

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: CS/SB 92

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Gaetz

SUBJECT: Employee Protections

DATE: January 14, 2026 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. White	McVaney	GO	Fav/CS
2. Cleary	Roberts	EE	Favorable
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 92 addresses retaliatory actions taken against an employee for disclosing to the Commission on Ethics (Commission) violations of:

- The Code of Ethics for Public Officers and Employees (part III, ch. 112, F.S.);
- Article II, section 8 of the State Constitution;
- Certain standards of conduct for the Public Service Commission and the Public Service Commission Nominating Council;
- Certain standards of conduct for the Florida Gaming Control Commission;
- Restrictions on use of public funds to retain lobbyists; and
- Requirements for the use of, and procurement for, state means of transportation.

Under the bill, a public officer, public employee, or local government attorney breaches public trust if he or she initiates, or uses his or her influence and position to cause another to initiate, an adverse personnel action against an agency employee or independent contractor in retaliation for a disclosure of an ethical violation.

If an employee is discharged, disciplined, or subjected to other adverse personnel action as a result of his or her disclosure, the employee may file a complaint for such retaliatory actions with the Commission. Upon receiving a notice that the Commission terminated its investigation into the alleged retaliatory action, a complainant may pursue an administrative remedy or file a civil action. The bill lists available relief.

The bill provides that, upon a written request, the Commission shall provide a copy of the complaint for ethical violations, and any timely amendments thereto, to Public Employee Relations Commission, the person who filed the ethics complaint, or a current or former employee of the alleged violator who is identified in the text of the complaint or amendment thereto. The Commission, prior to releasing the complaint, must redact any designations regarding an ongoing ethics investigation, the records of which are protected from public records disclosures.

The bill takes effect January 1, 2027.

II. Present Situation:

Ethical Standards & the Public Trust

The people of the state of Florida “have the right to secure and sustain [public trust] against abuse.”¹ As the Florida Supreme Court has stated, the right to a secure public trust requires the State to protect the public’s right to know an official’s interest, deter corruption and conflicting interest, create public confidence in Florida’s public officials, and assist in detecting and prosecuting officials who violate the law and ethical standards.² The State Constitution further requires the Legislature to adopt a code of ethics for state employees to prohibit conflicts between public duty and private interest.³

A breach of public trust is a breach of the ethical standards placed on public employees and officers, and encompasses violations of:

- The “Sunshine Amendment” and other constitutional provisions governing public officials’ conduct;
- The Code of Ethics for Public Officers and Employees (Code of Ethics), part III, ch. 112, F.S.;
- Restrictions on agencies’ use of public funds to retain lobbyists;
- Standards of conduct for the Public Service Commission and its nominating council;
- Standards for the procurement relating to and use of state motor vehicles and aircraft;
- Standards of conduct for the Florida Gaming Control Commission; and
- Gift and honoraria laws.⁴

The State Constitution Sunshine Amendment

The Sunshine Amendment addresses potential conflicts between the public duties of state employees and officers and their private interests, especially private monetary interests. Under the Sunshine Amendment, elected constitutional officers, candidates for such offices, and other designated persons must file full and public disclosure of their financial interests and campaign finances. Public officers during, and for a certain period following their tenure, are prohibited from personally representing another individual before government bodies or being paid to lobby

¹ FLA. CONST. art. II, s. 8.

² *Plante v. Smathers*, 372 So. 2d 933, 937 (Fla. 1979) (discussing FLA. CONST. art. II, s. 8).

³ FLA. CONST. art. III, s. 18

⁴ Rule 34.50015, F.A.C.; Florida Commission on Ethics, *Ethics Laws*, <https://ethics.state.fl.us/Research/EthicsLaws.aspx> (last visited Oct. 28, 2025).

on another's behalf. Public officers and employees are additionally prohibited from using their office or position for disproportional personal benefit.

The Code of Ethics (Part III, Chapter 112, F.S.)

The Code of Ethics establishes statutory ethical standards for public officials and employees and applies to officers and employees of the state or a political subdivision.⁵ The Code of Ethics serves as both a guide for the official conduct of public servants as well as a basis for discipline of those who violate its provisions.⁶ Various activities by public officers and employees are limited or prohibited by the Code of Ethics, including:

- Soliciting or accepting gifts;
- Doing business with any entity in which the officer or employee or his or her spouse or child has a position or interest;
- Accepting any unauthorized compensation, payment, or thing of value;
- Corruptly using his or her official position to secure a special privilege, benefit, or exemption for him- or herself or others;
- Having or holding any employment or contractual relationship that conflicts with his or her public position;
- Using information gained by reason of his or her official position for personal gain;
- Representing another person or entity before the government body or agency of which the individual served for a specified period following vacation of office;
- Holding dual-offices simultaneously;
- Serving on a professional and occupational licensing board while serving as a member of a state examining or licensing board for the profession or occupation; and
- Lobbying by certain officers before a specified time.⁷

The Code of Ethics also requires lobbyists who regularly engage in lobbying to disclose their identity, expenditures, and activities, even if their lobbying is done by solicitation of others to engage in such efforts.⁸

Restrictions on Agencies' Use of Public Funds to Retain Lobbyist

Section 11.062, F.S., prohibits executive, judicial, and quasi-judicial departments and agencies from using state funds to pay for lobbying. While a department of the executive branch, a state university, a community college, or a water management district may not use public funds to retain a lobbyist to represent it before the legislative or executive branch, their full-time employees may register and serve as a lobbyist for their employer.

