

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1973 Public Records Exemption
SPONSOR(S): Procedures and Harrington
TIED BILLS: HB 1793, HB 1971 **IDEN./SIM. BILLS:** SB 3006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Ethics and Elections (Sub.)</u>	<u>7 Y, 3 N</u>	<u>Mitchell</u>	<u>Randle</u>
2) <u>Procedures</u>	<u>27 Y, 1 N</u>	<u>Mitchell</u>	<u>Randle</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1973 is tied to two bills, HB 1793 and HB 1971, proposed by the Committee on Procedures that create s. 106.0705, F.S. That section provides for an electronic filing system for campaign reports within the Department of State's Division of Elections (Division).

The bill creates an exemption from public records requirements for all user identifications, passwords, or other identifying information used by the Division for limiting access to the electronic filing system, and all information in draft reports stored in the electronic filing system *prior to filing* by the candidate, committee or political party. After a report is finalized with the Division, it will be considered a public record. The exemption would be contained in newly created s. 106.0706, F.S.

The bill also provides for future review and repeal of the exemption in s. 106.0706, F.S., on October 2, 2009, unless reenacted by the Legislature.

Article I, s. 24(c), Fla. Const., requires a two-thirds vote of each house for passage of a newly created public records or public meetings exemption. If enacted by such a vote, the bill takes effect January 1, 2005, if either of the bills creating the electronic filing system (HB 1793 or HB 1971) are also enacted.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Article I, s. 24(a), Fla. Const., expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records 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.

Section 119.01(1), F.S., provides:

It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person.

Article I, s. 24(c), Fla. Const., provides that the Legislature may, by general law, provide exemptions from these requirements. The general law must state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish its purpose.

Passage of Public Records Exemptions

In 2002, HJR 327 was proposed by Representative Carassas and others. HJR 327 amended art. I, s. 24, Fla. Const., to require a two-thirds vote of each house in order to enact an exemption to the requirement that public meetings be open to the public or that a public record be open to copying and inspection.

The joint resolution was approved at the general election in November 2002, and became effective in January 2003. Thus, this bill must receive a 2/3 vote of each house to be enacted.

The bill is tied to two bills, HB 1793 and HB 1971, proposed by the Committee on Procedures that create s. 106.0705, F.S. Section 106.0705, F.S., provides for an electronic filing system for campaign reports within the Division.

The bill creates an exemption from public records requirements for all user identifications and passwords used by the Division for limiting access to the electronic filing system, and all information in draft reports stored in the electronic filing system *prior to filing* by the candidate, committee or political party. Once the reports are finalized with the Division, they would be considered public records. The exemption would be contained in newly created s. 106.0706, F.S.

The bill also provides for future review and repeal of the exemption in s. 106.0706, F.S., on October 2, 2009, unless reenacted by the Legislature.

If enacted by a two-thirds vote, the bill takes effect January 1, 2005, if either of the bills creating the electronic filing system is also enacted.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article I, s. 24(a), Fla. Const., sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Art. I, s. 24, Fla. Const. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES