

By Senator Smith

5-514-02

1 A bill to be entitled
2 An act relating to elections; abolishing the
3 Florida Elections Commission and transferring
4 its powers, duties, functions, and assets to
5 the Florida Commission on Ethics; renaming the
6 Elections Commission Trust Fund as the
7 Elections Trust Fund; amending ss. 99.092,
8 99.093, 99.0955, 104.271, 104.42, 105.031,
9 105.071, 106.03, 106.04, 106.06, 106.07,
10 106.085, 106.087, 106.141, 106.22, 106.24,
11 106.25, 106.26, 106.29, 106.35, F.S., to
12 conform; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:
15

16 Section 1. All powers, duties, functions, rules,
17 records, property, and unexpended balances of appropriations,
18 allocations, or other funds of the Florida Elections
19 Commission are transferred to the Florida Commission on Ethics
20 by a type two transfer as defined in section 20.06, Florida
21 Statutes, and the Florida Elections Commission is abolished.

22 Section 2. Subsection (1) of section 99.092, Florida
23 Statutes, is amended to read:

24 99.092 Qualifying fee of candidate; notification of
25 Department of State.--

26 (1) Each person seeking to qualify for nomination or
27 election to any office, except a person seeking to qualify by
28 the alternative method pursuant to s. 99.095, s. 99.0955, or
29 s. 99.096 and except a person seeking to qualify as a write-in
30 candidate, shall pay a qualifying fee, which shall consist of
31 a filing fee and election assessment, to the officer with whom

1 the person qualifies, and any party assessment levied, and
2 shall attach the original or signed duplicate of the receipt
3 for his or her party assessment or pay the same, in accordance
4 with the provisions of s. 103.121, at the time of filing his
5 or her other qualifying papers. The amount of the filing fee
6 is 3 percent of the annual salary of the office. The amount
7 of the election assessment is 1 percent of the annual salary
8 of the office sought. The election assessment shall be
9 deposited into the Elections ~~Commission~~ Trust Fund. The
10 amount of the party assessment is 2 percent of the annual
11 salary. The annual salary of the office for purposes of
12 computing the filing fee, election assessment, and party
13 assessment shall be computed by multiplying 12 times the
14 monthly salary, excluding any special qualification pay,
15 authorized for such office as of July 1 immediately preceding
16 the first day of qualifying. No qualifying fee shall be
17 returned to the candidate unless the candidate withdraws his
18 or her candidacy before the last date to qualify. If a
19 candidate dies prior to an election and has not withdrawn his
20 or her candidacy before the last date to qualify, the
21 candidate's qualifying fee shall be returned to his or her
22 designated beneficiary, and, if the filing fee or any portion
23 thereof has been transferred to the political party of the
24 candidate, the Secretary of State shall direct the party to
25 return that portion to the designated beneficiary of the
26 candidate.

27 Section 3. Subsection (1) of section 99.093, Florida
28 Statutes, is amended to read:

29 99.093 Municipal candidates; election assessment.--

30 (1) Each person seeking to qualify for nomination or
31 election to a municipal office shall pay, at the time of

1 qualifying for office, an election assessment. The election
2 assessment shall be an amount equal to 1 percent of the annual
3 salary of the office sought. Within 30 days after the close
4 of qualifying, the qualifying officer shall forward all
5 assessments collected pursuant to this section to the
6 Department of State for deposit in the Elections ~~Commission~~
7 Trust Fund.

8 Section 4. Subsection (2) of section 99.0955, Florida
9 Statutes, is amended to read:

10 99.0955 Candidates with no party affiliation; name on
11 general election ballot.--

12 (2) The qualifying fee for candidates with no party
13 affiliation shall consist of a filing fee and an election
14 assessment. The amount of the filing fee is 3 percent of the
15 annual salary of the office sought. The amount of the
16 election assessment is 1 percent of the annual salary of the
17 office sought. The election assessment shall be deposited
18 into the Elections ~~Commission~~ Trust Fund. Filing fees paid to
19 the Department of State shall be deposited into the General
20 Revenue Fund of the state. Filing fees paid to the supervisor
21 of elections shall be deposited into the general revenue fund
22 of the county.

