

## LEGISLATIVE REPORT

**TO:** Members, Commission on Ethics

**FROM:** Kerrie Stillman   
Executive Director

**DATE:** January 10, 2024

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In addition to bill tracking information, attached is a copy of SB 7014, the Senate Ethics and Elections Committee bill, as well as amendment #451260. Also attached is a staff analysis of the bill itself (the analysis does not include the changes set forth in the amendment). The bill, as amended, passed the Rules Committee today by a unanimous vote. Steve and I spent considerable time reviewing the bill, discussing its intent and requirements with Senate staff, providing technical input, and laying out the implementation challenges that exist for the Commission to successfully implement the policy choices in contained in the bill. The amendment filed to SB 7014 demonstrates that those concerns were considered and the amendment, in our opinion, improves the bill in that it includes language that will accomplish the policy goals without as many potential unintended consequences to the complaint process and allows additional time for us to plan strategically before the effective date. The amendment increases the number of days we have to order an investigation and increases the number of days for an investigation to 150, instead of 120. Commission staff can seek an additional 60 days to complete an investigation, if six members of the Commission agree to the extension.

The bill also contains a requirement of a vote of six members of the Commission to divert from a recommendation of the Advocate. We have some implementation concerns about how this change would impact the Commission's operations and complaint parties during probable cause hearings. There are a number of considerations and I will highlight a few here. As members of the Commission, you have a constitutional charge to uphold and strengthen the public's trust in their government, to conduct ethics investigations, and announce the findings of those investigations in public reports. There are checks and balances for Commissioners in terms of membership requirements, term limits, and confirmation processes. Requiring a vote of six members to divert from an Advocate's Recommendation essentially means the Advocates would hold more authority than five members of the Commission. This also puts a great deal of pressure on the Advocates to get it right every time, particularly in light of the fact that the Advocates will only have 15 days to file their recommendations. It shifts the locus of authority to the Advocate, who will not have the benefit of any written responses filed by the Respondent, as the Commission has before it when it considers a matter for probable cause. It is foreseeable that some recommendations will need to be rubber stamped even though a majority of seated Commissioners disagree with that recommendation. Further, there would be logistical concerns. Quorum is five. However, under the language of the bill, although the Commission could meet with five members, the Commission would not be able to hear any matters for probable cause. Those cases would need to be rescheduled. Chair Lukis spoke at the Committee meeting and shared these concerns and others with the Rules Committee before the vote. Senator Burgess, who chairs the Senate Ethics & Elections Committee indicated that they will continue to consider the issues raised by the Commission, as the bill continues through the process.

Implementing the bill in terms of complaint time frames will be challenging, but can be done, provided the Commission receives funding to hire additional staff and implement a case management system. The next stop for the bill will be consideration by the full Senate.

## 2024 Legislative Bills to Watch: (1/10/2024)

### BILLS BEING TRACKED:

#### HOUSE:

HB 7005, OCSR Financial Disclosure Records exemption for EFDMS login credentials	HB 735 Andrade Similar SB 734; Local lobbyist registration	HB 601 Duggan Complaints against law enforcement and correctional officers
HB 1017 Edmonds Identical SB 102 Compare SB 1556 Compare SB 1489 Creates Prop Insurance Comm; elected Ins Comm w/ certain post-emp restrictions	HB 1489 Driskell Compare HB 1017 Compare SB 102 Compare SB 1556 Creates Prop Insurance Comm; elected Ins Commissioner w/ certain post-emp restrictions	HB 1597 Brackett Identical SB 7014 Complaint timeframes; membership terms; fines

#### SENATE:

SB 102 Jones Identical HB 1017 Compare HB 1489 Compare SB 1556 Creates Prop Insurance Comm; elected Ins Commissioner w/ certain post-emp restrictions	SB 7014 Burgess Complaint timeframes; membership terms; fines	SB 734 Ingoglia Similar HB 735; Gov't accountability/local lobbyist registration
SB 1556 Davis Compare HB 1017 Compare SB 102 Compare HB 1489 Creates Prop Insurance Comm; elected Ins Commissioner w/ certain post-emp restrictions		

### HOUSE BILLS:

**HB 7005 OCSR/Financial Disclosure**  
**Public Records Exemption by House Ethics Elections & Open Government Committee**

Preserves public records exemption for logon credentials and certain other information entered into EFDMS

11/17/2023	HOUSE	Filed
11/30/2023	H	Referred to State Affairs Committee Now in State Affairs Committee

**HB 735: Government Accountability  
GENERAL BILL by Andrade**

Government Accountability; Prohibits individuals from soliciting or accepting anything of value from foreign country of concern; prohibits person from lobbying county, municipality, or special district unless registered as lobbyist; establishes requirements for registration, compliance, investigations, & registration fees; prohibits entities from renewing or extending employment contracts during specified timeframe; requires specified number of members of governing body to be physically present at meeting for quorum purposes; authorizes members to participate in deliberations of governing body through technology.

