The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES SUBCOMMITTEE ON ETHICS AND ELECTIONS
Senator Diaz de la Portilla, Chair
Senator Detert, Vice Chair

MEETING DATE: Monday, March 21, 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, Rich, Richter, Simmons, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Consideration of proposed committee bill:		
1	**SPB 7074**	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.	
2	**SB 1504** Simmons	Initiative Petitions; Limits the validity of a signed initiative petition to 30 months. Specifies qualifications for a person to act as a paid petition circulator. Subjects a petition circulator or an initiative sponsor to criminal penalties for violating specified restrictions or requirements. Requires the Secretary of State to revise the wording of the ballot title or ballot summary for an amendment to the State Constitution proposed by the Legislature when the wording is found by a court to be confusing, misleading, or otherwise deficient, etc. EE 03/21/2011 RC CJ BC	
3	**SB 1618** Diaz de la Portilla (Compare H 1355)	Elections; Allows a respondent who is alleged by the Elections Commission to have violated the election code or campaign financing laws to elect as a matter of right a formal hearing before the Division of Administrative Hearings. Authorizes an administrative law judge to assess civil penalties upon the finding of a violation. Authorizes an administrative law judge to assess civil penalties upon a finding of a violation of the election code or campaign financing laws, etc. EE 03/21/2011 RC JU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1690** Diaz de la Portilla	Elections; Revises the limitations on contributions made to certain candidates and political committees. Reenacts provisions relating to contributions made by committees of continuous existence, contributions made to pay all or part of loans incurred, penalties for the acceptance of contributions or expenditures made in excess of the statutory limits or failing to report or falsely reporting certain information, and contributions received and expenditures made by state executive and county executive committees of each political party, to incorporate the amendment made to provisions in references thereto. EE 03/21/2011 RC BC	

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 7074
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 Act[1] 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 Act[4] 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 agency[5] 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 exemption[10] 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 Act[18] 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 Law[22] 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.

[30] FLA. CONST. art. I, § 24(c).

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 1504
INTRODUCER:	Senator Simmons
SUBJECT:	Initiative Petitions
DATE:	March 10, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	EE	**Pre-meeting**
2.			RC	
3.			CJ	
4.			BC	
5.				
6.				

I. Summary:

Senate Bill 1504 seeks to limit the validity of a signed initiative petition to a period of 30 months. The bill provides that paid petition circulators must meet certain qualifications and that the political committee sponsoring the initiative must have paid petition circulators sign and complete an affidavit. The bill adds criminal penalties if a paid petition circulator or sponsoring committee violates specified restrictions or requirements; and if a person alters a signed initiative petition form without knowledge or consent of the person who signed the form. The bill requires the Secretary of State to revise a ballot title or ballot summary proposed by joint resolution of the Legislature if a court finds the original ballot title or ballot summary to be deficient by a court. The bill provides that if the court's decision is not reversed, the Secretary of State is required to place the amendment with the revised ballot title or ballot summary on the ballot.

The bill provides an effective date of July 1, 2011.

This bill substantially amends ss. 15.21, 16.061, 100.371, 101.161, 104.185, and 1011.73 and creates s. 101.161 of the Florida Statutes.

II. Present Situation:

Constitutional Amendments by Initiative Petitions

Article XI of the Florida Constitution allows voters to approve constitutional amendments proposed through the following methods:

- Proposed by joint resolution passed by a three-fifths vote of each house of the legislature;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or

- Proposal by the citizen initiative petition.

Petitions signed by the requisite number of voters may be used to place an issue[1] before voters and for several other purposes. Most notably, petitions are used to secure ballot position for constitutional amendments proposed by citizen initiatives. Florida adopted the citizen initiative process in 1968.[2] Section 3, Art. XI, of the Florida Constitution, which authorizes citizen initiatives, states:

> The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

Accordingly, signatures equal to eight percent of the votes cast in the last presidential election must be gathered to place a citizen initiative amendment on the ballot. For the 2012 general election ballot, 676,811 signatures are required.[3]

Initiative Petition Process

When an individual or group is seeking to place a constitutional amendment on the ballot, they must register as a political committee with the Division of Elections (Division).[4] The political committee sponsoring the initiative petition is required to submit the proposed initiative amendment form to the Division prior to being circulated for signatures.[5]

