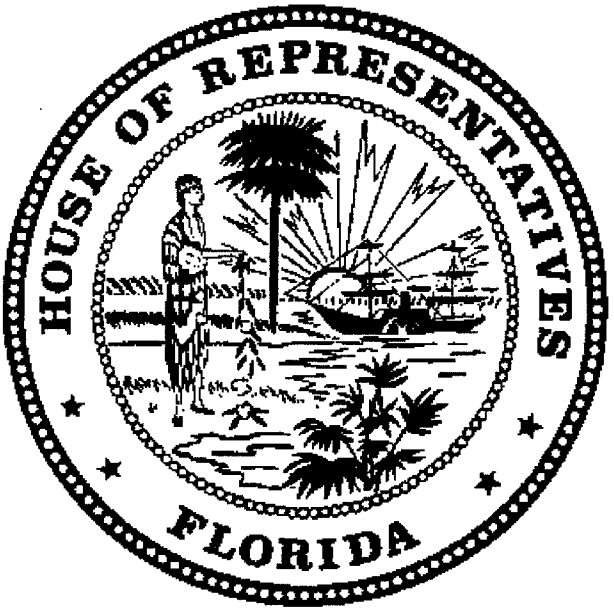

Governmental Affairs Policy Committee

Wednesday, March 3, 2010
8:00 AM – 10:30 AM
306 House Office Building

REVISED

Larry Cretul
Speaker

Robert C. "Rob" Schenck
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Governmental Affairs Policy Committee

Start Date and Time: Wednesday, March 03, 2010 08:00 am

End Date and Time: Wednesday, March 03, 2010 10:30 am

Location: 306 HOB
Duration: 2.50 hrs

Consideration of the following bill(s) with proposed committee substitute(s):

PCS for HB 131 -- Absent Uniformed Services and Overseas Voters

Consideration of the following bill(s):

HB 625 Voter Information Cards by Gibson
HB 1207 Campaign Financing by McKeel

Consideration of the following proposed committee bill(s):

PCB GAP 10-03 -- Public Record Exemption for E911 Recordings
PCB GAP 10-06 -- OGSR Voter Information
PCB GAP 10-07 -- OGSR Commission on Ethics
PCB GAP 10-08 -- OGSR GAL Identification and Location Information
PCB GAP 10-10 -- OGSR Identification of a Minor
PCB GAP 10-11 -- OGSR Florida Self-Insurers Guaranty Association
PCB GAP 10-12 -- OGSR Insurance Claim Data Exchange Information
PCB GAP 10-18 -- OGSR Domestic Security Oversight Council
PCB GAP 10-22 -- Fire Sprinklers
PCB GAP 10-23 -- Voter Interface Device Requirements

Department of the Lottery:

1. Update on a consolidation plan regarding excess office space in the Tallahassee Headquarters
2. Discussion of its rulemaking authority, including its grant of emergency rulemaking authority

NOTICE FINALIZED on 03/01/2010 15:36 by Ellinor.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 131 Absent Uniformed Services and Overseas Voters
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1682

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		McDonald	Williamson
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The recent enactment of the Military and Overseas Voter Empowerment (MOVE) Act with the Military Defense Authorization Act (Public Law 111-84) expands the rights of voters subject to the Uniformed and Overseas Citizens Absentee Voting Act. At a minimum, the MOVE Act allows uniformed services members and their spouses and dependents absent from their place of residence whether inside or outside the United States, and civilians overseas to:

- Submit a request for and receive a voter registration application and an absentee ballot request form by mail or electronically,
- Receive from the supervisor of elections a blank (unvoted) absentee ballot by mail or electronically,
- Require the blank (unvoted) absentee ballot to be sent by mail or electronically no later than 45 days before an election, and
- Track via a free access system whether the voted absentee ballot has been received.

The bill adds a definition of "absent uniformed services voter" and amends the current definition of "overseas voter" to conform to changes in federal law. This definitional change makes clear that uniformed services voters who are stateside, but away from their place of residence, are governed the same under the Florida Election Code as are those voters who are overseas.

Upon receiving a request for an absentee ballot, the supervisor of elections must notify an absent uniformed services voter or overseas voter of the free access system designated by the department for determining absentee ballot status which is a new federal requirement. Timeframes for sending an absentee ballot and methods of transmission of the ballot to the absent uniformed voter and the overseas voter are amended to conform to recent changes in federal law. The bill requires the department to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters if candidate certification for election cannot be accomplished within specified timeframes. It amends provisions relating to the federal postcard application to conform to the use of means other than mail to send an absentee ballot and to remove language regarding its two year effectiveness as registration, which was recently removed by changes to federal law.

The bill requires the supervisor of elections to record an overseas voter's e-mail address, if provided, in the voter's request for an absentee ballot, in the absentee ballot record. The bill then expands the information that a supervisor of elections must provide an overseas voter via e-mail to include confirmation of the ballot request and notification of the estimated date the ballot will be sent to the voter and confirmation of the receipt of the voted ballot.

The bill takes effect upon becoming a law.

There is an indeterminate fiscal impact on state expenditures and a possible minimal fiscal impact on local governments. See "Fiscal Comments."

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:

Current Situation

The Florida Election Code (Chs. 97-106, F.S.)

An overseas voter[1] may request an absentee ballot or apply for voter registration with a Federal Post Card Application obtained from a Voting Assistance Officer or through the Federal Voter Assistance Program of the U.S. Department of Defense. Florida law specifies that the absentee ballot will be mailed if the ballots are available for mailing and if the registration information provided is in order. The postcard application request for an absentee ballot is effective for elections through the next two general elections.[2] Florida law also allows the overseas voter to request an absentee ballot by calling, mailing, faxing or e-mailing the supervisor of elections.

A supervisor of elections is required to record specific information for each request for any absentee ballot received; such as date of the request, date the ballot was delivered, date the ballot was received by the supervisor, and other information deemed necessary. The information is provided in electronic format, updated each day, and provided to the Division of Elections of the Department of State. Information collected is confidential and is made available only to the voter on request or to certain specified other groups.[3]

Under the Florida Election Code, an absentee ballot requested by an overseas voter who is qualified to vote must be mailed by the supervisor of elections not less than 35 days before the primary election and not less than 45 days before the general election.[4] Forwardable mail is the method of transmission

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[1] An overseas voter is defined in s. 97.021(22) and clarified in the definition of "uniformed services" in 97.21(38), F.S., as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration while in the active service who is a permanent resident of the state and is temporarily residing outside the territorial limits of the U.S. and the District of Columbia; a member of the Merchant Marine of the U.S. who is a permanent resident of the state and is temporarily residing outside the territorial limits of the U.S. and the District of Columbia; and, any other U.S. citizen who is a permanent resident of the state and is temporarily residing outside the territorial limits of the U.S. and the District of Columbia, who is qualified and registered to vote as provided by law. Florida elections law does not include a definition for "absent uniformed services voter" as is provided in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

[2] See s. 101.694, F.S.

[3] See s. 101.62(3), F.S.

[4] See s. 101.62(4)(a), F.S.

specified for voters who are entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.[5]

If an overseas voter's request for an absentee ballot includes an e-mail address, the supervisor of elections must e-mail the voter a list of candidates who will be on the ballots. The list of candidates for the primary and general election must be sent no later than 30 days before each election. Information pertaining to whether the absentee ballot was sent or received is not required.[6],[7]

Absentee ballots received from overseas voters are presumed to be mailed on the date provided on the outside of the return envelope regardless of the absence of a postmark date on the envelope or a date that is later than the election date.[8]

The Department of State is required to determine if secure electronic means can be established for receiving ballots from overseas voters. Additionally, if security can be established, the department is required to adopt rules authorizing a supervisor of elections to accept a request for an absentee ballot or a voted absentee ballot from an overseas voter by secure facsimile transmission (fax) or other secure electronic means. Acceptance of a voted ballot requires verification of the voter, security of the transmission, and the recording of each ballot.[9] The department has adopted a rule allowing overseas voters to receive their blank ballot by mail, fax, or e-mail. Voted ballots, however, must be returned by mail or fax.[10] As provided in law, the department may authorize other methods of returning voted ballots if it determines that secure methods can be established.

As of this date, the Department of State has authorized only one secured electronic transmission program. In the 2008 General Election, the Okaloosa County's Distance Balloting Pilot Program (ODEP) in conjunction with Operation BRAVO Foundation was implemented. Supervised absentee voting kiosks were established at U.S. military installations in Mildenhall, England; Ramstein, Germany; and Kadena, Japan. Each kiosk location permitted voting by secure electronic remote voting technology under the management and control of the Supervisor of Elections. These voting stations were connected by a secure Virtual Private Network (VPN) to a secure voting server in Florida. Ninety-three ballots using 23 different ballot styles were cast in the 2008 election.[11]

Recent Changes in Federal Law Relating to Military and Overseas Voters

The Military and Overseas Voter Empowerment Act (MOVE) was signed into law on October 28, 2009 as part of the National Defense Authorization Act for Fiscal Year 2010[12]. The MOVE Act amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) which pertains to absentee voting for members of the United States uniformed services and merchant marines who are overseas or absent stateside from their place of residence, their family members who are also absent, and U.S. citizens residing outside the U.S.[13] Some provisions pertain to new requirements concerning state actions while others relate to the U.S. Department of Defense. Additionally, some requirements impact the November 2010 General Election while others take effect after the 2010 General Election. UOCAVA and MOVE pertain only to Federal elections. The following provisions take effect prior to the 2010 General Election:

- Each state must establish procedures that allow UOCAVA voters to request voter registration applications and absentee ballot applications by mail or electronically for general, special, primary, and runoff elections for Federal office. Voters must be able to state a preference for how information is to be received. The state must transmit voter registration applications and

[5] See s. 101.62(4)(b), F.S.
[6] Analysis of HB 131, Department of State, November 5, 2009, p.1.
[7] See s. 101.6952(1), F.S.
[8] See s. 101.6952(2), F.S.
[9] See s. 101.697, F.S.
[10] Rule 2.013, F.A.C.
[11] Analysis of HB 131, Department of State, November 5, 2009, p. 1.
[12] P.L. 111-084.
[13] UOCAVA is 42 U.S.C. 1973ff et seq. and MOVE adds Part H to Title V.

absentee ballot applications based on the preference of the voter or in accordance with state law, if no preference is given, or if there is no state law, then by mail.

- Each state must designate at least one means of electronic communication for use by voters to request voter registration or absentee ballot application and for the state to send such information and to provide UOCAVA voters with election and voting information. The means of electronic communication must be included on all information and instructional materials sent with the ballot materials.
- Each state may provide a means of electronic communication for jurisdictions in the state to communicate with UOCAVA voters.
- Each state must develop procedures for transmitting blank ballots to UOCAVA voters, including military stateside, by mail and electronically; must include a means for the voter to designate how he or she wants to receive the ballot, by mail or electronically; and must send the requested information based on the stated preference. To the extent practicable, privacy and integrity of absentee ballots must be protected as well as the privacy of the identity and personal data of the voter throughout the transmission process.
- Each state chief election official must work with local jurisdictions to develop a free access system allowing a UOCAVA voter to determine if the voted absentee ballot was received by the election official.
- Absentee ballots must be sent 45 days before the primary and general elections -- applies to all UOCAVA voters. Provision for certain waivers regarding timeframes is established for states.
- Any runoff election must have a written plan to make absentee ballots available to UOCAVA voters with sufficient time to vote.
- The federal provision allowing one request to serve as a request to receive absentee ballots through the next two federal general elections is repealed.[14]

On December 31, 2010, the use of the Federal Write-In Absentee Ballot (FWAB) is expanded to include all special and primary elections as well as general elections for federal office.

Provision is made for financial assistance in implementing MOVE. There is a 5 percent match requirement.

Effect of the Bill

The bill adds a definition of "absent uniformed services voter" and amends the current definition of "overseas voter" to conform to changes in federal law. This definitional change makes clear that uniformed services voters who are stateside, but away from their place of residence, are governed the same under the Florida Election Code as are those voters who are overseas.

Upon receiving a request for an absentee ballot from an absent uniformed services voter or an overseas voter, the supervisor of elections must notify the absentee voter of the free access system designated by the department for determining absentee ballot status which is a new federal requirement. Timeframes for sending an absentee ballot and methods of transmission of the ballot to the absent uniformed voter and the overseas voter are amended to conform to recent changes in federal law, including the transmission of an absentee ballot by facsimile or electronic mail. The bill requires the department to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters if candidate certification for election cannot be accomplished within specified timeframes. It also amends provisions relating to the federal postcard application to conform to the use of means other than mail to send an absentee ballot and to remove language regarding its two year effectiveness as registration, which was recently removed by changes to federal law.

The bill requires the supervisor of elections to record an overseas voter's e-mail address, if provided, in the voter's request for an absentee ballot, in the absentee ballot record. The bill then expands the information that a supervisor of elections must provide an overseas voter via e-mail to include confirmation of the ballot request and notification of the estimated date the ballot will be sent to the voter and confirmation of the receipt of the voted ballot.

[14] Florida law requires ballots to be sent through two general elections.

B. SECTION DIRECTORY:

Section 1. Amends s. 97.021, F.S., to add a definition for "absent uniformed services voter" and to amend the definition of "overseas voter" to conform to federal law related to military and overseas voters.

Section 2. Amends s. 98.0981, F.S., to correct a cross-reference.

Section 3. Amends s. 101.62, F.S., to require supervisors of elections to accept certain requests for absentee ballots; to require supervisors of elections to notify an absent uniformed services voter and overseas voter of the free access system designated by the department for determining absentee ballot status; and to authorize the department to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters if candidate certification for election cannot be accomplished within specified timeframes.

Section 4. Amends s. 101.694, F.S., to require supervisors of elections to mail ballots upon receipt of the federal postcard application and to remove provisions relating to two year applicability of the application in compliance with changes in federal law.

Section 5. Amends s. 101.6952, F.S., to require a supervisor of elections to record the overseas voter's e-mail address in the absentee ballot record, confirm by e-mail the receipt of the ballot request and provide the estimated date for the ballot being sent, and confirm by e-mail the receipt of the voted absentee ballot.

Section 6. Amends s. 379.352, F.S., to correct a cross-reference.

Section 7. Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Correspondence from the Florida Association of Supervisors of Elections indicates there is no cost associated with section 5 of the bill; however, some programming changes might be involved.[15]

Costs related to implementation of the "single free access system" for persons who vote absentee ballot to be able to access information on the status of their absentee ballots is indeterminate for the state and local levels at this time. The Department of State has been gathering information from vendors and others on various ways to implement the federal requirement. According to department staff, costs would be for programming and implementation changes needed for such a system; however, different implementation methodologies are being considered.[16]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill is exempt from mandate requirements because it is amending the elections laws.

2. Other:

Under section 5 of the Voting Rights Act, new legislation that implements a voting change, including, but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. If the Attorney General objects to the voting change, the legislation is unenforceable.

B. RULE-MAKING AUTHORITY:

The bill conforms current statutory authorization for department rulemaking authority for a ballot to be sent to specified voters if candidate certification for election cannot be accomplished within specified timeframes to changes in voter definitions and federal requirements for transmission of certain information to such voters.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[15] Information received from Mr. Bill Cowles, Chair of the Legislative Committee, Florida Association of Supervisors of Elections, December 30, 2009. Correspondence on file with the Governmental Affairs Policy Committee.

[16] Conversation with Department of State staff, January 25, 2010.

A bill to be entitled

An act relating to absent uniformed services and overseas voters; amending s. 97.021, F.S.; defining the term "absent uniformed services voter"; revising the definition of "overseas voter"; amending s. 98.0981, F.S., relating to statewide voter information; conforming a cross-reference; amending s. 101.62, F.S.; requiring the supervisor of elections to notify the absent uniformed services voter and overseas voter of the free access system for determining absentee ballot status; providing a timeframe for an absentee ballot to be sent to each absent uniformed services voter and overseas voter; providing acceptable formats for requesting an absentee ballot; modifying circumstances under which the department is authorized to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters; amending s. 101.694, F.S.; conforming timeframes for sending an absentee ballot upon receipt of federal postcard application to those prescribed in s. 101.62, F.S.; deleting the requirement for a federal postcard application request to be effective through two regularly scheduled general elections pursuant to changes in federal law; amending s. 101.6952, F.S.; revising responsibilities of the supervisor of elections when an overseas voter's request for an absentee ballot includes an e-mail address; requiring the supervisor to record the e-mail address in the absentee ballot record and, via e-mail, confirm that the request was received, inform the voter of the

estimated date the ballot will be sent, and notify the voter when the absentee ballot is received; amending s. 379.352, F.S., relating to recreational licenses and permits; conforming cross-references; providing an effective date.

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

Section 1. Subsections (2) through (21) and (23) through (43) of section 97.021, Florida Statutes, are renumbered as subsections (3) through (22) and (24) through (44), respectively, a new subsection (2) is added to that section and present subsection (22) is amended to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(2) "Absent uniformed services voter" means:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) A spouse or dependent of a member referred to in paragraph (a) or (b) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(23) ~~(22)~~ "Overseas voter" means:

(a) An absent uniformed services voter who, by reason of

active duty or service is absent from the United States on the date of the election involved ~~Members of the uniformed services while in the active service who are permanent residents of the state and are temporarily residing outside the territorial limits of the United States and the District of Columbia;~~

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States ~~Members of the Merchant Marine of the United States who are permanent residents of the state and are temporarily residing outside the territorial limits of the United States and the District of Columbia;~~ or ~~and~~

(c) A person who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled before leaving the United States ~~Other citizens of the United States who are permanent residents of the state and are temporarily residing outside the territorial limits of the United States and the District of Columbia,~~

~~who are qualified and registered to vote as provided by law~~.

Section 2. Subsection (3) of section 98.0981, Florida Statutes, is amended to read:

98.0981 Reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics.—

(3) PRECINCT-LEVEL BOOK CLOSING STATISTICS.—After the date of book closing but before the date of an election as defined in

s. 97.021(11)~~(10)~~ to fill a national, state, county, or district office, or to vote on a proposed constitutional amendment, the department shall compile the following precinct-level statistical data for each county:

(a) Precinct numbers.

(b) Total number of active registered voters by party for each precinct.

Section 3. Paragraph (c) is added to subsection (1) of Section 101.62, Florida Statutes, and subsection (4) of that section is amended to read:

101.62 Request for absentee ballots.—

(1)

(c) Upon receiving a request for an absentee ballot from an absent uniformed services voter or overseas voter, the supervisor of elections shall notify the voter of the free access system that has been designated by the department for determining the status of his or her absentee ballot.

(2) A request for an absentee ballot to be mailed to a voter must be received no later than 5 p.m. on the sixth day before the election by the supervisor of elections. The supervisor of elections shall mail absentee ballots to voters requesting ballots by such deadline no later than 4 days before the election.

(4)(a) No later than 45 days before each election, the supervisor of elections shall send an absentee ballot as provided in subparagraph (b)2. to each absent uniformed services voter and to each overseas voter who has requested an absentee ballot. ~~To each absent qualified elector overseas who has~~

~~requested an absentee ballot, the supervisor of elections shall mail an absentee ballot not less than 35 days before the primary election and not less than 45 days before the general election.~~

(b) The supervisor shall provide an absentee ballot to each elector by whom a request for that ballot has been made by one of the following means:

1. By nonforwardable, return-if-undeliverable mail to the elector's current mailing address on file with the supervisor, unless the elector specifies in the request that:

a. The elector is absent from the county and does not plan to return before the day of the election;

b. The elector is temporarily unable to occupy the residence because of hurricane, tornado, flood, fire, or other emergency or natural disaster; or

c. The elector is in a hospital, assisted living facility, nursing home, short-term medical or rehabilitation facility, or correctional facility,

in which case the supervisor shall mail the ballot by nonforwardable, return-if-undeliverable mail to any other address the elector specifies in the request.

2. By forwardable mail<u>, e-mail, or facsimile machine transmission</u> to <u>absent uniformed services voters and overseas</u> voters ~~who are entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act~~. <u>The absent uniformed services voter or overseas voter may designate in the absentee ballot request the preferred method of transmission. If the voter does not designate the method of transmission, the</u>

absentee ballot shall be mailed.

3. By personal delivery before 7 p.m. on election day to the elector, upon presentation of the identification required in s. 101.043.

4. By delivery to a designee on election day or up to 5 days prior to the day of an election. Any elector may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two absentee ballots per election, other than the designee's own ballot, except that additional ballots may be picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that ballot and shall indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

(5) In the event that the department ~~Elections Canvassing Commission~~ is unable to certify candidates for ~~the results of~~ an

election ~~for a state office~~ in time to comply with paragraph (4)(a) ~~subsection (4)~~, the Department of State is authorized to prescribe rules for a ballot to be sent to absent uniformed services voters and ~~electors~~ overseas voters.

Section 4. Subsection (1) of section 101.694, Florida Statutes, is amended to read:

101.694 Mailing of ballots upon receipt of federal postcard application.—

(1) Upon receipt of a federal postcard application for an absentee ballot executed by a person whose registration is in order or whose application is sufficient to register or update the registration of that person, the supervisor shall send the ballot in accordance with s. 101.62(4) ~~mail to the applicant a ballot, if the ballots are available for mailing. The federal postcard application request for an absentee ballot shall be effective for all elections through the next two regularly scheduled general elections~~.

Section 5. Section 101.6952, Florida Statutes, is amended to read:

101.6952 Absentee ballots for overseas voters.—

(1) If an overseas voter's request for an absentee ballot includes an e-mail address, the supervisor of elections shall:

(a) Record the voter's e-mail address in the absentee ballot record;

(b) Confirm by e-mail that the absentee ballot request was received and include in that e-mail the estimated date the ballot will be sent to the voter;

(c) Inform the voter of the names of candidates who will be on the ballots via electronic transmission. The supervisor of elections shall e-mail to the voter the list of candidates for the primary and general election not later than 30 days before each election; and

(d) Notify the voter by e-mail when the voted absentee ballot is received by the supervisor of elections.

(2) For absentee ballots received from overseas voters, there is a presumption that the envelope was mailed on the date stated on the outside of the return envelope, regardless of the absence of a postmark on the mailed envelope or the existence of a postmark date that is later than the date of the election.

Section 6. Subsection (11) of section 379.352, Florida Statutes, is amended to read:

379.352 Recreational licenses, permits, and authorization numbers to take wild animal life, freshwater aquatic life, and marine life; issuance; costs; reporting.—

(11) When acting in its official capacity pursuant to this section, neither the commission nor a subagent is deemed a third-party registration organization, as defined in s. 97.021(37) ~~(36)~~, or a voter registration agency, as defined in s. 97.021(41) ~~(40)~~, and is not authorized to solicit, accept, or collect voter registration applications or provide voter registration services.