23 Section 5. Subsection (2) of section 104.271, Florida
24 Statutes, is amended to read:

25 104.271 False or malicious charges against, or false
26 statements about, opposing candidates; penalty.--

27 (2) Any candidate who, in a primary election or other
28 election, with actual malice makes or causes to be made any
29 statement about an opposing candidate which is false is guilty
30 of a violation of this code. An aggrieved candidate may file
31 a complaint with the Florida ~~Elections~~ Commission on Ethics

1 pursuant to s. 106.25. The commission shall adopt rules to
2 provide an expedited hearing of complaints filed under this
3 subsection. Notwithstanding any other provision of law, the
4 commission shall assess a civil penalty of up to \$5,000
5 against any candidate found in violation of this subsection,
6 which shall be deposited to the account of the General Revenue
7 Fund of the state.

8 Section 6. Subsection (1) of section 104.42, Florida
9 Statutes, is amended to read:

10 104.42 Fraudulent registration and illegal voting;
11 investigation.--

12 (1) The supervisor of elections is authorized to
13 investigate fraudulent registrations and illegal voting and to
14 report his or her findings to the local state attorney and the
15 Florida ~~Elections~~ Commission on Ethics.

16 Section 7. Subsection (3) of section 105.031, Florida
17 Statutes, is amended to read:

18 105.031 Qualification; filing fee; candidate's oath;
19 items required to be filed.--

20 (3) QUALIFYING FEE.--Each candidate qualifying for
21 election to a judicial office or the office of school board
22 member, except write-in judicial candidates, shall, during the
23 time for qualifying, pay to the officer with whom he or she
24 qualifies a qualifying fee, which shall consist of a filing
25 fee and an election assessment, or qualify by the alternative
26 method. The amount of the filing fee is 3 percent of the
27 annual salary of the office sought. The amount of the election
28 assessment is 1 percent of the annual salary of the office
29 sought. The Department of State shall forward all filing fees
30 to the Department of Revenue for deposit in the Elections
31 ~~Commission~~ Trust Fund. The supervisor of elections shall

1 forward all filing fees to the Elections ~~Commission~~ Trust
2 Fund. The election assessment shall be deposited into the
3 Elections ~~Commission~~ Trust Fund. The annual salary of the
4 office for purposes of computing the qualifying fee shall be
5 computed by multiplying 12 times the monthly salary authorized
6 for such office as of July 1 immediately preceding the first
7 day of qualifying. This subsection shall not apply to
8 candidates qualifying for retention to judicial office.

9 Section 8. Section 105.071, Florida Statutes, is
10 amended to read:

11 105.071 Candidates for judicial office; limitations on
12 political activity.--A candidate for judicial office shall
13 not:

14 (1) Participate in any partisan political party
15 activities, except that such candidate may register to vote as
16 a member of any political party and may vote in any party
17 primary for candidates for nomination of the party in which
18 she or he is registered to vote.

19 (2) Campaign as a member of any political party.

20 (3) Publicly represent or advertise herself or himself
21 as a member of any political party.

22 (4) Endorse any candidate.

23 (5) Make political speeches other than in the
24 candidate's own behalf.

25 (6) Make contributions to political party funds.

26 (7) Accept contributions from any political party.

27 (8) Solicit contributions for any political party.

28 (9) Accept or retain a place on any political party
29 committee.

30 (10) Make any contribution to any person, group, or
31 organization for its endorsement to judicial office.

1 (11) Agree to pay all or any part of any advertisement
2 sponsored by any person, group, or organization wherein the
3 candidate may be endorsed for judicial office by any such
4 person, group, or organization.

5
6 A candidate for judicial office or retention therein who
7 violates the provisions of this section is liable for a civil
8 fine of up to \$1,000 to be determined by the Florida ~~Elections~~
9 Commission on Ethics.

10 Section 9. Paragraph (c) of subsection (7) of section
11 106.03, Florida Statutes, is amended to read:

12 106.03 Registration of political committees.--

13 (7) The Division of Elections shall promulgate rules
14 to prescribe the manner in which inactive committees may be
15 dissolved and have their registration canceled. Such rules
16 shall, at a minimum, provide for:

17 (c) Appeal of the decision to the Florida ~~Elections~~
18 Commission on Ethics. Such appeals shall be exempt from the
19 confidentiality provisions of s. 106.25.