The Commission on Ethics investigates potential violations of s. 11.062, F.S.⁹

⁵ *Id.*

⁶ Section 112.311(5), F.S.

⁷ Sections 112.311(2) and (3), and 112.313, F.S.; *see also* 9 FLA. JUR. 2D CIVIL SERVANTS s. 168 *Standards of conduct for public officers and employees* (2024).

⁸ Section 112.311(3), F.S.

⁹ Florida Commission on Ethics Rule 34.50015.

Standards of Conduct for the Public Service Commission and the Public Service Commission Nominating Council

Florida Statutes provide for standards of conduct for commissioners and employees of the Public Service Commission as well as those serving on its Nominating Council.¹⁰ These standards prohibit members of the council and commission, as well as their spouses, from engaging in any potential direct or indirect financial benefit from entities regulated by the commission. In addition, commissioners and employees of the Public Service Commission may not represent regulated entities in actions before the commission for a set amount of time after leaving the commission. Commissioners are additionally prohibited from entertaining certain ex parte communications concerning the merits, threat, or offer of reward in any currently pending proceeding.

The Commission on Ethics has the authority to accept and investigate alleged violations of these standards of conduct by the members or employees of the Public Service Commission or its Nominating Council.

Standards of Conduct for the Florida Gaming Control Commission

Section 16.715, F.S., sets forth standards of conduct for commissioners and employees of the Florida Gaming Control Commission (FGC). Commissioners and employees must behave professionally, avoid impropriety, and act in a manner that promotes public confidence in the impartiality and integrity of the commission.

Commissioners and employees may not accept anything from any business or entity affiliated with or that is before the commission or regulated by the commission. Nor may FGC commissioners or employees accept special financial benefits or free food at conferences that are not available to all conference participants. A commissioner may not serve as a representative, officer, or employee of a political party or any executive committee or governing body of a political party. Nor may a commissioner receive remuneration for activities on behalf of a candidate or otherwise participate in the solicitation of votes for a candidate. Commissioners are additionally prohibited from entertaining certain ex parte communications concerning the merits, threat, or offer of reward in any currently pending proceeding. A former commissioner or employee cannot represent an entity or person regulated by the commission for two years after their service with the FGC ends.

The Commission on Ethics has the authority to accept and investigate alleged violations of s. 16.715, F.S.

Use of State Motor Vehicles and Aircraft

Part III, ch. 287, F.S., governs the use and procurement of means of transportation for officers and employees of the executive and judicial branches of state government. Such state officers and employees may only purchase or continue to pay for the lease of state motor vehicles with funds appropriated by the Legislature for that purpose. Additional requirements provide for oversight by the Department of Management Services, limitations on the types and use of the vehicles, and repairs and service of the vehicles. Any violation of the standards for acquiring,

¹⁰ See ss. 350.031, 350.04, 350.041, 350.042, and 350.0605, F.S.

funding, and using vehicles constitutes a misuse of public position and breach of public trust. The Chief Financial Officer reports suspected violations to the Commission on Ethics who has the authority to investigate possible violations of public trust.¹¹

Gift and Honoraria Laws

Various statutes address public officers or employees accepting expenditure, gifts, or other honoraria and require the public disclosure of any financial benefit or gifts received. The Commission on Ethics investigates any violations of these laws.

The Commission on Ethics & Investigation Into Breaches of Ethics Standards and the Public Trust

The Commission on Ethics (Commission) has the constitutional duty to investigate “all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.”¹² To this end, the Commission reviews and investigates possible violations of the State’s ethics laws by state and local elected or appointed public officers and public employees and others designated by Florida law. The Commission’s jurisdiction is limited to individual public officers and employees and does not extend to open meetings or public records laws, residency requirements, elections laws, or to judges, federal officials, or most employees or officers of private companies or attorneys in private practice.¹³ The Commission must complete an investigation, including the probable cause determination, within one year of receiving a complaint.¹⁴

Initiating an Investigation

The Commission on Ethics investigates written, sworn complaints of alleged breaches of public trust upon receipt of a written complaint executed on a form prescribed by the Commission and signed under oath or affirmation, 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.¹⁵ Within 30 days of receiving a complaint or referral, the Commission must conduct a preliminary investigation into the legal sufficiency of the complaint or referral and determine whether there is probable cause that a violation has occurred.

Any individual can submit a complaint, but the complaint must be based upon personal knowledge or information other than hearsay,¹⁶ and made within five years of the alleged breach of public trust.¹⁷ Complainants have 60 days from when the Commission receives the original complaint to amend the complaint.¹⁸ Within five days of receiving the complaint, the Commission must forward a copy of the complaint to the alleged violator.¹⁹

¹¹ Section 287.175, F.S.

¹² FLA. CONST. art. II, s. 8(g); *see* s. 112.320, F.S. (other ethical standards).

