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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 03/30/2011 | . | |
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The Committee on Governmental Oversight and Accountability
(Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 96 and 97
insert:

Section 4. Section 112.324, Florida Statutes, is amended to
read:

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

(1) ~~Upon a written complaint executed on a form prescribed
by the commission and signed under oath or affirmation by any
person,~~ The commission shall investigate any alleged violation
of this part or any other alleged breach of the public trust



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13 within the jurisdiction of the commission as provided in s.
14 8(f), Art. II of the State Constitution in accordance with
15 procedures set forth herein:—

16 (a) Upon a written complaint executed on a form prescribed
17 by the commission and signed under oath or affirmation by any
18 person;

19 (b) Upon receipt of reliable and publicly disseminated
20 information that seven members of the commission deem sufficient
21 to indicate a breach of the public trust, except that commission
22 staff may not undertake a formal investigation other than the
23 collection of publicly disseminated information before a
24 determination of sufficiency by the commission; or

25 (c) Upon receipt of a written referral of a possible
26 violation of this part or other possible breach of the public
27 trust from the Governor, the Chief Financial Officer, a state
28 attorney, the executive director of the Department of Law
29 Enforcement, or the statewide prosecutor, which seven members of
30 the commission deem sufficient to indicate a breach of the
31 public trust.

32
33 Within 5 days after the commission receives receipt of a
34 complaint or after the commission determines that the
35 information or referral received is sufficient by the
36 commission, a copy shall be transmitted to the alleged violator.

37 (2) (a) The complaint and records relating to the complaint
38 or to any preliminary investigation or the commission's
39 determination regarding the information or the referral, as
40 provided in this section, held by the commission or its agents,
41 by a Commission on Ethics and Public Trust established by any



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42 county defined in s. 125.011(1) or by any municipality defined
43 in s. 165.031, or by any county or municipality that has
44 established a local investigatory process to enforce more
45 stringent standards of conduct and disclosure requirements as
46 provided in s. 112.326 are confidential and exempt from ~~the~~
47 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
48 Constitution.

49 (b) Any proceeding conducted by the commission, a
50 Commission on Ethics and Public Trust, or a county or
51 municipality that has established such local investigatory
52 process, pursuant to a complaint, information, or referral as
53 provided in this section, or a preliminary investigation, is
54 exempt from the provisions of s. 286.011, s. 24(b), Art. I of
55 the State Constitution, and s. 120.525.

56 (c)1. The exemptions in paragraphs (a) and (b) apply until
57 the complaint is dismissed as legally insufficient, until the
58 alleged violator requests in writing that such records and
59 proceedings be made public, until the commission determines that
60 it will not investigate the complaint or referral, or until the
61 commission, a Commission on Ethics and Public Trust, or a county
62 or municipality that has established such local investigatory
63 process determines, based on such investigation, whether
64 probable cause exists to believe that a violation has occurred.

65 2. In no event shall A complaint under this part against a
66 candidate in any general, special, or primary election may not
67 be filed and ~~or~~ any intention of filing such a complaint may not
68 be disclosed on the day of any such election or within the 5
69 days immediately preceding the date of the election.

70 3. The confidentiality requirements of this section do not



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71 prohibit the commission or its staff from sharing investigative
72 information with criminal investigative agencies.

73 (d) This subsection is subject to the Open Government
74 Sunset Review Act in accordance with s. 119.15 and shall stand
75 repealed on October 2, 2016 ~~October 2, 2015~~, unless reviewed and
76 saved from repeal through reenactment by the Legislature.

