

By Senator Saunders

25-39B-02

1 A bill to be entitled
2 An act relating to ethics; amending s.
3 112.3148, F.S.; providing that gifts are valued
4 at fair market value for reporting purposes;
5 amending s. 112.317, F.S.; authorizing the
6 Attorney General to collect fees and costs
7 associated with collecting civil and
8 restitution penalties imposed for ethics
9 violations; amending s. 112.321, F.S.;
10 clarifying when a vacancy exists on the Florida
11 Commission on Ethics and providing procedures
12 for filling vacancies; amending s. 112.3231,
13 F.S.; clarifying time limitations; amending s.
14 112.324, F.S.; authorizing the Commission on
15 Ethics to initiate investigations under certain
16 circumstances; abrogating mandated legislative
17 review and repeal of an exemption from
18 public-records requirements; providing an
19 effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Paragraph (a) of subsection (7) of section
24 112.3148, Florida Statutes, is amended to read:

25 112.3148 Reporting and prohibited receipt of gifts by
26 individuals filing full or limited public disclosure of
27 financial interests and by procurement employees.--

28 (7)(a) The value of a gift provided to a reporting
29 individual or procurement employee shall be its fair market
30 value ~~determined using actual cost to the donor~~, less taxes
31 and gratuities, except as otherwise provided in this

1 subsection, and, with respect to personal services provided by
2 the donor, the reasonable and customary charge regularly
3 charged for such service in the community in which the service
4 is provided shall be used. If additional expenses are
5 required as a condition precedent to eligibility of the donor
6 to purchase or provide a gift and such expenses are primarily
7 for the benefit of the donor or are of a charitable nature,
8 such expenses shall not be included in determining the value
9 of the gift.

10 Section 2. Subsection (2) of section 112.317, Florida
11 Statutes, is amended to read:

12 112.317 Penalties.--

13 (2) In any case in which the commission finds a
14 violation of this part or of s. 8, Art. II of the State
15 Constitution and the proper disciplinary official or body
16 under s. 112.324 imposes ~~recommends~~ a civil penalty or
17 restitution penalty, the Attorney General shall bring a civil
18 action to recover such penalty. No defense may be raised in
19 the civil action to enforce the civil penalty or order of
20 restitution that could have been raised by judicial review of
21 the administrative findings and recommendations of the
22 commission by certiorari to the district court of appeal. The
23 Attorney General may collect any costs, attorney's fees,
24 expert witness fees, or other costs of collection incurred in
25 bringing such actions.

26 Section 3. Subsection (1) of section 112.321, Florida
27 Statutes, is amended to read:

28 112.321 Membership, terms; travel expenses; staff.--

29 (1) The commission shall be composed of nine members.
30 Five of these members shall be appointed by the Governor, no
31 more than three of whom shall be from the same political

1 party, subject to confirmation by the Senate. One member
2 appointed by the Governor shall be a former city or county
3 official and may be a former member of a local planning or
4 zoning board which has only advisory duties. Two members shall
5 be appointed by the Speaker of the House of Representatives,
6 and two members shall be appointed by the President of the
7 Senate. Neither the Speaker of the House of Representatives
8 nor the President of the Senate shall appoint more than one
9 member from the same political party. Of the nine members of
10 the commission, no more than five members may ~~shall~~ be from
11 the same political party at any one time. If any member of the
12 commission changes party affiliation and as a result more than
13 five members have the same party affiliation, a vacancy shall
14 exist in that office as of the date of the party change. The
15 officer who appointed the member who changed parties shall
16 fill the vacancy in accordance with this subsection. A ~~No~~
17 member may not hold any public employment. All members shall
18 serve 2-year terms. A ~~No~~ member may not ~~shall~~ serve more than
19 two full terms in succession. Any member of the commission may
20 be removed for cause by majority vote of the Governor, the
21 President of the Senate, the Speaker of the House of
22 Representatives, and the Chief Justice of the Supreme Court.

23 Section 4. Subsections (1) and (3) of section
24 112.3231, Florida Statutes, are amended to read:

25 112.3231 Time limitations.--

26 (1) ~~On or after October 1, 1993,~~All sworn complaints
27 alleging a violation of this part, or ~~of~~ any other breach of
28 the public trust within the jurisdiction of the Commission on
29 Ethics under s. 8, Art. II of the State Constitution, must
30 ~~shall~~ be filed with the commission within 5 years after ~~of~~ the
31 alleged violation or other breach of the public trust. For

1 information or referrals received by the commission pursuant
2 to s. 112.324, the determination by at least seven members
3 that the information or referral is sufficient to indicate a
4 breach of the public trust must be made within 5 years after
5 the alleged violation.

