

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1597 Ethics
SPONSOR(S): Brackett
TIED BILLS: IDEN./SIM. BILLS: CS/SB 7014

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics, Elections & Open Government Subcommittee	14 Y, 1 N, As CS	Skinner	Toliver
2) State Affairs Committee			

SUMMARY ANALYSIS

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, including:
 - Requires the Commission to begin a preliminary investigation within 30 days of receipt of a technically and legally sufficient referral or complaint.
 - Requires the Commission to complete their preliminary investigation no later than one year after the beginning of the preliminary investigation.
 - 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.
 - Requires the investigatory report be transmitted to the alleged violator and Commission counsel no later than five days after completion of the report.
 - Requires Commission counsel to make a written probable cause recommendation no later than 15 days after receiving an investigatory report.
 - Requires the Commission, upon receipt of the counsel's written recommendation, to schedule the probable cause hearing for the next applicable Commission meeting.
 - Requires the Commission to conduct an informal hearing no later than 75 days after the date of the probable cause determination.
- 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.
- Requires a vote of six Commission members to reject or deviate from a recommendation of counsel representing the Commission.
- Makes technical changes, such as clarifying terminology and removing obsolete language.

The bill might have a fiscal impact on state government but does not appear to have a fiscal impact on local governments. See Fiscal Analysis & Economic Impact Statement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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

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.”⁴ The Commission was created in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.⁵ The state constitution and state law designate the Commission as the independent commission referred to in the state constitution.⁶ 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.⁷ No more than five members of the Commission may be from the same political party and no member may hold public employment.⁸ Commissioners serve two year terms but may not serve more than two full terms consecutively.⁹ The Commission must employ an executive director¹⁰ who serves as the “chief administrative employee and is responsible for carrying out the directives of the Commission and for supervising its staff.”¹¹ The Commission’s duties consist, in part, of:

- Rendering advisory opinions to public officials.¹²
- Making recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws.¹³
- Administering the executive branch lobbying registration and reporting law.¹⁴
- Maintaining financial disclosure filings of constitutional officers and state officers and employees.¹⁵
- Administering automatic fines for public officers and employees who fail to timely file required annual financial disclosure.¹⁶

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 Jan. 20, 2024).

³ See Pt. III, Ch. 112, F.S.

⁴ Article II, s. 8(g), FLA. CONST.

⁵ 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 Jan. 20, 2024); See also s. 112.320, F.S.

⁶ Article II, s. 8(j)(3), FLA. CONST.; S. 112.320, F.S.

⁷ Section 112.321(1), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 112.321(4), F.S.

¹¹ 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 Jan. 20, 2024).

¹² Section 112.322(3)(a), F.S.

¹³ Section 112.322(2)(b), F.S.

¹⁴ Sections 112.3215 and 112.32155, F.S.

¹⁵ Section 112.3144, F.S.

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The Commission may make rules that are necessary to provide for its practices and procedures and to interpret disclosures and prohibitions.¹⁷

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.¹⁸ Within five days of receipt of either of those complaints, the Commission must transmit a copy to the alleged violator.¹⁹

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.²⁰ The investigator, after finishing the initial investigation, writes an investigatory report²¹ and transmits it to the alleged violator and to an advocate,²² who serves as counsel for the Commission on the matter.²³ The alleged violator is given 14 days from the mailing of the investigator's report to provide a written response.²⁴ Upon receipt of the investigator's report, the advocate must make a written probable cause recommendation to the Commission.²⁵ 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.²⁶ 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.²⁷

If the Commission does not find probable cause that the alleged violations were committed, the complaint or referral is dismissed.²⁸ 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 request a public hearing.²⁹ However, the Commission may require a public hearing — regardless of whether the alleged violator requests a hearing.³⁰ 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.³¹

The Commission may conduct a public hearing or transfer the case to the Division of Administrative Hearings (DOAH) for such hearing.³² For hearings conducted by the Commission, final orders³³ are

¹⁶ 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 Jan. 20, 2024).

¹⁷ Section 112.322(9)(a) and (b), F.S.

¹⁸ Section 112.324(1), F.S.

¹⁹ *Id.*

²⁰ Section 112.324(3), F.S.; *see* r. 34-5.002(2), F.A.C.

²¹ *See* r. 34-5.004(7), F.A.C.

²² 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.

²³ Rule 34-5.006(1) and (3), F.A.C.; r. 34-17.010(1) and (3), F.A.C.

²⁴ Rule 34-5.006(2), F.A.C.; r. 34-17.010(2), F.A.C.

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

²⁶ *Id.*

²⁷ Rule 34-5.006(4); r. 34-17.010(4), F.A.C.

²⁸ Section 112.324(3), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² 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.

³³ 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.

issued recommending a penalty.³⁴ For hearings conducted by a DOAH administrative law judge, the judge issues a recommended order to the Commission.³⁵ Jurisdiction may be relinquished back to the Commission from DOAH when a dispute of material fact no longer exists as determined by the administrative law judge.³⁶

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.³⁷ 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* violation³⁸ attributable to inadvertent or unintentional error.³⁹

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.⁴⁰ 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.⁴¹ 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.⁴²

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.⁴³

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.⁴⁴ 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.

³⁴ 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.

³⁵ 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.

³⁶ Section 120.57(1)(i), F.S.

³⁷ Section 112.324(12), F.S.

³⁸ A *de minimis* violation is any violation that is unintentional and not material in nature. Section 112.324(11)(b), F.S.

³⁹ Section 112.324(11)(a), F.S.

⁴⁰ Art. II, s. 8(f), FLA. CONST.

⁴¹ Art. II, s. 8(f)(2), FLA. CONST.

⁴² Art. II, s. 8(f)(3), FLA. CONST.

⁴³ Section 112.3122(4), F.S.

⁴⁴ Section 112.317(1), F.S.

- A civil penalty not to exceed \$20,000.
- Restitution of any pecuniary benefits received because of the violation committed.⁴⁵

Although the Commission does not have the authority to directly impose the above penalties,⁴⁶ 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.⁴⁷

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 such officer or employee's reputation, such complainant is liable for the costs and reasonable attorney fees related to the public officer or employee's defense against the complaint.⁴⁸

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 the 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.
- 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.

⁴⁵ *Id.*

⁴⁶ Section 112.324(3), F.S.

⁴⁷ See ss. 112.324(4)-(10), F.S., to see which disciplinary authorities the Commission reports findings and make recommendations to.

⁴⁸ Section 112.317(7), F.S.

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.
- 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.
- Requires a vote of six Commission members to reject or deviate from a recommendation of counsel representing the Commission.
- Makes technical changes, such as clarifying terminology and removing obsolete language.

B. SECTION DIRECTORY:

Section 1 amends s. 112.3122, F.S., relating to enforcement and penalties for constitutional prohibition against lobbying by a public officer.

Section 2 amends s. 112.321, F.S., relating to membership, terms; travel expenses; staff.

Section 3 amends s. 112.317, F.S., relating to penalties.

Section 4 amends s. 112.324, F.S., relating to procedures on complaints of violations and referrals; public records and meeting exemptions.

Section 5 provides an effective date of October 1, 2024.

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.

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, reorganization of staff duties and responsibilities, and 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The provisions of the bill will require implementation by the Commission, including potential rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.