



## Memo

To: CRC Ethics for Lobbyists Subcommittee Members

From: Cliff Shepard

CC: Katie Smith

Re: Lobbyist/Lobbying Definitions

See below for the requested definitions of lobbying and lobbyists.

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2 U.S.C. § 1602(7):

The term “lobbying activities” means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

2 U.S.C. § 1602(8):

- (A) Definition. The term “lobbying contact” means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—
- (i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);
  - (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;

- (iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
  - (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.
- (B) Exceptions. The term “lobbying contact” does not include a communication that is—
- (i) made by a public official acting in the public official’s official capacity;
  - (ii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;
  - (iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;
  - (iv) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 ([22 U.S.C. 611](#) et seq.);
  - (v) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official or a covered legislative branch official;
  - (vi) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act [5 USCS Appx.];
  - (vii) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;
  - (viii) information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative branch official for specific information;

- (ix) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency, including any communication compelled by a Federal contract, grant, loan, permit, or license;
- (x) made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;
- (xi) not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;
- (xii) made to an official in an agency with regard to—
  - (I) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or
  - (II) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis, if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;
- (xiii) made in compliance with written agency procedures regarding an adjudication conducted by the agency under section 554 of title 5, United States Code, or substantially similar provisions;
- (xiv) a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;
- (xv) a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures;
- (xvi) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with—
  - (I) a covered executive branch official, or

- (II) a covered legislative branch official (other than the individual’s elected Members of Congress or employees who work under such Members’ direct supervision), with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;
- (xvii) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978 [5 USCS Appx.], or under another provision of law;
- (xviii) made by—
  - (I) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986 [26 USCS § 6033(a)(2)(A)(i)], or
  - (II) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a) [26 USCS § 6033(a)(2)(A)(iii)]; and
- (xix) between—
  - (I) officials of a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act [15 USCS § 78c(a)(26)]) that is registered with or established by the Securities and Exchange Commission as required by that Act or a similar organization that is designated by or registered with the Commodities Future Trading Commission as provided under the Commodity Exchange Act [7 USCS §§ 1 et seq.]; and
  - (II) the Securities and Exchange Commission or the Commodities Future Trading Commission, respectively; relating to the regulatory responsibilities of such organization under that Act.

2 U.S.C. § 1602(10):

The term “lobbyist” means any individual who is employed or retained by a client for financial or other compensation for services that include more than one [lobbying contact](#), other than an individual

whose [lobbying activities](#) constitute less than 20 percent of the time engaged in the services provided by such individual to that [client](#) over a 3-month period.

### Lobbying the Florida Legislature

#### Statutes

F.S. § 11.045(1)(e):

“Lobbying” means influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.

F.S. § 11.045(1)(g):

“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.

#### Joint Rules of the Florida Legislature

Joint Rule One, Section 1.1(2)(c):

“Lobby” or “lobbying” means influencing or attempting to influence legislative action or nonaction through oral or written communication or through an attempt to obtain the goodwill of a member or employee of the Legislature.

Joint Rule One, Section 1.1(3):

For the purposes of Joint Rule One, the terms “lobby” and “lobbying” do not include any of the following:

- (a) A response to an inquiry for information made by any member, committee, or staff of the Legislature.
- (b) An appearance in response to a legislative subpoena.

- (c) Advice or services that arise out of a contractual obligation with the Legislature, a member, a committee, any staff, or any legislative entity to render the advice or services where such obligation is fulfilled through the use of public funds.
- (d) Representation of a client before the House of Representatives or the Senate, or any member or committee thereof, when the client is subject to disciplinary action by the House of Representatives or the Senate, or any member or committee thereof.

Joint Rule One, Section 1.1(2)(e):

“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. An employee of the principal is not a lobbyist unless the employee is principally employed for governmental affairs. The term “principally employed for governmental affairs” means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer’s various relationships with government or representing the employer in its contacts with government. Any person employed by the Governor, the Executive Office of the Governor, or any executive or judicial department of the state or any community college of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, is a lobbyist.

Joint Rule One, Section 1.1(3):

For purposes of registration and reporting, the term “lobbyist” does not include any of the following:

- (a) A member of the Legislature.
- (b) A person who is employed by the Legislature.
- (c) A judge who is acting in that judge’s official capacity.
- (d) A person who is a state officer holding elective office or an officer of a political subdivision of the state holding elective office and who is acting in that officer’s official capacity.

- (e) A person who appears as a witness or for the purpose of providing information at the written request of the chair of a committee, subcommittee, or legislative delegation.
- (f) A person employed by any executive or judicial department of the state or any community college of the state who makes a personal appearance or attendance before the House of Representatives or the Senate, or any member or committee thereof, while that person is on approved leave or outside normal working hours and who does not otherwise meet the definition of a lobbyist.