Section 7. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 625 Voter Information Cards
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 192

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald	Williamson
2)	Military & Local Affairs Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill requires the voter information card prescribed in s. 97.071, F.S., to include the address of the polling place. If an elector's address of legal residence or polling place address changes, the supervisor of elections must send the elector a new voter information card. For any elector registered to vote on July 1, 2010, the supervisor of elections has until 30 days before the next supervisor-administered election in which the elector is eligible to vote to include the polling place address on the elector's voter information card.

Currently, every supervisor of elections must furnish a voter information card to every registered voter in the supervisor's county. The card must include date of registration; full name of elector; party affiliation; date of birth; legal residence address; precinct number; supervisor's name and contact information; and other information deemed necessary by the supervisor. Replacement cards are provided free of charge. New cards are issued automatically when a voter's name, address, or party affiliation changes. Sixty-one counties include the polling place address on the voter information card.

The bill takes effect July 1, 2010.

There will be a fiscal impact on counties that do not include the polling place address on the voter information card. See "Fiscal Comments."

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:

Present Situation

Currently, every supervisor of elections must furnish a voter information card to every registered voter in the supervisor's county. The card must include the following information:

- date of registration;
- full name of elector;
- party affiliation;
- date of birth;
- legal residence address;
- precinct number;
- supervisor's name and contact information; and,
- other information deemed necessary by the supervisor.[1]

Replacement cards are provided free of charge upon verification of the voter's registration, if the voter provides a signed written request for a replacement card.[2] The voter also may use the uniform statewide voter registration application to request a replacement card.[3] New cards are issued automatically when a voter's name, address, or party affiliation changes.[4]

According to the Florida State Association of Supervisors of Elections, 61 counties include the polling place address on the voter information card. Counties that do not include the polling place address are *Glades,* Jefferson, Madison, Orange, Taylor, and Volusia.[5]

Effect of Proposed Changes

The bill requires the voter information card prescribed in s. 97.071, F.S., to include the address of the polling place. If an elector's address of legal residence or polling place address changes, the supervisor of elections must send the elector a new voter information card. For any elector registered to vote on July 1, 2010, the supervisor of elections has until 30 days before the next supervisor-

[1] s. 97.071(1), F.S.
[2] s. 97.071(2), F.S.
[3] s. 97.052(1), F.S.
[4] s. 97.071(3), F.S. See also s. 97.1031, F.S.
[5] Information received from the Florida State Association of Supervisors of Elections, February 23, 2010.

administered election in which the elector is eligible to vote to include the polling place address on the elector's voter information card.

B. SECTION DIRECTORY:

Section 1. Amends s. 97.01, F.S., to add polling place address to the information required on the voter information card required to be given to all registered voters residing in a Supervisor of Elections county and to issue the voter a new card when the polling place address changes.

Section 2. Provides an effective date of July 1, 2010.

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:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact has not been determined for the six counties that will be required to issue new voter information cards reflecting the polling place address. While it varies from county to county, the average county cost to print and mail one card is approximately 52 cents. For electors who are registered to vote on July 1, 2010, the bill would allow the supervisor until 30 days before the next supervisor-administered election in which an elector is eligible to vote to comply with the polling place address requirement.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to voter information cards; amending s. 97.071, F.S.; requiring that voter information cards contain the address of the polling place of the registered voter; requiring a supervisor of elections to issue a new voter information card to a voter upon a change in a voter's address of legal residence or a change in a voter's polling place address; providing instructions for implementation by the supervisors of elections; providing an effective date.

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

Section 1. Section 97.071, Florida Statutes, is amended to read:

97.071 Voter information card.—

(1) A voter information card shall be furnished by the supervisor to all registered voters residing in the supervisor's county. The card must contain:

(a) Voter's registration number.

(b) Date of registration.

(c) Full name.

(d) Party affiliation.

(e) Date of birth.

(f) Address of legal residence.

(g) Precinct number.

(h) Polling place address.

(i) ~~(h)~~ Name of supervisor and contact information of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

supervisor.

(j) ~~(i)~~ Other information deemed necessary by the supervisor.

(2) A voter may receive a replacement voter information card by providing a signed, written request for a replacement card to a voter registration official. Upon verification of registration, the supervisor shall issue the voter a duplicate card without charge.

(3) In the case of a change of name, address of legal residence, polling place address, or party affiliation, the supervisor shall issue the voter a new voter information card.

Section 2. The supervisor must meet the requirements of this act for any elector who is registered to vote on July 1, 2010, no later than 30 days before the first election administered by the supervisor in which the elector is eligible to vote.

Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1207 Campaign Financing
SPONSOR(S): McKeel
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald	Williamson
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

On May 22, 2009, portions of Chapter 106, F.S., regulating "electioneering communications," were held unconstitutional by the United States District Court for the Northern District of Florida in Broward Coalition v. Browning.

The bill reenacts and amends provisions related to electioneering communications and electioneering communication organizations (ECOs) to do the following:

- Redefine "electioneering communication" to remove reference to issues, specify the allowable communication formats, regulate advocacy that is the functional equivalent of express advocacy, and provide timeframes for the communications.
- Remove reference to a specific number of persons who must be targeted in a geographic area in the definition of "electioneering communication" to only refer to targeting to "relevant electorate in the geographic area the candidate would represent if elected."
- Redefine "electioneering communications organization" to clarify that it includes only those organizations with "election-related activities" that are limited to electioneering communications and that its activities would not require the group to register as a political party, political committee, or committee of continuous existence.
- Amend the definition of "political committee" to remove the requirement that an ECO conform to specified requirements of a "political committee" when it is specifically exempt from the definition.
- Provide separate registration and reporting requirements for ECOs.
- Require an organization to register as an ECO upon receipt or expenditure of an aggregate amount exceeding $5,000, rather than when it "anticipates receipt or expenditure of money."
- Increase the amount an individual can expend before being subject to regulation from $100 to $5,000.
- Remove provisions identified as an impermissible burden on speech.

The bill also revises provisions relating to use of local government funds for political advertising.

The bill authorizes the leader of each political party conference of the state House of Representatives and Senate to establish a separate, affiliated party committee to support the election of candidates of the leader's political party. Leader is defined as President of the Senate, Speaker of the House of Representatives, or the minority leader of either house of the Legislature, until a person is designated by a political party conference of members of either house to succeed to the position, at which time the designee becomes the leader for purposes of the affiliated party committee. Payment of assessments for candidates for state senator and member of the House of Representatives must be paid to the respective affiliated party committee of the Senate or House of Representatives. The bill provides that specified requirements and exemptions for political parties and state executive committees apply to an affiliated party committee. Finally, the bill removes the 28-day time limitation prior to a general election for contributions from political parties and affiliated party committees to candidates.

See "Fiscal Comments" for details on possible fiscal impacts.

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:

Electioneering Communications and Electioneering Communications Organizations

Summary of Current Law

Federal Law and Regulations

Political speech, political association, and political expression are protected by the First Amendment. Consequently, governments can regulate only those narrow categories of political speech that are "unambiguously related to the campaign of a particular . . . candidate."[1] Two categories fall within that narrow exception: "communications that in express terms advocate the election or defeat of a clearly identifiable candidate for federal office, also referred to as express advocacy"[2]; and communications that constitute "the functional equivalent of express advocacy."[3,4]

The Bipartisan Campaign Reform Act of 2002 ("BCRA") amended the Federal Election Campaign Act by adding a new category of political communications, "electioneering communications," to those communications already governed by the Act. BCRA defines electioneering communications as broadcast, cable, or satellite communications that refer to a clearly identified candidate for Federal office, are publicly distributed within 60 days before a general election or 30 days before a primary election, and are targeted to the relevant electorate. Individuals and entities that make electioneering communications are subject to certain reporting requirements.

In 2007, the Supreme Court reviewed an as-applied challenge to the electioneering communications regulations of BCRA.[5] In WRTLII, Wisconsin Right to Life, a non-profit corporation, sought to use its own general treasury funds to pay for broadcast advertisements that qualified as electioneering communications prohibited by BCRA. The Federal Election Commission contended that the 2003 U.S. Supreme Court decision in McConnell v. Federal Election Commission established the "constitutional

[1] Buckley v. Valeo, 424 U.S. 1, 80 (1976).
[2] Id. at 44.
[3] McConnell v. Fed. Election Comm'n, 540 U.S. 93, 206 (2003).
[4] Citizens United v. Fed. Election Comm'n, 530 F.Supp.2d 274 (D.C.C. 2008)(A film producer challenged provisions of BCRA as unconstitutional. The district court held that a movie about a presidential candidate was the functional equivalent of express advocacy. On September 9, 2009, the Supreme Court heard re-argument on the issue of contribution and expenditure limitations on corporations.)
[5] FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449 (2007) ("WRTL II").

test for determining if an ad is the functional equivalent of express advocacy: whether the ad is intended to influence elections and has that effect."[6] The Court held that McConnell did not adopt any test as the standard for future as-applied challenges. The Court went on to reject the adoption of any test for as-applied challenges that depended on the speaker's intent to affect an election. Instead, the Court required that "a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[7]

Florida Law

"Legislatures have the power to regulate elections;"[8] however, there are certain constraints established in federal law and in case law.

On May 22, 2009, portions of Chapter 106, F.S., regulating "electioneering communications," were held unconstitutional by the United States District Court for the Northern District of Florida.[9] The electioneering communications laws attempted to regulate communication that "refers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue."[10] Any group that makes an electioneering communication must register as an electioneering communications organization. These organizations were required to register and report expenditures and contributions in the same manner as political committees supporting or opposing an issue or a candidate.

In the Broward Coalition decision, the court explained that there are two factors that must be met before a communication is deemed to be the functional equivalent of express advocacy. First, the speech must be "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[11] Second, the communication must be a "broadcast, cable, or satellite communication that refers to a clearly identified candidate within sixty days of a general election or thirty days of a primary election."[12] Under this criteria, the court found that: 1) none of the plaintiffs issued communication via broadcast, cable, or satellite; 2) all of the speech at issue is susceptible of a reasonable interpretation other than an appeal to vote for or against a candidate; and 3) "plaintiff's speech relating to ballot issues cannot, by definition, be express advocacy for a particular candidate."[13]

Effect of Proposed Changes

The bill reenacts and revises the following provisions of law related to electioneering communications and electioneering communication organizations (ECOs) to address the concerns raised in the Broward Coalition decision:

- Redefines "electioneering communication" to conform with federal law and case law by removing reference to issues; only regulating advocacy that is the functional equivalent of express advocacy and providing guidelines for such advocacy; and providing the timeframes for such communications.
- Removes the reference to electioneering communication in the provision of law relating to telephone solicitations which are express advocacy since such solicitations cannot, by definition, be electioneering communications.

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[6] WRTL II, at 465.
[7] In response to WRTL II, the FEC amended its regulations to allow electioneering communications if certain criteria were met.
[8] Buckley v. Valeo, 424 U.S. 1, 13 (1976).
[9] Broward Coalition v. Browning, 2009 WL 1457972, at *8.
[10] Section 106.011(1)(a), F.S.
[11] WRTL II, at 470.
[12] Id. at 476.
[13] Broward Coalition, 2009 WL 1457972, at *6.

- Removes reference to a specific number of persons who must be targeted[14] in a geographic area (1,000 in current state law, 50,000 in federal law) in the definition of "electioneering communication" to only refer to targeting to "relevant electorate in the geographic area the candidate would represent if elected."
- Redefines "electioneering communications organization" to clarify that it includes only those organizations with "election-related activities" that are limited to electioneering communications and that its activities would not require the group to register as a political party, political committee, or committee of continuous existence.
- Amends the definition of "political committee" to remove caveat on an ECO not being a political committee but having to conform to specified requirements of a "political committee." This was addressed in the Broward Coalition decision as being "confusing" and also that such requirements were too onerous on ECOs.
- Amends political committee registration provisions to specifically and separately address registration of ECOs.[15]
- Narrows the requirement for an organization to register as an ECO to once an organization receives or expends an aggregate amount exceeding $5,000,[16] rather than "anticipates receipt or expenditure of money."[17]
- Increases the amount an individual can expend before being subject to regulation from $100 to $5,000.[18]
- Places in one section of law all provisions relating to reporting requirements for ECOs and tailors certain provisions to ECOs. This, in part, addresses concerns of the court that ECOs are treated like political committees when they are not political committees and that such treatment is onerous for such organizations.
- Removes provisions stricken by the Broward Coalition decision (ss. 106.08(4)(b) and (5)(d), F.S.) because of probable challenge as a regulation on contributions that is too far removed from the candidate to prevent corruption and, therefore, is an impermissible burden on speech.[19]
- Reenacts other provisions because of changes made in the definitions and other changes in the proposal that seem to negate concerns raised by the court.

The bill differs from the Broward Coalition decision and from current law in the following ways:

- In redefining the term "electioneering communication", the bill retains certain print media (newspaper, magazine, or direct mail) and adds telephone.
- A statement to be read by someone who places an electioneering communication telephone call is provided in a separate section of law from that for express advocacy telephone solicitations.

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[14] In the *Order Granting Motion for Preliminary Injunction* issued in Broward Coalition, 2008 WL 4791004, 21 Fla. L. Weekly Fed. D 420 (N.D.Fla., 2008), the court noted it would be impossible for plaintiffs to determine whether certain communications, issued through the internet or print, would be received by 1,000 or more persons. See also Alaska Right to Life Committee v. Miles, 441 F.3d 773, 783 (discussing Alaska electioneering law that required the communication to "address an issue of national, state, or local political importance" instead "targeted to the relevant electorate").

[15] Section 106.03(1)(b), F.S., requires an ECO to register; however, other provisions in the registration requirements under s. 106.03, F.S., refer to political committees even though they are used for ECOs. The caveat in the exception of ECOs from the definition of "political committee" is used as authority for implementation of requirements under this section and other sections of ch. 106, F.S., as they would apply to ECOs.

[16] Federal case law has established a "major purpose" test to determine whether an organization's campaign activity should be regulated. However, basing regulation on an organization's *relative* amount of activity may encourage advocacy groups to circumvent the law by hiding their electoral activity from view. In addition, such regulation would discriminate against small organizations, because advocacy "that would constitute a small organization's major purpose might only be considered one of several primary purposes at a larger entity." Human Life of Washington v. Brumsickle, 2009 WL 62144 (W.D.Wash., 2009).

[17] Broward Coalition held that regulation based on an organizations anticipation of receiving or expending contributions constituted a prior restraint on the organizations communication. The amount of money specified brings the requirement more in line with federal requirements.

[18] 2 U.S.C. s. 434(f) places the threshold for an individual at an amount of greater than $10,000.

[19] See e.g. Emily's List v. Federal Election Com'n, --- F.3d ----, 2009 WL 2972412 (D.C.Cir., 2009)(discussing the First Amendment right of individuals to spend funds to express their views about policy issues and the corresponding right of those individuals to band together and pool their resources as a non-profit organization to express their views).

- Addresses the types of communications by local governments subject to regulation that was not addressed by the Broward Coalition decision.

Affiliated Party Committees

Present Situation

Chapter 103, F.S., requires each political party of the state to be represented by a state executive committee. County executive committees and other committees may be established in accordance with the rules of the state executive committee. The selection of membership to executive committees is provided as well as the responsibilities. Certain information relating to officers, membership, bylaws, and rules and regulations must be filed by the state executive committees with the Department of State. County executive committees file officer and membership information with the state executive committee and with the respective supervisor of elections.[20] Responsibility for maintaining records on receipt and disbursement of all party funds is delineated as well as penalties for misappropriation of funds, unlawful expenditure of funds, or false or improper accounting for committee funds.[21]

Unless excluded in law, the state executive committee receives payment of assessments for candidates for office, including state senators and members of the House of Representatives.[22]

No person or group of persons can use the name, abbreviation, or symbol of any political party or name of groups or committees associated with the political party that is filed by the political party with the Department of State.[23]

Effect of Proposed Changes

The bill establishes the mechanism for the leader of each political party conference of the Florida House of Representatives and Senate to establish a separate, affiliated party committee to support the election of candidates of the leader's political party.[24] An affiliated party committee shall adopt bylaws to include, at a minimum, the designation of a treasurer; conduct campaigns for candidates who are members of the leader's political party; and establish an account to raise and expend funds. Such funds may not be expended or committed for expenditure unless authorized by the leader.

Payment of assessments for candidates for state senator and member of the House of Representatives must be paid to the respective affiliated party committee of the Florida Senate or Florida House of Representatives, if such a committee has been established.

An affiliated party committee is entitled to use the name, abbreviation, or symbol of the political party of its leader.

Chapter 106, F.S., is amended to provide that an affiliated party committee is required to file specified reports like an executive committee of a political party or a political party. Additionally, provisions relating to contributions and expenditures; use of closed captioning and descriptive narrative in all television broadcasts, telephone solicitation, polls and surveys relating to candidacies; and penalties that relate to state executive committees and political parties are amended to include an affiliated party committee. Funds contributed to an affiliated party committee cannot be deemed as designated for the partial or exclusive use of a leader of an affiliated party committee.

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[20] Section 103.091, F.S.

[21] Section 103.121, F.S.

[22] Section 103.121(1)(b), F.S., provides that all party assessments are 2 percent of the annual salary of the office sought by the respective candidate.

[23] Section 103.081, F.S.

[24] The term "leader" means the President of the Senate, Speaker of the House of Representatives, or the minority leader of either house of the Legislature, until a person is designated by a political party conference of members of either house to succeed to the position, at which time the designee becomes the leader for purposes of the affiliated party committee.

Section 11.045, F.S., is amended to exclude contributions or expenditures made by or to an affiliated party committee, just as is done for a political party, from the definition of "expenditure" under this provision.

Sections 112.312 and 112.3215, F.S., are amended to exclude from the definition of "gift" contributions or expenditures by an affiliated party committee and to exclude from the definition of "expenditure," in the latter section, contributions or expenditures made by or to an affiliated party committee, just as is done for a political party in both of those sections.

Contributions by Political Parties to Candidates / Non-allocables

Present Situation

A candidate is limited to accepting an aggregate of $50,000 ($250,000 for a statewide candidate) from a political party, no more than half of which can be accepted before the 28-day period immediately preceding the general election.[25] The following items, known as "non-allocables," are excluded from the aggregate $50,000 contribution limit ($250,000 limit for statewide candidates): polling services, research services, costs for campaign staff, professional consulting services, and telephone calls.

Effect of Proposed Change

The bill includes affiliated party committee along with political party in the list from which the aggregate funds can be accepted by a candidate. It removes the 28-day time limitation prior to a general election for candidates to accept contributions from political parties and affiliated party committees.

B. SECTION DIRECTORY:

Section 1. Amends s. 103.081, F.S., to allow an affiliated party committee to use the name, abbreviation, or political party symbol of the party to which its leader belongs.

Section 2. Creates s. 103.092, F.S., to define the term "leader," provide for the establishment of affiliated party committees, and delineate duties and responsibilities of an affiliated party committee.

Section 3. Amends s. 103.121, F.S., to require that certain assessments going to the party county or state executive committees be redirected to the appropriate affiliated party committee.

Section 4. Amends s. 106.011, F.S., to revise the definition of "political committee," "independent expenditure," "person," "filing officer," "electioneering communication," and "electioneering communications organization;" and to re-enact "contribution" and "expenditure."

Section 5. Amends s. 106.021, F.S., to provide that certain expenditures by an affiliated party committee are not considered a contribution or expenditure to or for a candidate.

Section 6. Reenacts s. 106.022(1), F.S., relating to appointment of a registered agent; duties.

Section 7. Amends s. 106.025, F.S., to exempt an affiliated party committee from certain campaign fund raising requirements.

Section 8. Amends s. 106.03, F.S., to provide separate, distinct registration requirements for electioneering communications organizations.

Section 9. Amends s. 106.04, F.S., to require a committee of continuous existence to report receipts from and transfers to an affiliated party committee.

Section 10. Amends s. 106.0701, F.S., to exempt affiliated party committees from certain filing requirements.

[25] Section 106.08(2), F.S.

Section 11. Reenacts and amends s. 106.0703, F.S., to consolidate into one section reporting requirements for an electioneering communications organization.

Section 12. Amends s. 106.0705, F.S., to reenact a provision, add a reference to affiliated party committee, add cross-references, and add reference to "leader and treasurer" for required reports filed under the section.

Section 13. Reenacts and amends s. 106.071(1), F.S., to increase the aggregate amount of expenditures required for filing certain reports related to independent expenditures or electioneering communications.

Section 14. Amends s. 106.08, F.S., to remove certain limitations on contributions received by an electioneering communications organization, provide that an affiliated party committee is treated like a political party regarding limitations on contributions, delete the 28-day restriction on acceptance of certain funds preceding a general election, place certain restrictions on solicitation for and making of contributions, provide guidelines for acceptance of in-kind contributions, and add an affiliated party committee to entities subject to penalties.

Section 15. Creates s. 106.088, F.S., to require an oath or affirmation by the leader or treasurer of an affiliated party committee as a condition of receipt of a rebate of party assessments and to provide penalties for violation of oath or affirmation.

Section 16. Amends s. 106.113, F.S., to remove reference to electioneering communication and to prohibit specific appropriation or designated expenditure by a local government for the purpose of a political advertisement and to prohibit acceptance of such funds by a person for such advertisement.

Section 17. Reenacts s. 106.1437, F.S., relating to miscellaneous advertisements.

Section 18. Reenacts and amends s. 106.1439, F.S., to provide disclaimers for electioneering communication telephone calls.

Section 19. Amends s. 106.147, F.S., to delete references to electioneering communication telephone calls and to add affiliated party committee to the list of entities included in the definition of "person."

Section 20. Amends s. 106.165, F.S., to add affiliated party committee to the list of entities that must use closed captioning and descriptive narratives in all television broadcasts.

Section 21. Amends s. 106.17, F.S., to add affiliated party committee to the list of entities that can authorize or conduct polls, surveys, and other such instruments relating to public office candidacy.

Section 22. Amends s. 106.23, F.S., to add affiliated party committee to the list of persons and organizations that may request and be provided with advisory opinions by the Division of Elections.

Section 23. Amends s. 106.265, F.S., to authorize the imposition of civil penalties by the Florida Elections Commission for certain violations by an affiliated party committee.

Section 24. Amends s. 106.27, F.S., to add affiliated party committee to the list of groups subject to certain civil actions by the Florida Elections Commission.

Section 25. Amends s. 106.29, F.S., to require filing of certain reports by an affiliated party committee, provide restrictions on certain expenditures and contributions, and to provide penalties.

Section 26. Amends s. 11.045, F.S., to exclude contributions or expenditures made by or to an affiliated party committee from the definition of "expenditure."

Section 27. Amends s. 112.312, F.S., to exclude from the definition of "gift" contributions or expenditures by an affiliated party committee.

