

House Bill No. 273

An act relating to public records and public meeting exemptions regarding complaints of ethics violations; amending s. 112.324, F.S., which provides an exemption from public records requirements for certain information held by the Commission on Ethics and a Commission on Ethics and Public Trust regarding complaints of ethics violations and an exemption from public meeting requirements for commission proceedings held pursuant to such complaints; reenacting such exemptions and removing the October 2, 2002, repeal thereof scheduled under the Open Government Sunset Review Act of 1995; clarifying language; deleting obsolete language; providing an effective date.

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

Section 1. Notwithstanding the October 2, 2002, repeal of said section scheduled pursuant to the Open Government Sunset Review Act of 1995, section 112.324, Florida Statutes, is reenacted and amended to read:

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

(1) Upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person, the commission shall investigate any alleged violation of this part or any other alleged breach of the public trust within the jurisdiction of the commission as provided in s. 8(f), Art. II of the State Constitution in accordance with procedures set forth herein. Within 5 days after receipt of a complaint by the commission, a copy shall be transmitted to the alleged violator.

(2) ~~All proceedings, The complaint, and other records relating to the complaint or to any preliminary investigation held by the commission or its agents or as provided herein, or as provided by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1), are shall be confidential and exempt from the provisions of s. 119.07(1), and s. 24(a), Art. I of the State Constitution, and any proceeding conducted by the commission or a Commission on Ethics and Public Trust, pursuant to a complaint or preliminary investigation, is exempt from the provisions of s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525, either until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such investigation and records and proceedings be made public, records or until the commission or a Commission on Ethics and Public Trust determines, based on such investigation, whether probable cause exists to believe that a violation has occurred the preliminary investigation is completed, notwithstanding any provision of chapter 120 or s. 286.011 and s. 24(b), Art. I of the State Constitution.~~ In no event shall a complaint under this part against a candidate in any general, special, or primary election be filed or any intention of filing such a complaint be disclosed on the day of any such election or within the 5 days immediately

preceding the date of the election. ~~This subsection is repealed October 2, 2002, and must be reviewed by the Legislature before that date in accordance with s. 119.15, the Open Government Sunset Review Act of 1995.~~

~~(3)~~⁽²⁾ A preliminary investigation shall be undertaken by the commission of each legally sufficient complaint over which the commission has jurisdiction to determine whether there is probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission finds no probable cause to believe that this part has been violated or that any other breach of the public trust has been committed, the commission shall dismiss the complaint with the issuance of a public report to the complainant and the alleged violator, stating with particularity its reasons for dismissal of the complaint. At that time, the complaint and all materials relating to the complaint shall become a matter of public record. If the commission finds from the preliminary investigation probable cause to believe that this part has been violated or that any other breach of the public trust has been committed, it shall so notify the complainant and the alleged violator in writing. Such notification and all documents made or received in the disposition of the complaint shall then become public records. Upon request submitted to the commission in writing, any person who the commission finds probable cause to believe has violated any provision of this part or has committed any other breach of the public trust shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the probable cause notification required by this subsection. However, the commission may on its own motion, require a public hearing, may conduct such further investigation as it deems necessary, and may enter into such stipulations and settlements as it finds to be just and in the best interest of the State. The commission is without jurisdiction to, and no respondent may voluntarily or involuntarily, enter into a stipulation or settlement which imposes any penalty, including, but not limited to, a sanction or admonition or any other penalty contained in s. 112.317. Penalties shall be imposed only by the appropriate disciplinary authority as designated in this section.

~~(4)~~⁽³⁾ If, in cases pertaining to members of the Legislature, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution, the commission shall forward a copy of the complaint and its findings by certified mail to the President of the Senate or the Speaker of the House of Representatives, whichever is applicable, who shall refer the complaint to the appropriate committee for investigation and action which shall be governed by the rules of its respective house. It shall be the duty of the committee to report its final action upon the complaint to the commission within 90 days of the date of transmittal to the respective house. Upon request of the committee, the commission shall submit a recommendation as to what penalty, if any, should be imposed. In the case of a member of the Legislature, the house in which the member serves shall have the power to invoke the penalty provisions of this part.

~~(5)~~⁽⁴⁾ If, in cases pertaining to complaints against impeachable officers, upon completion of a full and final investigation by the commission, the

commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution, and the commission finds that the violation may constitute grounds for impeachment, the commission shall forward a copy of the complaint and its findings by certified mail to the Speaker of the House of Representatives, who shall refer the complaint to the appropriate committee for investigation and action which shall be governed by the rules of the House of Representatives. It shall be the duty of the committee to report its final action upon the complaint to the commission within 90 days of the date of transmittal.

