

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RCC 07-04 Joint Rule One and Joint Rule Seven
SPONSOR(S): Rules & Calendar Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Rules & Calendar Council	17 Y, 0 N	DeJesus	Rubottom
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

PCB-04 constitutes a draft Concurrent Resolution that revises and readopts Joint Rule One (JR 1)—Lobbyist Registration and Compensation Reporting, and Joint Rule Seven (JR 7)—Joint Legislative Budget Commission (“Commission”).

The revisions to JR 1 addressed in this PCB implement statutory directives to establish an electronic filing system for lobbying firm compensation reporting.¹ This PCB also provides several technical improvements to other provisions in JR 1, in part, to reflect updated technology.

This PCB revises JR 7 to remove the zero-based budgeting provision conforming to current budget practices. It also removes unnecessary provisions relating to the organizational structure of the Commission that were included in the constitutional amendment governing the Commission adopted into the Florida Constitution in November 2006.²

Joint Rules constitute mutual agreement of the House and Senate to jointly regulate certain legislative activities.³ The House of Representatives adopted House Rules for 2006-2008 during Organization Session on November 21, 2006.⁴ Also at the organization session, the House agreed to be governed by Joint Rules One through Seven, as revised by the 2006 Senate Concurrent Resolution 1856. The House's agreement expires March 16, 2007.⁵ The adoption of this Concurrent Resolution by the House and Senate will supplant that temporary ratification respecting the two revised rules.

The revised JR 1 preserves all obligations existing under the previous rule as of the date of the last general election and retroactively enforces all provisions continued in the revised rule. The revised JR 7 replaces all prior joint rules governing the Commission and implements constitutional provisions relating to the Commission existing as of the date of the rule's adoption. The revised rules are effective April 1, 2007.

This PCB does not appear to have a fiscal impact on state or local governments.

¹ These revisions are consistent with s.11.0455(6) and (7), Florida Statutes, effective April 1, 2007.

² See Art. III, Sec. 19(j), Fla. Const. (as amended in the 2006 general election); see also FN 13 for full text.

³ See House Rule 13.4, which provides that the House shall be governed by joint rules approved by the House and Senate during the term, and may not be waived except by agreement of both the House and Senate.

⁴ See FN 3.

⁵ See Journal of the House of Representatives, Nov. 21, 2006, p. 26.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The revised joint rules do not go beyond the minimum requirements of controlling statutes and constitutional provisions. Lobbying firms will be required to file reports electronically and this PCB imposes responsibilities on the Division of Legislative Information Services to maintain the electronic system. The Joint Legislative Budget Commission constitutes a new constitutional body possessing limited legislative authority, but it is not subject to the constitutional time constraints on sessions applicable to the full Legislature.

Safeguard Individual Liberty: The revised JR 1 requires lobbying firms to report compensation electronically as opposed to by mail, which may make reporting easier.

Maintain public security: The Commission regulated by JR 7 has authority to redirect state spending which may be used to meet immediate security needs.

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. A Concurrent Resolution, such as the one proposed by this PCB, can be taken up by the full House upon introduction without reference. The purpose of this 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, and governing the Joint Legislative Budget Commission.

Present situation:

Joint Rule One

The existing JR 1 brought the Legislature's joint lobbyist registration and reporting rules into compliance with the statutory directives adopted in SB 6-B (2005), ch. 2005-359. Section 11.045(3)(c), as amended by SB 6-B, requires that, effective April 1, 2007, compensation reports must be filed electronically in accordance with s. 11.0455, F.S.

The administration of JR 1 is assigned to the Office of Legislative Services, a legislative office operated jointly by the House and Senate.

Joint Rule Seven

In 2000, the Legislative Budget Commission (LBC), was created⁶ primarily to consider budget amendments requested by the executive and judicial branches and to conduct zero-based budget reviews of state agencies. The LBC's authority expanded since then to encompass a number of actions that required legislative review during the interim between sessions. The LBC applied zero-based budgeting principles in their review of budget requests, pursuant to s. 216.1825, F.S.⁷

Proposed by CS/SJR 2144 (2005), a constitutional amendment was adopted in November 2006 revising Art. III, Sec. 19, Fla. Const., by creating subsection (j). (See FN 13 for full text). The

⁶ See Section, 11.90, F.S., derived from Laws 2000, ch. 2000-371, §37, creating the Legislative Budgeting Commission. Ch. 2001-56, s.15 amended statute to change name to Legislative Budget Commission.

⁷ Section 216.1825, F.S., ch. 2000-371 §24, established zero-based budgeting principles applied by the LBC. This statutory provision was repealed by Laws 2005, ch. 2005-152, §63, effective July 1, 2005.

amendment created a new constitutional body, the Joint Legislative Budget Commission, and requires that it be governed by joint legislative rules. Additional powers and duties may be specified in law or joint rule. The existing JR 7, adopted prior to the constitutional amendment, contained provisions for general responsibilities and organizational structure of the Commission. The constitutional provision supplants some of those provisions. The current rule also includes zero-based budgeting provision that implemented statutes that have been repealed in the years since the rule was last revised.