Once the form is approved by the Division, the petition may then be circulated for signature by electors. An elector's signature on the petition form must be dated – and the signature is valid for a period of four years following the date.[6] When a committee has obtained signatures from ten percent of the electors required from at least 25 percent of the state's congressional districts, the Secretary of State is required to submit an initiative petition to the Attorney General and the Financial Impact Estimating Conference.[7] Within 30 days of receipt, the Attorney General must

[1] Under s. 106.011(7), F.S., an issue "means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election."
[2] Section 3, Art. XI, FLA CONST.
[3] Florida Department of State: Division of Elections, Congressional District Requirements, *available at* http://election.dos.state.fl.us/constitutional-amendments/cong-dist-require.shtml.
[4] Pursuant to s. 106.03, F.S. *See also* s. 100.371(2), F.S.
[5] The Department of State has adopted rules that set out the style and requirements of the initiative amendment form. *See* s. 100.371(2), F.S.; Rule 1S-2.009(2), FLA. ADMIN. CODE.
[6] Section 100.371(3), F.S.
[7] The Secretary of State only submits the initiative petition to the Attorney General and Financial Impact Estimating Conference if three conditions have been met: the initiative sponsor has registered as a political committee; the sponsor has

petition the Florida Supreme Court requesting an advisory opinion regarding compliance of the text of the proposed amendment and compliance of the proposed ballot title and summary.[8]

As petition signatures are received, the appropriate supervisor of elections must verify the validity of each signature.[9] In addition, the political committee sponsoring the initiative petition must pay a fee to the appropriate supervisor of elections for the verification of signatures on petitions.[10] Supervisors of elections must certify the total number of valid signatures with the Secretary of State by February 1 of the year of the election.[11] After the filing date, the Secretary of State determines if the requirements for the total number of verified valid signatures and the distribution of the signatures among the state's congressional districts have been met.[12] If the threshold has been met, the Secretary of State issues a certificate of ballot position for the proposed amendment along with a designating number.[13]

Regulation of Petition Circulators

Currently, Florida does not regulate initiative petition circulators. Of the 24 states that currently allow citizen initiatives, more than half of the states require that petition circulators are eligible to vote in the state.[14] Age and residency requirements are among the most common regulations governing petition circulators.[15] Some states have also enacted pay-per-signature bans as it has been argued that a circulator's desire to earn more money may motivate fraudulent behavior in gathering additional signatures. There is currently a conflict among federal courts regarding the validity of pay-per-signature bans.[16]

Some groups have used fraudulent, illegal, or unethical practices among petition circulators, including: false claims of residency by "mercenary petition gatherers"; false attestations that the gatherer was present when the petitions were signed; misrepresentations and lies to voters as to

---

submitted the ballot title, substance, and text of the proposed revision or amendment to the Secretary of State; and the Secretary has received a letter from the Division of Elections confirming the veracity of the electors' signatures. Section 15.21, F.S. *See also* s. 3, Art. XI, FLA. CONST.

[8] Section 16.061, F.S. The text of the proposed amendment is required by the State Constitution to be limited to one subject. Sec. 3, Art. XI, FLA. CONST. The wording of the ballot title and summary "shall be printed in clear and unambiguous language on the ballot." *Florida Dept. of State v. Florida State Conference of NAACP Branches*, 43 So.3d 662, 665 (Fla. 2010); *see also* section 101.161(1), F.S.

[9] *Id.*

[10] *See* section 99.097, F.S.

[11] Initiative petitions for constitutional amendments are only placed on the ballot at general elections; therefore, the deadline for that specific class of initiative petitions would be February 1 of the year of the general election. Section 100.371(1), F.S. The verification fee charged to the sponsoring political committee is 10 cents per signature or the actual cost of verification, whichever is less. Section 100.371(6)(e), F.S.

[12] Section 100.371(4), F.S.

[13] Section 100.371(4); section 101.161, F.S.

[14] National Conference of State Legislatures, Laws Governing Petition Circulators, last updated May 8, 2009, http://www.ncsl.org/default.aspx?tabid=16535.

[15] Residency requirements have been challenged in courts with mixed results. *See* Initiative & Referendum Institute v. Jaeger, 241 F.3d 614 (8th Cir. 2001) (upheld North Dakota's residency requirement for circulators); *but see* Yes on Term Limits, Inc. v. Savage, 550 F.3d 1023 (10th Cir. 2008) (Oklahoma's residency requirement for circulators violated First Amendment). In a similar case, the U.S. Supreme Court ruled that a Colorado law requiring petition circulators to be *registered voters* was unconstitutional. *See* Buckley v. American Constitutional Law Foundation, 119 S.Ct. 636 (1999).