¹³*Id.*; Florida Commission on Ethics, *Complaints* (Updated Oct. 9, 2024), <https://ethics.state.fl.us/Complaints/Complaints.aspx> (last visited Dec. 9, 2025).

¹⁴ Sections 112.311-112.3261, F.S.

¹⁵ Section 112.324(1), F.S.

¹⁶ Section 112.324(1)(a), F.S.

¹⁷ Section 112.3231(1), F.S.

¹⁸ Section 112.324(3)(a), F.S.

¹⁹ Section 112.324(1), F.S.

Staff of the Commission conduct a technical and clerical review upon receipt of the complaint by staff of the Commission. If the complaint is incomplete or alleges a matter or names a person not within the jurisdiction of the Commission, the complaint is returned to the complainant identifying the defect.²⁰ Only complaints that pass the technical and clerical review are forwarded.²¹

After the technical and clerical review, the complaint is reviewed to determine whether the complaint is legally sufficient to allege a breach of public trust. Complaints are sufficient if the allegations by the complainant, if true, may constitute a breach of public trust, and each element of the statute to be investigated, except elements pertaining to mental state, intent, or knowledge of an individual, is supported by information in the complaint that is based on personal knowledge of the complainant or information other than hearsay.²²

If the complaint is legally sufficient, the Executive Director of the Commission orders an investigation.²³

Preliminary Investigation

Within 30 days of receiving a technically and legally sufficient complaint, the Commission must conduct a preliminary investigation to determine whether there is probable cause that a violation has occurred.²⁴ Investigations are conducted by Commission staff, by personnel of the Department of Legal Affairs, or by any other person or agency designated by the Commission.²⁵

During the investigation, the Commission may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other relevant items.²⁶ The Commission may also call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties.²⁷ If any person called to give evidence in a proceeding before the Commission refuses to give evidence because of a claim of possible self-incrimination, the Commission, with the written authorization of the appropriate state attorney, may apply to the chief judge of the appropriate judicial circuit for a judicial grant of immunity ordering the testimony or other evidence of such person notwithstanding his or her objection, but in such case no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal proceeding.²⁸

²⁰ Rule 34-5.002(2), F.A.C.

²¹ Rule 34-5.001(4), F.A.C.

²² Rule 34-5.002(1) and (2), F.A.C.; *see* s. 112.324(1)(a), F.S.

²³ Rule 34-5.002(3) and (4), F.A.C.

²⁴ Section 112.324(3)(a), F.S.

²⁵ Rule 34-5.004, F.A.C.

²⁶ Section 112.322(4), F.S.

²⁷ Section 112.322(6), F.S.

²⁸ Section 112.3232, F.S.

Investigatory Report

Within 150 days of the order to conduct the investigation, the investigator provides an investigatory report to the Commission.²⁹ The report contains a narrative account of all pertinent information obtained through interviews of witnesses, documentary evidence, or other sources and must include a discussion of any conflicts in the evidence. The report cannot contain any determination or speculation with respect to whether the evidence indicates a breach of public trust, nor may the report make any recommendations.³⁰ The investigator keeps an investigatory file maintained in the office of the Commission. The investigatory file must include:

- Copies of all documents obtained during the course of the investigation;
- Tape recordings of interviews with witnesses and, if no recording is made, a summary of the interview;
- A list of the names and addresses of all persons actually interviewed;
- Any other relevant documents; and
- The investigator's report(s) to the Commission.³¹

The investigatory report is sent to the alleged violator and to counsel representing the Commission within five days. Counsel representing the Commission then has 15 days to recommend to the Commission the disposition of the complaint. The counsel's report is forwarded to the alleged violator within five days and the violator has 14 days to respond.³² The Commission, once it receives counsel's recommendations, schedules a probable cause hearing.³³

Informal Disposition

Informal disposition of the complaint may be made via stipulation, agreed settlement, or consent order between counsel for the Commission and the alleged violator, so long as the Commission approves in a public meeting and finds that the settlement is in the best interest of the state.³⁴ The Commission can only deviate or reject stipulations and settlements recommended by counsel via a two-thirds vote. The Commission cannot impose a penalty via settlement.³⁵

Probable Cause Determination

No matter the outcome, the probable cause determination ends the preliminary investigation. If the Commission does not find probable cause, it dismisses the matter and provides the complainant and alleged violator a public report stating with particularity its reasons for dismissal. At that time, the complaint or referral and all materials relating to the complaint or referral become a matter of public record.³⁶

If the Commission finds probable cause to believe a violation has occurred, it must send the alleged violator and complainant an order finding probable cause in writing within five days.³⁷

²⁹ Section 112.324(3)(b), F.S.

³⁰ Rule 34-5.004(7), F.A.C.

³¹ Rule 34-5.004(8), F.A.C.

³² Section 112.324(3)(b), F.S.

³³ Section 112.324(3)(c), F.S.

³⁴ Section 112.324(3)(h), F.S.; Rule 34-5.020, F.A.C.

³⁵ Section 112.324(3)(h), F.S.

³⁶ Section 112.324(3)(d), F.S.

³⁷ Section 112.324(3)(e), F.S.

