

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1597 Ethics

SPONSOR(S): Ethics, Elections & Open Government Subcommittee; Brackett

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 7014

FINAL HOUSE FLOOR ACTION: 79 Y's

34 N's

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

CS/HB 1597 passed the House on March 6, 2024, as CS/SB 7014, as amended, and was returned to the Senate. The Senate concurred in the House amendment, as amended by the Senate, on March 6, 2024, and returned the bill to the House. The House concurred in the amendment as amended by the Senate and subsequently passed the bill as amended on March 7, 2024.

The Code of Ethics for Public Officers and Employees (Code of Ethics) establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially. The Commission on Ethics (Commission) is an independent commission that, in part, maintains financial disclosure filings of constitutional officers and state officers and employees, administers fines for late filed annual financial disclosures, and administers the executive branch lobbying registration and reporting laws. The Commission investigates possible violations and other alleged breaches of the public trust within the Code of Ethics when it receives a legally sufficient complaint or a referral.

The bill makes several changes to the Code of Ethics:

- Creates statutory timeframes for completion of investigations of alleged ethics violations conducted by the Commission.
- Requires ethics complaints be based on personal knowledge or information other than hearsay.
- Defines "counsel" for purposes of the Commission's investigative and hearing processes.
- Requires a two-thirds vote of Commission members present at a meeting to reject or deviate from a stipulation or settlement recommended by Commission counsel.
- Requires political subdivisions and agencies with additional or stricter ethical requirements to abide by certain requirements.
- Allows attorneys filing financial disclosures to remove identifying information about a client if disclosure would violate the Florida Bar Client Confidentiality Rule.
- Conforms the maximum civil penalty for a violation of the constitutional prohibition against lobbying by a public officer to those for other violations of ethics laws.
- Provides that terms of Commission members are limited to two total terms, rather than two consecutive terms.
- Adds candidates for public office to the categories of persons authorized to recover costs and attorney fees for defending against a maliciously filed ethics complaint.
- Makes clarifying changes and removes obsolete language.

The bill might have a fiscal impact on state government but does not appear to have a fiscal impact on local governments.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

The Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)¹ establishes ethical standards for public officials and is intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.² The Code of Ethics pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct, and the Commission on Ethics (Commission).³

Under the Code of Ethics, political subdivisions and agencies are permitted to impose additional or more stringent standards of conduct and disclosure requirements upon their own officers and employees.⁴ However, such standards of conduct or disclosure requirements may not conflict with the Code of Ethics.⁵

Commission on Ethics

The Florida Constitution requires the creation of an independent commission “to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.”⁶ The Commission was created in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.⁷ The state constitution and state law designate the Commission as the independent commission referred to in the state constitution.⁸

The Commission is composed of nine members: five members appointed by the Governor, two by the President of the Senate, and two by the Speaker of the House of Representatives.⁹ No more than five members of the Commission may be from the same political party and no member may hold public employment.¹⁰ Commissioners serve two year terms but may not serve more than two full terms consecutively.¹¹ The Commission must employ an executive director¹² who serves as the “chief administrative employee and is responsible for carrying out the directives of the Commission and for supervising its staff.”¹³

¹ See Pt. III, Ch. 112, F.S.; see also Art. II, s. 8(h)(1), FLA. CONST.

² Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited Mar. 13, 2024).

³ See Pt. III, Ch. 112, F.S.

⁴ Section 112.326, F.S.

⁵ Section 112.326, F.S.

⁶ Article II, s. 8(g), FLA. CONST.

⁷ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited Mar. 13, 2024); See also s. 112.320, F.S.

⁸ Article II, s. 8(j)(3), FLA. CONST.; S. 112.320, F.S.

⁹ Section 112.321(1), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 112.321(4), F.S.

¹³ Commission on Ethics, *Statement of Organization and Operation*, available at <https://ethics.state.fl.us/documents/ethics/statement%20of%20org.pdf?cp=2024120> (last visited Mar. 13, 2024).