[16] *See* Initiative & Referendum Institute v. Jaeger, 241 F.3d 614 (8th Cir. 2001) (upheld North Dakota's pay-per-signature ban); *but see* Independence Institute v. Buescher, 718 F. Supp. 2d. 1257 (D. Colo. 2010) (preliminary injunction granted against enforcement of Colorado's pay-per-signature ban).

the effect of petitions; and "bait-and-switch" and other deceptive tactics to get voters to sign a petition that was not properly explained to them.[17] The extent to which these practices are occurring in Florida is a matter of some debate, although some reports suggest that Florida may not be immune.[18] There have been some reforms to the initiative petition process in Florida in recent years; with fraudulent activity being one of the concerns.[19]

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.[20] This has been referred to the courts as the "accuracy requirement."[21] All constitutional amendments are subject to this requirement; including amendments proposed by the Legislature.[22] In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the ballot by Florida courts for failing to be in "clear and unambiguous language." For example, the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.[23]

If a court rules to remove an amendment from the ballot, there is no opportunity for the Legislature to correct a deficiency in the ballot title or ballot summary absent calling a special session.

III. Effect of Proposed Changes:

Section 1 amends s. 100.371(3), F.S., to change the validity of signatures on initiative petitions for a period of 4 years following the date of the signature to a period of 30 months following the date.

Section 2 creates s. 100.372, F.S., to create definitions for "initiative sponsor", "petition circulator", and "paid petition circulator."

This section establishes specific qualifications for paid petition circulators, including: a paid petition circulator must be at least 18 years of age and eligible to vote in Florida; a person is prohibited from acting as a paid petition circulator for 5 years following a conviction or a no contest plea to a criminal offense involving fraud, forgery, or identity theft in any jurisdiction; and a person is required to carry identification while acting as a paid petition circulator.

---

[17] *See generally* Ballot Initiative Strategy Center, *Ballot Integrity: A Broken System in Need of Solutions* (July 2010).

[18] For example, supervisors of elections found names of dead electors signed on petitions to get proposed constitutional amendments on the 2004 general election ballot. *See e.g.,* Joni James and Lucy Morgan, *Names of the dead found on petitions,* ST. PETERSBURG TIMES, Sept. 28, 2004, at 1B.

[19] The statutory mechanism to revoke one's signature from an initiative petition was adopted by the 2007 Legislature after concerns about fraud; but the signature-revocation mechanism has since been ruled unconstitutional by the Florida Supreme Court. *See* Browning v. Florida Hometown Democracy, 29 So.3d 1053 (Fla. 2010).

[20] Roberts v. Doyle, 43 So.3d 654 (Fla. 2010).

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

[22] *Id.* at 13.

[23] 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).

This section requires that a paid petition circulator may not be paid, directly or indirectly, based on the number of signatures that they receive on an initiative petition.

This section establishes that each initiative petition form presented by a paid petition circulator for another person's signature must legibly identify the name of the paid petition circulator.

This section requires political committees sponsoring an initiative petition to only employ an individual as a paid petition circulator unless the individual has signed an affidavit attesting that they have not been convicted or have entered into a no contest plea to a criminal offense involving fraud, forgery, or identity theft in any jurisdiction. This section specifies that the sponsoring political committee must maintain records of the names, addresses, and affidavits of paid petition circulators for a minimum of four years. Additionally, the section prohibits the political committee sponsoring the initiative from compensating paid petition circulators based on the amount of initiative petition signatures obtained.

Any person who violates the provisions of this section commits a misdemeanor of the first degree. Additionally, the bill authorizes the Department of State to adopt rules to administer this section.

Section 3 amends s. 101.161, F.S., to add clarifying language relating to the definitions of ballot summary and ballot title of constitutional amendments or other public measures placed on the ballot.

This section provides that if a court determines that a constitutional amendment proposed by joint resolution of the Legislature has a deficient ballot title or ballot summary, it is not grounds for removal of the amendment from the ballot. Courts are directed to specifically identify the deficiency in the ballot title or ballot summary in a written decision. This section provides that the Secretary of State shall revise the ballot title or ballot summary to correct the deficiency; in addition to pursuing reversal of the deciding court's ruling. If the judicial decision is not reversed, the revised ballot title or ballot summary for the amendment shall be placed on the ballot.

Section 4 amends s. 104.185, F.S., to provide that an individual who alters an initiative petition form that has been signed by another person, without the other person's knowledge or consent, has committed a misdemeanor of the first degree.