Section 28. Amends s. 112.3215, F.S., to exclude contributions or expenditures made by or to an affiliated party committee from the definition of "expenditure."

Section 29. Provides a July 1, 2010 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Assessments for candidates for the state Senate and state House of Representatives that currently go to the respective political parties instead would go to an affiliated party committee if one has been created pursuant to the bill.

D. FISCAL COMMENTS:

Any state government costs associated with requirements for affiliated party committees are estimated by the Department of State to be minimal. The provisions would entail only coding an entry for receiving such electronic reports and receiving and processing the reports as is currently done for other committees, candidates, and parties. The payment of the assessment to the applicable leader likewise would be minimal as the Department of State currently pays the political parties their assessment.

According to the Department of State, any litigation relating to the provisions in HB 1207 relating to electioneering communications and electioneering communications organizations largely depends upon the issue litigated and whether appeals would be taken. The department stated estimates would range from about $50,000 at trial court level to upwards of $300,000 for defense; plus, if the department loses and has to pay attorney fees, it could easily go upwards of over $2 million. The department also noted that the plaintiff's attorney fees in Broward Coalition were slightly over $140,000.[26]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill is exempt from the mandate requirements because it is amending the elections laws.

[26] Information on estimated fiscal impact of HB 1207 was provided by the Department of State, February 25, 2010.

2. Other:

On May 22, 2009, portions of Chapter 106, F.S., regulating "electioneering communications" were held to be unconstitutional by the United States District Court for the Northern District of Florida in Broward Coalition v. Browning. The court stated "because the Court has never held that the regulation of 'electioneering communications' beyond how that term is defined in [BCRA] is permissible, the outer limit of regulation tracks BCRA's definition: a broadcast, cable, or satellite communication that refers to a clearly identified candidate within sixty days of a general election or thirty days of a primary election."[27]

The definition of "electioneering communication" contained in section 4 of HB 1207 includes types of communication beyond that in the definition in BCRA.

Under section 5 of the Voting Rights Act, new legislation that implements a voting change including but not limited to a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. The legislation is unenforceable if the Attorney General objects to the voting change.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[27] Broward Coalition, 2009 WL 1457972, at *6, citing, N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 282 (4th Cir. 2008).

A bill to be entitled

An act relating to campaign financing; amending s. 103.081, F.S.; permitting the use of a political party's name, abbreviation, or symbol by an affiliated party committee under certain circumstances; creating s. 103.092, F.S.; providing for the establishment of affiliated party committees; providing a definition; delineating duties and responsibilities of such committees; amending s. 103.121, F.S.; requiring certain assessments to be paid to an affiliated party committee; amending s. 106.011, F.S.; revising the definition of the term "political committee" to remove certain reporting requirements included in the exclusion of electioneering communications organizations from the definition and to allow contributions to an affiliated party committee; adding an affiliated party committee to the list of entities not considered a political committee under chapter 106, F.S.; revising the definition of the term "independent expenditure" to specify that certain expenditures are not considered an independent expenditure; revising the definition of the term "person" to include an affiliated party committee; revising the definition of the term "filing officer" to expand applicability to electioneering communications organizations; revising the definition of the term "electioneering communication" to conform to certain federal requirements and to delineate what constitutes such a communication; revising the definition of the term

"electioneering communications organization"; amending s. 106.021, F.S.; providing that certain expenditures by an affiliated party committee are not considered a contribution or expenditure to or for a candidate; amending s. 106.025, F.S.; exempting an affiliated party committee from certain campaign fund raising requirements; amending s. 106.03, F.S.; revising the registration requirements for electioneering communications organizations; revising the statement of organization requirements; revising rule adoption requirements relating to dissolution of political committees and electioneering communications organizations; amending s. 106.04, F.S.; requiring that a committee of continuous existence report receipts from and transfers to an affiliated party committee; amending s. 106.0701, F.S.; exempting an affiliated party committee from certain filing requirements; amending s. 106.0703, F.S.; consolidating reporting requirements in ch. 106, F.S., applicable to electioneering communications organizations; providing penalties; conforming provisions; amending s. 106.0705, F.S., relating to electronic filing of campaign treasurer's reports; conforming provisions; requiring an affiliated party committee to file certain reports with the Division of Elections; providing that a report filed by the leader and treasurer of an affiliated party committee is considered to be under oath; amending s. 106.071, F.S.; increasing the aggregate amount of expenditures required for filing certain reports related

to independent expenditures or electioneering communications; amending s. 106.08, F.S.; removing certain limitations on contributions received by an electioneering communications organization; providing that an affiliated party committee is treated like a political party regarding limitations on contributions; deleting the 28-day restriction on acceptance of certain funds preceding a general election; placing certain restrictions on solicitation for and making of contributions; providing guidelines for acceptance of in-kind contributions; adding an affiliated party committee to entities subject to penalties; creating s. 106.088, F.S.; requiring the subscribing to an oath or affirmation prior to receipt of certain funds; providing the form of the oath; providing penalties; providing that undistributed funds shall be deposited into the General Revenue Fund; amending s. 106.113, F.S., relating to expenditures by local governments; revising definitions; prohibiting a local government, or a person acting on behalf of a local government, from making a specific appropriation or designated expenditure of moneys under the jurisdiction or control of the local government; prohibiting certain persons or groups from accepting such moneys for the purpose of certain political advertisements; deleting an exception for certain electioneering communications; clarifying that certain provisions of state law do not preclude certain officials from expressing an opinion on an issue at any time; amending s. 106.1439, F.S.;

providing identification requirements for certain electioneering communications; providing an exception for telephone calls; amending s. 106.147, F.S., relating to telephone solicitation disclosure requirements; removing requirements relating to electioneering communication, to conform; revising the definition of the term "person" to include an affiliated party committee; providing penalties; amending s. 106.165, F.S.; adding affiliated party committees to the entities that must use closed captioning and descriptive narrative in all television broadcasts; amending s. 106.17, F.S.; adding affiliated party committees to those entities authorized to conduct polls and surveys relating to candidacies; amending s. 106.23, F.S.; providing that an affiliated party committee shall be provided an advisory opinion by the Division of Elections when requested; amending s. 106.265, F.S.; authorizing the imposition of civil penalties by the Florida Elections Commission for certain violations by an affiliated party committee; amending s. 106.27, F.S.; adding affiliated party committees to those entities subject to certain determinations and legal disposition by the Florida Elections Commission; amending s. 106.29, F.S.; requiring filing of certain reports by an affiliated party committee; providing restrictions on certain expenditures and contributions; providing penalties; amending s. 11.045, F.S., relating to lobbying before the Legislature; excluding contributions and expenditures by an affiliated party committee from the definition of the

term "expenditure"; amending s. 112.312, F.S.; providing that certain activities pertaining to an affiliated party committee are excluded from the definition of the term "gift"; amending s. 112.3215, F.S., relating to lobbying before the executive branch or the Constitution Revision Commission; excluding contributions and expenditures by an affiliated party committee from the definition of the term "expenditure"; reenacting ss. 106.011(1)(b), (3), (4), (18), and (19), 106.022(1), 106.03(1)(b), 106.04(5), 106.0703, 106.0705(2)(b), 106.071(1), 106.08(7), 106.1437, 106.1439, and 106.17, F.S., relating to definitions, registered office and agent requirements, registration requirements, prohibited activities for committees of continuous existence, additional reporting requirements, electronic filing requirements, expenditure reports, penalties for violations pertaining to limitations on contributions, miscellaneous advertisements, electioneering communications disclaimers and penalties for failure to include disclaimers, and polls and surveys pertaining to candidacies, to cure and conform; providing an effective date.

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

Section 1. Subsection (4) is added to section 103.081, Florida Statutes, to read:

103.081 Use of party name; political advertising.—

(4) Notwithstanding any other provision of law to the

contrary, an affiliated party committee shall be entitled to use the name, abbreviation, or symbol of the political party of its leader as defined in s. 103.092.

Section 2. Section 103.092, Florida Statutes, is created to read:

103.092 Affiliated party committees.—

(1) For purposes of this section, the term "leader" means the President of the Senate, the Speaker of the House of Representatives, or the minority leader of either house of the Legislature, until a person is designated by a political party conference of members of either house to succeed to any such position, at which time the designee becomes the leader for purposes of this section.

(2) The leader of each political party conference of the House of Representatives and the Senate may establish a separate, affiliated party committee to support the election of candidates of the leader's political party. The affiliated party committee is subject to the same provisions of chapter 106 as a political party.

(3) Each affiliated party committee shall:

(a) Adopt bylaws to include, at a minimum, the designation of a treasurer.

(b) Conduct campaigns for candidates who are members of the leader's political party.

(c) Establish an account.

(d) Raise and expend funds. Such funds may not be expended or committed to be expended except when authorized by the leader of the affiliated party committee.

Section 3. Paragraph (b) of subsection (1) of section 103.121, Florida Statutes, is amended to read:

103.121 Powers and duties of executive committees.—

(1)

(b) The county executive committee shall receive payment of assessments upon candidates to be voted for in a single county except state senators, state ~~and members of the House of~~ representatives, and representatives to the Congress of the United States; an affiliated party committee controlled by a leader of the Senate as defined in s. 103.092 shall receive payment of assessments upon candidates for the office of state senator and an affiliated party committee controlled by a leader of the House of Representatives as defined in s. 103.092 shall receive payment of assessments upon candidates for the office of state representative; and the state executive committees shall receive all other assessments authorized. All party assessments shall be 2 percent of the annual salary of the office sought by the respective candidate. All such committee assessments shall be remitted to the state executive committee of the appropriate party and distributed in accordance with subsection (5), except that assessments for candidates for the office of state senator or state representative shall be remitted to the appropriate affiliated party committee.

Section 4. Paragraph (a) of subsection (1) of section of section 106.011, Florida Statutes, is amended, paragraph (b) of subsection (1) of that section is reenacted and amended, subsections (3) and (4) of that section are reenacted, subsections (5), (8), and (14) of that section are amended, and

subsections (18) and (19) of that section are reenacted and amended, to read:

106.011 Definitions.—As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(1)(a) "Political committee" means:

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of $500 during a single calendar year:

a. Accepts contributions for the purpose of making contributions to any candidate, political committee, committee of continuous existence, affiliated party committee, or political party;

b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;

c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or

d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, committee of continuous existence, affiliated party committee, or political party;

2. The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

(b) Notwithstanding paragraph (a), the following entities are not considered political committees for purposes of this chapter:

1. Organizations which are certified by the Department of State as committees of continuous existence pursuant to s. 106.04, national political parties, ~~and~~ the state and county executive committees of political parties, and affiliated party committees regulated by chapter 103.

2. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.

3. Electioneering communications organizations as defined in subsection (19)~~; however, such organizations shall be required to register with and report expenditures and contributions, including contributions received from committees of continuous existence, to the Division of Elections in the same manner, at the same time, and subject to the same penalties as a political committee supporting or opposing an issue or a legislative candidate, except as otherwise specifically provided in this chapter~~.

(3) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value,

including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.

(b) A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combination of these groups.

(c) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.

Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services, including, but not limited to, legal and accounting services, provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee. This definition shall not be construed to include editorial endorsements.

(4)(a) "Expenditure" means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign

treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. However, "expenditure" does not include a purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election when made by an organization, in existence prior to the time during which a candidate qualifies or an issue is placed on the ballot for that election, for the purpose of printing or distributing such organization's newsletter, containing a statement by such organization in support of or opposition to a candidate or issue, which newsletter is distributed only to members of such organization.

(b) As used in this chapter, an "expenditure" for an electioneering communication is made when the earliest of the following occurs:

1. A person enters into a contract for applicable goods or services;

2. A person makes payment, in whole or in part, for the production or public dissemination of applicable goods or services; or

3. The electioneering communication is publicly disseminated.

(5)(a) "Independent expenditure" means an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue,

which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period shall not be deemed an independent expenditure.

(b) An expenditure for the purpose of expressly advocating the election or defeat of a candidate which is made by the national, state, or county executive committee of a political party, including any subordinate committee of the ~~a national, state, or county committee of a~~ political party, an affiliated party committee, a ~~or by any~~ political committee, a ~~or~~ committee of continuous existence, or any other person~~,~~ shall not be considered an independent expenditure if the committee or person:

1. Communicates with the candidate, the candidate's campaign, or an agent of the candidate acting on behalf of the candidate, including any pollster, media consultant, advertising agency, vendor, advisor, or staff member, concerning the preparation of, use of, or payment for, the specific expenditure or advertising campaign at issue; or

2. Makes a payment in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any general or particular understanding with the candidate, the candidate's campaign, a political committee supporting the candidate, or an agent of the candidate relating to the specific expenditure or advertising campaign at issue; or

3. Makes a payment for the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by the candidate, the candidate's campaign, or an agent of the candidate, including any pollster, media consultant, advertising agency, vendor, advisor, or staff member; or

4. Makes a payment based on information about the candidate's plans, projects, or needs communicated to a member of the committee or person by the candidate or an agent of the candidate, provided the committee or person uses the information in any way, in whole or in part, either directly or indirectly, to design, prepare, or pay for the specific expenditure or advertising campaign at issue; or

5. After the last day of qualifying for statewide or legislative office, consults about the candidate's plans, projects, or needs in connection with the candidate's pursuit of election to office and the information is used in any way to plan, create, design, or prepare an independent expenditure or advertising campaign, with:

a. Any officer, director, employee, or agent of a national, state, or county executive committee of a political party <u>or an affiliated party committee</u> that has made or intends to make expenditures in connection with or contributions to the candidate; or

b. Any person whose professional services have been retained by a national, state, or county executive committee of a political party <u>or an affiliated party committee</u> that has made or intends to make expenditures in connection with or

contributions to the candidate; or

6. After the last day of qualifying for statewide or legislative office, retains the professional services of any person also providing those services to the candidate in connection with the candidate's pursuit of election to office; or

7. Arranges, coordinates, or directs the expenditure, in any way, with the candidate or an agent of the candidate.

(8) "Person" means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, affiliated party committee, political committee, or committee of continuous existence.

(14) "Filing officer" means the person before whom a candidate qualifies, the agency or officer with whom a political committee or an electioneering communications organization registers, or the agency by whom a committee of continuous existence is certified.

(18)(a) "Electioneering communication" means any communication publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone ~~a paid expression in any communications media prescribed in subsection (13) by means other than the spoken word in direct conversation~~ that:

1. Refers to or depicts a clearly identified candidate for office ~~or contains a clear reference indicating that an issue is~~

~~to be voted on at an election,~~ without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate; ~~or the passage or defeat of an issue.~~

2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and

3. Is ~~For communications referring to or depicting a clearly identified candidate for office, is~~ targeted to the relevant electorate~~. A communication is considered targeted if 1,000 or more persons~~ in the geographic area the candidate would represent if elected ~~will receive the communication~~.

~~3. For communications containing a clear reference indicating that an issue is to be voted on at an election, is published after the issue is designated a ballot position or 120 days before the date of the election on the issue, whichever occurs first.~~

(b) The term "electioneering communication" does not include:

1. A communication disseminated through a means of communication other than a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, telephone, or statement or depiction by an organization, in existence prior to the time during which a candidate named or depicted qualifies ~~or an issue identified is placed on the ballot~~ for that election, made in that

organization's newsletter, which newsletter is distributed only to members of that organization.

2. A communication in a news story, commentary, or editorial distributed through the facilities of any radio station, television station, cable television system, or satellite system, unless the facilities are owned or controlled by any political party, political committee, or candidate. A news story distributed through the facilities owned or controlled by any political party, political committee, or candidate may nevertheless be exempt if it represents a bona fide news account communicated through a licensed broadcasting facility and the communication is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the area ~~An editorial endorsement, news story, commentary, or editorial by any newspaper, radio, television station, or other recognized news medium~~.

3. A communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that:

a. The staging organization is either:

(I) A charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or

(II) A newspaper, radio station, television station, or other recognized news medium; and

b. The staging organization does not structure the debate to promote or advance one candidate or issue position over another.

(c) For purposes of this chapter, an expenditure made for, or in furtherance of, an electioneering communication shall not be considered a contribution to or on behalf of any candidate.

(d) For purposes of this chapter, an electioneering communication shall not constitute an independent expenditure nor be subject to the limitations applicable to independent expenditures.

(19) "Electioneering communications organization" means any group, other than a political party, affiliated party committee, political committee, or committee of continuous existence, whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party, political committee, or committee of continuous existence under this chapter.

Section 5. Subsection (3) of section 106.021, Florida Statutes, is amended to read:

106.021 Campaign treasurers; deputies; primary and secondary depositories.—

(3) No contribution or expenditure, including contributions or expenditures of a candidate or of the candidate's family, shall be directly or indirectly made or

received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate or political committee, subject to the following exceptions:

(a) Independent expenditures;

(b) Reimbursements to a candidate or any other individual for expenses incurred in connection with the campaign or activities of the political committee by a check drawn upon the campaign account and reported pursuant to s. 106.07(4). After July 1, 2004, the full name and address of each person to whom the candidate or other individual made payment for which reimbursement was made by check drawn upon the campaign account shall be reported pursuant to s. 106.07(4), together with the purpose of such payment;

(c) Expenditures made indirectly through a treasurer for goods or services, such as communications media placement or procurement services, campaign signs, insurance, or other expenditures that include multiple integral components as part of the expenditure and reported pursuant to s. 106.07(4)(a)13.; or

(d) Expenditures made directly by any political committee, affiliated party committee, or political party regulated by chapter 103 for obtaining time, space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure shall not be considered a contribution or expenditure to or on behalf of any such candidates for the purposes of this chapter.

Section 6. Subsection (1) of section 106.022, Florida Statutes, is reenacted to read:

106.022 Appointment of a registered agent; duties.—

(1) Each political committee, committee of continuous existence, or electioneering communications organization shall have and continuously maintain in this state a registered office and a registered agent and must file with the division a statement of appointment for the registered office and registered agent. The statement of appointment must:

(a) Provide the name of the registered agent and the street address and phone number for the registered office;

(b) Identify the entity for whom the registered agent serves;

(c) Designate the address the registered agent wishes to use to receive mail;

(d) Include the entity's undertaking to inform the division of any change in such designated address;

(e) Provide for the registered agent's acceptance of the appointment, which must confirm that the registered agent is familiar with and accepts the obligations of the position as set forth in this section; and

(f) Contain the signature of the registered agent and the entity engaging the registered agent.

Section 7. Subsection (2) of section 106.025, Florida Statutes, is amended to read:

106.025 Campaign fund raisers.—

(2) This section shall not apply to any campaign fund raiser held on behalf of a political party by the state or

county executive committee or an affiliated party committee of such party, provided that the proceeds of such campaign fund raiser are reported pursuant to s. 106.29.

Section 8. Paragraph (b) of subsection (1) of section 106.03, Florida Statutes, is reenacted and amended, and subsections (2), (4), and (7) of that section are amended, to read:

106.03 Registration of political committees and electioneering communications organizations.—

(1)

(b)1. Each electioneering communications organization that receives ~~anticipates receiving~~ contributions or makes ~~making~~ expenditures during a calendar year in an aggregate amount exceeding $5,000 shall file a statement of organization as provided in subparagraph 2. ~~subsection (3)~~ by expedited delivery within 24 hours after its organization or, if later, within 24 hours after the date on which it receives ~~has information that causes the organization to anticipate that it will receive~~ contributions or makes ~~make~~ expenditures for an electioneering communication in excess of $5,000.

2.a. In a statewide, legislative, or multicounty election, an electioneering communications organization shall file a statement of organization with the Division of Elections.

b. In a countywide election or any election held on less than a countywide basis, except as described in sub-subparagraph c., an electioneering communications organization shall file a statement of organization with the supervisor of elections of the county in which the election is being held.

c. In a municipal election, an electioneering communications organization shall file a statement of organization with the officer before whom municipal candidates qualify.

d. If an electioneering communications organization is required to file a statement of organization with two or more locations in order to comply with the requirements of this subparagraph, the electioneering communications organization shall file a statement of organization only with the Division of Elections.

(2) The statement of organization shall include:

(a) The name, mailing address, and street address of the committee or electioneering communications organization;

(b) The names, street addresses, and relationships of affiliated or connected organizations;

(c) The area, scope, or jurisdiction of the committee or electioneering communications organization;

(d) The name, mailing address, street address, and position of the custodian of books and accounts;

(e) The name, mailing address, street address, and position of other principal officers, including the treasurer and deputy treasurer ~~including officers and members of the finance committee~~, if any;

(f) The name, address, office sought, and party affiliation of:

1. Each candidate whom the committee is supporting;

2. Any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever;

(g) Any issue or issues the committee ~~such organization~~ is supporting or opposing;

(h) If the committee is supporting the entire ticket of any party, a statement to that effect and the name of the party;

(i) A statement of whether the committee is a continuing one;

(j) Plans for the disposition of residual funds which will be made in the event of dissolution;

(k) A listing of all banks, safe-deposit boxes, or other depositories used for committee or electioneering communications organization funds; ~~and~~

(l) A statement of the reports required to be filed by the committee or the electioneering communications organization with federal officials, if any, and the names, addresses, and positions of such officials; and

(m) A statement of whether the electioneering communications organization was formed as a newly created organization during the current calendar quarter or was formed from an organization existing prior to the current calendar quarter. For purposes of this subsection, calendar quarters end the last day of March, June, September, and December.

(4) Any change in information previously submitted in a statement of organization shall be reported to the agency or officer with whom such committee or electioneering

communications organization is required to register ~~pursuant to subsection (3),~~ within 10 days following the change.

(7) The Division of Elections shall adopt ~~promulgate~~ rules to prescribe the manner in which ~~inactive~~ committees and electioneering communications organizations may be dissolved and have their registration canceled. Such rules shall, at a minimum, provide for:

(a) Notice which shall contain the facts and conduct which warrant the intended action, including but not limited to failure to file reports and limited activity.

(b) Adequate opportunity to respond.

(c) Appeal of the decision to the Florida Elections Commission. Such appeals shall be exempt from the confidentiality provisions of s. 106.25.

Section 9. Paragraph (c) of subsection (4) of section 106.04, Florida Statutes, is amended, and subsection (5) of that section is reenacted, to read:

106.04 Committees of continuous existence.—

(4)

(c) All committees of continuous existence shall file their reports with the Division of Elections. Reports shall be filed in accordance with s. 106.0705 and shall contain the following information:

1. The full name, address, and occupation of each person who has made one or more contributions, including contributions that represent the payment of membership dues, to the committee during the reporting period, together with the amounts and dates of such contributions. For corporations, the report must provide

as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $100 or less, the occupation of the contributor or principal type of business need not be listed. However, for any contributions that represent the payment of dues by members in a fixed amount aggregating no more than $250 per calendar year, pursuant to the schedule on file with the Division of Elections, only the aggregate amount of such contributions need be listed, together with the number of members paying such dues and the amount of the membership dues.