**Effective Date:** 7/1/2024

12/5/2023	HOUSE	Filed
12/19/2023	H	Referred to Local Administration, Federal Affairs & Special Districts Subcommittee Referred to Ethics, Elections & Open Government Subcommittee Referred to State Affairs Committee Now in Local Administration, Federal Affairs & Special Districts Subcommittee

**HB 601: Complaints Against Law Enforcement and Correctional Officers  
GENERAL BILL by Duggan ; (CO-INTRODUCERS) Black**

Complaints Against Law Enforcement and Correctional Officers; Preempts regulation of complaints against law enforcement officers & correctional officers to state.

**Effective Date:** 7/1/2024

11/21/2023	HOUSE	Filed
11/30/2023	H	Referred to Criminal Justice Subcommittee Referred to Local Administration, Federal Affairs & Special Districts Subcommittee Referred to Judiciary Committee Now in Criminal Justice Subcommittee
1/8/2024	H	Added to Criminal Justice Subcommittee agenda

**HB 1017: Insurance**

**GENERAL BILL by Edmonds**

Insurance; Creates Property Insurance Commission; provides powers & duties of commission & election of Commissioner of Insurance Regulation; prohibits commissioner from engaging in certain activities or employment after leaving office; requires interest earned on insurance proceeds be paid to insureds; specifies condition on insurance activities engaged in within this state by person who engages in property insurance activities in another state; prohibits property insurers from using certain defenses for denial of claims; requires DFS to adopt rules regarding its handling of allegations of insurance fraud made by insurers or their employees or contractors; specifies appropriations for My Safe Florida Home Program. APPROPRIATION: \$300,000,000

**Effective Date:** 7/1/2024

12/22/2023	HOUSE	Filed
1/8/2024	H	Referred to Insurance & Banking Subcommittee

Referred to Appropriations Committee  
 Referred to Commerce Committee  
 Now in Insurance & Banking Subcommittee

**HB 1489: Insurance**

**GENERAL BILL by Driskell**

Insurance; Creates Property Insurance Commission; provides powers & duties of commission; provides for election of Commissioner of Insurance Regulation; prohibits commissioner from engaging in certain activities or employment for specified period after leaving office; requires interest earned on insurance proceeds received by mortgagees & assignees to be paid to insureds; prohibits property insurers from claiming insolvency; authorizes persons who engage in property insurance activities in other states to engage in insurance activities in this state; prohibits property insurers from using certain defenses as claims denials; requires insurance agents to advise insurance applicants of flood risk; requires OPPAGA to conduct study of effectiveness of property insurance mediation program; increases appropriation to My Safe Florida Home Program; provides effective date. APPROPRIATION: \$300,000,000

**Effective Date:** 7/1/2024

1/8/2024 HOUSE Filed

**HB 1597: Ethics**

**GENERAL BILL by Brackett**

Ethics; Revises and provides requirements relating to the Code of Ethics, including lobbying by public officer, Commission on Ethics membership, & procedures & timeframes for investigation & reports of complaints or referrals of violations of code.

**Effective Date:** 7/1/2024

1/8/2024 HOUSE Filed

1/9/2024 H 1st Reading (Original Filed Version)

**SENATE BILLS:**

**SB 102: Financial Disclosures for Local Officers**

**General Bill by Jones**

Property Insurance; Creating the Property Insurance Commission; providing for the election of the Commissioner of Insurance Regulation; prohibiting the commissioner from engaging in certain activities or employment for a specified period after leaving office; prohibiting property insurers from claiming insolvency under specified circumstances; requiring residential property insurers to release specified information to insureds upon request, etc. APPROPRIATION: \$300,000,000

**Effective Date:** 7/1/2024

10/4/2023 SENATE Filed

10/17/2023 S Referred to Banking and Insurance; Ethics and Elections;  
 Appropriations

1/9/2024 S Introduced

**SB 7014: Ethics**

**GENERAL BILL by Ethics and Elections**

Ethics; Increasing the maximum fine for violations of specified lobbying provisions; prohibiting a member of the Commission on Ethics from serving more than two full terms, instead of two full terms in succession; requiring the commission to submit a copy of a certain referral to an alleged violator within a specified timeframe; authorizing an investigation that must be completed within

a specified timeframe if a specified number of commissioners determines further investigation is necessary, etc.

