



Public Integrity & Ethics Committee

**Thursday, January 24, 2017
2:30 p.m. – 4:30 p.m.**

404 HOB

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Public Integrity & Ethics Committee

Start Date and Time: Tuesday, January 24, 2017 02:30 pm
End Date and Time: Tuesday, January 24, 2017 04:30 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following proposed committee bill(s):

PCB PIE 17-01 -- State Officers Post-service Lobbying Prohibitions
PCB PIE 17-02 -- State Officers Post-service Lobbying Prohibitions

Actionable Items

Report on preliminary findings

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-committee members shall be 6:00p.m., Monday, January 23, 2017.

By request of Chair Metz, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00p.m., Monday, January 23, 2017.

Request to speak before the committee may be filled out in advance and submitted electronically by using the form provided on the committee page of myfloridahouse.gov. Please bring two completed paper copies with you for committee staff.

NOTICE FINALIZED on 01/17/2017 4:08PM by Tully.Melissa



The Florida House of Representatives

Public Integrity & Ethics Committee

Richard Corcoran
Speaker

Larry Metz
Chair

Meeting Agenda Tuesday, January 24, 2017 404 House Office Building (Sumner Hall) 2:30 p.m. – 4:30 p.m.

- **Call to Order**
- **Roll Call**
- **Welcome and Opening Remarks**
- **Bills**

PCB PIE 17-01 – State Officers Post-service Lobbying Prohibitions

PCB PIE 17-02 – State Officers Post-service Lobbying Prohibitions

- **Report on Preliminary Investigations**
- **Other Business**
- **Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PIE 17-01 State Officers Post-service Lobbying Prohibitions
SPONSOR(S): Public Integrity & Ethics Committee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Ethics Committee		Kiner <i>KUK</i>	Rubottom <i>[Signature]</i>

SUMMARY ANALYSIS

The Florida constitution and general law place post-service employment restrictions on legislators, statewide elected officers, and appointed state officers. These restrictions prohibit these individuals from personally representing another person or entity for compensation before their former government body or agency. These restrictions are typically characterized as post-service lobbying bans and are in effect for two years following vacation of office. Additionally, legislators are prohibited from lobbying the executive branch for two years following vacation of office and from personally representing another person or entity for compensation during term of office before any state agency, other than judicial tribunals.

The joint resolution proposes an amendment to the Florida constitution to extend the current constitutional prohibition on legislators and statewide elected officers personally representing another person or entity for compensation before their former government body or agency to six years following vacation of office from two years. The joint resolution also proposes to subject appointed state officers to the same prohibition, and extend the prohibition on legislators providing personal representation for compensation before any state agency (other than judicial tribunals) to six years following vacation of office.

If passed by the Legislature, the joint resolution will be submitted to the electorate for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

The joint resolution impacts state funds to the extent the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The Department of State has not yet provided a fiscal analysis of such cost.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

The Florida Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Legislative Post-service Lobbying Prohibitions

The Florida Constitution prohibits legislators and statewide elected officers from personally representing¹ another person or entity for compensation before their former government body or agency for a period of two years following vacation of office.² This constitutional provision also prohibits legislators from personally representing another person or entity for compensation during term of office before any state agency³, other than judicial tribunals.⁴ The constitutional provision is codified in state statute as part of Florida's Code of Ethics for Public Officers and Employees (Code).⁵

In addition to these constitutional prohibitions, the Legislature has passed general law Code provisions that prohibit appointed state officers⁶ from representing another person or entity for compensation before their former government body or agency for a period of two years following vacation of office, and legislators from acting as lobbyists for compensation before an executive branch agency, agency official, or employee, for two years following vacation of office.⁷

The Florida Commission on Ethics (Commission) is the independent body charged with receiving and investigating sworn complaints involving Florida's constitutional and statutory ethics provisions.⁸ While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation.⁹ Instead, whenever the Commission finds probable cause exists that an ethics violation has occurred, the Commission is required to submit its findings, along with a recommended penalty, to the statutorily designated official who may impose punishment.¹⁰

The Commission must make such submission to the Senate President or Speaker of the House, whichever is applicable, in any case concerning a former legislator who is alleged to have violated a provision applicable to former legislators or whose alleged conduct occurred during term of office.¹¹ In the case of a former statewide elected officer or appointed state officer, the Commission is required to make such submission to the Governor.¹²

¹ Pursuant to s. 112.312(22), the term 'represent' or 'representation' means "actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client."

