

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 39

Relating to: GENERAL PROVISIONS, Ethics in government; JUDICIARY, Ethics in the judiciary
Prohibited activities; SCHEDULE, creates new section

Introducer(s): Commissioner Gaetz

Article/Section affected:

Date: December 5, 2017

	REFERENCE	ACTION
1.	<u>EE</u>	<u>Pre-meeting</u>
2.	<u>GP</u>	<u></u>

I. SUMMARY:

Proposal #39:

- Amends Section 8 of Article II of the State Constitution to:
 - Prohibit legislators and statewide elected officers from personally representing another person or entity for compensation before the legislature or any state government body or state agency except judicial tribunals for six years following vacation of office.
 - Prohibit legislators and statewide elected officers from personally representing another person or entity for compensation during term of office before any federal agency; the legislature; any state government body or agency other than judicial tribunals; or any political subdivision of the state.
 - Prohibit state appointed officers from personally representing another person or entity for compensation before the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department for a period of six years following vacation of his or her position.
 - Prohibit state appointed officers during service from personally representing another person or entity for compensation before any federal agency; the legislature; any state government body or agency other than judicial tribunals; or any political subdivision of the state.
 - Prohibit county officers pursuant to Article VIII or a county charter, school board members, superintendent of schools, elected municipal officers, or elected special district officers in special districts with ad valorem taxing authority from personally representing

- another person or entity for compensation before his or her former agency or governing body for a period of six years following vacation of office, or before any federal agency; the legislature; any state government body or agency other than judicial tribunals; or any political subdivision of the state during his or her term of office.
- Does not prohibit any public officer or public employee from representing his or her agency before any other governmental entities in the normal course of his or her duties.
 - Amends Section 13 of Article 5 of the State Constitution to prohibit a justice or judge from personally representing another person for compensation before the legislative, executive, or judicial branches of state government, other than practicing law before a judicial tribunal, for a period of six years following vacation of office.
 - Creates a new section in Article XII of the State Constitution, providing that the prohibitions on personal representation for compensation of another person or entity before specified governmental bodies by certain public officers and employees, and the creation of this section, shall take effect January 1, 2020.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Ethics in Government – General

Ethics in government covers a broad range of concepts regarding the appropriate behavior of elected officials and public employees. The National Conference on State Legislatures (NCSL) lists governmental ethics under the following broad categories:

- Conflict of Interest
- Financial Disclosure
- Gift Restrictions
- Lobbyist Regulation
- Oversight/Ethics Commissions and Committees
- Staff Ethics

Conflict of Interest – Revolving Door Prohibitions - General

NCSL lists a category under Conflict of Interest as “Revolving Door Prohibitions: Rules Against Legislators Lobbying State Government After They Leave Office.” Under this category, the following information is provided:

“At least 34 states have enacted a “cooling-off period” before a former legislator can come back to work at the legislature as a lobbyist. Also known as revolving door laws, statutes range from Maryland, where the ban is until the conclusion of the next regular session, to eight states—Alabama, Colorado, Florida, Iowa, Kentucky, Louisiana, Montana, and New York—that ban former legislators for two years...In Minnesota, the ban only applies to House members, not those in the Senate, and exists in chamber rule.

Ohio formerly had a one year ban, but the law was overturned by a federal district court in 2010. New Mexico and Wisconsin exempt legislators and certain legislative staff from their laws. Statutes in Kansas, Mississippi and Oklahoma restrict former legislators from certain contracting with government opportunities.”

Per House staff analysis of 2018 House Bill 5, while no state currently has a post-service lobbying ban longer than two years, House Bill 213 was filed in the Missouri House of Representatives during the 2017 Regular Legislative Session to extend Missouri’s lobbying ban applicable to former legislators and appointed state officers from six months to five years following vacation of office.