6 (3) The applicable period of limitation is tolled on
7 the day a sworn complaint against the public officer,
8 employee, or candidate is filed with the Commission on Ethics.
9 For information or referrals received by the commission
10 pursuant to s. 112.324, the applicable period of limitation is
11 tolled upon a determination by at least seven of the members
12 that the information or referral is sufficient to indicate a
13 breach of the public trust.If it can be concluded from the
14 face of the complaint that the applicable period of limitation
15 has run, the complaint shall be dismissed and the commission
16 shall issue a public report.

17 Section 5. Section 112.324, Florida Statutes, is
18 amended to read:

19 112.324 Procedures on complaints of violations.--

20 ~~(1)(a) Upon a written complaint executed on a form~~
21 ~~prescribed by the commission and signed under oath or~~
22 ~~affirmation by any person,~~The commission shall investigate
23 any alleged violation of this part or any other alleged breach
24 of the public trust within the jurisdiction of the commission
25 as provided in s. 8(f), Art. II of the State Constitution:

26 1. Upon a written complaint executed on a form
27 prescribed by the commission and signed under oath or
28 affirmation by any person;

29 2. Upon receipt of reliable and publicly disseminated
30 information which at least seven of the members of the
31 commission consider sufficient to indicate a breach of the

1 public trust, provided that commission staff shall undertake
2 no formal investigation other than collecting publicly
3 disseminated information prior to a determination of
4 sufficiency by at least seven members of the commission; or

5 3. Upon receipt of a written referral of a possible
6 violation of this part or other possible breach of the public
7 trust from the Governor, the Chief Financial Officer, a State
8 Attorney, the Executive Director of the Department of Law
9 Enforcement, or the Statewide Prosecutor, which at least seven
10 of the members of the commission consider sufficient to
11 indicate a breach of the public trust.~~in accordance with~~
12 ~~procedures set forth herein.~~

13 (b) Within 5 days after receipt of a complaint or
14 other information provided pursuant to paragraph (a),~~by the~~
15 commission shall transmit,~~a copy shall be transmitted~~ to the
16 alleged violator.

17 (c) All proceedings, the complaint, and other records
18 relating to the preliminary investigation as provided herein,
19 or as provided by a Commission on Ethics and Public Trust
20 established by any county defined in s. 125.011(1), are shall
21 ~~be~~ confidential and exempt from the provisions of s.
22 119.07(1), and s. 24(a), Art. I of the State Constitution,
23 ~~either~~ until the alleged violator requests in writing that
24 such investigation and records be made public records or the
25 preliminary investigation is completed, notwithstanding any
26 provision of chapter 120 or s. 286.011 and s. 24(b), Art. I of
27 the State Constitution. ~~In no event shall~~

28 (d) A complaint, information, or referral under this
29 part against a candidate in any general, special, or primary
30 election may not be filed nor may ~~or~~ any intention of filing
31 such a complaint be disclosed on the day of any ~~such~~ election

1 or within the 5 days immediately preceding the date of the
2 election. ~~This subsection is repealed October 2, 2002, and~~
3 ~~must be reviewed by the Legislature before that date in~~
4 ~~accordance with s. 119.15, the Open Government Sunset Review~~
5 ~~Act of 1995.~~

6 (2) A preliminary investigation shall be undertaken by
7 the commission of each legally sufficient complaint,
8 information, or referral over which the commission has
9 jurisdiction to determine whether there is probable cause to
10 believe that a violation has occurred. If, upon completion of
11 the preliminary investigation, the commission finds no
12 probable cause to believe that this part has been violated or
13 that any other breach of the public trust has been committed,
14 the commission shall dismiss the complaint or proceeding with
15 the issuance of a public report to the complainant and the
16 alleged violator, stating with particularity its reasons for
17 dismissal ~~of the complaint~~. At that time, the complaint, the
18 proceeding, and all materials relating to the complaint and
19 proceeding shall become a matter of public record. If the
20 commission finds from the preliminary investigation probable
21 cause to believe that this part has been violated or that any
22 other breach of the public trust has been committed, it shall
23 so notify the complainant, if applicable, and the alleged
24 violator in writing. Such notification and all documents made
25 or received in the disposition of the complaint or proceeding
26 shall then become public records. Upon request submitted to
27 the commission in writing, any person who the commission finds
28 probable cause to believe has violated any provision of this
29 part or has committed any other breach of the public trust
30 shall be entitled to a public hearing. Such person shall be
31 deemed to have waived the right to a public hearing if the

