

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GAP 09-02 OGSR Campaign Finance Reports

**SPONSOR(S):** Governmental Affairs Policy Committee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1348

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Governmental Affairs Policy Committee	10 Y, 0 N	Williamson	Williamson
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

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**SUMMARY ANALYSIS**

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Florida law requires candidates, political committees supporting or opposing certain candidates or statewide ballot issues, committees of continuous existence, and certain individuals to file periodic reports of their financial activities with the Division of Elections. As of 2005, the reports must be filed electronically.

Current law provides that user identifications and passwords held by the Department of State are confidential and exempt from public records requirements. In addition, all records, reports, and files stored in the electronic filing system are exempt until the report is submitted as a filed report.

The bill reenacts the public record exemptions, which will repeal on October 2, 2009, if this bill does not become law. It also reorganizes the section and makes clarifying changes.

The bill does not appear to have a fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Campaign Finance Reports

Florida law requires candidates, political committees supporting or opposing certain candidates or statewide ballot issues, committees of continuous existence, and certain individuals<sup>4</sup> to file periodic

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Individuals making "independent expenditures" with respect to candidates or issues aggregating \$100 or more must report their expenditures in the same manner as political committees supporting or opposing such candidates or issues. Section 106.071(1), F.S.

reports of their financial activities with the Division of Elections (Division). Reports submitted to the Division must include all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding an election must contain all previously unreported contributions and expenditures as of the date preceding the designated due date (the Thursday immediately preceding the election).<sup>5</sup> As of 2005, the reports must be filed electronically.<sup>6</sup>

#### Public Record Exemption under Review

Current law provides that user identifications and passwords held by the Department of State are confidential and exempt from public records requirements. In addition, all records, reports, and files stored in the electronic filing system in accordance with s. 106.0705, F.S., are exempt<sup>7</sup> until the report is submitted as a filed report.<sup>8</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2009, unless reenacted by the Legislature.

### **EFFECT OF BILL**

The bill removes the repeal date, thereby reenacting the public record exemptions. It also reorganizes the section and makes clarifying changes.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 106.0706, F.S., to reenact the public record exemption for campaign finance reports.

Section 2 provides an effective date of October 1, 2009.

## **II. 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.

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<sup>5</sup> Section 106.07(2)(a)1., F.S.

<sup>6</sup> Section 106.0705, F.S. See Chapter 2004-252, L.O.F.

<sup>7</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985)

<sup>8</sup> Section 106.0706, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.