

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/HB 275

SPONSOR: Committee on Rules, Ethics & Elections and Representatives Ross and Goodlette

SUBJECT: Public Records

DATE: April 16, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for House Bill 275 (“the committee substitute”) is the public records exemption bill tied to the House bill requiring candidates, committees, and political parties who receive contributions or make expenditures in an aggregate amount over \$10,000 in a calendar year to file campaign treasurer’s reports by electronic means via the Division of Elections’ Internet web site (Committee Substitute for Committee Substitute for House Bill 273, hereinafter, *CS/CS/HB 273*).

Specifically, the committee substitute 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 the electronic filing of campaign treasurer’s reports.

This committee substitute creates section 106.0706 of the Florida Statutes, and provides a public necessity statement, as is required by Art. I, section 24, of the State Constitution.

II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.¹

¹Art. I, s. 24 of the Florida Constitution.

Article I, section 24, Florida Constitution, provides:

- (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 Florida Constitution, the Public Records Law² specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

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.

The Public Records Law states that, unless specifically exempted, all agency³ records are to be 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.⁴

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.⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, section 24, Florida Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

²Chapter 119, F.S.

³The word "agency" is defined in section 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."

⁴Section 119.011(1), F.S.

⁵*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

⁷Art. I, s. 24(c) of the Florida Constitution.

The Open Government Sunset Review Act of 1995⁸ 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:

- 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 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.⁹

Article I, section 23 of the Florida Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd 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 Joint Legislative Management Committee 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.

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 section 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:

⁸Section 119.15, F.S.

⁹Section 119.15(4)(b), F.S.

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, sections 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, sections 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 electronic format that can be uploaded.

Section 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.

Under section 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 posts the reports on the Internet upon receipt of all reports for a particular race so as not to benefit one candidate over another.

III. Effect of Proposed Changes:

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

The committee substitute is linked to CS/CS/HB 273. That bill 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.

Committee Substitute for Committee Substitute for House Bill 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 the Committee Substitute for House Bill 275

The committee substitute 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 public records.

The committee substitute also provides a public necessity statement for the exemption as required by Article I, section 24 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 linked to the passage of CS/CS/HB 273, or similar legislation, requiring electronic filing of campaign treasurer's reports.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
