

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 Community Affairs

BILL: SB 734

INTRODUCER: Senator Ingoglia

SUBJECT: Government Accountability

DATE: January 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Pre-meeting
2.			EE	
3.			RC	

I. Summary:

SB 738 makes various changes related to ethics regulations on local governments. Specifically, the bill:

- Prohibits certain state and local officials from soliciting or accepting anything of value from a foreign country of concern;
- Establishes requirements for lobbyist registration for individuals lobbying local governments;
- Provides that certain local government employee contracts shall not be renewed, extended, or renegotiated within 8 months of a general election for members of the applicable governing body; and
- Provides that a member of the governing body of the municipality may be present for the purpose of establishing quorum through electronic participation, under certain circumstances.

The bill takes effect July 1, 2024.

II. Present Situation:

Commission on Ethics

The Commission on Ethics (Commission) was created by the Legislature in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.¹ The Florida Constitution and state law designate the Commission as the independent commission provided for in s. 8(g), Art. II of the Florida Constitution.² Constitutional duties of the Commission consist of conducting investigations and making public reports on all breach of trust

¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, p. 1., available at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023310> (last visited Mar. 30, 2023); see also s. 112.320, F.S.

² Section (8)(j)(3), art. II, Fla. Const.; s. 112.320, F.S.

complaints towards public officers or employees not governed by the judicial qualifications commission.³ In addition to constitutional duties, the Commission, in part:

- Renders advisory opinions to public officials;⁴
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;⁵
- Administers the Executive Branch Lobbying Registration and Reporting Law;⁶
- Maintains financial disclosure filings of constitutional officers and state officers and employees;⁷ and
- Administers automatic fines for public officers and employees who fail to timely file a required annual financial disclosure.⁸

Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)⁹ establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially, not using their officers for private gain other than compensation provided by law.¹⁰ The Code of Ethics addresses various issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, and the Commission on Ethics, among others.¹¹

Gifts and Contracts

Public officers, state agency employees, local government attorneys, and candidates for office are prohibited from soliciting or accepting anything of value, including a gift, loan, reward, promise of future employment, favor, or service, based upon the understanding that their vote, official action, or judgment would be influenced.¹² A state agency, political subdivision, or public school authorized to expend state-appropriated funds or levy ad valorem taxes may not participate in any agreement with or accept any grant from a foreign country of concern, or any entity controlled by a foreign country of concern which:

- Constrains the freedom of contract of such public entity;
- Allows the curriculum or values of a program in the state to be directed or controlled by the foreign country of concern; or
- Promotes an agenda detrimental to the safety or security of the United States or its residents.¹³

³ Section (8)(g), art. II., Fla. Const.

⁴ Section 112.322(3)(a), F.S.

⁵ Section 112.322(2)(b), F.S.

⁶ Sections 112.3215, 112.32155, F.S.

⁷ Section 112.3144, F.S.

⁸ Section 112.3144, F.S.; s. 112.3145, F.S.; s. 112.31455, F.S.

⁹ See pt. III. Ch. 112, F.S.

¹⁰ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, p. 1., available at <https://ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=2023310> (last visited Mar. 30, 2023)

¹¹ See pt. III. 112, F.S.

¹² Section 112.313(2), F.S.

¹³ Section 288.860(2), F.S.

A “foreign country of concern” is defined as the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of those nations.¹⁴

Lobbyist Registration and Compensation Reporting

Lobbyist must register to lobby the executive branch or the legislative branch in Florida. Executive branch lobbying is regulated by the Code of Ethics and administered by the Commission.¹⁵ Legislative branch lobbying is regulated primarily by Joint Rule of the House and Senate and administered by the Office of Legislative Services.¹⁶ Both registration systems require lobbyists to register annually for each principal represented and to indicate the entities to be lobbied.¹⁷ In addition, lobbying firms must file quarterly compensation reports.¹⁸ Both the Commission and the Legislature have instituted electronic registration and compensation reporting.¹⁹ Executive branch lobbyists, however, must supply a written oath to complete each registration as well as a signed statement of authority from the principal.²⁰

State agency employees and employees of legislative and judicial branch entities acting in the normal course of their duties are exempt from executive branch lobbying registration.²¹ However, local government officers and employees must register to lobby the state executive branch.

Compensation reporting is subject to random audits, and findings of non-compliance are reported to the Commission, in the case of executive branch lobbying firms, for investigation.²²

The executive branch lobbyist registration law provides specific procedures for its enforcement.²³ The Commission reports probable cause findings to the Governor and Cabinet for appropriate action, which can include a fine up to \$5,000 and prohibition from lobbying for up to two years.²⁴ A person accused of violating the lobbyist registration law may also request a hearing within 14 days of the mailing of the probable cause notification.²⁵

Local Government Employees

Local governments have broad authority to contract with or employ personnel for the wide variety of tasks they accomplish. This authority is limited only narrowly by statute, which generally forbids the payment of extra compensation and sets limits on severance pay for all

¹⁴ Section 288.860(1)(a), F.S.

¹⁵ Section 112.3215, F.S.

¹⁶ Section 11.045, F.S. and Joint rule 1.

¹⁷ Section 112.3215(3), F.S.; Joint Rule 1.2.

¹⁸ Section 112.3215(5)(a)1., F.S.; Joint Rule 1.4.

¹⁹ Section 112.32155, F.S.; Joint Rule 1.1(2)(f)

²⁰ Section 112.3215(3), F.S.

²¹ Section 112.3215(1)(h)(2), F.S.

²² Section 112.3215(8)(c), F.S.

²³ Section 112.3215(8)-(9), F.S.

