HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7007 PCB PIE 18-01 Ethics Reform
SPONSOR(S): Public Integrity & Ethics Committee, Sullivan and others
TIED BILLS: **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) Public Integrity & Ethics Committee	16 Y, 0 N, As CS	Rubottom	Rubottom

SUMMARY ANALYSIS

The bill addresses public officer, employee and third party conduct regarding sexual harassment, solicitation and negotiation of conflicting and potentially conflicting income producing relationships, addresses post-service lobbying restrictions for certain officers, and revises executive branch lobbyist registration requirements in addition to other reforms. Specifically, the bill:

- Removes restrictions on state employees lobbying the legislature;
- Establishes policy to prohibit and prevent sexual harassment in all branches of government;
- Restricts use of campaign funds to defend legal claims arising out of public service and limits use of public service announcements during a campaign;
- Broadens the Code of Ethics to prohibit sexual harassment of or by state employees and third parties, and, relating to sexual harassment, it prohibits disclosures of confidential information, retaliation or false complaints;;
- Requires agencies to adopt policies to manage reports and complaints of sexual harassment including policies to protect and provide certain accommodations to victims of alleged sexual harassment;
- Requires biannual surveys of the climate of sexual harassment in agencies and establishes a task force to review surveys, rules and policies to make recommendations to improve sexual harassment policies;
- Prohibits public officers and employees from soliciting an employment or contractual relationship from entities with whom they are prohibited from entering into conflicting employment and contractual relationships;
- Requires public officers and employees to report or disclose particular solicitations and offers of employment or contractual relationships;
- Imposes a two-year post-service ban on personal representation before any state executive branch agency for agency directors including department secretaries, except when employed by another state agency;
- Imposes the following restrictions on statewide elected officers and legislators:
    - Prohibits solicitation of employment or investment advice arising out of official duties;
    - Prohibits solicitation and acceptance of investment advice or profitmaking arrangements (other than employment) from lobbyists or lobbyists' employers or principals; and
    - Requires immediate disclosure of either new employment or an increase in compensation from certain employers;
- Restricts certain unelected state officers and employees regarding soliciting and negotiating an employment or contractual relationship with certain employers;
- Authorizes the Commission on Ethics to investigate disclosures of certain prohibited solicitations in the same manner as a complaint; and
- Revises executive branch lobbying registration requirements to mandate electronic registration, clarify provisions, adjust the maximum registration fee, and add the Board of Governors of the State University System and the State Board of Education to the list of entities to which the requirements apply.

The bill has an indeterminate fiscal impact on the state pertaining to both fee revenues and administrative expenditures.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Conflicting Employment and Solicitation of Gifts

Present Situation:

Current law prohibits a public officer or employee from entering into an employment or contractual relationship with any entity, including public agencies, over which the officer's or employee's agency exercises regulatory power or with whom the officer's or employee's agency does business.[1] There are a number of exceptions relating to certain objectively fair or *de minimis* procurements, certain disclosed relationships, and other comparable exceptions.[2] "Regulatory power" under this law does not include power exercised by a legislative body over another agency or legislative authority exercised by passage of laws or ordinances.[3]

The Florida Constitution prohibits legislators and statewide elected officers from personally representing another person or entity for compensation before their former body or agency for a period of two years following vacation of office.[4] The Code of Ethics for Public Officers and Employees (Code of Ethics) also imposes on many public officers and state employees a two-year ban on lobbying their own agency after vacation of public office or employment.[5] Affected employees are generally those with policy making or significant purchasing authority. Affected legislative employees, including committee staff directors, deputy staff directors, certain attorneys, analysts, and others, are barred by this statute from lobbying either house or any office of the Legislature. Affected state agency personnel are only barred from lobbying their own former agency. Thus, a former Secretary of Health may lobby the Executive Office of the Governor or any agency under the Governor except the Department of Health. For both legislative and executive employees, however, there is an exception to the ban for those subsequently employed by other state agencies. Thus, a former agency secretary or legislative staff director may lobby their former employer on behalf of another state agency by whom they are employed during the first two years after leaving the position to which the ban relates.

The only "exception" to the current two-year ban for statewide elected officers and members of the Legislature is one recognized by the Commission on Ethics (Commission) regarding those serving in subsequent elective office.[6] Thus, a former legislator elected to a higher state office or a local office may lobby the Legislature in their newly elected official capacity.

