

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: SPB 7014

INTRODUCER: For consideration by the Ethics and Elections Committee

SUBJECT: Ethics

DATE: December 8, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cleary	Roberts		Pre-meeting

I. Summary:

SPB 7014 creates timeframes for completion of investigations of alleged ethics violations conducted by the Commission on Ethics (commission) and:

- Creates a harmless error standard for failure to meet the deadlines;
- Tolls the timeframes until resolution of any related criminal cases; and
- Provides that the timeframes will apply to existing and new cases.

The proposed bill also:

- Confirms the maximum civil penalty for a violation of the constitutional prohibition against lobbying by a public officer to those for other violations of ethics laws;
- Provides that terms of commission members are limited to two total, rather than two successive;
- Adds candidates for public office to the categories of persons authorized to recover costs and attorney fees for defending against a maliciously filed ethics complaint;
- Requires a vote of six commission members to reject or deviate from a recommendation of counsel to the commission; and
- Removes the commission's ability to conduct a formal hearing to determine disputed material facts.

The proposed bill takes effect July 1, 2024.

II. Present Situation:

Commission on Ethics

The Commission on Ethics was created by the Legislature in 1974 “to serve as guardian of the standards of conduct” for state and local public officials and employees.¹ The Florida Constitution and state law designate the commission as the independent commission provided for in s. 8(g), Art. II of the Florida Constitution.² Constitutional duties of the commission consist of conducting investigations and making public reports on all breach of trust complaints towards public officers or employees not governed by the judicial qualifications commission.³ In addition to constitutional duties, the commission in part:

- Renders advisory opinions to public officials;⁴
- Conducts investigations into potential violations of the Code of Ethics or Florida Constitution based on referrals from select government agencies;⁵
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws;⁶
- Administers the executive branch lobbying registration and reporting Laws;⁷
- Maintains financial disclosure filings of constitutional officers and state officers and employees;⁸ and
- Administers automatic fines for public officers and employees who fail to timely file a required annual financial disclosure.⁹

Current law prescribes requirements for commission members and specifies that a member may not serve more than two full terms in succession.¹⁰

Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)¹¹ establishes ethical standards for public officials and is intended to “ensure that public officials conduct themselves independently and impartially, not using their office for private gain other than compensation provided by law.”¹² The Code of Ethics pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, standards of conduct,

¹ Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited December 5, 2023).

² Section 8(j)(3), art. II, Fla. Const.; s. 112.320, F.S.

³ Section (8)(g), art. II, Fla. Const.

⁴ Section 112.322(3)(a), F.S.

⁵ Section 112.324(1)(b), F.S.

⁶ Section 112.322(2)(b), F.S.

⁷ Sections 112.3215, 112.32155, F.S.

⁸ Section 112.3144, F.S.

⁹ Section 112.3144, F.S.; s. 112.3145, F.S.; s. 112.31455, F.S.

¹⁰ Section 112.321(1), F.S.

¹¹ See Pt. III, Ch. 112, F.S.; *see also* Art. II, s. 8(h)1, Fla. Const.

¹² Florida Commission on Ethics, *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (last visited December 5, 2023).

investigations and prosecutions of ethics complaints and referrals for alleged ethics violations, and the commission, among others.¹³

Procedures on Complaints and Violations

Current law requires the commission to investigate alleged violations of the Code of Ethics upon receipt of a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person, or upon receipt of a written referral of a possible violation from the Governor, the Department of Law Enforcement, a State Attorney, or a United States Attorney.¹⁴ Within 5 days after receipt of a complaint by the commission or a determination by at least six members of the commission that the referral received is deemed sufficient, the commission must transmit a copy to the alleged violator.¹⁵

Upon determination of legal sufficiency of a complaint or referral, the commission must undertake a preliminary investigation.¹⁶ The commission begins the preliminary investigation with issuance of an order to investigate.¹⁷ After the commission's investigator completes his or her initial investigation, he or she writes an investigatory report¹⁸ and mails the report to the alleged violator and to an advocate in the Attorney General's office, who serves as counsel for the commission.¹⁹ The alleged violator is given 14 days from the mailing of the investigator's report to respond to the report.²⁰ Upon receipt of the investigatory report, the advocate must make a written probable cause recommendation to the commission.²¹ A copy of the advocate's recommendation must be furnished to the alleged violator, and the alleged violator has 7 days from the date of mailing of the advocate's recommendation to provide a written response for the commission's consideration.²²

