



# The Florida Senate

Interim Project Report 2007-119

November 2006

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Committee on Ethics and Elections

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## REVISION OF GUBERNATORIAL APPOINTMENT BIOGRAPHICAL QUESTIONNAIRE

### SUMMARY

The Florida Senate confirms approximately 450 gubernatorial and other appointments each year. The Florida Constitution entrusts the Florida Senate with the authority and responsibility to review and confirm certain appointments when authorized by law. This constitutional process plays a vital role in Florida government as an essential “checks and balances” function of our government. When the Governor, or any other individual authorized to do so, makes an appointment, the Department of State sends the appointee qualifying papers and requests he or she complete a *biographical questionnaire*. The form and content of the *biographical questionnaire* is prescribed by the President of the Senate. The *biographical questionnaire* is the primary informational document utilized by the Committee on Ethics and Elections to advance an extensive committee inquiry into the background, qualifications, and other information pertinent to the Senate’s evaluation of the suitability of an appointee for appointment.

### BACKGROUND

Senate confirmation is a process by which the Florida Senate reviews executive appointments to certain offices. The Florida Senate’s authority to conduct confirmations is found in Article IV, section 6(a) of Florida’s Constitution. This constitutional process plays a crucial role in Florida government because the Senate, when authorized by law, is entrusted with the constitutional responsibility to review qualifications relating to the appointment, ultimately resulting in confirmation or rejection of the appointee. This constitutional joint action of the executive and the legislative branches functions as an essential part of the “checks and balances” system of our tripartite, republican form of government.

When the Governor, or any other individual authorized to make an appointment subject to Senate confirmation,

makes an appointment, the letter of appointment is recorded and filed with the Department of State.<sup>1</sup> After the appointee qualifies for office, copies of applicable documents, including a completed *biographical questionnaire*, in form and content approved by the Senate President, are forwarded to the President, or to the Secretary of the Senate as the President’s designee.<sup>2</sup> If Cabinet approval of the appointment is necessary, the Department of State forwards appropriate documents to the President of the Senate after the Cabinet has approved the appointment. The President then refers the appointment to the Committee on Ethics and Elections, other appropriate Senate committee, or a Special Master for inquiry.<sup>3</sup> After thorough investigation of the background and qualification of each appointee, the committee, committees (if dually referenced), or Special Master reports the findings to the President with a recommendation for action to be taken by the Senate.<sup>4</sup> Once the President releases the report, a vote is taken on the floor of the Senate which is recorded in the Journal of the Senate. Appropriate documents reflecting the Senate’s decision are prepared and forwarded to the Department of State and to the appointee.<sup>5</sup> If the Senate confirms the appointee, the Department of State prepares a commission which is signed by the Governor. This act finalizes the appointment process.<sup>6</sup>

In furtherance of the Senate’s responsibility, the Committee on Ethics and Elections must conduct extensive background investigations of all appointees and make a report to the Senate President with a recommendation to confirm, refuse to confirm, or indicate that it failed to consider an appointee. In order to successfully and thoroughly conduct this

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<sup>1</sup> Section 114.05(1)(a), F. S.

<sup>2</sup> Section 114.05(1)(b), F.S.

<sup>3</sup> See Florida Senate, Rule 12.7.

<sup>4</sup> *Id.*

<sup>5</sup> Section 114.05(1)(c), (d), & (e), F.S.

<sup>6</sup> Section 114.05(1)(c), F.S.

investigation, the committee utilizes the *biographical questionnaire* as its primary informational document.

Upon referral of an appointment, the Committee on Ethics and Elections informs the appointee of the referral of his or her appointment, provides information regarding the confirmation process, and may request additional information from the appointee. The committee also informs all members of the Senate by e-mail of every appointment within their senatorial district. This information is also maintained and available on an interactive committee website. The committee requests comments from Senators on the suitability of the appointee for office. The committee then conducts an extensive background check on the appointee. The information compiled includes facts about the appointee's education, work experience, record of performance, arrest record, professional or occupational service, conflicts of interest, and any other information deemed relevant by the committee.