2. The name and address of each political committee or committee of continuous existence from which the reporting committee received, or the name and address of each political committee, committee of continuous existence, affiliated party committee, or political party to which it made, any transfer of funds, together with the amounts and dates of all transfers.

3. Any other receipt of funds not listed pursuant to subparagraph 1. or subparagraph 2., including the sources and amounts of all such funds.

4. The name and address of, and office sought by, each candidate to whom the committee has made a contribution during the reporting period, together with the amount and date of each contribution.

5. The full name and address of each person to whom expenditures have been made by or on behalf of the committee within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address, and office sought by, each candidate on whose behalf such expenditure was

made.

6. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses has been made, including the full name and address of each entity to whom the person made payment for which reimbursement was made by check drawn upon the committee account, together with the amount and purpose of such payment.

7. Transaction information from each credit card statement that will be included in the next report following receipt thereof by the committee. Receipts for each credit card purchase shall be retained by the treasurer with the records for the committee account.

8. The total sum of expenditures made by the committee during the reporting period.

(5) No committee of continuous existence shall make an electioneering communication, contribute to any candidate or political committee an amount in excess of the limits contained in s. 106.08(1), or participate in any activity which is prohibited by this chapter. If any violation occurs, it shall be punishable as provided in this chapter for the given offense. No funds of a committee of continuous existence shall be expended on behalf of a candidate, except by means of a contribution made through the duly appointed campaign treasurer of a candidate. No such committee shall make expenditures in support of, or in opposition to, an issue unless such committee first registers as a political committee pursuant to this chapter and undertakes all the practices and procedures required thereof; provided such committee may make contributions in a total amount not to exceed

25 percent of its aggregate income, as reflected in the annual report filed for the previous year, to one or more political committees registered pursuant to s. 106.03 and formed to support or oppose issues.

Section 10. Subsection (5) of section 106.0701, Florida Statutes, is amended to read:

106.0701 Solicitation of contributions on behalf of s. 527 or s. 501(c)(4) organizations; reporting requirements; civil penalty; exemption.—

(5) The filing requirements of subsection (1) do not apply to an individual acting on behalf of his or her own campaign, ~~or~~ a political party, or an affiliated party committee of which the individual is a member.

Section 11. Section 106.0703, Florida Statutes, is reenacted and amended to read:

106.0703 Electioneering communications organizations; ~~additional~~ reporting requirements; certification and filing; penalties.—

(1)(a) Each electioneering communications organization shall file regular reports of all contributions received and all expenditures made by or on behalf of the organization. Reports shall be filed on the 10th day following the end of each calendar quarter from the time the organization is registered. However, if the 10th day following the end of a calendar quarter occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day that is not a Saturday, Sunday, or legal holiday. Quarterly reports shall include all contributions received and expenditures made during the calendar

quarter that have not otherwise been reported pursuant to this section.

(b) Following the last day of candidates qualifying for office, the reports shall be filed on the 32nd, 18th, and 4th days immediately preceding the primary election and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election.

(c) When a special election is called to fill a vacancy in office, all electioneering communications organizations making contributions or expenditures to influence the results of the special election shall file reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

(d) The filing officer shall provide each electioneering communications organization with a schedule designating the beginning and end of reporting periods as well as the corresponding designated due dates.

(2)(a) Except as provided in s. 106.0705, the reports required of an electioneering communications organization shall be filed with the filing officer not later than 5 p.m. of the day designated. However, any report postmarked by the United States Postal Service no later than midnight of the day designated shall be deemed to have been filed in a timely manner. Any report received by the filing officer within 5 days after the designated due date that was delivered by the United States Postal Service shall be deemed timely filed unless it has a postmark that indicates that the report was mailed after the designated due date. A certificate of mailing obtained from and dated by the United States Postal Service at the time of

mailing, or a receipt from an established courier company, which bears a date on or before the date on which the report is due, shall be proof of mailing in a timely manner. Reports shall contain information of all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding the election shall contain information of all previously unreported contributions received and expenditures made as of the day preceding the designated due date. All such reports shall be open to public inspection.

(b)1. Any report that is deemed to be incomplete by the officer with whom the electioneering communications organization files shall be accepted on a conditional basis. The treasurer of the electioneering communications organization shall be notified, by certified mail or other common carrier that can establish proof of delivery for the notice, as to why the report is incomplete. Within 7 days after receipt of such notice, the treasurer must file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.

2. Notice is deemed sufficient upon proof of delivery of written notice to the mailing or street address of the treasurer of the electioneering communication organization on record with the filing officer.

(3)(a) Each report required by this section must contain:

1. The full name, address, and occupation, if any, of each person who has made one or more contributions to or for such

electioneering communications organization within the reporting period, together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $100 or less, the occupation of the contributor or the principal type of business need not be listed.

2. The name and address of each political committee from which or to which the reporting electioneering communications organization made any transfer of funds, together with the amounts and dates of all transfers.

3. Each loan for electioneering communication purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.

4. A statement of each contribution, rebate, refund, or other receipt not otherwise listed under subparagraphs 1.-3.

5. The total sums of all loans, in-kind contributions, and other receipts by or for such electioneering communications organization during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.

6. The full name and address of each person to whom expenditures have been made by or on behalf of the electioneering communications organization within the reporting period and the amount, date, and purpose of each expenditure.

7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for expenses has been made and that is not otherwise reported, including the amount, date, and purpose of the expenditure.

8. The total sum of expenditures made by the electioneering communications organization during the reporting period.

9. The amount and nature of debts and obligations owed by or to the electioneering communications organization that relate to the conduct of any electioneering communication.

10. Transaction information for each credit card purchase. Receipts for each credit card purchase shall be retained by the electioneering communications organization.

11. The amount and nature of any separate interest-bearing accounts or certificates of deposit and identification of the financial institution in which such accounts or certificates of deposit are located.

12. The primary purposes of an expenditure made indirectly through an electioneering communications organization for goods and services, such as communications media placement or procurement services and other expenditures that include multiple components as part of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure.

(b) The filing officer shall make available to any electioneering communications organization a reporting form which the electioneering communications organization may use to

indicate contributions received by the electioneering communications organization but returned to the contributor before deposit.

(4) The treasurer of the electioneering communications organization shall certify as to the correctness of each report, and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any treasurer who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) The electioneering communications organization depository shall return all checks drawn on the account to the treasurer, who shall retain the records pursuant to s. 106.06. The records maintained by the depository with respect to the account shall be subject to inspection by an agent of the Division of Elections or the Florida Elections Commission at any time during normal banking hours, and such depository shall furnish certified copies of any such records to the Division of Elections or the Florida Elections Commission upon request.

(6) Notwithstanding any other provisions of this chapter, in any reporting period during which an electioneering communications organization has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any electioneering communications organization not

reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

(7)(a) Any electioneering communications organization failing to file a report on the designated due date shall be subject to a fine as provided in paragraph (b) for each late day. The fine shall be assessed by the filing officer and the moneys collected shall be deposited:

1. In the General Revenue Fund, in the case of an electioneering communications organization that registers with the Division of Elections; or

2. In the general revenue fund of the political subdivision, in the case of an electioneering communications organization that registers with an officer of a political subdivision.

No separate fine shall be assessed for failure to file a copy of any report required by this section.

(b) Upon determining that a report is late, the filing officer shall immediately notify the electioneering communications organization as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. The fine shall be $50 per day for the first 3 days late and, thereafter, $500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each primary and

general election, the fine shall be $500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. Upon receipt of the report, the filing officer shall determine the amount of the fine which is due and shall notify the electioneering communications organization. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.

2. When the report is postmarked.

3. When the certificate of mailing is dated.

4. When the receipt from an established courier company is dated.

5. When the electronic receipt issued pursuant to s. 106.0705 or other electronic filing system authorized in this section is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). Notice is deemed sufficient upon proof of delivery of written notice to the mailing or street address on record with the filing officer. An officer or member of an electioneering communications organization shall not be personally liable for such fine.

(c) The treasurer of an electioneering communications organization may appeal or dispute the fine, based upon, but not limited to, unusual circumstances surrounding the failure to

file on the designated due date, and may request and shall be entitled to a hearing before the Florida Elections Commission, which shall have the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in s. 106.265(1) when determining the amount of a fine, if any, to be waived. Any such request shall be made within 20 days after receipt of the notice of payment due. In such case, the treasurer of the electioneering communications organization shall, within the 20-day period, notify the filing officer in writing of his or her intention to bring the matter before the commission.

(d) The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by an electioneering communications organization, the failure of an electioneering communications organization to file a report after notice, or the failure to pay the fine imposed. The commission shall investigate only those alleged late filing violations specifically identified by the filing officer and as set forth in the notification. Any other alleged violations must be stated separately and reported by the division to the commission under s. 106.25(2).

(8) ~~In addition to the reporting requirements in s. 106.07,~~ An electioneering communications organization shall, within 2 days after receiving its initial password or secure sign-on from the Department of State allowing confidential access to the department's electronic campaign finance filing system, electronically file the periodic ~~campaign finance~~

reports that would have been required pursuant to this section ~~s. 106.07~~ for reportable activities that occurred since the date of the last general election.

Section 12. Paragraph (b) of subsection (2) of section 106.0705, Florida Statutes, is reenacted and amended, and subsections (3) and (4) of that section are amended, to read:

106.0705 Electronic filing of campaign treasurer's reports.—

(2)

(b) Each political committee, committee of continuous existence, electioneering communications organization, affiliated party committee, or state executive committee that is required to file reports with the division under s. 106.04, s. 106.07, s. 106.0703, or s. 106.29, as applicable, must file such reports with the division by means of the division's electronic filing system.

(3) Reports filed pursuant to this section shall be completed and filed through the electronic filing system not later than midnight of the day designated. Reports not filed by midnight of the day designated are late filed and are subject to the penalties under s. 106.04(8), s. 106.07(8), s. 106.0703(7), or s. 106.29(3), as applicable.

(4) Each report filed pursuant to this section is considered to be under oath by the candidate and treasurer, ~~or~~ the chair and treasurer, or the leader and treasurer under s. 103.092, whichever is applicable, and such persons are subject to the provisions of s. 106.04(4)(d), s. 106.07(5), s. 106.0703(4), or s. 106.29(2), as applicable. Persons given a

secure sign-on to the electronic filing system are responsible for protecting such from disclosure and are responsible for all filings using such credentials, unless they have notified the division that their credentials have been compromised.

Section 13. Subsection (1) of section 106.071, Florida Statutes, is reenacted and amended to read:

106.071 Independent expenditures; electioneering communications; reports; disclaimers.—

(1) Each person who makes an independent expenditure with respect to any candidate or issue, and each individual who makes an expenditure for an electioneering communication which is not otherwise reported pursuant to this chapter, which expenditure, in the aggregate, is in the amount of $5,000 ~~$100~~ or more, shall file periodic reports of such expenditures in the same manner, at the same time, subject to the same penalties, and with the same officer as a political committee supporting or opposing such candidate or issue. The report shall contain the full name and address of the person making the expenditure; the full name and address of each person to whom and for whom each such expenditure has been made; the amount, date, and purpose of each such expenditure; a description of the services or goods obtained by each such expenditure; the issue to which the expenditure relates; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

Section 14. Subsections (1) , (2), (4), (5), and (6) of section 106.08, Florida Statutes, are amended, and subsection (7) of that section is reenacted and amended, to read:

106.08 Contributions; limitations on.—

(1)(a) Except for political parties or affiliated party committees, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of $500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section.

(b)1. The contribution limits provided in this subsection do not apply to contributions made by a state or county executive committee of a political party or affiliated party committee regulated by chapter 103 or to amounts contributed by a candidate to his or her own campaign.

2. Notwithstanding the limits provided in this subsection, an unemancipated child under the age of 18 years of age may not make a contribution in excess of $100 to any candidate or to any political committee supporting one or more candidates.

(c) The contribution limits of this subsection apply to each election. For purposes of this subsection, the primary election and general election are separate elections so long as the candidate is not an unopposed candidate as defined in s. 106.011(15). However, for the purpose of contribution limits with respect to candidates for retention as a justice or judge, there is only one election, which is the general election.

(2)(a) A candidate may not accept contributions from national, state, or ~~including any subordinate committee of a national, state, or county committee of a political party, and~~

county executive committees of a political party, including any subordinate committee of such political party or affiliated party committees, which contributions in the aggregate exceed $50,000~~, no more than $25,000 of which may be accepted prior to the 28-day period immediately preceding the date of the general election~~.

(b) A candidate for statewide office may not accept contributions from national, state, or county executive committees of a political party, including any subordinate committee of the ~~a national, state, or county committee of a~~ political party, or affiliated party committees, which contributions in the aggregate exceed $250,000~~, no more than $125,000 of which may be accepted prior to the 28-day period immediately preceding the date of the general election~~. Polling services, research services, costs for campaign staff, professional consulting services, and telephone calls are not contributions to be counted toward the contribution limits of paragraph (a) or this paragraph. Any item not expressly identified in this paragraph as nonallocable is a contribution in an amount equal to the fair market value of the item and must be counted as allocable toward the contribution limits of paragraph (a) or this paragraph. Nonallocable, in-kind contributions must be reported by the candidate under s. 106.07 and by the political party or affiliated party committee under s. 106.29.

(4)~~(a)~~ Any contribution received by the chair, campaign treasurer, or deputy campaign treasurer of a political committee supporting or opposing a candidate with opposition in an

election or supporting or opposing an issue on the ballot in an election on the day of that election or less than 5 days prior to the day of that election may not be obligated or expended by the committee until after the date of the election.

~~(b) Any contribution received by an electioneering communications organization on the day of an election or less than 5 days prior to the day of that election may not be obligated or expended by the organization until after the date of the election and may not be expended to pay for any obligation arising prior to the election.~~

(5)(a) A person may not make any contribution through or in the name of another, directly or indirectly, in any election.

(b) Candidates, political committees, affiliated party committees, and political parties may not solicit contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good.

(c) Candidates, political committees, affiliated party committees, and political parties may not make contributions, in exchange for political support, to any religious, charitable, civic, or other cause or organization established primarily for the public good. It is not a violation of this paragraph for:

1. A candidate, political committee, affiliated party committee, or political party executive committee to make gifts of money in lieu of flowers in memory of a deceased person;

2. A candidate to continue membership in, or make regular donations from personal or business funds to, religious, political party, affiliated party committee, civic, or charitable groups of which the candidate is a member or to which

the candidate has been a regular donor for more than 6 months; or

3. A candidate to purchase, with campaign funds, tickets, admission to events, or advertisements from religious, civic, political party, affiliated party committee, or charitable groups.

~~(d) An electioneering communications organization may not accept a contribution from an organization exempt from taxation under s. 527 or s. 501(c)(4) of the Internal Revenue Code, other than a political committee, committee of continuous existence, or political party, unless the contributing organization has registered as if the organization were an electioneering communications organization pursuant to s. 106.03 and has filed all campaign finance reports required of electioneering communications organizations pursuant to ss. 106.07 and 106.0703.~~

(6)(a) A political party or affiliated party committee may not accept any contribution that has been specifically designated for the partial or exclusive use of a particular candidate. Any contribution so designated must be returned to the contributor and may not be used or expended by or on behalf of the candidate. Funds contributed to an affiliated party committee shall not be deemed as designated for the partial or exclusive use of a leader as defined in s. 103.092.

(b)1. A political party or affiliated party committee may not accept any in-kind contribution that fails to provide a direct benefit to the political party or affiliated party committee. A "direct benefit" includes, but is not limited to,

fundraising or furthering the objectives of the political party or affiliated party committee.

2.a. An in-kind contribution to a state political party may be accepted only by the chairperson of the state political party or by the chairperson's designee or designees whose names are on file with the division in a form acceptable to the division prior to the date of the written notice required in sub-subparagraph b. An in-kind contribution to a county political party may be accepted only by the chairperson of the county political party or by the county chairperson's designee or designees whose names are on file with the supervisor of elections of the respective county prior to the date of the written notice required in sub-subparagraph b. An in-kind contribution to an affiliated party committee may be accepted only by the leader of the affiliated party committee as defined in s. 103.092 or by the leader's designee or designees whose names are on file with the division in a form acceptable to the division prior to the date of the written notice required in sub-subparagraph b.

b. A person making an in-kind contribution to a state ~~political party~~ or county political party or affiliated party committee must provide prior written notice of the contribution to a person described in sub-subparagraph a. The prior written notice must be signed and dated and may be provided by an electronic or facsimile message. However, prior written notice is not required for an in-kind contribution that consists of food and beverage in an aggregate amount not exceeding $1,500 which is consumed at a single sitting or event if such in-kind

contribution is accepted in advance by a person specified in sub-subparagraph a.

c. A person described in sub-subparagraph a. may accept an in-kind contribution requiring prior written notice only in a writing that is signed and dated before the in-kind contribution is made. Failure to obtain the required written acceptance of an in-kind contribution to a state or county political party or affiliated party committee constitutes a refusal of the contribution.

d. A copy of each prior written acceptance required under sub-subparagraph c. must be filed with the division at the time the regular reports of contributions and expenditures required under s. 106.29 are filed by the state executive committee, ~~and~~ county executive committee, and affiliated party committee.

e. An in-kind contribution may not be given to a state or county political party or affiliated party committee unless the in-kind contribution is made as provided in this subparagraph.

(7)(a) Any person who knowingly and willfully makes or accepts no more than one contribution in violation of subsection (1) or subsection (5), or any person who knowingly and willfully fails or refuses to return any contribution as required in subsection (3), commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any corporation, partnership, or other business entity or any political party, affiliated party committee, political committee, committee of continuous existence, or electioneering communications organization is convicted of knowingly and willfully violating any provision punishable under this

paragraph, it shall be fined not less than $1,000 and not more than $10,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity, or of a political party, affiliated party committee, political committee, committee of continuous existence, electioneering communications organization, or organization exempt from taxation under s. 527 or s. 501(c)(4) of the Internal Revenue Code, who aids, abets, advises, or participates in a violation of any provision punishable under this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly and willfully makes or accepts two or more contributions in violation of subsection (1) or subsection (5) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If any corporation, partnership, or other business entity or any political party, affiliated party committee, political committee, committee of continuous existence, or electioneering communications organization is convicted of knowingly and willfully violating any provision punishable under this paragraph, it shall be fined not less than $10,000 and not more than $50,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent,

attorney, or other representative of a corporation, partnership, or other business entity, or of a political committee, committee of continuous existence, political party, affiliated party committee, or electioneering communications organization, or organization exempt from taxation under s. 527 or s. 501(c)(4) of the Internal Revenue Code, who aids, abets, advises, or participates in a violation of any provision punishable under this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 15. Section 106.088, Florida Statutes, is created to read:

106.088 Independent expenditures; contribution limits; restrictions on affiliated party committees.—

(1) As a condition of receiving a rebate of party assessments under s. 103.121(1)(b), the leader or treasurer of an affiliated party committee as defined in s. 103.092 shall take and subscribe to an oath or affirmation in writing. During the qualifying period for state candidates and prior to distribution of such funds, a printed copy of the oath or affirmation shall be filed with the Secretary of State and shall be substantially in the following form:

State of Florida
County of

Before me, an officer authorized to administer oaths, personally appeared ...(name)..., to me well known, who, being sworn, says that he or she is the ...(title)... of the ...(name of

party).....(name of chamber)... affiliated party committee; that the affiliated party committee has not made, either directly or indirectly, an independent expenditure in support of or opposition to a candidate or elected public official in the prior 6 months; that the affiliated party committee will not make, either directly or indirectly, an independent expenditure in support of or opposition to a candidate or elected public official, through and including the upcoming general election; and that the affiliated party committee will not violate the contribution limits applicable to candidates under s. 106.08(2), Florida Statutes.

...(Signature of committee officer)...

...(Address)...

Sworn to and subscribed before me this day of , ...(year)..., at County, Florida.

...(Signature and title of officer administering oath)...

(2)(a) Any affiliated party committee found to have violated the provisions of the oath or affirmation prior to receiving funds shall be ineligible to receive the rebate for that general election year.

(b) Any affiliated party committee found to have violated the provisions of the oath or affirmation after receiving funds shall be ineligible to receive the rebate from candidates qualifying for the following general election cycle.

(3) Any funds not distributed to the affiliated party committee pursuant to this section shall be deposited into the General Revenue Fund of the state.

Section 16. Section 106.113, Florida Statutes, is amended to read:

106.113 Expenditures by local governments.—

(1) As used in this section, the term~~:~~

~~(a)~~ "local government" means:

(a)~~1.~~ A county, municipality, school district, or other political subdivision in this state; and

(b)~~2.~~ Any department, agency, board, bureau, district, commission, authority, or similar body of a county, municipality, school district, or other political subdivision of this state.

~~(b) "Public funds" means all moneys under the jurisdiction or control of the local government.~~

(2) A local government or a person acting on behalf of local government may not make a specific appropriation or designated expenditure of moneys under the jurisdiction or control of the local government ~~expend or authorize the expenditure of~~, and a person or group may not accept such moneys, ~~public funds~~ for the purpose of a political advertisement ~~or electioneering communication~~ concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors. ~~This subsection does not apply to an electioneering communication from a local government or a person acting on behalf of a local government which is limited to factual information.~~

(3) With the exception of the prohibitions specified in subsection (2), this section does not preclude an ~~elected~~

official of the local government from expressing an opinion on any issue at any time.

Section 17. Section 106.1437, Florida Statutes, is reenacted to read:

106.1437 Miscellaneous advertisements.—Any advertisement, other than a political advertisement, independent expenditure, or electioneering communication, on billboards, bumper stickers, radio, or television, or in a newspaper, a magazine, or a periodical, intended to influence public policy or the vote of a public official, shall clearly designate the sponsor of such advertisement by including a clearly readable statement of sponsorship. If the advertisement is broadcast on television, the advertisement shall also contain a verbal statement of sponsorship. This section shall not apply to an editorial endorsement.

Section 18. Section 106.1439, Florida Statutes, is reenacted and amended to read:

106.1439 Electioneering communications; disclaimers.—

(1) Any electioneering communication, other than a telephone call, shall prominently state: "Paid electioneering communication paid for by ...(Name and address of person paying for the communication)...."

(2) Any electioneering communication telephone call shall identify the persons or organizations sponsoring the call by stating either: "Paid for by ...(insert name of persons or organizations sponsoring the call)...." or "Paid for on behalf of ...(insert name of persons or organizations authorizing call)...." This subsection does not apply to any telephone call

in which the individual making the call is not being paid and the individuals participating in the call know each other prior to the call.