² Art. II, s. 8, Fla. Const.

³ Pursuant to s. 112.313(9), F.S., the term 'state agency' means "an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control."

⁴ Id.

⁵ S. 112.313(9), F.S.

⁶ Pursuant to s. 112.313(9), F.S., the term 'appointed state officer' means "any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations."

⁷ S. 112.313(9), F.S.

⁸ Art. II, s. 8(f) and (i)(3), Fla. Const., and s. 112.322(1), F.S.

⁹ S. 112.324(3), F.S.

¹⁰ S. 112.324(4)-(9), F.S.

¹¹ S. 112.324(8)(e), F.S.

¹² S. 112.324(8)(d), F.S.

A former legislator, statewide elected officer, or appointed state officer, that violates one of Florida's constitutional ethics provisions or a provision of the Code may be subject to one or more of the following civil penalties:

- Public censure and reprimand
- Civil penalty up to \$10,000
- Restitution¹³ any pecuniary benefits received because of the violation committed

Pursuant to statute, in any case in which a civil penalty or restitution is imposed, the Attorney General is required to bring a civil action to recover such penalty.¹⁴

Other State Post-service Lobbying Prohibitions

According to a 50-state survey conducted by the National Conference of State Legislatures, at least 34 states have enacted post-service lobbying prohibitions on former state legislators.¹⁵ Of these 34 states, 20 states¹⁶ impose a one-year prohibition, while eight states¹⁷, including Florida, impose a two-year prohibition. Out of the remaining six states, three states¹⁸ impose a ban that expires at the end of the next regular session after the legislator has vacated office, one state¹⁹ has a prohibition that expires at the end of the legislator's current term of office (in case of resignation), one state²⁰ has a prohibition lasting six months after expiration of any term of office for which the person was elected, and one state's²¹ prohibition lasts until the later of the close of the session which the legislator served or six months after leaving office.

In 2010, an Ohio state statute that imposed a one-year lobbying ban on former state assembly members was permanently enjoined by a federal district court on grounds it violated the First Amendment to the United States Constitution.²² The statute at issue prohibited former assembly members and legislative employees from lobbying the general assembly on a *compensated* and *uncompensated* basis for one-year after leaving office or employment.²³ There, a former state assembly member, who was a supporter and member of an advocacy organization, wished to represent the organization's interest before the Ohio General Assembly on an *uncompensated* basis. The court found the statute infringed on First Amendment protections relating to the right to peaceably assemble and to petition the government for redress of grievances, and as such, subjected the statute to strict scrutiny. While the court found the state had a compelling interest in preventing corruption or the appearance of corruption, the court found this compelling interest to be limited to *compensated* lobbying; as such, the court did not find the state had a compelling interest in prohibiting *uncompensated* lobbying.

Like many other states²⁴, Florida's ban is limited to personal representation for compensation.

Despite the injunction, however, an Ohio state statute providing a one-year prohibition on all public officials and employees from representing any person or entity in regards to a [non-legislative] matter in which they personally participated as a public official or employee remains intact.²⁵

¹³ Pursuant to s. 112.317(1)(d), F.S., the Commission may recommend that the restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund.

¹⁴ S. 112.317(2), F.S.

¹⁵ See "Rules Against Legislators Lobbying State Government After They Leave Office," on NCSL's website at <http://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx> (last viewed 1/13/2017).

¹⁶ AK, AZ, AR, CA, CT, DE, GA, IN, ME, MA, MN, NJ, PA, RI, SC, SD, TN, UT, VA, WV.

¹⁷ AL, CO, FL, IA, KY, LA, MT, NY.

¹⁸ MD, NV, OR.

¹⁹ MI.

²⁰ MO.

²¹ NC.

²² *Brinkman v. Budish*, 692 F. Supp. 2d 855, 862 (S.D. Ohio 2010).

²³ See Ohio Rev. Code 102.03(A)(4) (2010).

²⁴ At least, AL, AK, AZ, CA, CO, DE, IA, LA, ME, MD, MI, NV, NY, OR, PA, VA.

²⁵ See Ohio Rev. Code 102.03(A)(1).