Effect of Proposed Changes:

Joint Rule One

The PCB revises JR 1 to provide for electronic filing of lobbying firm compensation reports. Other technical improvements are included, in part to accommodate new technology. Specific changes are discussed below in the Section Directory. Lobbyist registration and reporting requirements found in the existing JR 1 implement directives of s. 11.045, F.S., as amended by SB-6B (ch.2005-359). SB-6B also included directives for an electronic reporting system effective April 1, 2007. Those directives are outlined in s. 11.0455, F.S.⁸ See Section Directory below for particulars.

Joint Rule Seven

The PCB revises JR 7 to implement the new constitutional provisions establishing the Joint Legislative Budget Commission. It eliminates organizational matters now supplied by Art. III, Sec. 19(j), Fla. Const. It eliminates the zero-based budgeting provision, consistent with the repeal zero-based budgeting statute.⁹ The amendment of Art. III, Sec. 19 of the Florida Constitution adopted in the 2006 general election, added subsection (j) to create a new constitutional body, the Joint Legislative Budget Commission, and provided that the Commission shall be governed by joint rules of the Legislature. See Section Directory below for particulars.

C. SECTION DIRECTORY:

The PCB's effective language revises the present JR 1 and JR 7. The revised JR 1 contains 9 separate new rules. The proposed new JR 7 contains 4 rules. The general subject of each rule is provided in a short title preceding it. A brief description of each rule and any proposed changes is provided below. References to "s. 11.045" in the discussion below relate to the amended version of s. 11.045, Florida Statutes, enacted in ch. 2005-359, Laws of Florida, effective January 1, 2006.

JOINT RULE ONE

Joint Rule 1.1 mandates lobbyist registration in conformity with the directives contained in s. 11.045(2), F.S. It also provides definitions applicable to the entire JR 1, consistent with the definitions provided in s. 11.045(1), F.S. The PCB adds a definition for "unusual circumstances," providing guidance to the administration of Joint Rule 1.5 sections (5), (6) and (7)(b).¹⁰ The PCB amends the definition of "lobbying firm" to include affiliates.¹¹

Joint Rule 1.2 provides the method of registration. It includes provisions that conform to directives contained in s. 11.045(2), F.S., but no longer requires the Federal Employer Identification Number and contact name for lobbying firm registration. "Lobbying firms" as defined in the Rule are often joint ventures that do not have FEIN's so practice has determined requiring the rule to be impractical during the first year of compensation reporting. The Lobbyist Registration Office will continue to retain original

⁸ See ss. 11.0455(6) and (7), F.S., requiring that each house of the Legislature provide by rule, or joint rule adopted by both houses, procedures to implement and administer the electronic reporting system.

⁹ Section 216.1825, F.S., repealed by Laws 2005, ch. 2005-152, §63, effective July 1, 2005.

¹⁰ The definition of "unusual circumstances" is added to provide guidance to the General Counsel of the Office of Legislative Services in the administration of Joint Rule 1.5(5), (6) and (7)(b). It is not intended to limit the discretion of the presiding officers in granting waivers under Joint Rule 1.5.

¹¹ The addition of "affiliates" is to clarify that any parent or sibling corporation would be treated similar to a subsidiary.

documents submitted, with the language reflecting the need for retaining original “registration” documents. The present publishing requirements are consolidated in the revision with information located in revised Joint Rule 1.6(b).

Joint Rule 1.3 provides for registration fees. There has been no change from the present rule. Investigation last year indicated that recent fees have been sufficient to cover the cost of administering Joint Rule One.

Joint Rule 1.4 mandates the reporting of lobbying firm compensation. It includes mandatory provisions found in s. 11.045(3)(a)-(d), F.S. Instead of aggregating compensation reported within a category by “calculating the arithmetic mean” of the category, the revision provides a table from which to determine the amount to use for each category when aggregating compensation. It also provides an effective date for the commencement of electronic filing.

Joint Rule 1.5 provides for late-filing penalties and administration thereof. It includes mandatory provisions found in s. 11.045(3)(e), F.S., but reflects updated procedures for reviewing the timeliness of reports filed through the electronic filing system rather than by mail.

Joint Rule 1.6 provides that registration forms and compensation reporting records of the Legislature are open records, and provides for the internet publication of registration forms and compensation reports. This is consistent with the present rule. 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, Fla. Const.

Joint Rule 1.7 provides for retention and inspection procedures governing records of lobbying firms and principals. There is no change from the present rule.

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 JR 1 to a specific situation. There is no change from the present rule.

Joint Rule 1.9 clarifies the effect of readoption and revision of JR 1. It expressly preserves all obligations existing under Joint Rule One on the date of the previous general election and retroactively enforces all prior provisions continued in the revised rule.