(6)(5) If the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution by an impeachable officer other than the Governor, and the commission recommends public censure and reprimand, forfeiture of a portion of the officer's salary, a civil penalty, or restitution, the commission shall report its findings and recommendation of disciplinary action to the Governor, who shall have the power to invoke the penalty provisions of this part.

(7)(6) If the commission finds that there has been a violation of this part or of any provision of s. 8, Art. II of the State Constitution by the Governor, and the commission recommends public censure and reprimand, forfeiture of a portion of the Governor's salary, a civil penalty, or restitution, the commission shall report its findings and recommendation of disciplinary action to the Attorney General, who shall have the power to invoke the penalty provisions of this part.

(8)(7) If, in cases pertaining to complaints other than complaints against impeachable officers or members of the Legislature, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part or of s. 8, Art. II of the State Constitution, it shall be the duty of the commission to report its findings and recommend appropriate action to the proper disciplinary official or body as follows, and such official or body shall have the power to invoke the penalty provisions of this part, including the power to order the appropriate elections official to remove a candidate from the ballot for a violation of s. 112.3145 or s. 8(a) and (i), Art. II of the State Constitution:

(a) The President of the Senate and the Speaker of the House of Representatives, jointly, in any case concerning the Public Counsel, members of the Public Service Commission, members of the Public Service Commission Nominating Council, the Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, or members of the Legislative Committee on Intergovernmental Relations.

(b) The Supreme Court, in any case concerning an employee of the judicial branch.

(c) The President of the Senate, in any case concerning an employee of the Senate; the Speaker of the House of Representatives, in any case concerning an employee of the House of Representatives; or the President and the Speaker, jointly, in any case concerning an employee of a committee of the Legislature whose members are appointed solely by the President and the Speaker or in any case concerning an employee of the Public Counsel,

Public Service Commission, Auditor General, Office of Program Policy Analysis and Government Accountability, or Legislative Committee on Intergovernmental Relations.

(d) Except as otherwise provided by this part, the Governor, in the case of any other public officer, public employee, former public officer or public employee, candidate, or former candidate.

(e) The President of the Senate or the Speaker of the House of Representatives, whichever is applicable, in any case concerning a former member of the Legislature who has violated a provision applicable to former members or whose violation occurred while a member of the Legislature.

~~(9)~~⁽⁸⁾ In addition to reporting its findings to the proper disciplinary body or official, the commission shall report these findings to the state attorney or any other appropriate official or agency having authority to initiate prosecution when violation of criminal law is indicated.

~~(10)~~⁽⁹⁾ Notwithstanding the foregoing procedures of this section, a sworn complaint against any member or employee of the Commission on Ethics for violation of this part or of s. 8, Art. II of the State Constitution shall be filed with the President of the Senate and the Speaker of the House of Representatives. Each presiding officer shall, after determining that there are sufficient grounds for review, appoint three members of their respective bodies to a special joint committee who shall investigate the complaint. The members shall elect a chair from among their number. If the special joint committee finds insufficient evidence to establish probable cause to believe a violation of this part or of s. 8, Art. II of the State Constitution has occurred, it shall dismiss the complaint. If, upon completion of its preliminary investigation, the committee finds sufficient evidence to establish probable cause to believe a violation has occurred, the chair thereof shall transmit such findings to the Governor who shall convene a meeting of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court to take such final action on the complaint as they shall deem appropriate, consistent with the penalty provisions of this part. Upon request of a majority of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, the special joint committee shall submit a recommendation as to what penalty, if any, should be imposed.

~~(11)~~⁽¹⁰⁾ Notwithstanding the provisions of subsections (1)-(8)~~(7)~~, the commission may, at its discretion, dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, in which case the commission shall issue a public report stating with particularity its reasons for the dismissal. ~~The investigation of facts and parties materially related to a complaint, as provided in s. 112.322(1) and pursuant to the definitions contained in s. 112.312(11) and (18), and the amendment of s. 112.3143 shall apply only to alleged violations occurring after May 24, 1991.~~

Section 2. This act shall take effect October 1, 2002.

Approved by the Governor April 25, 2002.

Filed in Office Secretary of State April 25, 2002.