$5 million or more in total revenue as determined by the annual financial report submitted to DFS in accordance with s. 218.32 for the fiscal year ending prior to the year the disclosure covers.”
- Broaden the scope of the provision requiring elected special district governing board members to complete 4 hours of annual ethics training to also include appointed special district governing board members and water management district board members.
- Revised the provision on providing ethics training information to only require the training provider’s name in lieu of requiring the training provider’s name and the date the training was completed.
- Removed the provision allowing the general counsel of an agency or entity having an officer subject to the ethics training requirement to provide ethics training provider information on behalf of the officer.
- Revised the provision requiring a lobbyist who wishes to lobby a governmental entity to register as a lobbyist with the Commission by:
 - Requiring electronic registration.
 - Including all special districts and not just independent special districts in the definition of “governmental entity”.
 - Providing the term “lobby” or “lobbies” does not include making application for or seeking approval of an application for a license, permit, or waiver of a regulation so long as the issuance or granting of such application does not require legislative discretion.
 - Requiring a lobbyist to provide his or her email address upon registering.
 - Requiring the Commission to make local government lobbyist registration available on the Internet rather than specifying the information must be available on the Commission’s website.

- Requiring the Commission to issue a warning letter and dismiss a first complaint or any complaint received before January 1, 2020, for a lobbyist's failure to register.
- Revising the term "fine" to "civil penalty."
- Revises the civil penalty for a second or subsequent violation from "not to exceed \$1,000" to "not less than \$200 and not greater than \$1,000."
- Authorizing, but not requiring, governmental entities to impose additional civil penalties for a second or subsequent violation.
- Authorizing a person who is unsure whether he or she is required to register as a lobbyist to request a binding advisory opinion from the Commission.

On March 22, 2017, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the section relating to increased financial disclosure for city commission candidates;
- Increased the budget-based threshold to trigger CE Form 6 filings for sitting city commissioners to \$10M or more in total revenue for three consecutive years;
- Effective October 1, 2018, repealed statutory authority for local governments to enact ordinances that require lobbyists to register;
- Clarified that the Local Government Lobbyist Registration System preempts any existing local government ordinances that require registration;
- Added additional exclusions to the definition of the term 'lobbyist' for purposes of the Local Government Lobbyist Registration System;
- Revised the fee structure for the Local Government Lobbyist Registration System;
- Provided the Governor with the authority to enforce the provisions of the Local Government Lobbyist Registration System; and
- Removed the un-numbered, superfluous section authorizing the Commission to issue advisory opinions.

This analysis is drafted to the committee substitute as approved by the Government Accountability Committee.