

By Senator Gruters

23-00461-19

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1 A bill to be entitled
 2 An act relating to public records; amending s. 106.25,
 3 F.S.; increasing the length of time before an election
 4 during which the Florida Elections Commission may not
 5 make public a probable cause finding and any related
 6 proceedings and records; providing for future
 7 legislative review and repeal; amending s. 112.324,
 8 F.S.; prohibiting the Commission on Ethics from
 9 publicly releasing a notification of a probable cause
 10 finding, and the documents made and received in
 11 disposition of a complaint or referral, during a
 12 specified period immediately preceding an election;
 13 providing for future legislative review and repeal;
 14 providing statements of public necessity; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Subsection (7) of section 106.25, Florida
 20 Statutes, is amended to read:

21 106.25 Reports of alleged violations to Florida Elections
 22 Commission; disposition of findings.-

23 (7) (a) Except as provided in paragraph (b), every sworn
 24 complaint filed pursuant to this chapter with the commission,
 25 every investigation and investigative report or other paper of
 26 the commission with respect to a violation of this chapter or
 27 chapter 104, and every proceeding of the commission with respect
 28 to a violation of this chapter or chapter 104 is confidential,
 29 is exempt from ~~the provisions of~~ ss. 119.07(1) and 286.011 and

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30 s. 24, Art. I of the State Constitution, and is exempt from
31 publication in the Florida Administrative Register of any notice
32 or agenda with respect to any proceeding relating to such
33 violation, except under the following circumstances:

34 1.~~(a)~~ As provided in subsection (6);

35 2.~~(b)~~ Upon a determination of probable cause or no probable
36 cause by the commission; or

37 3.~~(c)~~ For proceedings conducted with respect to appeals of
38 fines levied by filing officers for the late filing of reports
39 required by this chapter.

40 (b) ~~However,~~ A complainant is not bound by the
41 confidentiality provisions of this section. In addition,
42 confidentiality may be waived in writing by the person against
43 whom the complaint has been filed or the investigation has been
44 initiated.

45 (c) If a finding of probable cause in a case is entered
46 within 60 ~~30~~ days before ~~prior to~~ the date of the election with
47 respect to which the alleged violation occurred, such finding
48 and the proceedings and records relating to such case may ~~shall~~
49 not become public until noon of the day following such election.
50 This paragraph is subject to the Open Government Sunset Review
51 Act in accordance with s. 119.15 and shall stand repealed on
52 October 2, 2024, unless reviewed and saved from repeal through
53 reenactment by the Legislature.

54 (d) When two or more persons are being investigated by the
55 commission with respect to an alleged violation of this chapter
56 or chapter 104, the commission may not publicly enter a finding
57 of probable cause or no probable cause in the case until a
58 finding of probable cause or no probable cause for the entire

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59 case has been determined. However, once the confidentiality of
60 any case has been breached, the person or persons under
61 investigation have the right to waive the confidentiality of the
62 case, thereby opening up the proceedings and records to the
63 public. Any person who discloses any information or matter made
64 confidential by the provisions of this subsection commits a
65 misdemeanor of the first degree, punishable as provided in s.
66 775.082 or s. 775.083.

67 Section 2. Subsection (3) of section 112.324, Florida
68 Statutes, is amended to read:

69 112.324 Procedures on complaints of violations and
70 referrals; public records and meeting exemptions.—

71 (3) (a) A preliminary investigation shall be undertaken by
72 the commission of each legally sufficient complaint or referral
73 over which the commission has jurisdiction to determine whether
74 there is probable cause to believe that a violation has
75 occurred. If, upon completion of the preliminary investigation,
76 the commission finds no probable cause to believe that this part
77 has been violated or that any other breach of the public trust
78 has been committed, the commission shall dismiss the complaint
79 or referral with the issuance of a public report to the
80 complainant and the alleged violator, stating with particularity
81 its reasons for dismissal. At that time, the complaint or
82 referral and all materials relating to the complaint or referral
83 shall become a matter of public record.

84 (b) If the commission finds from the preliminary
85 investigation probable cause to believe that this part has been
86 violated or that any other breach of the public trust has been
87 committed, it shall so notify the complainant and the alleged

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88 violator in writing. Such notification and all documents made or
89 received in the disposition of the complaint or referral shall
90 then become public records. However, if the complaint or
91 referral is against a candidate in any general, special, or
92 primary election and the finding in such a case is made within
93 60 days before the date of such election, the notification of
94 the finding of probable cause and any documents made or received
95 in the disposition of such complaint or referral may not become
96 public until noon of the day following such election. This
97 paragraph is subject to the Open Government Sunset Review Act in
98 accordance with s. 119.15 and shall stand repealed on October 2,
99 2024, unless reviewed and saved from repeal through reenactment
100 by the Legislature.

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

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

119 Section 3. (1) The Legislature finds that it is a public
120 necessity that the period of time during which the Florida
121 Elections Commission may not make public a finding of probable
122 cause following an investigation of a complaint and related
123 proceedings and recordings be extended from 30 days to 60 days
124 before the date of the election with respect to which the
125 alleged violation occurred until noon of the day following such
126 election. As past elections have approached, individuals have
127 repeatedly resorted to filing complaints with the Florida
128 Elections Commission alleging certain violations of the Florida
129 Election Code by candidates during the pendency of an election
130 cycle as a means to unfairly influence the electoral process. In
131 many cases, individuals filing a complaint have been affiliated
132 with the candidate who is opposing the candidate who is the
133 subject of the complaint. Such abuse of the complaint process
134 has a disruptive effect on the electoral process and can
135 ultimately dissuade voters from participating in an election.
136 Additionally, the release of a probable cause determination in
137 close proximity to an election may deprive the candidate who is
138 the subject of the complaint of the ability to respond to the
139 Florida Elections Commission's findings or to reach a settlement
140 before the election occurs. The Legislature has already
141 recognized this potential of harm to an ongoing election by
142 prohibiting the Florida Elections Commission from making public
143 any finding of probable cause and related proceedings and
144 records during the 30 days before the election with respect to
145 which the alleged violation occurred.

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146 (2) The Legislature further finds that it is a public
147 necessity that the Commission on Ethics not be allowed to make
148 public the notification of a finding of probable cause against a
149 candidate in any general, special, or primary election, and the
150 documents made or received in the disposition of such complaint
151 or referral, beginning 60 days before such election and
152 continuing until noon on the day following the election. Similar
153 to complaints filed with the Florida Elections Commission,
154 ethics complaints have been used to influence the electoral
155 process in some instances. The public release of a probable
156 cause determination by the Commission on Ethics, and the
157 documents made or received in the disposition of such complaint
158 or referral, in close proximity to an election may deprive the
159 candidate who is the subject of the complaint of the ability to
160 respond to the findings or to reach a settlement with the
161 commission before the election occurs. The Legislature has
162 already recognized the importance of avoiding any unfair impact
163 of ethics complaints or referrals on the electoral process by
164 placing limitations on the filing of complaints or referrals and
165 the disclosure of the intention of filing a complaint or
166 referral within the 30 days immediately preceding the election.

167 Section 4. This act shall take effect July 1, 2019.