The Code of Ethics imposes additional post-service restrictions on certain state employees.[7] There is a concurrent employment prohibition[8] and a post-employment restriction[9] on employment by agency contractors over which the employee has exercised certain procurement influence or authority during public service. After retirement or termination, the former employee may not be employed "in connection with any contract" over which the employee had influence with respect to the procurement. The restriction lasts for the duration of such contract. There is an exception when the employee's position is contracted out to the contractor, the influence was merely advisory, and the agency head

[1] Section 112.313(7), F.S.
[2] Section 112.313(12), F.S.
[3] Section 112.313(7)(a)2., F.S.
[4] Art. II, s. 8, Fla. Const.
[5] Section 112.313(9), F.S.
[6] Commission on Ethics Advisory Opinion (CEO) 81-57, affirmatively quoted in CEO 09-4 (footnote 1).
[7] Section 112.3185, F.S.
[8] Section 112.3185(2), F.S.
[9] Section 112.3185(3), F.S.

determines the best interests of the state will be served by the employee having an employment or contractual relationship with the contractor.[10]

A related restriction prohibits a former state agency employee, within 2 years after retirement or termination, from having or holding any employment or contractual relationship with any business entity in connection with any contract for contractual services that was "within [the] responsibility" of the former employee. An exception exists when the agency head determines the former employee's employment with the contractor is in the best interests of the state.[11]

In addition, there is a post-service compensation limitation applicable to an agency employee who becomes a contractor providing services to his or her former agency. During the first year after leaving his or her position with the agency, the former employee may not be paid more than the annual salary he or she was receiving upon leaving the agency for contractual services provided to the agency. This limitation also has an exception when the agency head grants a waiver for a particular contract after determining it will result in significant time or cost savings to the state.[12]

The Code of Ethics also prohibits a public officer or employee or a candidate for public office from soliciting or accepting anything of value based upon an understanding that the vote, official action, or judgment of the officer, employee, or candidate would be influenced thereby.[13] This includes gifts, employment, and valuable investment advice. In addition, even without such a quid pro quo understanding, the law prohibits certain public officers and employees from soliciting any gift or honorarium from certain entities – primarily vendors, political committees, lobbyists, and principals.[14] Nonetheless, a public officer or employee may solicit employment from entities from which they may not seek a gift and may solicit future employment from entities from which they may not accept present employment, so long as there is no understanding that influence is offered in the exchange.

The term "solicit" appears in over 240 statutes in a variety of forms. The term is only defined for a few specific purposes, such as regulating the solicitation of charitable contributions.[15] The word is used five times in the Code of Ethics with no statutory definition.[16]

There are currently no laws restricting public servants from soliciting employment or investment opportunities based merely on the status of the person or business solicited.

House Rules adopted for the 2016-2018 term prohibit a House member from soliciting or accepting an employment offer or investment advice arising out of legislative or political activities engaged in while he or she is a member of, or candidate for, the House.[17] The Rules also restrict House members' acceptance of compensation to lobby local governments[18] and establish a six-year ban on legislators lobbying the House after vacation of office.[19]

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[10] Section 112.3185(3), F.S.
[11] Section 112.3185(4), F.S.
[12] Section 112.3185(5), F.S.
[13] Section 112.313(2), F.S.
[14] Sections 112.3148(3) and 112.3149(2), F.S. (Only unsolicited gifts, $100 and under, may be accepted; and only *expenses* such as travel and lodging related to an honorarium event may be accepted.)
[15] Section 496.404(24), F.S. (defining "solicitation").
[16] Black's Law Dictionary, Sixth Edition defines "solicit" as follows (citations omitted):

> To appeal for something; to apply to for obtaining something; to ask earnestly; to ask for the purpose of receiving; to endeavor to obtain by asking or pleading; to entreat, implore, or importune; to make petition to; to plead for; to try to obtain….The term implies personal petition and importunity addressed to a particular individual to do some particular thing….

[17] House Rule 15.5.
[18] House Rule 15.4(e).
[19] House Rule 17.1(g) (applicable to all legislators serving on or after November 8, 2016). Note, the House has no authority to regulate lobbying in the Senate except by joint action. For an example of joint lobbyist regulation, see Joint Rule 1, Joint Rules, the Eighty-eighth Florida Legislature.

Effect of Proposed Changes:

The bill creates a new two-year ban on lobbying any agency in the executive branch for "agency directors," defined as a department secretary,[20] the chief administrative employee or officer of a department headed by the Governor and Cabinet, or the chief administrative employee or officer of a body established or granted legislative or executive power by the State Constitution.[21] This provision would affect the highest-ranking state employee in fewer than 40 executive branch departments and independent commissions or boards.

The bill prohibits a statewide elected officer or member of the Legislature from soliciting an employment offer arising out of official or political activities engaged in while he or she is an officer or legislator or a candidate for such office, except in the following circumstances:

- The officer or legislator may solicit or accept future employment in the last 180 days of his or her term of office if he or she is ineligible to run for reelection or has publicly announced that he or she is not and does not intend to become a candidate for reelection.
- The officer or legislator may solicit or accept employment from any prospective employer in a profession or occupation in which he or she has formerly engaged, has been formally educated or trained, or is licensed unless such employment is prohibited by other general law.

