



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

***Provide Limited Government:*** The proposed joint rule implements and updates a statutorily directed system of legislative regulation of lobbyists by the Legislature. This preserves legislative authority over the internal workings of the House and Senate.

***Safeguard Individual Liberty:*** The proposal expressly abolishes any burdens arising out of the present requirements of Joint Rules 1.1-1.9 that were discontinued as statutory directives by the recent amendments to section 11.045, Florida Statutes.

***Promote Personal Responsibility:*** The proposal implements a statutory directive that lobbyists working together under a contract to lobby on behalf of a particular principal should be jointly and personally accountable to the Legislature for their relationship to that client. The proposal allows individual lobbyists to gain release from penalties applied to a lobbying firm based upon individual circumstances.

#### B. EFFECT OF PROPOSED CHANGES:

Subject only to the constraints of the federal and state constitutions, the House and Senate, acting jointly or separately, have inherent authority to regulate lobbying before each respective body. No statute can enlarge or reduce that inherent authority. Statutory directives provide additional guidance to the exercise of this authority, but are not subject to enforcement by any power external to the Legislature.

Lobbyist registration and reporting requirements presently found in Joint Rules 1.1-1.9 appear to satisfy the directives contained in the former provisions of section 11.045, Florida Statutes. The changes proposed by the new Joint Rule would replace the previous requirements with alternative requirements that comply with the new directives of that statute as amended. A Concurrent Resolution, such as the one proposed by the PCB, can be taken up by the full House without reference upon introduction. The purpose of the PCB is to allow the members of the Rules & Calendar Council to participate in drafting changes in rules governing the relationship of lobbyists to the House and its members.

***Previous situation:***

Prior to January 1, 2006, section 11.045(2), Florida Statutes, directed the Legislature to provide by rule for the registration of lobbyists. Section 11.045(3) directed the Legislature to provide by rule for the reporting of lobbyist expenditures. The directives in subsections (2) and (3) expressly allowed joint rules as a means of satisfying the directives. Joint Rules 1.1-1.9, as last adopted by the Legislature in 2000, reprinted in the House Journal, March 7, 2005, carries out the directives of those subsections as they were effective prior to January 1, 2006.

Subsections (4) and (5) of the same section directed each house of the Legislature to provide advisory opinions upon the request of any person in doubt about the applicability and interpretation of section 11.045 in a particular context, and to maintain those opinions for public consumption. Subsection (6) directed a committee in each house to investigate complaints against lobbyists arising under sections 11.045, 112.3148 or 112.3149, Florida Statutes, and specifically authorized fines up to \$5,000 and other penalties to be imposed only by a majority vote of the house administering the complaint. House Rules 16.4, 16.5 and 16.6 implement the directives of those subsections.

Subsection 11.045(7), Florida Statutes, makes it a non-criminal infraction to knowingly fail to disclose a material fact of which disclosure is required by the registration and reporting statute and legislative

rules. That infraction can be punished by a fine up to \$5,000.00 in addition to any punishment imposed by either house of the Legislature.

Subsection 11.045(8), Florida Statutes, established a trust fund for the retention of lobbying registration fees to be used for funding the registration program.

***Present situation:***

In Special Session B, 2005, the Legislature enacted SB 6-B rewriting section 11.045 and making other changes in law. With the Governor's signature, that bill became law on January 1, 2006 (ch. 2005-359, Laws of Florida). SB 6-B eliminated the directive to require lobbyist expenditure reporting. Instead it prohibited any lobbying expenditure made by a lobbyist or principal for the purpose of gaining the goodwill of a legislator or legislative employee. Celebratory items presented on the floor of either house on the opening day of a legislative session and expenditures made in the form of contributions to political parties are specifically exempted. The bill added a new directive for legislative rules that lobbying firms, specifically defined in the legislation, regularly report the compensation they receive for representing each principal. This directive may be found in subsection 11.045(3) as amended by section 1 of SB 6-B.

In addition to the new and revised directives relating to registration and compensation reporting, SB 6-B enacted comparable statutory requirements regulating executive branch lobbying registration and compensation reporting. It also eliminated executive branch lobbying expenditure reporting. The bill also creates an audit mechanism under the Joint Legislative Auditing Committee to enforce both legislative and executive branch compensation reporting. (Although it impacts a statutory committee of the Legislature, this provision does not direct any legislative rulemaking outside that committee.)

SB 6-B also made minor changes to the registration requirement and the requirement that each house of the Legislature investigate complaints of violations of section 11.045. In addition, the bill made minor changes not relevant to the new Joint Rule proposed by the PCB.

