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CS/CS/HB 7001

2022 Legislature

1
 2 An act relating to implementation of the
 3 constitutional prohibition against lobbying by a
 4 public officer; creating s. 112.3121, F.S.; providing
 5 definitions for the purpose of implementing the
 6 constitutional prohibition against lobbying by a
 7 public officer; creating s. 112.3122, F.S.; providing
 8 applicability; providing for administration; requiring
 9 the Commission on Ethics to report certain findings
 10 and recommendations to the Governor; providing
 11 penalties for a violation of the constitutional
 12 prohibition against lobbying by a public officer;
 13 authorizing collection of such penalties by specified
 14 entities; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 112.3121, Florida Statutes, is created
 19 to read:

20 112.3121 Definitions.—As used in this section and for
 21 purposes of implementing s. 8(f), Art. II of the State
 22 Constitution, the term:

23 (1) "Administrative action" means any process or decision
 24 regulated by chapter 120 or, for a state government body or
 25 agency or a political subdivision not subject to chapter 120,

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26 any action or a decision on a license, permit, waiver of
 27 regulation, development order or permit, or development
 28 agreement; any quasi-judicial proceeding on local government
 29 land use matters regulated by s. 286.0115(2); any decision
 30 subject to judicial review by petition for writ of certiorari or
 31 as otherwise prescribed by general law; or any other
 32 administrative procedure or procedure governed by existing law,
 33 ordinance, rule, or regulation, except on an issue of
 34 procurement.

35 (2) "Compensation" means a payment, distribution, loan,
 36 advance, reimbursement, deposit, salary, fee, retainer, or
 37 anything of value provided or owed to a recipient, directly or
 38 indirectly, from any source for lobbying activity.

39 (3) "Elected special district officer in a special
 40 district with ad valorem taxing authority" means an officer
 41 elected by the qualified electors of a special district, or
 42 appointed to fill an unexpired term of such officer, and does
 43 not include an officer elected by landowners when an election by
 44 qualified electors is a condition precedent to the exercise of
 45 the ad valorem taxing authority under s. 190.006(3). If such
 46 condition precedent does not apply, the term "elected special
 47 district officer in a special district with ad valorem taxing
 48 authority" means an officer elected by any method prescribed by
 49 law for a special district with ad valorem taxing authority.

50 (4) "Executive director" means the chief administrative

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51 employee or officer of a department headed by a board or by the
 52 Governor and Cabinet.

53 (5) "Federal government" means the United States Congress,
 54 any federal executive branch department, office, agency, or
 55 instrumentality, corporate or otherwise, or any federal
 56 independent agency, including any unit thereof.

57 (6) "Governmental entity" means a state government body or
 58 agency, the Legislature, a political subdivision, or the federal
 59 government.

60 (7) "Issue of appropriation" means a legislative decision
 61 to expend or approve an expenditure of public funds, including
 62 decisions that are delegated to an administrator.

63 (8) "Issue of policy" means a change in a law or ordinance
 64 or a decision, plan, or course of action designed to influence
 65 or determine the subsequent decisions or actions of a
 66 governmental entity, to sell or otherwise divest public
 67 property, or to regulate conduct. The term does not include a
 68 decision or determination of any rights, duties, or obligations
 69 made on a case-by-case basis.

70 (9) "Issue of procurement" means a proposal to purchase or
 71 acquire property, an interest in property, or services by a
 72 governmental entity.

73 (10) "Legislative action" means introduction, sponsorship,
 74 testimony, debate, voting, or any other official action on a
 75 measure, resolution, amendment, nomination, appointment, report,

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76 or other matter.

77 (11) (a) "Lobby" means to influence or attempt to influence
 78 an action or decision through oral, written, or electronic
 79 communication and, with respect to:

80 1. A state government body or agency, is limited to
 81 influencing decisions, other than administrative action, that
 82 are vested in or delegated to the state government body or
 83 agency, or an officer thereof;

84 2. The Legislature or other body that is vested with
 85 legislative power or the power to propose revisions to the State
 86 Constitution, is limited to influencing a procurement decision
 87 or any legislative action or nonaction by either the Senate or
 88 the House of Representatives, or any committee or office
 89 thereof, or by such other body or a committee or office thereof;

90 3. A political subdivision, is limited to influencing
 91 legislative actions or other discretionary decisions, but does
 92 not include administrative actions; or

93 4. The federal government, is limited to influencing a
 94 decision of the legislative or executive branch of the United
 95 States government for which registration as a lobbyist is
 96 required.