The bill also prohibits a public officer or employee of an agency from soliciting an employment or contractual relationship from an entity regulated by his or her agency or doing business with his or her agency. To enforce this prohibition, the bill requires such entities to disclose to the head of the employing agency any solicitation prohibited by the law. If the solicitor is the agency head or a member of a body that is the agency head, the disclosure must be made to the Commission.

The bill also prohibits certain unelected state officers and state agency employees, those required to file financial disclosures under the Code of Ethics, from soliciting an employment or contractual relationship from an entity that does business with or is regulated by the employing agency or from any person from whom they may not solicit gifts, including lobbyists and principals. Further, such state officers and state agency employees may not negotiate an offer of future employment with such entities without the permission of their agency head or an authorized designee. Permission may only be withheld if the agency head or designee determines such negotiation conflicts with the interests of the state. However, these officers and employees may solicit or negotiate such employment during the 90 days prior to termination of employment if the individual has given notice of termination or is ending a fixed term of office and will not be reappointed. In addition, if the agency has notified the individual that he or she will be discharged from employment or office, solicitation and negotiation is permitted during the 180 days prior to such discharge.

The bill requires a prohibited solicitation to be reported by the restricted employers to the agency head or to the Commission if the solicitor is the agency head. Officers and employees must disclose to their agency head, inspector general, general counsel, or a designee of the agency head any offer of employment or contractual relationship from entities from whom they may not solicit such relationships.

Solicitation of Investment Advice and Business Deals with Lobbyists and Principals

Present Situation:

The Code of Ethics prohibits a current or former public officer or employee from disclosing or using non-public information gained by reason of public position for his or her personal gain or benefit or for

[20] As that term is defined in s. 20.03, F.S. ("…an individual who is appointed by the Governor to head a department and who is not otherwise named in the State Constitution.")

[21] These entities include the Board of Governors, Florida Fish and Wildlife Conservation Commission, Department of Education, State Board of Administration, and similar agencies.

the personal gain or benefit of any other person or business entity.[22] In addition, House Rules adopted for the 2016-2018 term prohibit a House member from soliciting or accepting investment advice arising out of legislative or political activities engaged in while he or she is a member of, or candidate for, the House. The Rules also prohibit a member from entering into any investment, joint venture, or other profitmaking relationship with or advised by a lobbyist or principal.[23]

Effect of Proposed Changes:

The bill prohibits statewide elected officers and members of the Legislature from soliciting or accepting investment advice from lobbyists and principals or soliciting investment advice arising out of official or political activities.

The bill also prohibits such officers and legislators from entering into an investment, joint venture, or other profitmaking relationship with a lobbyist or principal. However, this prohibition does not apply to an employment relationship to engage the personal services[24] of the elected official.

Disclosure of Employment by Elected Officers

Present Situation:

The financial disclosure laws require elected constitutional officers to file a full and complete disclosure of assets, liabilities, and income annually, and require candidates for such offices to file the disclosure when qualifying for office.[25] These disclosures are due on July 1 each year for the period covering the previous calendar year. Thus, employer and income information is not reportable for 6 to 18 months after it is earned. There are no requirements for immediate disclosure of changes in income or employment.

The Code of Ethics prohibits a public officer from accepting public employment if the officer knows or should know that the employment is being offered to gain influence or other advantage based on the public officer's office or candidacy. Any public employment accepted by a public officer must meet all of the following conditions:

- The position was already in existence or was created by the employer without the knowledge or anticipation of the public officer's interest in such position;
- The position was publicly advertised;
- The public officer was subject to the same application and hiring processes as other candidates for the position; and
- The public officer meets or exceeds the required qualifications for the position.

A person who was employed by the state or any of its political subdivisions before qualifying as a public officer may continue his or her employment. However, he or she may not accept promotion, advancement, additional compensation, or anything of value that he or she knows or should know is provided as a result of his or her election or position.[26]

The House Rules adopted for the 2016-2018 term require House members to disclose to the Public Integrity & Ethics Committee any new employment with an entity that receives state funds directly by

[22] Section 112.313(8), F.S.
[23] House Rule 15.5.
[24] The IRS describes personal service activity as follows: "A personal service activity is an activity that involves performing personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, or any other trade or business in which capital is not a material income-producing factor." "2016 Instructions for Schedule C" (Form 1040), p.C-4.
[25] Section 8, Art. II, Fl. Const., s. 112.3144, F.S.
[26] Section 112.3125, F.S.

appropriation or from any public employer.[27] The disclosure must be filed within 30 days after acceptance of the employment and must include the employer, position, and salary.