Prior to a probable cause determination, the complaint and records relating to the preliminary investigation are confidential and exempt from public records disclosure requirements unless the complaint is dismissed as legally insufficient or the alleged violator requests in writing that the records be made public. During the same time, related proceedings are exempt from open meetings requirements.³⁸

Rights of Respondents

An alleged violator may request in writing to have a public hearing within 14 days of the mailing date of the probable cause notification. The alleged violator may elect to have a formal hearing before the Division of Administrative Hearings or an informal investigation before the Commission.³⁹ Informal hearings before the Commission must happen within 75 days of the probable cause determination.⁴⁰ During a probable cause hearing, the alleged violator may make brief oral statements, similar to oral argument, to the Commission.⁴¹ An alleged violator has the right to request a hearing before the Commission to present oral or written testimony in response to the allegations.⁴² The alleged violator may appear on their own behalf or representation of counsel, and, within a reasonable timeframe, move for dismissal if the Commission lacks proper jurisdiction.⁴³

Investigations Into Facts Discovered During the Preliminary Investigation

An investigator may uncover during his or her investigation facts materially and not materially related or relevant to the underlying complaint. The Commission must investigate all facts materially relevant to the complaint,⁴⁴ including facts that tend to show additional incidents of ethical violations that (1) are separate instances of the same or similar conduct; or (2) arise out of or in connection with the allegations in the complaint.⁴⁵ Materially relevant facts are included in the investigatory report.

If, during an investigation, an investigator uncovers evidence of a wrongful act not materially related to the complaint at issue, he or she shall report such evidence to the Commission in a separate report. The Commission may forward the information to the appropriate disciplinary or law enforcement authority, but the wrongful act is not further investigated by the investigator in the absence of a complaint with respect thereto.⁴⁶ If the disciplinary authority chooses to file a complaint with the Commission upon receiving the information, such complaint is treated as a separate complaint.⁴⁷

³⁸ *Id.*; see Florida Office of the Attorney General, *Government-In-The-Sunshine Manual: 2025 Edition*, pp. 26, 99.

³⁹ Section 112.324(3)(e), F.S.

⁴⁰ Section 112.324(3)(f), F.S.

⁴¹ Rule 34-5.006(5), F.A.C.

⁴² Section 112.322(2)(a), F.S.

⁴³ Rule 34-5.0054(1), F.A.C.; Rule 34-5.005, F.A.C.

⁴⁴ Rule 34-5.0043, F.A.C.

⁴⁵ Rule 34-5.0043(1), F.A.C.

⁴⁶ Rule 34-5.004(4), F.A.C.

⁴⁷ *See id.*

Penalties

In addition to any civil or criminal penalty for the underlying conduct, violations of the ethical standards investigated by the Commission may be punishable by one or more of the following:

- For public officers: impeachment, removal or suspension from office, public censure and reprimand, forfeiture of up to one-third of his or her salary for up to one year, a civil penalty of no more than \$20,000, and restitution of any pecuniary benefits received because of the violation committed.
- For public employees: dismissal, suspension of up to 90 days without pay, demotion, reduction in salary, public censure and reprimand, forfeiture of up to one-third of his or her salary for up to one year, a civil penalty of no more than \$20,000, and restitution of any pecuniary benefits received because of the violation committed.
- For candidates: disqualification from being on the ballot, public censure, reprimand, and a civil penalty of no more than \$20,000.
- For former public officers and employees: public censure and reprimand, a civil penalty of no more than \$20,000, and restitution of any pecuniary benefits received because of the violation committed.⁴⁸

In certain violations, public employees and officers may also forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.⁴⁹

Complainants who file complaints with a malicious intent to injure the reputation of the officer, employee, or candidate who is the subject of the complaint may be liable for costs and reasonable attorney's fees.⁵⁰

The Florida Commission on Human Relations (CHR)

The Florida Commission on Human Relations (CHR) is housed within the Department of Management Services but is not subject to any control or supervision by or direction from the department.⁵¹ The CHR is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate. The members must broadly represent various racial, religious, ethnic, social, economic, political, and professional groups in Florida.⁵²

The Legislature created the CHR to administer the predecessor to the Florida Civil Rights Act of 1992 and the Florida Fair Housing Act.⁵³ The CHR's jurisdiction was later expanded to take over the responsibilities for administering the public WBA. In accordance with and for the sole purpose of the, WBA, the CHR may:

- Protect employees and applicants for employment from personnel actions prohibited under the WBA;

⁴⁸ Section 112.317(1), F.S.

⁴⁹ Section 112.3173, F.S.

⁵⁰ Section 112.317(7), F.S.

⁵¹ Section 760.04, F.S.

⁵² Section 760.03, F.S.

⁵³ Chapter 760, F.S., Part II. Cf ch. 83-221, ss. 1 and 9, Laws of Fla. (creating the Fair Housing Act and assigning the duty of administration to the commission) and ch. 69-287 s. 1 (creating the original civil rights laws in Florida and assigning the commission to administer such laws).