Lobbying the Florida Executive Branch or Constitution Revision Commission

Florida Statutes

F.S. § 112.3215(1)(f):

“Lobbies” means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. “Lobbies” also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission’s action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.

F.S. § 112.3215(1)(h):

“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. “Lobbyist” does not include a person who is:

1. 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.
2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.

3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.
4. 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](#).

Florida Administrative Code

34 F.A.C. 12.020(6):

“Lobbies” or “lobbying” means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee.

34 F.A.C. 12.100:

As used in this chapter and except as excluded in this chapter, “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 an agency on behalf of that other person or governmental entity.

- (1) An employee of a principal is not a “lobbyist” unless the employee is principally employed for governmental affairs. “Principally employed for governmental affairs” means that one of the principal or most significant responsibilities of the employee to the employer is overseeing the employer’s various relationships with government or representing the employer in its contacts with government.
- (2) One who is not an employee of a principal is a “lobbyist” if he is retained as an independent contractor or otherwise for payment or economic consideration by a person or governmental entity to lobby an agency on behalf of that person or governmental entity.
- (3) If a corporation, partnership, firm, or other business organization is retained for payment or economic consideration to lobby an agency on behalf of another person or governmental entity, only the members, partners, associates, or employees of the

organization who personally lobby in behalf of that person or governmental entity are “lobbyists.”

- (4) A person who lobbies an agency in behalf of himself or in behalf of a business entity in which he has an ownership interest is not a “lobbyist” unless he comes within one of the above descriptions.
- (5) The terms “payment” or “economic consideration” do not include receiving only reimbursement for actual travel, lodging, and meal expenses.

34 F.A.C. 12.110:

“Lobbyist” does not include an attorney or any other person who represents a client in a judicial proceeding.

- (1) Representation of a client in a judicial proceeding includes all oral and written communications with an agency or any of its representatives which relate to the proceeding.
- (2) For purposes of this rule, a judicial proceeding does not commence until a complaint, petition, indictment, information, or other pleading initiating the proceeding has been filed. Therefore, an attorney or other person representing a client who lobbies an agency regarding matters which in the future may result in a judicial proceeding may be a “lobbyist” for purposes of this chapter if he is seeking to influence the agency with respect to a decision of the agency in the area of “policy,” as defined in subsection 34-12.020(9), F.A.C.
- (3) A judicial proceeding is not concluded until the court or tribunal loses jurisdiction over the proceeding. Therefore, an attorney or other person who represents a client before an executive branch agency regarding matters on which a court or judicial tribunal has jurisdiction to take action is not a “lobbyist.”
- (4) A “judicial proceeding” includes a proceeding before a judge of compensation claims involving workers’ compensation or birth-related neurological injuries.

34 F.A.C. 12.120:

“Lobbyist” does not include an attorney or other person who represents a client in a formal administrative proceeding conducted pursuant to Chapter 120, F.S., or in any other formal hearing before an agency.

- (1) Formal administrative proceedings conducted pursuant to Chapter 120, F.S., and other formal hearings before an agency include:
  - (a) Formal and informal proceedings under Sections 120.569 and 120.57, F.S., after the filing of a petition or request for hearing which initiates the proceeding;
  - (b) Rule challenge proceedings under Section 120.56, F.S., after the filing of the petition or request with the Division of Administrative Hearings;
  - (c) Declaratory statement proceedings under Section 120.565, F.S., after the filing of the petition for a declaratory statement;
  - (d) Bid protest proceedings under Section 120.57(3), F.S., after the filing of a formal written protest; and
  - (e) All other hearings of an agency of a similar nature to a hearing governed by a provision of Chapter 120, F.S., after the filing of the petition, complaint, or request which initiates the proceeding.
  - (f) An attorney or other person representing a client who lobbies an agency regarding matters which in the future may result in an administrative proceeding described in paragraphs (a) through (e) above may be a “lobbyist” for purposes of this chapter if he is seeking to influence the agency with respect to a decision of the agency in the area of “policy,” as defined in subsection 34-12.020(9), F.A.C.
- (2) Representation of a client in one of the types of administrative proceedings and formal hearings described in subsection (1) includes all oral and written communications with an agency or any of its representatives which relate to the proceeding or hearing.
- (3) An appearance in behalf of a client at a publicly noticed hearing or workshop conducted by the agency regarding a proposed agency rule constitutes the representation of a

client in a formal hearing before the agency. However, communications with agency personnel in behalf of a client which seek to influence the agency's decision regarding the proposed rule and which are outside of such a hearing or workshop are not exempted on this basis.

34 F.A.C. 12.125:

"Lobbyist" does not include an attorney or other person who represents a client in a formal administrative proceeding conducted pursuant to Chapter 120, F.S., or in any other formal hearing before an agency.

