

COMMITTEE MEETING EXPANDED AGENDA**RULES SUBCOMMITTEE ON ETHICS AND ELECTIONS****Senator Diaz de la Portilla, Chair****Senator Detert, Vice Chair****MEETING DATE:** Monday, March 28, 2011**TIME:** 9:00 —10:00 a.m.**PLACE:** Pat Thomas Committee Room, 412 Knott Building**MEMBERS:** Senator Diaz de la Portilla, Chair; Senator Detert, Vice Chair; Senators Alexander, Braynon, Dockery, Evers, Gaetz, Joyner, Oelrich, Richter, Simmons, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 2056 Rules Subcommittee on Ethics and Elections	OGSR/Commission on Ethics; Amends provisions which provide exemptions from public records and public meeting requirements for records and meetings related to audits and investigations conducted by the Commission on Ethics of alleged violations of certain lobbyist registration and reporting requirements. Saves the exemptions from repeal under the Open Government Sunset Review Act. Removes the scheduled repeal of the exemptions. EE 03/28/2011 RC GO	

Consideration of proposed committee bill:

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| 2 | SPB 7220 | Elections; Specifies a time period to initiate an action to challenge an amendment to the State Constitution proposed by the Legislature. Requires the court, including an appellate court, to accord the case priority over other cases. Requires the Attorney General to revise a ballot title or ballot summary for an amendment proposed by the Legislature under certain circumstances. Requires the Department of State to furnish a designating number and the revised ballot title and substance to the supervisor of elections, etc. |
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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.)

Prepared By: The Professional Staff of the Rules Subcommittee on Ethics and Elections

BILL: SB 2056

INTRODUCER: For consideration by the Rules Subcommittee on Ethics and Elections

SUBJECT: Public Records; OGSR

DATE: March 16, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carlton	Roberts		Pre-meeting
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The bill saves from repeal the exemption to the Florida Public Records Act¹ and the Florida Sunshine Law currently found in Section 112.3215(8)(d), F.S., relating to the confidentiality of certain records and meetings before the Commission on Ethics (“Commission”). Specifically, the provision subject to repeal exempts certain records relating to an audit or an investigation until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the Commission determines whether probable cause exists that a violation has occurred. Also, that Section exempts proceedings from the open meetings and notice requirements of the Sunshine Law found in Section 286.011, F.S.

Section 112.3215(8)(d), F.S., is scheduled for repeal on October 2, 2011, unless saved from repeal by the Legislature; pursuant to the requirements of the Open Government Sunset Review Act.

This bill amends Section 112.3215(8)(d), F.S., by removing the scheduled repeal date from the statute.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892.²

¹ §119.07(1), F.S.; FLA. CONST. art. I, § 24(a).

² §§ 1390, 1391 F.S. (Rev. 1892).

In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.³ Article I, s. 24(a), of the Florida Constitution, provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act⁴ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁵ records are available for public inspection. The term “public record” is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public

³ FLA. CONST. art. I, § 24.

⁴ Chapter 119, F.S.

⁵ The word “agency” is defined in s. 119.011(2), F.S., to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ § 119.011(12), F.S.

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ FLA. CONST. art. I, § 24(c).

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

Public Meetings

Article I, s. 24(b), of the Florida Constitution, provides that:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Florida's Sunshine Law, s. 286.011, F.S., states that:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

“The purpose of the Sunshine Law is ‘to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance.’”¹⁴ Having been “enacted in the public interest to protect the public from ‘closed door’ politics,” the Sunshine Law is construed liberally by the courts in favor of open government so as to frustrate all evasive devices.¹⁵ The law has been held to apply only to a meeting of two or more public officials at which decision

⁹ *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567, 569-570 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ FLA. CONST. art. I, § 24(c).

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1998) (quoting *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974)); See also *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 860 (Fla. 3d DCA 1994).

