

MEMORANDUM

To: Susan Churuti
From: Jason M. Breth
Date: February 2, 2010
Re: Overview of Legislative and Executive Lobbying Statutes

Issue

Provide an overview of the state statutes and rules related to lobbying before the Legislature and the Executive Branch.

Brief Answer

Section 11.045, Florida Statutes, and Joint Rule One of the Florida Legislature regulate lobbying before the Legislature. Additionally, section 112.3215, Florida Statutes, and Rules 34-12.010-760 of the Florida Administrative Code regulate lobbying before the executive branch and the Constitution Revision Commission. The statutes and rules relating to lobbying before the Legislature, executive branch and the Constitution Revision Commission are similar, if not identical, in many respects.

Analysis

1. Lobbying Before the Legislature

Section 11.045(2), Florida Statutes, requires the Legislature to provide by rule "for the registration of lobbyists who lobby the Legislature." The rule must provide that (a) a lobbyist is required to register for each principal he or she represents; (b) registration must include a signed statement by the principal indicating that the lobbyist is authorized to represent the principal and "also identify and designate [the principal's] main business. . ."; (c) a lobbyist must provide a written statement canceling the registration of a principal when that principal terminates the lobbyist's representation; (d) every lobbyist must disclose "the extent of any

direct business association or partnership with any current member of the Legislature"; (e) each lobbying firm and each principal must preserve for 4 years all records necessary to substantiate compensation; (f) all registrations are open to the public; and (g) any person exempt from registration is not considered a lobbyist. § 11.045(2)(a)-(g), Fla. Stat. (2009); *see* Fla. J. Rule 1.2 (2007). In addition to these mandatory requirements, the rule may provide for a registration fee and for exemptions from registration or the registration fee. § 11.045(2), Fla. Stat. (2009); *See* Fla. J. Rule 1.3 (2007) (annual registration fee of up to \$50 per house for a lobbyist to register to represent one principal, and up to \$10 per house for each additional principal the lobbyist represents); Fla. J. Rule 1.1(4) (2007) (exempting certain people from the definition of lobbyist).

The Legislature must also provide by rule certain reporting requirements described in section 11.045(3), Florida Statutes. The statutorily required reporting requirement includes the filing a quarterly compensation report indicating the total compensation provided or owed to the lobbying firm from all principals. *Id.*; *see also* Fla. J. Rule 1.4 (2007). The reporting statements must be filed within 45 days after the end of each reporting period. § 11.045(3)(c), Fla. Stat. (2009). The rule must provide for the notification and assessment of fines to any lobbying firm failing to timely file its required report. § 11.045(3)(d), Fla. Stat. (2009); *see also* Fla. J. Rule 1.5 (2007).

Section 11.045, Florida Statutes, provides for a number of additional requirements to be adopted by rule of the Legislature. The Legislature must provide by rule a procedure "by which a person, when in doubt about the applicability and interpretation of [section 11.045] in a particular context, may submit in writing the facts for an advisory opinion. . . ." § 11.045(5), Fla. Stat. (2009); *see also* Fla. J. Rule 1.8 (2007). Also, the Legislature must provide by rule for the investigation of any lobbyist upon receipt of a complaint alleging a violation of section 11.045, Florida Statutes, and statutes pertaining to the receipt of gifts and honoraria. § 11.045(7), Fla. Stat. (2009); *see also* Fla. J. Rule 1.7(2) (2007).

Statutes relating to lobbying the Legislature also provide certain prohibitions that relate to lobbyists. Section 11.045(4)(a), Florida Statutes, prohibits a lobbyist or principal from making, directly or indirectly, any expenditure to any member or employee of the Legislature. This section also prohibits any member or employee of the Legislature from knowingly

accepting, directly or indirectly, any such expenditure. *Id.* Additionally, the statute prohibits any person from providing compensation for lobbying to anyone that is not a lobbyist or a lobbying firm. § 11.045(4)(b), Fla. Stat. (2009). Section 11.047, Florida Statutes, prohibits a lobbyist or principal from paying, giving, receiving or agreeing to pay, give or receive a contingency fee dependent on the enactment, defeat, modification, or other outcome of any specific legislative action. § 11.047(1), Fla. Stat. (2009).

2. Lobbying Before the Executive Branch and the Constitution Revision Commission

Section 112.3215(3), Florida Statutes, prohibits any person from lobbying an agency until that person has registered as a lobbyist with the Florida Commission on Ethics. When registering, the person shall provide a statement signed by the principal, that the person is authorized to represent the principal as a lobbyist. *Id.* The lobbyist registration shall include information such as, (a) the name and address of the lobbyist; (b) the name and address of the principal represented; (c) the lobbyist's area of interest; (d) the agencies the lobbyist will appear before; and (e) the existence of any business association, partnership, or financial relationship with an employee of an agency with which the lobbyist lobbies before. *Id.* A lobbyist must "send a written statement canceling the registration for a principal upon termination of the lobbyist's representation of that principal." § 112.3215(7), Fla. Stat. (2009).

Section 112.3215(5) requires a lobbying firm to file a quarterly compensation report indicating the total compensation provided or owed to the lobbying firm from all principals. The reporting statements must be filed within 45 days after the end of each reporting period. § 112.3215(5)(c), Fla. Stat. (2009). The commission must provide by rule "procedures by which a lobbying firm that fails to timely file a report shall be notified and assessed fines, and the procedure for appealing the fins." § 112.3215(5)(d), Fla. Stat. (2009). The commission must also provide grounds for waiving such fines. *Id.* Also, each lobbying firm and each principal must preserve for 4 years all records necessary to substantiate compensation § 112.3215(5)(e), Fla. Stat. (2009).

Section 112.3215(6)(a), Florida Statutes, prohibits a lobbyist or principal from making, directly or indirectly, any expenditure to any member or employee of the Legislature. This section also prohibits any member or employee of the Legislature from knowingly accepting,

directly or indirectly, any such expenditure. *Id.* Additionally, the statute prohibits any person from providing compensation for lobbying to anyone that is not a lobbyist or a lobbying firm. § 112.3215(6)(b), Fla. Stat. (2009).

It is the responsibility of the Commission to investigate complaints filed against lobbyists for failure to comply with section 112.3125. § 112.3215(8)(a), Fla. Stat. (2009). Also, any person, "when in doubt about the applicability and interpretation of [section 112.3215] to himself or herself in a particular context, may submit in writing the facts of the situation to the commission with a request for an advisory opinion to establish the standard of duty." § 112.3215(11), Fla. Stat. (2009). It is up to the agencies to be diligent in ascertaining "whether persons required to register pursuant to [section 112.3215] have complied." § 112.3215(12), Fla. Stat. (2009).

Conclusion

The state statutes and rules related to lobbying follow a general form. Each statute and rule provide for registration of lobbyists and the reporting of various information, most notably, compensation information. The statutes and rules also provide an advisory opinion procedure in which a lobbyist may seek guidance in interpreting a particular statute or rule. Finally, with a few exceptions, the statutes and rules also prohibit lobbyists from making any expenditure to a government official or employee.