

By the Committee on Governmental Oversight and Accountability;
and Senators Dockery, Latvala, Negron, Detert, Fasano, Joyner,
Hill, Rich, and Jones

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1 A bill to be entitled
2 An act relating to voting conflicts; providing a short
3 title; creating s. 112.3142, F.S., pertaining to
4 qualified blind trusts; providing legislative findings
5 and intent relating to qualified blind trusts;
6 defining terms; providing that if a covered public
7 official holds an economic interest in a qualified
8 blind trust, he or she does not have a conflict of
9 interest that would otherwise be prohibited by law;
10 prohibiting a covered public official from attempting
11 to influence or exercise any control over decisions
12 regarding the management of assets in a qualified
13 blind trust; prohibiting direct or indirect
14 communication between the covered public official or
15 any person having a beneficial interest in the
16 qualified blind trust and the trustee; providing
17 exemptions; requiring a covered public official to
18 report as an asset on his or her financial disclosure
19 forms the beneficial interest, and its value if
20 required, which he or she has in a qualified blind
21 trust; specifying the required elements necessary to
22 establish a qualified blind trust; specifying the
23 required elements necessary to be a trustee;
24 specifying the required elements in the trust
25 agreement; providing that the trust is not effective
26 unless it is approved by the Commission on Ethics;
27 requiring that the trustee and the official observe
28 the obligations of the trust agreement; providing that
29 the trust contains only readily marketable assets;

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30 requiring that the trust agreement be filed with the
31 commission within a specified time; providing for the
32 filing of an amendment to a financial disclosure
33 statement of a covered public official in specified
34 circumstances; amending s. 112.3143, F.S.; providing
35 an exception to provisions relating to voting
36 conflicts, to conform to changes made by the act;
37 creating s. 112.31435, F.S.; providing definitions;
38 prohibiting a member of the Legislature from voting
39 upon or participating in any legislation inuring to
40 the personal gain or loss of the member or his or her
41 relative; prohibiting a member of the Legislature from
42 participating in any legislation inuring to the
43 personal gain or loss of a business associate,
44 employer, board on which the member sits, principal by
45 whom the member is retained, or parent corporation or
46 subsidiary of such principal; requiring that a member
47 disclose all such interests to the applicable
48 legislative body or committee before such legislation
49 is considered; requiring that the member disclose the
50 specific nature of any such interests within a
51 specified period after the date on which a vote on the
52 legislation occurs; requiring that such disclosure be
53 made by written memorandum and filed with the
54 Secretary of the Senate or the Clerk of the House of
55 Representatives; requiring that the memorandum be
56 recorded in the journal of the house of which the
57 legislator is a member; requiring that a member of the
58 Legislature vote on the annual General Appropriations

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59 Act and disclose any conflict that he or she may have
60 with a line-item appropriation contained in that act;
61 amending s. 112.324, F.S.; providing procedures for
62 investigations of complaints filed with the
63 commission; providing an effective date.
64

65 Be It Enacted by the Legislature of the State of Florida:
66

67 Section 1. This act may be cited as the "Restoring Trust in
68 Government Act."

69 Section 2. Section 112.3142, Florida Statutes, is created
70 to read:

71 112.3142 Qualified blind trusts.-

72 (1) The Legislature finds that if a public official creates
73 a trust, and if the public official does not know the identity
74 of the financial interests held by the trust and does not
75 control the interests held by the trust, his or her official
76 actions would not be influenced or appear to be influenced by
77 private considerations. Thus, it is the intent of the
78 Legislature that the public policy goal of the state, which is
79 to be achieved through reliance on a blind trust, be an actual
80 "blindness" or lack of knowledge or control by the official with
81 respect to the interests held in trust.

82 (2) As used in this section, the term:

83 (a) "Cabinet" has the same meaning as in s. 20.03.

84 (b) "Commission" means the Commission on Ethics.

85 (c) "Covered public official" means the Governor, the
86 Lieutenant Governor, or a member of the Cabinet.

87 (3) If a covered public official holds an economic interest

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88 in a qualified blind trust as defined in this section, he or she
89 does not have a conflict of interest prohibited under s.
90 112.313(3) or (7) or a voting conflict of interest under s.
91 112.3143 with regard to matters pertaining to that economic
92 interest.

