

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 Rules

BILL: CS/SB 7014

INTRODUCER: Rules Committee and Ethics and Elections Committee

SUBJECT: Ethics

DATE: January 11, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Clery</u>	<u>Roberts</u>		EE Submitted as Comm. Bill/Fav
1. <u>Clery</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

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

The bill also:

- Makes uniform for complaints and referrals the requirements for beginning an investigation;
- Conforms 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; and
- Makes technical changes, clarifying terminology and removing obsolete language.

The bill takes effect October 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 January 10, 2024).

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 January 10, 2024).

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 the 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:

CS/SB 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 begin a preliminary investigation within 30 days of the commission's receipt of a technically and legally sufficient referral or complaint.
- 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 150 days after issuance of the order to investigate.
- Allows the commission, at any one commission meeting held during the preliminary investigation, to order a one-time extension for additional investigation up to 60 days; requires the commission to document the reasons for extension during that meeting; and requires the commission to transmit those documented reasons to the alleged violator and complainant within 5 days from the order of extension.
- Requires an investigatory report be transmitted to the alleged violator and counsel representing the commission no later than 5 days after completion of the report.
- Requires the counsel representing the commission to make a written probable cause recommendation to the commission no later than 15 days after receiving an investigatory report.
- Requires the commission to transmit the counsel's written 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 counsel's written recommendation.
- Requires the commission, upon receipt of the counsel's written recommendation, to schedule the probable cause hearing for the next commission meeting, for which notice requirements can be met.
- Requires the commission to transmit a copy of the order finding probable cause 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 no later than 75 days after the date of the probable cause determination.
- If jurisdiction of a case is relinquished back from the DOAH without a Recommended Order, requires the commission to take up the case at its next meeting, for which notice

⁴¹ Section 112.317(7), F.S.

⁴² *Id.*

requirements can be met, and to complete final action on the case no later than the next subsequent commission meeting.

The 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 bill also:

- Makes uniform for complaints and referrals the requirements for beginning an investigation.
- Conforms 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 representing the commission.
- Removes the commission's ability to conduct a formal hearing to determine disputed material facts.
- Makes technical changes, clarifying terminology and removing obsolete language.

The bill takes effect October 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 bill will require implementation by the commission, including potential rulemaking, revision of internal policies and procedures, development of a case tracking process, reorganization of staff duties and responsibilities, and will potentially require the hiring of additional staff.

The timeframes for complaint resolution may reduce costs to investigate and prosecute ethics violations by preventing unnecessary delays, and potential revision of internal policies and procedures and reorganization of staff responsibilities may provide for opportunity to increase efficiency and eliminate unnecessary cost or delay.

Because the commission currently refers all cases for which a formal hearing is to be conducted to the DOAH, the 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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Rules on January 10, 2024:**

- Makes uniform for complaints and referrals the requirements for beginning an investigation and the deadlines for completion of initial technical and legal sufficiency reviews;

- Extends the deadline for completing an initial investigatory report to 150 from 120 days;
- Provides the commission more flexibility in granting an extension for further investigation by authorizing the commission to grant an extension at any meeting during a preliminary investigation, instead of only at the probable cause hearing;
- Extends the deadline for completing final action in a case relinquished from the Division of Administrative Hearings back to the commission;
- Removes the provision making the timeframes retroactive to existing cases;
- Clarifies terminology; and
- Extends the effective date of the bill to October 1, 2024 instead of July 1, 2024.

B. Amendments:

None.