

FOR CONSIDERATION By the Committee on Ethics and Elections

582-01747A-24

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1 A bill to be entitled
2 An act relating to ethics; amending s. 112.3122, F.S.;
3 increasing the maximum fine for violations of
4 specified lobbying provisions; amending s. 112.321,
5 F.S.; prohibiting a member of the Commission on Ethics
6 from serving more than two full terms, instead of two
7 full terms in succession; making technical changes;
8 deleting obsolete language; amending s. 112.317, F.S.;
9 providing that a complainant is liable for costs plus
10 reasonable attorney fees for filing a complaint with
11 malicious intent against a candidate for public
12 office; amending s. 112.324, F.S.; requiring the
13 commission to submit a copy of a certain referral to
14 an alleged violator within a specified timeframe;
15 specifying that complaints and referrals must be
16 technically, in addition to legally, sufficient for
17 the commission to undertake a preliminary
18 investigation and make a certain determination;
19 authorizing a complainant to submit an amended
20 complaint within a specified timeframe; providing that
21 the probable cause determination concludes the
22 preliminary investigation; requiring the commission to
23 complete a preliminary investigation, including a
24 probable cause determination, within a specified
25 timeframe; requiring the commission to determine
26 technical and legal sufficiency of complaints and
27 referrals within specified timeframes and issue an
28 order to investigate under a specified condition;
29 requiring that the commission complete an

582-01747A-24

20247014pb

30 investigatory report within a specified timeframe and
31 provide a copy of the completed report to an alleged
32 violator and counsel for the commission within a
33 specified timeframe; requiring counsel for the
34 commission to make a written recommendation for
35 disposition of a complaint within a specified
36 timeframe after receiving the investigatory report;
37 requiring that the commission provide such
38 recommendation to the violator within a specified
39 timeframe; providing that the alleged violator has a
40 specified timeframe to respond in writing to the
41 counsel's recommendation; requiring the commission,
42 upon receipt of the counsel's recommendation, to
43 schedule a probable cause hearing for the next
44 executive session of the commission if specified
45 conditions are met; providing that, under specified
46 conditions, the commission may dismiss complaints or
47 referrals before completion of a preliminary
48 investigation; providing a timeframe within which the
49 commission must notify a complainant and an alleged
50 violator after a finding of probable cause; specifying
51 that an alleged violator is entitled to request a
52 hearing before the Division of Administrative Hearings
53 or may select an informal hearing with the commission;
54 authorizing an investigation that must be completed
55 within a specified timeframe if a specified number of
56 commissioners determines further investigation is
57 necessary; requiring the commission to document the
58 reasons for ordering such investigation; providing the

582-01747A-24

20247014pb

59 timeframe within which the commission must conduct an
60 informal hearing; requiring the commission to schedule
61 a case that has been relinquished from the Division of
62 Administrative Hearings for additional action at the
63 next commission meeting; requiring the commission to
64 complete final action on such case within a specified
65 timeframe; requiring a specified number of
66 commissioners to vote to reject or deviate from a
67 recommendation made by counsel; providing that
68 specified timeframes are tolled until the completion
69 of a related criminal investigation or prosecution,
70 excluding appeals, whichever occurs later; providing
71 that a harmless error standard applies to the
72 commission regarding specified timeframes; providing
73 that specified timeframes apply retroactively and
74 prospectively; providing an effective date.

75
76 Be It Enacted by the Legislature of the State of Florida:

77
78 Section 1. Paragraph (b) of subsection (4) of section
79 112.3122, Florida Statutes, is amended to read:

80 112.3122 Enforcement and penalties for constitutional
81 prohibition against lobbying by a public officer.—

82 (4) A violation of s. 8(f), Art. II of the State
83 Constitution may be punished by one or more of the following:

84 (b) A civil penalty not to exceed \$20,000 ~~\$10,000~~.