20 Section 10. Subsections (6), (7), and (8) of section
21 106.04, Florida Statutes, are amended to read:

22 106.04 Committees of continuous existence.--

23 (6) All accounts and records of a committee of
24 continuous existence may be inspected under reasonable
25 circumstances by any authorized representative of the Division
26 of Elections or the Florida ~~Elections~~ Commission on Ethics.
27 The right of inspection may be enforced by appropriate writ
28 issued by any court of competent jurisdiction.

29 (7) If a committee of continuous existence ceases to
30 meet the criteria prescribed by subsection (1), the Division
31 of Elections shall revoke its certification until such time as

1 the criteria are again met. The Division of Elections shall
2 promulgate rules to prescribe the manner in which such
3 certification shall be revoked. Such rules shall, at a
4 minimum, provide for:

5 (a) Notice, which shall contain the facts and conduct
6 that warrant the intended action.

7 (b) Adequate opportunity to respond.

8 (c) Appeal of the decision to the Florida ~~Elections~~
9 Commission on Ethics. Such appeals shall be exempt from the
10 confidentiality provisions of s. 106.25.

11 (8)(a) Any committee of continuous existence failing
12 to file a report on the designated due date shall be subject
13 to a fine. The fine shall be \$500 per day for each late day,
14 not to exceed 25 percent of the total receipts or
15 expenditures, whichever is greater, for the period covered by
16 the late report. The fine shall be assessed by the filing
17 officer, and the moneys collected shall be deposited in the
18 ~~Elections Commission~~ Trust Fund. No separate fine shall be
19 assessed for failure to file a copy of any report required by
20 this section.

21 (b) Upon determining that a report is late, the filing
22 officer shall immediately notify the treasurer of the
23 committee as to the failure to file a report by the designated
24 due date and that a fine is being assessed for each late day.
25 Upon receipt of the report, the filing officer shall determine
26 the amount of fine which is due and shall notify the treasurer
27 of the committee. The filing officer shall determine the
28 amount of the fine due based upon the earliest of the
29 following:

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

- 1 2. When the report is postmarked.
- 2 3. When the certificate of mailing is dated.
- 3 4. When the receipt from an established courier
- 4 company is dated.

5
6 Such fine shall be paid to the filing officer within 20 days
7 after receipt of the notice of payment due, unless appeal is
8 made to the Florida ~~Elections~~ Commission on Ethics pursuant to
9 paragraph (c). An officer or member of a committee shall not
10 be personally liable for such fine.

11 (c) Any treasurer of a committee may appeal or dispute
12 the fine, based upon unusual circumstances surrounding the
13 failure to file on the designated due date, and may request
14 and shall be entitled to a hearing before the Florida
15 ~~Elections~~ Commission on Ethics, which shall have the authority
16 to waive the fine in whole or in part. Any such request shall
17 be made within 20 days after receipt of the notice of payment
18 due. In such case, the treasurer of the committee shall,
19 within the 20-day period, notify the filing officer in writing
20 of his or her intention to bring the matter before the
21 commission.

22 (d) The filing officer shall notify the Florida
23 ~~Elections~~ Commission on Ethics of the repeated late filing by
24 a committee of continuous existence, the failure of a
25 committee of continuous existence to file a report after
26 notice, or the failure to pay the fine imposed.

27 Section 11. Subsection (2) of section 106.06, Florida
28 Statutes, is amended to read:

29 106.06 Treasurer to keep records; inspections.--

30 (2) Accounts, including separate interest-bearing
31 accounts and certificates of deposit, kept by the campaign

1 treasurer of a candidate or political committee may be
2 inspected under reasonable circumstances before, during, or
3 after the election to which the accounts refer by any
4 authorized representative of the Division of Elections or the
5 Florida ~~Elections~~ Commission on Ethics. The right of
6 inspection may be enforced by appropriate writ issued by any
7 court of competent jurisdiction. The campaign treasurer of a
8 political committee supporting a candidate may be joined with
9 the campaign treasurer of the candidate as respondent in such
10 a proceeding.

11 Section 12. Subsections (6) and (8) of section 106.07,
12 Florida Statutes, are amended to read:

13 106.07 Reports; certification and filing.--

14 (6) The campaign depository shall return all checks
15 drawn on the account to the campaign treasurer who shall
16 retain the records pursuant to s. 106.06. The records
17 maintained by the depository with respect to such account
18 shall be subject to inspection by an agent of the Division of
19 Elections or the Florida ~~Elections~~ Commission on Ethics at any
20 time during normal banking hours, and such depository shall
21 furnish certified copies of any of such records to the
22 Division of Elections or Florida ~~Elections~~ Commission on
23 Ethics upon request.