**Effective Date:** 7/1/2024

12/4/2023	SENATE	Submitted for consideration by Ethics and Elections On Committee agenda-- Ethics and Elections, 12/13/23, 8:30 am, 110 Senate Building
12/13/2023	S	Submitted as Committee Bill and Reported Favorably by Ethics and Elections; YEAS 7 NAYS 1 Filed
12/14/2023	S	Referred to Rules
1/5/2024	S	On Committee agenda-- Rules, 01/10/24, 1:00 pm, 412 Knott Building
1/9/2024	S	Introduced

**SB 734: Government Accountability**

**GENERAL BILL by Ingoglia**

Government Accountability; Prohibiting specified individuals from soliciting or accepting anything of value from a foreign country of concern; prohibiting a person from lobbying a county, municipality, or special district unless he or she is registered as a lobbyist; requiring a Commission on Ethics and Public Trust established by a county or municipality or the Commission on Ethics to investigate a lobbyist or principal upon receipt of a sworn complaint containing certain allegations; prohibiting the governing body of a county from renewing or extending the employment contract of a county administrator during a specified timeframe; prohibiting a district school board from renewing or extending the employment contract of a district school superintendent during a specified timeframe, etc.

**Effective Date:** 7/1/2024

12/6/2023	SENATE	Filed
12/15/2023	S	Referred to Community Affairs; Ethics and Elections; Rules
1/9/2024	S	Introduced

**SB 1556: Insurance**

**GENERAL BILL by Davis**

Insurance; Creating the Property Insurance Commission; providing membership of the commission; providing for the election of the Commissioner of Insurance Regulation; requiring that interest earned on insurance proceeds received by mortgagees and assignees be paid to insureds; prohibiting property insurers from claiming insolvency under specified circumstances; prohibiting property insurers from using specified factors as a defense for denial of a claim, etc.  
APPROPRIATION: \$300,000,000

**Effective Date:** 7/1/2024

1/5/2024	SENATE	Filed
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**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7014

INTRODUCER: Ethics and Elections Committee

SUBJECT: Ethics

DATE: January 9, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Cleary</u>	<u>Roberts</u>		<b>EE Submitted as Comm. Bill/Fav</b>
1.	<u>Cleary</u>	<u>Twogood</u>	<u>RC</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> In addition to constitutional duties, the commission in part:

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

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

### Code of Ethics for Public Officers and Employees

The Code of Ethics for Public Officers and Employees (Code of Ethics)<sup>11</sup> 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.”<sup>12</sup> 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,

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<sup>1</sup> 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 13, 2023).

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

<sup>3</sup> Section (8)(g), art. II, Fla. Const.

<sup>4</sup> Section 112.322(3)(a), F.S.

<sup>5</sup> Section 112.324(1)(b), F.S.

<sup>6</sup> Section 112.322(2)(b), F.S.

<sup>7</sup> Sections 112.3215, 112.32155, F.S.

<sup>8</sup> Section 112.3144, F.S.

<sup>9</sup> Section 112.3144, F.S.; s. 112.3145, F.S.; s. 112.31455, F.S.

<sup>10</sup> Section 112.321(1), F.S.

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

<sup>12</sup> 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 13, 2023).

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

### **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.<sup>14</sup> 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.<sup>15</sup>

Upon determination of legal sufficiency of a complaint or referral, the commission must undertake a preliminary investigation.<sup>16</sup> The commission begins the preliminary investigation with issuance of an order to investigate.<sup>17</sup> After the commission's investigator completes his or her initial investigation, he or she writes an investigatory report<sup>18</sup> 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.<sup>19</sup> The alleged violator is given 14 days from the mailing of the investigator's report to respond to the report.<sup>20</sup> Upon receipt of the investigatory report, the advocate must make a written probable cause recommendation to the commission.<sup>21</sup> 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.<sup>22</sup>

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

If the commission does not find probable cause that the alleged violations were committed, the complaint is dismissed.<sup>25</sup> The commission may order additional investigation if it is deemed necessary.<sup>26</sup> 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.<sup>27</sup>

<sup>13</sup> See Pt. III, Ch. 112, F.S.

<sup>14</sup> Section 112.324(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 112.324(3), F.S.

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

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

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

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

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

<sup>22</sup> *Id.*

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

<sup>24</sup> *Id.*

<sup>25</sup> Section 112.324(3), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*



The alleged violator may at any time during the subsequent proceedings negotiate a settlement with the commission via the advocate.<sup>28</sup> 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.<sup>29</sup>

The commission may conduct a formal hearing itself or transfer the case to the Division of Administrative Hearings (DOAH) for formal hearing.<sup>30</sup> An informal hearing is always conducted by the commission.<sup>31</sup> If the commission conducts a hearing, it subsequently issues a Final Order recommending a penalty.<sup>32</sup> If an administrative law judge at DOAH conducts a formal hearing, the judge issues a Recommended Order to the commission.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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.<sup>36</sup>

### 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.<sup>37</sup> During the 2023 legislative session, the Legislature increased that penalty to \$20,000 from \$10,000 at the request of the commission.<sup>38</sup>

The law provides separate penalties for violations of the constitutional prohibition against lobbying by a public officer.<sup>39</sup> Among other penalties, the prescribed maximum civil penalty for a violation of that prohibition is \$10,000.<sup>40</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> 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.