Effect of Proposed Changes:

The bill requires statewide elected officials and members of the Legislature to disclose information relating to new employment or increased compensation under certain circumstances. Such officers and legislators must file a written statement with the Commission within 30 days of acceptance of any new employment or increased compensation if the employer is:

- An entity that receives state funds directly by appropriation;
- An agency;[28] or
- A lobbying firm, a lobbyist, or a lobbyist's principal.

In addition, new employment must be disclosed if the offer of employment arose out of official or political activities engaged in while the officer or legislator was in office or was a candidate for such office. The Commission must publish the disclosures online with the official's full financial disclosure.

Sexual Harassment

Present Situation:

Section 110.1221, F.S., provides that sexual harassment is a form of discrimination. That statute directs the Department of Management Services (DMS) to adopt uniform rules applicable to all executive agencies and to define "sexual harassment" in a manner consistent with the federal definition.

The Department of Management Services has adopted rules[29] which defines sexual harassment as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature from any person directed towards or in the presence of an employee or applicant when (a) submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment; (b) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. The rule also provides that:

- Agencies may not tolerate sexual harassment;
- Agencies shall make known to their employees that sexual harassment will not be tolerated and make a copy of the rule and the agency's procedures for investigating and resolving complaints available to their employees;
- Agencies shall develop and implement procedures to investigate and resolve complaints and designate a person or persons to receive complaints;
- Complaints must be in writing;
- Agencies shall promptly review complaints;
- Agencies shall take steps to protect the privacy of those involved during the review and any related investigation;
- The filing of a complaint pursuant to agency procedure must not preclude the complainant from also filing a complaint with the Florida Commission on Human Relations or the Federal Equal Employment Opportunity Commission;
- Agencies must discipline any employee who engages in sexual harassment;

[27] House Rule 15.4(d).

[28] Section 112.312(2), F.S. defines "agency" to mean:

> any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district as defined in s. 189.012.

[29] Rule 60L-40.001, F.A.C.

- Any supervisory employee who has knowledge of sexual harassment must immediately report it to the person the agency has designated to receive such complaints and failure to do so shall subject the employee to disciplinary action;
- Any employee who files a false complaint against another shall be subject to disciplinary action; and
- Agencies may not tolerate retaliation against any person who has in good faith filed a complaint, opposed a complaint, or participated in any manner in an investigation or proceeding.

Personal identifying information of the alleged victim of sexual harassment is confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), of the Florida Constitution.

The Code of Ethics does not define nor prohibit sexual harassment; however, a public officer, employee of an agency, or local government attorney may be prosecuted for certain acts constituting sexual harassment under "Misuse of Public Position." Appellate courts have upheld application of s. 112.313(6), F.S., to allegations of sexual harassment involving abuse of authority to gain a sexual benefit.[30]

Effect of Proposed Changes:

The bill establishes public policy to prohibit and prevent sexual harassment in the conduct of public business and in public employment. It defines sexual harassment in law. It applies to all public employees, public officers, and private persons who interact with public employees and public officers. The bill directs the Senate, the House of Representatives, and the Florida Supreme Court to establish rules, policies, and procedures necessary to prevent and prohibit sexual harassment within the legislative and judicial domains; the bill also directs the Department of Management Services to adopt uniform sexual harassment rules and administrative policies applicable to all executive agencies as necessary to implement the new law. The bill further directs agencies to review their policies at least every two years and revise them, as necessary.

The bill creates three new sections of the Code of Ethics for Public Officers and Employees, specifically addressing sexual harassment. The new sections prohibit sexual harassment in the public workplace and in the conduct of public business and apply to all public employees, public officers, and private persons who interact with public employees and public officers. Specifically, the bill:

- Makes a single unwelcome sexual advance or request for sexual favors an actionable offense;
- Allows for verbal reports of sexual harassment, as well as written complaints;
- Requires that a supervisor who observes or has direct knowledge of sexual harassment respond promptly and initiate such action as specified by applicable agency rule and policy;
- Prohibits retaliation against anyone reporting sexual harassment;
- Prohibits an individual accused of sexual harassment from violating any confidentiality requirement imposed upon him or her by rule or agreement;
- Directs agencies to appoint at least two positions, in addition to an employee's immediate supervisor, who may receive reports of sexual harassment;
- Directs agencies to provide guidelines and establish limits for dating relationships when such relationships may be incompatible with any supervisory responsibilities or proper operations of the agency;
- Requires agencies to provide sexual harassment training to employees and public officers;
- Requires agencies to notify their employees and any individuals subjected to sexual harassment that they may submit a complaint to the Commission on Ethics in lieu of or in addition to other reporting procedures;

[30] *See*, Garner v. State Com'n on Ethics, 439 So.2d 894 (2d DCA 1983), Bruner v. State Com'n on Ethics, 384 So.2d 1339 (1st DCA, 1980).