Sections 5, 6, and 7 amend ss. 15.21(2), 16.061(1), 1011.73(b)(4), F.S. respectively, to replace references to "substance" with "ballot summary," to conform to the amendments incorporated in s. 101.161, F.S.

Section 8 provides that if any provision of this act or its application is later held invalid; the invalid provision or application is severable and does not affect other provisions or applications of the act that may be executed independently of the invalid provision or application.

Section 9 provides 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may impose additional administrative costs on a political committee sponsoring a citizen initiative in the screening of paid petition circulators; which is indeterminate at this time.

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.

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 1618
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Elections
DATE:	March 14, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox/Carlton	Roberts	EE	**Pre-meeting**
2.			RC	
3.			JU	
4.			BC	
5.				
6.				

I. Summary:

Senate Bill 1618 corrects an oversight in an omnibus 2007 election law that shifted final order authority, in many cases, from the Florida Elections Commission to an administrative law judge (ALJ) at the Division of Administrative Hearings (DOAH), but neglected to statutorily authorize the ALJ to institute any civil penalties for election law violations. This bill grants the ALJ the same penalty power as the Commission, and provides that the ALJ must consider the same aggravating and mitigating circumstances in determining the amount of penalties.

The bill also reverses the current default procedure whereby alleged election law violations are transferred to DOAH *unless* the party charged with the offense elects to have a hearing before the Commission; the bill mandates that the alleged violator affirmatively request a hearing at DOAH within 30 days after the Commission's probable cause determination, or the Commission will hear the case.

SB 1618 also specifically adds electioneering communication organizations (ECOs) to the list of entities embraced by the election law penalty provisions, to conform to 2010 changes to the ECO laws.

The bill takes effect upon becoming a law.

This bill substantially amends Section 106.25, F.S., and Section 106.265, F.S.

II. Present Situation:

Penalties for Election Violations

The Florida Elections Commission has jurisdiction to investigate and determine violations of Chapters 104 and 106 of the Florida Statutes,[1] and to impose a civil penalty of up to $1,000 per violation, in most cases.[2]

Until 2007, where there were disputed issues of material fact, an alleged violator could elect to have a formal hearing at the Division of Administrative Hearings (DOAH), with the matter returning to the Commission for final disposition and a determination of penalties, if applicable. Otherwise, the Commission would conduct the hearing.

In 2007, the Legislature amended the procedure to have *all* cases default to an ALJ at DOAH after the Commission makes a probable cause determination, *unless* the alleged violator elects[3] to have a formal or informal hearing before the commission; or, resolves the matter by consent order.[4] The 2007 changes also gave the ALJ the authority to enter a *final order* on the matter, appealable directly to Florida's appellate courts: cases forwarded to DOAH never return to the Commission for final disposition. The 2007 law, however, neglected to give the ALJ the power to impose a civil penalty in cases where the ALJ found a violation.

This omission has been the subject of litigation.[5] In April 2006, the Commission received a sworn complaint alleging that James Davis, a candidate, had violated certain elections laws. The Commission conducted an investigation and found probable cause, charging Mr. Davis with five violations of Chapter 106, F.S. Because he did not request a hearing before the Commission, or elect to resolve the matter by a consent order, the matter was referred to DOAH for a formal administrative hearing. Ultimately, the ALJ found that Mr. Davis violated the Election Code, as alleged. The ALJ declined to impose civil penalties, however, because he determined that he lacked the express authority to do so. The Commission appealed the case to the First District Court of Appeal, which affirmed the order. As a result, complaints heard by an ALJ can result in a violation without recourse to the imposition of a civil penalty for the violation.[6]

Electioneering Communications Organizations

Section 106.265, F.S., contains the specific authority for the Commission to impose a civil penalty for a violation of Chapter 104 or Chapter 106 of the Florida Statutes. That section authorizes the Commission to impose a civil penalty not to exceed $1,000 per count, with the precise amount dependent upon consideration of certain aggravating and mitigating factors. The section further provides that the Commission is responsible for collecting civil penalties when

[1] Section 106.25(1), F.S.
[2] Section 106.265(1), F.S. In addition, Sections 104.271 and 106.19, F.S., provide for expanded and enhanced penalties for certain election law violations.
[3] Within 30 days after the probable cause determination.
[4] Chapter 2007-30, Section 48, LAWS OF FLORIDA.
[5] *Florida Elections Commission v. Davis*, 44 So.3d 1211 (Fla. 1st DCA 2010).
[6] Because of the nature of such proceedings, it is unclear whether the Commission would have jurisdiction to impose a civil penalty based upon a final order from DOAH — or even how they practically would accomplish it.

any person, political committee, committee of continuous existence, or political party fails or refuses to pay any civil penalties, and requires such penalties to be deposited into the now-defunct Election Campaign Financing Trust Fund.[7] Finally, the section permits a respondent, under certain circumstances, to seek reimbursement for attorneys fees.

