

By the Committee on State Administration and  
 Representative Brummer

1                                   A bill to be entitled  
 2           An act relating to public records and public  
 3           meeting exemptions regarding complaints of  
 4           ethics violations; amending s. 112.324, F.S.,  
 5           which provides an exemption from public records  
 6           requirements for certain information held by  
 7           the Commission on Ethics and a Commission on  
 8           Ethics and Public Trust regarding complaints of  
 9           ethics violations and an exemption from public  
 10          meeting requirements for commission proceedings  
 11          held pursuant to such complaints; reenacting  
 12          such exemptions and removing the October 2,  
 13          2002, repeal thereof scheduled under the Open  
 14          Government Sunset Review Act of 1995;  
 15          clarifying language; deleting obsolete  
 16          language; providing an effective date.

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

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 20           Section 1. Notwithstanding the October 2, 2002, repeal  
 21 of said section scheduled pursuant to the Open Government  
 22 Sunset Review Act of 1995, section 112.324, Florida Statutes,  
 23 is reenacted and amended to read:

24           112.324 Procedures on complaints of violations; public  
 25 records and meeting exemptions.--

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, the commission shall investigate  
 29 any alleged violation of this part or any other alleged breach  
 30 of the public trust within the jurisdiction of the commission  
 31 as provided in s. 8(f), Art. II of the State Constitution in

1 accordance with procedures set forth herein. Within 5 days  
2 after receipt of a complaint by the commission, a copy shall  
3 be transmitted to the alleged violator.  
4 (2) All proceedings,The complaint,and other records  
5 relating to the complaint or to any preliminary investigation  
6 held by the commission or its agents or as provided herein, or  
7 as provided by a Commission on Ethics and Public Trust  
8 established by any county defined in s. 125.011(1), are shall  
9 be confidential and exempt from the provisions of s.  
10 119.07(1),and s. 24(a), Art. I of the State Constitution, and  
11 any proceeding conducted by the commission or a Commission on  
12 Ethics and Public Trust, pursuant to a complaint or  
13 preliminary investigation, is exempt from the provisions of s.  
14 286.011, s. 24(b), Art. I of the State Constitution, and s.  
15 120.525, either until the complaint is dismissed as legally  
16 insufficient, until the alleged violator requests in writing  
17 that such investigation and records and proceedings be made  
18 public,records or until the commission or a Commission on  
19 Ethics and Public Trust determines, based on such  
20 investigation, whether probable cause exists to believe that a  
21 violation has occurred ~~the preliminary investigation is~~  
22 ~~completed, notwithstanding any provision of chapter 120 or s.~~  
23 ~~286.011 and s. 24(b), Art. I of the State Constitution.~~ In no  
24 event shall a complaint under this part against a candidate in  
25 any general, special, or primary election be filed or any  
26 intention of filing such a complaint be disclosed on the day  
27 of any such election or within the 5 days immediately  
28 preceding the date of the election. ~~This subsection is~~  
29 ~~repealed October 2, 2002, and must be reviewed by the~~  
30 ~~Legislature before that date in accordance with s. 119.15, the~~  
31 ~~Open Government Sunset Review Act of 1995.~~

1           (3)~~(2)~~ A preliminary investigation shall be undertaken  
2 by the commission of each legally sufficient complaint over  
3 which the commission has jurisdiction to determine whether  
4 there is probable cause to believe that a violation has  
5 occurred. If, upon completion of the preliminary  
6 investigation, the commission finds no probable cause to  
7 believe that this part has been violated or that any other  
8 breach of the public trust has been committed, the commission  
9 shall dismiss the complaint with the issuance of a public  
10 report to the complainant and the alleged violator, stating  
11 with particularity its reasons for dismissal of the complaint.  
12 At that time, the complaint and all materials relating to the  
13 complaint shall become a matter of public record. If the  
14 commission finds from the preliminary investigation probable  
15 cause to believe that this part has been violated or that any  
16 other breach of the public trust has been committed, it shall  
17 so notify the complainant and the alleged violator in writing.  
18 Such notification and all documents made or received in the  
19 disposition of the complaint shall then become public records.  
20 Upon request submitted to the commission in writing, any  
21 person who the commission finds probable cause to believe has  
22 violated any provision of this part or has committed any other  
23 breach of the public trust shall be entitled to a public  
24 hearing. Such person shall be deemed to have waived the right  
25 to a public hearing if the request is not received within 14  
26 days following the mailing of the probable cause notification  
27 required by this subsection. However, the commission may on  
28 its own motion, require a public hearing, may conduct such  
29 further investigation as it deems necessary, and may enter  
30 into such stipulations and settlements as it finds to be just  
31 and in the best interest of the State. The commission is