24 (8)(a) Any candidate or political committee failing to
25 file a report on the designated due date shall be subject to a
26 fine as provided in paragraph (b) for each late day, and, in
27 the case of a candidate, such fine shall be paid only from
28 personal funds of the candidate. The fine shall be assessed
29 by the filing officer and the moneys collected shall be
30 deposited:

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1 1. In the Elections ~~Commission~~ Trust Fund, in the case
2 of a candidate for state office or a political committee that
3 registers with the Division of Elections; or

4 2. In the general revenue fund of the political
5 subdivision, in the case of a candidate for an office of a
6 political subdivision or a political committee that registers
7 with an officer of a political subdivision.

8
9 No separate fine shall be assessed for failure to file a copy
10 of any report required by this section.

11 (b) Upon determining that a report is late, the filing
12 officer shall immediately notify the candidate or chair of the
13 political committee as to the failure to file a report by the
14 designated due date and that a fine is being assessed for each
15 late day. The fine shall be \$50 per day for the first 3 days
16 late and, thereafter, \$500 per day for each late day, not to
17 exceed 25 percent of the total receipts or expenditures,
18 whichever is greater, for the period covered by the late
19 report. However, for the reports immediately preceding each
20 primary and general election, the fine shall be \$500 per day
21 for each late day, not to exceed 25 percent of the total
22 receipts or expenditures, whichever if greater, for the period
23 covered by the late report. Upon receipt of the report, the
24 filing officer shall determine the amount of the fine which is
25 due and shall notify the candidate or chair. The filing
26 officer shall determine the amount of the fine due based upon
27 the earliest of the following:

- 28 1. When the report is actually received by such
29 officer.
30 2. When the report is postmarked.
31 3. When the certificate of mailing is dated.

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

3
4 Such fine shall be paid to the filing officer within 20 days
5 after receipt of the notice of payment due, unless appeal is
6 made to the Florida ~~Elections~~ Commission on Ethics pursuant to
7 paragraph (c). In the case of a candidate, such fine shall
8 not be an allowable campaign expenditure and shall be paid
9 only from personal funds of the candidate. An officer or
10 member of a political committee shall not be personally liable
11 for such fine.

12 (c) Any candidate or chair of a political committee
13 may appeal or dispute the fine, based upon unusual
14 circumstances surrounding the failure to file on the
15 designated due date, and may request and shall be entitled to
16 a hearing before the Florida ~~Elections~~ Commission on Ethics,
17 which shall have the authority to waive the fine in whole or
18 in part. Any such request shall be made within 20 days after
19 receipt of the notice of payment due. In such case, the
20 candidate or chair of the political committee shall, within
21 the 20-day period, notify the filing officer in writing of his
22 or her intention to bring the matter before the commission.

23 (d) The appropriate filing officer shall notify the
24 Florida ~~Elections~~ Commission on Ethics of the repeated late
25 filing by a candidate or political committee, the failure of a
26 candidate or political committee to file a report after
27 notice, or the failure to pay the fine imposed.

28 Section 13. Subsection (3) of section 106.085, Florida
29 Statutes, is amended to read:

30 106.085 Independent expenditures; unfair surprise
31 prohibited; notice requirements; penalty.--

1 (3) A person who violates any provision of this
2 section shall be liable for a civil fine of up to \$5,000 to be
3 determined by the Florida ~~Elections~~ Commission on Ethics or
4 the entire amount of the expenditure not noticed, whichever is
5 greater.

6 Section 14. Paragraph (b) of subsection (2) of section
7 106.087, Florida Statutes, is amended to read:

8 106.087 Independent expenditures; contribution limits;
9 restrictions on political parties, political committees, and
10 committees of continuous existence.--

11 (b) Any political committee or committee of continuous
12 existence that violates this subsection is liable for a civil
13 fine of up to \$5,000 to be determined by the Florida ~~Elections~~
14 Commission on Ethics or the entire amount of the expenditures,
15 whichever is greater.