¹⁵ *Wood v. Marston*, 442 So. 2d 934, 938, 940 (Fla. 1983).

making of significance, as opposed to fact finding or information gathering, will occur.¹⁶ Two or more public officials subject to the Sunshine Law may interview others privately concerning the subject matter of the entity's business, or discuss among themselves in private those matters necessary to carry out the investigative aspects of the entity's responsibility; but at the point where the public officials make decisions, such discussion must be conducted at a public meeting, following notice.¹⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁸ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.¹⁹

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?²⁰

Pursuant to Section 119.10(1)(a), F.S., any public officer who violates any provision of the Public Records Act is guilty of a noncriminal infraction, punishable by a fine not to exceed \$500. Further, under paragraph (b) of that subsection, a public officer who knowingly violates the provisions of Section 119.07(1), F.S., relating to the right to inspect public records, commits a first-degree misdemeanor, and is subject to suspension and removal from office or impeachment.

¹⁶ *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354 (Fla. 4th DCA 1989); See also *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978); *Bennett v. Warden*, 333 So. 2d 97, 99-100 (Fla. 2d DCA 1976); and *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222, 224-225 (Fla. 5th DCA 1985).

¹⁷ *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978).

¹⁸ § 119.15, F.S.

¹⁹ § 119.15(6)(b), F.S.

²⁰ § 119.15(6)(a), F.S.

Any person who willfully and knowingly violates any provision of the chapter is guilty of a first-degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000.

Section 112.3215(8)(d), F.S.

The Florida Public Records Act provides that “all exemptions from disclosure [be] construed narrowly and [be] limited to their designated purpose.”²¹ Exemptions to the open public meeting requirement under Florida’s Sunshine Law²² must also be narrowly construed.²³ Section 112.3215(8)(d), F.S., exempts from the Florida Public Records Act records that pertain to an audit of a lobbying firm’s or principal’s compensation report or records. Generally, compensation-reporting audits consist of a review of a lobbying firm’s compensation report filed with the Commission in order to ensure their accuracy.²⁴ Section 112.3215(8)(d), F.S., also exempts records relating to an investigation of a complaint alleging that a lobbyist, lobbying firm, or principal of a lobbyist has failed to register, has failed to submit a compensation report, or has knowingly submitted false information in any report or registration required by Section 112.3215, F.S., or Section 112.32155, F.S. The information protected by the exemption may be released to the public when either the affected lobbying firm requests that the records and meetings be made public or the Commission finds probable cause that “the audit reflects a violation of the reporting laws.”²⁵

Section 112.3215(8)(d), F.S., also provides that meetings held pursuant to such an investigation or at which such an audit is discussed are exempt from Florida’s Sunshine Law found in Section 286.011, F.S., and s. 24(b), Art. I of the State Constitution. Thus, a meeting wherein the Commission is considering an audit or investigation conducted pursuant to Section 112.3215, F.S., is not open to the public and no notice to the public is required.

In conjunction with Section 112.3215(8)(d), F.S., Rule 34-12.760, F.A.C., provides further guidelines for the Commission on what matters must remain confidential and exempt from public records requirements. Pursuant to the requirements of Rule 34-12.760(2), F.A.C., the Commission must also release the complaint, the report of the investigation, and the Commission’s order if there was no finding of probable cause that a violation occurred but the rest of the file and the investigative file remain confidential. If the Commission does determine probable cause exists that a violation has occurred, all of the documents pertaining to the complaint – including the investigative file – become public record upon the filing of the Commission’s order.²⁶ The complaint along with the recommendation of the Commission’s executive director and the Commission’s order become public record if a complaint is dismissed without an investigation.²⁷

²¹ *Barfield v. City of Fort Lauderdale Police Dept.*, 639 So. 2d 1012, 1014 (Fla. 4th DCA 1994).

²² §286.011, F.S.

²³ See *Bruckner v. City of Dania Beach*, 823 So. 2d 167, 170 (Fla. 4th DCA 2002); see also *Zorc*, *supra* note 14, at 897.

²⁴ See §112.3215(5)(a)1 (requiring lobbying firms to file a compensation report with the commission for each quarter in which one or more of the firm’s lobbyists were registered to represent a principal).

²⁵ §112.3215(8)(d), F.S.; see also Rule 34-12.760(2), F.A.C.

²⁶ Rule 34-12.760(3), F.A.C.

²⁷ Rule 34-12.760(1), F.A.C.