To date, Joint Rules 1.1-1.9 have not been altered by the Legislature. These rules continue to require expenditure reporting and do not fully comply with changed directives found in the amendments to section 11.045. Significant components of those directives became effective on January 1.

***Effect of Proposed Changes:***

The PCB rescinds Joint Rules 1.1-1.9. It would adopt a new Joint Rule One bringing the Legislature's joint lobbyist registration and reporting rules into compliance with the statutory directives adopted in SB 6-B. With respect to registration, lobbyists would no longer be required to identify a "designated lobbyist" to report expenditures on behalf of each principal. Also, each principal would be required to identify its "main business" by use of the North American Industry Classification System code most accurately describing that business.

The PCB would provide more simple registration fee provisions. It eliminates a mandatory exemption for certain executive branch lobbyists. It also eliminates a requirement for reduced fees for multiple registrations by a lobbyist. The Speaker and Senate President would retain broad authority, however, to establish a fee structure with such components. The PCB retains the present \$50.00 registration fee cap.

The PCB would implement the statutory directive for compensation reporting, including every mandatory provision contained in the amended statute with drafting changes that appear necessary to correct cross-references and clarify certain insignificant ambiguities apparent in the statutory directive. The PCB retains the administrative process to assess penalties for late filing that has been utilized for expenditure reporting. Because lobbying firms, as opposed to individual lobbyists, would be the reporting entity, however, the PCB provides joint and several liability of each lobbyist for any late filing

penalties assessed against a lobbying firm in which they participate. It suspends all registrations of lobbyist participants in a lobbying firm that fails to file a required report and timely pay or appeal a late filing penalty. It also allows an individual lobbyist to gain a waiver of such responsibility in appropriate circumstances by an appeal to the Speaker and Senate President.

The PCB would specifically require reports to affirm that no lobbyist or principal has violated the new expenditure ban. No other aspect of the PCB relate to the enforcement of the new expenditure ban.

Proposed Joint Rule 1.7 provides for records retention and inspection procedures governing records of lobbying firms and principals. It specifically provides that the Speaker or Senate President may order inspection by a licensed attorney or accountant when necessary to process a complaint. It provides specific authority for those entitled to inspect those private records to seek an appropriate judicial writ to enforce the right of the House or Senate to enforce their authority to regulate lobbying. This carries forward comparable provisions found in present Joint Rule 1.9. It does not include language in s. 11.045(2)(e) which directs that the rule authorize use of legislative subpoena. The constitution, other statutes, and House Rules already provide sufficient authority to subpoena the information in an appropriate investigation without including this specific authority in a joint rule.

Proposed Joint Rule 1.10 in the PCB would abolish and waive any obligations arising under the existing joint rules governing lobbyist registration and expenditure reporting. Proposed Joint Rules 1.1, 1.2 and 1.3 would be made retroactive to January 1, 2006, with respect to lobbyist registration but Joint Rule 1.10 allows compliance with the retroactive registration requirements through demonstrating substantial compliance with the abolished registration provisions presently found in Joint Rules 1.1, 1.2 and 1.3.<sup>1</sup>

The PCB revises other language found in the present Joint Rules 1.1-1.9 for to provide greater clarity. It also incorporates language in the mandatory provisions of the amended statute that is revised as necessary for accuracy and clarity.

The PCB includes a proposed Joint Rule 1.9 intended to direct the Legislature's attention to provisions in SB 6-B, amending s. 11.045, Florida Statutes, and creating s. 11.0455, Florida Statutes, that become effective in 2007. Those provisions direct the adoption of further rules changes to provide for electronic reporting.

#### C. SECTION DIRECTORY:

The PCB's effective language rescinds the old Joint Rule One and creates a new Joint Rule One. The proposed new Joint Rule One contains 10 separate new rules. The general subject of each rule is set out in a short title in each. A brief description of the source and subject matter of each rule is provided below. For a more full explanation of any changes noted, see the discussion above. References to "s. 11.045" in the discussion below relate to the amended version of s. 11.045, Florida Statutes, enacted in ch. 2005-385, Laws of Florida, effective January 1, 2006.

**Joint Rule 1.1** mandates lobbyist registration in conformity with the directives contained in s. 11.045(2). It also provides definitions applicable to the entire Joint Rule One, consistent with the definitions provided in s. 11.045(1). The definitions include clarifications useful to the enforcement of the rules, including many definitions found in present Joint Rule 1.1.