In addition to information provided by the appointee in the *biographical questionnaire*, the committee contacts the following individuals and agencies for information<sup>7</sup>:

- The Supervisor of Elections of the county in which the appointee resides for verification that the appointee is a registered voter;
- The Commission on Ethics for information as to whether the appointee has ever been found in violation of the Code of Ethics for Public Officers and Employees or the provisions of Article II, section 8, of the Florida Constitution;
- The Department of Highway Safety and Motor Vehicles for information concerning the appointee's driving history as a licensed Florida driver;
- The Department of State or the Supervisor of Elections in the county of residence for a copy of the appointee's financial disclosure forms;
- The Department of Law Enforcement for a criminal background check (any adverse reports are investigated by the committee staff and reported to the committee);
- The Auditor General for information on audit reports regarding agencies in which the appointee has been an office holder or employee (adverse reports are reported to the committee);

- Governmental agencies, such as the Department of Business and Professional Regulation, Insurance, Banking and Finance, and Education, and the Florida Bar, as appropriate, for information regarding professional licenses or certificates issued by such entities and the appointee's activities while so licensed or certified;
- The committee requires the applicants to provide verification from the awarding institution of the highest educational degree received by the applicant; and
- The appropriate board, commission, or authority, for attendance information on those appointees who have been reappointed to the same office.

The committee also takes into consideration any other office the appointee may be holding to assure there is no violation of the dual office holding provisions of Article II, section 5, of the Florida Constitution.

Prior to the hearing, committee staff prepares a check sheet which summarizes the results of the background investigation and provides the check sheets to members of the committee and any other interested individuals. If the appointment is for a multi-member board, a map is prepared showing the county of residence of each current member of the particular board to inform Senators of the geographical distribution of the board members.

## METHODOLOGY

The committee drew upon extensive hands on staff experience in reviewing the *biographical questionnaires* submitted by appointees to identify areas where additional information or revised questions would reveal pertinent information to staff and thereby provide Senators greater ability to evaluate the suitability of appointees for their appointive positions. Staff met with representatives of the governor's appointment office and received additional input regarding other appropriate inquiry since the governor's office originates the majority of appointments. The staff also met with the Secretary of State's office charged with ministerial functions associated with the appointment process to receive additional suggestions for improvement or refinement of the *biographical questionnaire*.

<sup>7</sup> Section 114.05(2), F.S.

## FINDINGS

Based upon the experience of committee staff and others who rely upon the utility of the *biographical questionnaire*, the need to update, expand, and refine the questionnaire became evident. The primary critique of the *biographical questionnaire* centered not on the lack of veracity of responses given by appointees, but rather on the need to eliminate confusing questions and to include questions that more incisively examine important but currently omitted areas of inquiry. It was also concluded that many questions were simply in need of clarification. Much necessary information was not elicited by the current *biographical questionnaire*. The proposed changes discussed below address the following areas of suggested further inquiry:

### *Workplace Misconduct*

Workplace misconduct often does not rise to the level of reported judicial proceedings. In order to provide opportunity for full disclosure, both committee staff and the governor's office suggest inclusion of such an inquiry. (Question 14)

### *Expanded Litigation Disclosure*

The current questionnaire elicits limited information on the appointees involvement in litigation. The proposed *biographical questionnaire* has been revised, expanded, and encompasses a more comprehensive inquiry into litigation matters to gain a more complete snapshot of the appointee's current and ongoing litigation involvement. (Questions 15-18)

### *Certification by Appointee under Penalties of Perjury*

Currently the *biographical questionnaire* requires the appointee to swear before a notary public to the veracity and complete nature of the information and answers contained in the questionnaire. Timeliness as well as accuracy are critical components of the appointment process, especially if the submission is incomplete or if additional information must be requested of an applicant.

Requiring the applicant to secure the notarization of his or her signature frequently occasion delays in the processing of appointments or even encourages appointees to ignore the certification requirement in completing supplemental information requests. Replacing the notarization requirement with the oath

given under penalties of perjury<sup>8</sup> is an efficient, contemporary, and equally effective means of insuring the accuracy and truthfulness of the responses given by appointees.

### *Miscellaneous*

From experience, staff identified numerous areas within the *biographical questionnaire* where greater clarity in question form as well as minor corrections would create less confusion in completion of the *biographical questionnaire*.

## RECOMMENDATIONS

The proposed revised *biographical questionnaire* consistent with the above findings is set forth on the following pages. New language is identified in underlined bold type and deletions are shown as stricken. For purposes of this report, the space for completion of the questionnaire has been compressed.

<sup>8</sup> See Chapter 837, F.S.