The commission then schedules a probable cause hearing, which is held during an executive session of the commission.²³ The commission must send notice to the parties at least 14 days prior to the hearing.²⁴

If the commission does not find probable cause that the alleged violations were committed, the complaint is dismissed.²⁵ The commission may order additional investigation if it is deemed necessary.²⁶ If the commission finds probable cause, it then provides written notice to the alleged violator of the probable cause finding and of the scheduling of a public hearing.²⁷

¹³ See Pt. III, Ch. 112, F.S.

¹⁴ Section 112.324(1), F.S.

¹⁵ *Id.*

¹⁶ Section 112.324(3), F.S.

¹⁷ Rule 34-5.002(2), F.A.C.; r. 34-17.005(2), F.A.C.

¹⁸ Rule 34-5.004(7), F.A.C.; r. 34-17.008(6), F.A.C.

¹⁹ Rule 34-5.006(1)(3), F.A.C.; r. 34-17.010(1)(3), F.A.C.;

²⁰ Rule 34-5.006(2), F.A.C.; r. 34-17.010(2), F.A.C.

²¹ Rule 34-5.006(3), F.A.C.; r. 34-17.010(3), F.A.C.

²² *Id.*

²³ Rule 34-5.006(4), F.A.C.; r. 34-17.010(4), F.A.C.

²⁴ *Id.*

²⁵ Section 112.324(3), F.S.

²⁶ *Id.*

²⁷ *Id.*

The alleged violator may at any time during the subsequent proceedings negotiate a settlement with the commission via the advocate.²⁸ The alleged violator also has the option to dispute material facts and request a formal hearing or to request an informal hearing and present mitigating circumstances.²⁹

The commission may conduct a formal hearing itself or transfer the case to the Division of Administrative Hearings (DOAH) for formal hearing.³⁰ An informal hearing is always conducted by the commission.³¹ If the commission conducts a hearing, it subsequently issues a Final Order recommending a penalty.³² If an administrative law judge at DOAH conducts a formal hearing, the judge issues a Recommended Order to the commission.³³ Jurisdiction may be relinquished back to the commission from the DOAH at the request of the commission or if a judge determines there are no disputed material facts.³⁴

The commission may dismiss any complaint or referral at any stage of disposition if it determines that the violation alleged is a *de minimis* violation attributable to inadvertent or unintentional error.³⁵ The commission may, at its discretion, dismiss any complaint at any stage of disposition should it determine that the public would not be served by proceeding further, in which case the commission must issue a public report stating with particularity its reasons for dismissal.³⁶

Penalty Provisions

The general penalty provisions for violations of the Code of Ethics are located in s. 112.317, F.S., and prescribe, among other penalties, a maximum civil penalty of \$20,000 per violation.³⁷ During the 2023 legislative session, the Legislature increased that penalty to \$20,000 from \$10,000 at the request of the commission.³⁸

The law provides separate penalties for violations of the constitutional prohibition against lobbying by a public officer.³⁹ Among other penalties, the prescribed maximum civil penalty for a violation of that prohibition is \$10,000.⁴⁰

²⁸ *Id.*

²⁹ *Id.*

³⁰ Rule 34-5.010, F.A.C.; r. 34-17.013, F.A.C. See s. 120.569(2), F.S.; s. 120.57(1), F.S.

³¹ Rule 34-5.010, F.A.C.; r. 34-17.013, F.A.C.; See s. 120.569(1), F.S.; s. 120.57(2), F.S.

³² The commission is without jurisdiction to impose a penalty or enter into a stipulation or settlement which imposes penalty (s. 112.324(3), F.S.). Penalties must be imposed only by the appropriate disciplinary authority designated by s. 112.324, F.S.

³³ Rule 34-5.024(1), F.A.C.; r. 34-17.018(1); F.A.C.; See also s. 120.57(1)(k), F.S.; r. 28-106.216, F.A.C.

³⁴ Section 120.57(1)(i), F.S.

³⁵ Section 112.324(11), F.S. A *de minimis* violation is any violation that is unintentional and not material in nature.

