

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Ethics and Elections Committee

BILL: SB 962

SPONSOR: Senator Smith

SUBJECT: Florida Elections Commission Investigations

DATE: March 31, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Babington</u>	<u>Rubinas</u>	<u>EE</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 962 requires the Florida Elections Commission to report all findings of an investigation into both alleged violations, and violations that could have been, but were not, alleged in a sworn complaint, to the Division of Elections.

The bill amends subsection (2) of s. 106.25, Florida Statutes.

The bill provides an effective date.

II. Present Situation:

Currently, the Florida Elections Commission is vested with the jurisdiction to investigate and determine violations of chapters 104 and 106, Florida Statutes.¹ Violations of these chapters are considered to be the willful performance of an act prohibited by chapter 104 or 106, or the willful failure to perform an act required by chapter 104 or 106.² Chapter 104 addresses criminal violations of the election code, and chapter 106 addresses campaign financing.

There are two scenarios under which the commission may investigate an alleged violation of chapter 104 or 106. First, the commission is required to investigate allegations of a violation set forth in an information reported to it by the Division of Elections.³ The Division has the duty to

¹ Section 106.25(1), Florida Statutes.

² Section 106.25(3), Florida Statutes.

³ Section 106.25(2), Florida Statutes.

report to the commission any failure to file a report or information required by chapter 106 or any apparent violation of chapter 106.⁴

Second, the commission is required to investigate allegations contained in a sworn complaint from any person. The commission is authorized to investigate only those alleged violations specifically contained within the sworn complaint. If the complainant fails to allege all violations that arise from the facts or allegations in the sworn complaint, the commission is prohibited from investigating any future complaints from the complainant that is based upon facts or allegations that either were raised in the first complaint, or could have been raised in that complaint.⁵

The commission is required to initiate a preliminary investigation to determine if the facts alleged in a sworn complaint, or in a matter initiated by the division constitute probable cause to believe that a violation has occurred. Upon the completion of the preliminary investigation, the commission is required to issue a written report, finding either probable cause or no probable cause.⁶ In a case where probable cause is found, the commission is required to make a preliminary determination to consider the matter, or to refer the matter to the state attorney.⁷

III. Effect of Proposed Changes:

Section 1. Reports of alleged violations to Florida Elections Commission; disposition of findings. [amending s. 106.25, F.S.]

Requires the Florida Elections Commission to report all findings related to a sworn complaint to the Division of Elections for further proceedings in accordance with s. 106.22(7), Florida Statutes. Section 106.22(7), provides, as one of the duties of the Division of Elections, the duty to report to the Florida Elections Commission any failure to file a report or information required by chapter 106, or any apparent violation of chapter 106.

The bill has the practical effect of allowing the commission to report any findings of additional violations it discovered in the course of its investigation into a sworn complaint, but was barred by statute from investigating further. The commission would be permitted to report these additional findings to the Division of Elections, which could then refer an information back to the commission to permit it to investigate these additional alleged violations.

Section 2. Effective date.

This act shall take effect July 1, 2005.

⁴ Section 106.22(7), Florida Statutes.

⁵ Section 106.25(2), Florida Statutes.

⁶ Section 106.25(4), Florida Statutes.

⁷ Section 106.25(4)(b), Florida Statutes.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

Current law provides that “every sworn complaint filed pursuant to this chapter with the commission, every investigation and investigative report or other paper of the commission with respect to a violation of this chapter or chapter 104... is exempt” from disclosure under state public records law.⁸ However, these exemptions do not apply to a determination of probable cause or no probable cause by the commission. It appears that the commission’s findings of additional violations, which the bill proposes it must submit in a report to the division, would not be exempted from disclosure under public records law if the findings are contained in its determination of probable cause or no probable cause.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

⁸ Section 106.25(7), Florida Statutes.

VIII. Summary of Amendments:

None.

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