The exemption in Section 112.3215(8)(d), F.S., is subject to the Open Government Sunset Review Act and is scheduled to be repealed on October 2, 2011, unless the Legislature reenacts the exemption pursuant to the requirements of Section 119.15, F.S.

III. Effect of Proposed Changes:

The bill saves from repeal the exemption found in Section 112.3215(8)(d), F.S. Section 1 of the bill reenacts the current public records and public meeting exemption found in Section 112.3215(8)(d), F.S.

The current exemption may be maintained as the public necessity that warranted the original 2005 legislation continues to exist. Requiring the disclosure of compensation audit reports of lobbyists through open records requests or public meetings could irreparably injure lobbying firms by providing competitors with detailed information about a firm's financial status. As a result, disclosure would create an economic disadvantage for such firms and possibly hinder a firm's reputation if no violations were found. Additionally, public disclosure of records and meetings could jeopardize the commission's ability to conduct investigations. No other exemption protects records or meetings of this nature; and there is no other existing exemption where it would be appropriate to merge with the exemptions found in this bill. Due to the still-existing public necessity, the benefits of maintaining the exemption outweigh any public benefit that may be received by requiring disclosure.

As precedent establishes, all public records and public meetings exemptions must be narrowly construed.²⁸ With the exemptions in section 112.3215(8)(d), F.S., being narrowly constructed as Florida law provides, it does not compromise the goals of the Florida Public Records Act or the Florida Sunshine Law. While the current language of the statute exempts an entire meeting at which an investigation or audit is discussed, any exemptions are construed narrowly. In narrowly construing the exemptions to the Public Records Act and the Sunshine Law, it is the practice of the Commission to take up a confidential matter on the executive session agenda with other confidential matters only. Section 112.3215(8)(d), F.S., does not impede the Public Records Act's or Sunshine Law's goals of preventing the "crystallization of secret decisions."²⁹ With the public necessity, the narrow construction of the exemptions, and the additional requirements established Rule 34-12.760, F.A.C., adequate public oversight is provided so that it does not contravene the public policy goals of the Public Records Act or the Sunshine Law.

Section 2 provides an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ See *supra* notes 21 and 23.

²⁹ *Zorc, supra* note 14, at 896.

B. Public Records/Open Meetings Issues:

As the bill does not create or expand a public records or public meetings exemption, a two-thirds vote for passage is not required.³⁰

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁰ FLA. CONST. art. I, § 24(c).



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules Subcommittee on Ethics and Elections
(Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

After line 179
insert:

Section 1. Paragraph (d) is added to subsection (2) of
section 99.095, Florida Statutes, to read:

99.095 Petition process in lieu of a qualifying fee and
party assessment.—

(2)

(d) In a year of apportionment, any candidate for county or
district office seeking ballot position by the petition process
may obtain the required number of signatures from any registered



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voter in the respective county, regardless of district boundaries. The candidate shall obtain at least the number of signatures equal to 1 percent of the total number of registered voters, as shown by a compilation by the department for the immediately preceding general election, divided by the total number of districts of the office involved.

Between lines 214 and 215
insert:

Section 3. Subsection (6) is added to section 101.591, Florida Statutes, to read:

101.591 Voting system audit.—

(6) If a manual recount is undertaken pursuant to s. 102.166, the canvassing board is not required to perform the audit provided for in this section.

Section 4. Paragraph (a) of subsection (1) and paragraph (b) of subsection (4) of section 101.62, Florida Statutes, are amended to read:

101.62 Request for absentee ballots.—

(1)(a) The supervisor shall accept a request for an absentee ballot from an elector in person or in writing. One request shall be deemed sufficient to receive an absentee ballot for all elections through the end of the calendar year of the next regularly scheduled general election, unless the elector or the elector's designee indicates at the time the request is made the elections for which the elector desires to receive an absentee ballot. Such request may be considered canceled when any first-class mail sent by the supervisor to the elector is returned as undeliverable.

