


LEGISLATIVE UPDATE

TO: Commission Members

FROM: Kerrie Stillman, Deputy Executive Director 

DATE: March 31, 2021

The bills summarized in this update speak directly to the Commission's operations and responsibilities. As is true every session, there are a number of other bills—mainly connected with public records, open meetings, and Administrative Procedure Act issues—that we are following, but which only affect the Commission in the same way they affect all other agencies. I have not included those bills here. In the time between the date of this report and the Commission meeting, I expect further activity on some of these bills.

CS/HB 573 and CS/SB 758

Last year, versions of each of these bills passed both the Senate and the House. The bill ultimately died in returning messages in the Senate after being amended in the House with language from a similar bill to HB 1585, which is outlined later in this report.

Both of these bills enumerate fiduciary duties of public officials and executive officers, and require 5 hours of board governance training for the officials on an annual basis, with some exemptions.

The House bill provides for the manner of training and requires appointed public officials and executive officers to certify completion of the required training. The training certification would be admissible in civil actions. The bills also provide standards for legal counsel and lobbyists. The bill requires legal counsel to represent the interests of the entity and they must not represent the interest of an individual employee or official unless that individual is sued for conduct committed in his or her official capacity, or provided there is no actual legal conflict between the member or employee and the governing body. It also contains a requirement for board approval of the hiring of the chief executive officer and general counsel by two-thirds vote of the voting members of the governing entity.

Significantly, the House bill was amended to require written certification of the training be filed with the Commission, resulting in an increase of more than 10,000 items required to be processed by your staff, simultaneous with the Phase 1 and Phase 2 launch of the e-filing system.

The House bill passed its first committee, as amended, and is waiting to be heard by the State Administration & Technology Appropriations Subcommittee and then State Affairs.

The Senate version of the bill differs slightly in terms of the training requirement. It calls for training and certification to be handled through the Department of Business and Professional Regulation. The Commission would not have any responsibility for handling training or certification filing. The bill also provides standards for legal counsel and lobbyists. The bill also requires legal counsel to represent the interests of the entity and they must not represent the interest of an individual employee

or official unless so directed by the entity. It requires the executive officer and general counsel be subject to approval by majority vote of the governmental entity.

The Senate version passed two committees and is awaiting hearing in Senate Appropriations.

HB 215

This bill would prohibit the use of public funds for lobbying by local governments and prohibits local governments from using public funds to retain lobbyists. It authorizes individuals to file complaints with the Commission and specifies penalties for violations.

This bill has been referred to three committees. It has no Senate companion, as of yet.

HB 509

This bill is a local bill creating an independent special district in Broward County with a governing body named the Senior Services County of Broward County. It establishes membership, powers and duties and requires council members, officers, and employees to take 4 hours of ethics training in accordance with s. 112.3142(2)(b).

The bill was referred to four committees. It has no Senate companion, as of the date of this memo.

HB 853

This bill closes the conflicting employment loophole, which was one of the Commission's legislative recommendations. It requires special district and water management district board members take ethics training, beginning in 2022. The bill also incorporates into law the Commission's rule on training, requires training providers to be accredited, requires the trainer's name be listed on the filer's Form 1 or Form 6 disclosure form, and specifies that the failure to name the trainer is not a de minimis violation of the ethics laws.

The bill also specifically adds special district and water management elected officials to the voting conflict statute (those officials are already public officers required to comply with the voting conflict statute). The bill includes part of the Commission's recommendation for making uniform the voting conflict standards in that it would prohibit *local elected* officials from participating in a vote or its discussion without first disclosing their conflict, which is consistent with existing laws for local appointed officials. The bill does not include language regarding the voting conflict standard for state elected or appointed officers.

The bill proposes a version of Form 6 disclosure for local governing bodies, but retains the fluctuating standard that is so problematic in terms of implementation (enhanced disclosure for cities which have had more than \$10 million in revenue for three consecutive years, but if their revenue drops below \$10 million for three years, their governing board members would revert back to Form 1). This fluctuating standard was proposed in 2018's HB 7003 and 2017's HB 7021, both of which passed in the House. Your recommendation this year was enhanced financial disclosure for *all* elected municipal officials regardless of the population of the municipality.

The bill has passed through its committees and is on the Second Reading Calendar and may get to a floor vote prior to the Commission meeting. There is no Senate companion.

HB 1585

This bill is similar to last year's HB 1111, This bill creates the Florida Integrity Office (FIO) under the Auditor General to facilitate the elimination of fraud, waste, abuse, mismanagement, and misconduct in government. The Florida Integrity Officer (Officer) shall be a legislative employee. He or she will be appointed by and serve at the pleasure of the Auditor General. The Auditor General serves at the pleasure of the Joint Legislative Auditing Committee.

The FIO may only investigate complaints received from five individuals:

- 1) President of the Senate
- 2) Speaker of the House of Representatives
- 3) Chair of the appropriations committee of the Senate
- 4) Chair of the appropriations committee of the House
- 5) Auditor General

If the complaint filed with the Officer is sufficient, the integrity officer shall determine whether an investigation into the matter has been initiated by law enforcement, the Commission on Ethics, CFO, Chief Inspector General, or agency inspector general. If so, the officer must notify the complainant (one of the 5 individuals noted above) in writing, and close the investigation. If the integrity officer undertakes an investigation, he or she will report the findings to the complainant, the Senate President, and Speaker of the House. Under the bill language, the Officer may agree to retain the confidentiality of such information, but does not require the FIO to maintain the confidentiality of the Commission's confidential complaint records.

The bill has been added to the second reading calendar.

HB 7043

This bill, similar to last year's HB 1185, 2019's HB 1, 2018's HB 7007, and 2017's HB 7083, addresses ethics at the state level. It make soliciting a job that creates a conflict a violation in itself, and failure to report to one's agency an offer of a job that would create a conflict would also be a separate violation. The bill also requires private employers to report instances of an employee soliciting a job that would create a conflict. Certain grandfathering exemptions from post-employment/officeholding restrictions would be eliminated. It also eliminates the exemption in 112.313(15), F.S., for elected officials beginning their term of office on or after October 1, 2021.

With some significant exceptions, the bill would prohibit state elected officers and legislators from soliciting jobs or investment advice "arising out of official or political activities engaged in" while an officer, legislator, or candidate. It would also prohibit state elected officers and legislators from soliciting investment advice or entering into certain business relationships with lobbyists, and would

require lobbyists to report solicitations of such advice or business relationships. If a lobbyist or any other person reports such conduct, the Commission could investigate without a complaint being filed.

The bill would also require state elected officers and legislators to file a statement with the Commission if they received a job or a pay increase from an entity receiving state funds or from a lobbyist or principal. They would also have to report any new employment arising from official or political activities. The Commission would be required to post the statement to its website.

The measure would prohibit anyone who, after July 1, 2021, was in a position requiring financial disclosure or was a procurement employee, from asking for any job with any entity doing business with or regulated by the "agency employing" him or her, or from whom they could not solicit a gift. Exceptions would apply if the official had already served notice of leaving their public position or had been terminated. Employees would have to notify their agencies if they received a job offer from a private company in the above category.

This is a PIE committee bill and it is now in the State Affairs Committee.