

**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 Governmental Oversight and Accountability Committee

**BILL:** PCS/SB 1348 (207438)

**INTRODUCER:** Governmental Oversight and Accountability Committee, Ethics and Elections Committee

**SUBJECT:** Campaign Finance Reports/OGSR

**DATE:** April 9, 2009                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	<b>Favorable</b>
2.	Naf	Wilson	GO	<b>Pre-meeting</b>
3.			RC	
4.				
5.				
6.				

**I. Summary:**

This bill reenacts the public records exemption for user identifications and passwords issued for the purpose of filing campaign finance reports electronically pursuant to section 106.0705, F.S. The bill also reenacts the exemption for information entered into the electronic filing system until the information is submitted as a filed report in accordance with s. 106.0705, F.S. The bill simplifies the language of section 106.0706, F.S., by replacing the phrase “records, reports, and files” with the word “information.” The bill also restructures the exemptions into separate subsections.

This bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of each house of the Legislature.

This bill amends section 106.0706, F.S.

**II. Present Situation:**

**Public Records**

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the Florida Constitution, provides that:

(a) 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,<sup>3</sup> which pre-dates the State Constitution, 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<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>7</sup> Exemptions must be created by general law and such law must specifically state the public

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<sup>2</sup> FLA CONST. art. I, § 24.

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> 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.” The Florida Constitution also establishes a right of access to 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 those records exempted by law or the Florida Constitution.

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>8</sup> A bill enacting an exemption<sup>9</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>10</sup>

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.<sup>11</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>12</sup>

The Open Government Sunset Review Act<sup>13</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are if the exemption:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>14</sup>

The act also requires consideration of the following:

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<sup>7</sup> FLA CONST. art. I, § 24(c).

<sup>8</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>9</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>10</sup> FLA CONST. art. I, § 24(c).

<sup>11</sup> Attorney General Opinion 85-62.

<sup>12</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

<sup>13</sup> Section 119.15, F.S.

<sup>14</sup> Section 119.15(6)(b), F.S.

- 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?<sup>15</sup>

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>16</sup> The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

[N]otwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Under s. 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 section, a public officer who knowingly violates the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, commits a first-degree misdemeanor penalty, and is subject to suspension and removal from office or impeachment. 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.

### **Campaign Finance Reports**

Florida law requires many candidates, political committees supporting or opposing certain candidates or statewide ballot issues, committees of continuous existence (“CCEs”), and certain individuals<sup>17</sup> to file periodic reports of their financial activities with the Division of Elections. The exact information that must be included on each report and the reporting dates vary, depending on the status of the reporting group or individual.<sup>18</sup> Florida law is consistent, however,

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<sup>15</sup> Section 119.15(6)(a), F.S.

<sup>16</sup> *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

<sup>17</sup> Individuals making “independent expenditures” with respect to candidates or issues aggregating \$100 or more must report their expenditures in the same manner as political committees supporting or opposing such candidates or issues. Section 106.071(1), F.S.

<sup>18</sup> For example, legislative candidates, political committees, and CCEs required to file with the division do so on a quarterly

in providing that reports submitted to the Division must include all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding an election must contain all previously unreported contributions and expenditures as of the date preceding the designated due date (the Thursday immediately preceding the election).<sup>19</sup> In 2005, a law was enacted that required these reports to be filed electronically with the Division of Elections.<sup>20</sup>

### **Public Records Exemption for Electronically Filing Finance Reports**

Section 106.0706, F.S., specifies that user identifications and passwords held by the Department of State for the purpose of electronically filing campaign finance reports pursuant to s. 106.0705, F.S., are confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the Florida Constitution. In addition, all records, reports, and files stored in the electronic filing system in accordance with s. 106.0705, F.S., are also exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution until the report is submitted as a filed report. Section 106.0706, F.S., is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and will be repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

### **III. Effect of Proposed Changes:**

This bill reenacts the exemption for user identifications and passwords issued for the purpose of filing campaign finance reports electronically pursuant to section 106.0705, F.S. The bill also reenacts the exemption for information entered into the electronic filing system until the information is submitted as a filed report in accordance with s. 106.0705, F.S. The bill simplifies the language of section 106.0706, F.S., by replacing the phrase “records, reports, and files” with the word “information.” The bill also restructures the exemptions into separate subsections.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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basis, with the report due on the 10<sup>th</sup> day following the end of each calendar quarter. Section 106.07(1), F.S. Reporting frequency increases after the last day of qualifying (periodic reporting dates during the election season are on the 32<sup>nd</sup>, 18<sup>th</sup> and 4<sup>th</sup> days immediately preceding the primary election, and on the 46<sup>th</sup>, 32<sup>nd</sup>, 18<sup>th</sup> and 4<sup>th</sup> days immediately preceding the general election). *Id.* Most other groups and individuals required to file with the division must do so on the same reporting schedule. *See* ss. 106.04(4)(b)1., F.S. (reporting dates for CCEs); 106.071(1), F.S. (reporting dates for persons making independent expenditures of \$100 or more). The state executive committee of a political party follows the same quarterly off-season reporting schedule (on the 10<sup>th</sup> day following the end of each calendar quarter), but is only required to file on the Friday immediately preceding the primary or general election after the close of state candidate qualifying. s. 106.29(1), F.S. (reporting dates for state executive committee of a political party).

<sup>19</sup> Section 106.07(2)(a)1., F.S.

<sup>20</sup> Section 106.0705, F.S. *See* Chapter 2004-252, L.O.F.

**B. Public Records/Open Meetings Issues:**

This bill retains an existing public records exemption. This bill complies with the requirement of article I, section 24 of the Florida Constitution that the Legislature address public records exemptions in legislation separate from substantive law changes.

**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.