<sup>33</sup> 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.

<sup>34</sup> Section 120.57(1)(i), F.S.

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

<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> Section 7, ch. 2023-49.

<sup>39</sup> Section 112.3122, F.S.

<sup>40</sup> 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.<sup>41</sup> The law does not include *candidates* for public office in the categories of persons who may seek such redress.<sup>42</sup>

### **III. Effect of Proposed Changes:**

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 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 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 and to complete final action on the case no later than 30 days after that meeting.

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<sup>41</sup> Section 112.317(7), F.S.

<sup>42</sup> *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:

- 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.
- 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.

By the Committee on Ethics and Elections

582-01858-24

20247014\_\_

1                                   A bill to be entitled  
2       An act relating to ethics; amending s. 112.3122, F.S.;  
3       increasing the maximum fine for violations of  
4       specified lobbying provisions; amending s. 112.321,  
5       F.S.; prohibiting a member of the Commission on Ethics  
6       from serving more than two full terms, instead of two  
7       full terms in succession; making technical changes;  
8       deleting obsolete language; amending s. 112.317, F.S.;  
9       providing that a complainant is liable for costs plus  
10      reasonable attorney fees for filing a complaint with  
11      malicious intent against a candidate for public  
12      office; amending s. 112.324, F.S.; requiring the  
13      commission to submit a copy of a certain referral to  
14      an alleged violator within a specified timeframe;  
15      specifying that complaints and referrals must be  
16      technically, in addition to legally, sufficient for  
17      the commission to undertake a preliminary  
18      investigation and make a certain determination;  
19      authorizing a complainant to submit an amended  
20      complaint within a specified timeframe; providing that  
21      the probable cause determination concludes the  
22      preliminary investigation; requiring the commission to  
23      complete a preliminary investigation, including a  
24      probable cause determination, within a specified  
25      timeframe; requiring the commission to determine  
26      technical and legal sufficiency of complaints and  
27      referrals within specified timeframes and issue an  
28      order to investigate under a specified condition;  
29      requiring that the commission complete an

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30       investigatory report within a specified timeframe and  
31       provide a copy of the completed report to an alleged  
32       violator and counsel for the commission within a  
33       specified timeframe; requiring counsel for the  
34       commission to make a written recommendation for  
35       disposition of a complaint within a specified  
36       timeframe after receiving the investigatory report;  
37       requiring that the commission provide such  
38       recommendation to the violator within a specified  
39       timeframe; providing that the alleged violator has a  
40       specified timeframe to respond in writing to the  
41       counsel's recommendation; requiring the commission,  
42       upon receipt of the counsel's recommendation, to  
43       schedule a probable cause hearing for the next  
44       executive session of the commission if specified  
45       conditions are met; providing that, under specified  
46       conditions, the commission may dismiss complaints or  
47       referrals before completion of a preliminary  
48       investigation; providing a timeframe within which the  
49       commission must notify a complainant and an alleged  
50       violator after a finding of probable cause; specifying  
51       that an alleged violator is entitled to request a  
52       hearing before the Division of Administrative Hearings  
53       or may select an informal hearing with the commission;  
54       authorizing an investigation that must be completed  
55       within a specified timeframe if a specified number of  
56       commissioners determines further investigation is  
57       necessary; requiring the commission to document the  
58       reasons for ordering such investigation; providing the

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59           timeframe within which the commission must conduct an  
 60           informal hearing; requiring the commission to schedule  
 61           a case that has been relinquished from the Division of  
 62           Administrative Hearings for additional action at the  
 63           next commission meeting; requiring the commission to  
 64           complete final action on such case within a specified  
 65           timeframe; requiring a specified number of  
 66           commissioners to vote to reject or deviate from a  
 67           recommendation made by counsel; providing that  
 68           specified timeframes are tolled until the completion  
 69           of a related criminal investigation or prosecution,  
 70           excluding appeals, whichever occurs later; providing  
 71           that a harmless error standard applies to the  
 72           commission regarding specified timeframes; providing  
 73           that specified timeframes apply retroactively and  
 74           prospectively; providing an effective date.

75  
 76   Be It Enacted by the Legislature of the State of Florida:

77  
 78           Section 1. Paragraph (b) of subsection (4) of section  
 79   112.3122, Florida Statutes, is amended to read:

80           112.3122 Enforcement and penalties for constitutional  
 81   prohibition against lobbying by a public officer.—

82           (4) A violation of s. 8(f), Art. II of the State  
 83   Constitution may be punished by one or more of the following:

84           (b) A civil penalty not to exceed \$20,000 ~~\$10,000~~.