(4)



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(b) The supervisor shall provide an absentee ballot to each elector by whom a request for that ballot has been made by one of the following means:

1. By nonforwardable, return-if-undeliverable mail to the elector's current mailing address on file with the supervisor ~~or, unless the elector specifies in the request that:~~

~~a. The elector is absent from the county and does not plan to return before the day of the election;~~

~~b. The elector is temporarily unable to occupy the residence because of hurricane, tornado, flood, fire, or other emergency or natural disaster; or~~

~~c. The elector is in a hospital, assisted living facility, nursing home, short term medical or rehabilitation facility, or correctional facility,~~

~~in which case the supervisor shall mail the ballot by nonforwardable, return-if-undeliverable mail to any other address the elector specifies in the request.~~

2. By forwardable mail, e-mail, or facsimile machine transmission to absent uniformed services voters and overseas voters. The absent uniformed services voter or overseas voter may designate in the absentee ballot request the preferred method of transmission. If the voter does not designate the method of transmission, the absentee ballot shall be mailed.

3. By personal delivery before 7 p.m. on election day to the elector, upon presentation of the identification required in s. 101.043.

4. By delivery to a designee on election day or up to 5 days prior to the day of an election. Any elector may designate



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in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two absentee ballots per election, other than the designee's own ballot, except that additional ballots may be picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that ballot and shall indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

Section 5. Paragraph (a) of subsection (2) of section 101.68, Florida Statutes, is amended to read:

101.68 Canvassing of absentee ballot.—

(2)(a) The county canvassing board may begin the canvassing of absentee ballots at 7 a.m. on the 15th ~~sixth~~ day before the election, but not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of absentee ballots through such tabulating equipment may begin at 7 a.m. on the 15th ~~sixth~~



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day before the election. However, notwithstanding any such authorization to begin canvassing or otherwise processing absentee ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor of elections, deputy supervisor of elections, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of absentee ballots prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to elections; amending s. 99.095, F.S.; allowing a candidate to obtain the required number of signatures from any registered voter regardless of district boundaries in a year of apportionment; amending s. 101.161,
Between lines 15 and 16

insert:

amending s. 101.591, F.S.; removing the audit requirement by the canvassing board if a manual recount is undertaken; amending s. 101.62, F.S.; extending the time for requesting an absentee ballot to the end of the calendar year of the next regularly scheduled general election; removing requirements that an elector provide certain information when requesting



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129 an absentee ballot from the county supervisor of
130 elections; amending s. 101.68, F.S.; extending the
131 time for canvassing and processing absentee ballots to
132 15 days before the election;

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.)

Prepared By: The Professional Staff of the Rules Subcommittee on Ethics and Elections

BILL: SPB 7220

INTRODUCER: For consideration by Rules Subcommittee on Ethics and Elections

SUBJECT: Elections

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox/Seay	Roberts		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This proposed committee bill is an omnibus elections package that establishes procedures for the Attorney General to cure defective ballot language in a joint resolution, and also makes numerous, primarily technical changes to Florida's campaign finance laws. Some of the more significant changes in the bill include:

- Specifying the time period to initiate a challenge to an amendment proposed by the Legislature to the State Constitution, and directing the Attorney General to revise ballot language found to be defective by a court;
- Requiring committees of continuous existence (CCEs) and political committees (PCs) who participate in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections;
- Increasing the penalty for CCEs that late-file their final campaign finance report due before a primary or general election for the first three days the report is late, from \$50 per day to \$500 per day (to conform to current law regarding PC and candidate filings);
- Requiring CCEs, candidates, and PCs to include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement;
- Creating an additional election violation for filing three campaign finance reports late in a two-year period; and,
- Providing that the failure of a candidate to comply with the campaign finance laws has no effect upon whether the candidate has qualified for the office the candidate is seeking.

This bill substantially amends ss. 101.161, 106.011, 106.022, 106.023, 106.04, 106.07, 106.0703, 106.0705, 106.08, 106.09, 106.11, 106.141, 106.143, 106.18, 106.19, 106.29, and 106.35 of the Florida Statutes.