- Petition for stays and for corrective actions, such as temporary reinstatement;
- Recommend disciplinary proceedings pursuant to investigation and appropriate agency rules and procedures;
- Forward to appropriate entities, including the Florida Department of Law Enforcement, potential violations of any law, rule, or regulation;
- Administer oaths, examine witnesses, take statements, issue subpoenas, order the taking of depositions, order responses to written interrogatories, and make appropriate motions to limit discovery;
- Intervene or otherwise participate in any appeal or other proceeding arising under the statute before the Public Employees Relations Commission or any other appropriate agency; and
- Conduct investigations even in the absence of a complaint.⁵⁴

The CHR may petition for an award of attorney's fees and expenses from a state agency.⁵⁵

Appeals of WBA Decisions

State agency employees must first report prohibited retaliatory actions to the CHR. Within 21 days of receipt of a notice of termination of investigation by the CHR, the complainant may file a complaint with the Public Employees Relations Commission or seek judicial review.⁵⁶

The Public Employees Relations Commission

The Public Employees Relations Commission (PERC) helps in resolve disputes between public employees and public employers.⁵⁷ Part II, Chapter 447, F.S., designates the PERC as having preemptive jurisdiction in resolving labor disputes between public employers and public employees.⁵⁸ There are state employees who have civil service privileges under the Florida Constitution concerning discipline, such as discharge, demotion and suspensions. They have the right to appeal these actions to the PERC which will appoint a hearing officer to hold an evidentiary hearing to determine if there was cause for the discipline and, in certain cases, whether the discipline should be mitigated.

Florida public employees have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.⁵⁹ The PERC additionally reviews and addresses disputes about the composition of bargaining units and alleged unfair labor practices; oversees the registration of public employee collective bargaining units; and conducts elections when public employees express the desire to be represented by a union.

⁵⁴ Section 112.31895(3)(a), F.S.

⁵⁵ Section 112.31895(3)(j), F.S.

⁵⁶ Section 112.31895(4), F.S.

⁵⁷ Section 447.201, F.S.

⁵⁸ *Maxwell v. Sch. Bd. of Broward Cnty.*, 330 So. 2d 177, 179 (Fla. 4th DCA 1976).

⁵⁹ Section 447.301, F.S.

Preclusion of Remedies

A public employee may not elect to pursue remedies through a WBA action against an employer and through a collective bargain grievance procedure.⁶⁰

Florida Private Sector Whistleblower's Act

Florida has two whistleblower laws with different requirements, one for the public-sector (the WBA) and one private-sector law. Unlike the WBA, the private-sector law affords private employees an immediate remedy via civil court. Chapter 448, F.S., provides general labor provisions for employers and employees in Florida. More specifically, ss. 448.101-448.105, F.S., the Private Sector Whistleblower's Act, prohibit retaliatory attacks on employees in private workplaces who disclose illegal workplace practices and provide the remedies and rights that flow from that prohibition.

Under Florida's Private Sector Whistleblower's Act, employees are protected from retaliatory actions for disclosing or threatening to disclose an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation adopted by any federal, state, or local governing body. An employer, for Florida's Private Sector Whistleblower's Act, is limited to a *private* individual, partnership, institution, corporation, or association that employs ten or more persons.⁶¹

It is unclear if this protection extends to employees who, in good faith, report a lawful activity, policy, or practice they believe is unlawful.⁶² To be covered by Florida's Private-Sector Whistleblower's Act, an employee must:

- Refuse to participate in unlawful activity, policy, or practice;
- Cooperate with an investigating governmental agency; or
- Disclose the unlawful activity, policy, or practice, to an appropriate governmental agency in writing and under oath. In this instance, the employee must first, in writing, bring the unlawful activity, policy, or practice to the private employer's attention and provide the employer a reasonable opportunity to correct the activity, policy, or practice.

An employee subjected to retaliatory actions in violation of Florida's Private Sector Whistleblower's Act may file a civil action in court; the employee need not engage in administrative procedures like those in the WBA. The CHR does not have jurisdiction over violations of Florida's Private Sector Whistleblower's Act

Overlap with the Public-Sector Whistle-blower's Act (WBA)

Employees of independent contractors are not precluded from filing an action under both the public-sector Whistle-blower's Act (WBA) and Florida's Private-Sector Whistleblower's Act.

⁶⁰ *Taylor v. Pub. Employees Relations Com'n*, 878 So. 2d 421 (Fla. 4th DCA 2004)

⁶¹ Section 448.101(3), F.S.

⁶² The First and Second District Court of Appeals' opinions conflict with the Fourth District's. See *Gessner v. Southern Co.*, 396 So. 3d 908, 910 (Fla. 1st DCA 2024) (holding that the conduct must actually be unlawful); *Kearns v. Farmer Acquisition Co.*, 157 So. 3d 458, 465 (Fla. 2d DCA 2015) (same); *contra Aery v. Wallace Lincoln-Mercury, LLC*, 118 So. 3d 904, 916 (Fla. 4th DCA 2013) (holding a good faith belief that the activity was illegal, whether or not actually illegal, invokes the protections of the private-sector whistle-blower's act).