85           Section 2. Subsection (1) of section 112.321, Florida  
 86   Statutes, is amended to read:

87           112.321 Membership, terms; travel expenses; staff.—

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88 (1) The commission shall be composed of nine members. Five  
89 of these members shall be appointed by the Governor, no more  
90 than three of whom shall be from the same political party,  
91 subject to confirmation by the Senate. One member appointed by  
92 the Governor shall be a former city or county official and may  
93 be a former member of a local planning or zoning board which has  
94 only advisory duties. Two members shall be appointed by the  
95 Speaker of the House of Representatives, and two members shall  
96 be appointed by the President of the Senate. Neither the Speaker  
97 of the House of Representatives nor the President of the Senate  
98 shall appoint more than one member from the same political  
99 party. Of the nine members of the Commission, no more than five  
100 members shall be from the same political party at any one time.  
101 A ~~No~~ member may not hold any public employment. An individual  
102 who qualifies as a lobbyist pursuant to s. 11.045 or s. 112.3215  
103 or pursuant to any local government charter or ordinance may not  
104 serve as a member of the commission, ~~except that this~~  
105 ~~prohibition does not apply to an individual who is a member of~~  
106 ~~the commission on July 1, 2006, until the expiration of his or~~  
107 ~~her current term.~~ A member of the commission may not lobby any  
108 state or local governmental entity as provided in s. 11.045 or  
109 s. 112.3215 or as provided by any local government charter or  
110 ordinance, ~~except that this prohibition does not apply to an~~  
111 ~~individual who is a member of the commission on July 1, 2006,~~  
112 ~~until the expiration of his or her current term.~~ All members  
113 shall serve 2-year terms. A member may not serve more than two  
114 full terms ~~in succession.~~ Any member of the commission may be  
115 removed for cause by majority vote of the Governor, the  
116 President of the Senate, the Speaker of the House of



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117 Representatives, and the Chief Justice of the Supreme Court.

118 Section 3. Subsection (7) of section 112.317, Florida  
119 Statutes, is amended to read:

120 112.317 Penalties.—

121 (7) In any case in which the commission determines that a  
122 person has filed a complaint against a public officer or  
123 employee or a candidate for public office with a malicious  
124 intent to injure the reputation of such officer or employee or  
125 candidate by filing the complaint with knowledge that the  
126 complaint contains one or more false allegations or with  
127 reckless disregard for whether the complaint contains false  
128 allegations of fact material to a violation of this part, the  
129 complainant shall be liable for costs plus reasonable attorney  
130 fees incurred in the defense of the person complained against,  
131 including the costs and reasonable attorney fees incurred in  
132 proving entitlement to and the amount of costs and fees. If the  
133 complainant fails to pay such costs and fees voluntarily within  
134 30 days following such finding by the commission, the commission  
135 shall forward such information to the Department of Legal  
136 Affairs, which shall bring a civil action in a court of  
137 competent jurisdiction to recover the amount of such costs and  
138 fees awarded by the commission.

139 Section 4. Subsections (1) and (3) of section 112.324,  
140 Florida Statutes, are amended to read:

141 112.324 Procedures on complaints of violations and  
142 referrals; public records and meeting exemptions.—

143 (1) The commission shall investigate an alleged violation  
144 of this part or other alleged breach of the public trust within  
145 the jurisdiction of the commission as provided in s. 8(f), Art.

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146 II of the State Constitution:

147 (a) Upon a written complaint executed on a form prescribed  
148 by the commission and signed under oath or affirmation by any  
149 person; or

150 (b) Upon receipt of a written referral of a possible  
151 violation of this part or other possible breach of the public  
152 trust from the Governor, the Department of Law Enforcement, a  
153 state attorney, or a United States Attorney which at least six  
154 members of the commission determine is sufficient to indicate a  
155 violation of this part or any other breach of the public trust.

156  
157 Within 5 days after receipt of a complaint or referral by the  
158 commission ~~or a determination by at least six members of the~~  
159 ~~commission that the referral received is deemed sufficient,~~ a  
160 copy must ~~shall~~ be transmitted to the alleged violator.

161 (3) (a) A preliminary investigation must ~~shall~~ be undertaken  
162 by the commission of each technically and legally sufficient  
163 complaint or referral over which the commission has jurisdiction  
164 to determine whether there is probable cause to believe that a  
165 violation has occurred. A complainant may submit an amended  
166 complaint up to 60 days after the commission receives the  
167 initial complaint. The probable cause determination is the  
168 conclusion of the preliminary investigation. The commission  
169 shall complete the preliminary investigation, including the  
170 probable cause determination, no later than 1 year after the  
171 beginning of the preliminary investigation.

