

**STORAGE NAME:** h0681.er

**DATE:** March 12, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
ELECTION REFORM  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 681

**RELATING TO:** Campaign financing (repealing the "Florida Election Campaign Financing Act")

**SPONSOR(S):** Representative Futch

**STATUTE(S) AFFECTED:** Repealing ss. 106.30, 106.31, 106.32, 106.33, 106.34, 106.35, 106.353, 106.355, 199.052(4) and 320.02(13), F.S.; amending ss. 99.092, 99.093, 99.103, 102.112, 105.031, 106.04, 106.07, 106.141, 106.22, 106.265, 322.08, 327.25 and 607.1622, F.S.

**COMPANION BILL(S):** SB 1706(i); CS/HB 461(c); and SB 568©

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) ELECTION REFORM (GRC)
- (2)
- (3)
- (4)
- (5)

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I. SUMMARY:

HB 681 repeals the "Florida Election Campaign Financing Act" and makes certain conforming changes.

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

HB 681 has an effective date of January 1, 1998.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

The "Florida Election Campaign Financing Act" (hereinafter referred to as "the Act") became law on January 1, 1987. It is set forth in ss. 106.30 through 106.36, F.S. In summary, it is the stated intent of the Legislature that the Act would alleviate certain factors which lead to the misperception that government officials are unduly influenced by special interests and to encourage qualified persons to seek statewide elective office who would not, or could not, otherwise do so. [s. 106.31, F.S. (1995)].

The Act provides public campaign financing, in the form of matching funds, to candidates for the office of Governor or member of the Cabinet. Under the provisions of the Act, matching funds are to be paid out of the Election Campaign Financing Trust Fund (hereinafter referred to as "the Trust Fund") on qualified contributions by individuals of \$250.00 or less. A principle source of funding for the Trust Fund has been a percentage of candidate filing fees and election assessments paid by all persons seeking to qualify for elective office in the State pursuant to ss. 99.092(1), 99.093(1) and 105.31(3), F.S.. Other sources of funding for the Trust Fund include fines and penalties collected by the Florida Elections Commission pursuant to ss. 106.04(8)(a), 106.07(8)(a) and 106.265, F.S., and voluntary contributions collected pursuant to ss. 199.052(14), 320.02(13), 322.08(7)(a), 327.25(11) and 607.1622, F.S.. In the event of a shortfall in the Trust Fund, the Act authorizes transfers of money into the Trust Fund from general revenue.

In order to be eligible to receive contributions from the Trust Fund, candidates must agree to abide by specified contribution and expenditure limits. [ss. 106.33, 106.34, F.S. (1995)]. Candidates who choose not to request public funds but who wish to voluntarily abide by the contribution and expenditure limits set forth in the Act must file an irrevocable statement to that effect with the Secretary of State. [s. 106.353(1), F.S. (1995)]. In the event that a non-participating candidate exceeds the expenditure limits set forth in the Act, all opposing candidates participating in public campaign financing are released from the expenditure limits to the extent the non-participating candidate exceeded the limit. [s. 106.355, F.S. (1995)].

Pursuant to the Act, the Division of Elections (Division) (has been responsible for reviewing all requests for public campaign financing, certifying the candidates eligible to receive money from the Trust Fund, and certifying the dollar amount each candidate is eligible to receive. [s. 106.35(1), F.S. (1995)]. The Comptroller has been responsible for disbursing funds to the candidates from the Trust Fund. [s. 106.35(3)(a), F.S. (1995)].

In 1992, the citizens of the State of Florida adopted a constitutional amendment which provides, in pertinent part, that state trust funds in existence before the effective date of the amendment would repeal within four (4) years unless the Legislature acted affirmatively to retain the trust fund. [Florida Constitution, art. III, s. 19(f)(2), See also, ss. 215.3206(1) and 215.3208, F.S. (1995)]. Pursuant to Florida law, all trust funds within the Department of State, including the Election Campaign Financing Trust Fund, were scheduled for review and possible re-creation by the Legislature during the 1996 Regular Legislative Session. During the 1996 Legislative Session, at least one bill was introduced for the specific purpose of terminating public campaign financing in Florida and at least two bills were introduced for the purpose of reenacting the Trust Fund.

These bills failed to pass. Pursuant to Art. III, s. 19(f)(2), of the Florida Constitution, the Election Campaign Financing Trust Fund terminated on November 4, 1996.

On November 4, 1996, the Division of Elections issued a formal, binding opinion interpreting the Election Campaign Financing Act in light of the Legislature's decision to allow the Trust Fund to terminate. [DE 96-03, *Public Campaign Finance*]. In DE 96-03, the Division opined that in the absence of the Trust Fund, (i) trust moneys should not be collected from candidates as part of their filing fees, (ii) the Division should not certify candidate eligibility, and (iii) the Comptroller should not authorize payments to candidates. Also included in the Division's opinion is the view that the Comptroller cannot authorize payments under the Act in the absence of a lawful appropriation.

The Secretary of State filed a lawsuit in the Circuit Court of the Second Judicial Circuit in Leon County on November 4, 1996, *Mortham v. Milligan, Case No. 96-6660*. In this lawsuit, the Secretary of State has requested declaratory relief under Chapter 86, F.S. (1995). Specifically, the Secretary of State has requested the Court to issue an Order declaring that:

- (1) No money designated by statute for deposit in the Trust Fund shall be collected until such time as the Legislature re-creates the Trust Fund or takes other action to provide lawful funding for the program;
- (2) The Secretary of State is relieved of any obligation to certify candidates to receive money from the Trust Fund pending further legislative action; and
- (3) The Comptroller shall assure that the termination of the Trust Fund is properly reflected in the State's fiscal operations, and that the Comptroller shall issue no warrant or authorize disbursements to candidates under the Act until the Trust Fund is either re-created or the Legislature takes other action that would allow for lawful disbursements to candidates.