(3) ~~(2)~~ Any person who fails to include the disclaimer prescribed in this section in any electioneering communication that is required to contain such disclaimer commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 19. Paragraphs (a) and (e) of subsection (1) and subsection (3) of section 106.147, Florida Statutes, are amended to read:

106.147 Telephone solicitation; disclosure requirements; prohibitions; exemptions; penalties.—

(1)(a) Any ~~electioneering communication telephone call or any~~ telephone call supporting or opposing a candidate, elected public official, or ballot proposal must identify the persons or organizations sponsoring the call by stating either: "paid for by _____" (insert name of persons or organizations sponsoring the call) or "paid for on behalf of _____" (insert name of persons or organizations authorizing call). This paragraph does not apply to any telephone call in which both the individual making the call is not being paid and the individuals participating in the call know each other prior to the call.

~~(e) Any electioneering communication paid for with public funds must include a disclaimer containing the words "paid for by ...(Name of the government entity paying for the communication)...."~~

(3)(a) Any person who willfully violates any provision of

this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) For purposes of paragraph (a), the term "person" includes any candidate; any officer of any political committee, committee of continuous existence, affiliated party committee, or political party executive committee; any officer, partner, attorney, or other representative of a corporation, partnership, or other business entity; and any agent or other person acting on behalf of any candidate, political committee, committee of continuous existence, affiliated party committee, political party executive committee, or corporation, partnership, or other business entity.

Section 20. Section 106.165, Florida Statutes, is amended to read:

106.165 Use of closed captioning and descriptive narrative in all television broadcasts.—Each candidate, political party, affiliated party committee, and political committee must use closed captioning and descriptive narrative in all television broadcasts regulated by the Federal Communications Commission that are on behalf of, or sponsored by, a candidate, political party, affiliated party committee, or political committee or must file a written statement with the qualifying officer setting forth the reasons for not doing so. Failure to file this statement with the appropriate qualifying officer constitutes a violation of the Florida Election Code and is under the jurisdiction of the Florida Elections Commission. The Department of State may adopt rules in accordance with s. 120.54 which are necessary to administer this section.

Section 21. Section 106.17, Florida Statutes, is reenacted and amended to read:

106.17 Polls and surveys relating to candidacies.—Any candidate, political committee, committee of continuous existence, electioneering communication organization, affiliated party committee, or state or county executive committee of a political party may authorize or conduct a political poll, survey, index, or measurement of any kind relating to candidacy for public office so long as the candidate, political committee, committee of continuous existence, electioneering communication organization, affiliated party committee, or political party maintains complete jurisdiction over the poll in all its aspects.

Section 22. Subsection (2) of section 106.23, Florida Statutes, is amended to read:

106.23 Powers of the Division of Elections.—

(2) The Division of Elections shall provide advisory opinions when requested by any supervisor of elections, candidate, local officer having election-related duties, political party, affiliated party committee, political committee, committee of continuous existence, or other person or organization engaged in political activity, relating to any provisions or possible violations of Florida election laws with respect to actions such supervisor, candidate, local officer having election-related duties, political party, affiliated party committee, committee, person, or organization has taken or proposes to take. Requests for advisory opinions must be submitted in accordance with rules adopted by the Department of

State. A written record of all such opinions issued by the division, sequentially numbered, dated, and indexed by subject matter, shall be retained. A copy shall be sent to said person or organization upon request. Any such person or organization, acting in good faith upon such an advisory opinion, shall not be subject to any criminal penalty provided for in this chapter. The opinion, until amended or revoked, shall be binding on any person or organization who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion.

Section 23. Subsections (1) and (2) of section 106.265, Florida Statutes, are amended to read:

106.265 Civil penalties.—

(1) The commission is authorized upon the finding of a violation of this chapter or chapter 104 to impose civil penalties in the form of fines not to exceed $1,000 per count. In determining the amount of such civil penalties, the commission shall consider, among other mitigating and aggravating circumstances:

(a) The gravity of the act or omission;

(b) Any previous history of similar acts or omissions;

(c) The appropriateness of such penalty to the financial resources of the person, political committee, committee of continuous existence, affiliated party committee, or political party; and

(d) Whether the person, political committee, committee of continuous existence, affiliated party committee, or political party has shown good faith in attempting to comply with the

provisions of this chapter or chapter 104.

(2) If any person, political committee, committee of continuous existence, affiliated party committee, or political party fails or refuses to pay to the commission any civil penalties assessed pursuant to the provisions of this section, the commission shall be responsible for collecting the civil penalties resulting from such action.

Section 24. Subsection (2) of section 106.27, Florida Statutes, is amended to read:

106.27 Determinations by commission; legal disposition.—

(2) Civil actions may be brought by the commission for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate order for the imposition of civil penalties provided by this chapter. Such civil actions shall be brought by the commission in the appropriate court of competent jurisdiction, and the venue shall be in the county in which the alleged violation occurred or in which the alleged violator or violators are found, reside, or transact business. Upon a proper showing that such person, political committee, committee of continuous existence, affiliated party committee, or political party has engaged, or is about to engage, in prohibited acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court, and the civil fines provided by this chapter may be imposed.

Section 25. Section 106.29, Florida Statutes, is amended to read:

106.29 Reports by political parties and affiliated party

committees; restrictions on contributions and expenditures; penalties.—

(1) The state executive committee and each county executive committee of each political party and any affiliated party committee regulated by chapter 103 shall file regular reports of all contributions received and all expenditures made by such committee. Such reports shall contain the same information as do reports required of candidates by s. 106.07 and shall be filed on the 10th day following the end of each calendar quarter, except that, during the period from the last day for candidate qualifying until the general election, such reports shall be filed on the Friday immediately preceding both the primary election and the general election. In addition to the reports filed under this section, the state executive committee, ~~and~~ each county executive committee, and each affiliated party committee shall file a copy of each prior written acceptance of an in-kind contribution given by the committee during the preceding calendar quarter as required under s. 106.08(6). Each state executive committee and affiliated party committee shall file the original and one copy of its reports with the Division of Elections. Each county executive committee shall file its reports with the supervisor of elections in the county in which such committee exists. Any state or county executive committee or affiliated party committee failing to file a report on the designated due date shall be subject to a fine as provided in subsection (3). No separate fine shall be assessed for failure to file a copy of any report required by this section.

(2) The chair and treasurer of each state or county executive committee shall certify as to the correctness of each report filed by them on behalf of such committee. The leader and treasurer of each affiliated party committee under s. 103.092 shall certify as to the correctness of each report filed by them on behalf of such committee. Any committee chair, leader, or treasurer who certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) Any state or county executive committee or affiliated party committee failing to file a report on the designated due date shall be subject to a fine as provided in paragraph (b) for each late day. The fine shall be assessed by the filing officer, and the moneys collected shall be deposited in the General Revenue Fund.

(b) Upon determining that a report is late, the filing officer shall immediately notify the chair of the executive committee or the leader of the affiliated party committee as defined in s. 103.092 as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. The fine shall be $1,000 for a state executive committee, $1,000 for an affiliated party committee, and $50 for a county executive committee, per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, if an executive committee or an affiliated party committee fails to file a report on the Friday immediately

preceding the general election, the fine shall be $10,000 per day for each day a state executive committee is late, $10,000 per day for each day an affiliated party committee is late, and $500 per day for each day a county executive committee is late. Upon receipt of the report, the filing officer shall determine the amount of the fine which is due and shall notify the chair or leader as defined in s. 103.092. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.

2. When the report is postmarked.

3. When the certificate of mailing is dated.

4. When the receipt from an established courier company is dated.

5. When the electronic receipt issued pursuant to s. 106.0705 is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). An officer or member of an executive committee shall not be personally liable for such fine.

(c) The chair of an executive committee or the leader of an affiliated party committee as defined in s. 103.092 may appeal or dispute the fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the Florida Elections Commission, which shall have the authority to

waive the fine in whole or in part. Any such request shall be made within 20 days after receipt of the notice of payment due. In such case, the chair of the executive committee or the leader of the affiliated party committee as defined in s. 103.092 shall, within the 20-day period, notify the filing officer in writing of his or her intention to bring the matter before the commission.

(d) The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by an executive committee or affiliated party committee, the failure of an executive committee or affiliated party committee to file a report after notice, or the failure to pay the fine imposed.

(4) Any contribution received by a state or county executive committee or affiliated party committee less than 5 days before an election shall not be used or expended in behalf of any candidate, issue, affiliated party committee, or political party participating in such election.

(5) No state or county executive committee or affiliated party committee, in the furtherance of any candidate or political party, directly or indirectly, shall give, pay, or expend any money, give or pay anything of value, authorize any expenditure, or become pecuniarily liable for any expenditure prohibited by this chapter. However, the contribution of funds by one executive committee to another or to established party organizations for legitimate party or campaign purposes is not prohibited, but all such contributions shall be recorded and accounted for in the reports of the contributor and recipient.

(6)(a) The national, state, and county executive

committees of a political party and affiliated party committees may not contribute to any candidate any amount in excess of the limits contained in s. 106.08(2), and all contributions required to be reported under s. 106.08(2) by the national executive committee of a political party shall be reported by the state executive committee of that political party.

(b) A violation of the contribution limits contained in s. 106.08(2) is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A civil penalty equal to three times the amount in excess of the limits contained in s. 106.08(2) shall be assessed against any executive committee found in violation thereof.

Section 26. Paragraph (d) of subsection (1) of section 11.045, Florida Statutes, is amended to read:

11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties.—

(1) As used in this section, unless the context otherwise requires:

(d) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C.

s. 527 or s. 501(c)(4).

Section 27. Paragraph (b) of subsection (12) of section 112.312, Florida Statutes, is amended to read:

112.312 Definitions.—As used in this part and for purposes of the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

(12)

(b) "Gift" does not include:

1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization.

2. Contributions or expenditures reported pursuant to chapter 106, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party or affiliated party committee.

3. An honorarium or an expense related to an honorarium event paid to a person or the person's spouse.

4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.

5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.

6. The use of a public facility or public property, made available by a governmental agency, for a public purpose.

7. Transportation provided to a public officer or employee

by an agency in relation to officially approved governmental business.

8. Gifts provided directly or indirectly by a state, regional, or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization.

Section 28. Paragraph (d) of subsection (1) of section 112.3215, Florida Statutes, is amended to read:

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(1) For the purposes of this section:

(d) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term "expenditure" does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or an affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).

Section 29. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1207 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative McKeel offered the following:

Amendment

Remove lines 562-566 and insert:

d. Any electioneering communications organization that would be required to file a statement of organization in two or more locations by reason of the organization's intention to support or oppose candidates at state or multicounty and local levels of government need only file a statement of organization with the Division of

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative McKeel offered the following:

Amendment

Remove line 735 and insert:

(d) In addition to the reports required by paragraph (a), an electioneering communications organization that is registered with the Department of State and that makes a contribution or expenditure to influence the results of a county or municipal election that is not being held at the same time as a state or federal election must file reports with the county or municipal filing officer on the same dates as county or municipal candidates or committees for that election. The electioneering communications organization must also include the expenditure in the next report filed with the Division of Elections pursuant to this section following the county or municipal election.

(e) The filing officer shall make available to each electioneering

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1207 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative McKeel offered the following:

Amendment

Remove line 773 and insert:

written notice to the mailing or street address of the treasurer or registered agent

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative McKeel offered the following:

Amendment

Remove lines 846-865 and insert:

depository shall provide statements reflecting deposits and expenditures from the account to the treasurer, who shall retain the records pursuant to s. 106.06. The records maintained by the depository with respect to the account shall be subject to inspection by an agent of the Division of Elections or the Florida Elections Commission at any time during normal banking hours, and such depository shall furnish certified copies of any such records to the Division of Elections or the Florida Elections Commission upon request.

(6) Notwithstanding any other provisions of this chapter, in any reporting period during which an electioneering communications organization has not received funds, made any contributions, or expended any reportable funds, the treasurer

shall file a written report with the filing officer by the prescribed reporting date that no reportable contributions or expenditures were made during the reporting period.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-03 Public Record Exemption for E911 Recordings
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations. In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911) services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service currently is available in all 67 counties.

Current law provides a public record exemption for the name, address, telephone number or personal information about, or information that may identify any person requesting emergency services or reporting an emergency. The exemption applies to such information in any record or recording, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency. The confidential and exempt information may be shared only with another public safety agency.

The bill expands the current public record exemption to include any recording of a request for emergency services or report of an emergency using an emergency communications E911 system. Sixty days after the date of a request for emergency services or a report of an emergency, a transcript of the recording may be made available pursuant to a public records request; however, the name, address, telephone number, or other personal information remains confidential and exempt and must be redacted from the transcript. The person requesting the transcript is responsible for paying the actual cost of transcribing the recording.

The confidential and exempt E911 recording may be disclosed to a public safety agency.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It provides a public necessity statement as required by the State Constitution and it provides for retroactive application of the exemption.

The bill requires a two-thirds vote of the members present and voting for passage.

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

Public Records Law

Article I, s. 24(a) of the State Constitution, 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, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. 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.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] 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.

E911 System

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations.[3] In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911)

[1] Article I, s. 24(c) of the State Constitution.

[2] Section 119.15, F.S.

[3] Section 365.171, F.S., also known as the Florida Emergency Communications Number E911 State Plan Act, required the Technology program within the Department of management Services to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan.

services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service is available currently in all 67 counties.[4]

Florida currently has 235 public safety answering points, also known as call centers, which receive emergency 911 calls. Staff in these call centers include call-takers, dispatchers, and dual call-taker/dispatchers. Call-takers answer calls and record necessary information such as the caller's name and the nature of the emergency, and relay this information to dispatchers who assess the information, determine the type of emergency response needed, and direct appropriate emergency services to respond to the call. In some call centers, call-taking and dispatch functions are performed by the same individual (dual call-taker/dispatcher).[5]

State, county, and local government entities administer Florida's E911 system.

The Department of Management Services coordinates the statewide system but has no authority to monitor emergency services. The department provides technical assistance to counties on technology standards and operational capabilities, helps design and implement new communications and data systems, and assists with staff training. The department also develops and updates a statewide emergency communications E911 system plan, which provides guidance to counties but permits them to design and maintain their own 911 systems and plans.[6] The department's statewide 911 coordinator reviews county plans and inspects call centers for compliance with the state plan.

E911 Board

The E911 Board was established by the Legislature in 2007 to administer the Emergency Communications Number E911 System Fund (E911 Trust Fund),[7] which is the main funding source for 911 communications in the state.[8] The board consists of nine members, including the Department of Management Services' E911 system director, who is designated by the Secretary of the Department of Management Services and serves as chair.[9] With oversight by the department, the board administers the fund and disburses revenues to the department, wireless providers, and counties for specific authorized expenses.

Boards of County Commissioners

Boards of County Commissioners are the responsible fiscal agent and ultimate authority for 911 services in each county. Each board designates a county 911 coordinator who serves as a point of contact for local call centers, reports on system status, and submits the county 911 plan to the department. These plans describe county 911 system infrastructure and staffing for each call center. Call centers are operated typically by city police departments and county sheriffs' offices. Call centers may establish their own training protocols and quality assurance measures.[10]

Public Record Exemption for the E911 System

Current law provides that

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[4] Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 1 and 2.

[5] *Id.* at 2.

[6] Section 365.171(4), F.S.

[7] Section 365.172(5)(a), F.S.

[8] The E911 Trust Fund is derived from a monthly fee (not to exceed 50 cents) on each wireless and non-wireless voice communication subscriber with a Florida billing address. The E911 Board makes disbursements from the E911 Trust Fund for wireless service provider E911 deployment and services, county E911 funding for equipment and services, rural county grants, E911 state grants, and E911 Board administration and operations.

[9] Pursuant to s. 365.172(5)(b), F.S., the Governor appoints the remaining eight members: four county coordinators from a large, medium, and rural county and an at-large representative recommended by the Florida Association of Counties, two local exchange carrier members, and two members from the wireless telecommunications industry.

[10] Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 2.

> [a]ny record, recording, or information, or portions thereof, obtained by a public agency[11] or a public safety agency[12] for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt[13] from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. . .[14]

In short, the name, address, telephone number or personal information about, or information that may identify any person requesting emergency services or reporting an emergency is confidential and exempt from public records requirements. Such information may be released only to a public safety agency.[15]

Due to technological advances, more and more E911 recordings are accessible to the public via the Internet, radio, and television. E911 recordings provide the listener with an eyewitness account of the emergency at hand. The emergency often times is a very personal and traumatizing event. As such, states have begun prohibiting the release of E911 recordings.

Protections in Other States

In Maine, the audio recording of a call placed to a 911 system for the purpose of requesting service from a law enforcement, fire, or medical agency is deemed private data on individuals with respect to the individual making the call. However, a written transcript of the audio recording is considered public except for certain circumstances. A transcript is prepared upon request and the person requesting the transcript is required to pay the actual cost of transcribing the call, in addition to any other applicable costs.[16]

Mississippi provides that all emergency telephone calls and telephone call transmissions and all recordings of such calls are confidential. The recordings may be used only for the purposes as may be needed for law enforcement, fire, medical rescue, or other emergency services.[17]

In Pennsylvania, "[r]ecords or parts of records . . . pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings" are not a public record. However, an agency or a court may release 911 recordings if it determines the public interest in disclosure outweighs the interest in nondisclosure.[18] South Dakota has similar protections and release standards as those in Pennsylvania.[19]

Rhode Island provides that all 911 telephone calls and telephone call transmissions and all tapes containing records of 911 telephone calls are confidential.[20]

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[11] Section 365.171(3)(c), F.S., defines "public agency" to mean the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

[12] Section 365.171(3)(d), F.S., defines "public safety agency" to mean a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

[13] 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).

[14] Section 365.171(12), F.S.

[15] *Id.*

[16] Minn. Stat. s. 13.82.

[17] Miss. Code s. 19-5-319.

[18] 65 P.S. s. 67.708.

[19] S.D. Cod. Laws s. 1-27-1.5.

[20] R.I. Gen. Laws s. 39-21.1-17.

Effect of Bill

The bill expands the current public record exemption to include any recording of a request for emergency services or report of an emergency using an emergency communications E911 system. Sixty days after the date of a request for emergency services or a report of an emergency, a transcript of the recording may be made available pursuant to a public records request; however, the name, address, telephone number, or other personal information remains confidential and exempt and must be redacted from the transcript. The person requesting the transcript is responsible for paying the actual cost of transcribing the recording.

The confidential and exempt E911 recording may be disclosed to a public safety agency.

The bill provides for retroactive application of the public record exemption.[21] It also provides a public necessity statement as required by the State Constitution.[22]

In accordance with the Open Government Sunset Review Act,[23] the exemption will sunset on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 365.171, F.S., to expand the current public record exemption to include the recording of an E911 call.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector will incur costs associated with this bill if a public records request is made for a transcript of a recording of a request for emergency services or report of an emergency through the

[21] In 2001, the Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).
[22] Section 24(c), Art. I of the State Constitution.
[23] Section 119.15, F.S.

E911 system. The requestor will be responsible for paying the actual cost of transcribing the recording in addition to any other costs associated with the redaction of confidential and exempt information from the transcript.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on public agencies and public safety agencies, because staff responsible for complying with public records requests could require training related to the changes made to the current public record exemption. In addition, such agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of public agencies and public safety agencies.

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:

Vote Requirement
Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to a public record exemption for E911 recordings; amending s. 365.171, F.S.; expanding the public record exemption for certain identification information of a person reporting or requesting emergency services to include the recording of such report or request; authorizing the release of a transcript of such recording 60 days after the date of a request for emergency services or a report of an emergency; requiring the requestor to pay the actual cost of transcribing the recording; authorizing the release of such recording to a public safety agency; providing for retroactive application of the public record exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (12) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

(12) CONFIDENTIALITY OF RECORDS.—

(a)1. Any recording of a request for emergency services or report of an emergency using an emergency communications E911 system held by a public agency or a public safety agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

of the State Constitution.

2. Upon receipt of a public records request, a transcript of the confidential and exempt recording may be made available by a public agency or a public safety agency 60 days after the date of a request for emergency services or a report of an emergency using such system; however, ~~Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals~~ the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system shall be redacted from the transcript. The person requesting the transcript shall pay the actual cost of transcribing the recording, in addition to any other applicable costs provided under s. 119.07. ~~is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that~~

3. Such recording and ~~record or~~ information may be disclosed to a public safety agency. ~~The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.~~

4. This exemption is remedial in nature and it is the intent of the Legislature that the exemption be applied to requests for recordings received before, on, or after the

effective date of this paragraph.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) A telecommunications company or commercial mobile radio service provider shall not be liable for damages to any person resulting from or in connection with such telephone company's or commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United States, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer unless the telecommunications company or commercial mobile radio service provider acted in a wanton and willful manner.

Section 2. The Legislature finds that it is a public necessity that any recording of a request for emergency services or report of an emergency using an emergency communications E911 system held by a public agency or a public safety agency be made confidential and exempt from public records requirements. The need for emergency services bespeaks a very personal and often traumatizing event. To have the recordings made publicly available is an invasion of privacy that could result in trauma, sorrow, humiliation, or emotional injury to the person reporting the emergency or requiring emergency services, or to the immediate family of those persons. Additionally, to have such

recordings publicly available could jeopardize the health and safety of those needing emergency services in that people, other than emergency service providers, could actually gain access to the scene of the emergency and thereby impede the effective and efficient provision of emergency services. Furthermore, there are those persons, who, for personal, private gain or for business purposes, would seek to capitalize on individuals in their time of need. Those reporting or needing emergency services should not be subjected to this type of possible harassment. Furthermore, to allow such recording to become public could chill the reporting of emergency situations to the detriment of public health and safety. Finally, the public record exemption still provides for public oversight by authorizing the release, upon request, of a transcript of such recordings 60 days after the report while maintaining protections for the individuals involved in the report or receipt of emergency services.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-06 OGSR Voter Information
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2188

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

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 residents can register to vote by mailing or hand delivering a voter registration application to various locations. In addition to the applicant's name, the voter application requests, in part, the following: date of birth, name and address where last registered to vote, last four digits of the social security number, Florida driver's license number or identification number from a Florida issued ID card, and signature of the applicant.

Current law provides a public record exemption for the following information held by an agency:

- All declinations to register to vote at a voter registration agency or driver license office.
- Information relating to the place where a person registered to vote or updated a voter registration.
- The social security number, driver's license number, and Florida ID number of a voter registration applicant or voter.

Further, the law provides that the signature of a voter or voter registration applicant is exempt from the copying requirements found in the public records laws.

The bill reenacts the public record exemptions, which will repeal on October 2, 2010, if this bill does not become law. It also 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[1] 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.[2] 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[3] then a public necessity statement and a two-thirds vote for passage are not required.