97 (b) The term "lobby" does not mean any of the following:

98 1. Providing or seeking to provide confidential
 99 information to be used for law enforcement purposes.

100 2. Appearing as a witness to provide information at the

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101 written request of the chair of a legislative body or committee,
 102 including a legislative delegation meeting.

103 3. Appearing or offering written testimony under oath as
 104 an expert witness in any proceeding for any purpose related to
 105 the proceeding and communications related to such testimony.

106 (12) (a) "Lobby for compensation" means being employed or
 107 contracting for compensation, for the purpose of lobbying, and
 108 includes being principally employed for governmental affairs to
 109 lobby on behalf of a person or governmental entity.

110 (b) The term "lobby for compensation" does not include any
 111 of the following:

112 1. A public officer carrying out the duties of his or her
 113 public office.

114 2. A public or private employee, including an officer of a
 115 private business, nonprofit entity, or governmental entity,
 116 acting in the normal course of his or her duties, unless he or
 117 she is principally employed for governmental affairs.

118 3. Advice or services to a governmental entity pursuant to
 119 a contractual obligation with the governmental entity.

120 4. Representation of a person on a legal claim cognizable
 121 in a court of law, in an administrative proceeding, or in front
 122 of an adjudicatory body, including representation during
 123 prelitigation offers, demands, and negotiations, but excluding
 124 representation on a claim bill pending in the Legislature.

125 5. Representation of a person in any proceeding on a

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126 complaint or other allegation that could lead to discipline or
 127 other adverse action against the person.

128 6. Representation of a person with respect to a subpoena
 129 or other legal process.

130 (13) "Other agency head" means the chief administrative
 131 employee or officer of a department that is not headed by an
 132 executive director or secretary.

133 (14) "Political subdivision" means a county, municipality,
 134 school district, special district with ad valorem taxing
 135 authority, or any agency or unit thereof.

136 (15) "Principally employed for governmental affairs" means
 137 that the principal or most significant responsibilities of the
 138 employee is to oversee the employer's various relationships with
 139 governmental entities or representing the employer in its
 140 contacts with governmental entities.

141 (16) "Secretary" means the head of a department who is
 142 appointed by the Governor.

143 (17) "State government body or agency" means any
 144 department, agency, commission, council, board, or
 145 instrumentality created by the State Constitution or established
 146 by general law and any official or officer thereof. The term
 147 includes, but is not limited to, a state attorney, a public
 148 defender, a criminal conflict and civil regional counsel, and a
 149 capital collateral regional counsel.

150 Section 2. Section 112.3122, Florida Statutes, is created

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151 to read:

152 112.3122 Enforcement and penalties for constitutional
153 prohibition against lobbying by a public officer.—

154 (1) Section 8(f), Art. II of the State Constitution
155 applies to persons serving as public officers on or after
156 December 31, 2022.

157 (2) For purposes of administrative enforcement, a
158 violation of s. 8(f), Art. II of the State Constitution is
159 deemed a violation of this part.

160 (3) If the commission finds that there has been a
161 violation of s. 8(f)(3), Art. II of the State Constitution, the
162 commission must report its findings and recommendations for
163 appropriate action to the Governor who has the power to invoke
164 any of the penalties under subsection (4).

165 (4) A violation of s. 8(f), Art. II of the State
166 Constitution may be punished by one or more of the following:

167 (a) Public censure and reprimand.

168 (b) A civil penalty not to exceed \$10,000.

169 (c) Forfeiture of any pecuniary benefits received for
170 conduct that violates this section. The amount of the pecuniary
171 benefits must be paid to the General Revenue Fund.

172 (5) The Attorney General and Chief Financial Officer are
173 independently authorized to collect any penalty imposed under
174 this section.

175 Section 3. This act shall take effect December 31, 2022.