172 (b) The commission shall make a determination as to whether  
173 a complaint is technically sufficient no later than 5 days after  
174 receiving the complaint. The commission shall make a

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175 determination as to whether a complaint is legally sufficient no  
176 later than 21 days after receiving the complaint. The commission  
177 shall make a determination as to whether a referral is  
178 technically and legally sufficient at its next meeting.

179 (c) If the commission determines a complaint or referral is  
180 technically and legally sufficient, it must issue an order to  
181 investigate. An investigatory report must be completed no later  
182 than 120 days after the beginning of the preliminary  
183 investigation and must be provided to the alleged violator and  
184 to counsel for the commission no later than 5 days after  
185 completion of the report. The counsel for the commission shall  
186 make a written recommendation to the commission for the  
187 disposition of the complaint or referral no later than 15 days  
188 after he or she receives the completed investigatory report. The  
189 commission shall provide the counsel's written recommendation to  
190 the alleged violator no later than 5 days after its completion.  
191 The alleged violator has 14 days to respond in writing after the  
192 mailing date of the counsel's recommendation.

193 (d) Upon receipt of the counsel's recommendation, the  
194 commission must schedule a probable cause hearing for the next  
195 executive session of the commission if notice requirements can  
196 be met.

197 (e) If, upon completion of the preliminary investigation,  
198 the commission finds no probable cause to believe that this part  
199 has been violated, or that no any other breach of the public  
200 trust has been committed, the commission must ~~shall~~ dismiss the  
201 complaint or referral with the issuance of a public report to  
202 the complainant and the alleged violator, stating with  
203 particularity its reasons for dismissal. At that time, the

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204 complaint or referral and all materials relating to the  
205 complaint or referral ~~shall~~ become a matter of public record.

206 (f) If the commission finds ~~from the preliminary~~  
207 investigation probable cause to believe that this part has been  
208 violated or that any other breach of the public trust has been  
209 committed, it must ~~shall so~~ notify the complainant and the  
210 alleged violator in writing no later than 5 days after the date  
211 of the probable cause determination. Such notification and all  
212 documents made or received in the disposition of the complaint  
213 or referral ~~shall then~~ become public records. Upon request  
214 submitted to the commission in writing, any person who the  
215 commission finds probable cause to believe has violated any  
216 provision of this part or has committed any other breach of the  
217 public trust is ~~shall be~~ entitled to a public hearing and may  
218 elect to have a formal administrative hearing conducted by an  
219 administrative law judge in the Division of Administrative  
220 Hearings. If the person does not elect to have a formal  
221 administrative hearing by an administrative law judge, the  
222 person is entitled to an informal hearing conducted before the  
223 commission. Such person is ~~shall be~~ deemed to have waived the  
224 right to a public hearing if the request is not received within  
225 14 days following the mailing date of the probable cause  
226 notification required by this paragraph ~~subsection~~. However, the  
227 commission may, on its own motion, require a public hearing.7

228 (g) At a probable cause hearing, if at least six members of  
229 the commission determine ~~may conduct such~~ further investigation  
230 is necessary, the investigation may be ordered, and such  
231 investigation may not exceed a period of 60 days as ~~it deems~~  
232 necessary. During the probable cause hearing, the commission

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233 must document the reasons for ordering the additional  
234 investigation.

235 (h) If the commission conducts an informal hearing, it must  
236 do so no later than 75 days after the date of the probable cause  
237 determination.

238 (i) If the commission refers a case to the Division of  
239 Administrative Hearings for a formal hearing and subsequently  
240 requests that the case be relinquished back to the commission,  
241 or if the administrative law judge assigned to the case  
242 relinquishes jurisdiction back to the commission before a  
243 recommended order is entered, the commission must schedule the  
244 case for additional action at the next commission meeting and  
245 must complete final action on the case no later than 30 days  
246 after the date of that commission meeting.

247 (j) The commission, ~~and~~ may enter into such stipulations  
248 and settlements as it finds to be just and in the best interest  
249 of the state. The commission is without jurisdiction to, and no  
250 respondent may voluntarily or involuntarily, enter into a  
251 stipulation or settlement which imposes any penalty, including,  
252 but not limited to, a sanction or admonition or any other  
253 penalty contained in s. 112.317. Penalties may ~~shall~~ be imposed  
254 only by the appropriate disciplinary authority as designated in  
255 this section.

256 (k) At least six members of the commission must vote to  
257 reject or deviate from a recommendation of counsel to the  
258 commission.

259 (l) If a criminal complaint related to an investigation  
260 pursuant to this section is filed, the timeframes in this  
261 subsection are tolled until completion of the criminal

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262 investigation or prosecution, excluding any appeals from such  
263 prosecution, whichever occurs later.

264 (m) The failure of the commission to comply with the time  
265 limits provided in this subsection constitutes harmless error in  
266 any related disciplinary action unless a court finds that the  
267 fairness of the proceedings or the correctness of an action may  
268 have been impaired by a material error in procedure or a failure  
269 to follow prescribed procedure.

