

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7009 PCB PIE 20-01 Penalties for Violations of the Constitutional Prohibition
Against Abuse of Public Position

SPONSOR(S): Public Integrity & Ethics Committee, Byrd

TIED BILLS: **IDEN./SIM. BILLS:** SB 7006

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7009 passed the House on January 29, 2020, and subsequently passed the Senate on February 12, 2020.

During the 2018 General Election, Florida voters approved Amendment 12, which amended art. II, s. 8 of the Florida Constitution to, among other things, provide a constitutional prohibition on public officers and public employees abusing their positions in order to obtain a 'disproportionate benefit' for themselves or other specified persons or entities.

Amendment 12 included an implementation schedule, which provides:

- The abuse of public position provision becomes effective on December 31, 2020;
- The Florida Commission on Ethics (Commission) must, by rule, define the term "disproportionate benefit" and prescribe the intent for finding a violation of the prohibition against abuse of public position by October 1, 2019; and
- Following the adoption of rules by the Commission, the Legislature must establish penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.

As required by Amendment 12, the Commission adopted Rule 32-18.001, F.A.C., to define the term "disproportionate benefit" and to prescribe the requisite intent for finding a violation of the abuse of position provision.

The bill reenacts s. 112.317, F.S., to implement Amendment 12, which amended art. II, s. 8 and created art. XII, s. 38 of the Florida Constitution, to specify penalties for violations of the prohibition against abuse of public position. Under the bill, the penalties applicable to the abuse of public position provision will be the same penalties applicable to other violations of art. II, s. 8 of the Florida Constitution.

The bill may have a slightly positive fiscal impact in that it authorizes financial penalties for violating the new prohibition.

The bill was approved by the Governor on September 18, 2020, ch. 2020-182, L.O.F., and will become effective December 31, 2020, as required by Amendment 12.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

The Florida Constitution contains ethics standards applicable to public officers, candidates for public office, and public employees.¹ These standards impose financial disclosure and campaign finance disclosure requirements on public officers and candidates, as well as prohibitions on personal representation post-service.²

The Florida Code of Ethics for Public Officers and Employees (Code), codified in ch. 112, part III, F.S., implements the constitutional ethics standards. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.³ While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.⁴

The Code contains provisions that establish standards for the conduct of elected and appointed officials and government employees.

The Florida Commission on Ethics (Commission) is the independent body charged with receiving and investigating sworn complaints involving Florida's constitutional ethics provisions, as well as any other violation of the Code.⁵ While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation.⁶ Instead, whenever the Commission finds probable cause exists that an ethics violation has occurred, the Commission is required to submit its findings, along with a recommended penalty, to the statutorily designated official who may impose punishment.⁷

Pursuant to statute, in any case in which a civil penalty or restitution is imposed, the Attorney General is required to bring a civil action to recover such penalty.

Amendment 12

During the 2018 general election, Florida voters approved Amendment 12, which amended art. II, s. 8 of the Florida Constitution, which among other things, provides a constitutional prohibition on public officers and public employees abusing their positions in order to obtain a disproportionate benefit for themselves or other specified persons or entities.⁸ The amendment becomes effective December 31, 2020.⁹

¹ Art. II, s. 8, Fla. Const.

² *Id.*

³ S 112.311(1) F.S.

⁴ S 112.311(2) F.S.

⁵ S. 112.324, F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Art. XII, s. 38, Fla. Const.

⁹ *Id.*

Specifically, Amendment 12 prohibits public officers and public employees from abusing their public positions to obtain a disproportionate benefit for themselves and their spouse, children, employer, or entities with which they have certain business interests. Amendment 12 required the Commission to define, by rule, the term “disproportionate benefit” and prescribe the intent for finding a violation of the prohibition against abuse of public position by October 1, 2019.

As required by Amendment 12, the Commission adopted Rule 34-18.001, F.A.C., effective September 30, 2019, to define the term “disproportionate benefit,” and to prescribe the requisite intent for finding a violation of the provision.¹⁰ The rule defines “disproportionate benefit” as a benefit, privilege, exemption or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.¹¹ The rule prescribes that the public officer or public employee acted, or refrained from acting, with the requisite intent for finding a violation of the prohibition against abuse of public position if the public officer or public employee acted, or refrained from acting, with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result from the act or omission which is inconsistent with the proper performance of his or her public duties.¹²

Amendment 12 also mandates that “appropriate penalties shall be prescribed by law,” and includes an implementation schedule¹³ requiring the Legislature to enact penalty legislation “following the adoption of rules” by the Commission to take effect December 31, 2020.¹⁴

Effect of Changes

The bill reenacts s. 112.317, F.S., the existing statutory section in the Code that provides penalties for ethics violations.¹⁵ The reenactment of s. 112.317, F.S., will make the penalty provisions of the section applicable to art. II, s. 8 of the Florida Constitution, as amended by Amendment 12, which provides:

A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

The bill reenacts s. 112.317, F.S., effective December 31, 2020, to make the penalty provisions of the section applicable to the amended provisions of art. II, s. 8 of the Florida Constitution that take effect the same day and follow the adoption of Rule 34-18.001, F.A.C., by the Commission. This meets the requirement of the Amendment 12 implementation schedule.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes financial penalties for violating the new prohibition. Any revenue impact is expected to be slight.

2. Expenditures:

None.

¹⁰ R. 34-18.001, F.A.C.

¹¹ R. 34-18.001(2), F.A.C.

¹² R. 34-18.001(4), F.A.C.

¹³ Art. XII, s. 38, Fla. Const.

¹⁴ Art. XII, s. 38(b), Fla. Const.

¹⁵ S. 112.317, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.