

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 699 Campaign Financing

SPONSOR(S): Public Integrity & Elections Committee, Payne and others

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

FINAL HOUSE FLOOR ACTION: Y's 75 N's 40 **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 699 passed the House on April 26, 2021, as CS/CS/SB 1890.

The bill places a \$3,000 contribution limit from a person or political committee to a political committee that is the sponsor of a constitutional amendment proposed by initiative. The new contribution limit will not apply after the Secretary of State has issued a certificate of ballot position and a designating number for the proposed constitutional amendment.

The bill preempts local governments from enacting or adopting:

- Contribution limits that differ from existing limits in statute;
- Any limitation or restriction involving contributions to a political committee or an electioneering communication organization; or
- Any limitation or restriction on expenditures for an electioneering communication or an independent expenditure.

The bill revises the authorized methods for disposing of campaign surplus funds. Specifically, the bill provides that if the surplus funds are disposed of by donation to a charitable organization, the candidate may not be employed by the same charitable organization. The bill also allows all candidates for state and local office to deposit surplus funds in the general revenue fund of a political subdivision, the state General Revenue Fund, or the Election Campaign Financing Trust Fund.

The bill may result in a positive fiscal impact to state and local government revenues as both state and local candidates would be permitted to deposit surplus funds in either the state general revenue fund or the general revenue fund of a political subdivision.

The bill was approved by the Governor on May 7, 2021, ch. 2021-16, and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Political Committees

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

- Accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;
- Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
- Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
- Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.¹

In addition, a political committee means the sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.²

All political committees are required to file a statement of organization within 10 days after its organization.³ A political committee that is organized to support or oppose statewide, legislative, or multicounty candidates or issues to be voted upon on a statewide or multicounty basis must file its statement of organization with the Division of Elections.⁴

Each political committee must file regular reports of all contributions received, and all expenditures made, by or on behalf of the political committee.⁵ The reports must include a list of specified information, including, but not limited to, the full name, address, and occupation, if any, of each person who made one or more contributions to or for such committee within the reporting period, together with the amount and date of such contributions.⁶

Proposal of Constitutional Amendments

Amendments to the Florida Constitution can be proposed in five different ways: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizens' initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.⁷ Depending on the method, all proposed amendments or revisions to the Florida Constitution must be submitted to the electors at the next general election held more than 90 days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the

¹ S. 106.011 (16)(a), F.S.

² S. 106.011(16)(a), F.S. The following entities are not considered political committees: 1) national political parties, the state and county executive committees of political parties, and affiliated party committees; 2) corporations 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, affiliated party committees, 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; or 3) electioneering communications organizations (s. 106.011(16)(b), F.S.).

³ S. 106.03(1)(a), F.S.

⁴ S. 106.03(3)(a), F.S.

⁵ S. 106.07(1), F.S.

⁶ S. 106.07(4)(a), F.S.

⁷ See FLA. CONST. art XI, ss. 1-4 and 6.

custodian of state records, or for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election will be held.⁸

The Florida Constitution mandates that all proposed amendments or revisions⁹ be adopted by at least a 60% affirmative vote of those electors voting on the measure.

Citizens' Initiatives

The Florida Constitution provides citizens the right to propose constitutional amendments through an initiative petition process.¹⁰ The process includes the following signature requirements:

- The total number of signatures must be equal to at least eight percent of the number of voters in the last presidential election.
- The signatures must come from voters in at least one-half of the congressional districts of the state.¹¹

In order for a citizens' petition to get placed on the ballot, the individual or group wishing to propose an amendment must register as a political committee with the Division of Elections.¹² The sponsoring political committee must then submit its initiative petition form to the Division for approval.¹³ After the Division approves the format of a petition form, the Division assigns a serial number to the initiative petition.¹⁴ Once a serial number has been assigned, the sponsoring political committee may begin circulating petitions for signature by registered Florida voters.¹⁵ Each signed initiative petition form must be submitted by the sponsoring political committee to the supervisor of elections' office in the county of residence of the signee for signature verification.¹⁶

Once the sponsoring political committee obtains the thresholds for verified signatures,¹⁷ the Secretary of State (Secretary) sends the petition to the Attorney General,¹⁸ who must within 30 days of receipt petition the Florida Supreme Court (Court) for an advisory opinion as to whether the text of the proposed amendment complies with state constitutional requirements¹⁹, whether the proposed amendment is facially invalid under the United States Constitution, and whether the proposed ballot title and substance comply with statutory requirements.²⁰ The Secretary concurrently sends a copy of the petition to the Financial Impact Estimating Conference, which completes and submits to the Court a financial impact statement for the proposed amendment.²¹ By February 1 of the year of the general election, the Secretary determines whether the required number and distribution of signatures has been met.²² If so, the Secretary issues a certificate of ballot position to the sponsoring political committee.²³

⁸ See FLA. CONST. Art XI, s. 5.

⁹ When the Florida Constitution uses the word 'amendment' it is in reference to a section of the constitution, while the word 'revision' relates to one or more articles or the whole constitution. See FLA. CONST. Art. XI, s. 1.

¹⁰ FLA. CONST. Art. XI, s. 3.

¹¹ FLA. CONST. Art. XI, s. 3.

¹² S. 100.371(2), F.S.

¹³ Rule 1S-2.009 (Constitutional Amendment by Initiative Petition), F.A.C.

¹⁴ *Id.*

¹⁵ See *id.* and s. 100.371(2), F.S.

¹⁶ S. 100.371(11)(a), F.S. Each signature must be verified by the relevant supervisor of elections. The sponsoring political committee must pay the actual cost of verification to the supervisor of elections.

