

By Senator Saunders

37-77-04

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 for
14 complaints alleging an ethics violation;
15 amending s. 112.324, F.S.; authorizing the
16 Commission on Ethics to initiate investigations
17 under certain circumstances; providing an
18 effective date.

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

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22 Section 1. Paragraph (a) of subsection (7) of section
23 112.3148, Florida Statutes, is amended to read:24 112.3148 Reporting and prohibited receipt of gifts by
25 individuals filing full or limited public disclosure of
26 financial interests and by procurement employees.--27 (7)(a) The value of a gift provided to a reporting
28 individual or procurement employee shall be its fair market
29 value ~~determined using actual cost to the donor~~, less taxes
30 and gratuities, except as otherwise provided in this
31 subsection, and, with respect to personal services provided by

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

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

11 112.317 Penalties.--

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

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

27 112.321 Membership, terms; travel expenses; staff.--

28 (1) The commission shall be composed of nine members.
29 Five of these members shall be appointed by the Governor, no
30 more than three of whom shall be from the same political
31 party, subject to confirmation by the Senate. One member

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

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

24 112.3231 Time limitations.--

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

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

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

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

18 112.324 Procedures on complaints of violations; public
19 records and meeting exemptions.--

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 that at least seven of the members of the
31 commission consider sufficient to indicate a breach of the

1 public trust; however, commission staff may not undertake a
2 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 this paragraph, by the
15 commission shall transmit, a copy shall be transmitted to the
16 alleged violator.

17 (2) The complaint and records relating to the
18 complaint or to any preliminary investigation held by the
19 commission or its agents or by a Commission on Ethics and
20 Public Trust established by any county defined in s.
21 125.011(1), are confidential and exempt from the provisions of
22 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
23 and any proceeding conducted by the commission or a Commission
24 on Ethics and Public Trust, pursuant to a complaint or
25 preliminary investigation, is exempt from the provisions of s.
26 286.011, s. 24(b), Art. I of the State Constitution, and s.
27 120.525, until the complaint is dismissed as legally
28 insufficient, until the alleged violator requests in writing
29 that such records and proceedings be made public, or until the
30 commission or a Commission on Ethics and Public Trust
31 determines, based on such investigation, whether probable

1 cause exists to believe that a violation has occurred. ~~In no~~
2 ~~event shall~~ A complaint, information, or referral under this
3 part against a candidate in any general, special, or primary
4 election may not be filed nor may ~~or~~ any intention of filing
5 such a complaint be disclosed on the day of any ~~such~~ election
6 or within the 5 days immediately preceding the date of the
7 election.

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

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

16 (4) If, in cases pertaining to members of the
17 Legislature, upon completion of a full and final investigation
18 by the commission, 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, the commission shall forward a copy of
21 the complaint, information, or referral and its findings by
22 certified mail to the President of the Senate or the Speaker
23 of the House of Representatives, whichever is applicable, who
24 shall refer the matter ~~complaint~~ to the appropriate committee
25 for investigation and action, which committee shall be
26 governed by the rules of its respective house. ~~It shall be~~
27 ~~the duty of~~ The committee shall ~~to~~ report its final action
28 upon the matter ~~complaint~~ to the commission within 90 days
29 after ~~of~~ the date of transmittal to the respective house. Upon
30 request of the committee, the commission shall submit a
31 recommendation as to what penalty, if any, should be imposed.

1 In the case of a member of the Legislature, the house in which
2 the member serves shall have the power to invoke the penalty
3 provisions of this part.

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

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

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

1 portion of the Governor's salary, a civil penalty, or
2 restitution, the commission shall report its findings and
3 recommendation of disciplinary action to the Attorney General,
4 who shall have the power to invoke the penalty provisions of
5 this part.

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

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

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

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

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

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

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

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

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

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

20 (11) Notwithstanding the provisions of subsections
21 (1)-(8), the commission may, at its discretion, dismiss any
22 complaint or proceeding at any stage of disposition ~~if should~~
23 it finds ~~determine~~ that the public interest would not be
24 served by proceeding further, in which case the commission
25 shall issue a public report stating with particularity its
26 reasons for the dismissal.

27 Section 6. This act shall take effect October 1, 2004.
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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.