93 (4) Except as otherwise provided in this section, the
94 covered public official may not attempt to influence or exercise
95 any control over decisions regarding the management of assets in
96 a qualified blind trust. The covered public official and each
97 person having a beneficial interest in the qualified blind trust
98 may not make any effort to obtain information with respect to
99 the holdings of the trust, including obtaining a copy of any
100 trust tax return filed or any information relating thereto,
101 except as otherwise provided in this section.

102 (5) Except for communications that consist solely of
103 requests for distributions of cash or other unspecified assets
104 of the trust, there shall be no direct or indirect communication
105 with respect to the trust between the covered public official or
106 any person having a beneficial interest in the qualified blind
107 trust and the trustee, unless such communication is in writing
108 and unless it relates only to:

109 (a) A request for a distribution from the trust which does
110 not specify whether the distribution is to be made in cash or in
111 kind;

112 (b) The general financial interests and needs of the
113 covered public official or interested person, including, but not
114 limited to, an interest in maximizing income or long-term
115 capital gain;

116 (c) The notification of the trustee of a law or regulation

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117 subsequently applicable to the covered public official which
118 prohibits the covered official from holding an asset and which
119 notification directs that the asset not be held by the trust; or

120 (d) Directions to the trustee to sell all of an asset
121 initially placed in the trust by the covered public official
122 which, in the determination of the covered public official,
123 creates a conflict of interest or the appearance thereof due to
124 the subsequent assumption of duties by the public official.

125 (6) The covered public official shall report as an asset on
126 his or her financial disclosure forms the beneficial interest in
127 the qualified blind trust and its value, if the value is
128 required to be disclosed. The covered public official shall
129 report the blind trust as a primary source of income on his or
130 her financial disclosure forms and its amount, if the amount of
131 income is required to be disclosed. The covered public official
132 is not required to report as a secondary source of income any
133 source of income to the blind trust.

134 (7) In order to constitute a qualified blind trust, the
135 trust must be established by the covered public official and
136 meet the following requirements:

137 (a) The person or entity appointed as a trustee must not
138 be:

139 1. The covered public official's spouse, child, parent,
140 grandparent, grandchild, brother, sister, parent-in-law,
141 brother-in-law, sister-in-law, aunt, uncle, or first cousin, or
142 the spouse of any such person;

143 2. A person who is an elected or appointed public officer
144 or a public employee; or

145 3. A person who has been appointed to serve in an agency by

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146 the covered public official or by a public officer or public
147 employee supervised by the covered public official.

148 (b) The trust agreement that establishes the trust must:

149 1. Contain a clear statement of its purpose, namely, to
150 remove from the grantor control and knowledge of investment of
151 trust assets so that conflicts between the grantor's
152 responsibilities as a public official and his or her private
153 interests will be eliminated;

154 2. Give the trustee complete discretion to manage the
155 trust, including, but not limited to, the power to dispose of
156 and acquire trust assets without consulting or notifying the
157 covered public official or any person having a beneficial
158 interest in the trust;

159 3. Prohibit communication between the trustee and the
160 covered public official and any person having a beneficial
161 interest in the trust concerning the holdings or sources of
162 income of the trust, except amounts of cash value or net income
163 or loss, provided that such report may not identify any asset or
164 holding, and except as provided in this section;

165 4. Provide that the trust tax return is prepared by the
166 trustee or his or her designee and that any information relating
167 thereto is not disclosed to the covered public official or to
168 any other beneficiary, except as provided in this section;

169 5. Permit the trustee to notify the covered public official
170 of the date of disposition and value at disposition of any
171 original investment or interests in real property to the extent
172 required by federal tax law, so that the information can be
173 reported on the covered public official's applicable tax
174 returns;

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175 6. Prohibit the trustee from disclosing to the covered
176 public official and any person having a beneficial interest in
177 the trust any information concerning replacement assets to the
178 trust, except for the minimum tax information that lists only
179 the totals of taxable items from the trust and does not describe
180 the source of individual items of income;

181 7. Prohibit the trustee from investing trust assets in
182 business entities that he or she knows are regulated by or do a
183 significant amount of business with the covered public
184 official's public agency; and

185 8. Provide that the trust is not effective until it is
186 approved by the commission.