The Commission's duties consist, in part, of:

- Rendering advisory opinions to public officials.¹⁴
- Making recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws.¹⁵
- Administering the executive branch lobbying registration and reporting law.¹⁶
- Maintaining financial disclosure filings of constitutional officers and state officers and employees.¹⁷
- Administering automatic fines for public officers and employees who fail to timely file the required annual financial disclosure.¹⁸

The Commission may make rules that are necessary to provide for its practices and procedures and to interpret disclosures and prohibitions.¹⁹

Procedures on Complaints and Violations

The Commission investigates alleged breaches of the public trust and other violations of the Code of Ethics. To begin an investigation, the Commission must receive either a written complaint signed under oath or affirmation or a written referral is received — which at least six members of the Commission determine is sufficient to indicate a violation has occurred — from the Governor, the Department of Law Enforcement, a state attorney, or a United States Attorney.²⁰ Within five days of receipt of either of those complaints, the Commission must transmit a copy to the alleged violator.²¹

Upon the issuance of an order to investigate by the Commission's Executive Director, a Commission investigator begins a preliminary investigation of each legally sufficient complaint or referral to determine if there is probable cause that a violation has occurred.²² The investigator, after finishing the initial investigation, writes an investigatory report²³ and transmits it to the alleged violator and to an advocate,²⁴ who serves as counsel for the Commission on the matter.²⁵ The alleged violator is given 14 days from the mailing of the investigator's report to provide a written response.²⁶ Upon receipt of the investigator's report, the advocate must make a written probable cause recommendation to the Commission.²⁷ The alleged violator must receive a copy of such recommendation and he or she then has at least seven days from the date it was mailed to provide a written response for the Commission's consideration.²⁸ The Commission then schedules a probable cause hearing, with a notice of such hearing provided to the parties at least 14 days prior to the hearing.²⁹

If the Commission does not find probable cause that the alleged violations were committed, the complaint or referral is dismissed.³⁰ If the Commission does find probable cause exists, it must provide notice to the alleged violator of such finding, who then has 14 days following the mailing of the notice to

¹⁴ Section 112.322(3)(a), F.S.

¹⁵ Section 112.322(2)(b), F.S.

¹⁶ Sections 112.3215 and 112.32155, F.S.

¹⁷ Section 112.3144, F.S.

¹⁸ Section 112.31455, F.S.; *see also* Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited Mar. 13, 2024).

¹⁹ Section 112.322(9)(a) and (b), F.S.

²⁰ Section 112.324(1), F.S.

²¹ *Id.*

²² Section 112.324(3), F.S.; *see r.* 34-5.002(2), F.A.C.

²³ *See r.* 34-5.004(7), F.A.C.

²⁴ The Advocate presenting the matter before the Commission must be an Assistant Attorney General or another attorney designated by the Commission as Advocate. The Advocate represents the Commission in its prosecutorial function. Rule 34-5.0045(2), F.A.C.

²⁵ Rule 34-5.006(1) and (3), F.A.C.; r. 34-17.010(1) and (3), F.A.C.

²⁶ Rule 34-5.006(2), F.A.C.; r. 34-17.010(2), F.A.C.

²⁷ Rule 34-5.006(3), F.A.C.; r. 34-17.010(3), F.A.C.

²⁸ *Id.*

²⁹ Rule 34-5.006(4); r. 34-17.010(4), F.A.C.

³⁰ Section 112.324(3), F.S.

request a public hearing.³¹ However, the Commission may require a public hearing regardless of whether the alleged violator requests a hearing.³² The Commission may also conduct further investigations and enter into stipulations and settlements as it finds to be just and in the state's best interests.³³

The Commission may conduct a public hearing or transfer the case to the Division of Administrative Hearings (DOAH) for such hearing.³⁴ For hearings conducted by the Commission, final orders³⁵ are issued recommending a penalty.³⁶ For hearings conducted by a DOAH administrative law judge (ALJ), the judge issues a recommended order to the Commission.³⁷ Jurisdiction may be relinquished back to the Commission from DOAH when a dispute of material fact no longer exists as determined by the ALJ.³⁸

The Commission may, at its discretion, dismiss any complaint or referral at any stage of disposition should it determine that the public interest would not be served by proceeding further, but a report must be issued stating with particularity its reason for dismissal.³⁹ The Commission may also dismiss any complaint or referral if it determines that the violation that is alleged or has occurred is a *de minimis* violation⁴⁰ attributable to inadvertent or unintentional error.⁴¹