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<sup>1</sup> As a result of the enactment of SB 6-B, changes to the Rules of the House are also necessary with respect to complaints filed with the House against lobbyists and others accused of particular violations. It should be anticipated that such changes to House Rules will be addressed through separate action to amend the Rules of the House. The Rules of the House can be amended by motion approved by a 2/3 vote of the House, or by recommendation of the Rules & Calendar Council approved by a majority vote of the House.

**Joint Rule 1.2** provides the method of registration. It includes provisions that conform to directives contained in s. 11.045(2) and carries over many administrative provisions found in present Joint Rule 1.2.

**Joint Rule 1.3** provides for registration fees. It greatly simplifies the provisions in the present rule.

**Joint Rule 1.4** mandates reporting of lobbying firm compensation. It includes mandatory provisions found in s. 11.045(3)(a)-(d).

**Joint Rule 1.5** provides for late-filing penalties and administration thereof. It includes mandatory provisions found in s. 11.045(3)(e). It carries forward many provisions contained in present Joint Rule 1.5 relating to late filing of expenditure reports.

**Joint Rule 1.6** provides that registration and compensation reporting records of the Legislature are open records. This is consistent with present treatment of registration and expenditure reporting records under present Joint Rule 1.5. It represents an exercise of the Legislature's specific authority, respecting legislative records, to implement Florida's constitutional open records requirement, Art. I, Sec. 24, Florida Constitution.

**Joint Rule 1.7** provides for records retention and inspection procedures governing records of lobbying firms and principals. It also includes inspection provisions. This carries forward comparable provisions found in present Joint Rule 1.9.

**Joint Rule 1.8** provides for an informal opinion to be provided by the General Counsel of the Office of Legislative Services with respect to the interpretation and applicability of provisions of Joint Rule One to a specific situation. These opinions are subject to revision by an appropriate committee of either house. The rule also provides that a person may also seek an advisory opinion directly from either house. These provisions carry forward language found in present Joint Rule 1.7.

**Joint Rule 1.9** provides a mechanism for the House and Senate to address the requirements of s. 11.0455, created in SB 6-B, which directs the implementation of electronic reporting effective in April, 2007.

**Joint Rule 1.10** provides for the transition from the old Joint Rules 1.1-1.9 to the new rules by abolishing the obligations under the old rule and making new registration provisions retroactive to January 1, 2006, the effective date of most provisions of SB 6-B.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

Revenues go to the Lobbyist Registration Trust Fund and do not affect general revenue.

#### **2. Expenditures:**

Registration and reporting administration expenditures are funded from the Lobbyist Registration Trust Fund and do not affect general appropriations.

The proposed rules eliminate mandatory registration fee exemptions presently granted to certain state agencies and departments. The proposed rules, however, allow the Speaker and Senate President to continue the exemption. It is estimated that the present cost of documenting a lobbyist's qualification for the exemption and the cost of administering the exemption exceed the

\$50.00 value of each exemption. It should be anticipated that the exemption is likely to be eliminated.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

N/A

2. Expenditures:

N/A

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The economic impact on private sector compliance with the proposed rules appears insignificant. The publication of lobbying compensation paid by each principal could introduce a new degree of price competition to the business of legislative lobbying.

**D. FISCAL COMMENTS:**

N/A

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

Opponents question the constitutionality of mandatory compensation reporting. These questions raise issues under Florida's Privacy Amendment, Art. I, Sec. 23, Florida Constitution, as well as due process provisions of the federal and state constitutions.

It is inarguable, however, that the House and Senate have broad inherent authority to regulate lobbying before the House and Senate. The previous regime of expenditure reporting survived for some time without serious challenge. Compensation reporting may not be more problematic under constitutional scrutiny than expenditure reporting has been.

It should also be considered that financial disclosure rules, requiring disclosure of individual income and debts as well as those of near relatives, are being used widely in public ethics schemes subject to the same constitutional limitations which opponents might assert in objection to compensation reports.

Finally, it must be remembered that PCB RCC 06-04 proposes a Joint Rule of the House and Senate. Proper regard for the separation of powers, see Art. II, Sec. 3, Florida Constitution, makes it difficult to discover the basis for judicial jurisdiction over a complaint against the House and Senate or its officers questioning a legislative rule regulating lobbying within the confines of the legislative process. A judicial order in such litigation would be analogous to a legislative enactment purporting to limit the Supreme Court's regulation of the practice of law. A lack of judicial jurisdiction over the subject, however, should increase the gravity of the responsibility of the House and Senate to respect the constitutional rights of Florida residents in the exercise of legislative authority.

**B. RULE-MAKING AUTHORITY:**

The PCB does not address any rule-making authority outside the legislative branch of government.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**