16 Section 15. Subsection (6) of section 106.141, Florida
17 Statutes, is amended to read:

18 106.141 Disposition of surplus funds by candidates.--

19 (6) Prior to disposing of funds pursuant to subsection
20 (4) or transferring funds into an office account pursuant to
21 subsection (5), any candidate who filed an oath stating that
22 he or she was unable to pay the election assessment or fee for
23 verification of petition signatures without imposing an undue
24 burden on his or her personal resources or on resources
25 otherwise available to him or her, or who filed both such
26 oaths, or who qualified by the alternative method and was not
27 required to pay an election assessment, shall reimburse the
28 state or local governmental entity, whichever is applicable,
29 for such waived assessment or fee or both. Such reimbursement
30 shall be made first for the cost of petition verification and
31 then, if funds are remaining, for the amount of the election

1 assessment. If there are insufficient funds in the account to
2 pay the full amount of either the assessment or the fee or
3 both, the remaining funds shall be disbursed in the above
4 manner until no funds remain. All funds disbursed pursuant to
5 this subsection shall be remitted to the qualifying officer.
6 Any reimbursement for petition verification costs which are
7 reimbursable by the state shall be forwarded by the qualifying
8 officer to the state for deposit in the General Revenue Fund.
9 All reimbursements for the amount of the election assessment
10 shall be forwarded by the qualifying officer to the Department
11 of State for deposit in the Elections ~~Commission~~ Trust Fund.

12 Section 16. Subsection (7) of section 106.22, Florida
13 Statutes, is amended to read:

14 106.22 Duties of the Division of Elections.--It is the
15 duty of the Division of Elections to:

16 (7) Report to the Florida ~~Elections~~ Commission on
17 Ethics any failure to file a report or information required by
18 this chapter or any apparent violation of this chapter.

19 Section 17. Section 106.24, Florida Statutes, is
20 amended to read:

21 106.24 Florida ~~Elections~~ Commission on Ethics;
22 ~~membership; powers; duties.--~~

23 ~~(1)(a) There is created within the Department of Legal~~
24 ~~Affairs, Office of the Attorney General, a Florida Elections~~
25 ~~Commission, hereinafter referred to as the commission. The~~
26 ~~commission shall be a separate budget entity, and its director~~
27 ~~shall be the agency head for all purposes. The commission~~
28 ~~shall not be subject to control, supervision, or direction by~~
29 ~~the Department of Legal Affairs or the Attorney General in the~~
30 ~~performance of its duties, including, but not limited to,~~

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1 ~~personnel, purchasing transactions involving real or personal~~
2 ~~property, and budgetary matters.~~

3 ~~(b) The commission shall be composed of nine members.~~
4 ~~The President of the Senate, the Speaker of the House of~~
5 ~~Representatives, the minority leader of the Senate, and the~~
6 ~~minority leader of the House of Representatives shall each~~
7 ~~provide a list of six nominees to the Governor for initial~~
8 ~~appointment to the commission. The Governor may appoint two~~
9 ~~members to the commission from each list. If the Governor~~
10 ~~refuses to appoint two members from any of the respective~~
11 ~~lists, the Governor shall so inform the nominating officer and~~
12 ~~the nominating officer shall submit a new list of six nominees~~
13 ~~within 30 days. The new list must contain at least three~~
14 ~~nominees not included on the prior nominating list. The ninth~~
15 ~~commission member, who shall serve as chair of the commission,~~
16 ~~shall be appointed by the Governor. Each member of the~~
17 ~~commission is subject to confirmation by the Senate. The~~
18 ~~chair of the commission shall serve for a maximum term of 4~~
19 ~~years, such term to run concurrently with the term of the~~
20 ~~appointing Governor and until a future successor is appointed.~~
21 ~~Other members of the commission shall serve for 4-year terms~~
22 ~~and until their successors are appointed.~~

23 ~~(c) As the terms of members expire, excluding the~~
24 ~~chair, successors shall be appointed to 4-year terms and shall~~
25 ~~serve until their successors are appointed. Six months prior~~
26 ~~to the expiration of a commission member's term, the ranking~~
27 ~~officer of the political party in the respective house~~
28 ~~originally nominating the commission member shall submit a~~
29 ~~list of three nominees to the Governor. The Governor may~~
30 ~~appoint one of the listed nominees to the commission. If no~~
31 ~~nominee is selected from the list, the Governor shall so~~

1 ~~inform the nominating officer, who shall submit a list of~~
2 ~~three different nominees to the Governor within 30 days.~~
3 ~~Vacancies on the commission shall expeditiously be filled for~~
4 ~~the unexpired terms in the same manner.~~