- Requires agencies to offer employees subjected to sexual harassment the services of a victim advocate and to make reasonable accommodations to protect reporting individuals from continued sexual harassment or retaliation;
- Requires agencies to conduct periodic assessments, which may be anonymous or confidential, at least every two years to determine current and prevalent attitudes and behaviors concerning sexual harassment. The bill also directs agencies to distribute the results of the assessments to their employees and to make them publicly available;
- Directs agencies to establish policies for handling verbal reports and written complaints of sexual harassment;
- Provides that a written complaint, the identities of the complainant and witnesses, and all information in the record of the official investigation shall be confidential until probable cause is determined;
- Further provides that an agency may omit information that discloses the identity of the complainant and witnesses or information that is unnecessarily embarrassing from the written findings determining probable cause;
- Directs agencies to establish policies and procedures that ensure due process for the accused and an opportunity for legal representation;
- Requires agencies to promptly refer evidence supporting a reasonable suspicion that a crime has occurred to the appropriate law enforcement agency;
- Requires agencies to maintain records of all written complaints for at least as long as personnel records are kept;
- Prohibits an individual from knowingly making a materially false report of sexual harassment and provides that such conduct is subject to discipline; and
- Makes any confidentiality agreement unenforceable against a victim of sexual harassment.

The bill also establishes the Task Force in the Prevention of Sexual Harassment, to convene no later than November 2018 and at least every two years thereafter. The task force will be comprised of members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The task force will study the problem of sexual harassment; review agency assessments; evaluate the effectiveness of sexual harassment policies established in statute, rule, and administrative policy; and examine the best practices for effective prevention. Thereafter, the task force will report its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least thirty days before the start of the next legislative session.

Using Campaign Funds to Pay for Legal Defense

Present Situation:

Section 106.011(10)(a), F.S., defines “expenditure” as a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. Excluded are expenditures of a political organization that pre-dates a particular campaign when the expenditure is to communicate in newsletters only to members of such organization.

Section 106.1405, F.S., prohibits the use of funds on deposit in a campaign account by a candidate or the spouse of a candidate to defray normal living expenses for the candidate or the candidate’s family, other than expenses incurred for transportation, meals, and lodging by the candidate or the candidate’s family member during travel in the course of the campaign. However, many expenses relating to public office may be paid by political expenditures.

Effect of Proposed Changes:

The bill prohibits the payment of any expense incurred related to any ethical, disciplinary, or legal complaint arising out of a public officer's or candidate's public service with funds on deposit in a campaign, political committee, or political party account. The bill does not prohibit payment of such expense related to any ethical, disciplinary, or legal complaint arising out of a public officer's or candidate's campaign.

Additionally, this bill does not preclude a candidate or public officer from establishing a legal defense fund to receive contributions towards anticipated legal fees.

Elected Official Advertising

Present Situation:

Chapter 106, F.S., governs campaign financing for candidates for public office and contains many provisions relating to political organizations, campaign contributions, use of campaign funds, and campaign advertising. The provisions related to campaign advertising set forth the requirements applicable to the contents of political advertisements[31] as well as the use and removal of such advertisements.[32] In addition, s. 106.113, F.S., prohibits a local government[33] or a person acting on behalf of a local government from expending or authorizing the expenditure of public funds for a political advertisement concerning an issue, referendum, or amendment that is subject to a vote of the electors.

In Florida, the general election date for federal, state, county, and district office is the first Tuesday after the first Monday in November of each even-numbered year.[34] In each year in which a general election is held, the primary election is held on the Tuesday 10 weeks prior to the general election.[35] The election date for municipal office may be set by municipal ordinance.[36] For these offices, current law provides for the following qualifying dates:

- Federal office – between noon on the 120th day before the primary election through noon on the 116th day before the primary election;
- State office – between noon on the 71st day before the primary election through noon on the 67th day before the primary election;
- State attorney – between noon on the 120th day before the primary election through noon on the 116th day before the primary election;
- Public Defender - between noon on the 120th day before the primary election through noon on the 116th day before the primary election;

[31] The term "political advertisement" means a paid expression in a specified communications medium, whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue. However, political advertisement does not include:

- A statement by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or opposition to a candidate or issue, in that organization's newsletter, which newsletter is distributed only to the members of that organization.
- Editorial endorsements by a newspaper, a radio or television station, or any other recognized news medium.

Section 106.011(15), F.S.

[32] Sections 106.143 and 106.1435, F.S.

[33] The term "local government" means:

- A county, municipality, school district, or other political subdivision in this state; and
- Any department, agency, board, bureau, district, commission, authority, or similar body of a county, municipality, school district, or other political subdivision of this state.