JOINT RULE SEVEN

Joint Rule 7.1 provides for the general responsibilities of the Joint Legislative Budget Commission. The Commission is to consult with the Chief Financial Officer (revised from “Comptroller”) in addition to the Governor.

Joint Rule 7.2 provides the organizational structure of the Commission. The PCB removes organizational language that is now supplied by Art. III, Sec. 19(j), Fla. Const. The PCB omits provisions that presently require the Commission to apply zero-based budgeting principles.

Joint Rule 7.3 continues notice provisions contained in the present rule.

Joint Rule 7.4 provides that the revised JR 7 replaces all prior joint rules governing the Commission, and expresses intent to implement constitutional provisions relating to the Commission existing as of the date of the rule’s adoption.

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.

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 the private sector of the revised rules appears to be insignificant.

D. FISCAL COMMENTS:

N/A

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

The Florida Constitution provides that “no money shall be drawn from the treasury except in pursuance of appropriation made by law,” Art. VII, Sec.1(c), Fla. Const., and that “provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.” Art. VII, Sec. 1(d), Fla. Const. The Florida Supreme Court has repeatedly held that, under the doctrine of separation of powers, the legislature may not delegate the power to enact laws or to declare what the law shall be to any other branch. Any attempt by the Legislature to abdicate its particular constitutional duty is void.¹²

Directly addressing the above stated concerns with respect to the Joint Legislative Budget Commission, the Legislature in 2005 adopted, CS/SJR 2144, proposing an amendment to the Florida Constitution, in part creating subsection 19(j).¹³ The proposed amendment was approved in the 2006 general election.

¹² Pursley v. City of Fort Myers, 87 Fla. 428, 432, 100 So.366, 367 (1924); Bailey v. Van Pelt, 78 Fla. 337, 350, 82 So.789, 793 (1919).

¹³ “(j) JOINT LEGISLATIVE BUDGET COMMISSION. There is created within the legislature the joint legislative budget commission composed of equal numbers of senate members appointed by the president of the senate and house members appointed by the speaker of the house of representatives. Each member shall serve at the pleasure of the officer who appointed the member. A vacancy on the commission shall be filled in the same manner as the original appointment. From November of each odd-numbered year through October of each even-numbered year, the chairperson of the joint legislative budget commission shall be appointed by the president of the senate and the vice chairperson of the commission shall be appointed by the speaker of the house of representatives. From November of each even-numbered year through October of each odd-numbered year, the chairperson of the joint legislative budget commission shall be appointed by the speaker of the house of representatives and the vice chairperson of the

The amendment, however, appears to mandate, for the first time in the Florida Constitution, joint legislative rules to govern the Commission. Enforcing a mandate respecting legislative rules appears problematic. Proper regard for the separation of powers, Art. II, Sec. 3, Fla. Const., makes it difficult to discover the basis for judicial jurisdiction over a complaint against the House and Senate or its officers, questioning legislative rules. 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 authority to directly enforce the mandate, however, should increase the gravity of the responsibility of the House and Senate to respect the constitutional rights of Florida residents and to honor Floridians' express constitutional directives regarding the exercise of legislative authority. No reasonable controversy over the issue should arise, however, if the Concurrent Resolution proposed by the PCB is adopted by the House and Senate.

A number of constitutional duties of the separate branches of government are not subject to the direct supervision of the other branches. The test of our form of government in such cases lies, therefore, in the self-supervision of the officers of each branch, with each being directly accountable to Florida voters.

B. RULE-MAKING AUTHORITY:

The PCB does not address any rule-making authority outside the legislative branch of government. The revision to JR 1 does allow the Office of Legislative Services to determine the procedures for electronic filing.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Rules & Calendar Council adopted an amendment submitted by the Senate which inserted the word "reasonably" before the word "available" on line 427, in Joint Rule 1.6(2). The amendment was recommended by the Senate General Counsel to ensure the division had a reasonable amount of time to post to the Internet. The Joint Rule, as amended, provides that it is the division's responsibility to make information filed pursuant to Rules 1.2 and 1.4 "reasonably available" on the Internet in an easily understood and accessible format. The PCB was passed as amended.

commission shall be appointed by the president of the senate. The joint legislative budget commission shall be governed by the joint rules of the senate and the house of representatives, which shall remain in effect until repealed or amended by concurrent resolution. The commission shall convene at least quarterly and shall convene at the call of the president of the senate and the speaker of the house of representatives. A majority of the commission members of each house plus one additional member from either house constitutes a quorum. Action by the commission requires a majority vote of the commission members present of each house. The commission may conduct its meetings through teleconferences or similar means. In addition to the powers and duties specified in this subsection, the joint legislative budget commission shall exercise all other powers and perform any other duties not in conflict with paragraph (c)(3) and as prescribed by general law or joint rule."