Nothing in Section 106.265, F.S., specifically addresses *electioneering communications organizations,* which can also commit elections violations; until last year, when they were more explicitly detailed in statute, ECOs were generally treated like political committees for most purposes under the campaign finance laws.[8]

III. Effect of Proposed Changes:

Senate Bill 1618 establishes a new default procedure for violations alleged by the Elections Commission, providing that a hearing will be conducted by the Commission *unless* an alleged violator elects, as a matter of right, to have a formal hearing before an ALJ at DOAH. Further, it authorizes the ALJ to impose the same civil penalties as the Commission pursuant to ss. 106.19 and 106.265, F.S., and requires the ALJ to take into account the same mitigating and aggravating factors that the Commission must consider. As under current law, the ALJ's final order, which may now include civil penalties, is appealable directly to the District Courts of Appeal and does not return to the Commission for disposition.

The bill also integrates ECOs into the list of entities for the purpose of assessing election law civil penalties, and clarifies that all civil penalties collected are deposited to the General Revenue Fund of the State instead of the defunct Election Campaign Financing Trust Fund.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[7] The Elections Campaign Financing Trust Fund expired effective November 4, 1996, by operation of law. Funding for public campaign financing in statewide races has since been handled through the General Revenue Fund.

[8] *See generally*, Ch. 2010-167, LAWS OF FLA. (detailing requirements for ECOs in sections such as 106.0703, F.S); *see also,* s. 106.011(1)(b)3., F.S. (2009) (for purposes of registering and reporting contributions and expenditures, ECOs are treated like political committees).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could result in very modest increases to the General Revenue fund depending on the number and extent of administrative fines collected, which is indeterminate.

VI. Technical Deficiencies:

Section 104.271, F.S., authorizes the Commission to assess an additional civil penalty of up to $5,000 for candidate violations involving political defamation of opposing candidates. It might be wise to specifically authorize the DOAH ALJ to assess this additional penalty, as the bill does with respect to enhanced penalties in s. 106.19, F.S.

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.

205116

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment

Delete lines 51 - 52

and insert:

or, if applicable, to impose a civil penalty as provided in s. 104.271 or s. 106.19.

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 1690
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Campaign Contributions
DATE:	March 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	EE	**Pre-meeting**
2.			RC	
3.			BC	
4.				
5.				
6.				

I. Summary:

Senate Bill 1690 revises the limitations on contributions made to certain candidates and political committees. The bill proposes a tiered system of campaign contribution limitations; similar to what Florida has followed in the past. The bill also reenacts other sections to incorporate cross-references.

The bill provides an effective date of July 1, 2011.

This bill substantially amends section 106.08 and reenacts ss. 106.04(5), 106.075(2), 106.087, 106.19, and 106.29 of the Florida Statutes.

II. Present Situation:

In 1991, the Legislature lowered campaign contributions to a $500 limit to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates.[1] Political parties are not subject to the $500 limit on campaign contributions.[2] Previously, Florida followed a "tiered" approach in regard to campaign contributions. An individual, political committee, or committee of continuous existence were permitted to contribute up to $ 3,000 for candidates for statewide office; up to $2,000 for merit retention of a judge on a district court of appeal; and up to $1,000 for all other elected offices and to a political committee supporting or opposing one or more candidates.[3]

[1] Section 106.08(1)(a), F.S.; *see also* s. 11, ch. 91-107, LAWS OF FLORIDA.
[2] Section 106.08(1)(a), F.S.
[3] s. 11, ch. 91-107, LAWS OF FLORIDA.