### BIOGRAPHICAL QUESTIONNAIRE DRAFT

Date Completed \_\_\_\_\_

1. Name: \_\_\_\_\_  
MR./MRS./MS.                      LAST                      FIRST                      MIDDLE/MAIDEN

2. Business Address: \_\_\_\_\_  
STREET                      OFFICE #                      CITY

POST OFFICE BOX                      STATE                      ZIP CODE                      AREA CODE/PHONE NUMBER

3. Residence Address: \_\_\_\_\_  
STREET                      CITY                      COUNTY

POST OFFICE BOX                      STATE                      ZIP CODE                      AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business  Residence

**E-mail address (optional)** \_\_\_\_\_

**Cell Phone #** (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_                      **Fax # (optional)** \_\_\_\_\_

4. A. List all your places of residence for the last five (5) years.

ADDRESS                      CITY & STATE                      FROM                      TO

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS                      CITY & STATE                      FROM                      TO

5. Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

6. Social Security Number: \_\_\_\_\_

7. Driver License Number: \_\_\_\_\_ Issuing State: \_\_\_\_\_

8. Have you ever used or been known by any other legal name? Yes  No  If "Yes," explain:

9. Are you a United States citizen? Yes  No  If "No," explain: \_\_\_\_\_

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? \_\_\_\_\_

11. Are you a registered **to vote Florida voter**? Yes  No  If "Yes," list:

A. **State and** County of registration: \_\_\_\_\_ B. Current party affiliation: \_\_\_\_\_

12. Education

A. High School: \_\_\_\_\_ Year Graduated: \_\_\_\_\_

(NAME AND LOCATION)



21. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

\_\_\_\_\_

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes," list:

\_\_\_\_\_

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No  If "Yes," list:

\_\_\_\_\_

D. Identify all association memberships and association offices held by you that relate to this appointment:

\_\_\_\_\_

22. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes  No  If "Yes," list:

\_\_\_\_\_

23. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes," state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
_____			

B. **If this appointment is a re-appointment to the board, committee, or council on which you currently serve:** ~~If your service was on an appointed board(s), committee(s), or council(s):~~

(1) How frequently were meetings scheduled: \_\_\_\_\_

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE
_____		

24. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes  No  If "Yes," give details:

DATE	NATURE OF VIOLATION	DISPOSITION
_____		

25. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes," list:

A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_

B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

26. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No  If "Yes," list:

A. Title of Office: \_\_\_\_\_

B. Term of Appointment: \_\_\_\_\_

C. Confirmation results: \_\_\_\_\_

27. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes," explain:

\_\_\_\_\_

**28.** Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No  If “Yes,” provide the title and number, original issue date, and issuing authority. If any disciplinary action (**for example**, fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>LICENSE/CERTIFICATE</u>	<u>ORIGINAL</u>		
<u>TITLE &amp; NUMBER</u>	<u>ISSUE DATE</u>	<u>ISSUING AUTHORITY</u>	<u>DISCIPLINARY ACTION/DATE</u>

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**29.** A. Have you, or businesses of which you have been **an and** owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If “Yes,” explain:

<u>NAME OF BUSINESS</u>	<u>YOUR RELATIONSHIP TO BUSINESS</u>	<u>BUSINESS' RELATIONSHIP TO AGENCY</u>
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B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If “Yes,” explain:

	<u>FAMILY MEMBER'S</u>	<u>FAMILY MEMBER'S</u>	<u>BUSINESS' RELATIONSHIP</u>
<u>NAME OF BUSINESS</u>	<u>RELATIONSHIP TO YOU</u>	<u>RELATIONSHIP TO BUSINESS</u>	<u>TO AGENCY</u>

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**30.** Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>AGENCY LOBBIED</u>	<u>PRINCIPAL REPRESENTED</u>
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**31.** List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>ZIP CODE</u>	<u>AREA CODE/PHONE NUMBER</u>
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**32.** Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>OFFICE(S) HELD &amp; TERM</u>	<u>DATE(S) OF MEMBERSHIP</u>
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**33.** Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If “Yes,” explain:

**34.** If required by law or administrative rule, will you file financial disclosure statements? Yes  No

CERTIFICATION

STATE OF \_\_\_\_\_ FLORIDA,

COUNTY OF \_\_\_\_\_

Under penalties of perjury, I, \_\_\_\_\_, **duly swear and affirm** who, after being duty sworn, say: (1) that **I have** he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true **to the best of my knowledge and belief**; and (3) that **I will** he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

\_\_\_\_\_  
Signature of Applicant-Affiant

Sworn to and subscribed before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public State of Florida

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: \_\_\_\_\_

Personally Known  **OR** Produced Identification

Type of Identification Produced \_\_\_\_\_

(seal) \_\_\_\_\_