II. Present Situation:

Challenge of Constitutional Amendments

Amendments can be removed from the ballot if the ballot title and summary fail to inform the voter, in clear and unambiguous language, of the chief purpose of the amendment.¹ This has been referred to by the courts as the “accuracy requirement.”² All constitutional amendments are subject to this requirement, including amendments proposed by the Legislature.³ In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the ballot by Florida courts; the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.⁴

If a court rules to remove an amendment from the ballot and the Legislature is not in session, there is no opportunity to correct a deficiency in the ballot title or ballot summary — absent calling a special session.

Independent Expenditures

Independent expenditures are expenditures by a person for the purpose of expressly advocating the election or the approval or rejection of an issue which are not controlled by or coordinated with any candidate, political committee, or their respective agents.⁵ Under s. 106.011, F.S., an expenditure is not considered an independent expenditure if a committee or person, after the last day of qualifying for statewide or legislative office, consults about the candidate’s plans, projects, or needs, and then uses that information to plan, create, design, or prepare an independent expenditure or advertising campaign.⁶

Appointment of Registered Agents

Each political committee, committee of continuous existence, or electioneering communications organization is required to file a statement of appointment for both the registered office and registered agent with the Division of Elections (Division).⁷ In the event that the registered office or registered agent changes, the entity is required to complete a written statement of change and file with the Division.⁸

¹ *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010).

² *Armstrong v. Harris*, 773 So.2d 7, 11-12 (Fla. 2000); *see also* §101.161(1), F.S.

³ *Id.* at 13.

⁴ *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010); *Fla. Dept. of State v. Mangat*, 43 So.3d 642 (Fla. 2010); *Fla. Dept. of State v. Fla. State Conference of NAACP Branches*, 43 So.3d 662 (Fla. 2010).

⁵ Section 106.011(5)(a), F.S.

⁶ Section 106.011(5), F.S.; section 106.011(6), F.S.

⁷ Section 106.022(1), F.S.

⁸ When filing the original statement of appointment for the registered office and registered agent, the entity also pledges the undertaking to inform the Division of any change of the originally designated address of the entity. Section 106.022(1)(d).

Statement of Candidates

Candidates are required to file a statement with their filing officer that they have received, read, and understood the requirements of Chapter 106 of the Florida Statutes.⁹ The candidate must file such statement within 10 days of the appointment of the candidate's campaign treasurer and designation of the campaign depository.¹⁰

Committees of Continuous Existence

Under Florida law, committees of continuous existence are defined as any group, organization, association, or other entity certified under the requirements of s. 106.04, F.S. Committees of continuous existence must file annual reports with the Division.¹¹ If the CCE fails to meet the criteria in s. 106.04(1), F.S., the Division revokes the committee's certification until the criteria is met.¹² The Legislature has granted the Division rulemaking authority to establish the procedure of revoking the CCE's certification.¹³ If a CCE does not file its annual report on its designated due date, the Division must levy a fine.¹⁴ Once a report is found to be late, a Division filing officer must provide notice to the committee's treasurer.¹⁵ The committee's treasurer may appeal or dispute a late filing fine by requesting a hearing before the Florida Elections Commission.¹⁶ The Division's filing officer is to notify the commission of repeated late filing by a committee; the failure of a committee to file a report after given notice; or the failure to pay the imposed fine.¹⁷

CCEs must file campaign finance reporting forms at the same time as candidates and political committees, which must include transaction information from each credit card statement that will be included in the next report.¹⁸ Failure to file subjects CCEs to a \$50 per day fine for the first three days late, thereafter \$500 per day, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater.¹⁹ Unlike candidates and political committees, there is no enhanced \$500 penalty for the first three days late with respect to the final campaign finance report due immediately preceding a primary or general election.²⁰

Reports by Candidates and Political Committees

Campaign treasurers for candidates and political committees are to file regular reports detailing all contributions received and all expenditures made, by or on behalf of the candidate or political committee.²¹ The reports are normally due on the 10th day following the end of each calendar quarter.²² Additionally, a candidate facing opposition to nomination or election to an office, a

⁹ Section 106.023(1), F.S.

¹⁰ Section 106.023(1), F.S.

¹¹ Section 106.04(4)(a), F.S.

¹² Section 106.04(7), F.S.