1 request is not received within 14 days following the mailing
2 of the probable cause notification required by this
3 subsection. However, the commission may on its own motion,
4 require a public hearing, may conduct such further
5 investigation as it deems necessary, and may enter into such
6 stipulations and settlements as it finds to be just and in the
7 best interest of the State. The commission is without
8 jurisdiction to, and no respondent may voluntarily or
9 involuntarily, enter into a stipulation or settlement which
10 imposes any penalty, including, but not limited to, a sanction
11 or admonition or any other penalty contained in s. 112.317.
12 Penalties shall be imposed only by the appropriate
13 disciplinary authority as designated in this section.

14 (3) If, in cases pertaining to members of the
15 Legislature, upon completion of a full and final investigation
16 by the commission, the commission finds that there has been a
17 violation of this part or of any provision of s. 8, Art. II of
18 the State Constitution, the commission shall forward a copy of
19 the complaint, information, or referral and its findings by
20 certified mail to the President of the Senate or the Speaker
21 of the House of Representatives, whichever is applicable, who
22 shall refer the matter ~~complaint~~ to the appropriate committee
23 for investigation and action, which committee shall be
24 governed by the rules of its respective house. ~~It shall be the~~
25 ~~duty of~~ The committee shall ~~to~~ report its final action upon
26 the matter ~~complaint~~ to the commission within 90 days after ~~of~~
27 the date of transmittal to the respective house. Upon request
28 of the committee, the commission shall submit a recommendation
29 as to what penalty, if any, should be imposed. In the case of
30 a member of the Legislature, the house in which the member

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1 serves shall have the power to invoke the penalty provisions
2 of this part.

3 (4) If, in cases pertaining to complaints or
4 proceedings against impeachable officers, upon completion of a
5 full and final investigation by the commission, the commission
6 finds that there has been a violation of this part or of any
7 provision of s. 8, Art. II of the State Constitution, and the
8 commission finds that the violation may constitute grounds for
9 impeachment, the commission shall forward a copy of the
10 complaint, information, or referral and its findings by
11 certified mail to the Speaker of the House of Representatives,
12 who shall refer the matter ~~complaint~~ to the appropriate
13 committee for investigation and action, which committee shall
14 be governed by the rules of the House of Representatives. ~~It~~
15 ~~shall be the duty of~~ The committee shall ~~to~~ report its final
16 action upon the matter ~~complaint~~ to the commission within 90
17 days after ~~of~~ the date of transmittal.

18 (5) If the commission finds that there has been a
19 violation of this part or of any provision of s. 8, Art. II of
20 the State Constitution by an impeachable officer other than
21 the Governor, and the commission recommends public censure and
22 reprimand, forfeiture of a portion of the officer's salary, a
23 civil penalty, or restitution, the commission shall report its
24 findings and recommendation of disciplinary action to the
25 Governor, who shall have the power to invoke the penalty
26 provisions of this part.

27 (6) If the commission finds that there has been a
28 violation of this part or of any provision of s. 8, Art. II of
29 the State Constitution by the Governor, and the commission
30 recommends public censure and reprimand, forfeiture of a
31 portion of the Governor's salary, a civil penalty, or

1 restitution, the commission shall report its findings and
2 recommendation of disciplinary action to the Attorney General,
3 who shall have the power to invoke the penalty provisions of
4 this part.

5 (7) If, in cases pertaining to persons other than
6 ~~complaints other than complaints against~~ impeachable officers
7 or members of the Legislature, upon completion of a full and
8 final investigation by the commission, the commission finds
9 that there has been a violation of this part or of s. 8, Art.
10 II of the State Constitution, ~~it shall be the duty of the~~
11 commission shall ~~to~~ report its findings and recommend
12 appropriate action to the proper disciplinary official or body
13 as follows, and such official or body may ~~shall have the power~~
14 ~~to~~ invoke the penalty provisions of this part, including
15 ordering the power to order the appropriate elections official
16 to remove a candidate from the ballot for a violation of s.
17 112.3145 or s. 8(a) and (i), Art. II of the State
18 Constitution:

19 (a) The President of the Senate and the Speaker of the
20 House of Representatives, jointly, in any case concerning the
21 Public Counsel, members of the Public Service Commission,
22 members of the Public Service Commission Nominating Council,
23 the Auditor General, the director of the Office of Program
24 Policy Analysis and Government Accountability, or members of
25 the Legislative Committee on Intergovernmental Relations.

