

By the Committee on Ethics and Elections; and Senator Sanderson

313-403-02

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

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

19           Section 1.   Section 112.324, Florida Statutes, is  
20 amended to read:

21           112.324 Procedures on complaints of violations; public  
22 records and meetings exemptions.--

23           (1) Upon a written complaint executed on a form  
24 prescribed by the commission and signed under oath or  
25 affirmation by any person, the commission shall investigate  
26 any alleged violation of this part or any other alleged breach  
27 of the public trust within the jurisdiction of the commission  
28 as provided in s. 8(f), Art. II of the State Constitution in  
29 accordance with procedures set forth herein. Within 5 days  
30 after receipt of a complaint by the commission, a copy shall  
31 be transmitted to the alleged violator.

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

29           (3)~~(2)~~ A preliminary investigation shall be undertaken  
30 by the commission of each legally sufficient complaint over  
31 which the commission has jurisdiction to determine whether

1 | there is probable cause to believe that a violation has  
2 | occurred. If, upon completion of the preliminary  
3 | investigation, the commission finds no probable cause to  
4 | believe that this part has been violated or that any other  
5 | breach of the public trust has been committed, the commission  
6 | shall dismiss the complaint with the issuance of a public  
7 | report to the complainant and the alleged violator, stating  
8 | with particularity its reasons for dismissal of the complaint.  
9 | At that time, the complaint and all materials relating to the  
10 | complaint shall become a matter of public record. If the  
11 | commission finds from the preliminary investigation probable  
12 | cause to believe that this part has been violated or that any  
13 | other breach of the public trust has been committed, it shall  
14 | so notify the complainant and the alleged violator in writing.  
15 | Such notification and all documents made or received in the  
16 | disposition of the complaint shall then become public records.  
17 | Upon request submitted to the commission in writing, any  
18 | person who the commission finds probable cause to believe has  
19 | violated any provision of this part or has committed any other  
20 | breach of the public trust shall be entitled to a public  
21 | hearing. Such person shall be deemed to have waived the right  
22 | to a public hearing if the request is not received within 14  
23 | days following the mailing of the probable cause notification  
24 | required by this subsection. However, the commission may on  
25 | its own motion, require a public hearing, may conduct such  
26 | further investigation as it deems necessary, and may enter  
27 | into such stipulations and settlements as it finds to be just  
28 | and in the best interest of the State. The commission is  
29 | without jurisdiction to, and no respondent may voluntarily or  
30 | involuntarily, enter into a stipulation or settlement which  
31 | imposes any penalty, including, but not limited to, a sanction

1 or admonition or any other penalty contained in s. 112.317.

2 Penalties shall be imposed only by the appropriate  
3 disciplinary authority as designated in this section.

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

22 (5)~~(4)~~ If, in cases pertaining to complaints against  
23 impeachable officers, upon completion of a full and final  
24 investigation by the commission, the commission finds that  
25 there has been a violation of this part or of any provision of  
26 s. 8, Art. II of the State Constitution, and the commission  
27 finds that the violation may constitute grounds for  
28 impeachment, the commission shall forward a copy of the  
29 complaint and its findings by certified mail to the Speaker of  
30 the House of Representatives, who shall refer the complaint to  
31 the appropriate committee for investigation and action which

1 shall be governed by the rules of the House of  
2 Representatives. It shall be the duty of the committee to  
3 report its final action upon the complaint to the commission  
4 within 90 days of the date of transmittal.

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

14 (7)~~(6)~~ If the commission finds that there has been a  
15 violation of this part or of any provision of s. 8, Art. II of  
16 the State Constitution by the Governor, and the commission  
17 recommends public censure and reprimand, forfeiture of a  
18 portion of the Governor's salary, a civil penalty, or  
19 restitution, the commission shall report its findings and  
20 recommendation of disciplinary action to the Attorney General,  
21 who shall have the power to invoke the penalty provisions of  
22 this part.

23 (8)~~(7)~~ If, in cases pertaining to complaints other  
24 than complaints against impeachable officers or members of the  
25 Legislature, upon completion of a full and final investigation  
26 by the commission, the commission finds that there has been a  
27 violation of this part or of s. 8, Art. II of the State  
28 Constitution, it shall be the duty of the commission to report  
29 its findings and recommend appropriate action to the proper  
30 disciplinary official or body as follows, and such official or  
31 body shall have the power to invoke the penalty provisions of

1 this part, including the power to order the appropriate  
2 elections official to remove a candidate from the ballot for a  
3 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the  
4 State Constitution:

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

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

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

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

29 (e) The President of the Senate or the Speaker of the  
30 House of Representatives, whichever is applicable, in any case  
31 concerning a former member of the Legislature who has violated

1 a provision applicable to former members or whose violation  
2 occurred while a member of the Legislature.

3 (9)~~(8)~~ In addition to reporting its findings to the  
4 proper disciplinary body or official, the commission shall  
5 report these findings to the state attorney or any other  
6 appropriate official or agency having authority to initiate  
7 prosecution when violation of criminal law is indicated.

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

1 Representatives, and the Chief Justice of the Supreme Court,  
2 the special joint committee shall submit a recommendation as  
3 to what penalty, if any, should be imposed.

4 (11)~~(10)~~ Notwithstanding the provisions of subsections  
5 (1)-(8)~~(1)-(7)~~, the commission may, at its discretion,  
6 dismiss any complaint at any stage of disposition should it  
7 determine that the public interest would not be served by  
8 proceeding further, in which case the commission shall issue a  
9 public report stating with particularity its reasons for the  
10 dismissal. ~~The investigation of facts and parties materially~~  
11 ~~related to a complaint, as provided in s. 112.322(1) and~~  
12 ~~pursuant to the definitions contained in s. 112.312(11) and~~  
13 ~~(18), and the amendment of s. 112.3143 shall apply only to~~  
14 ~~alleged violations occurring after May 24, 1991.~~

15 Section 2. This act shall take effect July 1, 2002.

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18 SENATE SUMMARY

19 Reenacts and amends s. 112.324, F.S.; which provides a  
20 public-records exemption for specified information held  
21 by the Commission on Ethics or by any county Commission  
22 on Ethics and Public Trust, and provides a  
23 public-meetings exemption for such commissions'  
24 proceedings at which such information is discussed.  
25 Removes the October 2, 2002, repeal of s. 112.324, F.S.