77 (3) A preliminary investigation shall be undertaken by the
78 commission of each legally sufficient complaint, information, or
79 referral over which the commission has jurisdiction to determine
80 whether there is probable cause to believe that a violation has
81 occurred. If, upon completion of the preliminary investigation,
82 the commission finds no probable cause to believe that this part
83 has been violated or that any other breach of the public trust
84 has been committed, the commission shall dismiss the complaint
85 or proceeding with the issuance of a public report to the
86 complainant and the alleged violator, stating with particularity
87 its reasons for dismissal ~~of the complaint~~. At that time, the
88 complaint, the proceeding, and all materials relating to the
89 complaint and proceeding ~~shall~~ become a matter of public record.
90 If the commission finds from the preliminary investigation
91 probable cause to believe that this part has been violated or
92 that any other breach of the public trust has been committed, it
93 shall so notify the complainant and the alleged violator in
94 writing. The ~~Such~~ notification and all documents made or
95 received in the disposition of the complaint or proceeding shall
96 then become public records. Upon request submitted to the
97 commission in writing, any person who the commission finds
98 probable cause to believe has violated any provision of this
99 part or has committed any other breach of the public trust shall



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100 be entitled to a public hearing. Such person shall be deemed to
101 have waived the right to a public hearing if the request is not
102 received within 14 days following the mailing of the probable
103 cause notification required by this subsection. However, the
104 commission may on its own motion, require a public hearing, may
105 conduct such further investigation as it deems necessary, and
106 may enter into such stipulations and settlements as it finds to
107 be just and in the best interest of the state. The commission is
108 without jurisdiction to, and no respondent may voluntarily or
109 involuntarily, enter into a stipulation or settlement which
110 imposes any penalty, including, but not limited to, a sanction
111 or admonition or any other penalty contained in s. 112.317.
112 Penalties shall be imposed only by the appropriate disciplinary
113 authority as designated in this section.

114 (4) If, in cases pertaining to members of the Legislature,
115 upon completion of a full and final investigation by the
116 commission, the commission finds that there has been a violation
117 of this part or of any provision of s. 8, Art. II of the State
118 Constitution, the commission shall forward a copy of the
119 complaint, information, or referral and its findings by
120 certified mail to the President of the Senate or the Speaker of
121 the House of Representatives, whichever is applicable, who shall
122 refer the matter ~~complaint~~ to the appropriate committee for
123 investigation and action which shall be governed by the rules of
124 its respective house. It is ~~shall be~~ the duty of the committee
125 to report its final action upon the matter ~~complaint~~ to the
126 commission within 90 days of the date of transmittal to the
127 respective house. Upon request of the committee, the commission
128 shall submit a recommendation as to what penalty, if any, should



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129 be imposed. In the case of a member of the Legislature, the
130 house in which the member serves shall have the power to invoke
131 the penalty provisions of this part.

132 (5) If, in cases ~~pertaining to complaints~~ against
133 impeachable officers, upon completion of a full and final
134 investigation by the commission, the commission finds that there
135 has been a violation of this part or of any provision of s. 8,
136 Art. II of the State Constitution, and the commission finds that
137 the violation may constitute grounds for impeachment, the
138 commission shall forward a copy of the complaint, information,
139 or referral and its findings by certified mail to the Speaker of
140 the House of Representatives, who shall refer the matter
141 ~~complaint~~ to the appropriate committee for investigation and
142 action which shall be governed by the rules of the House of
143 Representatives. It is ~~shall be~~ the duty of the committee to
144 report its final action upon the matter ~~complaint~~ to the
145 commission within 90 days of the date of transmittal.

146 (6) If the commission finds that there has been a violation
147 of this part or of any provision of s. 8, Art. II of the State
148 Constitution by an impeachable officer other than the Governor,
149 and the commission recommends public censure and reprimand,
150 forfeiture of a portion of the officer's salary, a civil
151 penalty, or restitution, the commission shall report its
152 findings and recommendation of disciplinary action to the
153 Governor, who shall have the power to invoke the penalty
154 provisions of this part.

155 (7) If the commission finds that there has been a violation
156 of this part or of any provision of s. 8, Art. II of the State
157 Constitution by the Governor, and the commission recommends



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158 public censure and reprimand, forfeiture of a portion of the
159 Governor's salary, a civil penalty, or restitution, the
160 commission shall report its findings and recommendation of
161 disciplinary action to the Attorney General, who shall have the
162 power to invoke the penalty provisions of this part.

