

CHAPTER 2022-140

Committee Substitute for Committee Substitute for House Bill No. 7001

An act relating to implementation of the constitutional prohibition against lobbying by a public officer; creating s. 112.3121, F.S.; providing definitions for the purpose of implementing the constitutional prohibition against lobbying by a public officer; creating s. 112.3122, F.S.; providing applicability; providing for administration; requiring the Commission on Ethics to report certain findings and recommendations to the Governor; providing penalties for a violation of the constitutional prohibition against lobbying by a public officer; authorizing collection of such penalties by specified entities; providing an effective date.

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

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

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

(1) “Administrative action” means any process or decision regulated by chapter 120 or, for a state government body or agency or a political subdivision not subject to chapter 120, any action or a decision on a license, permit, waiver of regulation, development order or permit, or development agreement; any quasi-judicial proceeding on local government land use matters regulated by s. 286.0115(2); any decision subject to judicial review by petition for writ of certiorari or as otherwise prescribed by general law; or any other administrative procedure or procedure governed by existing law, ordinance, rule, or regulation, except on an issue of procurement.

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

(3) “Elected special district officer in a special district with ad valorem taxing authority” means an officer elected by the qualified electors of a special district, or appointed to fill an unexpired term of such officer, and does not include an officer elected by landowners when an election by qualified electors is a condition precedent to the exercise of the ad valorem taxing authority under s. 190.006(3). If such condition precedent does not apply, the term “elected special district officer in a special district with ad valorem taxing authority” means an officer elected by any method prescribed by law for a special district with ad valorem taxing authority.

(4) “Executive director” means the chief administrative employee or officer of a department headed by a board or by the Governor and Cabinet.

(5) “Federal government” means the United States Congress, any federal executive branch department, office, agency, or instrumentality, corporate or otherwise, or any federal independent agency, including any unit thereof.

(6) “Governmental entity” means a state government body or agency, the Legislature, a political subdivision, or the federal government.

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

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

(9) “Issue of procurement” means a proposal to purchase or acquire property, an interest in property, or services by a governmental entity.

(10) “Legislative action” means introduction, sponsorship, testimony, debate, voting, or any other official action on a measure, resolution, amendment, nomination, appointment, report, or other matter.

(11)(a) “Lobby” means to influence or attempt to influence an action or decision through oral, written, or electronic communication and, with respect to:

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

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

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

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

(b) The term “lobby” does not mean any of the following:

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

2. Appearing as a witness to provide information at the written request of the chair of a legislative body or committee, including a legislative delegation meeting.

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

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

(b) The term “lobby for compensation” does not include any of the following:

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

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

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

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

5. Representation of a person in any proceeding on a complaint or other allegation that could lead to discipline or other adverse action against the person.

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

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

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

(15) “Principally employed for governmental affairs” means that the principal or most significant responsibilities of the employee is to oversee the employer’s various relationships with governmental entities or representing the employer in its contacts with governmental entities.

(16) “Secretary” means the head of a department who is appointed by the Governor.

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

Section 2. Section 112.3122, Florida Statutes, is created to read:

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

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

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

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

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

(a) Public censure and reprimand.

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

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

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

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

Approved by the Governor May 25, 2022.

Filed in Office Secretary of State May 25, 2022.