According to the National Conference of State Legislatures (NCSL), there is a high degree of variability among individual states and their campaign contribution limits. Many states have no limit on how much an individual or political committee may contribute to a campaign – including Alabama, Indiana, Iowa, Mississippi, Missouri, Oregon, Pennsylvania, Texas, Utah and Virginia.[4] Florida, the fourth-most populous state in the country, has the fourth lowest campaign contribution limit among all states. Only three other states – Colorado, Connecticut, and Maine – have lower campaign contribution limits than Florida.[5] As a result, some have suggested that Florida's campaign contribution limits are "unrealistically low."[6] In contrast to Florida, neighboring Georgia has a smaller population and more legislative seats (180 house seats and 56 senate seats) – but allows campaign contributions for legislative races up to $2,000 for primary and general elections and up to $1,000 for primary and general election runoffs.[7]

III. Effect of Proposed Changes:

This bill revises the limitations on contributions made to certain candidates and political committees. The section re-adopts a tiered approach to campaign contribution limits, similar to what existed in Florida prior to 1991. The bill maintains that the contribution limits apply separately to primary and general elections.

The new tiered approach proposes that individuals, political committees, or committees of continuous existence may contribute:

- Up to $10,000 to a candidate for the offices of Governor and Lieutenant Governor, or any political committee supporting or opposing only such candidates. The bill maintains that candidates for the offices of Governor and Lieutenant Governor are considered a single candidate for the purpose of this section.
- Up to $5,000 to a candidate for statewide office other than the offices of Governor and Lieutenant Governor, or any political committee supporting or opposing only such candidates (such as a candidate for Attorney General, Chief Financial Officer, or Commissioner of Agriculture).
- Up to $2,500 to a candidate for legislative or multicounty office, or any political committee supporting or opposing only such candidates.
- Up to $1,000 to a candidate for countywide office or any election conducted on a less than countywide basis; a candidate for county court judge or circuit judge; a candidate for retention as a judge of a district court of appeal or as a justice of the Supreme Court; or any political committee supporting or opposing only such candidates.
- If a political committee supports or opposes two or more candidates that are subject to different contribution limitations, the lowest of such contribution limitations applies.

The bill reenacts other sections to incorporate cross-references.

---

[4] State Limits on Contributions to Candidates, National Conference of State Legislatures, *available at* http://www.ncsl.org/Portals/1/documents/legismgt/limits_candidates.pdf.
[5] *Id.*
[6] Michael Bender, *The dollars are hard to track*, ST. PETERSBURG TIMES, Feb. 27, 2011, *available at* http://www.tampabay.com/news/politics/elections/article1153703.ece; *see also* Bill Cotterell, *McCollum wants to loosen financing limits*, TALLAHASSEE DEMOCRAT, Aug. 12, 2010.
[7] O.C.G.A. § 21-5-41 (2011).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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.

515184

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Between lines 52 and 53
insert:

Section 2. Paragraph (a) of subsection (1) of section 106.021, Florida Statutes, is amended to read:

106.021 Campaign treasurers; deputies; primary and secondary depositories.—

(1)(a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and

515184

designate a primary campaign depository prior to qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he or she obtains the petitions. Each candidate shall at the same time he or she designates a campaign depository and appoints a treasurer also designate the office for which he or she is a candidate. If the candidate is running for an office which will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate for which group or district office he or she is running. Nothing in this subsection shall prohibit a candidate, at a later date, from changing the designation of the office for which he or she is a candidate. However, if a candidate changes the designated office for which he or she is a candidate, the candidate must notify all contributors in writing of the intent to seek a different office and offer to return pro rata, upon their request, those contributions given in support of the original office sought. This notification shall be given within 15 days after the filing of the change of designation and shall include a standard form developed by the Division of Elections for requesting the return of contributions. The notice requirement shall not apply to any change in a numerical designation resulting solely from redistricting. If, within 30 days after being notified by the candidate of the intent to seek a different office, the contributor notifies the candidate in writing that the contributor wishes his or her contribution to be returned, the candidate shall return the contribution, on a pro rata basis, calculated as of the date the change of

515184

designation is filed. Up to a maximum of the contribution limit in s. 106.08 for the newly designated office, any contribution ~~contributions~~ not requested to be returned within the 30-day period may be used by the candidate for the newly designated office; however, the candidate must dispose of any amount exceeding the contribution limit pursuant to the options in ss. 106.11(5)(b)-(d) for a candidate who withdraws his or her candidacy. No person shall accept any contribution or make any expenditure with a view to bringing about his or her nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on the person's behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon statewide may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than 3 deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the officer before whom such candidate is required to qualify or with whom such political committee is required to register pursuant to s. 106.03.