The fact that an employer might be independent contractor of the state is incidental and does not exclude employer's actions from private-sector whistleblower act. The WBA does not claim to be an exclusive remedy for employees of independent contractors of state agencies. Both the WBA and Florida's Private-Sector Whistleblower's Act specifically state that their provisions did not diminish rights, privileges, or remedies of employees under any other law or rule.⁶³

Moreover, there may be instances in which the WBA provides protections to employees of independent contractors that are not available under Florida's Private-Sector Whistleblower's Act. As mentioned above, Florida's Private-Sector Whistleblower's Act protects an employee's disclosures of unlawful conduct by his or her *private* employer. The WBA's protections extend to disclosures by an employee or agent of an agency or independent contractor. The alleged wrong-doer does not, under the WBA, need to be the employee's actual employer.

Public Records

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁶⁴ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.⁶⁵ When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.⁶⁶ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.⁶⁷ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.⁶⁸

III. Effect of Proposed Changes:

The bill provides protections against retaliation to government employees, applicants for employment with agencies, and employees of private employers doing business with state or local government, for their disclosures of alleged violations of certain standards of conduct and ethical obligations of public employees and officers.

Specifically, the bill protects disclosure of any violation or suspected violation of:

- The Code of Ethics for Public Officers and Employees;
- The Sunshine Amendment and other constitutional provisions relating to public officials' conduct;
- Restrictions on agencies' use of public funds to retain non-employee lobbyists;

⁶³ *Dahl v. Eckerd Family Youth Alternatives, Inc.*, 843 So. 2d 956 (Fla. 2d DCA 2003).

⁶⁴ FLA. CONST. art. I, s. 24(a).

⁶⁵ *Id. See also, Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

⁶⁶ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

⁶⁷ *Id.*

⁶⁸ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

- Standards of conduct for the Public Service Commission and the Public Service Commission Nominating Council;
- Standards of conduct for the Florida Gaming Control Commission;
- Requirements for the use, purchase, and lease of state motor vehicles and aircraft; and
- Gift and honoraria laws.

The bill additionally makes instigating such retaliatory actions a violation of the standards of conduct for public officers, employees of agencies, and local government attorneys

Adverse personnel action includes the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment.

The protections against retaliatory acts are only provided for information disclosed to the Commission on Ethics. Thus, if the information is disclosed through other channels, even if such channel is elsewhere permitted in law, these protections do not apply.

New Ethics Standard

Section 1 adds to the standards of conduct for public officers, employees of agencies, and local government attorneys, a prohibition against taking retaliation against an agency employee or independent contractor for protected activity. A public officer, public employee, or local government attorney breaches the public trust if he or she initiates an adverse personnel action against an agency employee or independent contractor who has engaged in a protected activity by an exercise of the public officer's, public employee's, or local government attorney's ultimate decisionmaking authority or a grant of his or her approval. It is also a breach of the public trust for a public officer, public employee, or local government attorney to use his or her position to cause another to initiate such an adverse personnel action, if the protected activity is the primary reason motivating the adverse personnel action.

“Protected activity” means submitting a written complaint to the Commission executed on the form specified in s. 112.324(1) and signed under oath or affirmation or providing information to an investigator during an investigation of a complaint or referral. This would encompass complaints for violations of ethical standards for public employees and officers.

“Exercise of ultimate decisionmaking authority” or “grant of approval” means having and using the authority to commence an adverse personnel action.

The communication or execution of an adverse personnel action initiated by another's ultimate decisionmaking authority or grant of approval does not constitute an exercise of one's ultimate decisionmaking authority or a grant of one's approval.

Protections Against Retaliation

This bill provides a basis for any employee or individual who faces retaliatory actions for such disclosures to file a complaint with the Commission. These protections cover retaliation taken as a result of specific disclosures to the Commission on Ethics. These protections and procedures

closely follow similar protections against retaliation provided in the Whistle-blower's Act for public employees (WBA), but this bill extends the protections to additional ethical complaints not covered by the WBA.

The protections only apply to complaints filed with, or assistance provided to, the Commission on Ethics. The complaint must be provided in writing on a form prescribed by the Commission and signed under oath or affirmation.

The bill's protections do not apply where an individual makes false disclosures in bad faith or participates in the underlying violation.

Definitions

An "agency," under the bill, is any state, regional, county, local, or municipal governmental entity, whether executive, legislative, or judicial; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university. Unless otherwise noted, agency refers to local and state level public entities. Independent contractors are private persons doing business with an agency.

These definitions closely mirror the WBA.

"Investigative Procedures" Established by this Bill to Obtain Remedies

The procedures established for investigating whether remedies are available that are created by this bill closely mirror procedures in the WBA.

The bill allows employees of, and applicants for employment with, agencies⁶⁹ who are subject to adverse personnel actions in violation of this bill to file a complaint with the Commission in order to claim the remedies and relief available under this bill. Complainants have 60 days from the prohibited adverse personnel action to file a complaint with the Commission, which must acknowledge receipt of the complaint within five working days.

The Commission provides copies of the complaint and any other preliminary information available concerning the disclosure to the employer, who shall acknowledge receipt to the complainant. The Commission conducts an informal fact-finding into legally sufficient complaints to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action has occurred, is occurring, or will occur. Within 180 days of receiving the complaint, the Commission provides the fact-finding report, which may include recommended resolution, to the agency head or independent contractor and the complainant.