¹³ *Id.*

¹⁴ Section 106.04(8)(a), F.S.

¹⁵ Section 106.04(8)(b), F.S.

¹⁶ Section 106.04(8)(c), F.S.

¹⁷ Section 106.04(8)(d), F.S.

¹⁸ Section 106.04(4)(b), F.S.

¹⁹ Section 106.04(8)(a), F.S.

²⁰ See *infra* note 28 and accompanying text (political committees and candidates are subject to a \$500 per day penalty for each day that they are late in filing their final campaign finance report).

²¹ Section 106.07(1), F.S.

²² The section provides variances in the event that the tenth day following the end of each calendar quarter falls on a Saturday, Sunday, or legal holiday. *Id.*

political committee, or a committee of continuous existence must file a report on the 32nd, 18th, and 4th days immediately preceding the primary election and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. A candidate who has opted to receive public campaign financing is required to file reports at more frequent increments.²³ When a special election is called to fill a vacancy in office, all political committees and committees of continuous existence making contributions or expenditures to influence the results of the special election must file campaign treasurers' reports with the Division of Elections' filing officer on the dates set by the Department of State.²⁴

The Division's filing officer may conditionally accept a report that is deemed incomplete. If a report is deemed incomplete, the Division must notify the campaign treasurer why the report was found to be incomplete by registered mail. The Division must allow the campaign treasurer 3 days from receipt of the notice to complete the report by filing an addendum. The filing officer may opt to notify the campaign treasurer of the report's deficiency by a telephone call in lieu of sending a notice via registered mail. If no additional information is received from the campaign treasurer within 3 days of the telephone notification, the filing officer shall send notice via registered mail.

Each report submitted to the Division must include each credit card statement after it is received by the campaign treasurer.²⁵ Additionally, the campaign depository is required to return all checks drawn from the campaign account to the campaign treasurer — which, in turn, the campaign treasurer is required to retain for records.²⁶ The maintained records are subject to inspection by the Division or the Florida Elections Commission (Commission) anytime during normal business hours.²⁷

If the Division determines that a report is late, the filing officer must notify either the candidate or the chair of the political committee that the report is late and that a fine is levied for each day that the report is late.²⁸ Reports due immediately preceding each primary and general election are subject to a higher late fine.²⁹ The appropriate filing officer must notify the Commission of repeated late filing of reports.³⁰

All candidates that are required to file reports with the Division pursuant to s. 106.07, F.S., must use the Division's electronic filing system.

²³ Candidates who opt to receive public campaign financing through the Florida Election Campaign Financing Act must file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election. Section 106.07(1)(b), F.S.

²⁴ Section 106.07(1)(d)1, F.S.

²⁵ Section 106.07(4)(a)11, F.S.

²⁶ Section 106.07(6), F.S.

²⁷ *Id.*

²⁸ Section 106.07(8)(b), F.S. The fine is \$50 per day for the first three days late, followed by \$500 per day thereafter, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater. *Id.*

²⁹ *Id.* The fine for late-filing the final report is \$500 per day, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater. *Id.*

³⁰ Section 106.07(8)(d), F.S.

Limitations on Campaign Contributions

Independent or minor party candidates may qualify to be placed on the ballot through the petition method.³¹ Once a determination of qualification is made by the Department of State or the appropriate supervisor of elections, the department or supervisor must notify in writing all other candidates who have qualified for that same office within 3 days of the determination.³² If an independent or minor party candidate failed to qualify through petition, any contribution received by a candidate, campaign treasurer, or deputy campaign treasurer after notification of the other candidate's failure to qualify must be returned to the contributor and may not be used on behalf of the candidate.³³

More restrictions are placed on candidates' acceptance of campaign contributions by cash or cashier's check. An individual is prohibited from contributing or accepting a cash contribution or contribution by cashier's check in excess of \$50.³⁴

Expenditures by Candidates and Political Committees

Candidates and political committees may use debit cards when making expenditures. Before a candidate or political committee does use a debit card, they must provide a list of all persons authorized to use the card with the Division.³⁵ Any debit cards that are issued for a candidate's campaign or a political committee must expire by midnight of the last day of the month of the general election.³⁶

Political Advertising

Political advertisements that are circulated prior to an election and paid for by the candidate must prominently state certain information such as: the name of the candidate; the party affiliation; and the office sought.³⁷ Current law does not address statements that must be featured on the advertisements of write-in candidates.