187 (c) The obligations of the trustee and the official under
188 the trust agreement must be observed by them.

189 (d) The trust shall contain only readily marketable assets.

190 (e) The trust must be approved by the commission as meeting
191 the requirements of this section.

192 (8) A copy of the trust agreement must be filed with the
193 commission within 5 business days after the agreement is
194 executed and must include:

195 (a) A listing of the assets placed in the trust;

196 (b) A statement detailing the date the agreement was
197 executed;

198 (c) The name and address of the trustee; and

199 (d) A separate statement signed by the trustee, under
200 penalty of perjury, certifying that he or she will not reveal
201 any information to the covered public official or any person
202 having a beneficial interest in the qualified blind trust,
203 except for information that is authorized under this section,

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204 and that, to the best of the trustee's knowledge, the submitted
205 blind trust agreement complies with this section.

206 (9) If the trust is revoked while the covered public
207 official is a public officer, or if the covered public official
208 learns of any replacement assets that have been added to the
209 trust, the covered public official must file an amendment to his
210 or her most recent financial disclosure statement. The amendment
211 must be filed no later than 60 days after the date of revocation
212 or the addition of the replacement assets. The covered public
213 official must disclose the previously unreported pro rata share
214 of the trust's interests in investments or income deriving from
215 any such investments. For purposes of this section, any replaced
216 asset of which the covered public official learns shall
217 thereafter be treated as though the asset were an original asset
218 of the trust.

219 Section 3. Subsection (2) of section 112.3143, Florida
220 Statutes, is amended to read:

221 112.3143 Voting conflicts.—

222 (2) Except as provided in s. 112.31435, no state public
223 officer is prohibited from voting in an official capacity on any
224 matter. However, any state public officer voting in an official
225 capacity upon any measure that ~~which~~ would inure to the
226 officer's special private gain or loss; that ~~which~~ he or she
227 knows would inure to the special private gain or loss of any
228 principal by whom the officer is retained or to the parent
229 organization or subsidiary of a corporate principal by which the
230 officer is retained; or that ~~which~~ the officer knows would inure
231 to the special private gain or loss of a relative or business
232 associate of the public officer shall, within 15 days after the

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233 vote occurs, disclose the nature of his or her interest as a
234 public record in a memorandum filed with the person responsible
235 for recording the minutes of the meeting, who shall incorporate
236 the memorandum in the minutes.

237 Section 4. Section 112.31435, Florida Statutes, is created
238 to read:

239 112.31435 Voting conflicts; state legislators.-

240 (1) As used in this section, the term:

241 (a) "Participate" means any attempt, other than casting a
242 vote, to influence the passage, defeat, or amendment of
243 legislation by oral or written communication made by a
244 legislator or at such legislator's direction.

245 (b) "Relative" means any father, mother, son, daughter,
246 husband, wife, brother, sister, father-in-law, mother-in-law,
247 son-in-law, or daughter-in-law.

248 (2) A member of the Legislature may not vote upon or
249 participate in any legislation that would inure to his or her
250 special private gain or loss or that he or she knows would inure
251 to the special private gain or loss of his or her relative. The
252 member must, before any consideration of the legislation by the
253 legislative body of which he or she is a member or any committee
254 on which the member sits, publicly state to the body or
255 committee all of his or her interests in the legislation or all
256 of the relative's interests in the legislation which are known
257 to the member and, within 15 days after the date on which a vote
258 on the legislation occurs, disclose the specific nature of those
259 interests as a public record in a memorandum filed with the
260 Secretary of the Senate, if the member is a Senator, or filed
261 with the Clerk of the House of Representatives, if the member is

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262 a Representative. The memorandum shall be spread upon the pages
263 of the journal of the house of which the legislator is a member.