Ethics in Government – Florida

Florida Commission on Ethics

Florida’s Constitution and state law provide that the Florida Commission on Ethics (Commission) is the independent body charged with receiving and investigating sworn complaints involving Florida’s constitutional ethics provisions, as well as any other violation of Florida’s Code of Ethics for Public Officers and Employees. While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation. Instead, whenever the Commission finds probable cause exists that an ethics violation has occurred, the commission is required to submit its findings, along with a recommended penalty, to the statutorily designated official who may impose punishment. The Commission must make such submission to the Senate President or Speaker of the House, whichever is applicable, in any case concerning a former legislator who is alleged to have violated a provision applicable to former legislators or whose alleged conduct occurred while a member of the Legislature. In the case of a former statewide elected officer, the commission is required to make such submission to the Governor.

Florida State Constitution – Conflict of Interest - Revolving Door Prohibition

Article II of Florida’s State Constitution is entitled General Provisions, and Section 8 of this Article is entitled Ethics in Government. Within this section, subsection (e) reads as follows:

“No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.”

Florida State Law – Conflict of Interest - Revolving Door Prohibition

Codified in state law as Part III of Chapter 112, Florida Statutes, is the Code of Ethics for Public Officers and Employees. Specifically, per the 2018 Florida Commission on Ethics Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, Section 112.313(9), Florida Statutes provides for the following:

- A member of the Legislature or a statewide elected or appointed state official is prohibited for two years following vacation of office from representing another person or entity for compensation before the government body or agency of which the individual was an officer or member. Former members of the Legislature are also prohibited for two years from lobbying the executive branch.
- A member of the Legislature is prohibited from representing another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals.
- Certain employees of the executive and legislative branches of state government are prohibited from personally representing another person or entity for compensation before the agency with which they were employed for a period of two years after leaving their positions, unless employed by another agency of state government. These employees include the following:
 - Executive and legislative branch employees serving in the Senior Management Service and Selected Exempt Service, as well as any person employed by the Department of the Lottery having authority over policy or procurement.
 - Persons serving in the following position classifications: the Auditor General; the director of the Office of Program Policy Analysis and Government Accountability (OPPAGA); the Sergeant at Arms and Secretary of the Senate; the Sergeant at Arms and Clerk of the House of Representatives; the executive director and deputy executive director of the Commission on Ethics; an executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, legislative analyst, or attorney serving in the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, the Senate Minority Party Office, the House Majority Party Office, or the House Minority Party Office; the Chancellor and Vice-Chancellors of the State University System; the general counsel to the Board of Regents; the president, vice presidents, and deans of each state university; any person hired on a contractual basis and having the power normally conferred upon such persons, by whatever title; and any person having the power normally conferred upon the above positions.
- The prohibition does not apply to a person who was employed by the Legislature or other agency prior to July 1, 1989; who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994; or who reached normal retirement and retired by July 1, 1991. It does apply to OPS employees.

Per the 2018 Florida Commission on Ethics Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, Section 112.313(13) and Section 112.313(14), Florida Statutes provide for the following:

- A person elected to county, municipal, school district, or special district office is prohibited from representing another person or entity for compensation before the government body or agency of which he or she was an officer for two years after leaving office. Appointed officers and employees of counties, municipalities, school districts, and special districts may be subject to a similar restriction by local ordinance or resolution.

Under current law, a serving public officer who violates any of Florida's constitutional ethics provisions or a provision of the Code may be subject to one or more of the following civil penalties:

- Impeachment.
- Removal from office.
- Suspension from office.
- Public censure and reprimand.
- Forfeiture of no more than one-third of his or her salary per month for no more than 12 months.
- A civil penalty not to exceed \$10,000.
- Restitution of any pecuniary benefits received because of the violation committed.

Under current law, a former public officer who violates any of Florida's constitutional ethics provisions or a provision of the Code may be subject to one or more of the following civil penalties:

- Public censure and reprimand.
- Civil penalty up to \$10,000.
- Restitution of any pecuniary benefits received because of the violation committed.

Rules of the Florida House of Representatives (2016 – 2018)

Per House staff analysis of 2018 House Bill 5, during the 2016 Organization Session the Florida House of Representatives adopted Rule 17.1(g), which prohibits a lobbyist who was a member of the Legislature at any time after November 8, 2016, from lobbying the House of Representatives for a period of six years following vacation of office as a member of the Legislature.