Federal Legislative Post-service Lobbying Prohibitions

Federal law places certain post-service lobbying prohibitions on former members of the United States Senate and United States House of Representatives.²⁶ Specifically, former United States Senators are prohibited from lobbying either House of Congress on behalf of any other person (except the United States) for two years after vacating office.²⁷ Former United States Representatives are prohibited from lobbying either House of Congress on behalf of any other person (except the United States) for one year after vacating office.²⁸

Effect of Proposed Changes

The joint resolution proposes an amendment to the Florida constitution to extend the current constitutional prohibition on legislators and statewide elected officers personally representing another person or entity for compensation before their former government body or agency to six years following vacation of office from two years. The joint resolution also proposes to subject appointed state officers to the same prohibition, and extend the prohibition on legislators providing personal representation for compensation before any state agency (other than judicial tribunals) to six years following vacation of office from two years.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

The Florida Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

B. SECTION DIRECTORY:

As this piece of legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend art. II, s. 8(e) of the state constitution, to extend the prohibition on legislators and elected statewide officers from lobbying their former government body or agency to six years following vacation of office from two years, to prohibit legislators lobbying the executive branch for six years following vacation of office, and to prohibit appointed state officers from lobbying their former government body or agency for six years following vacation of office.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²⁶ See 18 U.S.C., sec. 207(e).

²⁷ See 18 U.S.C., sec. 207(e)(1)(A). The statute reads, "Senators. Any person who is a Senator and who, within 2 years after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any Member, officer, or employee of either House of Congress or any employee of any other legislative office of the Congress, on behalf of any other person (except the United States) in connection with any matter on which such former Senator seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title [18 USCS § 216]."

²⁸ See 18 U.S.C., sec. 207 (e)(1)(B)(i). Any person who is a Member of the House of Representatives or an elected officer of the House of Representatives and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in clause (ii) or (iii), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title [18 USCS § 216].

2. Expenditures:

Article XI, s. 5(d) of the state constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately before the week the election is held. The Department of State has not provided a fiscal analysis on the cost associated with publishing the constitutional amendment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Article XI, s. 1 of the state constitution, provides for proposed changes to the constitution by the Legislature:

SECTION 1: Proposal by legislature. – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. A proposed amendment may be submitted to the electorate at an earlier special election if the Legislature by three-fourths vote enacts a law so providing, which is limited to a single amendment or revision.²⁹ Each proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.³⁰

Sixty percent voter approval is required for a proposed constitutional amendment to pass.³¹ A proposed amendment or revision approved by the requisite vote of the electors is effective as an

²⁹ Art. XI, s. 5(a), Fla. Const.

³⁰ Art. XI, s. 5(d), Fla. Const.

³¹ Art. XI, s. 5(e), Fla. Const.

amendment to or revision of the state constitution on the first Tuesday after the first Monday in January following the election.³²

First Amendment, United States Constitution

The First Amendment to the United States Constitution provides, in part, that “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble, and to petition the government for redress of grievances.” The Fourteenth Amendment extends these prohibitions to the states.

Provisions of Florida law that regulate lobbyist activity have been challenged on grounds they violate these First Amendment protections. In Florida League of Professional Lobbyists v. Meggs, the United States Court of Appeals for the Eleventh Circuit (11th Circuit) upheld a Florida statute that required a lobbyist hired by a principal to disclose all lobbying expenditures, whether made by the lobbyist or by the principal, and the source of funds for all such expenditures.³³ In Florida Association of Professional Lobbyists, Inc. v. Division of Legislative Information Services, the 11th Circuit upheld a Florida statute prohibiting certain ‘expenditures’ and requiring quarterly compensation reports.³⁴

At least 34 states have instituted post-service lobbying bans on state legislators. In 2010, an Ohio statute prohibiting former members of the general assembly from lobbying the general assembly for one year following vacation of office was permanently enjoined.³⁵ There, the federal district court recognized the state’s compelling interest in avoiding corruption or the appearance of corruption, but held the prohibition was not narrowly tailored to achieve that objective because it prohibited compensated and uncompensated lobbying. Florida’s lobbying ban prohibits personal representation for compensation.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³² Art. XI, s. 5(e), Fla. Const.

³³ Florida League of Professional Lobbyists v. Meggs, 87 F.3d 457 (11th Cir. 1996).

³⁴ Florida Association of Professional Lobbyists, Inc. v. Division of Legislative Information Services, 525 F. 3d 1073 (11th Cir. 2008).