If a candidate is running for partisan office, any political advertisement must feature the name of the political party for which the candidate is seeking nomination or is the nominee.³⁸ If a candidate is running for a partisan office but is running with no party affiliation, any political advertisements must state that the candidate is running with no party affiliation.³⁹ Any political advertisements, offered on behalf of a candidate, must state that the advertisement was approved by the candidate and must disclose who paid for the advertisement.⁴⁰ The "approved by" disclaimer is not required for campaign messages used by a candidate or his or her supporters if the message is displayed on clothing.⁴¹

³¹ Pursuant to Section 99.0955, F.S.

³² Section 106.08(3)(c), F.S.

³³ Section 106.08(3)(c)2, F.S.

³⁴ Section 106.09(1), F.S.

³⁵ Section 106.11(2)(a)4, F.S.

³⁶ Section 106.11(2)(a)5, F.S.

³⁷ Section 106.143(1)(a), F.S.

³⁸ Section 106.143(2), F.S.

³⁹ *Id.*

⁴⁰ Section 106.143(4)(a), F.S.

⁴¹ Section 106.143(4)(c), F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 101.161, F.S., providing that any action for a judicial determination that a ballot title or substance is misleading or otherwise deficient in a constitutional amendment adopted through joint resolution of the Legislature must commence within 30 days after the joint resolution is filed with the Secretary of State or at least 150 days before the election that the amendment is to appear on the ballot; whichever date occurs later; providing that any court hearing such an action must accord priority to this case and must render a decision expeditiously; directing the Attorney General to prepare a revised ballot title or substance that corrects the deficiency identified by the court if a court determines that the ballot title or substance is defective and appeal of the decision is either declined, abandoned, or exhausted; requiring the Department of State to provide a designated number to the revised ballot and substance for supervisors of elections to place on the ballot; specifying that a defect in the ballot title or substance of a constitutional amendment adopted through joint resolution is not grounds for removal from the ballot.

Section 2. Amends s. 106.011, F.S., clarifying the time period during which consultation by a committee or person about a candidate's plans, projects, or needs will constitute an exemption from the definition of an independent expenditure; ties the time frame to the candidate's specific qualifying period instead of the qualifying period for legislative and statewide candidates.

Section 3. Amends s. 106.022, F.S., providing that a PC's, CCE's, or electioneering communications organization's filing of the appointment of a registered agent and registered office will be with the same filing officer that the entity registered with originally.

Section 4. Amends s. 106.023, F.S., revising the "Statement of Candidate" mandated for every candidate to state that the candidate has been *provided access* to Chapter 106 of the Florida Statutes, instead of *providing a copy*.

Section 5. Amends s. 106.04, F.S., requiring CCEs participating in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections; providing that CCEs include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement (to conform to the functionality of the electronic filing system); clarifying when campaign treasurer's reports for committee of continuous existence are due and how notification is provided when reports are late or incomplete; clarifies the procedures for imposition of fines against committees of continuous existence; defining the term "repeated late filings," providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

Section 6. Amends s. 106.07, F.S., deleting a redundant requirement to file a third-quarter campaign finance report during an election season, as reports are due more frequently after qualifying — generally in 2-week intervals; providing that a campaign treasurer must be notified by certified mail or another method that provides a proof of delivery of notice when a filing officer has deemed a report as incomplete; establishing that, within 7 days of receiving the notice, the campaign treasurer must provide an addendum to the filing officer containing the

information needed to complete the report; requiring PCs participating in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections; providing that PCs and candidates include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement (to conform to the functionality of the electronic filing system); defining the term “repeated late filings,” providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

Section 7. Amends s. 106.0703, F.S., defining the term “repeated late filings,” providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

Section 8. Amends s. 106.0705, F.S., requires campaign finance *office account* reports and *termination* reports (surplus funds) for individuals who file with the Division of Elections to be filed electronically, for consistency with other campaign finance filings and to enhance public access; deletes a time-delimited, outdated provision related to campaign finance filings.