¹⁷ The verified signatures on petitions must be equal to at least 25% of the number of signatures required statewide and in at least one-half of Florida's congressional districts.

¹⁸ S. 15.21, F.S.

¹⁹ FLA. CONST. Art. XI, s. 3, in part limits citizens' initiatives (except those limiting the power of government to raise revenue) to a single subject.

²⁰ S. 101.161, F.S., provides format and content requirements for ballot titles and summaries. The ballot summary must be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title must consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. However, those requirements do not apply to amendments or revisions proposed by joint resolution of the Legislature. All proposals are subject to requirements pertaining to a financial impact statement that must be included in the ballot summary.

²¹ S. 100.371(13), F.S.

²² S. 100.371(1), F.S.

²³ S. 100.371(12), F.S.

No later than the next day, the Division director assigns the designated number for the proposed amendment.²⁴

Political Contribution Limits

No person²⁵ or political committee (except for political parties or affiliated party committees²⁶) may contribute in excess of:

- \$3,000 to a candidate for statewide office or for retention as a Supreme Court Justice; or
- \$1,000 to a candidate for retention as a judge of a district court of appeal, a candidate for legislative office, a candidate for countywide office or in any election conducted on less than a countywide basis, or a candidate for county judge or circuit judge.²⁷

Florida law does not currently limit contributions to a political committee.

Disposition of Surplus Funds

A candidate who withdraws his or her candidacy, becomes unopposed, is eliminated, or is elected to office must dispose of surplus funds in his or her campaign account within 90 days and file a termination report reflecting the disposition of all remaining funds.²⁸ Florida law generally provides former candidates may dispose of surplus funds by one or more of the following four options:

- Return funds pro rata to each contributor;
- Donate the funds to a charitable organization or organizations that meet the requirements of s. 501(c)(3) of the Internal Revenue Code;
- Rebate up to \$25,000 to the candidate's political party or an affiliated party committee; or
- Deposit funds to the state General Revenue Fund or the Election Campaign Financing Trust Fund,²⁹ in the case of a candidate for state office, or to a local political subdivision general fund, in the case of a candidate for local office.³⁰

Before disposing of surplus funds, a candidate may expend funds from his or her campaign account to:

- Purchase "thank you" advertising for up to 75 days;
- Pay for items obligated before the candidate withdrew, became unopposed, or was eliminated or elected; and
- Pay for necessary expenses to close down the campaign office and prepare final reports.³¹

A successful candidate has the additional option to transfer a certain amount of the surplus funds to an office account to be used for "legitimate expenses in connection with the candidate's public office."³² Candidates receiving public campaign financing must return all excess funds to the state General Revenue Fund after paying for any items for which the campaign was liable before withdrawing, becoming unopposed, or being eliminated or elected.³³

²⁴ Rule 1S-2.0011 (Constitutional Amendment Ballot Position), F.A.C.

²⁵ A "person" is 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 (s. 106.011(14), F.S.). The term includes a political party, affiliated party committee, or political committee.

²⁶ 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 (s. 103.092(2), F.S.). Affiliated party committees are subject to the same provisions of ch. 106, F.S., as are political parties.

²⁷ S. 106.08(1)(a), F.S.

²⁸ S. 106.141, F.S.

²⁹ On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. See note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.

³⁰ S. 106.141(4), F.S.

³¹ S. 106.11(5), F.S.; see also Division of Elections, Candidate & Campaign Treasurer Handbook, available at <https://fldoswebumbracoprod.blob.core.windows.net/media/702477/candidate-campaign-treasurer-handbook-2020.pdf> (last visited Feb. 25, 2021).

³² S. 106.141(5), F.S.

³³ S. 106.141(4)(b), F.S.

A candidate who fails to dispose of funds in his or her campaign account in the manner provided by law commits a misdemeanor of the first degree.³⁴ A person convicted of a misdemeanor of the first degree may be sentenced to a maximum term of imprisonment not to exceed one year and a fine not to exceed \$1,000.³⁵ In addition to criminal liability, the Elections Commission has the power and authority to investigate violations of this provision and can impose civil penalties in the forms of fines not to exceed \$1,000 per count.³⁶

Effect of Proposed Change

The bill adds to existing contribution limits for persons and political committees to provide that a person or political committee may not contribute more than \$3,000 to a political committee that is the sponsor of a constitutional amendment proposed by initiative.

The new contribution limit will not apply after the Secretary of State has issued a certificate of ballot position and a designating number for the proposed constitutional amendment.

The bill preempts local governments from enacting or adopting:

- Contribution limits that differ from existing limits in statute;
- Any limitation or restriction involving contributions to a political committee or an electioneering communication organization; or
- Any limitation or restriction on expenditures for an electioneering communication or an independent expenditure.

The bill provides that any existing or future limitation or restriction enacted or adopted by a local government that is in conflict with the new preemption is void.

The bill revises the authorized methods for disposing of surplus funds. Specifically, the bill provides that if the surplus funds are disposed of by donation to a charitable organization, the candidate may not be employed by the same charitable organization. The bill also allows all candidates for state office or local office to deposit surplus funds in the general revenue fund of a political subdivision, the state General Revenue Fund, or the Election Campaign Financing Trust Fund.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in a positive fiscal impact on state government revenues, as local candidates would now be permitted to deposit surplus funds in the general revenue fund or the Election Campaign Financing Trust Fund.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³⁴ S. 106.141(11), F.S.

³⁵ Ss. 775.082-775.083, F.S.

³⁶ S. 106.265, F.S.

1. Revenues:

The bill may result in a positive fiscal impact on local government revenues, as state candidates would now be permitted to deposit surplus funds in the general revenue fund of a political subdivision.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.