²⁴ Section 112.3215(9)-(10), F.S.

²⁵ Section 112.3215(9), F.S.

employees of a governmental unit.²⁶ Severance pay may not exceed 20 weeks' compensation, and must not be granted when the employee has been fired for misconduct.²⁷

County Administrator

Counties are required to employ a county administrator, who acts as the administrative head of the county and is responsible for the administration of all departments of the county government.²⁸ The county administrator is appointed by a majority of the board of county commissioners, and must reside within the county during their tenure. The board of county commissioners fixes the county administrator's compensation.

School Superintendents

A school superintendent, the administrative head of a district school board, may be either appointed by the district school board or elected for four-year terms.²⁹ A district school board must enter into an employment contract with an appointed district school superintendent which provides a reasonable salary not exceeding \$225,000 in total remuneration.³⁰ These contracts are subject to the provisions of law limiting bonuses and severance pay.³¹ An elected superintendent is not an employee, and receives a statutory salary similarly to other elected officials.³²

Local Government Attorneys and Municipal Chief Executive Officers

While local governments are not required by law to employ an attorney, and municipalities are not required to employ a chief executive officer,³³ the practice of hiring such personnel is common, such that these roles are referred to by various statutes.³⁴ These roles may be full time employees, fulfilled through contract work as needed, or divided into several smaller roles, as needed by the local government.

III. Effect of Proposed Changes:

Section 1 amends 112.313, F.S., to prohibit public officers, state agency employees, local government attorneys, or candidates for office from soliciting or accepting anything of value, including gifts, loans, rewards, promises of future employment, favors, or services from a foreign country of concern.

Section 2 creates s. 112.3262, F.S., to establish requirements for lobbying before counties, municipalities, and special districts. These requirements largely mirror provisions of current law regulating lobbying the executive branch.

²⁶ Section 215.425, F.S.

²⁷ Section 215.425(4), F.S.

²⁸ Section 125.73, F.S.

²⁹ FLA. CONST. Art. IX, s. 5. Districts may decide which system to use, changing from one to the other by referendum.

³⁰ Section 1001.50(3) and (5), F.S.

³¹ Section 1001.50(2), F.S.

³² Section 1001.47, F.S.

³³ Often referred to as a city or town manager.

³⁴ See, e.g. ss 193.116 (referring to "the chief executive officer of each municipality"), 194.035 (referring to a school board attorney), and 409.2554 (referring to county and city attorneys), F.S.

The bill provides that a person may not lobby a county, municipality, or special district unless he or she is registered as a lobbyist with that entity. Such registration must be completed upon the person's initial retention as a lobbyist, may be renewed annually thereafter, and must be filed using the executive branch lobbying electronic filing system.

The local government must make copies of lobbyist registrations publicly available, and may charge an annual registration fee not exceeding \$40.

Upon receipt of a sworn complaint alleging that an individual has either failed to register or knowingly submitted false information in a report or registration, a local government's commission on ethics, or the Florida Commission on Ethics if the local government does not maintain such a commission, must investigate the allegations and provide findings and recommendations for the local government to act upon.

Section 3 amends s. 112.32155, F.S., to incorporate local government lobbyists into provisions related to the executive branch electronic filing system.

Sections 4, 5, 6, 8, and 9 amend ss. 125.73, 125.75, 166.021, and 1012.366 to provide that certain local government employee contracts shall not be renewed, extended, or renegotiated within 8 months of a general election for members of the applicable governing body, except upon unanimous vote of the governing body. The bill applies this provision to:

- County administrators;
- County attorneys;
- Municipal chief executive officers;
- Municipal attorneys;
- School superintendents; and
- School board district attorneys.

Section 7 amends s. 166.041, F.S., to provide that, when determining whether the majority of the governing body of a municipality is present, when at least two members are physically present, a member of the governing body may be considered present if the member can participate in the deliberations of the governing body.

The remainder of the bill revises cross-references and incorporates the amendments made by the bill.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply because the bill requires local governments to implement lobbyist registration systems, which may require expenditures. Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that

requires the expenditure of funds unless certain specified exemptions or exceptions are met. None of the constitutional exceptions appear to apply.

Article VII, section 18 (d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an “insignificant fiscal impact” are exempt from the mandate requirements, which for Fiscal Year 2024-2025 is forecast at approximately \$2.3 million.^{35,36} However, any local government costs associated with the bill are speculative and not readily estimable for purposes of determining whether the exemption for bills having an insignificant fiscal impact applies.

If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals seeking to lobby local governments may be subject to a registration fee not exceeding \$40.

³⁵ FLA. CONST. art. VII, s. 18(d).

³⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 24, 2024).

C. Government Sector Impact:

The commission on ethics and local governments may incur costs associated with the implementation of lobbyist registration.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Commission on Ethics has raised a variety of concerns regarding implementation of the lobbyist registration as provided by the bill, including technology systems costs, personnel requirements, and logistical complications of receiving jurisdiction over local registration laws and complaints.³⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.313, 112.32155, 125.73, 125.75, 166.021, 166.041, 1001.50, and 112.061.

This bill creates the following sections of the Florida Statutes: 112.3262 and 1012.336.

This bill reenacts the following sections of the Florida Statutes: 28.35, 112.3136, 112.3251, 288.012, 288.8014, 288.9604, 295.21, 406.06, 447.509, 627.311, 1002.33, 1002.333, and 1002.83.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

³⁷ See Florida Commission on Ethics, *Agency Bill Analysis Request, SB 734*, Jan. 25, 2023, on file with the Florida Senate Community Affairs Committee.