85 Section 2. Subsection (1) of section 112.321, Florida
86 Statutes, is amended to read:

87 112.321 Membership, terms; travel expenses; staff.—

582-01747A-24

20247014pb

88 (1) The commission shall be composed of nine members. Five
89 of these members shall be appointed by the Governor, no more
90 than three of whom shall be from the same political party,
91 subject to confirmation by the Senate. One member appointed by
92 the Governor shall be a former city or county official and may
93 be a former member of a local planning or zoning board which has
94 only advisory duties. Two members shall be appointed by the
95 Speaker of the House of Representatives, and two members shall
96 be appointed by the President of the Senate. Neither the Speaker
97 of the House of Representatives nor the President of the Senate
98 shall appoint more than one member from the same political
99 party. Of the nine members of the Commission, no more than five
100 members shall be from the same political party at any one time.
101 A ~~No~~ member may not hold any public employment. An individual
102 who qualifies as a lobbyist pursuant to s. 11.045 or s. 112.3215
103 or pursuant to any local government charter or ordinance may not
104 serve as a member of the commission, ~~except that this~~
105 ~~prohibition does not apply to an individual who is a member of~~
106 ~~the commission on July 1, 2006, until the expiration of his or~~
107 ~~her current term.~~ A member of the commission may not lobby any
108 state or local governmental entity as provided in s. 11.045 or
109 s. 112.3215 or as provided by any local government charter or
110 ordinance, ~~except that this prohibition does not apply to an~~
111 ~~individual who is a member of the commission on July 1, 2006,~~
112 ~~until the expiration of his or her current term.~~ All members
113 shall serve 2-year terms. A member may not serve more than two
114 full terms ~~in succession.~~ Any member of the commission may be
115 removed for cause by majority vote of the Governor, the
116 President of the Senate, the Speaker of the House of

582-01747A-24

20247014pb

117 Representatives, and the Chief Justice of the Supreme Court.

118 Section 3. Subsection (7) of section 112.317, Florida
119 Statutes, is amended to read:

120 112.317 Penalties.—

121 (7) In any case in which the commission determines that a
122 person has filed a complaint against a public officer or
123 employee or a candidate for public office with a malicious
124 intent to injure the reputation of such officer or employee or
125 candidate by filing the complaint with knowledge that the
126 complaint contains one or more false allegations or with
127 reckless disregard for whether the complaint contains false
128 allegations of fact material to a violation of this part, the
129 complainant shall be liable for costs plus reasonable attorney
130 fees incurred in the defense of the person complained against,
131 including the costs and reasonable attorney fees incurred in
132 proving entitlement to and the amount of costs and fees. If the
133 complainant fails to pay such costs and fees voluntarily within
134 30 days following such finding by the commission, the commission
135 shall forward such information to the Department of Legal
136 Affairs, which shall bring a civil action in a court of
137 competent jurisdiction to recover the amount of such costs and
138 fees awarded by the commission.

139 Section 4. Subsections (1) and (3) of section 112.324,
140 Florida Statutes, are amended to read:

141 112.324 Procedures on complaints of violations and
142 referrals; public records and meeting exemptions.—

143 (1) The commission shall investigate an alleged violation
144 of this part or other alleged breach of the public trust within
145 the jurisdiction of the commission as provided in s. 8(f), Art.

582-01747A-24

20247014pb

146 II of the State Constitution:

147 (a) Upon a written complaint executed on a form prescribed
148 by the commission and signed under oath or affirmation by any
149 person; or

150 (b) Upon receipt of a written referral of a possible
151 violation of this part or other possible breach of the public
152 trust from the Governor, the Department of Law Enforcement, a
153 state attorney, or a United States Attorney which at least six
154 members of the commission determine is sufficient to indicate a
155 violation of this part or any other breach of the public trust.

156
157 Within 5 days after receipt of a complaint or referral by the
158 commission ~~or a determination by at least six members of the~~
159 ~~commission that the referral received is deemed sufficient~~, a
160 copy must ~~shall~~ be transmitted to the alleged violator.

161 (3) (a) A preliminary investigation must ~~shall~~ be undertaken
162 by the commission of each technically and legally sufficient
163 complaint or referral over which the commission has jurisdiction
164 to determine whether there is probable cause to believe that a
165 violation has occurred. A complainant may submit an amended
166 complaint up to 60 days after the commission receives the
167 initial complaint. The probable cause determination is the
168 conclusion of the preliminary investigation. The commission
169 shall complete the preliminary investigation, including the
170 probable cause determination, no later than 1 year after the
171 beginning of the preliminary investigation.

172 (b) The commission shall make a determination as to whether
173 a complaint is technically sufficient no later than 5 days after
174 receiving the complaint. The commission shall make a

582-01747A-24

20247014pb

175 determination as to whether a complaint is legally sufficient no
176 later than 21 days after receiving the complaint. The commission
177 shall make a determination as to whether a referral is
178 technically and legally sufficient at its next meeting.