264 (3) A member of the Legislature may not participate in any
265 legislation that he or she knows would inure to the special
266 private gain or loss of a principal by whom he or she is
267 retained, the parent organization or subsidiary of a corporate
268 principal by which he or she is retained, a business associate,
269 an employer, or a board upon which the member sits. The member
270 must, before any consideration of the legislation by the
271 legislative body of which he or she is a member or any committee
272 on which the member sits, publicly state to the body or
273 committee all of the interests in the legislation of such
274 principals, parent organizations or subsidiaries of a corporate
275 principal, business associates, employers, or boards which are
276 known to the member and, within 15 days after the date on which
277 a vote on the legislation occurs, disclose the specific nature
278 of those interests as a public record in a memorandum filed with
279 the Secretary of the Senate, if the member is a Senator, or
280 filed with the Clerk of the House of Representatives, if the
281 member is a Representative. The memorandum shall be spread upon
282 the pages of the journal of the house of which the legislator is
283 a member.

284 (4) A member of the Legislature shall vote on the annual
285 General Appropriations Act and disclose any conflict that he or
286 she may have with a line-item appropriation contained in that
287 act.

288 Section 5. Section 112.324, Florida Statutes, is amended to
289 read:

290 112.324 Procedures on complaints of violations; public

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291 records and meeting exemptions.-

292 ~~(1) Upon a written complaint executed on a form prescribed~~
293 ~~by the commission and signed under oath or affirmation by any~~
294 ~~person,~~ The commission shall investigate any alleged violation
295 of this part or any other alleged breach of the public trust
296 within the jurisdiction of the commission as provided in s.
297 8(f), Art. II of the State Constitution in accordance with
298 procedures set forth herein:-

299 (a) Upon a written complaint executed on a form prescribed
300 by the commission and signed under oath or affirmation by any
301 person;

302 (b) Upon receipt of reliable and publicly disseminated
303 information that seven members of the commission deem sufficient
304 to indicate a breach of the public trust, except that commission
305 staff may not undertake a formal investigation other than the
306 collection of publicly disseminated information before a
307 determination of sufficiency by the commission; or

308 (c) Upon receipt of a written referral of a possible
309 violation of this part or other possible breach of the public
310 trust from the Governor, the Chief Financial Officer, a state
311 attorney, the executive director of the Department of Law
312 Enforcement, or the statewide prosecutor, which seven members of
313 the commission deem sufficient to indicate a breach of the
314 public trust.

315

316 Within 5 days after the commission receives receipt of a
317 complaint or after the commission determines that the
318 information or referral received is sufficient ~~by the~~
319 ~~commission,~~ a copy shall be transmitted to the alleged violator.

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320 (2) (a) The complaint and records relating to the complaint
321 or to any preliminary investigation or the commission's
322 determination regarding the information or the referral, as
323 provided in this section, held by the commission or its agents,
324 by a Commission on Ethics and Public Trust established by any
325 county defined in s. 125.011(1) or by any municipality defined
326 in s. 165.031, or by any county or municipality that has
327 established a local investigatory process to enforce more
328 stringent standards of conduct and disclosure requirements as
329 provided in s. 112.326 are confidential and exempt from ~~the~~
330 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
331 Constitution.

332 (b) Any proceeding conducted by the commission, a
333 Commission on Ethics and Public Trust, or a county or
334 municipality that has established such local investigatory
335 process, pursuant to a complaint, information, or referral as
336 provided in this section, or a preliminary investigation, is
337 exempt from the provisions of s. 286.011, s. 24(b), Art. I of
338 the State Constitution, and s. 120.525.

339 (c) 1. The exemptions in paragraphs (a) and (b) apply until
340 the complaint is dismissed as legally insufficient, until the
341 alleged violator requests in writing that such records and
342 proceedings be made public, until the commission determines that
343 it will not investigate the complaint or referral, or until the
344 commission, a Commission on Ethics and Public Trust, or a county
345 or municipality that has established such local investigatory
346 process determines, based on such investigation, whether
347 probable cause exists to believe that a violation has occurred.

348 2. ~~In no event shall~~ A complaint under this part against a

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349 candidate in any general, special, or primary election may not
350 be filed and ~~or~~ any intention of filing such a complaint may not
351 be disclosed on the day of any such election or within the 5
352 days immediately preceding the date of the election.

353 3. The confidentiality requirements of this section do not
354 prohibit the commission or its staff from sharing investigative
355 information with criminal investigative agencies.

