

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1315 Local Ethics Agency or Commission Procedures

SPONSOR(S): Local & Federal Affairs Committee; Ethics & Elections Subcommittee, McBurney and others

TIED BILLS: HB 1317 **IDEN./SIM. BILLS:** CS/SB 1474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics & Elections Subcommittee	11 Y, 0 N	Davison	Marino
2) Local & Federal Affairs Committee	16 Y, 0 N, As CS	Dougherty	Rojas
3) State Affairs Committee			

SUMMARY ANALYSIS

Part III of Chapter 112, F.S., provides the Code of Ethics for Public Officers and Employees. The Commission on Ethics (Commission) is required to investigate complaints concerning breach of the public trust by public officers or employees under the Code of Ethics. Section 112.324, F.S., provides for the procedures on complaints of violations and referrals to the Commission.

Pursuant to section 112.326, F.S., the governing body of any political subdivision, by ordinance, or agency, by rule, is permitted to impose additional or more stringent standards of conduct and disclosure requirements than are contained in the Code of Ethics. The governing body of a political subdivision or agency may not adopt standards of conduct and disclosure requirements that conflict with the Code of Ethics.

If a local ethics entity finds probable cause that a local ethics ordinance was violated, CS/CS/HB 1315 entitles the respondent to a public hearing and to choose a local ethics entity or a hearing officer to conduct the hearing. This bill also requires the procedures concerning the public hearing to be established by the local ethics ordinance

The bill does not appear to have a fiscal impact on state government and may have an indeterminate negative fiscal impact on local governments that must modify current ethics complaint and investigative procedures.

The bill provides an effective date of October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Part III of Chapter 112, F.S., provides the Code of Ethics for Public Officers and Employees. The Commission on Ethics (Commission) is required to investigate complaints concerning breach of the public trust by public officers or employees under the Code of Ethics.¹ Section 112.324, F.S., provides for the procedures on complaints of violations and referrals to the Commission. The Commission may only initiate an investigation upon receipt of a sworn complaint from any person or a referral from the Governor, the Florida Department of Law Enforcement, a state attorney, or a United States Attorney. A complaint against a candidate in any special, primary, or general election may not be filed with the Commission on Election Day or 30 days prior to the election, unless the complaint is based on information other than hearsay.² The Commission must transmit a copy of the complaint or referral to the alleged violator within 5 days of receipt.³ The Executive Director first reviews the complaint for legal sufficiency.⁴

If the Executive Director determines that the complaint is sufficient to invoke the jurisdiction of the Commission, an investigation is conducted.⁵ After the investigation is completed, the Commission reviews the complaint and investigative findings to determine whether probable cause exists to believe that a violation has occurred.⁶ If the Commission determines that probable cause does not exist, the complaint is dismissed and all records become public record.⁷

If the Commission determines that probable cause exists to believe a violation has occurred, the officer or employee who is the subject of the complaint has a right to a public hearing.⁸ The Commission does not have the authority to impose penalties if a violation is found, but rather must forward its findings to the appropriate body or official for discipline.⁹ Also, if the Commission determines that probable cause exists, the complaint, files, and any further proceedings become public record.¹⁰ The subject of any complaint may waive, in writing, confidentiality of the complaint at any time during the proceedings.¹¹

The Commission may dismiss a complaint or referral during any stage of proceeding if it determines that the violation or alleged violation is a de minimis violation attributable to inadvertent or unintentional error. A violation is de minimis if it is unintentional and not material in nature, and if the interests of the public were protected despite the violation.¹²

Pursuant to section 112.326, F.S., the governing body of any political subdivision, by ordinance, or agency, by rule, may impose on its own officers and employees additional or more stringent standards of conduct and disclosure requirements than are contained in the Code of Ethics. However, a governing body may not adopt standards of conduct and disclosure requirements that conflict with the Code of Ethics. According to Integrity Florida, as of November 2012, twelve counties had adopted an ethics code that is more stringent than the state code. The more stringent requirements generally relate to voting conflicts, gifts, and financial disclosure.¹³

¹ Art. II, s. 8(f) Fla. Const.

² s. 112.324(2)(f), F.S.

³ s. 112.324(1), F.S. (2013).

⁴ s. 112.324(3), F.S. (2013).

⁵ *Id.*

⁶ s. 112.324(3), F.S. (2013).

⁷ *Id.*

⁸ *Id.*

⁹ s. 112.324(4)-(9), F.S. (2013).

¹⁰ s. 112.324(4), F.S. (2013).

¹¹ s. 112.324(2)(e), F.S. (2013).

¹² s. 112.324 (11)(a), F.S. (2013).

¹³ *Tough Choices: Florida Counties Bridge the Ethics Policy Gap*, LeRoy Collins Institute at Florida State University and Integrity Florida, November 2012, available at <http://www.integrityflorida.org/county-ethics-report/> (last visited March 21, 2014).

Effect of Proposed Changes

This bill entitles the respondent to a public hearing and to choose a local ethics entity or a hearing officer to conduct the hearing. This also requires the procedures concerning the public hearing to be established by the local ethics ordinance.

B. SECTION DIRECTORY:

Section 1: amends s. 112.326, F.S., requiring a local ethics agency or commission to establish certain procedures.

Section 2: provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: The bill may have an indeterminate negative fiscal impact on local governments that must modify current ethics complaint and investigative procedures.

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 revenues or expenditures of county or municipal governments.

2. Other: None.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is not provided in the bill and additional rulemaking authority does not appear to be necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The language regarding the public hearing may be considered vague. The bill allows a respondent to choose a hearing officer "who is not a member of the local ethics agency, board, or commission" to

conduct the hearing, but does not provide any further guidance. However, the bill does require the local ethics ordinance to establish procedures concerning the request and waiver of a hearing and so the requirements for the hearing officer may be prescribed in such an ordinance.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the Ethics & Elections Subcommittee considered, approved, and reported favorably a Proposed Committee Substitute revising the original bill.

On April 3, 2014, the Local & Federal Affairs Committee considered, approved, and reported favorably a strike-all amendment. This amendment entitles the respondent to a public hearing and to choose a local ethics entity or a hearing officer to conduct the hearing. This also requires the procedures concerning the public hearing to be established by the local ethics ordinance. This analysis is drawn to the PCS.