2017 Florida Legislative Session

During the 2017 Session of the Florida Legislature, the House of Representatives submitted for consideration proposed changes to both the Florida Constitution and Florida law to broaden and lengthen the existing prohibitions on personal representation for compensation:

- House Joint Resolution (HJR) 7001 would have amended the Florida Constitution to prohibit legislators and statewide elected officers from personally representing another person or entity for compensation before any state government body or state agency except judicial tribunals for six years following vacation of office. This would have applied to individuals who were members of the Legislature or who were

statewide elected officers at any time after November 8, 2016. HJR7001 passed the House on March 30, 2017 by a vote of 108-4, but was not considered in the Senate.

- House Bill (HB) 7003 would have codified the constitutional change made by HJR 7001 in state law (although the ban would have remained two years for appointed state officers.) HB 7003 passed the House on March 10, 2017 by a vote of 110-3, but was not considered in the Senate.
- HB 7083 was an omnibus ethics reform bill that contained the provisions in HB 7003; it passed the House on April 20, 2017 by a vote of 118-1 but was not considered in the Senate.

2018 Florida Legislative Committee Meetings

During committee meetings leading up to the 2018 Session of the Florida Legislature, the House of Representatives has submitted for consideration proposed changes to Florida law that would broaden and lengthen the existing prohibitions on personal representation for compensation:

- HB 5 would prohibit legislators and statewide elected officers from personally representing another person or entity for compensation before any state government body or state agency except judicial tribunals for six years following vacation of office (the ban would remain two years for appointed state officers.) HB 5 passed the House Public Integrity and Ethics Committee on November 7, 2017 by a vote of 18-0, and as of December 5, 2017 is on the calendar of bills available for consideration by the full House. As of December 5, 2017 there is no similar companion bill filed in the Senate.

Article V

Article V of the Florida State Constitution covers the Judiciary. Section 13 of Article V currently reads:

“Prohibited activities.—All justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party.”

B. EFFECT OF PROPOSED CHANGES:

Article II

Proposal #39 would replace the current constitutional prohibition on legislators and statewide elected officers personally representing another person or entity for compensation before **their former government body or agency** for **two years** following vacation of office with a new prohibition. The proposed language would prohibit legislators and statewide elected officers from personally representing another person or entity for compensation before **the legislature or any state government body or state agency other than judicial tribunals** for **six years** following vacation of office.

Proposal #39 would also replace the current constitutional prohibition against **legislators** personally representing another person or entity for compensation during term of office before **any state agency** other than judicial tribunals with a new prohibition. The proposed language would prohibit **legislators and statewide elected officers** from personally representing another person or entity for compensation during term of office before **any federal agency; the legislature, any state government body or agency** other than judicial tribunals; **or any political subdivision of the state**.

Proposal #39 would also constitutionally establish several new provisions prohibiting public officials from personally representing another person or entity for compensation:

- A person who served as a secretary, executive director, or other agency head of a department of the executive branch of state government, may not personally represent another person or entity for compensation before the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department for a period of six years following vacation of his or her position.
- A person who is serving as a secretary, executive director, or other agency head of a department of the executive branch of state government, may not personally represent another person or entity for compensation before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state.
- A county officer pursuant to Article VIII or a county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority, may not personally represent another person or entity for compensation before his or her former agency or governing body for a period of six years following vacation of office.
- A county officer pursuant to Article VIII or a county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority, may not personally represent another person or entity for compensation before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state during his or her term of office.

Finally, with regards to all the changes made to this subsection of Section 8 of Article II, Proposal #39 clarifies that no public officer or public employee would be prohibited from representing his or her agency before any other governmental entities in the normal course of his or her duties.

With all the changes incorporated, this proposal would amend Subsection (e) of Section 8 of Article II of the Florida State Constitution to read:

“(e)(1) A member of the legislature or a statewide elected officer may not personally represent another person or entity for compensation before the legislature or any state

government body or agency, other than judicial tribunals, for a period of six years following vacation of office. A member of the legislature or a statewide elected officer may not personally represent another person or entity for compensation during term of office before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state.