If the Commission determines there is no reasonable grounds, it terminates its investigation.

⁶⁹ In this instance, the bill refers to the definition of state agency in s. 216.011, F.S.: "any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, "state agency" or "agency" includes, but is not limited to, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission."

If the Commission determines that reasonable grounds exist, it must report that determination, with a fact-finding report, to the agency head or independent contractor and the complainant. If the agency or independent contractor implements a corrective action in response to the Commission's fact-finding report, the Commission terminates its investigation. If the agency or independent contractor does not implement a corrective action within 35 days, the Commission still terminates its investigation and, along with a notice of termination, notifies the complainant of his or her right to appeal. The complainant may, within 21 days after receipt of a notice to terminate an investigation, may file a complaint regarding the alleged prohibited personnel action with the Public Employees Relations Commission. The complainant may also seek judicial review.

An employing agency or independent contractor cannot take disciplinary action against an employee for reporting an alleged prohibited personnel action that is under investigation, or for reporting any related activity, or against an employee for participating in an investigation, without notifying the Commission.

The bill provides an affirmative defense to employers to justify the adverse action by showing the action was predicated on other grounds and would have been taken absent the employee or person's exercise of rights under the section.

Relief From Retaliatory Actions

The relief for an employee or applicant who successfully brings a complaint for a violation of this bill must include:

- Reinstatement of the employee to the same position held before the adverse action was commenced or to an equivalent position or reasonable front pay as alternative relief;
- Reinstatement of the employee's full fringe benefits and seniority rights as appropriate;
- Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action;
- Payment of reasonable costs, including attorney's fees; and
- Issuance of an injunction, if appropriate, by a court of competent jurisdiction.

An employee, except for a municipal employee, may also be temporarily reinstated to his or her former position or equivalent position pending the final outcome on the complaint, so long as the court or Commission on Human Relations determines that the disclosure was not made in bad faith and the agency initiated the personnel action after the disclosure to the Commission on Ethics. Such personnel action, to qualify, cannot include documentation of the employee's violation of a disciplinary standard or performance deficiency.

A prevailing employer may receive attorney's fees if the employee filed a frivolous action in bad faith.

The bill explicitly states that it does not diminish the rights, privileged, or remedies of an employee under other law or rule or under any collective bargaining agreement or employment contract. The election of remedies in s. 447.401, F.S., however, does apply to actions under this section. Section 447.401, F.S., addresses labor organizations and bargaining agents for public employees.

Release of the Complaint by the Commission on Ethics

Section 3 of the bill requires the Commission on Ethics to release a complaint for violations of ethical standards, and timely amendments thereto, to:

- An agency conducting an investigation of a claim asserted under the bill. The agency must submit a written request to the commission;
- The person who filed the complaint upon receiving a notarized, written request; and
- A person who identifies himself or herself as a current or former employee or independent contractor of the agency or individual that allegedly violated the ethical standard. In this instance, the commission must receive a notarized, written request.

Typically, such complaint would be exempt from disclosures under s. 112.324(2)(a)-(d), F.S., however this bill allows the Commission on Ethics to release the information notwithstanding and without affecting the public records exemption. Prior to releasing the complaint, however, the Commission on Ethics must redact any designations regarding an ongoing ethics investigation, where the records of that investigation are exempt from public records disclosures. These designations include, but are not limited to, date stamps, receipt stamps, and complaint serial numbers.

Miscellaneous

The bill provides legislative intent to protect employees who report violations of the Code of Ethics for Public Officers and Employees, found in ss. 112.311 to 112.3261, F.S., or article II, section 8 of the State Constitution, from retaliatory actions, and to additionally protect any person who discloses information to an appropriate agency regarding alleged breaches of public trust or violations of article II, section 8 of the State Constitution on the part of an agency, public officer, or employee. This intent mirrors the legislative intent provided for in the WBA but is tailored to the protection of disclosures of ethical violations.

The bill gives the Commission the power to adopt rules as necessary to implement the “investigative procedures” prescribed in the bill.

Section 5 reenacts s. 112.313, F.S., to incorporate other amendments made in the bill.

Section 6 provides the act takes effect on January 1, 2027. This gives the Commission on Ethics time to promulgate the necessary rules to administer the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce the authority of municipalities or counties to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None identified.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

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

None identified.

B. Private Sector Impact:

The private sector will likely incur additional costs if private contractors are subjected to the Code of Ethics and other standards of conduct for public officers and employees.

C. Government Sector Impact:

The Commission on Ethics will likely see an increase in workload associated with these investigations.

VI. Technical Deficiencies:

It is unclear if the “breach of public trust” created in section 1 of the bill encompasses adverse actions taken against employees of independent contractors. Unlike the rest of this bill, section 1 specifically speaks to taking adverse action against an agency employee or independent contractor—rather than an employee of an independent contractor. Consequently, a public employee or officer who uses his or her position to pressure an independent contractor to take adverse employment actions against an employee of said contractor may not be considered an ethics violation. It further is unclear how a public officer or employee could take adverse personnel action prohibited by section 1 against an independent contractor. The Legislature may consider clarifying that the breach of public trust in section 1 extends to actions taken “against an employee of an agency or independent contractor,” at lines 109-110.