Section 106.113(1)(a), F.S.

[34] FLA. CONST. Art. VI, s. 5 and s. 100.031, F.S.

[35] Section 100.061, F.S.

[36] FLA. CONST. Art. VI, s. 6 and ss. 100.3605, F.S.

- County office - between noon on the 71st day before the primary election through noon on the 67th day before the primary election.[37]

Florida Election Dates					
	Federal	**State**	**State Attorney/Public Defender**	**County Office**	**Municipal Office**
Qualifying Period	Between noon on the 120th day before the primary election through noon on the 116th day before the primary election	Between noon on the 71st day before the primary election through noon on the 67th day before the primary election	Between noon on the 120th day before the primary election through noon on the 116th day before the primary election	Between noon on the 71st day before the primary election through noon on the 67th day before the primary election	Municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality.
Primary Election	Tuesday, ten weeks before primary election	Tuesday, ten weeks before primary election	Tuesday, ten weeks before primary election	Tuesday, ten weeks before primary election	Municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality.
General Election	First Tuesday after the first Monday in November of each even-numbered year	First Tuesday after the first Monday in November of each even-numbered year	First Tuesday after the first Monday in November of each even-numbered year	First Tuesday after the first Monday in November of each even-numbered year	Municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality.

Effect of Proposed Changes:

The bill defines the term "governmental entity" as any executive, judicial, or quasi-judicial department; state university; community college; water management district; or political subdivision. In addition, the term "public service announcement" is defined as any message communicated by radio, television, electronic communication, or billboard that promotes or announces an issue of public importance, concern, or welfare.

The bill prohibits a governmental entity, a person acting on behalf of a governmental entity, or an elected official from using or authorizing the use of an elected official's name, image, likeness, official uniform, badge, or other symbol of office in a public service announcement from the date that the public official qualifies as a candidate for reelection or election to public office to the day after the election for which the elected official qualified as a candidate, if such announcement is paid with public funds or if the time or space for the announcement was donated by the media. The prohibition does not apply to charitable events held by an entity with 501(c)(3) tax-exempt status or bona fide news events, such as press conferences or public debates broadcast by a licensed broadcaster. The provision does not restrict the usage of funds from a campaign or political committee account.

Lobbyist Registration and Compensation Reporting

Present Situation:

Lobbyists must register to lobby the executive branch and the legislative branch in Florida. Executive branch lobbying is regulated by the Code of Ethics and administered by the Commission.[38] Legislative branch lobbying is regulated primarily by Joint Rule and administered by the Office of Legislative Services (OLS). Both registration systems require lobbyists to register annually for each principal represented and to indicate the entities to be lobbied. In addition, lobbying firms must file quarterly compensation reports. Both the Commission and the Legislature have instituted electronic registration and compensation reporting. Executive branch lobbyists, however, must supply a written oath to

[37] Section 99.061, F.S.
[38] Section 112.3215, F.S.

complete each registration. Registration fees are set administratively and are paid into a trust fund for the administration of each system. For executive branch lobbying, the annual registration fee may not exceed $40 for each principal represented.[39] Most executive branch lobbyists register to lobby all agencies covered by the system, leaving the specific entities to be lobbied unclear.

In addition to the Joint Rules, state law regulates aspects of legislative lobbying by state employees. Employees of non-public entities are only required to register if they are principally employed for governmental affairs. However, any state employee who appears before any legislator or appears before or attends any legislative committee to advocate for or against legislation must register as a lobbyist on behalf of his or her agency.[40] In addition, each state, state university, or community college employee is required to record his or her attendance before any committee during the established business hours of the employee's agency and to record with OLS any attendance in the legislative chambers, committee rooms, legislative offices, and other areas, unless the agency designates the individual's position as being used for lobbying. The law requires deduction from the employee's paycheck for all business hours spent lobbying in violation of these requirements.[41] Other than the registration requirement, these regulations do not appear to have been enforced in recent years.

All state agency and legislative officers and employees are exempt from executive branch lobbying registration. [42] However, local 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 case of executive branch lobbying firms) for investigation.[43] Some such cases involve mere mistakes in reporting or calculation.

Effect of Proposed Changes:

The bill updates the executive branch registration law by requiring registrations to include e-mail addresses of lobbyists, principals, and lobbying firms. It requires registration to be electronic and removes the written oath requirement. The bill revises provisions to bring some definitions into closer conformity with the legislative branch lobbying registration rule.

The bill adds the Board of Governors of the State University System and the State Board of Education to the list of entities for which executive branch lobbyist registration and compensation reporting is required.

The bill changes the maximum annual lobbyist registration fee for executive branch lobbying from $40 to $20 for each principal represented, plus a fee not to exceed $5 for each additional agency lobbied on behalf of that principal.