5 ~~(d) As the term of the chair of the commission expires~~
6 ~~or becomes vacant, a successor shall be appointed in the~~
7 ~~manner of the original appointment, and shall serve for a~~
8 ~~maximum of 4 years, such term to run concurrently with the~~
9 ~~term of the appointing Governor and until a future successor~~
10 ~~is appointed.~~

11 ~~(e) In no event may any member of the commission serve~~
12 ~~more than two full terms. Members of the commission shall be~~
13 ~~paid travel and per diem as provided in s. 112.061 while in~~
14 ~~performance of their duties and in traveling to, from, and~~
15 ~~upon same. Of the nine members of the commission, no more~~
16 ~~than five members shall be from the same political party at~~
17 ~~any one time.~~

18 ~~(2) No member of the commission shall be a member of~~
19 ~~any county, state, or national committee of a political party;~~
20 ~~be an officer in any partisan political club or organization;~~
21 ~~or hold, or be a candidate for, any other public office. No~~
22 ~~person shall be appointed as a member of the commission who~~
23 ~~has held an elective public office or office in a political~~
24 ~~party within the year immediately preceding his or her~~
25 ~~appointment.~~

26 ~~(3) The commission shall convene at the call of its~~
27 ~~chair or at the request of a majority of the members of the~~
28 ~~commission. The presence of five members is required to~~
29 ~~constitute a quorum, and the affirmative vote of the majority~~
30 ~~of the members present is required for any action or~~

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1 ~~recommendation by the commission. The commission may meet in~~
2 ~~any city of the state.~~

3 ~~(4) The commission shall appoint an executive~~
4 ~~director, who shall serve under the direction, supervision,~~
5 ~~and control of the commission. The executive director, with~~
6 ~~the consent of the commission, shall employ such staff as are~~
7 ~~necessary to adequately perform the functions of the~~
8 ~~commission, within budgetary limitations. All employees,~~
9 ~~except the executive director and attorneys, are subject to~~
10 ~~part II of chapter 110. The executive director shall serve at~~
11 ~~the pleasure of the commission and be subject to part III of~~
12 ~~chapter 110, except that the commission shall have complete~~
13 ~~authority for setting the executive director's salary.~~
14 ~~Attorneys employed by the commission shall be subject to part~~
15 ~~V of chapter 110.~~

16 ~~(1)(5)~~ Hearings shall be held before the Florida
17 Commission on Ethics, except that the chair may direct that
18 any hearing be held before one member of the commission or a
19 panel of less than the full commission. The commission shall
20 adopt rules to provide for the filing of a report when
21 hearings are held by a single commissioner or a panel, which
22 rules shall prescribe the time for filing the report and the
23 contents of the report.

24 ~~(2)(6)~~ There is ~~hereby~~ established in the State
25 Treasury an Elections ~~Commission~~ Trust Fund to be used
26 ~~utilized~~ by the Division of Elections and the Florida
27 ~~Elections~~ Commission on Ethics in order to carry out their
28 duties pursuant to ss. 106.24-106.28. The trust fund may also
29 be used by the division, pursuant to its authority under s.
30 106.22(11), to provide rewards for information leading to
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1 criminal convictions related to voter registration fraud,
2 voter fraud, and vote scams.

3 ~~(7) The commission shall develop a budget request~~
4 ~~pursuant to chapter 216 annually. The budget is not subject~~
5 ~~to change by the Department of Legal Affairs or the Attorney~~
6 ~~General, but it shall be submitted by the Department of Legal~~
7 ~~Affairs to the Governor for transmittal to the Legislature.~~

8 (3)~~(8)~~ The commission is authorized to contract or
9 consult with appropriate agencies of state government for such
10 professional assistance as may be needed in the discharge of
11 its duties.

12 Section 18. Section 106.25, Florida Statutes, is
13 amended to read:

14 106.25 Reports of alleged violations to Florida
15 ~~Elections~~ Commission on Ethics; disposition of findings.--

16 (1) Jurisdiction to investigate and determine
17 violations of this chapter and chapter 104 is vested in the
18 Florida ~~Elections~~ Commission on Ethics; however, nothing in
19 this section limits the jurisdiction of any other officers or
20 agencies of government empowered by law to investigate, act
21 upon, or dispose of alleged violations of this code.

