

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Ethics and Elections

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BILL: SPB 7006

INTRODUCER: Ethics and Elections Committee

SUBJECT: Penalties for Violations of the Constitutional Prohibition Against Abuse of Public Position

DATE: November 13, 2019      REVISED: \_\_\_\_\_

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| ANALYST            | STAFF DIRECTOR | REFERENCE | ACTION                                |
|--------------------|----------------|-----------|---------------------------------------|
| 1. <u>Mitchell</u> | <u>Roberts</u> | _____     | <b>EE Submitted as Comm. Bill/Fav</b> |

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**I. Summary:**

SPB 7006 reenacts s. 112.317, F.S., which provides penalties for violations of the Florida Code of Ethics for Public Officers and Employees and for any violation of Article II, section 8 of the Florida Constitution.

The reenactment of s. 112.317, F.S., will make the section applicable to amendments to the Florida Constitution by Amendment 12 adopted in the 2018 general election. The amended constitutional language prohibits a public officer or public employee from abusing his or her public position in order to obtain a disproportionate benefit. Penalties under s. 112.317, F.S., include impeachment and removal from office, public censure and reprimand, a civil penalty not to exceed \$10,000, and restitution, among other punishments.

Amendment 12 provides that the abuse of public position prohibition takes effect on December 31, 2020. The amendment also requires the Legislature to enact implementing legislation establishing penalties for violations of the prohibition to take effect on the same day.

SPB 7006's reenactment of s. 112.317, F.S., effective December 31, 2020, makes the penalty provisions of the section applicable to the constitutional prohibition. This meets the requirement of the Amendment 12 schedule language.

**II. Present Situation:**

**Implementation of Amendment 12, Lobbying and Abuse of Office by Public Officers**

Amendment 12, sponsored by President Gaetz in the 2018 Constitution Revision Commission, was adopted during the 2018 election with 78.92% support.<sup>1</sup>

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<sup>1</sup> Div. of Elections, Fla. Dep't of State, *November 6, 2018 General Election*, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/6/2018&DATAMODE=> (last visited Nov. 11, 2019).

Effective December 31, 2022,<sup>2</sup> the amendment adds a new, more expansive, 6-year lobby ban on statewide elected officials, county elected officials, members of the Legislature, judges, elected special district officers, and executive agency heads. The Legislature may enact legislation to implement the ban, including defining terms and providing penalties for violations.<sup>3</sup> This part of Amendment 12 is not addressed by SPB 7006.

Effective December 31, 2020,<sup>4</sup> Amendment 12 also prohibits a public officer or public employee from abusing his or her public position in order to obtain a “disproportionate benefit.”

“Disproportionate benefit” may not be obtained by the public officer or public employee 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.<sup>5</sup>

Amendment 12 further provides that by October 1, 2019,<sup>6</sup> the Florida Commission on Ethics (Commission) is required, by rule in accordance with statutory procedures governing administrative rulemaking, to define “disproportionate benefit” and prescribe the requisite intent for finding a violation of the prohibition against abuse of public position.<sup>7</sup>

Following adoption of the Commission’s rules, Amendment 12 requires the Legislature to enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.<sup>8</sup> SPB 7006 is proposed as the implementing legislation that establishes penalties for violations of the prohibition.

### **The Florida Commission on Ethics and the Imposition of Penalties for Ethics Violations**

Florida’s Constitution<sup>9</sup> and state law<sup>10</sup> provide that the 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 Florida Code of Ethics for Public Officers and Employees (Code of Ethics).<sup>11</sup> While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation. Instead, whenever the Commission finds 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.<sup>12</sup> The Commission must make such submission to the Senate President or Speaker of the House, whichever is applicable, in any case

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<sup>2</sup> FLA. CONST. art. XII, s. 38.

<sup>3</sup> FLA. CONST. art. II, s. 8. See Note.

<sup>4</sup> FLA. CONST. art. XII, s. 38.

<sup>5</sup> FLA. CONST. art. II, s. 8. See Note.

<sup>6</sup> FLA. CONST. art. XII, s. 38.

<sup>7</sup> FLA. CONST. art. II, s. 8. See Note.

<sup>8</sup> FLA. CONST. art. XII, s. 38.

<sup>9</sup> FLA. CONST. art. II, s. 8(i)(3).

<sup>10</sup> Section 112.320, F.S.

<sup>11</sup> Part III (ss. 112.311 – 112.3261), ch. 112, F.S.