The bill exempts officers and employees of political subdivisions from the requirement to register as executive branch lobbyists.

The bill also repeals the law requiring a broad category of state employees to register to lobby the Legislature and requiring state employees to record their presence on legislative premises during business hours. Registration will still be required under the Joint Rules.

[39] Section 112.3215(4), F.S.
[40] Section 11.061, F.S.
[41] Section 11.061(2)(b), F.S.
[42] Section 112.3215(1)(h)2., F.S.
[43] Section 112.3215(8), F.S.

Code of Ethics Enforcement

Present Situation:

The Commission is the independent body responsible for investigating and reporting on complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the Judicial Qualifications Commission.[44] This jurisdiction extends to alleged violations of the Code of Ethics.[45] For most violations, the Commission may not investigate except upon receipt of a complaint or referral from particular state officers responsible for enforcing the laws or from a United States Attorney.[46]

The power to impose civil penalties for violations is vested in the Governor and other public officers, depending on the status of the violator. Only the House or Senate may impose penalties on Members of the House or Senators, respectively. If the Commission finds grounds for impeachment of an impeachable officer, findings are submitted to the Speaker of the House. In addition, the Governor is authorized to impose penalties on other officers subject to impeachment and the Attorney General has such power to impose penalties on the Governor. The presiding officers of the Legislature are empowered to impose penalties on certain legislative employees.[47]

The Commission investigates complaints, determines probable cause, and, after any public administrative hearing, makes findings of violations and recommendations on punishment. If the Commission does not find probable cause, the complaint is dismissed. A hearing must be requested within 14 days following mailing of the probable cause notification. In addition, the Commission may require a public hearing on its own motion. The Commission may not enter into stipulation or settlement imposing penalties, but all penalties must be imposed by the appropriate disciplinary authority.[48] The Commission may dismiss any complaint or referral at any stage of disposition if it determines that the violation that is alleged or has occurred is a de minimis violation.

Executive branch lobbyist registration enforcement is governed by distinct enforcement provisions. 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 2 years. 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. Such complaints, however, are not subject to dismissal based on the de minimis nature of a violation.[49]

Effect of Proposed Changes:

The bill authorizes the Commission to investigate certain mandatory disclosures of prohibited solicitations by certain public officers and employees in the same manner as the Commission investigates complaints.

The bill also authorizes the Commission to dismiss executive branch lobbyist registration complaints and referrals based on lobbying firm compensation audits if the Commission determines that the public interest is not served by proceeding further. In such cases, the Commission must issue a public report stating with particularity its reasons for the dismissal. This will allow dismissal of cases involving de minimis violations or unintentional mistakes in compensation reports.

The bill is effective July 1, 2018, but the sexual harassment provisions are effective upon becoming law.

[44] Art. II, s. 8(f) and (i)(3), Fla. Const.
[45] *See* ss. 112.322(1) and 112.324, F.S.
[46] Section 112.324(1), F.S.
[47] Section 112.324(4)-(8), F.S.
[48] Section 112.324(3), F.S.
[49] Section 112.3215(8)-(9), F.S.

B. SECTION DIRECTORY:

Section 1. repeals s. 11.061, F.S. – State, state university, and community college employee lobbyists; registration; recording attendance; penalty; exemptions.[50]

Section 2. creates s. 11.255, F.S., to protect legislative employees from sexual harassment.

Section 3. amends s. 25.382, F.S., to protect judicial employees from sexual harassment.

Section 4 amends s. 106.011, F.S., to exclude from the definition of campaign "expenditure" expenses related to an ethical, disciplinary, or legal complaint arising out of public service.

Section 5. creates s. 106.112, F.S., to prohibit use of campaign or political committee funds to pay expenses related to an ethical, disciplinary, or legal complaint arising out of public service.

Section 6. creates s. 106.114, F.S., to prohibit certain public service announcements by specified governmental entities, persons acting on behalf of such entities, and elected officials.

Section 7. amends s. 110.1221, F.S., to require all state employees and those interacting with state agencies to comply with new Code of Ethics provisions prohibiting and preventing sexual harassment and authorizes rulemaking.

Section 8. amends s. 112.313(7), (9), and (15), F.S., to prohibit public officer and employee solicitation of an employment or contractual relationship from entities regulated by or doing business with the officer or employee's agency, create a ban on lobbying the entire executive branch for particular state agency directors serving on or after January 8, 2019, and remove a number of outdated exemptions from certain provisions of law.

Section 9. creates s. 112.3131, F.S., to prohibit sexual harassment in the public workplace and in the conduct of public business, encourage reporting, require action on reports, prohibit retaliation, prohibit certain breaches of confidentiality rules and agreements, and prohibit false accusations.