22 (2) The commission shall investigate all violations of
23 this chapter and chapter 104, but only after having received
24 either a sworn complaint or information reported to it by the
25 Division of Elections. Any person, other than the division,
26 having information of any violation of this chapter or chapter
27 104 shall file a sworn complaint with the commission. Such
28 sworn complaint shall state whether a complaint of the same
29 violation has been made to any state attorney. Within 5 days
30 after receipt of a sworn complaint, the commission shall
31 transmit a copy of the complaint to the alleged violator. All

1 sworn complaints alleging violations of the Florida Election
2 Code over which the commission has jurisdiction shall be filed
3 with the commission within 2 years of the alleged violations.
4 The period of limitations is tolled on the day a sworn
5 complaint is filed with the commission.

6 (3) For the purposes of commission jurisdiction, a
7 violation shall mean the willful performance of an act
8 prohibited by this chapter or chapter 104 or the willful
9 failure to perform an act required by this chapter or chapter
10 104.

11 (4) The commission shall undertake a preliminary
12 investigation to determine if the facts alleged in a sworn
13 complaint or a matter initiated by the division constitute
14 probable cause to believe that a violation has occurred. Upon
15 completion of the preliminary investigation, the commission
16 shall, by written report, find probable cause or no probable
17 cause to believe that this chapter or chapter 104 has been
18 violated.

19 (a) If no probable cause is found, the commission
20 shall dismiss the case and the case shall become a matter of
21 public record, except as otherwise provided in this section,
22 together with a written statement of the findings of the
23 preliminary investigation and a summary of the facts which the
24 commission shall send to the complainant and the alleged
25 violator.

26 (b) If probable cause is found, the commission shall
27 so notify the complainant and the alleged violator in writing.
28 All documents made or received in the disposition of the
29 complaint shall become public records upon a finding by the
30 commission.

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1 In a case where probable cause is found, the commission shall
2 make a preliminary determination to consider the matter or to
3 refer the matter to the state attorney for the judicial
4 circuit in which the alleged violation occurred.

5 (5) When there are disputed issues of material fact in
6 a proceeding conducted under ss. 120.569 and 120.57, a person
7 alleged by the ~~Elections~~ Commission on Ethics to have
8 committed a violation of this chapter or chapter 104 may
9 elect, within 30 days after the date of the filing of the
10 commission's allegations, to have a hearing conducted by an
11 administrative law judge in the Division of Administrative
12 Hearings.

13 (6) It is the duty of a state attorney receiving a
14 complaint referred by the commission to investigate the
15 complaint promptly and thoroughly; to undertake such criminal
16 or civil actions as are justified by law; and to report to the
17 commission the results of such investigation, the action
18 taken, and the disposition thereof. The failure or refusal of
19 a state attorney to prosecute or to initiate action upon a
20 complaint or a referral by the commission shall not bar
21 further action by the commission under this chapter.

22 (7) Every sworn complaint filed pursuant to this
23 chapter with the commission, every investigation and
24 investigative report or other paper of the commission with
25 respect to a violation of this chapter or chapter 104, and
26 every proceeding of the commission with respect to a violation
27 of this chapter or chapter 104 is confidential, is exempt from
28 the provisions of ss. 119.07(1) and 286.011, and is exempt
29 from publication in the Florida Administrative Weekly of any
30 notice or agenda with respect to any proceeding relating to
31 such violation, except under the following circumstances:

- 1 (a) As provided in subsection (6);
2 (b) Upon a determination of probable cause or no
3 probable cause by the commission; or
4 (c) For proceedings conducted with respect to appeals
5 of fines levied by filing officers for the late filing of
6 reports required by this chapter.

7
8 However, a complainant is not bound by the confidentiality
9 provisions of this section. In addition, confidentiality may
10 be waived in writing by the person against whom the complaint
11 has been filed or the investigation has been initiated. If a
12 finding of probable cause in a case is entered within 30 days
13 prior to the date of the election with respect to which the
14 alleged violation occurred, such finding and the proceedings
15 and records relating to such case shall not become public
16 until noon of the day following such election. When two or
17 more persons are being investigated by the commission with
18 respect to an alleged violation of this chapter or chapter
19 104, the commission may not publicly enter a finding of
20 probable cause or no probable cause in the case until a
21 finding of probable cause or no probable cause for the entire
22 case has been determined. However, once the confidentiality of
23 any case has been breached, the person or persons under
24 investigation have the right to waive the confidentiality of
25 the case, thereby opening up the proceedings and records to
26 the public. Any person who discloses any information or
27 matter made confidential by the provisions of this subsection
28 commits a misdemeanor of the first degree, punishable as
29 provided in s. 775.082 or s. 775.083.