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

And the title is amended as follows:

Between lines 4 and 5

insert:

amending s. 106.021, F.S.; providing requirements and restrictions on the use of contributions received prior to a candidate changing his or her candidacy to

515184

a new office, to conform;

911174

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment (with directory and title amendments)

Delete lines 91 - 149
and insert:
106.08 Contributions; limitations on.—
(1)
(b)1. The contribution limits provided in this subsection do not apply to contributions made by a state or county executive committee of a political party regulated by chapter 103 or to amounts contributed by a candidate to his or her own campaign.
2. Notwithstanding the limits provided in this subsection,

an unemancipated child under the age of 18 years of age may not make a contribution in excess of $100 to any candidate or to any political committee supporting one or more candidates.

(c) The contribution limits of this subsection apply to each election. For purposes of this subsection, the primary election and general election are separate elections so long as the candidate is not an unopposed candidate as defined in s. 106.011(15). However, for the purpose of contribution limits with respect to candidates for retention as a justice or judge, there is only one election, which is the general election.

(2)(a) A candidate may not accept contributions from national, state, including any subordinate committee of a national, state, or county committee of a political party, and county executive committees of a political party, which contributions in the aggregate exceed $50,000, no more than $25,000 of which may be accepted prior to the 28-day period immediately preceding the date of the general election.

(b) A candidate for statewide office may not accept contributions from national, state, or county executive committees of a political party, including any subordinate committee of a national, state, or county committee of a political party, which contributions in the aggregate exceed $250,000, no more than $125,000 of which may be accepted prior to the 28-day period immediately preceding the date of the general election. Polling services, research services, costs for campaign staff, professional consulting services, and telephone calls are not contributions to be counted toward the contribution limits of paragraph (a) or this paragraph. Any item not expressly identified in this paragraph as nonallocable is a

911174

contribution in an amount equal to the fair market value of the item and must be counted as allocable toward the contribution limits of paragraph (a) or this paragraph. Nonallocable, in-kind contributions must be reported by the candidate under s. 106.07 and by the political party under s. 106.29.

(3)(a) Any contribution received by a candidate with opposition in an election or by the campaign treasurer or a deputy campaign treasurer of such a candidate on the day of that election or less than 5 days prior to the day of that election must be returned by him or her to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

(b) Except as otherwise provided in paragraph (c), any contribution received by a candidate or by the campaign treasurer or a deputy campaign treasurer of a candidate after the date at which the candidate withdraws his or her candidacy, or after the date the candidate is defeated, becomes unopposed, or is elected to office must be returned to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

(c) With respect to any campaign for an office in which an independent or minor party candidate has filed as required in s. 99.0955 or s. 99.096, but whose qualification is pending a determination by the Department of State or supervisor of elections as to whether or not the required number of petition signatures was obtained:

1. The department or supervisor shall, no later than 3 days after that determination has been made, notify in writing all other candidates for that office of that determination.

2. Any contribution received by a candidate or the campaign treasurer or deputy campaign treasurer of a candidate after the candidate has been notified in writing by the department or supervisor that he or she has become unopposed as a result of an independent or minor party candidate failing to obtain the required number of petition signatures shall be returned to the person, political committee, or committee of continuous existence contributing it and shall not be used or expended by or on behalf of the candidate.

(4) Any contribution received by the chair, campaign treasurer, or deputy campaign treasurer of a political committee supporting or opposing a candidate with opposition in an election or supporting or opposing an issue on the ballot in an election on the day of that election or less than 5 days prior to the day of that election may not be obligated or expended by the committee until after the date of the election.

(5)(a) A person may not make any contribution through or in the name of another, directly or indirectly, in any election.

(b) Candidates, political committees, and political parties may not solicit contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good.

(c) Candidates, political committees, and political parties may not make contributions, in exchange for political support, to any religious, charitable, civic, or other cause or organization established primarily for the public good. It is not a violation of this paragraph for:

1. A candidate, political committee, or political party executive committee to make gifts of money in lieu of flowers in

911174

memory of a deceased person;

2. A candidate to continue membership in, or make regular donations from personal or business funds to, religious, political party, civic, or charitable groups of which the candidate is a member or to which the candidate has been a regular donor for more than 6 months; or

3. A candidate to purchase, with campaign funds, tickets, admission to events, or advertisements from religious, civic, political party, or charitable groups.

(6)(a) A political party may not accept any contribution that has been specifically designated for the partial or exclusive use of a particular candidate. Any contribution so designated must be returned to the contributor and may not be used or expended by or on behalf of the candidate.

