

JoAnne Leznoff  
*Vice Chair*  
Michelle Anchors  
Antonio Carvajal  
Travis Cummings  
Don Gaetz  
Glenton "Glen" Gilzean, Jr.  
John Grant  
William "Willie" N. Meggs  
Jim Waldman



State of Florida  
COMMISSION ON ETHICS  
P.O. Drawer 15709  
Tallahassee, Florida 32317-5709

325 John Knox Road  
Building E, Suite 200  
Tallahassee, Florida 32303

C. Christopher Anderson, III  
*Executive Director/  
General Counsel*

Kerrie J. Stillman  
*Deputy Executive Director*

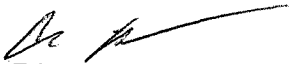
(850) 488-7864 Phone  
(850) 488-3077 (FAX)  
www.ethics.state.fl.us

*"A Public Office is a Public Trust"*

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**MEMORANDUM**

**TO:** Commission Members

**FROM:** Chris Anderson, Executive Director 

**SUBJECT:** Proposed Legislation for 2021 (anonymous complaints)

**DATE:** January 6, 2021

At your December meeting, you decided to continue to your January meeting your discussion of the matter of anonymous complaints and directed your staff to provide you with possible statutory language as a framework to facilitate discussion.<sup>1</sup> Below, please find such language; it is an

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<sup>1</sup> The Commission already has decided, at its October and December meetings, to recommend the following to the Legislature: closing a loophole in the conflicting employment and contractual relationships statute, Section 112.313(7), Florida Statutes, resulting from situations involving closely-held business entities; making uniform the voting/participation conflicts statute, Section 112.3143, Florida Statutes, such that it applies the same at the state level and local level, and such that it applies the same to elective and appointive officers; enhancing financial disclosure (Form 1 to Form 6) for elected municipal officers; opposing any legislation that would relax Commission decisions interpreting Section 112.313(7) as precluding public officers or members of their professional firms from representing clients before the officer's public board; opposing any legislation that would exempt from the gift and expenditure laws donations, unlimited in amount, from lobbyists or their principals to certain public employees and appointed public officials, for disease or injury expenses; amending Section 112.324(11), Florida Statutes, to broaden its applicability (to allow the Commission to dismiss financial disclosure complaints alleging de minimis violations); amending Section 112.324(12), Florida Statutes (the "Rudd Amendment"), to allow the Commission to use it as to lobbying firm audit matters; increasing the amount of civil fine penalties for ethics violations; and "Whistle-blower"-like protection for ethics complainants.

attempt from Commission Members' comments from the December meeting of limiting the scope of who could file an anonymous complaint and limiting the scope of the subject matter of such a complaint; and reflecting comments from the meeting as to other contents of an anonymous complaint.

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

(1) The commission shall investigate an alleged violation of this part or 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:

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

(b) Upon receipt of a written referral of a possible violation of this part or other possible breach of the public trust from the Governor, the Department of Law Enforcement, a 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;

or

(c) Upon receipt, by U.S. mail, courier, or in person, of a written complaint submitted anonymously by a public officer or a public employee, on a form prescribed by the commission. The anonymous complaint shall not be based solely on information known to or readily available to the general public, nor based in personnel actions or private causes of action which in and of themselves are not indicative of violations under the jurisdiction of the commission. The anonymous complaint must contain:

1. Material allegations concerning possible violations of Article II, Section 8, Florida Constitution, Part III, Chapter 112, Florida Statutes, or other law within the Commission's jurisdiction, based on either information other than hearsay or information which falls within an exception to the hearsay rule;

2. Allegations of conduct personally observed by the person submitting the complaint or conduct the person is aware of due to their position as a public officer or public employee; and,

3. A statement on the form by the complainant containing the following:

a. that he or she is public officer or public employee,

b. the allegations are made in good faith, and

c. the complainant reasonably believes the allegations to be true.

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, a copy shall be transmitted to the alleged violator.

(2)(a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals held by the commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Any portion of a proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(d) Any portion of a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, and s. 120.525.

(e) The exemptions in paragraphs (a)-(d) apply until:

1. The complaint is dismissed as legally insufficient;
2. The alleged violator requests in writing that such records and proceedings be made public;
3. The commission determines that it will not investigate the referral; or
4. The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.

(f) A complaint or referral under this part against a candidate in any general, special, or primary election may not be filed nor may any intention of filing such a complaint or referral be disclosed on the day of any such election or within the 30 days immediately preceding the date of the election, unless the complaint or referral is based upon personal information or information other than hearsay.

(3) A preliminary investigation shall be undertaken by the commission of each legally sufficient complaint or referral 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 or referral with the issuance of a public report to the complainant and the alleged violator, stating with particularity its reasons for dismissal. At that time, the complaint or referral and all materials relating to the complaint or referral 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 or referral 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) 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 or referral 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 or referral to the appropriate committee for investigation and action which shall be governed by the rules of its respective house. It is the duty of the committee to report its final action upon the matter 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 has the power to invoke the penalty provisions of this part.

(5) If, in cases 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 or referral and its findings by certified mail to the Speaker of the House of Representatives, who shall refer the complaint or referral to the appropriate committee for investigation and action which shall be governed by the rules of the House of Representatives. It is the duty of the committee to report its final action upon the matter to the commission within 90 days of the date of transmittal.

(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 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 has the power to invoke the penalty provisions of this part.

(7) 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) If, in cases other than complaints or referrals 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 is 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 has 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, or the director of the Office of Program Policy Analysis and Government Accountability.

(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, or Office of Program Policy Analysis and Government Accountability.

(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, or person who is not a public officer or employee, other than lobbyists and lobbying firms under s. 112.3215 for violations of s. 112.3215.

(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) 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) 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)(a) Notwithstanding subsections (1)-(8), the commission may dismiss any complaint or referral at any stage of disposition if it determines that the violation that is alleged or has occurred is a de minimis violation attributable to inadvertent or unintentional error. In

determining whether a violation was de minimis, the commission shall consider whether the interests of the public were protected despite the violation. This subsection does not apply to complaints or referrals pursuant to ss. 112.3144 and 112.3145.

(b) For the purposes of this subsection, a de minimis violation is any violation that is unintentional and not material in nature.

(12) Notwithstanding the provisions of subsections (1)-(8), the commission may, at its discretion, dismiss any complaint or referral 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.