Full and Public Disclosure of Financial Interests

All elected constitutional officers, as well as candidates for such offices, are required by the Florida Constitution to file full and public disclosure of their financial interests.⁴² Other public officers, candidates, and employees may also be required to file such disclosures, as required by law.⁴³

The term "full and public disclosure of financial interests" means the reporting individual must disclose his or her net worth and the value of each asset and liability in excess of \$1,000.⁴⁴ The disclosure must be accompanied by either a copy of the filer's most recent federal income tax return or a sworn statement that identifies each separate source and amount of income that exceeds \$1,000.⁴⁵ The Commission has created by rule CE Form 6 (Form 6) to be used to make the required full and public financial disclosure.⁴⁶

Currently, individuals holding the following positions must file Form 6:⁴⁷

- Governor.
- Lieutenant Governor.
- Cabinet members.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Rule 34-5.010, F.A.C.; r. 34-17.013, F.A.C.; *see also* ss. 120.569(2) and 120.57(1), F.S.

³⁵ A "final order" means a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it. The clerk shall indicate the date of filing on the order. Section 120.52(7), F.S.

³⁶ The Commission is without jurisdiction to enter into a stipulation or settlement which imposes any penalty and penalties may only be imposed by the appropriate disciplinary authority. Section 112.324(3), F.S.

³⁷ Rule 34-5.024(1), F.A.C.; r. 34-17.018(1), F.A.C.; *see also* s. 120.57(1)(k), F.S. and r. 28-106.216, F.A.C.

³⁸ Section 120.57(1)(i), F.S.

³⁹ Section 112.324(12), F.S.

⁴⁰ A *de minimis* violation is any violation that is unintentional and not material in nature. Section 112.324(11)(b), F.S.

⁴¹ Section 112.324(11)(a), F.S.

⁴² Art. II, s. 8(a), FLA. CONST.

⁴³ *Id.*

⁴⁴ Article II, s. 8(j)(1), FLA. CONST.

⁴⁵ *Id.*; *see also* s. 112.3144, F.S.

⁴⁶ Section 112.3144(8), F.S.

⁴⁷ Commission on Ethics, *Filing Information*, available at https://www.ethics.state.fl.us/Documents/Forms/Form1.html#form_6 (last visited Mar. 13, 2024).

- Legislators.
- State attorneys.
- Public defenders.
- Clerks of circuit court.
- Sheriffs.
- Tax collectors.
- Property appraisers.
- Supervisors of elections.
- County commissioners.
- Elected superintendents of schools.
- District school board members.
- Jacksonville City Council members, including the mayor.
- Judges of compensation claims.
- Duval County Superintendent of Schools.
- Florida Housing Finance Corporation board members.
- Each member of an expressway authority, a transportation authority (except the Jacksonville Transportation Authority), a bridge authority, or a toll authority created pursuant to chapter 348, F.S., or chapter 343, F.S., or any other general law.
- Mayors.
- Elected members of the governing body of a municipality.
- Each member of the Commission.
- Judges, as required by Canon 6, Code of Judicial Conduct.

Current law requires a less detailed disclosure of financial interests using the Commission's CE Form 1 (Form 1) for certain local officers.⁴⁸ Other persons filing Form 1 include specified state officers and employees as well as persons seeking to qualify as candidates for state or local office.⁴⁹ Form 1 requires individuals to disclose their primary sources of income (other than their public position), secondary sources of income, real property, intangible personal property, liabilities, and interests in specific businesses.⁵⁰ Although no specific dollar values of incomes, property, or liabilities are required to be reported, the filer must report which assets or liabilities exceed certain dollar thresholds.⁵¹

Lobbying Prohibition by a Public Officer

The Florida Constitution prohibits lobbying by certain public officers during public service and for a six-year period following vacation of public office.⁵² The prohibitions address lobbying on issues of policy, appropriations, or procurement before the federal government, the Legislature, any state government body or agency, or any political subdivision.⁵³ The following officers are subject to this prohibition:

- Statewide elected officers.
- Members of the Legislature.
- County commissioners.
- Constitutional county officers and county charter officers.
- School board members.
- School superintendents.
- Elected municipal officers.
- Elected special district officers in special districts with ad valorem taxing authority.
- Secretaries, executive directors, and other administrative heads of executive branch departments.⁵⁴

⁴⁸ Section 112.3145, F.S.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Section 112.3145(3), F.S.