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

360 (3) A preliminary investigation shall be undertaken by the
361 commission of each legally sufficient complaint, information, or
362 referral over which the commission has jurisdiction to determine
363 whether there is probable cause to believe that a violation has
364 occurred. If, upon completion of the preliminary investigation,
365 the commission finds no probable cause to believe that this part
366 has been violated or that any other breach of the public trust
367 has been committed, the commission shall dismiss the complaint
368 or proceeding with the issuance of a public report to the
369 complainant and the alleged violator, stating with particularity
370 its reasons for dismissal ~~of the complaint~~. At that time, the
371 complaint, the proceeding, and all materials relating to the
372 complaint and proceeding ~~shall~~ become a matter of public record.
373 If the commission finds from the preliminary investigation
374 probable cause to believe that this part has been violated or
375 that any other breach of the public trust has been committed, it
376 shall so notify the complainant and the alleged violator in
377 writing. The ~~Such~~ notification and all documents made or

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378 received in the disposition of the complaint or proceeding shall
379 then become public records. Upon request submitted to the
380 commission in writing, any person who the commission finds
381 probable cause to believe has violated any provision of this
382 part or has committed any other breach of the public trust shall
383 be entitled to a public hearing. Such person shall be deemed to
384 have waived the right to a public hearing if the request is not
385 received within 14 days following the mailing of the probable
386 cause notification required by this subsection. However, the
387 commission may on its own motion, require a public hearing, may
388 conduct such further investigation as it deems necessary, and
389 may enter into such stipulations and settlements as it finds to
390 be just and in the best interest of the state. The commission is
391 without jurisdiction to, and no respondent may voluntarily or
392 involuntarily, enter into a stipulation or settlement which
393 imposes any penalty, including, but not limited to, a sanction
394 or admonition or any other penalty contained in s. 112.317.
395 Penalties shall be imposed only by the appropriate disciplinary
396 authority as designated in this section.

397 (4) If, in cases pertaining to members of the Legislature,
398 upon completion of a full and final investigation by the
399 commission, the commission finds that there has been a violation
400 of this part or of any provision of s. 8, Art. II of the State
401 Constitution, the commission shall forward a copy of the
402 complaint, information, or referral and its findings by
403 certified mail to the President of the Senate or the Speaker of
404 the House of Representatives, whichever is applicable, who shall
405 refer the matter ~~complaint~~ to the appropriate committee for
406 investigation and action which shall be governed by the rules of

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407 its respective house. It is ~~shall be~~ the duty of the committee
408 to report its final action upon the matter ~~complaint~~ to the
409 commission within 90 days of the date of transmittal to the
410 respective house. Upon request of the committee, the commission
411 shall submit a recommendation as to what penalty, if any, should
412 be imposed. In the case of a member of the Legislature, the
413 house in which the member serves shall have the power to invoke
414 the penalty provisions of this part.

415 (5) If, in cases ~~pertaining to complaints~~ against
416 impeachable officers, upon completion of a full and final
417 investigation by the commission, the commission finds that there
418 has been a violation of this part or of any provision of s. 8,
419 Art. II of the State Constitution, and the commission finds that
420 the violation may constitute grounds for impeachment, the
421 commission shall forward a copy of the complaint, information,
422 or referral and its findings by certified mail to the Speaker of
423 the House of Representatives, who shall refer the matter
424 ~~complaint~~ to the appropriate committee for investigation and
425 action which shall be governed by the rules of the House of
426 Representatives. It is ~~shall be~~ the duty of the committee to
427 report its final action upon the matter ~~complaint~~ to the
428 commission within 90 days of the date of transmittal.

429 (6) If the commission finds that there has been a violation
430 of this part or of any provision of s. 8, Art. II of the State
431 Constitution by an impeachable officer other than the Governor,
432 and the commission recommends public censure and reprimand,
433 forfeiture of a portion of the officer's salary, a civil
434 penalty, or restitution, the commission shall report its
435 findings and recommendation of disciplinary action to the

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436 Governor, who shall have the power to invoke the penalty
437 provisions of this part.

438 (7) If the commission finds that there has been a violation
439 of this part or of any provision of s. 8, Art. II of the State
440 Constitution by the Governor, and the commission recommends
441 public censure and reprimand, forfeiture of a portion of the
442 Governor's salary, a civil penalty, or restitution, the
443 commission shall report its findings and recommendation of
444 disciplinary action to the Attorney General, who shall have the
445 power to invoke the penalty provisions of this part.