163 (8) If, in cases ~~pertaining to complaints~~ other than
164 ~~complaints~~ against impeachable officers or members of the
165 Legislature, upon completion of a full and final investigation
166 by the commission, the commission finds that there has been a
167 violation of this part or of s. 8, Art. II of the State
168 Constitution, it shall be the duty of the commission to report
169 its findings and recommend appropriate action to the proper
170 disciplinary official or body as follows, and such official or
171 body shall have the power to invoke the penalty provisions of
172 this part, including the power to order the appropriate
173 elections official to remove a candidate from the ballot for a
174 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the
175 State Constitution:

176 (a) The President of the Senate and the Speaker of the
177 House of Representatives, jointly, in any case concerning the
178 Public Counsel, members of the Public Service Commission,
179 members of the Public Service Commission Nominating Council, the
180 Auditor General, the director of the Office of Program Policy
181 Analysis and Government Accountability, or members of the
182 Legislative Committee on Intergovernmental Relations.

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

185 (c) The President of the Senate, in any case concerning an
186 employee of the Senate; the Speaker of the House of



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187 Representatives, in any case concerning an employee of the House
188 of Representatives; or the President and the Speaker, jointly,
189 in any case concerning an employee of a committee of the
190 Legislature whose members are appointed solely by the President
191 and the Speaker or in any case concerning an employee of the
192 Public Counsel, Public Service Commission, Auditor General,
193 Office of Program Policy Analysis and Government Accountability,
194 or Legislative Committee on Intergovernmental Relations.

195 (d) Except as otherwise provided by this part, the
196 Governor, in the case of any other public officer, public
197 employee, former public officer or public employee, candidate or
198 former candidate, or person who is not a public officer or
199 employee, other than lobbyists and lobbying firms under s.
200 112.3215 for violations of s. 112.3215.

201 (e) The President of the Senate or the Speaker of the House
202 of Representatives, whichever is applicable, in any case
203 concerning a former member of the Legislature who has violated a
204 provision applicable to former members or whose violation
205 occurred while a member of the Legislature.

206 (9) In addition to reporting its findings to the proper
207 disciplinary body or official, the commission shall report these
208 findings to the state attorney or any other appropriate official
209 or agency having authority to initiate prosecution when
210 violation of criminal law is indicated.

211 (10) Notwithstanding the foregoing procedures of this
212 section, a sworn complaint against any member or employee of the
213 Commission on Ethics for violation of this part or of s. 8, Art.
214 II of the State Constitution shall be filed with the President
215 of the Senate and the Speaker of the House of Representatives.



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216 Each presiding officer shall, after determining that there are
217 sufficient grounds for review, appoint three members of their
218 respective bodies to a special joint committee who shall
219 investigate the complaint. The members shall elect a chair from
220 among their number. If the special joint committee finds
221 insufficient evidence to establish probable cause to believe a
222 violation of this part or of s. 8, Art. II of the State
223 Constitution has occurred, it shall dismiss the complaint. If,
224 upon completion of its preliminary investigation, the committee
225 finds sufficient evidence to establish probable cause to believe
226 a violation has occurred, the chair thereof shall transmit such
227 findings to the Governor who shall convene a meeting of the
228 Governor, the President of the Senate, the Speaker of the House
229 of Representatives, and the Chief Justice of the Supreme Court
230 to take such final action on the complaint as they shall deem
231 appropriate, consistent with the penalty provisions of this
232 part. Upon request of a majority of the Governor, the President
233 of the Senate, the Speaker of the House of Representatives, and
234 the Chief Justice of the Supreme Court, the special joint
235 committee shall submit a recommendation as to what penalty, if
236 any, should be imposed.

237 (11) Notwithstanding the provisions of subsections (1)-(8), the
238 commission may, at its discretion, dismiss any complaint, information, or referral
239 at any stage of disposition should it
240 determine that the public interest would not be served by
241 proceeding further, in which case the commission shall issue a
242 public report stating with particularity its reasons for the
243 dismissal.
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245 ===== T I T L E A M E N D M E N T =====

246 And the title is amended as follows:

247 Delete line 26

248 and insert:

249 legislator is a member; amending s. 112.324, F.S.;

250 providing procedures for investigations of complaints

251 filed with the commission; providing an effective

252 date.