1 without jurisdiction to, and no respondent may voluntarily or  
2 involuntarily, enter into a stipulation or settlement which  
3 imposes any penalty, including, but not limited to, a sanction  
4 or admonition or any other penalty contained in s. 112.317.  
5 Penalties shall be imposed only by the appropriate  
6 disciplinary authority as designated in this section.

7 (4)~~(3)~~ If, in cases pertaining to members of the  
8 Legislature, upon completion of a full and final investigation  
9 by the commission, the commission finds that there has been a  
10 violation of this part or of any provision of s. 8, Art. II of  
11 the State Constitution, the commission shall forward a copy of  
12 the complaint and its findings by certified mail to the  
13 President of the Senate or the Speaker of the House of  
14 Representatives, whichever is applicable, who shall refer the  
15 complaint to the appropriate committee for investigation and  
16 action which shall be governed by the rules of its respective  
17 house. It shall be the duty of the committee to report its  
18 final action upon the complaint to the commission within 90  
19 days of the date of transmittal to the respective house. Upon  
20 request of the committee, the commission shall submit a  
21 recommendation as to what penalty, if any, should be imposed.  
22 In the case of a member of the Legislature, the house in which  
23 the member serves shall have the power to invoke the penalty  
24 provisions of this part.

25 (5)~~(4)~~ If, in cases pertaining to complaints against  
26 impeachable officers, upon completion of a full and final  
27 investigation by the commission, the commission finds that  
28 there has been a violation of this part or of any provision of  
29 s. 8, Art. II of the State Constitution, and the commission  
30 finds that the violation may constitute grounds for  
31 impeachment, the commission shall forward a copy of the

1 complaint and its findings by certified mail to the Speaker of  
2 the House of Representatives, who shall refer the complaint to  
3 the appropriate committee for investigation and action which  
4 shall be governed by the rules of the House of  
5 Representatives. It shall be the duty of the committee to  
6 report its final action upon the complaint to the commission  
7 within 90 days of the date of transmittal.

8 (6)~~(5)~~ If the commission finds that there has been a  
9 violation of this part or of any provision of s. 8, Art. II of  
10 the State Constitution by an impeachable officer other than  
11 the Governor, and the commission recommends public censure and  
12 reprimand, forfeiture of a portion of the officer's salary, a  
13 civil penalty, or restitution, the commission shall report its  
14 findings and recommendation of disciplinary action to the  
15 Governor, who shall have the power to invoke the penalty  
16 provisions of this part.

17 (7)~~(6)~~ If the commission finds that there has been a  
18 violation of this part or of any provision of s. 8, Art. II of  
19 the State Constitution by the Governor, and the commission  
20 recommends public censure and reprimand, forfeiture of a  
21 portion of the Governor's salary, a civil penalty, or  
22 restitution, the commission shall report its findings and  
23 recommendation of disciplinary action to the Attorney General,  
24 who shall have the power to invoke the penalty provisions of  
25 this part.

26 (8)~~(7)~~ If, in cases pertaining to complaints other  
27 than complaints against impeachable officers or members of the  
28 Legislature, upon completion of a full and final investigation  
29 by the commission, the commission finds that there has been a  
30 violation of this part or of s. 8, Art. II of the State  
31 Constitution, it shall be the duty of the commission to report

1 its findings and recommend appropriate action to the proper  
2 disciplinary official or body as follows, and such official or  
3 body shall have the power to invoke the penalty provisions of  
4 this part, including the power to order the appropriate  
5 elections official to remove a candidate from the ballot for a  
6 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the  
7 State Constitution:

8 (a) The President of the Senate and the Speaker of the  
9 House of Representatives, jointly, in any case concerning the  
10 Public Counsel, members of the Public Service Commission,  
11 members of the Public Service Commission Nominating Council,  
12 the Auditor General, the director of the Office of Program  
13 Policy Analysis and Government Accountability, or members of  
14 the Legislative Committee on Intergovernmental Relations.

