

**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 19

Relating to: GENERAL PROVISIONS, Ethics in government; SCHEDULE, creates new section

Introducer(s): Commissioner Rouson

Article/Section affected:

Date: December 5, 2017

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

I. SUMMARY:

Proposal #19 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 any state government body or state agency except judicial tribunals for six years following vacation of office. It also creates a new section in Article XII of the State Constitution, providing that this prohibition applies to individuals who were members of the Legislature or who were statewide elected officers at any time after November 6, 2018.

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.

Under current law, a former public officer who violates this or 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.

B. EFFECT OF PROPOSED CHANGES:

Article II

Proposal #19 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. Effective November 6, 2018, the proposed language would prohibit legislators and statewide elected officers from personally representing another person or entity for compensation before **any state government body or state agency other than judicial tribunals** for **six years** following vacation of office. Specifically, this proposal would amend Subsection (e) of Section 8 of Article II of the Florida State Constitution to read:

“(e) A member of the legislature or a statewide elected officer may not personally represent another person or entity for compensation before any state government body or state agency other than judicial tribunals for a period of six years following vacation of office. A member of the legislature may not 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.”

Article XII

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

“State officers post-service personal representation prohibitions.—The amendment to Section 8 of Article II prohibiting legislators and statewide elected officers from providing personal representation for compensation before any state government body or state agency for six years following vacation of office is applicable only to those

individuals who were members of the legislature or who were statewide elected officers at any time after November 6, 2018.

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 (#19), the memo states:

“This proposal would: 1) expand the language in the Constitution from “the government body or agency of which the individual was an officer or member” to “any state government body or state agency” 2) extend the prohibition to six years, and 3) include an exemption which does not exist in the current language for representation before judicial tribunals.”

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.