

**HOUSE OF REPRESENTATIVES
PROCEDURAL & REDISTRICTING COUNCIL
ANALYSIS**

BILL #: CS/HB 275

RELATING TO: Public Records

SPONSOR(S): Committee on Rules, Ethics & Elections and Representative(s) Ross and Goodlette

TIED BILL(S): CS/CS/HB 273

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) RULES, ETHICS, & ELECTIONS (PRC) YEAS 13 NAYS 0
- (2) STATE ADMINISTRATION (SGC) YEAS 5 NAYS 0
- (3) PROCEDURAL & REDISTRICTING COUNCIL YEAS 18 NAYS 0
- (4)
- (5)

I. SUMMARY:

Candidates, political committees, Committees of Continuous Existence ("CCEs"), and state executive committees of political parties are required to report all contributions received and expenditures made by way of campaign treasurer's reports filed with the Division of Elections. Approximately 40 percent of the candidates filing campaign treasurer's reports file a magnetic diskette. This number is much lower for committees. All paper reports filed must be data-entered by the Division of Elections staff.

Reports are due by 5 p.m. on the designated due date, and they are accepted as timely filed so long as they are postmarked by midnight on the due date by the U.S. Postal Service. The division releases the reports to the public upon receipt of all reports for a particular race so as not to benefit one candidate over another.

CS/CS/HB 273 expands the requirements for both the disclosure and tracking of contributions and expenditures in campaign treasurer's reports. Candidates, committees, and political parties who receive contributions or make expenditures in an aggregate amount over \$10,000 in a calendar year are required to file campaign treasurer's reports by electronic means via the Division of Elections' Internet web site. Reports can be filed either by direct data entry or through data electronic transfer through the division's web site.

The passage of CS/HB 275 is tied to CS/CS/HB 273. CS/HB 275 provides for the confidentiality of all personal identification numbers of, and all computer security algorithms required to maintain the security of information submitted or received through, the electronic filing system (primarily the Division of Elections' Internet web site), for filing campaign treasurer's reports as required by CS/CS/HB 273.

CS/HB 275 also provides a public necessity statement, as is required by s. 24, Art. I of the State Constitution. The public necessity statement provides that the above records should be exempt from public disclosure because the release of such identification numbers and computer algorithms could invite criminal activity, such as unauthorized access to the electronic filing system, affecting the integrity and security of the system.

This committee substitute does not have a significant fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section 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.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

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

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Filing Campaign Treasurers' Reports

Under Chapter 106, F.S., candidates, political committees, Committees of Continuous Existence ("CCEs"), and state executive committees of political parties are required to report all contributions received and expenditures made by way of campaign treasurer's reports filed with the Division of Elections.

Under s. 106.07, F.S., such reports must be filed quarterly except after the last day of qualifying when the reports are due every two weeks leading up to each of the three elections: the first and second primaries and the general election [corresponding statutory days are the 32nd, 18th, and 4th days preceding the first primary and the 18th and 4th days preceding the second primary and general election]. For candidates receiving funds under the provisions of the Florida Election Campaign Financing Act, ss. 106.30-106.36, F.S., reports are due weekly preceding each of the three elections [corresponding due dates are the 32nd, 25th, 18th, 11th, and 4th days preceding the first primary and the 25th, 18th, 11th, and 4th days preceding the second primary and general election]. CCE resume filing quarterly reports after the general election. [See generally, s. 106.04, and 106.07, F.S].

A campaign treasurer's report includes the following components:

- Campaign Treasurer's Report Summary (form DS-DE 12) - Shows a snapshot of the aggregate amount of contributions received and expenditures made for the reporting period.
- Campaign Treasurer's Report - Itemized Contributions (form DS-DE 13) - Itemized ledger including contributor's name, address, occupation, contribution type, and amount.
- Campaign Treasurer's Report - Itemized Expenditures (form DS-DE 14) - Itemized ledger including name and address of entity receiving payment, purpose of expenditure, expenditure type, and amount.
- Magnetic Diskette - Computer diskette that includes itemized contributions and expenditures in an uploadable electronic format.

s. 106.07, F.S.

For committees and candidates who are unable to provide a magnetic diskette, paper copies of the forms are acceptable.

The Division of Elections estimates that approximately 40 percent of the candidates filing campaign treasurer's reports file a magnetic diskette. This number is much lower for committees. All paper reports filed must be data-entered by the Division of Elections staff -- a time-consuming effort.

Moreover, some of the software utilized by various campaign treasurers is incompatible with the division's computer system, or the magnetic diskettes submitted are unreadable, requiring further use of the division's staff to manually input the required information. 2001 House Bill Analysis of HB 273, Committee on Rules, Ethics & Elections (February 6, 2001).

Under s. 106.07(2)(a), F.S., reports are due by 5 p.m. on the designated due date, and they are accepted as timely filed so long as they are postmarked by midnight on the due date by the U.S. Postal Service. The division releases the reports to the public upon receipt of all reports for a particular race so as not to benefit one candidate over another.

C. EFFECT OF PROPOSED CHANGES:

Filing Campaign Treasurers' Reports under linked bill CS/CS/HB 273

This bill, CS/HB 275, is linked to CS/CS/HB 273. CS/CS/HB 273 expands the requirements for both the disclosure and tracking of contributions and expenditures in campaign treasurer's reports. Candidates, committees, and political parties who receive contributions or make expenditures in an aggregate amount over \$10,000 in a calendar year are required to file campaign treasurer's reports by electronic means primarily through the Division of Elections' Internet web site. Reports can be filed either by direct data entry or through data electronic transfer.

CS/CS/HB 273 provides rulemaking authority to the division to carry out the requirements of this section, including

1. Developing an Internet electronic filing system;
2. Making the electronic filing system accessible to anyone using a standard Internet web-browser (e.g., Microsoft Explorer or Netscape Navigator);
3. Allowing users to access the filing system for data entry and downloading campaign finance information;
4. Providing for security verification of the person accessing the data entry portion of the campaign report; and
5. Developing an alternative method for filing should the Division's Internet web server fail.

Public Records Exemption under CS/HB 275

CS/HB 275 provides that all personal identification numbers of, and all computer security algorithms necessary to maintain the security of information submitted or received through electronic means, as required by the linked bill, CS/CS/HB 273, are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

This committee substitute provides a public necessity statement for the exemption as required by s. 24, Art. I of the State Constitution. The public necessity statement provides that the above records should be exempt from public disclosure because the release of such identification numbers and computer algorithms could invite criminal activity, such as unauthorized access to the electronic filing system, affecting the integrity and security of the system.

This committee substitute is contingent upon the passage of CS/CS/HB 273, or similar legislation.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This committee substitute does not have a significant fiscal impact on state or local governments.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This committee substitute does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This committee substitute does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 6, 2001, the Committee on Rules, Ethics, and Elections heard HB 275. The committee adopted one amendment by Representative Ross. Representative Ross offered a strike-all amendment to correct deficiencies with respect to the public records necessity statement and the effective date in the bill. The committee reported the bill out favorably as a committee substitute.

On February 8, 2001, the Committee on State Administration heard CS/HB 275. The committee reported the committee substitute out favorably.

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS, AND ELECTIONS:

Prepared by:

R. Michael Paredes

Staff Director:

Philip Twogood

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Jennifer D. Krell, J.D.

Staff Director:

J. Marleen Ahearn, J.D., Ph.D.

AS FURTHER REVISED BY THE PROCEDURAL & REDISTRICTING COUNCIL:

Prepared by:

R. Michael Paredes

Staff Director:

P.K. Jameson, J.D.