

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 Committee on Ethics and Elections

BILL: SB 1662

INTRODUCER: Ethics and Elections Committee

SUBJECT: Public Records and Meetings/Florida Elections Commission

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Fox</u>	<u>Roberts</u>		EE SPB 7070 as introduced
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	Pre-meeting
2.	_____	_____	<u>AP</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1662 is a public records and meetings exemption bill linked to SB 1660 — a bill clarifying that the Florida Elections Commission may enforce violations for certain political activities by judicial candidates. This bill creates a temporary public records and meetings exemption that parallels those currently in use with respect to other alleged election and campaign finance violations in Chapters 104 and 106.

This new exemption is scheduled to sunset and stands repealed pursuant to Open Government Sunset Review on October 2, 2019, unless reenacted by the Legislature.

Because this bill creates new public records and meetings exemptions, it requires a two-thirds vote of the members present and voting in each house for passage.

The bill takes effect on the same date as the linked SB 1660 (upon becoming law), if it passes.

II. Present Situation:

Public Records and Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person 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 of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at

¹ FLA. CONST., Art. I, s. 24(a).

² *Id.*

which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or public meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Exemptions are subject to the Open Government Sunset Review Act,¹³ which prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ It requires the automatic repeal of such exemption on October 2nd of the

³ FLA. CONST., Art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public records" 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." Section 119.011(2), F.S., defines "agency" to mean as "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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., Art. I, s. 24(c).

¹⁰ FLA. CONST., Art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., Art. I, s. 24(c).

¹³ Section 119.15, F.S.

¹⁴ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁵

Florida Elections Commission Proceedings

The Florida Elections Commission's ("the commission") *general jurisdiction statute*¹⁶ empowers the commission to investigate alleged violations of Chapter 104 (election violations, generally) and Chapter 106 (campaign finance), upon the filing of a sworn complaint or upon receipt of information reported to it by the Division of Elections. Current law provides that an elections complaint, investigation, and other documents, as well as related meetings involving Chapter 104 and 106 violations, are temporarily confidential and exempt from disclosure,¹⁷ typically until the commission makes a probable cause determination in the case.¹⁸

The linked bill SB 1660 clarifies that the commission has jurisdiction over s. 105.071, F.S., governing the political activities of judicial candidates, by adding references to s. 105.071, F.S., throughout the commission's general jurisdiction statute. However, expanding the general jurisdiction statute's temporary public records and meetings exemptions that apply to Chapter 104 and Chapter 106 proceedings to include s. 105.071, F.S., requires a separate public records bill.

III. Effect of Proposed Changes:

SB 1662 creates a new temporary public records and meetings exemption for commission records and meetings related to violations of s. 105.071, F.S., which deals with political activities by candidates. This new exemption essentially mirrors the current exemptions for Chapter 104 and 106 cases before the commission, although it's worded a bit differently for bill drafting purposes.¹⁹

Specifically, the bill makes a sworn complaint and an investigation and investigative report or other paper of the commission with respect to a violation of s. 105.071, F.S., temporarily confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the Florida Constitution. It also makes any portion of a commission proceeding in which a violation of s. 105.071, F.S., is discussed or acted upon temporarily exempt from s. 286.011, F.S.; s. 24(b), Art. I of the Florida Constitution; and s. 120.525, F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 106.25, F.S.

¹⁷ This pre-1993 exemption is grandfathered from the requirements of s. 24, Art. I of the State Constitution. Section 24(d), Art. I of the State Constitution provides for continued recognition of certain public records and meetings exemptions that were in existence when the amendment took effect in 1993.

¹⁸ Section 106.25(7), F.S.

¹⁹ The current public records exemptions for cases involving Chapter 104 and 106 violations pre-date 1993 and, as such, are grandfathered from the requirements of s. 24, Art. I of the State Constitution.. If the new exemption for s. 105.071, F.S., were simply incorporated into the existing statutory language, it would open those current Chapter 104 and 106 exemptions to the broader, more expansive post-1993 constitutional standards regarding public records and meetings and also subject them to sunset review in 5 years pursuant to the Open Government Sunset Review Act..

These new exemptions cease to apply when the commission makes a probable cause determination in the case, when the complaint is referred to a state attorney, or for appellate proceedings conducted with respect to automatic fines levied by filing officers for late-filed campaign finance reports.

The new exemptions automatically sunset on October 2, 2019, unless the legislature reenacts them.

The bill provides the public necessity statement required by the Florida Constitution, and takes effect on the same date that SB 1660 takes effect (upon becoming law), if enacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates new public records and meetings exemptions, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates new public records and meetings exemptions, it includes a public necessity statement.

Single Subject

Section 24(c), Art. I of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain only exemptions from constitutional public records and open meetings requirements and provisions governing the enforcement of the section. This bill creates new public records and open meetings exemptions.

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:

This bill is linked to SB 1660, clarifying that the FEC's jurisdiction includes violations of section 105.071, F.S., involving political activities by judicial candidates.

VIII. Statutes Affected:

This bill substantially amends section 106.25, of the Florida Statutes.

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

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

None.

B. Amendments:

None.