30 (8) Any person who files a complaint pursuant to this
31 section while knowing that the allegations contained in such

1 complaint are false or without merit commits a misdemeanor of
2 the first degree, punishable as provided in s. 775.082 or s.
3 775.083.

4 Section 19. Subsection (13) of section 106.26, Florida
5 Statutes, is amended to read:

6 106.26 Powers of commission; rights and
7 responsibilities of parties; findings by commission.--

8 (13) The commission may not issue advisory opinions
9 regarding the Florida Election Code and must, in all its
10 deliberations and decisions, adhere to statutory law and
11 advisory opinions of the division.

12 Section 20. Subsection (3) of section 106.29, Florida
13 Statutes, is amended to read:

14 106.29 Reports by political parties; restrictions on
15 contributions and expenditures; penalties.--

16 (3)(a) Any state or county executive committee failing
17 to file a report on the designated due date shall be subject
18 to a fine as provided in paragraph (b) for each late day. The
19 fine shall be assessed by the filing officer, and the moneys
20 collected shall be deposited in the Elections ~~Commission~~ Trust
21 Fund.

22 (b) Upon determining that a report is late, the filing
23 officer shall immediately notify the chair of the executive
24 committee as to the failure to file a report by the designated
25 due date and that a fine is being assessed for each late day.
26 The fine shall be \$1,000 for a state executive committee, and
27 \$50 for a county executive committee, per day for each late
28 day, not to exceed 25 percent of the total receipts or
29 expenditures, whichever is greater, for the period covered by
30 the late report. However, if an executive committee fails to
31 file a report on the Friday immediately preceding the general

1 election, the fine shall be \$10,000 per day for each day a
2 state executive committee is late and \$500 per day for each
3 day a county executive committee is late. Upon receipt of the
4 report, the filing officer shall determine the amount of the
5 fine which is due and shall notify the chair. The filing
6 officer shall determine the amount of the fine due based upon
7 the earliest of the following:

- 8 1. When the report is actually received by such
9 officer.
- 10 2. When the report is postmarked.
- 11 3. When the certificate of mailing is dated.
- 12 4. When the receipt from an established courier
13 company is dated.

14
15 Such fine shall be paid to the filing officer within 20 days
16 after receipt of the notice of payment due, unless appeal is
17 made to the Florida ~~Elections~~ Commission on Ethics pursuant to
18 paragraph (c). An officer or member of an executive committee
19 shall not be personally liable for such fine.

20 (c) The chair of an executive committee may appeal or
21 dispute the fine, based upon unusual circumstances surrounding
22 the failure to file on the designated due date, and may
23 request and shall be entitled to a hearing before the Florida
24 ~~Elections~~ Commission on Ethics, which shall have the authority
25 to waive the fine in whole or in part. Any such request shall
26 be made within 20 days after receipt of the notice of payment
27 due. In such case, the chair of the executive committee
28 shall, within the 20-day period, notify the filing officer in
29 writing of his or her intention to bring the matter before the
30 commission.

31

1 (d) The appropriate filing officer shall notify the
2 Florida ~~Elections~~ Commission on Ethics of the repeated late
3 filing by an executive committee, the failure of an executive
4 committee to file a report after notice, or the failure to pay
5 the fine imposed.

6 Section 21. Subsection (1) of section 106.35, Florida
7 Statutes, is amended to read:

8 106.35 Distribution of funds.--

9 (1) The division shall review each request for
10 contributions from the Election Campaign Financing Trust Fund
11 and certify whether the candidate is eligible for such
12 contributions. Notice of the certification decision shall be
13 provided to the candidate. An adverse decision may be
14 appealed to the Florida ~~Elections~~ Commission on Ethics. The
15 division shall adopt rules providing a procedure for such
16 appeals.

17 Section 22. This act shall take effect July 1, 2002.

18 *****

19 SENATE SUMMARY

20 Abolishes the Florida Elections Commission and transfers
21 its powers, duties, functions, and assets to the
22 Commission on Ethics.