⁵² Art. II, s. 8(f), FLA. CONST.

⁵³ Art. II, s. 8(f)(2), FLA. CONST.

⁵⁴ Art. II, s. 8(f)(3), FLA. CONST.

If the Commission finds that this prohibition has been violated by a public officer, the Commission reports such finding to the Governor, who may publicly censure and reprimand such officer, impose a civil penalty no greater than \$10,000, and require forfeiture to the General Revenue Fund of any pecuniary benefits derived from the violation.⁵⁵

Penalties for Violations

Current law provides a range of penalty provisions for violations of the Code of Ethics that cover public officers and employees, former public officers and employees, candidates, lobbyists, and lobbying firms.⁵⁶ Depending on the position that the individual holds, there are different penalties that can be enforced, including:

- Impeachment, removal from office, or dismissal of employment.
- Suspension from office or employment.
- Disqualification from being on the ballot.
- Demotion.
- Reduction in salary.
- Forfeiture of no more than one-third of his or her salary per month for no more than 12 months.
- Public censure and reprimand.
- A civil penalty not to exceed \$20,000.
- Restitution of any pecuniary benefits received because of the violation committed.⁵⁷

Although the Commission does not have the authority to directly impose the above penalties,⁵⁸ in its findings, the Commission makes recommendations to the appropriate disciplinary authority for the individual or entity who was found in violation of the Code of the Ethics.⁵⁹

Redress for Defense against a Maliciously Filed Complaint

If the Commission determines that a person has filed a complaint against a public officer or employee with malicious intent to injure the reputation of such officer or employee, such complainant is liable for the costs and reasonable attorney fees related to the public officer's or employee's defense against the complaint.⁶⁰

Florida Bar Rules regarding Confidentiality of Client Information

Florida Bar Rule 4-1.6 (Client Confidentiality Rule) prohibits a lawyer, except in certain circumstances, from revealing information relating to a client's representation, unless the client gives informed consent.⁶¹

The Client Confidentiality Rule specifies situations in which a lawyer must disclose confidential information and situations in which a lawyer may reveal information. Disclosure is mandatory if the lawyer reasonably believes revealing such information is necessary to prevent a client from committing a crime or preventing death or substantial bodily harm.⁶² Disclosure is permitted, but not required, if the lawyer reasonably believes it is necessary to:

- Serve the client's interests, unless it is information the client specifically requires not to be disclosed;
- Establish a claim or defense on the lawyer's behalf in a controversy between the lawyer and client;

⁵⁵ Section 112.3122(4), F.S.

⁵⁶ Section 112.317(1), F.S.

⁵⁷ *Id.*

⁵⁸ Section 112.324(3), F.S.

⁵⁹ See ss. 112.324(4)-(10), F.S., to see which disciplinary authorities the Commission reports findings and make recommendations to.

⁶⁰ Section 112.317(7), F.S.

⁶¹ The Florida Bar, *Rules Regulating The Florida Bar*, available at https://www-media.floridabar.org/uploads/2024/03/2024_08-FEB-RRTFB-2-15-2024.pdf (last visited Mar. 13, 2024).

⁶² *Id.*

- Establish a defense to a criminal charge or civil claim against the lawyer based on conduct in which the client was involved;
- Respond to allegations in any proceeding concerning the lawyer's representation of the client;
- Comply with another Florida Bar rule;
- Detect and resolve conflicts of interests between lawyers in different firms arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or
- Respond to specific allegations published via the internet by a former client that the lawyer has engaged in criminal conduct punishable by law.⁶³

All lawyers must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to a client's representation.⁶⁴ When disclosure is mandated or permitted, the lawyer must disclose only the information required to meet the requirements or accomplish the purposes of the Client Confidentiality Rule.⁶⁵

Effect of the Bill

The bill creates the following statutory timeframes for completion of investigations of alleged ethics violations conducted by the Commission:

