

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: SB 984

INTRODUCER: Senator Braynon

SUBJECT: Exemption from Legislative Lobbying Requirements

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Carlton</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 984 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 and the 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 effective date of the bill is July 1, 2015.

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.

Section 11.045(1)(c), F.S., defines the term “expenditure” as:

¹ Section 11.045(1)(i), F.S.

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). (emphasis supplied.)

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.”²

The following penalties can be imposed for violation of the legislative expenditure ban:³

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

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 One – Expenditures, Section One – General Guidelines, Subsection g – Exceptions, No. 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. (Emphasis supplied.)

² Section 11.045(1)(e), F.S.

³ Section 11.045(7), F.S.

The Florida House of Representatives has included a similar approval process in its policies.⁴

III. Effect of Proposed Changes:

Section 1 creates a statutory exception to the definition of “expenditure” for a “public-legislative use.” The exception provides that a “public-legislative use” is the “use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register a person as a lobbyist pursuant to this section.”

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

Section 2 provides an effective date of July 1, 2015.

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:

Minimal.

⁴ Florida House of Representatives, “Administrative Policy Manual” dated December 2014, pages 9 and 10.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The “old” gifts law codified in s. 112.3148, F.S., which predates the “Legislative Expenditure Ban,” prohibits certain gifts in excess of \$100 to reporting individuals (anyone required to file annual financial disclosure,⁵ including legislators) and procurement employees. Section 112.3148, F.S., exempts gifts given by a state, county, and municipal government (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 Commission on Ethics (CE) Form 10. Because both ss. 11.045 and 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 (under current law and the provisions of the bill).

VIII. Statutes Affected:

This bill substantially amends section 11.045 of the Florida Statutes.

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.

⁵ FLA. CONST., art. II, s. 8, and s. 112.3144, F.S.