26 (b) The Supreme Court, in any case concerning an
27 employee of the judicial branch.

28 (c) The President of the Senate, in any case
29 concerning an employee of the Senate; the Speaker of the House
30 of Representatives, in any case concerning an employee of the
31 House of Representatives; or the President and the Speaker,

1 jointly, in any case concerning an employee of a committee of
2 the Legislature whose members are appointed solely by the
3 President and the Speaker or in any case concerning an
4 employee of the Public Counsel, Public Service Commission,
5 Auditor General, Office of Program Policy Analysis and
6 Government Accountability, or Legislative Committee on
7 Intergovernmental Relations.

8 (d) Except as otherwise provided by this part, the
9 Governor, in the case of any other public officer, public
10 employee, former public officer or public employee, candidate,
11 or former candidate.

12 (e) The President of the Senate or the Speaker of the
13 House of Representatives, whichever is applicable, in any case
14 concerning a former member of the Legislature who has violated
15 a provision applicable to former members or whose violation
16 occurred while he or she was a member of the Legislature.

17 (8) In addition to reporting its findings to the
18 proper disciplinary body or official, the commission shall
19 report these findings to the state attorney or any other
20 appropriate official or agency having authority to initiate
21 prosecution when violation of criminal law is indicated.

22 (9) Notwithstanding the foregoing procedures of this
23 section, a sworn complaint, information, or referral against
24 any member or employee of the Commission on Ethics for
25 violation of this part or of s. 8, Art. II of the State
26 Constitution shall be filed with the President of the Senate
27 and the Speaker of the House of Representatives. Each
28 presiding officer shall, after determining that there are
29 sufficient grounds for review, appoint three members of his or
30 her ~~their~~ respective body ~~bodies~~ to a special joint committee
31 to who shall investigate the allegations ~~complaint~~. The

1 members shall elect a chair from among their number. If the
2 special joint committee finds insufficient evidence to
3 establish probable cause to believe a violation of this part
4 or of s. 8, Art. II of the State Constitution has occurred, it
5 shall dismiss the matter ~~complaint~~. If, upon completion of its
6 preliminary investigation, the committee finds sufficient
7 evidence to establish probable cause to believe a violation
8 has occurred, the chair thereof shall transmit such findings
9 to the Governor, who shall convene a meeting of the Governor,
10 the President of the Senate, the Speaker of the House of
11 Representatives, and the Chief Justice of the Supreme Court to
12 take such final action on the matter ~~complaint~~ as they
13 consider ~~shall deem~~ appropriate, consistent with the penalty
14 provisions of this part. Upon request of a majority of the
15 Governor, the President of the Senate, the Speaker of the
16 House of Representatives, and the Chief Justice of the Supreme
17 Court, the special joint committee shall submit a
18 recommendation as to what penalty, if any, should be imposed.

19 (10) Notwithstanding the provisions of subsections
20 (1)-(7), the commission may, at its discretion, dismiss any
21 complaint or proceeding at any stage of disposition should it
22 determine that the public interest would not be served by
23 proceeding further, in which case the commission shall issue a
24 public report stating with particularity its reasons for the
25 dismissal. The investigation of facts and parties materially
26 related to a complaint, as provided in s. 112.322(1) and
27 pursuant to the definitions contained in s. 112.312(11) and
28 (18), and the amendment of s. 112.3143 shall apply only to
29 alleged violations occurring after May 24, 1991.

30 Section 6. This act shall take effect October 1, 2002.
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SENATE SUMMARY

Revises provisions relating to the code of ethics for public officers and employees. Provides that gifts are to be valued at fair market value. Authorizes the Attorney General to obtain reimbursement of fees and costs associated with collecting civil and restitution penalties imposed for ethics violations. Provides for filling vacancies on the Commission on Ethics and authorizes the commission to initiate investigations under certain circumstances.