- Requires the Commission to complete its preliminary investigation, which concludes with the probable cause determination, no later than one year after the beginning of the preliminary investigation.
- Requires the Commission to begin a preliminary investigation within 30 days of the Commission's receipt of a technically and legally sufficient referral or complaint.
- Creates a 60-day deadline from the date of the Commission's receipt of an initial complaint for the complainant to file an amended complaint.
- Requires an investigatory report to be completed no later than 150 days after issuance of the order to investigate.
- Allows the Commission, at any one Commission meeting held during the preliminary investigation, to order a one-time extension for additional investigation up to 60 days; requires the Commission to document the reasons for extension during that meeting; and requires the Commission to transmit those documented reasons to the alleged violator and complainant within five days from the order of extension.
- Requires an investigatory report be transmitted to the alleged violator and counsel representing the Commission no later than five days after completion of the report.
- Requires the counsel representing the Commission to make a written probable cause recommendation to the Commission no later than 15 days after receiving an investigatory report.
- Requires the Commission to transmit the counsel's written recommendation to the alleged violator no later than five days after its completion.
- Requires the alleged violator be given 14 days to respond in writing after the mailing date of the counsel's written recommendation.
- Requires the Commission, upon receipt of the counsel's written recommendation, to schedule the probable cause hearing for the next Commission meeting, for which notice requirements can be met.
- Requires the Commission to transmit a copy of the order finding probable cause to the complainant and the alleged violator no later than five days after the date of the probable cause determination.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

- Requires the Commission to conduct an informal hearing no later than 75 days after the date of the probable cause determination.
- If jurisdiction of a case is relinquished back from DOAH without a recommended order, requires the Commission to take up the case at its next meeting, for which notice requirements can be met, and to complete final action on the case no later than the next subsequent Commission meeting.

The bill specifies the following implementing provisions related to the new timeframes:

- A failure of the Commission to comply with the new timeframes constitutes harmless error in any related disciplinary action unless a court finds that the fairness of the proceedings or the correctness of an action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.
- The timeframes are tolled pending resolution of a related criminal complaint.

The bill also makes the following changes to the Code of Ethics:

- Makes uniform for complaints and referrals the requirements for beginning an investigation.
- Requires ethics complaints be based on personal knowledge or information other than hearsay.
- Defines “counsel”⁶⁶ for purposes of the Commission’s investigative and hearing processes.
- Requires a two-thirds vote of Commission members present at a meeting to reject or deviate from a stipulation or settlement recommended by Commission counsel.
- Allows attorneys filing financial disclosures to remove identifying information about a client if disclosure would violate the Client Confidentiality Rule.
- Confirms the maximum civil penalty for a violation of the constitutional prohibition against lobbying by a public officer to those for other violations of ethics laws.
- Provides that terms of Commission members are limited to two total terms, rather than two consecutive terms.
- Adds candidates for public office to the categories of persons authorized to recover costs and attorney fees for defending against a maliciously filed ethics complaint.
- Makes clarifying changes and removes obsolete language.

With regard to the Code of Ethics, the bill also requires political subdivisions and agencies with additional or stricter ethical requirements to ensure any noncriminal complaint procedure:

- Require the complaint be written and signed under oath or affirmation by the person making the complaint.
- Require complaints be based on personal knowledge or information other than hearsay.
- Prohibit such political subdivisions or agencies from initiating complaints or investigations.
- Include a process for the recovery of costs and attorney fees in certain instances.

The bill provides that any existing or future ordinance or rule in conflict with these requirements is void.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The timeframes for complaint resolution may reduce costs to investigate and prosecute ethics violations by preventing unnecessary delays, and potential revision of internal policies and procedures and reorganization of staff responsibilities may provide for opportunity to increase efficiency and eliminate unnecessary cost or delay.

⁶⁶ The bill defines “counsel” for these purposes to mean an assistant attorney general, or in the event of a conflict of interest, an attorney not otherwise employed by the Commission.

2. Expenditures:

The provisions of the bill will require implementation by the Commission, including potential rulemaking, revision of internal policies and procedures, development of a case tracking process, and reorganization of staff duties and responsibilities, which might increase the need for additional staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.