³⁵ Brinkman v. Budish, 692 F. Supp. 2d 855, 862 (S.D. Ohio 2010).

BILL

ORIGINAL

YEAR

House Joint Resolution

A joint resolution proposing an amendment to Section 8 of Article II of the State Constitution to extend the prohibition on legislators and statewide elected officers providing personal representation for compensation before the government body or agency of which the individual was an officer or member from two years to six years following vacation of office; to subject appointed state officers to the same prohibition; and to prohibit legislators from personally representing another person or entity for compensation before any state agency other than judicial tribunals for six years following vacation of office.

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

That the following amendment to Section 8 of Article II of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE II

GENERAL PROVISIONS

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SECTION 8. Ethics in government.—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

(b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.

(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

(e) A ~~no~~ member of the legislature, appointed state officer as defined by general law in the code of ethics, or statewide elected officer may not ~~shall~~ personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of six ~~two~~ years following vacation of office. A ~~no~~

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member of the legislature may not ~~shall~~ personally represent another person or entity for compensation during term of office, or for a period of six years following vacation of office, before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

(g) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(h) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(i) Schedule—On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

BILL

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a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

(2) Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to subsection (i)(1).

(3) The independent commission provided for in subsection (f) shall mean the Florida Commission on Ethics.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE II, SECTION 8

STATE OFFICERS POST-SERVICE LOBBYING PROHIBITIONS.-

Proposing an amendment to the State Constitution to extend the prohibition on legislators and statewide elected officers providing personal representation for compensation before the government body or agency of which the individual was an officer or member from two years to six years following vacation of office, to impose the same prohibition on appointed state

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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101 | officers, and to prohibit legislators from providing personal
102 | representation for compensation before any state agency other
103 | than judicial tribunals for six years following vacation of
104 | office.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB PIE 17-01 (2017)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Committee/Subcommittee hearing bill: Public Integrity & Ethics
Committee

Representative Fine offered the following:

Amendment (with schedule, ballot and title amendments)

S C H E D U L E A M E N D M E N T

Between lines 89 and 90, insert:

ARTICLE

SCHEDULE XII

Section 37. State Officers Post-service Lobbying
Prohibitions.-The amendment to Section 8 of Article II extending
the prohibition on legislators and statewide elected officers
providing personal representation for compensation before the
government body or agency of which the individual was an officer
or member from two years following vacation of office to six

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB PIE 17-01 (2017)

Amendment No. 1

17 years is applicable only to those individuals who were members
18 of the Legislature or who were statewide elected officers at any
19 time after November 8, 2016. The amendment to Section 8 of
20 Article II extending the prohibition on legislators providing
21 personal representation for compensation during term of office
22 before any state agency other than judicial tribunals to six
23 years following vacation of office is applicable only to those
24 individuals who were members of the Legislature at any time
25 after November 8, 2016. The amendment to Section 8 of Article II
26 prohibiting appointed state officers from providing personal
27 representation for compensation before the government body or
28 agency of which the individual was an officer or member for six
29 years following vacation of office is applicable only to those
30 appointed state officers who were in such positions at any time
31 after July 1, 2017.

34 **B A L L O T A M E N D M E N T**

35 Remove line 104 and insert:

36 office. The proposed amendment's prohibitions only apply to
37 those individuals who were members of the Legislature at any
38 time after November 8, 2016, who were statewide elected officers
39 at any time after November 8, 2016, or who were appointed state
40 officers at any time after July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB PIE 17-01 (2017)

Amendment No. 1

T I T L E A M E N D M E N T

Remove line 2 and insert:

A joint resolution proposing an amendment to Section 8 of Article II and the creation of Section 37 of Article XII of the State Constitution to extend the prohibition on legislators and statewide elected officers providing personal representation for compensation before the government body or agency of which the individual was an officer or member from two years to six years following vacation of office; to subject appointed state officers to the same prohibition; and to prohibit legislators from personally representing another person or entity for compensation before any state agency other than judicial tribunals for six years following vacation of office, and to provide an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PIE 17-02 State Officers Post-service Lobbying Prohibitions

SPONSOR(S): Public Integrity & Ethics Committee

TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Ethics Committee		Kiner <i>KKK</i>	Rubottom <i>[Signature]</i>

SUMMARY ANALYSIS

The Florida constitution and general law place post-service employment restrictions on legislators, statewide elected officers, and appointed state officers. These restrictions prohibit these individuals from personally representing another person or entity for compensation before their former government body or agency. These restrictions are typically characterized as post-service lobbying bans and are in effect for two years following vacation of office. Additionally, legislators are prohibited from lobbying the executive branch for two years following vacation of office and from personally representing another person or entity for compensation during term of office before any state agency, other than judicial tribunals.

