

By the Committee on Ethics and Elections

582-02416-14

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1 A bill to be entitled
2 An act relating to public records and meetings;
3 amending s. 106.25, F.S.; creating an exemption from
4 public records requirements for a sworn complaint and
5 records relating to an investigation, investigative
6 report, or other paper of the Florida Elections
7 Commission with respect to violations of limitations
8 on political activity by candidates for judicial
9 office; creating an exemption from public meetings
10 requirements for portions of proceedings of the
11 Florida Elections Commission in which violations of
12 limitations on political activity by candidates for
13 judicial office are discussed or acted upon following
14 a complaint or relating to an investigation; providing
15 for future repeal and legislative review of the
16 exemptions under the Open Government Sunset Review
17 Act; providing statements of public necessity;
18 providing a contingent effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Subsection (7) of section 106.25, Florida
23 Statutes, is amended to read:

24 106.25 Reports of alleged violations to Florida Elections
25 Commission; disposition of findings.—

26 (7) (a) Every sworn complaint filed pursuant to this chapter
27 with the commission, every investigation and investigative
28 report or other paper of the commission with respect to a
29 violation of this chapter or chapter 104, and every proceeding

582-02416-14

20141662__

30 of the commission with respect to a violation of this chapter or
31 chapter 104 is confidential, is exempt from the provisions of
32 ss. 119.07(1) and 286.011, and is exempt from publication in the
33 Florida Administrative Register of any notice or agenda with
34 respect to any proceeding relating to such violation, ~~except~~
35 ~~under the following circumstances:~~.

36 (b) A sworn complaint filed with the commission and an
37 investigation and investigative report or other paper of the
38 commission with respect to a violation of s. 105.071 is
39 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
40 of the State Constitution.

41 (c) Any portion of a proceeding of the commission in which
42 a violation of s. 105.071 is discussed or acted upon pursuant to
43 a complaint or investigation is exempt from s. 286.011, s.
44 24(b), Art. I of the State Constitution, and s. 120.525.

45 (d) The exemptions in paragraphs (a)-(c) apply, except
46 under the following circumstances:

47 1.(a) As provided in subsection (6);

48 2.(b) Upon a determination of probable cause or no probable
49 cause by the commission; or

50 3.(e) For proceedings conducted with respect to appeals of
51 finances levied by filing officers for the late filing of reports
52 required by this chapter.

53 (e) Paragraphs (b) and (c) are subject to the Open
54 Government Sunset Review Act in accordance with s. 119.15 and
55 shall stand repealed on October 2, 2019, unless reviewed and
56 saved from repeal through reenactment by the Legislature.

57
58 However, a complainant is not bound by the confidentiality

582-02416-14

20141662__

59 provisions of this section. In addition, confidentiality may be
60 waived in writing by the person against whom the complaint has
61 been filed or the investigation has been initiated. If a finding
62 of probable cause in a case is entered within 30 days prior to
63 the date of the election with respect to which the alleged
64 violation occurred, such finding and the proceedings and records
65 relating to such case may ~~shall~~ not become public until noon of
66 the day following such election. When two or more persons are
67 being investigated by the commission with respect to an alleged
68 violation of s. 105.071, this chapter, or chapter 104, the
69 commission may not publicly enter a finding of probable cause or
70 no probable cause in the case until a finding of probable cause
71 or no probable cause for the entire case has been determined.
72 However, once the confidentiality of any case has been breached,
73 the person or persons under investigation have the right to
74 waive the confidentiality of the case, thereby opening up the
75 proceedings and records to the public. Any person who discloses
76 any information or matter made confidential by the provisions of
77 this subsection commits a misdemeanor of the first degree,
78 punishable as provided in s. 775.082 or s. 775.083.

79 Section 2. (1) The Legislature finds that it is a public
80 necessity that a sworn complaint filed with the Florida
81 Elections Commission, and records relating to an investigation,
82 investigative report, or other paper of the commission, with
83 respect to violations on limitations on political activity by
84 candidates for judicial office be confidential and exempt from
85 public records requirements. Sworn complaints, and records held
86 by the commission relating to investigations, of a violation of
87 chapter 104 or chapter 106, Florida Statutes, relating to

582-02416-14

20141662__

88 certain violations and penalties of the Florida Election Code
89 and campaign financing, respectively, have historically been
90 exempt from public records requirements. This exemption affords
91 the same confidentiality to such complaints and records relating
92 to a violation of s. 105.071, Florida Statutes. This exemption
93 is necessary because the release of such information could be
94 defamatory to an individual under investigation, cause
95 unwarranted damage to the reputation of such individual, or
96 impair the integrity of the investigation. This exemption is
97 narrowly drawn in that the confidentiality may be waived in
98 writing by the person against whom the complaint has been filed,
99 or the investigation has been initiated; or upon the
100 determination of probable cause or no probable cause by the
101 commission.

102 (2) The Legislature finds that it is a public necessity
103 that any portion of a proceeding of the Florida Elections
104 Commission in which a violation of s. 105.071, Florida Statutes,
105 is discussed or acted upon following a complaint or relating to
106 an investigation be exempt from public meetings requirements.
107 Proceedings of the commission with respect to a violation of
108 chapter 104 or chapter 106, Florida Statutes, relating to
109 certain violations and penalties of the Florida Election Code
110 and campaign financing, respectively, have historically been
111 exempt from public meetings requirements. This exemption affords
112 the same protection to discussions or actions pursuant to a
113 complaint or investigation during any portion of a proceeding of
114 the commission with respect to an alleged violation of s.
115 105.071, Florida Statutes. This exemption is necessary because
116 the release of such information could be defamatory to an

582-02416-14

20141662__

117 individual under investigation, cause unwarranted damage to the
118 reputation of such individual, or impair the integrity of the
119 investigation. This exemption is narrowly drawn in that it
120 applies only to portions of proceedings of the commission in
121 which such an alleged violation of s. 105.071, Florida Statutes
122 pursuant to a complaint or investigation is discussed or acted
123 upon.

124 Section 3. This act shall take effect on the same date that
125 SB ___ or similar legislation takes effect, if such legislation
126 is adopted in the same legislative session or an extension
127 thereof and becomes a law.