Section 9. Amends s. 106.08, F.S., deleting a requirement that persons authorized to accept in-kind contributions to the state or county executive committee of a political party do so in a *signed* acceptance (the written acceptance must still be dated before the in-kind contribution is made); provides that persons accepting on behalf of county executive committees file their in-kind contribution acceptance with the applicable supervisor of elections instead of the Division of Elections; deletes obsolete provisions relating to minor party and independent candidates seeking to qualify by the petition method.

Section 10. Amends s. 106.09, F.S., clarifying that the \$50 limit on contribution by cash and cashier’s check are in the *aggregate, per election*; it also clarifies that the aggregate limits apply to *making* contributions to *the same* candidate or committee or *accepting* contributions from *the same* contributor.

Section 11. Amends s. 106.11, F.S., eliminating a requirement for candidates using debit cards as bank checks to submit a list of authorized users to the Division of Elections (unnecessary in practice); removes the requirement that the debit cards expire no later than November 30 of an election year (banks do not typically issue termination dates for debit cards); clarifies that a candidate may be reimbursed for a loan that he or she has made to the campaign “at any time the campaign account has sufficient funds to repay the loan and satisfy its other obligations;” makes technical changes to the designation of a campaign account.

Section 12. Amends s. 106.141, F.S., directing that surplus campaign funds of candidates that have received public financing be returned to the General Revenue Fund, after paying off: previous monetary obligations of the campaign; costs for closing down campaign offices; and, costs associated with preparing final campaign reports.

Section 13. Amends s. 106.143, F.S., mandating that a write-in candidate use a specified disclaimer for political advertisements; prohibiting candidates for nonpartisan office from referring to party affiliation in their political advertisements, and prohibiting them from

campaigning based on party affiliation; clarifying that if a political advertisement is paid for a candidate, the advertisement need not specify that the candidate “approved” the advertisement (mirroring the treatment of political disclaimers in the 2010 “Technology in Elections Act,”⁴² which created a new disclaimer for electronic ads that merely states: “Paid by (name of candidate), (party affiliation), for (office sought)”); deletes an exclusion from the “approved by” disclaimer for campaign messages designed to be worn, to conform to changes made to the general ‘paid-for-by’ disclaimer in the 2010 Technology in Elections Act.⁴³

Section 14. Amends s. 106.18, F.S., deleting an outdated provision relating to candidates filing copies of their campaign finance reports. Before going to electronic filings, candidates required to file with the Division also had to file copies with the applicable supervisors of elections.

Section 15. Amends s. 106.19, F.S., providing that a candidate’s failure to comply with the requirements of Chapter 106 has no effect on whether the candidate has qualified for the office sought.

Section 16. Amends s. 106.29, F.S., clarifying that political party executive committees making contributions or expenditures in special primary or special elections must file campaign finance reports on the dates set by the Department of State in s. 100.111, F.S.; provides for the filing of such reports on the Friday before a special primary or special election, and subjects the state and county executive committee filing late to a \$10,000-per-day or \$500-per-day fine, consistent with other elections; provides that notice of fines is sufficient upon proof of delivery of written notice to the mailing address or street address on record with the filing officer; establishes repeated late filings (3 late filings in any 2-year period) as a separate violation.

Section 17. Amends s. 106.35, F.S., deleting outdated provisions relating to paper reports associated with public campaign financing. Paper reports have been replaced by the Division’s electronic filing system as mandated by s. 106.0705, F.S.

Section 18. Provides for an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴² Ch. 2010-167, s. 18, LAWS OF FLA.

⁴³ *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may result in very minor additional costs to prepare and file local campaign finance reports, for CCEs who participate in county or municipal elections.

C. Government Sector Impact:

This bill may be expected to produce a minor positive fiscal impact as a result of: higher penalties for late-filed reports by CCEs; potential fines levied on the new election violation of “repeated late filing;” and, abolishing the requirement of providing candidates with a physical copy of Chapter 106 of the Florida Statutes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.