The bill amends general law to extend the current prohibition on legislators, statewide elected officers, and appointed state officers, personally representing another person or entity for compensation before their former government body or agency to six years following vacation of office from two years.

The bill also amends general law to extend the prohibition on legislators lobbying the executive branch to six years following vacation of office from two years.

The bill does not have a fiscal impact on the state or local governments.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Legislative Post-service Lobbying Prohibitions

The Florida Constitution prohibits legislators and statewide elected officers from personally representing¹ another person or entity for compensation before their former body for a period of two years following vacation of office.² This constitutional provision also prohibits legislators from personally representing another person or entity for compensation during term of office before any state agency³, other than judicial tribunals.⁴ The constitutional provision is codified in state statute as part of Florida's Code of Ethics for Public Officers and Employees (Code).⁵

In addition to these constitutional prohibitions, the Legislature has passed general law Code provisions that prohibit appointed state officers⁶ from representing another person or entity for compensation before their former government body or agency for a period of two years following vacation of office, and legislators from acting as lobbyists⁷ for compensation before an executive branch agency, agency official, or employee.⁸

The Florida Commission on Ethics (Commission) is the independent body charged with receiving and investigating sworn complaints involving Florida's constitutional ethics provisions, as well as any other violation of Florida's Code of Ethics for Public Officers and Employees.⁹ While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation.¹⁰ Instead, whenever the Commission finds probable cause exists that an ethics violation has occurred, the Commission is required to submit its findings, along with a recommended penalty, to the statutorily designated official who may impose punishment.¹¹

The Commission must make such submission to the Senate President or Speaker of the House, whichever is applicable, in any case concerning a former legislator who is alleged to have violated a provision applicable to former legislators or whose alleged conduct occurred while a member of the

¹ Pursuant to s. 112.312(22), the term 'represent' or 'representation' means "actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client."

² Art. II, s. 8, Fla. Const.

³ Pursuant to s. 112.313(9), F.S., the term 'state agency' means "an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control."

⁴ Id.

⁵ S. 112.313(9), F.S.

⁶ Pursuant to s. 112.313(9), F.S., the term 'appointed state officer' means "any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations."

⁷ Pursuant to s. 112.3215(1)(h), the term 'lobbyist' means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. The term does not include: An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state; An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties; A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes; A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017."

⁸ S. 112.313(9), F.S.

⁹ Art. II, s. 8(f) and (i)(3), Fla. Const., and s. 112.322(1), F.S.

¹⁰ S. 112.324(3), F.S.

¹¹ S. 112.324(4)-(9), F.S.

Legislature.¹² In the case of a former statewide elected officer or appointed state officer, the Commission is required to make such submission to the Governor.¹³

A former legislator, statewide elected officer, or appointed state officer, that violates one of Florida's constitutional ethics provisions or a provision of the Code may be subject to one or more of the following civil penalties:

- Public censure and reprimand
- Civil penalty up to \$10,000
- Restitution¹⁴ any pecuniary benefits received because of the violation committed

Pursuant to statute, in any case in which a civil penalty or restitution is imposed, the Attorney General is required to bring a civil action to recover such penalty.¹⁵

Other State Post-service Lobbying Prohibitions

According to a 50-state survey conducted by the National Conference of State Legislatures, at least 34 states have enacted post-service lobbying prohibitions on former state legislators.¹⁶ Of these 34 states, 20 states¹⁷ impose a one-year prohibition, while eight states¹⁸, including Florida, impose a two-year prohibition. Out of the remaining six states, three states¹⁹ impose a ban that expires at the end of the next regular session after the legislator has vacated office, one state²⁰ has a prohibition that expires at the end of the legislator's current term of office (in case of resignation), one state²¹ has a prohibition lasting six months after expiration of any term of office for which the person was elected, and one state's²² prohibition lasts until the later of the close of the session which the legislator served or six months after leaving office.