Voter Registration in Florida

Florida residents can register to vote by mailing or hand delivering a voter registration application to various locations, including the office of the voter's supervisor of elections, the Division of Elections

[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

within the Department of State, a driver license office, a voter registration agency,[4] or an armed forces recruitment office.[5] In addition to the applicant's name, the voter application requests, in part, the following: date of birth, address and county of legal residence, mailing address if different, race or ethnicity, state or country of birth, sex, party affiliation, whether the applicant needs assistance in voting, name and address where last registered, last four digits of the social security number, Florida driver's license number or identification number from a Florida issued ID card, and signature of the applicant.[6]

Florida Voter Registration System

The Florida Voter Registration System (FVRS) contains the official registration information of every legally registered voter in the State. There are at least 11.2 million active registered voters. Since its implementation in January 2006, the FVRS is considered one of the most comprehensive statewide databases. It includes, but is not limited to, the voter's name, date of birth, former and maiden names, addresses, social security number, driver's license number or state identification number, signature, and information as to where a person registered to vote or updated his or her registration record. Under Florida's public records laws, all of this electronic information is a public record with the exception of that information made confidential and exempt.[7]

Public Record Exemptions under Review

Prior to 2005, current law provided a public record exemption for declinations to register to vote at a voter registration agency and the location where a person registered or updated a voter registration.[8] Use of the declination was limited to voter registration purposes, as required by federal law.

The exemption also provided that a voter's signature, social security number, and telephone number were exempt from the copying requirements of the Public Records Act[9] and s. 24(a), Art. I of the State Constitution; however, such information was subject to public inspection.[10]

In 2005, the public record exemption was amended and, as such, currently provides that the following information held by an agency[11] is confidential and exempt[12] from public records requirements and may be used only for voter registration purposes:

- All declinations to register to vote at a voter registration agency or driver license office.
- Information relating to the place where a person registered to vote or updated a voter registration.
- The social security number, driver's license number, and Florida ID number of a voter registration applicant or voter.[13]

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[4] Section 97.021(40), F.S., defines "voter registration agency" to mean "any office that provides public assistance, any office that serves persons with disabilities, any center for independent living, or any public library."

[5] Section 97.053(1), F.S.

[6] *See* s. 97.052(2)(a) – (t), F.S.

[7] Email from Maria Matthews, Assistant General Counsel for the Department of State, August 11, 2009 (on file with the Governmental Affairs Policy Committee).

[8] Section 97.0585, F.S. (2004)

[9] Chapter 119, F.S., often is referred to as the Public Records Act.

[10] Section 97.0585, F.S. (2004)

[11] Section 119.011(2), F.S., defines "agency" 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."

[12] 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).

[13] Section 97.0585(1)(a) – (c), F.S.

Further, the section provides that the signature of a voter or voter registration applicant is exempt from the copying requirements found in the public records laws.[14]

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.[15]

EFFECT OF BILL

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

B. SECTION DIRECTORY:

Section 1 amends s. 97.0585, F.S., to reenact the public record exemptions for information regarding voters and voter applicants.

Section 2 repeals s. 3 of chapter 2005-279, L.O.F., which provides for repeal of the exemptions.

Section 3 provides an effective date of October 1, 2010.

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.

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.

[14] Section 97.0585(2), F.S.

[15] Section 3 of chapter 2005-279, L.O.F.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments by the Department of State[16]

Declinations to Register to Vote and Information Relating to the Place of Registration
The public record exemption for declinations to register to vote flows from the National Voter Registration Act of 1993 (NVRA). One of the primary goals of the NVRA was to make it easier to register and to maintain one's registration record. This was accomplished in part by designating the driver license examiner offices and other governmental agencies or offices as voter registration agencies. That means those agencies have to provide simultaneous voter registration services in conjunction with their own agency services. Consequently, a person was no longer limited to submitting his or her registration application to a supervisor of elections office.

Some of the offices designated included offices that served persons with disabilities or offices that provided public assistance. In order to encourage registration and minimize any disincentive to registering at these sites, the federal law prohibited the disclosure of the location where someone registered or updated his or her registration information so as not to reveal whether someone was applying for or receiving public assistance.

Congress also wanted to monitor the effectiveness of the NVRA without revealing whether or not someone decided to register or update his or her voter record. Once again, the objective was to remove any disincentives from registering.

The reasons for the public record exemption for declinations to register to vote and location of registration, under federal law, still apply and, as such, protection should be continued at the state level.

Social Security Number, Driver's License Number, and Florida ID number
The public record exemption for the social security, driver's license, or Florida identification number of a voter registration applicant or voter flows from a requirement in the Help America Vote Act and under section 97.053(5), F.S., in which a person must provide a personal identifying number in order to register to vote. The personal identifying number is then confirmed or verified against databases at the Florida Department of Highway Safety and Motor Vehicles (DHSMV) or the Social Security Administration for identification purposes.[17]

The Department of State believes disclosure of such numbers in conjunction with other readily available and easily accessible public information, including information contained in the FVRS, could be used to facilitate identity theft, serve illegitimate uses, and pose economic and personal harm.

The Department believes the exemption under review affords greater protection of an applicant's or voter's social security number than is afforded under the Federal Privacy Act and the general exemption for social security numbers[18] found in the Public Records Act. Unlike the general public record exemption found in the Public Records Act, the public record exemption specific to the social

[16] Comments were provided by email from Maria Matthews, Assistant General Counsel for the Department of State, August 11, 2009 (on file with the Governmental Affairs Policy Committee).

[17] Such as verifying that the person signing the application is who he or she says he or she is on the application.

[18] *See* s. 119.071(5)(a), F.S., providing a public record exemption for social security numbers held by an agency. Access is provided to certain agencies and individuals, including a business with a legitimate business purpose.

security number of an applicant or voter denies access to any requestor. No exceptions apply. The information may only be used for voter registration purposes.

In addition, both federal and state laws limit the disclosure of driver's license numbers in a "motor vehicle record."[19] However, the voter registration application is not a part of the motor vehicle record even though the DHSMV transfers information regarding the driver's license or state identification card number and other data from the license application to the voter registration application as part of its simultaneous electronic intake for voter registration. Therefore, the protections in federal law and the Public Records Act would not protect those numbers from disclosure.

As such, the Department of State would like to maintain those protections provided in s. 97.0585, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[19] *See* s. 119.0712, F.S., which provides that a driver's license number is confidential as provided in the Federal Driver's Privacy Protection Act (DPPA).

BILL ORIGINAL YEAR

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 97.0585, F.S., which provides an exemption from public records requirements for certain information regarding voters and voter registration and which provides an exemption from the copying requirements for signatures of voters and voter registrants; making clarifying changes; repealing s. 3, ch. 2005-279, Laws of Florida, which provides for repeal of the exemptions; providing an effective date.

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

Section 1. Section 97.0585, Florida Statutes, is amended to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.--

(1) The following information ~~concerning voters and voter registration~~ held by an agency as defined in s. 119.011 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(a) All declinations to register to vote made pursuant to ss. 97.057 and 97.058.

(b) Information relating to the place where a person registered to vote or where a person updated a voter registration.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(c) The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

(2) The signature of a voter registration applicant or a voter is exempt from the copying requirements ~~may not be copied and is exempt for that purpose from the provisions~~ of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) This section applies to information held by an agency before, on, or after the effective date of this exemption.

Section 2. Section 3 of chapter 2005-279, Laws of Florida, is repealed.

Section 3. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-07 OGSR Commission on Ethics
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2170

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

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.

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission on Ethics or a Commission on Ethics and Public Trust established by a county or a municipality. In addition, any proceedings regarding a complaint or preliminary investigation are exempt from public meetings requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2010, if this bill does not become law. It also reorganizes the exemption for clarity.

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[1] 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.[2] 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[3] then a public necessity statement and a two-thirds vote for passage are not required.

[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

Commission on Ethics

The Commission on Ethics (Commission) is a non-paid, appointed body consisting of nine members.[4] The Commission serves as guardian of the standards of conduct for officers and employees of the state and of a county, city, or other political subdivision of the state.[5]

Current law establishes the duties and powers of the Commission.[6] Chief among these responsibilities is the duty to receive and investigate sworn complaints of violation of the code of ethics and of any other breach of the public trust,[7] including investigation of all facts and parties materially related to the complaint.

A county or municipality also has the authority to create a Commission on Ethics and Public Trust.

Exemptions under Review

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission or a Commission on Ethics and Public Trust established by a county or a municipality. The complaint and associated records are confidential and exempt from public records requirements.[8] In addition, any proceedings regarding a complaint or preliminary investigation are exempt from public meetings requirements. Such exemptions no longer apply when the:

- Complaint is dismissed as legally insufficient;
- Alleged violator requests in writing that the records and proceedings be made public; or
- Commission or Commission on Ethics and Public Trust determines whether probable cause exists to believe that a violation has occurred.[9]

In 2005, the Legislature applied the public record and public meeting exemptions to a Commission on Ethics and Public Trust established by a municipality.[10] As such, pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions. It also reorganizes the exemptions for clarity.

B. SECTION DIRECTORY:

Section 1 amends s. 112.324, F.S., to reenact the public record and public meeting exemptions for the Commission or a Commission on Ethics and Public Trust established by a county or a municipality.

Section 2 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[4] Section 112.321(1), F.S.

[5] Section 112.320, F.S.

[6] *See* s. 112.322, F.S.

[7] As provided in s. 8(f), Art. II of the State Constitution.

[8] 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).

[9] Section 112.324(2)(a), F.S.

[10] Chapter 2005-185, L.O.F.

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:

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

Not applicable.

BILL ORIGINAL YEAR

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 112.324, F.S., which provides an exemption from public records and public meetings requirements for complaints and related records in the custody of and proceedings conducted by the Commission on Ethics or a Commission on Ethics and Public Trust established by a county or municipality; reorganizing the exemption; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (2) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations; public records and meeting exemptions.--

(2)(a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents or by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~, and~~

(b) Any proceeding conducted by the commission or a Commission on Ethics and Public Trust, pursuant to a complaint or preliminary investigation, is exempt from the provisions of

s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.~~,~~

(c) The exemptions apply until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records and proceedings be made public, or until the commission or a Commission on Ethics and Public Trust determines, based on such investigation, whether probable cause exists to believe that a violation has occurred. In no event shall a complaint under this part against a candidate in any general, special, or primary election be filed or any intention of filing such a complaint be disclosed on the day of any such election or within the 5 days immediately preceding the date of the election.

~~(b) Paragraph (a) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2010.

PCB GAP 10-08

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-08 OGSR GAL Identification and Location Information
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1200

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

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.

The Florida Guardian ad Litem (GAL) Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. As of December 14, 2009, approximately 23,000 children were represented by close to 7,000 volunteers in the GAL program.

Current law provides several public record exemptions for identification and location information of certain public employees and their spouse and children. In 2005, the Legislature added guardians ad litem to the public record exemption. The following information was made exempt from public records requirements:

- Home addresses, telephone numbers, places of employment, and photographs of current or former GALs; and
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such GALs.

The exemption applies only if the GAL provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

The bill reenacts the public record exemption for identification and location information of guardians ad litem and their spouse and children. It expands the exemption to also protect the names and locations of school and daycare facilities attend by the children of GALs. Other similar exemptions provide protections for school and daycare information. As such, this expansion provides GALs with the same protections afforded other public employees with the same type of public record exemption.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

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

The bill requires a two-thirds vote of the members present and voting for passage.

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[1] 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.[2] 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[3] then a public necessity statement and a two-thirds vote for passage are not required.

Guardian ad Litem Program

The Florida Guardian ad Litem (GAL) Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. As of December 14,

[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

2009, approximately 23,000 children were represented by close to 7,000 volunteers in the GAL program.[4]

Guardians ad Litem[5] are responsible for making independent recommendations to the court based on the best interests of a child. In order to accomplish this goal, some of the responsibilities of a GAL include:

- Visiting the child and keeping the child informed about the court proceedings;
- Gathering and assessing independent information on a consistent basis about the child in order to recommend a resolution that is in the child's best interest;
- Reviewing records;
- Interviewing appropriate parties involved in the case, including the child;
- Determining whether a permanent plan, which establishes the placement intended to serve as the child's permanent home, has been created for the child in accordance with federal and state laws and whether appropriate services are being provided to the child and family;
- Submitting a signed written report with recommendations to the court on what placement, visitation plan, services, and permanent plan are in the best interest of the child;
- Attending and participating in court hearings and other related meetings to advocate for a permanent plan that serves the child's best interest; and
- Maintaining complete records about the case, including appointments scheduled, interviews held, and information gathered about the child and the child's life circumstances.[6]

Public Record Exemptions for Identification and Location Information

Current law provides several public record exemptions for identification and location information of certain public employees and their spouse and children.[7] Examples of protected information include home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, investigators for the Department of Children and Family Services, state attorneys, and code enforcement officers. Similar information concerning the spouse and children of such employees also is protected.

Exemption under Review

In 2005, the Legislature added guardians ad litem to the public record exemption.[8] The following information was made exempt[9] from public records requirements:

- Home addresses, telephone numbers, places of employment, and photographs of current or former GALs; and
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such GALs.

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[4] Bill analysis by the Statewide Guardian ad Litem Office, December 15, 2009, at 1. (on file with the Governmental Affairs Policy Committee).

[5] Section 39.820(1), F.S., defines "guardian ad litem" to mean: as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

[6] Bill analysis by the Statewide Guardian ad Litem Office, December 15, 2009, at 1. (on file with the Governmental Affairs Policy Committee).

[7] *See* s. 119.071(4)(d), F.S.

[8] Section 4 of chapter 2005-213, L.O.F., codified at s. 119.071(4)(d)1.h., F.S.

[9] 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).

The exemption applies only if the GAL provides to his or her GAL office a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.[10] The GAL also may protect such identification and location information held by any other agency[11] if he or she provides written notification to that custodial agency that he or she is a GAL who receives protection under s. 119.071(4)(d)h.1., F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.[12]

EFFECT OF BILL

The bill reenacts the public record exemption for identification and location information of GALs and their spouse and children. It expands the exemption to also protect the names and locations of school and daycare facilities attend by the children of GALs, if the GAL provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. Other similar exemptions provide protections for school and daycare information. As such, this expansion provides GALs with the same protections afforded other public employees with the same type of public record exemption.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact and expand the public record exemption for identification and location information of GALs and their spouse and children.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

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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[10] Section 119.071(4)(d)1.h., F.S.

[11] Section 119.011(2), F.S., defines "agency" 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.

[12] Section 119.071(4)(d)1.h., 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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for identification and location information of guardians ad litem and the spouse and children of guardians ad litem; expanding the public record exemption to include the names and locations of schools or daycare facilities attended by children of guardians ad litem; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(4) AGENCY PERSONNEL INFORMATION.--

(d)1.a. The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties

are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

b. The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from s. 119.07(1).

d. The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers,

social security numbers, photographs, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the

general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the

children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in s. 39.820;~~, and~~ the names, home addresses, telephone numbers, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons~~,~~ are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015 ~~2010~~, unless reviewed and saved from repeal through reenactment by the Legislature.

i. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, and places of employment of spouses and

children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

2. An agency that is the custodian of the information specified in subparagraph 1. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

Section 2. The Legislature finds that it is a public necessity that the names and locations of schools and day care facilities attended by the children of current or former guardians ad litem be made exempt from public records requirements. Guardians ad litem provide a valuable service to the community. They interact with victims of child abuse and neglect and, at times, the perpetrators of that abuse or neglect. The capacity in which they work or volunteer their time does not always create good will. Different persons may be disgruntled with the testimony, report, or recommendation made by guardians ad litem. The testimony of guardians ad litem could create a safety risk. Thus, the children of guardians ad litem

could become a potential target for acts of revenge. If the name and location of schools or daycare facilities attended by the children of such persons were made available, the safety and welfare of the children of the guardians ad litem could be seriously jeopardized. Accordingly, it is a public necessity that such information be made exempt from public disclosure.

Section 3. This act shall take effect upon becoming a law.

PCB GAP 10-10

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-10 OGSR Identification of a Minor
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1198

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

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.

In 2005, the Legislature enacted the Parental Notice of Abortion Act (Act). The Act requires a treating physician to provide actual notice, in person or by telephone, to a parent or other legal guardian of a minor seeking to have an abortion at least 48 hours before the performance of the abortion on the minor. The Act provides exceptions to the notice requirement. Under the Act, a minor may petition any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal, in which she resides, for a waiver of the notice requirements under the Act.

In conjunction with the enactment of the Florida Parental Notice of Abortion Act (Act), the Legislature created a public record exemption for judicial records related to parental notification bypass proceedings. Any information in a court record that could be used to identify a minor in a proceeding to bypass parental notification under the Act is confidential and exempt from public records requirements.

The bill reenacts the public record exemption for information in judicial records that would identify a minor participating in a parental notification bypass proceeding. It expands the exemption to also include such information when held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission. During representation of minors in judicial-waiver cases under the Act, the Office of Criminal Conflict and Civil Regional Counsel may obtain identifying information from the minors. Similarly, the Justice Administrative Commission may receive identifying information of minors that is related to the processing of attorney billing and payment requests for representation in such cases.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

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

The bill requires a two-thirds vote of the members present and voting for passage.

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[1] 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.[2] 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[3] then a public necessity statement and a two-thirds vote for passage are not required.

Public Access to Court Records

Although Florida courts have consistently held that the judiciary is not considered an "agency" for purposes of the Public Records Act,[4,5] the Florida Supreme Court has found that "both civil and criminal

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[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

[4] Chapter 119, F.S., is known as the Public Records Act.

proceedings in Florida are public events" and that it will "adhere to the well established common law right of access to court proceedings and records."[6] Furthermore, there is a constitutional guarantee of access to judicial records.[7] This constitutional provision provides for public access to judicial records, except for those records expressly exempted by the Florida Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the Legislature in accordance with the Constitution.[8]

Parental Notice of Abortion Act

In 1999, the Legislature enacted a law requiring parents of minors to be notified prior to the minor's termination of her pregnancy. This law was constitutionally challenged on grounds that the act violated a person's right to privacy under the Florida Constitution. The Florida Supreme Court concluded that the act violated Florida's constitutional right to privacy[9] because the minor was not afforded a mechanism by which to bypass parental notification if certain exigent circumstances existed.[10] In response to the court's decision, the Legislature proposed a constitutional amendment authorizing the Florida Legislature, notwithstanding a minor's right to privacy under the Florida Constitution, to require a physician to notify a minor's parent or guardian prior to termination of the minor's pregnancy, which was subsequently ratified by Florida voters. The amendment provides:

> The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.[11]

The Legislature responded to this authorization by enacting the Parental Notice of Abortion Act (Act).[12] The Act requires a treating physician to provide actual notice, in person or by telephone, to a parent or other legal guardian of a minor seeking to have an abortion at least 48 hours before the performance of the abortion on the minor.[13, 14] Notice under the Act is not required if:

- In the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements;
- Notice is waived in writing by the person who is entitled to notice;
- Notice is waived by a minor who is or has been married or has had the disability of nonage removed under statute;
- Notice is waived by the patient because the patient has a minor child dependent on her; or
- A court waives the parental notification process via a bypass proceeding.[15]

Parental Notification Judicial-Bypass Proceeding

Under the Act, a minor may petition any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal, in which she resides, for a waiver of the notice requirements under the Act.[16]

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[5] *Times Publishing Co. v. Ake*, 660 So. 2d 255 (Fla. 1995) (holding that the judiciary, as a coequal branch of government, is not an "agency" subject to control by another coequal branch of government).

[6] *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988).

[7] Section 24(a), Art. I of the State Constitution.

[8] Section 24, Art. I of the State Constitution.

[9] Section 23, Art. I of the State Constitution.

[10] *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).

[11] Section 22, Art. X of the State Constitution.

[12] Section 2 of chapter 2005-52, L.O.F.

[13] Section 390.01114(2)(a) and (3)(a), F.S.

[14] Constructive notice may be provided after a physician has made reasonable efforts to contact the parents. To accomplish legally valid constructive notice, the physician must provide written notice, signed by the physician, and mailed at least 72 hours before the inducement or performance of the termination of pregnancy, to the last known address of the parent or legal guardian of the minor, by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian. After 72 hours, delivery is deemed to have occurred. (Section 390.01114(2)(c), F.S.)

[15] Section 390.01114(3)(b), F.S.

To initiate the proceeding, a minor must file a petition with the court under a pseudonym or through the use of initials.[17,18] The court must advise the minor that she is entitled to court-appointed counsel upon her request at no charge.[19]

After a petition is filed, the court must rule and issue written findings of fact and conclusions of law within 48 hours.[20] In order to the grant the petition, the court must find:

- By clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy;
- By a preponderance of the evidence, that there is evidence of child abuse or sexual abuse of the minor by one or both of her parents or her guardian; or
- By a preponderance of the evidence that the notification of a parent or guardian is not in the best interest of the minor.[21]

If the court fails to issue a ruling within the 48-hour period and an extension of time has not been requested by the minor, the petition is granted and the notice requirement is waived.[22]

Exemption under Review

In conjunction with the enactment of the Florida Parental Notice of Abortion Act (Act), the Legislature created a public record exemption for judicial records related to parental notification bypass proceedings. Any information in a court record that could be used to identify a minor in a proceeding to bypass parental notification under the Act is confidential and exempt[23] from public records requirements.[24]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.[25]

EFFECT OF BILL

The bill reenacts the public record exemption for information in judicial records that would identify a minor participating in a parental notification bypass proceeding. It expands the exemption to also include such information when held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission. During representation of minors in judicial-waiver cases under the Act, the Office of Criminal Conflict and Civil Regional Counsel may obtain identifying information from the minors. Similarly, the Justice Administrative Commission may receive identifying information of minors that is related to the processing of attorney billing and payment requests for representation in such cases.

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[16] Section 390.01114(4)(a), F.S.

[17] *Id.*

[18] No filing fees or court costs are required of any pregnant minor who petitions a court for a waiver of parental notification under the Act. (Section 390.01114(4)(g), F.S.)

[19] Section 390.01114(4)(a), F.S.

[20] The 48-hour period may be extended only upon the request of the minor. (Section 390.01114(4)(b), F.S.)

[21] Section 390.01114(4)(c) and (d), F.S.

[22] Section 390.01114(4)(b), F.S.

[23] 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).

[24] Section 390.01116, F.S. This exemption is not the first public-records exemption related to juveniles and domestic cases. All dependency court records, including cases related to the termination of parental rights, are closed to the public except to those demonstrating a proper interest. See ss. 39.0132(3) and 39.814(3), F.S.

[25] Section 2 of Chapter 2005-104, L.O.F.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 390.01116, F.S., to reenact and expand the public record exemption for information used to identify a minor petitioning a circuit court for a judicial waiver of the notice requirements under the Parental Notice of Abortion Act.

Section 2 provides a public necessity statement.

Section 3 repeals s. 2 of chapter 2005-104, L.O.F., which provides for repeal of the exemption.

Section 4 provides an effective date of upon becoming a law.