As set forth in her Complaint for Declaratory Judgment, it is the opinion of the Secretary of State that because the Trust Fund is the only statutorily authorized source of funding for candidates under the Act, there is no longer any basis for certifying candidate eligibility or the amounts of funds candidates should receive. In contrast, the Comptroller disagrees with the legal conclusions set forth in DE 96-03, *Public Campaign Finance* and in his Answer and Counterclaim he maintains that the termination of the Trust Fund did not serve to void the entire Act, but merely changed the conduit through which payments under the Act are to be made from the Trust Fund to the General Revenue Fund. The Comptroller has also requested an Order from the Court:

- (1) Denying the relief sought by the Secretary of State;
- (2) Declaring that the portion of the candidate filing fees which were deposited into the Trust Fund are still valid and shall continue to be collected, but should now be deposited into the General Revenue Fund;
- (3) Declaring that all other statutes which provide for fines, penalties or voluntary contributions which are to be deposited into the Trust Fund should now be deposited into the General Revenue Fund; and

- (4) Declaring that all provisions of the Act, with the exception of the Trust Fund, continue to be fully valid and effective and that the General Revenue Trust Fund serve the purposes previously served by the Trust Fund.

It should be noted that the Secretary of State and the Comptroller have entered into a joint stipulation to preserve the status quo during their litigation. This case is still pending before the Circuit Court of the Second Judicial Circuit, Leon County.

**B. EFFECT OF PROPOSED CHANGES:**

HB 681 repeals the "Florida Election Campaign Financing Act", thereby eliminating the transfer of a portion of candidate filing fees to the Election Campaign Financing Trust Fund and reduces filing fees accordingly. Candidate filing fees for federal, state and county candidates are reduced from 4.5 percent to 3 percent. This bill also eliminates the transfer of a portion of municipal election assessments to the Trust Fund and reduces the municipal assessment accordingly. The municipal election assessment is reduced from 1.5 percent to .5 percent.

According to the Division, counties and municipalities collected \$1,267,859 from candidates during the 1996 elections to be deposited in the Trust Fund. With the passage of this bill, candidates who have previously qualified by the petition method (no fee required) may opt to pay the reduced qualifying fee. However, to what extent the counties and municipalities will be effected is indeterminable at this time

This bill also provides that fines assessed for late county election returns and late campaign financing reports are to be deposited in the General Revenue Fund rather than the Trust Fund. Based on the current \$50 per day fine for late reports (not exceeding 25 percent of the total receipts or expenditures, whichever is greater) for the period covered by the late report, the Division assessed candidates, political committees, committees of continuous existence, and political parties \$37,050 in fines during the 1996 elections. As of this date, no fine has ever been collected from a canvassing board member for the filing of late returns. With the passage of this bill, all future fines would be deposited in the General Revenue Fund.

HB 681 also eliminates the separate reporting dates for candidates receiving contributions from the Trust Fund and the required audits of campaign accounts of candidates receiving contributions from the Trust Fund. Under this bill, all civil penalties collected pursuant to s. 106.265, F.S., would be deposited into the General Revenue Fund rather than the Trust Fund. Provisions that currently authorize voluntary contributions to the Trust Fund are also eliminated.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Under the "Florida Election Campaign Financing Act", the Division of Elections is responsible for certifying whether a candidate is eligible for contributions and must provide a notice of the certification to the candidate. Adverse decisions may be appealed to the Florida Elections Commission. The Division of Elections is charged with adopting rules providing a procedure for such appeals. Furthermore, under the Act the Division of Elections is charged with reviewing reports made by candidates requesting contributions and for verifying the amount of funds to be distributed prior to authorizing the release of funds. The Division of Elections must also adopt rules providing for the weekly reports and certification and distribution of funds.

The elimination of public campaign financing would reduce the Division of Elections' rulemaking authority under the Act and the Florida Elections Commission would not have to adjudicate disputes arising from the Act.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

See answer in (1).

(3) any entitlement to a government service or benefit?

Candidates for the office of Governor and Cabinet would no longer be entitled to public campaign financing.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

To the extent that the "Florida Election Campaign Financing Act" is considered a "program", responsibility for financing a campaign for the office of Governor or member of the Cabinet would be passed on to the individual candidate.

(2) what is the cost of such responsibility at the new level/agency?

Indeterminate.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Yes.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

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- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Not applicable.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.



D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

HB 681 eliminates provisions in the Florida Statutes that authorize voluntary contributions to the Election Campaign Financing Trust Fund. Therefore, intangible tax return forms, motor vehicle registration forms, driver's license application forms, boat registration application forms and corporation annual report forms would all have to be reprinted as a result of this bill. By providing an effective date of January 1, 1998, the current stock of these forms will be able to be used before reprinting is required.

If candidates who would normally opt to qualify by petition decide to forego that method of qualifying and pay the reduced qualifying fee, the State may realize revenues, though indeterminable at this time.

All moneys normally deposited in the Election Campaign Financing Trust Fund and the provisions by which said moneys are collected are not eliminated by this bill, and would be deposited in the General Revenue Trust Fund.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminable at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

If candidates who would normally opt to qualify by the petition method decide to forego that method because the qualifying fee is reduced, revenues may be realized, though indeterminable at this time.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Under this bill, individual citizens running for the office of Governor or member of the Cabinet would not be entitled to matching funds.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is exempt from the mandates provision of the Florida Constitution because it is an elections law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

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