In 2010, an Ohio state statute that imposed a one-year lobbying ban on former state assembly members was permanently enjoined by a federal district court on grounds it violated the First Amendment to the United States Constitution.²³ The statute at issue prohibited former assembly members and legislative employees from lobbying the general assembly on a *compensated* and *uncompensated* basis for one-year after leaving office or employment.²⁴ There, a former state assembly member, who was a supporter and member of an advocacy organization, wished to represent the organization's interest before the Ohio General Assembly on an *uncompensated* basis. The court found the statute infringed on First Amendment protections relating to the right to peaceably assemble and to petition the government for redress of grievances, and as such, subjected the statute to strict scrutiny. While the court found the state had a compelling interest in preventing corruption or the appearance of corruption, the court found this compelling interest to be limited to *compensated* lobbying; as such, the court did not find the state had a compelling interest in prohibiting *uncompensated* lobbying.

Like many other states²⁵, Florida's ban is limited to personal representation for compensation.

¹² S. 112.324(8)(e), F.S.

¹³ S. 112.324(8)(d), F.S.

¹⁴ Pursuant to s. 112.317(1)(d), F.S., the Commission may recommend that the restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund.

¹⁵ S. 112.317(2), F.S.

¹⁶ See "Rules Against Legislators Lobbying State Government After They Leave Office," on NCSL's website at <http://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx> (last viewed 1/13/2017).

¹⁷ AK, AZ, AR, CA, CT, DE, GA, IN, ME, MA, MN, NJ, PA, RI, SC, SD, TN, UT, VA, WV.

¹⁸ AL, CO, FL, IA, KY, LA, MT, NY.

¹⁹ MD, NV, OR.

²⁰ MI.

²¹ MO.

²² NC.

²³ *Brinkman v. Budish*, 692 F. Supp. 2d 855, 862 (S.D. Ohio 2010).

²⁴ See Ohio Rev. Code 102.03(A)(4) (2010).

²⁵ At least, AL, AK, AZ, CA, CO, DE, IA, LA, ME, MD, MI, NV, NY, OR, PA, VA.

Despite the injunction, however, an Ohio state statute providing a one-year prohibition on all public officials and employees from representing any person or entity in regards to a [non-legislative] matter in which they personally participated as a public official or employee remains intact.²⁶

Federal Legislative Post-service Lobbying Prohibitions

Federal law places certain post-service lobbying prohibitions on former members of the United States Senate and United States House of Representatives.²⁷ Specifically, former United States Senators are prohibited from lobbying either House of Congress on behalf of any other person (except the United States) for two years after vacating office.²⁸ Former United States Representatives are prohibited from lobbying either House of Congress on behalf of any other person (except the United States) for one year after vacating office.²⁹

Effect of Proposed Changes

The bill amends general law to extend the current prohibition on legislators, statewide elected officers, and appointed state officers, representing another person or entity for compensation before their former government body or agency to six years following vacation of office from two years.

The bill also amends general law to extend the prohibition on legislators lobbying the executive branch to six years following vacation of office from two years.

B. SECTION DIRECTORY:

Section 1 amends s. 112.313, F.S., relating to postemployment restrictions and standards of conduct for legislators and legislative employees.

Section 2 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²⁶ See Ohio Rev. Code 102.03(A)(1).

²⁷ See 18 U.S.C., sec. 207(e).

²⁸ See 18 U.S.C., sec. 207(e)(1)(A). The statute reads, "Senators. Any person who is a Senator and who, within 2 years after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any Member, officer, or employee of either House of Congress or any employee of any other legislative office of the Congress, on behalf of any other person (except the United States) in connection with any matter on which such former Senator seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title [18 USCS § 216]."

²⁹ See 18 U.S.C., sec. 207 (e)(1)(B)(i). Any person who is a Member of the House of Representatives or an elected officer of the House of Representatives and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in clause (ii) or (iii), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title [18 USCS § 216].

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

First Amendment, United States Constitution

The First Amendment to the United States Constitution provides, in part, that “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble, and to petition the government for redress of grievances.” The Fourteenth Amendment extends these prohibitions to the states.