270 (n) The timeframes provided in this subsection apply to  
271 complaints and referrals submitted to the commission before, on,  
272 or after July 1, 2024.

273 Section 5. This act shall take effect July 1, 2024.



LEGISLATIVE ACTION

Senate

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. .  
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House

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The Committee on Rules (Burgess) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 153 - 273

and insert:

state attorney, or a United States Attorney ~~which at least six~~  
~~members of the commission determine is sufficient to indicate a~~  
~~violation of this part or any other breach of the public trust.~~

Within 5 days after receipt of a complaint or referral by the  
commission ~~or a determination by at least six members of the~~  
commission ~~that the referral received is deemed sufficient, a~~



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12 copy must ~~shall~~ be transmitted to the alleged violator.

13       (3) (a) A preliminary investigation must ~~shall~~ be undertaken  
14 by the commission within 30 days after its receipt of each  
15 technically and legally sufficient complaint or referral over  
16 which the commission has jurisdiction to determine whether there  
17 is probable cause to believe that a violation has occurred. A  
18 complainant may submit an amended complaint up to 60 days after  
19 the commission receives the initial complaint. The probable  
20 cause determination is the conclusion of the preliminary  
21 investigation. The commission shall complete the preliminary  
22 investigation, including the probable cause determination, no  
23 later than 1 year after the beginning of the preliminary  
24 investigation.

25       (b) An investigatory report must be completed no later than  
26 150 days after the beginning of the preliminary investigation.  
27 If, at any one meeting of the commission held during a given  
28 preliminary investigation, at least six members of the  
29 commission determine that additional time is necessary to  
30 adequately complete such investigation, the commission may  
31 extend the timeframe to complete the preliminary investigation  
32 by no more than 60 days. During such meeting, the commission  
33 shall document its reasons for extending the investigation and  
34 transmit a copy of such documentation to the alleged violator  
35 and complainant no later than 5 days after the extension is  
36 ordered. The investigatory report must be transmitted to the  
37 alleged violator and to the counsel representing the commission  
38 no later than 5 days after completion of the report. The counsel  
39 representing the commission shall make a written recommendation  
40 to the commission for the disposition of the complaint or





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41 referral no later than 15 days after he or she receives the  
42 completed investigatory report. The commission shall transmit  
43 the counsel's written recommendation to the alleged violator no  
44 later than 5 days after its completion. The alleged violator has  
45 14 days after the mailing date of the counsel's recommendation  
46 to respond in writing to the recommendation.

47 (c) Upon receipt of the counsel's recommendation, the  
48 commission shall schedule a probable cause hearing for the next  
49 executive session of the commission for which notice  
50 requirements can be met.

51 (d) If, upon completion of the preliminary investigation,  
52 the commission finds no probable cause to believe that this part  
53 has been violated, or that no any other breach of the public  
54 trust has been committed, the commission must shall dismiss the  
55 complaint or referral with the issuance of a public report to  
56 the complainant and the alleged violator, stating with  
57 particularity its reasons for dismissal. At that time, the  
58 complaint or referral and all materials relating to the  
59 complaint or referral shall become a matter of public record.

60 (e) If the commission finds from the preliminary  
61 investigation probable cause to believe that this part has been  
62 violated or that any other breach of the public trust has been  
63 committed, it must transmit a copy of the order finding probable  
64 cause to shall so notify the complainant and the alleged  
65 violator in writing no later than 5 days after the date of the  
66 probable cause determination. Such notification and all  
67 documents made or received in the disposition of the complaint  
68 or referral shall then become public records. Upon request  
69 submitted to the commission in writing, any person who the



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70 commission finds probable cause to believe has violated any  
71 provision of this part or has committed any other breach of the  
72 public trust ~~is shall be~~ entitled to a public hearing and may  
73 elect to have a formal administrative hearing conducted by an  
74 administrative law judge in the Division of Administrative  
75 Hearings. If the person does not elect to have a formal  
76 administrative hearing by an administrative law judge, the  
77 person is entitled to an informal hearing conducted before the  
78 commission. Such person is shall be deemed to have waived the  
79 right to a formal or an informal public hearing if the request  
80 is not received within 14 days following the mailing date of the  
81 probable cause notification required by this paragraph  
82 ~~subsection~~. However, the commission may, on its own motion,  
83 require a public hearing.

84 (f) If the commission conducts an informal hearing, it must  
85 be held no later than 75 days after the date of the probable  
86 cause determination.

87 (g) If the commission refers a case to the Division of  
88 Administrative Hearings for a formal hearing and subsequently  
89 requests that the case be relinquished back to the commission,  
90 or if the administrative law judge assigned to the case  
91 relinquishes jurisdiction back to the commission before a  
92 recommended order is entered, the commission must schedule the  
93 case for additional action at the next commission meeting for  
94 which notice requirements can be met. At the next subsequent  
95 commission meeting, the commission must complete final action on  
96 such case.