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.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 390.01116, F.S., which provides an exemption from public records requirements for information that could identify a minor which is contained in a record relating to a minor's petition to waive notice requirements when terminating a pregnancy; expanding the exemption to include such information held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission; making editorial changes; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; repealing s. 2, ch. 2005-104, Laws of Florida, which provides for repeal of the exemption; providing an effective date.

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

Section 1. Section 390.01116, Florida Statutes, is amended to read:

390.01116 Public record exemptions; minors seeking waiver of notice requirements ~~petition; confidentiality~~.—

(1) Any information that can be used to identify ~~When~~ a minor petitioning ~~petitions~~ a circuit court for a judicial waiver, as provided in s. 390.01114, of the notice requirements under the Parental Notice of Abortion Act ~~pertaining to a minor~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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~~seeking to terminate her pregnancy, any information in a record held by the circuit court or an appellate court which could be used to identify the minor~~ is:

(a) Confidential and exempt from ~~s. 119.07(1) and~~ s. 24(a), Art. I of the State Constitution if held by a circuit court or an appellate court.

(b) Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission.

(2) Paragraph (1)(b) is subject to the Open Government Sunset Review Act in accordance with section 119.15, Florida Statutes, and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements any information that can be used to identify a minor petitioning a circuit court for a judicial waiver from the statutory requirement that a parent or legal guardian be notified when that minor seeks to terminate her pregnancy when such information is held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission. The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the

safety of the minor in instances when child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, without the public record exemption, could learn of the minor's pregnancy, her plans to terminate the pregnancy, and her petition to the court. The Legislature further finds that it is a public necessity to keep this identifying information in records held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission confidential and exempt in order to protect the privacy of the minor. The State Constitution contains an express right of privacy in Section 23 of Article I. Further, the United States Supreme Court has repeatedly required parental-notification laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the public record exemption provided in this act, the disclosure of personal identifying information would violate the right of privacy of the minor. Further, without the confidential and exempt status for this information, the constitutionality of the state's program providing for notification of a minor's termination of pregnancy, and the judicial-bypass procedure in particular, would be in question. Thus, the public record exemption provided in this act is necessary for the effective administration of the state's program, which administration would be impaired without the exemption.

Section 3. Section 2 of chapter 2005-104, Laws of Florida, is repealed.

Section 4. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-11 OGSR Florida Self-Insurers Guaranty Association
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1662

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

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.

The Florida Legislature created the Florida Self-Insurers Guaranty Association (association) as a nonprofit corporation. The purpose of the association is to provide a mechanism to fund covered workers' compensation claims of individual insolvent self-insurers other than public utilities or governmental entities.

Current law provides a public record and public meeting exemption for the association. Claims files and medical information relating to a claimant are confidential and exempt from public records requirements. The public record exemption for claims files expires upon termination of all litigation and settlement of all claims arising out of the accident.

Current law also provides a public meeting exemption for those portions of association meetings wherein confidential and exempt claims files or medical information is discussed. All closed portions of meetings must be recorded and transcribed. Minutes of closed portions of association meetings are confidential and exempt from public records requirements; however, such exemption expires upon termination of all litigation and settlement of all claims.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2010, if this bill does not become law. It also reorganizes the section for clarity.

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[1] 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.[2] 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[3] then a public necessity statement and a two-thirds vote for passage are not required.

Florida Self-Insurers Guaranty Association

The Florida Legislature created the Florida Self-Insurers Guaranty Association (association) as a nonprofit corporation.[4] The purpose of the association is to provide a mechanism to fund covered

[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

[4] Section 440.385(1)(a), F.S.

workers' compensation claims of individual insolvent self-insurers other than public utilities or governmental entities. The association is under the general oversight of the Department of Financial Services, which also regulates individual self-insurers for purposes of workers' compensation coverage.[5]

Exemptions under Review

Current law provides a public record exemption for the association. Claims files and medical records and information relating to the medical condition or medical status, of a claimant, are confidential and exempt[6] from public records requirements.[7] The public record exemption for claims files expires upon termination of all litigation and settlement of all claims arising out of the accident.[8]

Upon written request, confidential and exempt claims files and medical records and other medical information, of a claimant, may be released to another agency in the performance of that agency's official duties and responsibilities. The receiving agency must maintain the confidential and exempt status of such files, records, and information.[9]

Current law also provides a public meeting exemption for those portions of association meetings wherein confidential and exempt claims files or other medical information about a claimant is discussed. All closed portions of meetings must be recorded and transcribed, including:

- The times of commencement and termination of the meeting;
- All discussion and proceedings;
- The names of all persons present at any time; and
- The names of all persons speaking.[10]

Minutes of closed portions of association meetings are confidential and exempt from public records requirements; however, such exemption expires upon termination of all litigation and settlement of all claims.[11]

The court reporter's notes of any exempt portion of a meeting must be retained by the association for a minimum of five years.[12]

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.[13]

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions. It also reorganizes the section for clarity.

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[5] *Id.*

[6] 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).

[7] Section 440.3851(1)(a) and (b), F.S.

[8] Section 440.3851(1)(a), F.S.

[9] Section 440.3851(2), F.S.

[10] Section 440.3851(3), F.S.

[11] Section 440.3851(1)(c) and (3), F.S.

[12] Section 440.3851(3), F.S.

[13] Section 440.3851(4), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 440.3851, F.S., to reenact the public record and public meeting exemptions for the Florida Association of Self-Insurers Guaranty Association.

Section 2 provides an effective date of October 1, 2010.

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.

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

Not applicable.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 440.3851, F.S., which provides an exemption from public records and public meetings requirements for the Florida Self-Insurers Guaranty Association, Incorporated; reorganizing the section; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Section 440.3851, Florida Statutes, is amended to read:

440.3851 Public records and public meetings exemptions.—

(1) The following records of the Florida Self-Insurers Guaranty Association, Incorporated, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Claims files, until termination of all litigation and settlement of all claims arising out of the same accident.

(b) Medical records that are part of a claims file and other information relating to the medical condition or medical status of a claimant.

(c) Minutes of exempt portions of meetings, as provided in subsection (3), until termination of all litigation and settlement of all claims with regard to that claim.

(2) Records or portions of records made confidential and exempt by this section may be released, upon written request, to

another agency in the performance of that agency's official duties and responsibilities. The receiving agency shall maintain the confidential and exempt status of such record or portion of a record.

(3)(a) That portion of a meeting of the association's board of directors or any subcommittee of the association's board at which records made confidential and exempt by this section are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) All exempt portions of meetings shall be recorded and transcribed. The board shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record.

(c) Subject to this section and s. 119.021(2), the court reporter's notes of any exempt portion of a meeting shall be retained by the association for a minimum of 5 years.

(d) A copy of the transcript of any exempt portion of a meeting in which claims files are discussed shall become public as to individual claims after settlement of the claim with any confidential and exempt information redacted.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-12 OGSR Insurance Claim Data Exchange Information
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 886

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

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.

In 2004, the Legislature directed the Department of Revenue to develop and operate a data match system that would identify noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide the Department with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim. The data provided can be used only for purposes of child support enforcement.

The Department did not immediately begin matching data files with insurance companies using the insurance claim data exchange statute. In February 2006, the Deficit Reduction Act of 2005 was enacted by Congress. The Act amended federal law to authorize the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. The Act further allowed HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.

The Department began participating in the federal program in the fall of 2008. The Department reports it needs additional time to determine the success of the federal program.

Current law provides that information obtained by the Department pursuant to the insurance claim data exchange is confidential and exempt from public records requirements until the Department determines if a match exists. If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is *not* made, then the nonmatch information must be destroyed.

At the request of the Department, the bill extends the repeal date from October 2, 2010, to October 2, 2012, thereby reenacting the public record exemption for information obtained by the Department pursuant to the insurance claim data exchange. This extension should provide the Department with ample time to determine the success of the federal program.

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[1] 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.[2] 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[3] then a public necessity statement and a two-thirds vote for passage are not required.

Insurance Claim Data Exchange

As of July 2009, 468,596 noncustodial parents in Florida owed past-due child support.[4]

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[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

[4] Senate Bill Analysis and Fiscal Impact Statement for SB 886 by the Committee on Children, Families, and Elder Affairs, February 8, 2010, at 3.

The Department of Revenue is authorized to levy any credit or personal property of an obligor for any past-due child support.[5] This includes bank accounts, vehicles, and insurance claim payments.

The Legislature directed the Department to develop and operate a data match system that would identify noncustodial parents who owe past-due child support and who also have a claim with an insurer.[6] This process allows insurers to voluntarily provide the Department with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim.[7] The data provided can be used only for purposes of child support enforcement.[8]

An insurer may provide the Department with the needed information in one of the following ways:

- An insurer may provide the required data for each claim directly to the Department electronically so it can conduct a data match;
- An insurer may receive or access data from the Department and conduct a data match of all noncustodial parents who have a claim with the insurer and who owe past-due child support, and submit the match data regarding each noncustodial parent to the Department; or
- An insurer may authorize an insurance claim data collection organization to complete either of the two options.[9]

Due to the variety of data submission methods provided within the system, it is possible for the Department to receive information on individuals who have a claim with an insurer and who do not owe child support.

Public Record Exemption under Review

Current law provides that information obtained by the Department pursuant to the insurance claim data exchange is confidential and exempt[10] from public records requirements until the Department determines if a match exists.[11] If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is *not* made, then the nonmatch information must be destroyed.[12]

Pursuant to the Open Government Sunset Review Act (OGSR), the exemption was scheduled to repeal on October 2, 2009; however, as a result of the OGSR review during the 2008 interim the repeal date was delayed until October 2, 2010.

Implementation of the Insurance Claim Data Exchange

The Department did not immediately begin matching data files with insurance companies using the insurance claim data exchange statute. According to the Department, it took steps to implement the statute by contacting most of the top 25 insurers in the State. During this time, insurers were responding to claims resulting from damage caused during the 2004 hurricane season. Therefore, the Department decided to postpone working on the insurance claim data exchange initiative at the request of those insurers. The Department did not re-initiate contact with the insurers and attempt to resume implementation activities due to its resources being otherwise dedicated to the statewide

[5] Section 409.25656, F.S.

[6] Chapter 2004-334, L.O.F.; codified as s. 409.25659, F.S.

[7] Section 409.25659(2), F.S.

[8] Section 409.25659(5), F.S.

[9] Section 409.25659(2)(a) – (c), F.S.

[10] 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).

[11] Section 409.25661(1), F.S.

[12] *Id.*

implementation of Phase I of the Child Support Enforcement Automated Management System (CAMS).[13]

In February 2006, the Deficit Reduction Act of 2005 was enacted by Congress. The Act amended federal law to authorize the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. The Act further allowed HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.[14]

Rather than re-engage insurers in the implementation of insurance claim data exchange, the Department chose to monitor the results of a federal workgroup charged with implementing the nationwide insurance data match program in other states before implementing the federal program in Florida.[15] The Department submitted the participation form to the Federal Office of Child Support Enforcement on September 8, 2008 and began receiving matches on October 10, 2008.

Between October 10 and December 4, 2008, the Department had received 530 matches from the new program. Approximately 47 percent of these matches already had been received by the Department through other means.[16] For the period of November 2008 through October 2009, the Department had received 2,996 data matches from the federal program. Of those matches, the Department reports 422 already had been made by the Department through other means.[17]

The Department has requested additional time in order to determine the success of the federal program. As such, it has requested delay of repeal of the exemption until October 2, 2012.[18]

EFFECT OF BILL

The bill extends the repeal date from October 2, 2010, to October 2, 2012, thereby reenacting the public record exemption for information obtained by the Department pursuant to the insurance claim data exchange. This extension provides the Department with additional time to determine the success of the federal program.

B. SECTION DIRECTORY:

Section 1 amends s. 409.25661, F.S., to extend the repeal date from October 2, 2010, to October 2, 2012.

Section 2 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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[13] Email from Debbie Thomas, Staff, Department of Revenue, (Aug. 25, 2008)(on file with the Governmental Affairs Policy Committee); follow-up telephone call with Debbie Thomas (March 9, 2009).

[14] *Id.*

[15] *Id.*

[16] Senate Bill Analysis and Fiscal Impact Statement for SB 750 by the Committee on Children, Families, and Elder Affairs, February 12, 2009, at 5.

[17] Senate Bill Analysis and Fiscal Impact Statement for SB 886 by the Committee on Children, Families, and Elder Affairs, February 8, 2010, at 5.

[18] Memorandum from Debra Thomas, Office of Legislative and Cabinet Services for the Department of Revenue, (December 30, 2009) (on file with the Governmental Affairs Policy Committee).

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:

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

Not applicable.

BILL ORIGINAL YEAR

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 409.25661, F.S., which provides an exemption from public records requirements for certain records obtained by the Department of Revenue under an insurance claim data exchange system; saving the exemption from repeal under the Open Government Sunset Review Act; extending the repeal date; providing an effective date.

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

Section 1. Section 409.25661, Florida Statutes, is amended to read:

409.25661 Public records exemption for insurance claim data exchange information.—

(1) Information obtained by the Department of Revenue pursuant to s. 409.25659 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the department determines whether a match exists. If a match exists, such information becomes available for public disclosure. If a match does not exist, the nonmatch information shall be destroyed as provided in s. 409.25659.

(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012 ~~2010~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-18 OGSR Domestic Security Oversight Council
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 618

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

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.

The Domestic Security Oversight Council (council) was created to serve as an advisory council to provide guidance to the state's regional domestic security task forces and other domestic security working groups. It also was created to make recommendations to the Governor and the Legislature regarding the expenditure of funds and allocation of resources related to counterterrorism and domestic security efforts. The council must meet at least semiannually.

Current law provides a public meeting exemption for those portions of council meetings wherein the council hears or discusses active criminal investigative information or active criminal intelligence information. The exemption applies only if: the chair of the council announces at a public meeting that, in connection with the performance of the council's duties, it is necessary that such information be discussed; the chair declares the specific reasons it is necessary to close the meeting, or portion thereof, in a document that is a public record and filed with the official records of the council; and the entire closed meeting is recorded.

An audio or video recording of, and any minutes and notes generated during, a closed portion of a council meeting is exempt from public records requirements. However, the public record exemption expires at such time as the criminal investigative information or criminal intelligence information discussed therein is no longer active.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2010, if this bill does not become law.

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[1] 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.[2] 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[3] then a public necessity statement and a two-thirds vote for passage are not required.

Domestic Security Oversight Council

The Domestic Security Oversight Council (council) was created to serve as an advisory council to provide guidance to the state's regional domestic security task forces and other domestic security working groups. It also was created to make recommendations to the Governor and the Legislature

[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution.

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

regarding the expenditure of funds and allocation of resources related to counterterrorism and domestic security efforts.[4] The council must meet at least semiannually.[5] Its duties include, in part, reviewing:

- The development, maintenance, and operation of a comprehensive multidisciplinary domestic security strategy that will guide the state's prevention, preparedness, protection, response, and recovery efforts against terrorist attacks and make appropriate recommendations to ensure the implementation of that strategy.
- The development of integrated funding plans to support specific projects, goals, and objectives necessary to the state's domestic security strategy and make appropriate recommendations to implement those plans.
- The overall statewide effectiveness of domestic security and counter-terrorism efforts in order to provide suggestions to improve or enhance those efforts.
- The efforts of any agency or entity involved in state or local domestic security and counter-terrorism efforts that requests assistance or that appears to need such review in order to provide suggestions to improve or enhance those efforts.
- Efforts within the state to better secure state and local infrastructure against terrorist attack and make recommendations to enhance the effectiveness of such efforts.
- Statewide or multiagency mobilizations and responses to major domestic security incidents and recommend suggestions for training, improvement of response efforts, or improvement of coordination or for other strategies that may be derived as necessary from such reviews.[6]

Exemptions under Review

Current law provides a public meeting exemption for those portions of council meetings wherein the council hears or discusses active criminal investigative information or active criminal intelligence information.[7] The exemption applies only if:

- The chair of the council announces at a public meeting that, in connection with the performance of the council's duties, it is necessary that active criminal investigative information or active criminal intelligence information be discussed.
- The chair declares the specific reasons that it is necessary to close the meeting, or portion thereof, in a document that is a public record and filed with the official records of the council.
- The entire closed meeting is recorded. The recording must include the times of commencement and termination of the closed meeting or portion thereof, all discussion and proceedings, and the names of the persons present. No portion of the closed meeting may be off the record. The recording must be maintained by the council.[8]

An audio or video recording of, and any minutes and notes generated during, a closed council meeting are exempt from public records requirements. However, the public record exemption expires at such time as the criminal investigative information or criminal intelligence information discussed therein is no longer active.[9]

Only members of the council, staff supporting the council, and other persons whose presence has been authorized by the chair are allowed to attend closed portions of council meetings.[10]

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[4] Section 943.0313, F.S.

[5] Section 943.0313(3), F.S.

[6] Section 943.0313(5)(a), F.S.

[7] Section 119.011(3), F.S., defines "criminal intelligence information," "criminal investigative information," and "active." Criminal intelligence information means "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." It is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal investigative information means "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance." Criminal investigative information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

[8] Section 943.0314(1)(a), F.S.

[9] Section 943.0314(1)(b), F.S.

[10] Section 943.0314(2), F.S.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions.

B. SECTION DIRECTORY:

Section 1 amends s. 943.0314, F.S., to reenact the public record and public meeting exemptions for the Domestic Security Oversight Council.

Section 2 provides an effective date of October 1, 2010.

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.

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

Not applicable.

BILL ORIGINAL YEAR

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 943.0314, F.S., which provides an exemption from public records and public meetings requirements for the Domestic Security Oversight Council; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (3) of Section 943.0314, Florida Statutes, is repealed.

Section 2. This act shall take effect October 1, 2010.

PCB GAP 10-18

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

PCB GAP 10-22

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-22 Fire Sprinklers
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 846

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Haug EH	Williamson RAW
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Florida Building Code was authorized by the 1998 Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. This unified code was created in response to a multiplicity of complex and confusing building codes and administrative processes that resulted in weak and inadequate compliance with local building codes across Florida.

The Florida Building Commission was created and tasked with preparing the first Florida Building Code and continues to be responsible for the amendment of the code on a triennial basis. The primary resource used by the commission in formulating the Florida Building Code is the International Residential Code (IRC).

The IRC is a comprehensive, stand-alone residential building code that creates minimum regulations for one- and two-family dwellings of three stories or less. A recent amendment to the IRC adds a requirement to install fire sprinklers in all newly constructed one- and two-family residential dwellings and townhouses effective January 1, 2011. As a result, there is an expectation that the Florida Building Commission will adopt similar standards in the 2010 edition of the Florida Building Code.

This bill amends the Florida Building Code to prohibit inclusion of the provisions of the International Residential Code mandating fire sprinklers in one- and two-family residences and townhouses either by adoption by the Florida Building Commission or local amendment.

The bill has an effective date of July 1, 2010.

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

The Florida Building Code[1] (Florida Building Code or code) was authorized by the 1998 Legislature[2] to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. This unified code was created in response to a multiplicity of complex and confusing building codes and administrative processes that resulted in weak and inadequate compliance with local building codes across Florida.[3] It also was created to provide uniform predictability and accountability.[4] The code has created consistency of building throughout Florida and only allows for local variation of the code when there are compelling differences in local physical conditions.[5]

The Florida Building Commission (Florida Building Commission or commission) was created and tasked with preparing the first Florida Building Code published in 2001, and continues to be responsible for the amendment of the code on a triennial basis. The commission is comprised of 25 members who serve four year terms representing, in part, engineers, architects, contractors, building owners and insurers, state and local governments and persons with disabilities. Members are appointed by the Governor and confirmed by the Senate.[6]

In addition to the triennial republishing of the Florida Building Code, the commission may amend the code once each year to incorporate interpretations and update standards if it finds that such amendment:

1. Is needed in order to accommodate the specific needs of this state.
2. Has a reasonable and substantial connection with the health, safety and welfare of the general public.
3. Strengthens or improves the Florida Building Code or, in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.

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[1] Section 553.73, F.S.

[2] CS/CS/HB 4181, Enrolled (1998).

[3] *Id.* at 7.

[4] *Id.* at 8.

[5] Section 553.73(4)(b), F.S.

[6] Section 553.74, F.S.

4. Does not discriminate against materials, products, methods or systems of construction of demonstrated capabilities.
5. Does not degrade the effectiveness of the Florida Building Code.[7]

Local governments also may amend the code for their jurisdiction no more than once each six months. Any local amendment must address a unique local condition and be more stringent than the Florida Building Code. To ensure the criteria are met, issues of whether the amendment addresses a unique condition and is more stringent are appealable to the Florida Building Commission. Adopted local amendments are repealed or incorporated into the code every three years, upon the updating of the Florida Building Code.[8]

The last triennial edition of the Florida Building Code was published in 2007 and work is now underway on the 2010 code.[9] The scope of the commission's work includes the following:

> The commission shall select from available national or international model building codes, or other available building codes and standards currently recognized by the laws of this state, to form the foundation for the Florida Building Code. The commission may modify the selected model codes and standards as needed to accommodate the specific needs of this state. Standards or criteria referenced by the selected model codes shall be similarly incorporated by reference.[10]

The primary resource used by the commission in formulating the Florida Building Code is the International Residential Code (IRC). The IRC is a comprehensive, stand-alone residential building code that creates minimum regulations for one- and two-family dwellings of three stories or less. This code contains all building, plumbing, mechanical, fuel gas, energy and electrical provisions for one- and two-family residences. The IRC includes both a prescriptive approach (i.e., measures) and a performance approach (i.e., energy modeling) for determining compliance.

A recent amendment to the IRC adds a requirement to install fire sprinklers in all newly constructed one- and two-family residential dwellings and townhouses effective January 1, 2011.[11] As a result, there is an expectation that the Florida Building Commission will adopt similar standards in the 2010 edition of the Florida Building Code.

The need for fire sprinklers in one- and two-family residences and townhouses is widely debated. Those supporting residential fire sprinklers emphasize increased safety both to life and property and those opposing residential fire sprinklers emphasize the effectiveness of smoke detectors and the costs associated with requiring residential fire sprinklers.

The following graph illustrates that both the total number of deaths and the rate of deaths associated with residential fires has decreased during the most recently documented period (1977-2008).[12]

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[7] Section 553.73(8)(a), F.S.

[8] Section 553.73(4)(b), F.S.

