

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:

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 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
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
36 | probable 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 are
49 | confidential and exempt from s. 119.07(1) and s. 24, Art. I of
50 | the State Constitution, and may ~~shall~~ not become public, until

51 noon of the day following such election. This paragraph is
52 subject to the Open Government Sunset Review Act in accordance
53 with s. 119.15 and shall stand repealed on October 2, 2024,
54 unless reviewed and saved from repeal through reenactment by the
55 Legislature.

56 (d) When two or more persons are being investigated by the
57 commission with respect to an alleged violation of this chapter
58 or chapter 104, the commission may not publicly enter a finding
59 of probable cause or no probable cause in the case until a
60 finding of probable cause or no probable cause for the entire
61 case has been determined. However, once the confidentiality of
62 any case has been breached, the person or persons under
63 investigation have the right to waive the confidentiality of the
64 case, thereby opening up the proceedings and records to the
65 public. Any person who discloses any information or matter made
66 confidential by the provisions of this subsection commits a
67 misdemeanor of the first degree, punishable as provided in s.
68 775.082 or s. 775.083.

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

71 112.324 Procedures on complaints of violations and
72 referrals; public records and meeting exemptions.—

73 (3)(a) A preliminary investigation shall be undertaken by
74 the commission of each legally sufficient complaint or referral
75 over which the commission has jurisdiction to determine whether

76 | there is probable cause to believe that a violation has
77 | occurred. If, upon completion of the preliminary investigation,
78 | the commission finds no probable cause to believe that this part
79 | has been violated or that any other breach of the public trust
80 | has been committed, the commission shall dismiss the complaint
81 | or referral with the issuance of a public report to the
82 | complainant and the alleged violator, stating with particularity
83 | its reasons for dismissal. At that time, the complaint or
84 | referral and all materials relating to the complaint or referral
85 | shall become a matter of public record.

86 | **(b)** If the commission finds from the preliminary
87 | investigation probable cause to believe that this part has been
88 | violated or that any other breach of the public trust has been
89 | committed, it shall so notify the complainant and the alleged
90 | violator in writing. Such notification and all documents made or
91 | received in the disposition of the complaint or referral shall
92 | then become public records. However, if the complaint or
93 | referral is against a candidate in any general, special, or
94 | primary election and the finding in such a case is made within
95 | 60 days before the date of such election, the notification of
96 | the finding of probable cause and any documents made or received
97 | in the disposition of such complaint or referral are
98 | confidential and exempt from s. 119.07(1) and s. 24, Art. I of
99 | the State Constitution, and may not become public, until noon of
100 | the day following such election. This paragraph is subject to

101 the Open Government Sunset Review Act in accordance with s.
102 119.15 and shall stand repealed on October 2, 2024, unless
103 reviewed and saved from repeal through reenactment by the
104 Legislature.

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

123 Section 3. (1) The Legislature finds that it is a public
124 necessity that the period of time during which the Florida
125 Elections Commission may not make public a finding of probable

126 cause following an investigation of a complaint and related
127 proceedings and recordings be extended from 30 days to 60 days
128 before the date of the election with respect to which the
129 alleged violation occurred until noon of the day following such
130 election. As past elections have approached, individuals have
131 repeatedly resorted to filing complaints with the Florida
132 Elections Commission alleging certain violations of the Florida
133 Election Code by candidates during the pendency of an election
134 cycle as a means to unfairly influence the electoral process. In
135 many cases, individuals filing a complaint have been affiliated
136 with the candidate who is opposing the candidate who is the
137 subject of the complaint. Such abuse of the complaint process
138 has a disruptive effect on the electoral process and can
139 ultimately dissuade voters from participating in an election.
140 Additionally, the release of a probable cause determination in
141 close proximity to an election may deprive the candidate who is
142 the subject of the complaint of the ability to respond to the
143 Florida Elections Commission's findings or to reach a settlement
144 before the election occurs. The Legislature has already
145 recognized this potential of harm to an ongoing election by
146 prohibiting the Florida Elections Commission from making public
147 any finding of probable cause and related proceedings and
148 records during the 30 days before the election with respect to
149 which the alleged violation occurred.

150 (2) The Legislature further finds that it is a public

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

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