179 (c) If the commission determines a complaint or referral is
180 technically and legally sufficient, it must issue an order to
181 investigate. An investigatory report must be completed no later
182 than 120 days after the beginning of the preliminary
183 investigation and must be provided to the alleged violator and
184 to counsel for the commission no later than 5 days after
185 completion of the report. The counsel for the commission shall
186 make a written recommendation to the commission for the
187 disposition of the complaint or referral no later than 15 days
188 after he or she receives the completed investigatory report. The
189 commission shall provide the counsel's written recommendation to
190 the alleged violator no later than 5 days after its completion.
191 The alleged violator has 14 days to respond in writing after the
192 mailing date of the counsel's recommendation.

193 (d) Upon receipt of the counsel's recommendation, the
194 commission must schedule a probable cause hearing for the next
195 executive session of the commission if notice requirements can
196 be met.

197 (e) If, ~~upon completion of the preliminary investigation,~~
198 the commission finds no probable cause to believe that this part
199 has been violated, or that no ~~any~~ other breach of the public
200 trust has been committed, the commission must ~~shall~~ dismiss the
201 complaint or referral with the issuance of a public report to
202 the complainant and the alleged violator, stating with
203 particularity its reasons for dismissal. At that time, the

582-01747A-24

20247014pb

204 complaint or referral and all materials relating to the
205 complaint or referral ~~shall~~ become a matter of public record.

206 (f) If the commission finds ~~from the preliminary~~
207 ~~investigation~~ probable cause to believe that this part has been
208 violated or that any other breach of the public trust has been
209 committed, it must ~~shall so~~ notify the complainant and the
210 alleged violator in writing no later than 5 days after the date
211 of the probable cause determination. Such notification and all
212 documents made or received in the disposition of the complaint
213 or referral ~~shall then~~ become public records. Upon request
214 submitted to the commission in writing, any person who the
215 commission finds probable cause to believe has violated any
216 provision of this part or has committed any other breach of the
217 public trust is ~~shall be~~ entitled to a public hearing and may
218 elect to have a formal administrative hearing conducted by an
219 administrative law judge in the Division of Administrative
220 Hearings. If the person does not elect to have a formal
221 administrative hearing by an administrative law judge, the
222 person is entitled to an informal hearing conducted before the
223 commission. Such person is ~~shall be~~ deemed to have waived the
224 right to a public hearing if the request is not received within
225 14 days following the mailing date of the probable cause
226 notification required by this paragraph ~~subsection~~. However, the
227 commission may, on its own motion, require a public hearing.7

228 (g) At a probable cause hearing, if at least six members of
229 the commission determine ~~may conduct such~~ further investigation
230 is necessary, the investigation may be ordered, and such
231 investigation may not exceed a period of 60 days ~~as it deems~~
232 necessary. During the probable cause hearing, the commission

582-01747A-24

20247014pb

233 must document the reasons for ordering the additional
234 investigation.

235 (h) If the commission conducts an informal hearing, it must
236 do so no later than 75 days after the date of the probable cause
237 determination.

238 (i) If the commission refers a case to the Division of
239 Administrative Hearings for a formal hearing and subsequently
240 requests that the case be relinquished back to the commission,
241 or if the administrative law judge assigned to the case
242 relinquishes jurisdiction back to the commission before a
243 recommended order is entered, the commission must schedule the
244 case for additional action at the next commission meeting and
245 must complete final action on the case no later than 30 days
246 after the date of that commission meeting.

247 (j) The commission, ~~and~~ may enter into such stipulations
248 and settlements as it finds to be just and in the best interest
249 of the state. The commission is without jurisdiction to, and no
250 respondent may voluntarily or involuntarily, enter into a
251 stipulation or settlement which imposes any penalty, including,
252 but not limited to, a sanction or admonition or any other
253 penalty contained in s. 112.317. Penalties may ~~shall~~ be imposed
254 only by the appropriate disciplinary authority as designated in
255 this section.

256 (k) At least six members of the commission must vote to
257 reject or deviate from a recommendation of counsel to the
258 commission.

259 (l) If a criminal complaint related to an investigation
260 pursuant to this section is filed, the timeframes in this
261 subsection are tolled until completion of the criminal

582-01747A-24

20247014pb

262 investigation or prosecution, excluding any appeals from such
263 prosecution, whichever occurs later.

264 (m) The failure of the commission to comply with the time
265 limits provided in this subsection constitutes harmless error in
266 any related disciplinary action unless a court finds that the
267 fairness of the proceedings or the correctness of an action may
268 have been impaired by a material error in procedure or a failure
269 to follow prescribed procedure.

270 (n) The timeframes provided in this subsection apply to
271 complaints and referrals submitted to the commission before, on,
272 or after July 1, 2024.

273 Section 5. This act shall take effect July 1, 2024.