<sup>12</sup> Section 112.324, F.S.

concerning a former legislator who is alleged to have violated a provision applicable to former legislators or whose alleged conduct occurred while a member of the Legislature. In the case of a former statewide elected officer, the Commission is required to make such submission to the Governor.<sup>13</sup>

### **Penalties for Violations of the Florida Code of Ethics for Public Officers and Employees**

Section 112.317, F.S., provides penalties for violations of the Code of Ethics. In addition to any criminal or other civil penalties that may be applicable, violations of the Code of Ethics, including any violation of Article II, section 8 of The Florida Constitution, may be punished by, one or more of the following:

- In the case of a public officer:
  - Impeachment.
  - Removal from office.
  - Suspension from office.
  - Public censure and reprimand.
  - Forfeiture of no more than one-third of his or her salary per month for no more than 12 months.
  - A civil penalty not to exceed \$10,000.
  - Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of which the public officer was a member or to the General Revenue Fund.
- In the case of an employee or a person designated as a public officer by this part who otherwise would be deemed to be an employee:
  - Dismissal from employment.
  - Suspension from employment for not more than 90 days without pay.
  - Demotion.
  - Reduction in his or her salary level.
  - Forfeiture of no more than one-third salary per month for no more than 12 months.
  - A civil penalty not to exceed \$10,000.
  - Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency by which the public employee was employed, or of which the officer was deemed to be an employee, or to the General Revenue Fund.
  - Public censure and reprimand.
- In the case of a former public officer or employee who has violated a provision applicable to former officers or employees or whose violation occurred before the officer's or employee's leaving public office or employment:
  - Public censure and reprimand.
  - A civil penalty not to exceed \$10,000.
  - Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund.<sup>14</sup>

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<sup>13</sup> Id.

<sup>14</sup> Section 112.317(1), F.S.

The Attorney General must bring a civil action to recover a civil or restitution penalty imposed by the proper disciplinary official or body under s. 112.324, F.S., in any case in which the Commission finds a violation of the Code of Ethics or of Article II, section 8 of the Florida Constitution. The Attorney General must collect any costs, attorney fees, expert witness fees, or other costs of collection incurred in bringing the action.<sup>15</sup>

A violation of the Code of Ethics or of Article II, section 8 of the Florida Constitution by a public officer constitutes malfeasance, misfeasance, or neglect of duty in office within the meaning of Article IV, section 7 of the Florida Constitution.<sup>16</sup>

Section 112.317, F.S., was last amended in 2013. Prohibitions or violations adopted or enacted after the last enactment of the section are not governed by its penalty provisions until a subsequent reenactment of the section.

### **Rulemaking by the Florida Commission on Ethics**

The Commission has adopted Rule 34-18.001 of the Florida Administrative Code, effective September 30, 2019. The rule defines the term “disproportionate benefit” and prescribes the requisite intent for finding a violation of the prohibition against abuse of public position by a public officer or public employee in order to obtain a disproportionate benefit, both required by Amendment 12.

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.<sup>17</sup>

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.<sup>18</sup>

### **III. Effect of Proposed Changes:**

SPB 7006 reenacts s. 112.317, F.S., the statutory section in the Code of Ethics<sup>19</sup> that provides penalties for violations of the Code of Ethics and for any violation of Article II, section 8 of the Florida Constitution.<sup>20</sup>

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<sup>15</sup> Section 112.317(2), F.S.

<sup>16</sup> Section 112.317(4), F.S.

<sup>17</sup> Fla. Admin. Code R. 34-18.001(2)(2019).

<sup>18</sup> Fla. Admin. Code R. 34-18.001(4)(2019).

<sup>19</sup> Part III (ss. 112.311 – 112.3261), ch. 112, F.S.

<sup>20</sup> Section 112.317(1), F.S.

The reenactment of s. 112.317, F.S., will make the penalty provisions of the section applicable to Article II, section 8, subsection (h), paragraph (2) of the Florida Constitution, as amended by Amendment 12 adopted in the 2018 general election.<sup>21</sup> The amended language provides that:

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.<sup>22</sup>

The amendment also requires appropriate penalties to be prescribed by law.<sup>23</sup> The enactment of this bill will apply the penalty provisions of s. 112.317, F.S., to violations of the prohibition against abuse of public position in Amendment 12.

Schedule language in Amendment 12 provides that the amendments to Article II, Section 8(h) of the Florida Constitution take effect December 31, 2020.<sup>24</sup> The language requires the Florida Commission on Ethics by rule to define the term “disproportionate benefit” and prescribe the requisite intent for finding a violation of the prohibition against abuse of public position by October 1, 2019.<sup>25</sup> Amendment 12 language also provides that following the adoption of these rules by the Commission, the Legislature must enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.<sup>26</sup>

The effective date of SPB 7006 is December 31, 2020. The bill’s reenactment of s. 112.317, F.S., effective December 31, 2020, makes the penalty provisions of the section applicable to the amended provisions of Article II, section 8, subsection (h) of the Florida Constitution that take effect the same day and follow the adoption of Rule 34-18.001 of the Florida Administrative Code by the Commission, effective September 30, 2019. This meets the requirement of the Amendment 12 schedule language.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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

##### **B. Public Records/Open Meetings Issues:**

None.

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<sup>21</sup> After these amendatory provisions become effective on December 31, 2020, this reference will be “Article II, section 8, subsection (g), paragraph (2)” until other amendments to s. 8, Art. II take effect December 31, 2022, after which the subsection designation will be (h).

<sup>22</sup> FLA. CONST. art. II, s. 8. See Note.

<sup>23</sup> Id.

<sup>24</sup> FLA. CONST. art. XII, s. 38.

<sup>25</sup> Id.

<sup>26</sup> Id.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill reenacts section 112.317 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.