Provisions of Florida law that regulate lobbyist activity have been challenged on grounds they violate these First Amendment protections. In Florida League of Professional Lobbyists v. Meggs, the United States Court of Appeals for the Eleventh Circuit (11th Circuit) upheld a Florida statute that required a lobbyist hired by a principal to disclose all lobbying expenditures, whether made by the lobbyist or by the principal, and the source of funds for all such expenditures.³⁰ In Florida Association of Professional Lobbyists, Inc. v. Division of Legislative Information Services, the 11th Circuit upheld a Florida statute prohibiting certain ‘expenditures’ and requiring quarterly compensation reports.³¹

At least 34 states have instituted post-service lobbying bans on state legislators. In 2010, an Ohio statute prohibiting former members of the general assembly from lobbying the general assembly for one year following vacation of office was permanently enjoined.³² There, the federal district court recognized the state’s compelling interest in avoiding corruption or the appearance of corruption, but held the prohibition was not narrowly tailored to achieve that objective because it prohibited compensated and uncompensated lobbying. Florida’s lobbying ban prohibits personal representation for compensation.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁰ Florida League of Professional Lobbyists v. Meggs, 87 F.3d 457 (11th Cir. 1996).

³¹ Florida Association of Professional Lobbyists, Inc. v. Division of Legislative Information Services, 525 F. 3d 1073 (11th Cir. 2008).

³² Brinkman v. Budish, 692 F. Supp. 2d 855, 862 (S.D. Ohio 2010).

BILL

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YEAR

1 A bill to be entitled
2 An act relating to state officer post-service lobbying
3 prohibitions; amending s. 112.312, F.S.; defining the
4 term "appointed state officer"; amending s. 112.313,
5 F.S.; deleting a definition; extending the prohibition
6 on legislators, elected statewide officers, and
7 appointed state officers, from providing personal
8 representation for compensation before the government
9 body or agency of which the individual was an officer
10 or member to a number of specified years following
11 vacation of office; extending the prohibition on
12 legislators lobbying the executive branch for
13 compensation to a number of specified years following
14 vacation of office; amending s. 1001.421, F.S.;
15 conforming a provision to changes made by the act;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsections (3) through (24) of section
21 112.312, Florida Statutes, are renumbered as subsections (4)
22 through (25), respectively, and a new subsection (3) is added to
23 that section, to read:

24 112.312 Definitions.—As used in this part and for purposes
25 of the provisions of s. 8, Art. II of the State Constitution,

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unless the context otherwise requires:

(3) "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

Section 2. Subsection (9) of section 112.313, Florida Statutes, is amended to read:

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602

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or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

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b. ~~"Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.~~

~~e.~~ "State agency" means an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control.

3.a. A ~~No~~ member of the Legislature, appointed state officer, or statewide elected officer may not ~~shall~~ personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 6 ~~2~~ years following vacation of office. A ~~No~~ member of the Legislature may not ~~shall~~ personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

b. For a period of 6 ~~2~~ years following vacation of office, a former member of the Legislature may not act as a lobbyist for compensation before an executive branch agency, agency official, or employee. The terms used in this sub-subparagraph have the same meanings as provided in s. 112.3215.

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4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in s. 112.317 and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

a. A person employed by the Legislature or other agency prior to July 1, 1989;

b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;

c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;

d. A person who has reached normal retirement age as defined in s. 121.021(29), and who has retired under the provisions of chapter 121 by July 1, 1991; or

e. Any appointed state officer whose term of office began

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126 before January 1, 1995, unless reappointed to that office on or
127 after January 1, 1995.

128 (b) In addition to the provisions of this part which are
129 applicable to legislators and legislative employees by virtue of
130 their being public officers or employees, the conduct of members
131 of the Legislature and legislative employees shall be governed
132 by the ethical standards provided in the respective rules of the
133 Senate or House of Representatives which are not in conflict
134 herewith.

135 Section 3. Section 1001.421, Florida Statutes, is amended
136 to read:

137 1001.421 Gifts.—Notwithstanding any other provision of law
138 to the contrary, district school board members and their
139 relatives, as defined in s. 112.312(22) ~~112.312(21)~~, may not
140 directly or indirectly solicit any gift, or directly or
141 indirectly accept any gift in excess of \$50, from any person,
142 vendor, potential vendor, or other entity doing business with
143 the school district. The term "gift" has the same meaning as in
144 s. 112.312(13) ~~112.312(12)~~.

145 Section 4. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB PIE 17-02 (2017)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Public Integrity & Ethics
Committee

Representative Fine offered the following:

Amendment (with title amendment)

Between lines 134 and 135, insert:

Section 3. The amendment made to s. 112.313, Florida Statutes,
by this act applies only to those individuals who were members
of the Legislature at any time after November 8, 2016, who were
statewide elected officers at any time after November 8, 2016,
or who were appointed state officers at any time after July 1,
2017.