97 (h) The commission, may conduct such further investigation  
98 ~~as it deems necessary, and~~ may enter into such stipulations and



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99 settlements as it finds to be just and in the best interest of  
100 the state. The commission is without jurisdiction to, and no  
101 respondent may voluntarily or involuntarily, enter into a  
102 stipulation or settlement which imposes any penalty, including,  
103 but not limited to, a sanction or admonition or any other  
104 penalty contained in s. 112.317. Penalties may ~~shall~~ be imposed  
105 only by the appropriate disciplinary authority as designated in  
106 this section.

107 (i) At least six members of the commission must vote to  
108 reject or deviate from a recommendation of the counsel  
109 representing the commission.

110 (j) If a criminal complaint related to an investigation  
111 pursuant to this section is filed, the timeframes in this  
112 subsection are tolled until completion of the criminal  
113 investigation or prosecution, excluding any appeals from such  
114 prosecution, whichever occurs later.

115 (k) The failure of the commission to comply with the time  
116 limits provided in this subsection constitutes harmless error in  
117 any related disciplinary action unless a court finds that the  
118 fairness of the proceedings or the correctness of an action may  
119 have been impaired by a material error in procedure or a failure  
120 to follow prescribed procedure.

121 Section 5. This act shall take effect October 1, 2024.

122

123 ===== T I T L E A M E N D M E N T =====

124 And the title is amended as follows:

125 Delete lines 12 - 74

126 and insert:

127 office; amending s. 112.324, F.S.; specifying that a



128 certain number of members of the commission are not  
129 required to make a specified determination related to  
130 written referrals submitted to the commission by  
131 specified parties; requiring the commission to submit  
132 a copy of a certain referral to an alleged violator  
133 within a specified timeframe; requiring the commission  
134 to undertake a preliminary investigation within a  
135 specified timeframe after receipt of technically and  
136 legally sufficient complaints or referrals and make a  
137 certain determination; authorizing a complainant to  
138 submit an amended complaint within a specified  
139 timeframe; providing that the probable cause  
140 determination concludes the preliminary investigation;  
141 requiring the commission to complete a preliminary  
142 investigation, including a probable cause  
143 determination, within a specified timeframe; requiring  
144 the commission to complete an investigatory report  
145 within a specified timeframe; authorizing the  
146 commission to extend, for a specified period, the  
147 allowable timeframe to adequately complete a  
148 preliminary investigation if a specified number of  
149 members of the commission determine such extension is  
150 necessary; requiring the commission to document the  
151 reasons for extending such investigation and transmit  
152 a copy of such documentation to the alleged violator  
153 and complainant within a specified timeframe;  
154 requiring the commission to transmit a copy of the  
155 completed report to an alleged violator and to the  
156 counsel representing the commission within a specified



157 timeframe; requiring such counsel to make a written  
158 recommendation for disposition of a complaint or  
159 referral within a specified timeframe after receiving  
160 the investigatory report; requiring the commission to  
161 transmit such recommendation to the alleged violator  
162 within a specified timeframe; providing that the  
163 alleged violator has a specified timeframe to respond  
164 in writing to the counsel's recommendation; requiring  
165 the commission, upon receipt of the counsel's  
166 recommendation, to schedule a probable cause hearing  
167 for the next executive session of the commission for  
168 which notice requirements can be met; providing that,  
169 under specified conditions, the commission may dismiss  
170 complaints or referrals before completion of a  
171 preliminary investigation; providing a timeframe  
172 within which the commission must transmit a copy of  
173 the order finding probable cause to the complainant  
174 and the alleged violator after a finding of probable  
175 cause; specifying that an alleged violator is entitled  
176 to request a formal hearing before the Division of  
177 Administrative Hearings or may select an informal  
178 hearing with the commission; providing that persons  
179 are deemed to waive their rights to a formal or an  
180 informal hearing if the request is not received within  
181 a specified timeframe; providing the timeframe within  
182 which the commission must conduct an informal hearing;  
183 requiring the commission to schedule a case that has  
184 been relinquished from the Division of Administrative  
185 Hearings for additional action at the next commission



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186 meeting for which notice requirements can be met;  
187 requiring the commission to complete final action on  
188 such case within a specified timeframe; requiring a  
189 specified number of commissioners to vote to reject or  
190 deviate from a recommendation made by the counsel  
191 representing the commission; providing that specified  
192 timeframes are tolled until the completion of a  
193 related criminal investigation or prosecution,  
194 excluding appeals, whichever occurs later; providing  
195 that a harmless error standard applies to the  
196 commission regarding specified timeframes; providing  
197 an effective date.