Section 10. creates s. 112.3132, F.S., establishing procedural requirements for the prevention and protection from sexual harassment including policies on reporting, recordkeeping and training, requires criminal referrals and restricts nondisclosure agreements; provides violations of the section are not subject to the jurisdiction of the Commission on Ethics.

Section 11. creates s. 112.3133, F.S., creating the Task Force on the Prevention of Sexual Harassment, providing for study, review of agency policies and survey results and making recommendations for policy improvements.

Section 12. creates s. 112.3181, F.S., to regulate solicitation and acceptance of employment and investment advice or business deals and to require certain employment and compensation disclosures.

Section 13. amends s. 112.3185(1) and (7)-(9), F.S., to prohibit certain state appointed officers and employees from soliciting an employment or contractual relationship from certain employers posing potential conflicts and allowing agency heads to refuse to allow certain negotiations for future employment when not in the state's interests.

Section 14. amends s. 112.3215, F.S., to update the executive branch lobbyist registration law.

Section 15. provides an effective date of July 1, 2018, with exceptions.

[50] Joint Rule One will still require all such state officers and employees to register, consistent with the current requirements of s. 11.061(1), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The change in the fee structure will have an indeterminate fiscal impact on revenues to the Executive Branch Lobbyist Registration Trust Fund.

2. Expenditures:

The changes in s. 112.3215, F.S., specifically relating to streamlining the executive branch lobbyist registration process, are expected to yield an indeterminate reduction in the Commission's overall cost of administering that law. However, the savings may be offset by an indeterminate increase in costs associated with other provisions of the bill potentially resulting in the need to conduct additional investigations. During the 2017 Session, the Office of Legislative Information Technology Services provided the Commission with a cost estimate of $35,573 on a nearly identical bill, HB 7083, to make the necessary programming changes to implement the bill, which would have been absorbed within existing resources.

The sexual harassment policies in ss. 110.2121, 112.3131-3133, F.S., will have an indeterminate fiscal impact on state agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has no impact on local revenues.

2. Expenditures:

The bill may result in a slight reduction in costs to local governments by exempting local officers and employees from executive branch lobbying registration.

The Code of Ethics provisions in ss. 112.3131-3132, F.S., will have an indeterminate impact on local governments training and preventing sexual harassment.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The change in the fee structure has an indeterminate fiscal impact on lobbyists.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The provisions of s. 112.3132, F.S. may require counties or municipalities to spend funds on training employees to prevent sexual harassment. However, the provision is applicable all persons similarly situated, including state government agencies. Moreover, the fiscal impact is likely insignificant.[51]. Thus, the mandate provision of Art. VII, s. 18(a) does not appear to apply. The bill does not reduce

[51] S. 18(d), Art. VII, Fl. Const. ("laws having insignificant fiscal impact, … are exempt from the requirements of this section.")

the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Lobbyist Registration Fees
Lobbying consists of activity protected by the First Amendment of the United States Constitution's guarantee of the right to petition government. Regulation of those who lobby for compensation is permitted, but fees may only be used to administer the regulations in order to avoid taxing the exercise of a constitutional right. Thus, fees established for lobbyist registration should be no higher than necessary to administer the registration law.

B. RULE-MAKING AUTHORITY:

The bill authorizes new rulemaking and provides significant guidance. The revisions to Department of Management Services rulemaking on sexual harassment add significant guidance including statutory definitions. The sexual harassment provisions authorize rulemaking by agencies to implement DMS rules and the bill's prevention and procedural requirements.

The revisions to the executive branch lobbying registration law and other changes to the Code of Ethics are proper subjects of the rulemaking powers of the Commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, November 7, 2017, the PIE Committee adopted one amendment to PCB PIE 18-01. The amendment narrowed the time frame that the prohibition against the use of an elected official's name, image, likeness, etc., in a public service announcement applies. Specifically, the amendment provides the prohibition applies once an elected official "qualifies for reelection or election" rather than when the elected official becomes "a candidate for reelection or election." The amendment also provides the prohibition ends "the day after the election for which the elected official qualified" rather than "on the date of the general election." The amendment provided an exception to the prohibition for charitable events held by a 501(c)(3) tax-exempt organization and press conferences. After adopting the amendment, the committee reported the bill favorably. The bill analysis is drafted to CS/HB 7007 which incorporates all amendments to the PCB..

On Thursday, February 2, 2018, the PIE Committee adopted a committee substitute incorporating two amendments relating to sexual harassment. The first establishes stronger state policy affecting all three branches of government and includes sexual harassment in the Code of Ethics to protect and regulate all public servants and those engaged in public business including lobbyists. The second makes the sexual harassment policies effective upon becoming law. This bill analysis is drafted to the CS.