³⁶ Section 112.324(12), F.S. In order for the commission to dismiss a complaint under this provision, it must find that the public interest would not be served by proceeding further and must issue a public report explaining its justification for dismissal. In contrast, to dismiss a violation for being *de minimis*, the commission must find that the violation was unintentional and not material in nature.

³⁷ Section 112.317(1)(a)6., F.S. The commission is without jurisdiction to impose any penalty, but may make recommendations for an appropriate penalty to the appropriate disciplinary authority charged with imposing penalties as designated under the procedures of s. 112.324(3), F.S.

³⁸ Section 7, ch. 2023-49.

³⁹ Section 112.3122, F.S.

⁴⁰ Section 12.3122(4)(b), F.S.

Redress for Defense against a Maliciously Filed Complaint

Current law entitles a public officer or employee who is the subject of a maliciously filed ethics complaint to seek from the complainant the costs and attorney fees related to the public officer or employee's defense against the complaint.⁴¹ The law does not include *candidates* for public office in the categories of persons who may seek such redress.⁴²

III. Effect of Proposed Changes:

SPB 7014 creates the following statutory timeframes for completion of investigations of alleged ethics violations conducted by the commission:

- Requires the commission to complete the preliminary investigation, which concludes with the probable cause determination, no later than 1 year after the beginning of the preliminary investigation.
- Requires the commission to determine technical sufficiency of a complaint within 5 days of receipt and legal sufficiency within 21 days of receipt, and requires the commission to determine technical and legal sufficiency of a referral at its next meeting.
- Creates a 60-day deadline from the date of the commission's receipt of an initial complaint for the complainant to file an amended complaint.
- Requires an investigatory report to be completed no later than 120 days after issuance of the order to investigate.
- Requires an investigatory report be provided to the alleged violator and advocate no later than 5 days after completion of the report.
- Requires the advocate to make a written probable cause recommendation to the commission no later than 15 days after receiving an investigatory report.
- Requires the commission to provide the advocate's recommendation to the alleged violator no later than 5 days after its completion.
- Requires the alleged violator be given 14 days to respond in writing after the mailing date of the advocate's recommendation.
- Requires the commission, upon receipt of the advocate's recommendation, to schedule the probable cause hearing for the next executive session if notice requirements can be met.
- Limits an order of additional investigation at a probable cause hearing to 60 days, if six commission members approve, and requires the commission to document the reasons for extension during the hearing.
- Requires the commission to provide written notification of the probable cause determination to the complainant and the alleged violator no later than 5 days after the date of the probable cause determination.
- Requires the commission to conduct an informal hearing within 75 days of receipt of the alleged violator's request for the informal hearing.
- If jurisdiction of a case is relinquished back from the DOAH without a Recommended Order, require the commission to take up the case its next meeting and to complete final action on the case no later than 30 days after that meeting.

⁴¹ Section 112.317(7), F.S.

⁴² *Id.*

The proposed bill specifies the following implementing provisions related to the new timeframes:

- A failure of the commission to comply with the new timeframes constitutes harmless error in any related disciplinary action unless a court finds that the fairness of the proceedings or the correctness of an action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.
- The timeframes are tolled pending resolution of a related criminal complaint.
- The timeframes apply to existing and new cases.

The proposed bill also:

- Confirms the maximum civil penalty for a violation of the constitutional prohibition against lobbying by a public officer to those for other violations of ethics laws.
- Provides that terms of commission members are limited to two total, rather than two successive.
- Adds candidates for public office to the categories of persons authorized to recover costs and attorney fees for defending against a maliciously filed ethics complaint.
- Requires a vote of six commission members to reject or deviate from a recommendation of counsel to the commission.
- Removes the commission's ability to conduct a formal hearing to determine disputed material facts.
- Makes technical changes, removing obsolete language.

The proposed bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The provisions of the proposed bill will require implementation by the commission, including potential rulemaking, revision of internal policies and procedures, and development of a case tracking process.

The timeframes for complaint resolution may reduce costs to investigate and prosecute ethics violations by preventing unnecessary delays.

Because the commission currently refers all cases for which a formal hearing is to be conducted to the DOAH, the proposed bill's removal of the commission's authority to conduct formal hearings is not likely to increase the commission's DOAH costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.3122, 112.321, 112.317, and 112.324.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.