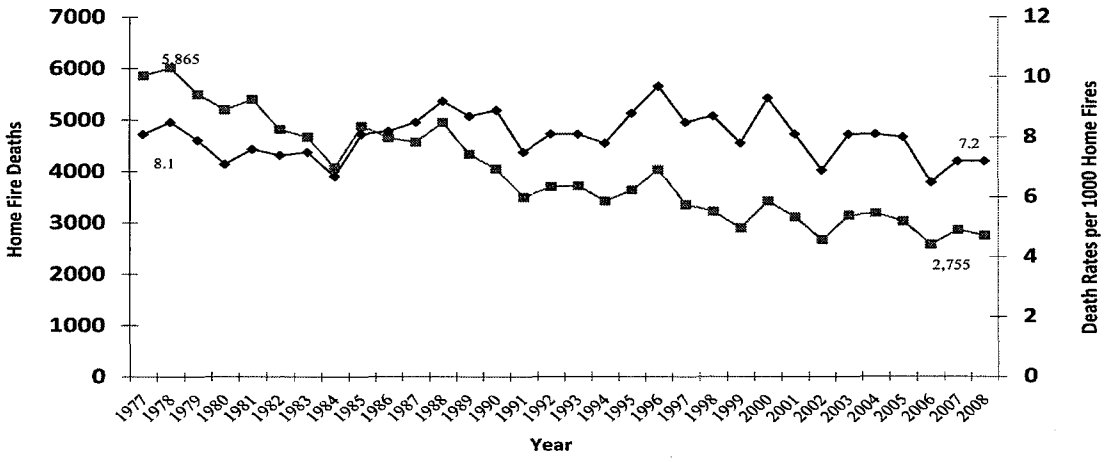
[9] Scheduled meetings to work on revisions for 2010 are noticed on the commission's website. *See* http://www.dca.state.fl.us/fbc/meetings/2_meetings.htm

[10] Section 553.73(3), F.S.

[11] Amendment RB64-07/08 to the International Residential Code by the International Code Council, September 21, 2008, in Minneapolis, MN.

[12] *Fire Loss In The United States 2008*, Michael J. Karter, Jr., National Fire Protection Association, August 2009 (Revised January 2010).

Figure 3.
Civilian Home Fire Deaths and Rates per 1000 Fires, 1977-2008



Source: NFPA Survey of Fire Departments (1977-2008)

The National Home Builders Research Center collected information on sprinkler costs in a nationwide survey completed by 102 builders who built 5,527 homes with fire sprinklers in 2006. The survey results show the median cost of installing fire sprinklers in the 5,527 homes (median size 2,271 square feet) was approximately $5,573.[13] The average cost allocation was as follows:

Category	Median Cost
Fire Sprinkler Permit Fee	$ 198
Fire Sprinkler Design Fee	$ 593
Water Service Pipe Changes	$ 866
Water Meter Changes	$ 172
Installation Cost	$1,829
Total Median Cost to Builder	**$5,573**

Another recent report by the Fire Protection Research Foundation, which used a smaller (30) sample of homes built in different regions of the United States, showed a similar average builder cost of $5,127 per single family home.[14]

Effect of Proposed Changes

The bill amends the Florida Building Code to prohibit inclusion of the provisions of the International Residential Code mandating fire sprinklers in one- and two-family residences and townhouses either by adoption by the commission or local amendment. The specifically named IRC section is R313.[15]

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[13] *Fire Sprinklers and Homeowner Insurance*, Lanlan Xu, National Association of Home Builders, September 14, 2007.

[14] *Home Fire Sprinkler Cost Assessment, Final Report*, Fire Protection Research Foundation, September 10, 2008.

[15] IRC 2009 Edition Code, Section R313 – Automatic Fire Sprinkler Systems

Townhouses

R313.1 Townhouse automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in townhouses.

Exception: An automatic residential fire sprinkler system shall not be required when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed.

R313.1.1 Design and installation. Automatic residential fire sprinkler systems for townhouses shall be designed and installed in accordance with Section P2904.

One- and Two-Family Dwellings

R313.2 One- and two-family dwellings automatic fire systems. Effective January 1, 2011, an automatic residential fire sprinkler system shall be installed in one- and two- family dwellings.

Exception: An automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic residential sprinkler system.

B. SECTION DIRECTORY:

Section 1. Adds subsection (14) to section 553.73, F.S., to exclude specified sections relating to fire sprinklers in the IRC from inclusion in the Florida Building Code.

Section 2. Provides an effective date of July 1, 2010.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would prevent the addition of a provision to the Florida Building Code that, if adopted, would add costs to the construction and final retail price of one- and two-family homes and townhouses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

R313.2.1 Design and installation. Automatic residential fire sprinkler systems shall be designed and installed in accordance with Section P2904 or NFPA 13D.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL YEAR

A bill to be entitled

An act relating to the fire sprinklers; amending s. 553.73, F.S.; prohibiting inclusion within the Florida Building Code of certain mandatory fire sprinkler provisions of the International Residential Code; providing an effective date.

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

Section 1. Subsection (14) is added to section 553.73, Florida Statutes, to read:

553.73 Florida Building Code.—

(14) The provisions of section R313 of the most current version of the International Residential Code relating to mandated fire sprinklers shall not be included within the Florida Building Code as adopted by the Florida Building Commission or available as a local amendment to the Florida Building Code.

Section 2. This act shall take effect July 1, 2010.

PCB GAP 10-22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

PCB GAP 10-23

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-23 Voter Interface Device Requirements
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		McDonald	Williamson
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Current Florida law allows persons with disabilities to vote on a voter interface device that meets the voting system accessibility requirements for individuals with disabilities under section 301 of the federal Help America Vote Act (HAVA) of 2002 and that meets the standards for accessible voting contained in s. 101.56062, F.S. The law also requires that, in 2012, persons with disabilities vote on a voter interface device that not only meets these requirements but also uses a paper ballot. At this time there is only one optical scan (paper) system certified in the state as meeting the requirement for the 2012 deadline.

Sixty-three counties use touch screens, the majority of which are with audio ballots, to comply with HAVA requirements. Only four counties, Duval, Hillsborough, Pinellas, and Sarasota, have a system for disabled voters that meets the 2012 requirements.

The bill extends the 2012 paper ballot requirement for the voter interface device to 2016.

The bill takes effect upon becoming a law.

According to the Florida State Association of Supervisors of Elections, the cost of replacing touch screens in order to implement the change for the 2012 election is more than $45 million that will have to borne by the counties.

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:

Present Situation

The Help America Vote Act of 2002 requires that a state's voting system be accessible for individuals with disabilities, including accessibility for the blind and visually impaired, in a way that provides the same opportunity for access and participation as is provided for other voters. In order to accomplish this, each polling place must be equipped with at least one direct recording electronic voting system (DRE) or other system equipped for individuals with disabilities.[1]

In 2007, the Florida Legislature changed the voting systems requirements for all voters, except disabled voters, to cast a marksense ballot on an optical scan system. Each county was still required to have one voter interface device in each polling place that met the accessibility requirement for individuals with disabilities, which could be a DRE. By 2012, however, the changes in the law required that disabled voters be provided a means to cast an independent, marksense ballot; i.e., a paper-based ballot system.[2]

Sixty-three counties meet the HAVA requirements for disabled voters through the use of touch screens with audio ballots. Only four counties, Duval, Hillsborough, Pinellas, and Sarasota, meet the 2012 requirement through their purchase of AutoMark which, at this time, is the only state certified optical scan (paper) system that meets the requirements of the law for 2012.[3]

Effect of Proposed Changes

The bill extends the 2012 paper ballot requirement for disabled voters to 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 101.56075, F.S., to delay from 2012 to 2016 the implementation of the requirement that persons with disabilities must vote on a voter interface device that uses a paper ballot.

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[1] Sec. 301 of P.L. 107-252.

[2] Ch. 2007-30, L.O.F., required many changes to the elections laws, including these. Section 101.56075, F.S., was created in section 6 of the chapter law.

[3] Information provided by the Florida State Association of Supervisors of Elections in the "2010 FSASE Voting Equipment Survey Cost of Replacing Touch Screens" and other documentation presented to the Governmental Affairs Policy Committee at its February 17, 2010 meeting.

Section 2. Provides an effective date of upon becoming a law.

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:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to a survey of all Supervisors of Elections by the Florida State Association of Supervisors of Elections on February 11, 2010, the approximate current fiscal impact is estimated to be $45,014,556 for counties to purchase the equipment needed to be compliant with the 2012 statutory requirement. The per county cost estimates range from a low of $50,000 to almost $7 million.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In information provided to the Governmental Affairs Policy Committee at its meeting on February 17, 2010, was a list of boards of county commissioners that have voted in support of delaying the implementation date to 2016. Sixty-five of the 67 boards of county commissioners voted in support of the delay in implementation. This number includes Pinellas and Sarasota Counties which are currently in compliance with the 2012 requirement.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL ORIGINAL YEAR

A bill to be entitled

An act relating to voter interface device requirements; amending s. 101.56075, F.S.; extending the timeframe requiring that persons with disabilities vote on voter interface devices meeting specified requirements; providing an effective date.

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

Section 1. Subsection (3) of section 101.56075, Florida Statutes, is amended to read:

101.56075 Voting methods.—

(3) By 2016 ~~2012~~, persons with disabilities shall vote on a voter interface device that meets the voter accessibility requirements for individuals with disabilities under s. 301 of the federal Help America Vote Act of 2002 and s. 101.56062 which are consistent with subsection (1) of this section.

Section 2. This act shall take effect July 1, 2010.

Department of the
Lottery

CHARLIE CRIST
Governor

LEO DIBENIGNO
Secretary

FLORIDA LOTTERY

February 17, 2010

The Honorable D. Alan Hays
Chairman
Government Operations Appropriations Committee
The Capitol, Room 221
402 South Monroe Street
Tallahassee, Florida 32399-1300

The Honorable Robert C. Schenck
Chairman
Governmental Affairs Policy Committee
209 House Office Building
402 South Monroe Street
Tallahassee, Florida 32399-1300

RE: The Florida Lottery's Headquarters Facility

Dear Chairman Hays and Chairman Schenck:

As the Florida Lottery's Chief Administrative Officer with executive leadership responsibility for our facilities operations, Secretary Leo DiBenigno asked that I respond to your letter from February 11, 2010. You requested a consolidation plan for the Florida Lottery's leased headquarters facility, and a written response addressing facility security concerns, the tenant improvement allowance, and the rationale for using Lottery rule(s) for the lease procurement.

Space Consolidation Plan

Goal: Reduce excess office space in the Lottery's headquarters facility.

Strategies:
1. Free-up office space through consolidation and reconfiguration.
2. Secure new tenants.

The initial strategy is to reduce excess office space by first consolidating related Lottery work units and reconfiguring work areas, as economically as possible, based on current space standards. Emphasis will be placed on providing economies and efficiencies through shared resources (e.g., business center equipment, file storage, etc.). Excess office space is not located in large contiguous areas; instead, excess space is created incrementally due to individual offices and common areas that exceed current standards.

With the consolidation of Lottery work units and the resulting creation of contiguous available space, the second strategy will be pursued to secure new tenants. To implement these two strategies, the Florida Lottery will engage an architectural engineering firm, utilize the services of our tenant broker (Cushman & Wakefield), and consult with the Department of Management Services (DMS).

As background, DMS was recently consulted in regards to maximizing space utilization at the most economical cost. At that time, DMS recommended that the services of a professional architectural engineering firm be engaged. Such a firm would have the tools necessary to provide recommendations for the most economical and effective space utilization, thereby enhancing the "marketability" of space available for sublease.

The action plan described below will be completed by the architectural engineering firm and Cushman & Wakefield in concert with DMS:

Action Plan

1. Develop a timetable for completion of the Action Plan.
2. Interview work unit managers and review work flow functions.
3. Analyze the security evaluation and operational study on file.
4. Analyze the Multi-State Lottery Association (MUSL) rules applicable to the Florida Lottery for POWERBALL.
5. Conduct preliminary assessment of potential new tenants (both public and private).
6. Conduct a space needs analysis for program areas.
7. Apply space management principles using the most-recent DMS space utilization standards.
8. Identify reconfiguration and consolidation opportunities taking into account, for example:
    - Existing hard wall offices, meeting rooms and hallways that were built in compliance with standards that are now more than 22 years old;
    - Unique requirements associated with the presence of two data centers, draw production activities, law enforcement activities, player access, etc.;
    - Utilities infrastructure to include electrical, plumbing, HVAC, security, fiber optics; and,
    - Alternative ingress/egress options.
9. Identify necessary tenant improvements in anticipation of occupancy until at least July, 2018.
10. Identify potential new tenants (public and private) with space needs requirements and prospective occupancy dates.
11. Prepare and submit to Lottery Executive Management:
    - An executive summary of the analysis and recommendations that will result in the greatest long-term value to the State of Florida by consolidating excess office space and acquiring new tenants. (architectural engineering firm);
    - A detailed work plan with an estimation of costs associated with the demolition and reconfiguration of the facility, along with a proposed construction time table. (architectural engineering firm); and
    - An executive summary listing potential new tenants that have been identified, subject to space requirements, building renovation(s), adequate ingress/egress, etc. (Cushman & Wakefield).

While the emphasis in the action plan focuses on excess office space primarily, available warehouse space will also be taken into consideration with regards to securing tenants for subleasing.

Security Concerns

Protecting the security and integrity of Lottery operations is paramount to public confidence and, therefore, to the success of the department. To this end, section 24.108(7)(a), Florida Statutes, requires that the department undergo a periodic comprehensive study and evaluation of all aspects of operational security.

The principal security concerns for subleasing Lottery space have included:

- Live tickets in various areas throughout the building;
- The Lottery's gaming and financial computer systems, communication and network structures, including the gaming system's host servers;
- Confidential data on retailers, vendors, employees and prize claimants;
- Game drawing equipment; and
- Division of Security's advanced forensic testing equipment.

The current physical layout of the headquarters building has not allowed the department to isolate these areas from access or potential access by sub-tenants, their employees, vendors, and clientele. The Lottery has a history of receiving high marks for its security controls for both physical and technological assets and is committed to continuing that level of security. The Lottery will work with the architectural engineering firm to ensure these requirements are considered during the redesign or reconfiguration process.

Tenant Improvement Allowance (TIA)

A Tenant Improvement Allowance (TIA) of $2.34 million is to be used for consolidating Lottery work units into a contiguous area that will result in a smaller footprint while facilitating the opportunity for shared resources, such as copiers, printers, conference rooms, etc. Additionally, renovation of the facility's common areas, such as the lobby, restrooms and break areas, are planned. Taken together, these improvements should enhance the appeal of the facility to potential tenants.

It should be noted that approximately $380,000 of the TIA has been expended in the demolition of excess office space and building of the on-site draw production studio. The TIA funds also cover required architectural/engineering and permitting fees, as well as equipment and furniture relocation expenses, associated with the reconfiguration and renovation of space.

Use of Lottery Rule 53ER87-24

Rule 53ER87-24 was the purchasing rule in effect in 1997, when the Lottery's Request for Proposal (RFP) for a headquarters lease was issued. Thus, it was the governing rule in effect at the time of the RFP and was used for that reason.

The current lease, dated July 11, 2008, is a renewal of the 1997 lease, but on more favorable terms than the original lease. As stated above, the original lease was competitively acquired through an RFP and although the RFP nominally took place under rule 53ER87-24, the rule's substantive requirements were similar if not identical to chapter 255, Florida Statutes.

Background

Section 24.105(13), Florida Statutes, authorizes the adoption of alternative purchasing procedures by the Lottery. As stated in the 1987 legislation that created the Lottery, structures and procedures appropriate to the performance of other governmental functions would not necessarily be appropriate to the operation of a state lottery and thus, alternative purchasing rules were statutorily authorized to be adopted by the Lottery.

Rule 53ER87-24 was the purchasing rule adopted by the Lottery in 1987, at or near the time of Lottery startup. Substantively, the rule closely paralleled the provisions of chapter 255, Florida Statutes; both required competitive bidding for leases of 2,000 square feet or more.

In contrast to its 1987 counterpart, chapter 255 currently requires competitive bidding for leases of 5,000 square feet or more. The Lottery's current facility leasing rule, 53ER09-51, directly incorporates the competitive bidding requirements of chapter 255 for leases of 10,000 square feet or more. Thus, while rule 53ER09-51 increases the minimum square footage for competitive bidding to 10,000 square feet, it retains the requirement for open competition for all leases, regardless of size. For leases under 10,000 square feet, the Lottery rule requires competitive offers to be obtained, followed by negotiation of specific terms, conditions and cost. For these smaller leases, the Lottery has used its tenant broker, Cushman & Wakefield, to conduct comparative market analyses of potential lease facilities and to assist in negotiating lease terms, conditions and cost. All leases acquired under rule 53ER09-51 are required to provide the greatest long-term benefit to the State. The criteria for determining "greatest long-term benefit to the state" are set forth in section 24.105(13), Florida Statutes.

Both of the referenced rules, 53ER87-24 and 53ER09-51, were adopted pursuant to section 24.105(13), Florida Statutes. In adopting such procedures, the Lottery's goal has been to streamline the procurement process while retaining the open, competitive nature of Lottery procurements. This is one of the important tools the Lottery has used to gain the operational efficiency that has been reported favorably in various OPPAGA studies. It is a tool that was contemplated by the Legislature in 1987 when it directed the Lottery to operate in the manner of an entrepreneurial business enterprise. The Lottery has made judicious use of this authority for more than 20 years, again, contributing to the efficiency of its operations while maintaining fair and open competition in its procurement activities.

Space Utilization History

In an effort to further respond to questions that arose during the February 3 and 9 Committee meetings, please see the following summary of actions taken by the Florida Lottery to obtain subtenants for available office space in the headquarters facility:

July 2003 – Relocated the Tallahassee district office to the headquarters facility. Approximately 2,000 square feet of office space and 3,423 square feet of warehouse space are used to meet the district's space needs.

October 2006 – FDLE: approximately 14,700 square feet for a DNA lab. FDLE cited environmental and design concerns, which resulted in its pursuit of other space.

November 2006 – RESPECT of Florida: approximately 7,000 square feet for a t-shirt screen printing facility. The Florida Lottery was pursuing a contract where an employment center for disabled persons would manufacture the Lottery's screen printed t-shirts. However, the employment center had just initiated the plans, permitting and loan process for its facility in Madison County.

July 2007 – Hispanic Market Spanish Language Advertising contract: Offered space for co-location of account management staff, if the successful firm did not have an established presence in Florida. Presence must have been established within 90 days after contract award. Selected firm had an established presence; therefore, opted to not co-locate.

January 2008 – Instant Ticket Games contract: Mandated account management staff co-location, and offered space for co-location of telemarketing function. Relocation of the established telemarketing function from elsewhere in Florida would have resulted in increased contract cost; however, account management staff is co-located at Lottery headquarters.

May 2008 – Auditing Services contract: Offered office space to successful firm in the event they sought to establish a presence in Tallahassee, Fla. Selected firm had an established presence in Tallahassee.

May 2009 – General Market Advertising contract: Mandated co-location of account management staff. On September 8, 2009, account management staff co-located to Lottery headquarters.

November 2009 – Production Services contract: Offered office space to successful firm in the event co-location was necessary. Selected firm had an established presence in Tallahassee; therefore, co-location was not necessary.

April 2010 – Game Draws will commence in April 2010. The Florida Lottery completed the renovation of excess office space into a new Draw Studio occupying 3,756 square feet of space.

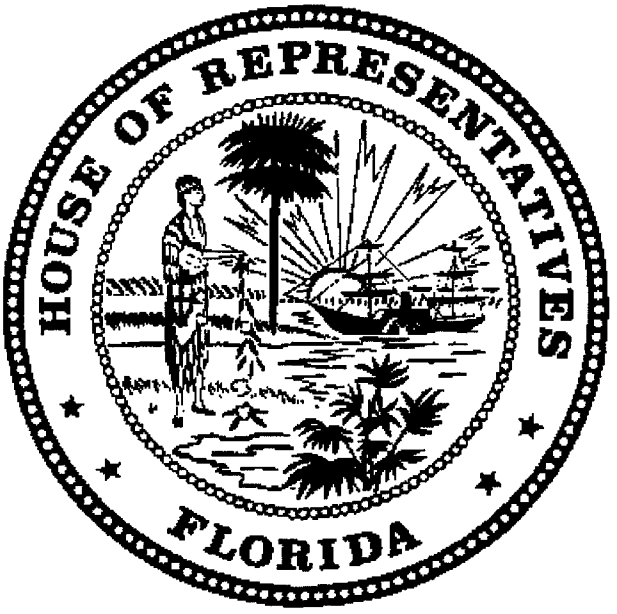
Chairman Hays, I appreciate your visit on the afternoon of February 11. This provided us an opportunity to show you first-hand some of the challenges associated with securing new tenants and consolidating our present headquarters facility.

I trust that this letter is responsive to your inquiry, and I look forward to addressing any further questions that either of you may have on this matter.

Respectfully,

Terry Perkins
Chief Administrative Officer

c: Secretary Leo DiBenigno



Governmental Affairs Policy Committee

Wednesday, March 3, 2010
8:00 AM – 10:30 AM
306 HOB
Addendum A – 3/2/10 6:00 PM

Larry Cretul
Speaker

Robert C. "Rob" Schenck
Chair

Amendment No. 5

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative(s) McKeel offered the following:

Amendment

Remove line 236 and insert:

parties, affiliated party committees, or political committees or expenditures in support of

Amendment No. 6

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative(s) McKeel offered the following:

Amendment (with title amendment)

Between lines 1281 and 1282, insert:

Section 17. Paragraph (a) of subsection (4) of section 106.141, Florida Statutes, is amended to read:

106.141 Disposition of surplus funds by candidates.—

(4)(a) Except as provided in paragraph (b), any candidate required to dispose of funds pursuant to this section shall, at the option of the candidate, dispose of such funds by any of the following means, or any combination thereof:

1. Return pro rata to each contributor the funds that have not been spent or obligated.

2. Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code.

3. Give not more than $10,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member, except that a candidate for the Florida Senate may give not more than $30,000 of such funds to the affiliated party committee or political party of which the candidate is a member.

4. Give the funds that have not been spent or obligated:

a. In the case of a candidate for state office, to the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or

b. In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

Section 18. Paragraph (a) of subsection (4) of section 106.143, Florida Statutes, is amended to read:

106.143 Political advertisements circulated prior to election; requirements.—

(4)(a) Any political advertisement, including those paid for by a political party or affiliated party committee, other than an independent expenditure, offered by or on behalf of a candidate must be approved in advance by the candidate. Such political advertisement must expressly state that the content of the advertisement was approved by the candidate and must state who paid for the advertisement. The candidate shall provide a written statement of authorization to the newspaper, radio station, television station, or other medium for each such

advertisement submitted for publication, display, broadcast, or other distribution.

T I T L E A M E N D M E N T

Remove line 84 and insert:

an issue at any time; amending s. 106.141, F.S.; adding affiliated party committees to the list of entities to which a candidate can donate surplus funds; amending s. 106.143, F.S.; requiring an affiliated party committee, like a political party, to obtain advance approval by a candidate for political advertisements; amending s. 106.1439, F.S.;