- (1) Formal administrative proceedings conducted pursuant to Chapter 120, F.S., and other formal hearings before an agency include:
  - (a) Formal and informal proceedings under Sections 120.569 and 120.57, F.S., after the filing of a petition or request for hearing which initiates the proceeding;
  - (b) Rule challenge proceedings under Section 120.56, F.S., after the filing of the petition or request with the Division of Administrative Hearings;
  - (c) Declaratory statement proceedings under Section 120.565, F.S., after the filing of the petition for a declaratory statement;
  - (d) Bid protest proceedings under Section 120.57(3), F.S., after the filing of a formal written protest;
  - (e) Rulemaking proceedings under Section 120.54, F.S., after the publication of the notice of rule development pursuant to Section 120.54(2), F.S., or the filing of a petition to initiate rulemaking pursuant to Section 120.54(7), F.S., and
  - (f) All other hearings of an agency of a similar nature to a hearing governed by a provision of Chapter 120, F.S., after the filing of the petition, complaint, or request which initiates the proceeding.
  - (g) An attorney or other person representing a client who lobbies an agency regarding matters which in the future may result in an administrative proceeding described in paragraphs (a) through (f) above may be a "lobbyist" for purposes of this chapter

if he is seeking to influence the agency with respect to a decision of the agency in the area of “policy,” as defined in subsection 34-12.020(9), F.A.C.

- (2) Representation of a client in one of the types of administrative proceedings and formal hearings described in subsection (1) includes all oral and written communications with an agency or any of its representatives which relate to the proceeding or hearing.

34 F.A.C. 12.130:

An officer or employee of a state agency or a legislative or judicial branch entity is excluded from being a “lobbyist” when acting on its behalf in the normal course of his or her duties.

34 F.A.C. 12.140:

“Lobbyist” does not include a confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

34 F.A.C. 12.150:

“Lobbyist” does not include a person who lobbies to procure a contract pursuant to Chapter 287, F.S., which contract does not exceed category one as provided in Section 287.017(1), F.S

#### Lobbying a Florida Water Management District

F.S. § 112.3261(1)(b):

“Lobbies” means seeking, on behalf of another person, to influence a district with respect to a decision of the district in an area of policy or procurement or an attempt to obtain the goodwill of a district official or employee. The term “lobbies” shall be interpreted and applied consistently with the rules of the commission implementing s. [112.3215](#).

F.S. § 112.3261(1)(c):

“Lobbyist” has the same meaning as provided in s. [112.3215](#).

Lobbying Orange County

Orange Cnty. Code § 2-351(h):

*Lobbyist* means any person, partnership, corporation or other business entity that receives compensation to lobby on behalf of a principal, or an employee of a principal only when governmental relations, acting as a governmental liaison, or communicating with governmental agencies is a primary or substantial part of the employee's ongoing job responsibilities. Lobbyist does not mean a county official, county employee or any other person affiliated with the county while acting in his or her official capacity.

Orange Cnty. Code § 2-351(i):

*Lobbying* means:

- (1) To communicate or the act of communicating directly with the county mayor, with any other member of the board, or with any member of a procurement committee; or
- (2) To communicate indirectly with the county mayor or any other member of the board by communicating with any staff member to a county commissioner, any county employee assigned to the county mayor's staff, the county administrator, any deputy or assistant county administrator, the county attorney, any county department director, or any county division manager.

In either case, lobbying seeks to encourage the approval, disapproval, adoption, repeal, rescission, passage, defeat or modification of any ordinance, resolution, agreement, development permit, other type of permit, franchise, vendor, consultant, contractor, recommendation, decision or other foreseeable action of the board. Lobbying shall include all such communications, regardless of whether initiated by the lobbyist or by the person being lobbied and regardless of whether oral, written or electronic.

Lobbyists as Defined by Gift and Honoraria Regulations of Government Officials

F.S. § 112.3148(2)(b):

1. "Lobbyist" means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decision-making of a reporting individual or procurement employee or his or her agency or seeks, or sought

during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency.

2. With respect to an agency that has established by rule, ordinance, or law a registration process for persons seeking to influence decision-making or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term “lobbyist” includes only a person who is required to be registered as a lobbyist in accordance with such rule, ordinance, or law or who was during the preceding 12 months required to be registered as a lobbyist in accordance with such rule, ordinance, or law. At a minimum, such a registration system must require the registration of, or must designate, persons as “lobbyists” who engage in the same activities as require registration to lobby the Legislature pursuant to s. 11.045.

F.S. § 112.3149(1)(d):

3. “Lobbyist” means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decision-making of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency.
4. With respect to an agency that has established by rule, ordinance, or law a registration process for persons seeking to influence decision-making or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term “lobbyist” includes only a person who is required to be registered as a lobbyist in accordance with such rule, ordinance, or law or who was during the preceding 12 months required to be registered as a lobbyist in accordance with such rule, ordinance, or law. At a minimum, such a registration system must require the registration of, or must designate, persons as “lobbyists” who engage in the same activities as require registration to lobby the Legislature pursuant to s.11.045.