

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Fasano offered the following:

Amendment to Amendment (005347) (with title amendment)

Remove lines 1132-1368 and insert:

Section 17. 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 within the jurisdiction of the commission as provided in s. 8(f), Art. II of the State Constitution ~~in accordance with procedures set forth herein.~~

(a) Such investigation shall commence upon the receipt of:

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17 1. A written complaint executed on a form prescribed by
18 the commission and signed under oath or affirmation by the
19 complainant;

20 2. Reliable and publicly disseminated information that
21 seven members of the commission deem sufficient to indicate a
22 breach of the public trust. Commission staff may not undertake a
23 formal investigation, other than the collection of publicly
24 disseminated information, before the commission makes a
25 determination of sufficiency; or

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

32 (b) Within 5 days after the commission receives ~~receipt~~ of
33 a complaint, or after the commission determines that there is a
34 legally sufficient indication of a breach of the public trust
35 pursuant to publicly disseminated information or a written
36 referral ~~by the commission~~, a copy of the complaint or
37 determination of sufficiency shall be transmitted to the alleged
38 violatee.

39 (c) A complaint under this part against a candidate in any
40 general, special, or primary election may not be filed and any
41 intention of filing such a complaint may not be disclosed on the
42 day of such election or within the 5 days immediately preceding
43 the date of the election.

44 (2) (a) The complaint and records relating to the complaint

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45 or to any preliminary investigation held by the commission or
46 its agents, by a Commission on Ethics and Public Trust
47 established by any county defined in s. 125.011(1) or by any
48 municipality defined in s. 165.031, or by any county or
49 municipality that has established a local investigatory process
50 to enforce more stringent standards of conduct and disclosure
51 requirements as provided in s. 112.326 are confidential and
52 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
53 of the State Constitution.

54 (b) Any proceeding conducted by the commission, a
55 Commission on Ethics and Public Trust, or a county or
56 municipality that has established such local investigatory
57 process, pursuant to a complaint or preliminary investigation,
58 is exempt from the provisions of s. 286.011, s. 24(b), Art. I of
59 the State Constitution, and s. 120.525.

60 (c) The exemptions in paragraphs (a) and (b) apply until
61 the complaint is dismissed as legally insufficient, until the
62 alleged violator requests in writing that such records and
63 proceedings be made public, or until the commission, a
64 Commission on Ethics and Public Trust, or a county or
65 municipality that has established such local investigatory
66 process determines, based on such investigation, whether
67 probable cause exists to believe that a violation has occurred.
68 ~~In no event shall a complaint under this part against a~~
69 ~~candidate in any general, special, or primary election be filed~~
70 ~~or any intention of filing such a complaint be disclosed on the~~
71 ~~day of any such election or within the 5 days immediately~~
72 ~~preceding the date of the election.~~

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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, 2015, unless reviewed and saved from
76 repeal through reenactment by the Legislature.

77 (3) A preliminary investigation shall be undertaken by the
78 commission of each legally sufficient complaint or other
79 indication of a breach of the public trust over which the
80 commission has jurisdiction to determine whether there is
81 probable cause to believe that a violation has occurred.

82 (a) If, upon completion of the preliminary investigation,
83 the commission finds no probable cause to believe that this part
84 has been violated or that any other breach of the public trust
85 has been committed, the commission shall dismiss the complaint
86 or other determination with the issuance of a public report to
87 the complainant or referring official and the alleged violator,
88 stating with particularity its reasons for dismissal ~~of the~~
89 ~~complaint~~. At that time, the complaint or other alleged breach
90 of the public trust and all related materials ~~relating to the~~
91 ~~complaint~~ shall become a matter of public record.

92 (b) If the commission finds from the preliminary
93 investigation probable cause to believe that this part has been
94 violated or that any other breach of the public trust has been
95 committed, it shall so notify the complainant or referring
96 official and the alleged violator in writing. The Such
97 notification and all documents made or received in the
98 determination of probable cause ~~disposition of the complaint~~
99 shall ~~then~~ become public records. Upon request submitted to the
100 commission in writing, any person who the commission finds

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

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

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129 report its final action upon the matter ~~complaint~~ to the
130 commission within 90 days after ~~of~~ the date of transmittal to
131 the respective house. Upon request of the committee, the
132 commission shall submit a recommendation as to what penalty, if
133 any, should be imposed. In the case of a member of the
134 Legislature, the house in which the member serves is empowered
135 ~~shall have the power~~ to invoke the penalty provisions of this
136 part.

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

151 (6) If the commission finds that there has been a
152 violation of this part or of any provision of s. 8, Art. II of
153 the State Constitution by an impeachable officer other than the
154 Governor, and the commission recommends public censure and
155 reprimand, forfeiture of a portion of the officer's salary, a
156 civil penalty, or restitution, the commission shall report its

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157 findings and recommendation of disciplinary action to the
158 Governor, who is empowered ~~shall have the power~~ to invoke the
159 penalty provisions of this part.

160 (7) If the commission finds that there has been a
161 violation of this part or of any provision of s. 8, Art. II of
162 the State Constitution by the Governor, and the commission
163 recommends public censure and reprimand, forfeiture of a portion
164 of the Governor's salary, a civil penalty, or restitution, the
165 commission shall report its findings and recommendation of
166 disciplinary action to the Attorney General, who is empowered
167 ~~shall have the power~~ to invoke the penalty provisions of this
168 part.

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

182 (a) The President of the Senate and the Speaker of the
183 House of Representatives, jointly, in any case concerning the
184 Public Counsel, members of the Public Service Commission,

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185 members of the Public Service Commission Nominating Council, the
186 Auditor General, or the director of the Office of Program Policy
187 Analysis and Government Accountability.

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

190 (c) The President of the Senate, in any case concerning an
191 employee of the Senate; the Speaker of the House of
192 Representatives, in any case concerning an employee of the House
193 of Representatives; or the President and the Speaker, jointly,
194 in any case concerning an employee of a committee of the
195 Legislature whose members are appointed solely by the President
196 and the Speaker or in any case concerning an employee of the
197 Public Counsel, Public Service Commission, Auditor General, or
198 Office of Program Policy Analysis and Government Accountability.

199 (d) Except as otherwise provided by this part, the
200 Governor, in the case of any other public officer, public
201 employee, former public officer or public employee, candidate or
202 former candidate, or person who is not a public officer or
203 employee, other than lobbyists and lobbying firms under s.
204 112.3215 for violations of s. 112.3215.

205 (e) The President of the Senate or the Speaker of the
206 House of Representatives, as ~~whichever is~~ applicable, in any
207 case concerning a former member of the Legislature who has
208 violated a provision applicable to former members or whose
209 violation occurred while a member of the Legislature.

210 (9) In addition to reporting its findings to the proper
211 disciplinary body or official, the commission shall report these
212 findings to the state attorney or any other appropriate official

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213 or agency having authority to initiate prosecution if a ~~when~~
214 violation of criminal law is indicated.

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

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241 (11) Notwithstanding ~~the provisions of~~ subsections (1)-
242 (8), the commission may, ~~at its discretion,~~ dismiss any
243 complaint or other indication of a breach of the public trust at
244 any stage of disposition if should it finds ~~determine~~ that the
245 public interest would not be served by proceeding further, in
246 which case the commission shall issue a public report stating
247 with particularity its reasons for the dismissal.

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T I T L E A M E N D M E N T

250 Remove lines 1809-1820 and insert:
251 amending s. 112.324, F.S.; providing procedures for
252 investigations of complaints filed with the commission;
253