(2) A person who served as a secretary, executive director, or other agency head of a department of the executive branch of state government, may not personally represent another person or entity for compensation before the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department for a period of six years following vacation of his or her position. A person who is serving as a secretary, executive director, or other agency head of a department of the executive branch of state government, may not personally represent another person or entity for compensation before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state.

(3) A county officer pursuant to Article VIII or a county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority, may not personally represent another person or entity for compensation:

a. Before his or her former agency or governing body for a period of six years following vacation of office.

b. Before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state during his or her term of office.

(4) This subsection does not prohibit any public officer or public employee from representing his or her agency before any other governmental entities in the normal course of his or her duties.

(5) Similar restrictions on other public officers and employees may be established by law.”

Article V

Proposal #39 would constitutionally establish a new provision prohibiting a justice or judge from personally representing another person for compensation before the legislative, executive, or judicial branches of state government, other than practicing law before a judicial tribunal, for a period of six years following vacation of office. As amended by this proposal, Section 13 of Article V would read:

“Ethics in the judiciary.—All justices and judges shall devote full time to their judicial duties. A justice or judge may not engage in the practice of law or hold office in any political party. A justice or judge may not personally represent another person for compensation before the legislative, executive, or judicial branches of state government, other than practicing law before a judicial tribunal, for a period of six years following vacation of office.”

Article XII

The proposal would also create a new section in Article XII of the State Constitution to read:

“Personal representation prohibitions for specified public officers and employees.—The amendments to Section 8 of Article II and Section 13 of Article V, which establish certain prohibitions on the personal representation for compensation of another person or entity before specified governmental bodies by certain public officers and employees, and the creation of this section, shall take effect January 1, 2020.”

Florida Commission on Ethics Analysis

The Florida Commission on Ethics has scheduled a meeting for December 8, 2017. Included on the agenda for this meeting is Item IX, Constitution Revision Proposals. Included in the meeting materials for this item is a memo dated November 20, 2017 to Commission Members from the Executive Director. The subject of the memo is Constitution Revision Commission (CRC) request, and it provides information on each of the current four CRC proposals to amend the ethics provisions of the Florida Constitution. Regarding the changes made by this proposal (#39), the memo states:

“This proposal incorporates changes similar to those in Proposal 19, and in addition, prohibits members of the Legislature and statewide elected officers – during their term of office – from representing persons or entities for compensation before federal agencies, the Legislature, state government bodies or agencies other than judicial tribunals, and political subdivisions.

This proposal would prohibit a secretary, executive director, or head of an executive branch agency from representations for compensation before the Legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or the official’s own former department, for six years after leaving employment.

The proposal would also impose an in-office/employment ban which would prohibit the secretary, executive director, or agency head from representations for compensation, other than in the course of their duties, before federal agencies, the Legislature, state government bodies or agencies other than judicial tribunals, and political subdivisions. Current law does not speak to these kinds of activities, although if they were in conflict with the official’s public duties, they could potentially be addressed through application of the conflicts of interest law in Section 112.313(7).

The proposal also places a six-year restriction on county officials, including a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority. The restriction would (be) on representations for compensation before their own former agency or governing body... The proposal also creates an in-office/employment ban, which would prohibit such officials, during their terms in office, from representations for compensation before any federal agency, the Legislature, any state government body or agency other than judicial tribunals, or any political subdivision, except in the representation of their own government entity. Again, current law does not specifically speak to such activities, but in particular circumstances, they could fall within the ambit of Section 112.313(7).

The proposal also makes a change to Article V to place a six year limit on former judges representing persons or entities for compensation before the legislative, executive, or judicial branches of state government, other than practicing law before a judicial tribunal.”

C. FISCAL IMPACT:

To the extent that the change made by this proposal resulted in greater or fewer reported ethics complaints than is currently the case, there could be an indeterminate fiscal impact based on the related change in the workload of the Florida Commission on Ethics. There may be an indeterminate negative fiscal impact to legislators and statewide elected officers who would be impacted by the change made by this proposal. This could be offset by an indeterminate positive fiscal impact for those personally representing another person or entity for compensation before a state government body or state agency who in essence replace those who are prohibited under this proposal.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.