T I T L E A M E N D M E N T

Remove line 14 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB PIE 17-02 (2017)

Amendment No. 1

17 vacation of office; providing for applicability; amending s.
18 1001.421, F.S.;

Report of preliminary findings

The Rules



Florida House of Representatives

2016–2018

Richard Corcoran, Speaker

House Rules Adopted November 22, 2016

Joint Rules Adopted November 22, 2016

As Corrected by Direction of the Clerk of the House

Edition 1
January 5, 2017

RULE NINETEEN—IMPEACHMENT

19.1—Definitions

(a) The House construes "misdemeanor in office" to include, without limitation:

(1) Any wrongful act that is contrary to justice, honesty, principles, or good morals performed by virtue or under authority of office;

(2) Any willful malfeasance, misfeasance, or nonfeasance in office;

(3) Any breach of expectations of conduct and motivation associated with the office, including, but not limited to:

a. A wrongful official act or omission to perform an official duty;

b. Acceptance of any bribe;

c. Failure to report any attempted bribe to appropriate law enforcement officials;

d. Acceptance of any gift, compensation, or other benefit prohibited to the officer by any law or binding rule of conduct;

e. Acceptance of any undisclosed income if disclosure is required by law or binding rule of conduct;

f. Acceptance of any undisclosed compensation, gift, reimbursement, or other benefit valued in excess of \$100 without making public disclosure on an official internet website within 180 days after receipt, or as otherwise required by law or binding rule of conduct, if the law would require disclosure if such benefit were accepted by a member of the Legislature;

g. Failure to maintain a professional environment in the administration of the office free of unlawful discrimination and free of harassment or abuse of employees or members of the public served by the office;

h. Failure to abide by ethics laws and rules or public corruption laws governing conduct in office;

i. Failure to avoid any appearance of impropriety;

j. Any act injurious to the honor of the State of Florida or of any of its officers or employees unless such act is justified by official duty; or

k. Gross failure to discourage such misconduct by other officers subject to impeachment; or

(4) Any conduct unbecoming of a public officer, including, but not limited to:

a. Commission of any felony under any jurisdiction;

b. Commission of any breach of peace in any place;

c. Sexual harassment;

- d. Invidious discrimination;
 - e. Solicitation or acceptance of campaign contributions or expenditure of campaign funds in a manner that violates any law or binding rule of conduct, or acquiescence in such conduct by an agent of the candidate's campaign;
 - f. Any act contrary to the peace and dignity of the State of Florida; or
 - g. Gross failure to discourage such conduct by subordinates or by other officers subject to impeachment.
- (b) For purposes of this rule:
- (1) "Sexual harassment" means engaging in a sexual or romantic relationship with any person other than one's spouse if such person is a subordinate or an employee of a subordinate or an employee of a colleague officer or any related conduct that would be grounds for dismissal if committed by a state employee in any state agency or legislative or judicial body. It also includes solicitation of such relationship. For purposes of this definition, "colleague officer" means:
 - a. For a statewide elected officer, any other statewide elected officer.
 - b. For any other constitutional officer, any constitutional officer serving the same county, circuit, or district.
 - (2) "Breach of peace" means any act or conduct that seriously endangers or disturbs public peace and order, including, but not limited to, any act of unjustified violence against any person or property and malicious destruction of property.
 - (3) "Gross failure to discourage" means having actual knowledge of wrongful conduct of another person and neglecting to admonish appropriate behavior of such person, covering up inappropriate behavior of such person, failing to exercise vested authority to correct or discipline inappropriate behavior of such person, or failing to report inappropriate behavior of such person when there is a duty to report.

19.2—Procedure

The House may act in session upon any resolution of impeachment filed in the House, notwithstanding any deadline for filing substantive resolutions, or may proceed on any complaint against an officer subject to impeachment in accordance with Rule 18.

19.3—Impeachment Managers

When the House is in recess or not in session, the Speaker may appoint a replacement for any impeachment manager appointed by the House if the manager neglects or cannot perform the duties of a manager or if the manager resigns. The Speaker shall be the sole judge of such matters subject only to an

appeal to the House filed with the Clerk during a legislative session if filed within 48 hours after the Clerk publishes such replacement appointment.