446 (8) If, in cases ~~pertaining to complaints~~ other than
447 ~~complaints~~ against impeachable officers or members of the
448 Legislature, upon completion of a full and final investigation
449 by the commission, the commission finds that there has been a
450 violation of this part or of s. 8, Art. II of the State
451 Constitution, it shall be the duty of the commission to report
452 its findings and recommend appropriate action to the proper
453 disciplinary official or body as follows, and such official or
454 body shall have the power to invoke the penalty provisions of
455 this part, including the power to order the appropriate
456 elections official to remove a candidate from the ballot for a
457 violation of s. 112.3145 or s. 8(a) and (i), Art. II of the
458 State Constitution:

459 (a) The President of the Senate and the Speaker of the
460 House of Representatives, jointly, in any case concerning the
461 Public Counsel, members of the Public Service Commission,
462 members of the Public Service Commission Nominating Council, the
463 Auditor General, the director of the Office of Program Policy
464 Analysis and Government Accountability, or members of the

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465 Legislative Committee on Intergovernmental Relations.

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

468 (c) The President of the Senate, in any case concerning an
469 employee of the Senate; the Speaker of the House of
470 Representatives, in any case concerning an employee of the House
471 of Representatives; or the President and the Speaker, jointly,
472 in any case concerning an employee of a committee of the
473 Legislature whose members are appointed solely by the President
474 and the Speaker or in any case concerning an employee of the
475 Public Counsel, Public Service Commission, Auditor General,
476 Office of Program Policy Analysis and Government Accountability,
477 or Legislative Committee on Intergovernmental Relations.

478 (d) Except as otherwise provided by this part, the
479 Governor, in the case of any other public officer, public
480 employee, former public officer or public employee, candidate or
481 former candidate, or person who is not a public officer or
482 employee, other than lobbyists and lobbying firms under s.
483 112.3215 for violations of s. 112.3215.

484 (e) The President of the Senate or the Speaker of the House
485 of Representatives, whichever is applicable, in any case
486 concerning a former member of the Legislature who has violated a
487 provision applicable to former members or whose violation
488 occurred while a member of the Legislature.

489 (9) In addition to reporting its findings to the proper
490 disciplinary body or official, the commission shall report these
491 findings to the state attorney or any other appropriate official
492 or agency having authority to initiate prosecution when
493 violation of criminal law is indicated.

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494 (10) Notwithstanding the foregoing procedures of this
495 section, a sworn complaint against any member or employee of the
496 Commission on Ethics for violation of this part or of s. 8, Art.
497 II of the State Constitution shall be filed with the President
498 of the Senate and the Speaker of the House of Representatives.
499 Each presiding officer shall, after determining that there are
500 sufficient grounds for review, appoint three members of their
501 respective bodies to a special joint committee who shall
502 investigate the complaint. The members shall elect a chair from
503 among their number. If the special joint committee finds
504 insufficient evidence to establish probable cause to believe a
505 violation of this part or of s. 8, Art. II of the State
506 Constitution has occurred, it shall dismiss the complaint. If,
507 upon completion of its preliminary investigation, the committee
508 finds sufficient evidence to establish probable cause to believe
509 a violation has occurred, the chair thereof shall transmit such
510 findings to the Governor who shall convene a meeting of the
511 Governor, the President of the Senate, the Speaker of the House
512 of Representatives, and the Chief Justice of the Supreme Court
513 to take such final action on the complaint as they shall deem
514 appropriate, consistent with the penalty provisions of this
515 part. Upon request of a majority of the Governor, the President
516 of the Senate, the Speaker of the House of Representatives, and
517 the Chief Justice of the Supreme Court, the special joint
518 committee shall submit a recommendation as to what penalty, if
519 any, should be imposed.

520 (11) Notwithstanding the provisions of subsections (1)-(8),
521 the commission may, at its discretion, dismiss any complaint,
522 information, or referral at any stage of disposition should it

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523 determine that the public interest would not be served by
524 proceeding further, in which case the commission shall issue a
525 public report stating with particularity its reasons for the
526 dismissal.

527 Section 6. This act shall take effect July 1, 2011.