(b)1. A political party may not accept any in-kind contribution that fails to provide a direct benefit to the political party. A "direct benefit" includes, but is not limited to, fundraising or furthering the objectives of the political party.

2.a. An in-kind contribution to a state political party may be accepted only by the chairperson of the state political party or by the chairperson's designee or designees whose names are on file with the division in a form acceptable to the division prior to the date of the written notice required in sub-subparagraph b. An in-kind contribution to a county political party may be accepted only by the chairperson of the county political party or by the county chairperson's designee or designees whose names are on file with the supervisor of elections of the respective county prior to the date of the

911174

written notice required in sub-subparagraph b.

b. A person making an in-kind contribution to a state political party or county political party must provide prior written notice of the contribution to a person described in sub-subparagraph a. The prior written notice must be signed and dated and may be provided by an electronic or facsimile message. However, prior written notice is not required for an in-kind contribution that consists of food and beverage in an aggregate amount not exceeding $1,500 which is consumed at a single sitting or event if such in-kind contribution is accepted in advance by a person specified in sub-subparagraph a.

c. A person described in sub-subparagraph a. may accept an in-kind contribution requiring prior written notice only in a writing that is signed and dated before the in-kind contribution is made. Failure to obtain the required written acceptance of an in-kind contribution to a state or county political party constitutes a refusal of the contribution.

d. A copy of each prior written acceptance required under sub-subparagraph c. must be filed with the division at the time the regular reports of contributions and expenditures required under s. 106.29 are filed by the state executive committee and county executive committee.

e. An in-kind contribution may not be given to a state or county political party unless the in-kind contribution is made as provided in this subparagraph.

(7)(a) Any person who knowingly and willfully makes or accepts no more than one contribution in violation of subsection (1) or subsection (5), or any person who knowingly and willfully fails or refuses to return any contribution as required in

911174

subsection (3), commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any corporation, partnership, or other business entity or any political party, political committee, committee of continuous existence, or electioneering communications organization is convicted of knowingly and willfully violating any provision punishable under this paragraph, it shall be fined not less than $1,000 and not more than $10,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity, or of a political party, political committee, committee of continuous existence, electioneering communications organization, or organization exempt from taxation under s. 527 or s. 501(c)(4) of the Internal Revenue Code, who aids, abets, advises, or participates in a violation of any provision punishable under this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly and willfully makes or accepts two or more contributions in violation of subsection (1) or subsection (5) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If any corporation, partnership, or other business entity or any political party, political committee, committee of continuous existence, or electioneering communications organization is convicted of knowingly and willfully violating any provision punishable under this paragraph, it shall be fined not less than


911174

$10,000 and not more than $50,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity, or of a political committee, committee of continuous existence, political party, or electioneering communications organization, or organization exempt from taxation under s. 527 or s. 501(c)(4) of the Internal Revenue Code, who aids, abets, advises, or participates in a violation of any provision punishable under this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) Except when otherwise provided in subsection (7), any person who knowingly and willfully violates any provision of this section shall, in addition to any other penalty prescribed by this chapter, pay to the state a sum equal to twice the amount contributed in violation of this chapter. Each campaign treasurer shall pay all amounts contributed in violation of this section to the state for deposit in the General Revenue Fund.

(9) This section does not apply to the transfer of funds between a primary campaign depository and a savings account or certificate of deposit or to any interest earned on such account or certificate.

(10) Contributions to a political committee or committee of continuous existence may be received by an affiliated organization and transferred to the bank account of the political committee or committee of continuous existence via

911174

check written from the affiliated organization if such contributions are specifically identified as intended to be contributed to the political committee or committee of continuous existence. All contributions received in this manner shall be reported pursuant to s. 106.07 by the political committee or committee of continuous existence as having been made by the original contributor.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete lines 87 - 90

and insert:

Section 4. For the purpose of incorporating the amendment made by this act to paragraph (a) of subsection (1) of section 106.08, Florida Statutes, in a reference thereto, paragraphs (b) and (c) of that subsection along with subsections (2) through (10) of section 106.08, Florida Statutes, are amended to read:

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

And the title is amended as follows:

Delete lines 5 - 8

and insert:

reenacting ss. 106.04(5), 106.075(2), 106.08(1)(b),(c),(2)-(10), 106.19, and 106.29, F.S., relating to contributions made by committees of continuous existence, contributions made to pay all or part of loan incurred, general contribution limits and restrictions and associated penalties, penalties for