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

17 (c) The President of the Senate, in any case  
18 concerning an employee of the Senate; the Speaker of the House  
19 of Representatives, in any case concerning an employee of the  
20 House of Representatives; or the President and the Speaker,  
21 jointly, in any case concerning an employee of a committee of  
22 the Legislature whose members are appointed solely by the  
23 President and the Speaker or in any case concerning an  
24 employee of the Public Counsel, Public Service Commission,  
25 Auditor General, Office of Program Policy Analysis and  
26 Government Accountability, or Legislative Committee on  
27 Intergovernmental Relations.

28 (d) Except as otherwise provided by this part, the  
29 Governor, in the case of any other public officer, public  
30 employee, former public officer or public employee, candidate,  
31 or former candidate.

1           (e) The President of the Senate or the Speaker of the  
2 House of Representatives, whichever is applicable, in any case  
3 concerning a former member of the Legislature who has violated  
4 a provision applicable to former members or whose violation  
5 occurred while a member of the Legislature.

6           (9)~~(8)~~ In addition to reporting its findings to the  
7 proper disciplinary body or official, the commission shall  
8 report these findings to the state attorney or any other  
9 appropriate official or agency having authority to initiate  
10 prosecution when violation of criminal law is indicated.

11           (10)~~(9)~~ Notwithstanding the foregoing procedures of  
12 this section, a sworn complaint against any member or employee  
13 of the Commission on Ethics for violation of this part or of  
14 s. 8, Art. II of the State Constitution shall be filed with  
15 the President of the Senate and the Speaker of the House of  
16 Representatives. Each presiding officer shall, after  
17 determining that there are sufficient grounds for review,  
18 appoint three members of their respective bodies to a special  
19 joint committee who shall investigate the complaint. The  
20 members shall elect a chair from among their number. If the  
21 special joint committee finds insufficient evidence to  
22 establish probable cause to believe a violation of this part  
23 or of s. 8, Art. II of the State Constitution has occurred, it  
24 shall dismiss the complaint. If, upon completion of its  
25 preliminary investigation, the committee finds sufficient  
26 evidence to establish probable cause to believe a violation  
27 has occurred, the chair thereof shall transmit such findings  
28 to the Governor who shall convene a meeting of the Governor,  
29 the President of the Senate, the Speaker of the House of  
30 Representatives, and the Chief Justice of the Supreme Court to  
31 take such final action on the complaint as they shall deem

1 appropriate, consistent with the penalty provisions of this  
2 part. Upon request of a majority of the Governor, the  
3 President of the Senate, the Speaker of the House of  
4 Representatives, and the Chief Justice of the Supreme Court,  
5 the special joint committee shall submit a recommendation as  
6 to what penalty, if any, should be imposed.

7 (11)~~(10)~~ Notwithstanding the provisions of subsections  
8 (1)-(8)~~(7)~~, the commission may, at its discretion, dismiss any  
9 complaint at any stage of disposition should it determine that  
10 the public interest would not be served by proceeding further,  
11 in which case the commission shall issue a public report  
12 stating with particularity its reasons for the dismissal. ~~The~~  
13 ~~investigation of facts and parties materially related to a~~  
14 ~~complaint, as provided in s. 112.322(1) and pursuant to the~~  
15 ~~definitions contained in s. 112.312(11) and (18), and the~~  
16 ~~amendment of s. 112.3143 shall apply only to alleged~~  
17 ~~violations occurring after May 24, 1991.~~

18 Section 2. This act shall take effect October 1, 2002.

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21 HOUSE SUMMARY

22 Reenacts the public records exemption for certain  
23 information held by the Commission on Ethics and a  
24 Commission on Ethics and Public Trust regarding  
25 complaints of ethics violations and the public meeting  
26 exemption for commission proceedings held pursuant to  
27 such complaints, and removes the October 2, 2002, repeal  
28 thereof scheduled under the Open Government Sunset Review  
29 Act of 1995.  
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