Lines 191–199 (section 2) may be inconsistent with lines 274–370 (section 4). Both discuss the same remedial process but identify different protected classes. Section 2 states any “employee of or applicant for employment with an agency,” can use the process outlined in section 4. Section 4, however, makes the process available to an “employee or former employee of an

agency or independent contractor.”⁷⁰ While both sections cover agency employees, section 2 also includes agency job applicants, which section 4 does not. Conversely, section 4 includes employees and former employees of independent contractors—as well as former agency employees—which section 2 does not. The Legislature may wish to ensure the protected parties at lines 191-199 matches those discussed in section 4 by referring to “employees and former employees of agencies and independent contractors, and applicants for employment with agencies.”

It appears that the bill may intend to create a new administrative process that precludes filing of a complaint in civil court for action taken in violation of this bill. This, however, is never explicitly stated. Generally, an individual must exhaust contractual and administrative remedies prior to going to court. The Legislature may wish to clarify this point by explicitly stating—after line 358—that the process established in the bill constitutes an administrative process for purposes of exhaustion, including for employees of independent contractors, prior to filing a civil action.

VII. Related Issues:

Individuals and Actions Not Protected Under This Bill

There are various means and channels available to report or disclose ethical violations. The bill, however, only protects complaints and disclosures to the Commission on Ethics (Commission). Thus, if the complainant submits a complaint through other permissible channels these protections do not apply.

For instance, disclosures and complaints made to, and cooperation with, the following are not protected under the bill:

- Local commission on ethics;
- Superiors, managers, and internal processes—this differs from both the WBA and the Private Sector Whistleblower Act;
- The Chief Financial Officer, with whom individuals presumably report violations of the relevant ethical standards for means of transportation for state officers and employees;
- Department of Law Enforcement; and
- Other governmental entities that are charged with investigating or having oversight authority over the alleged ethical violation.

The Legislature may wish to extend protections to reports and disclosures “to an agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act,” or appropriate supervisor. This would mirror the language in the WBA.

Additionally, the following are not protected under the bill:

- Refusals to participate in a prohibited retaliatory action—which differs from the WBA; and
- Reports about an employee or commissioner of the Commission on Ethics, because those complaints are not filed with the Commission on Ethics.

⁷⁰ See e.g., lines 278-279, 306-307 (although the latter does not include former employees).

Application to “Independent Contractors”

The legislative intent section, specifically lines 126-137, provides that the bill intends to “prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency any violation of this part or s. 8, Art. II of the State Constitution on the part of a public employer or an independent contractor.” The quoted language appears to hold independent contractors to the standards of conduct for public officers and employees under article II, section 8 of the State Constitution. This may impose additional costs on the private businesses working with state agencies, which in turn may discourage private businesses from working with state agencies. The Legislature may wish to amend the legislative intent section to clearly delineate for whom it intends to impose these ethical standards.

It is unclear whether the bill is intended to expand the Commission’s investigatory authority to include retaliation claims brought by employees of independent contractors—and to recommend remedies—before the matter reaches civil court. Although the bill’s process for determining whether a prohibited personnel action warrants a remedy is similar to the process used by the Commission on Human Relations (CHR) under the WBA, the two are not identical. Notably, the WBA does not appear to grant the CHR jurisdiction to investigate retaliation committed by independent contractors against their employees. As written, the bill seems to require the Commission to assume investigatory responsibility for actions by independent contractors that fall outside both its current authority and the new jurisdiction created in section 1.

The bill also creates uncertainty about the remedial process for employees of independent contractors. Under the WBA, local public employees must file complaints with their local governmental entity, while “any other person protected” may file a civil action only after exhausting applicable contractual and administrative remedies. The bill eliminates these distinctions and appears to subject employees of independent contractors to the same administrative process used for agency employees through the Commission on Ethics.⁷¹

It is unclear how this new administrative process would interact with contractual remedies referenced in the WBA and generally provided for and discussed in law. Specifically, the bill does not clarify whether its administrative process supersedes those contractual remedies—potentially allowing an employee of an independent contractor to pursue a civil action without first exhausting contractual remedies, so long as the employee follows the procedures established in the bill.

The Legislature may wish to clarify how the Commission’s investigations under this bill apply to independent contractors.

VIII. Statutes Affected:

This bill creates section 112.3242 of the Florida Statutes and substantially amends section 112.324 of the Florida Statutes.

⁷¹ For further discussion about relevant inconsistency in the bill, see *supra* discussion of lines 191-199 versus section 4 of the bill under Vi. Technical Deficiencies.

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 Governmental Oversight and Accountability on December 9, 2025:

The CS makes the retaliatory actions prohibited by the bill an ethical violation itself. As an ethical violation, the Commission on Ethics becomes the appropriate body to investigate.

The amendment makes the Commission on Ethics, instead of the Commission on Human Relations, responsible for determining whether remedies are available and prescribes the procedures for such determination; grants the Commission on Ethics authority make rules; and standardizes the applicable process for employees of and applicants for employment with an agency.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
