

By Senator Diaz de la Portilla

34-767-02

1 A bill to be entitled
2 An act relating to the Florida Elections
3 Commission; providing legislative findings and
4 intent; repealing s. 106.24, F.S., relating to
5 the Florida Elections Commission; amending s.
6 106.25, F.S.; assigning jurisdiction for
7 violations of campaign-financing and election
8 laws to the Department of Legal Affairs and the
9 Division of Administrative Hearings;
10 prescribing responsibilities for the department
11 and the division; conforming provisions;
12 eliminating authority for a hearing by the
13 Division of Administrative Hearings in addition
14 to a hearing by the Florida Elections
15 Commission; amending s. 106.26, F.S.;
16 transferring to the Department of Legal Affairs
17 and the Division of Administrative Hearings
18 powers relating to the conduct of hearing on
19 violations of campaign-financing and election
20 laws; eliminating a prohibition against certain
21 communications among members of the Florida
22 Elections Commission and witnesses under
23 specified circumstances; amending s. 106.265,
24 F.S.; authorizing the Division of
25 Administrative Hearings to impose certain
26 fines; providing for payment of the proceeds to
27 the Department of Legal Affairs; assigning
28 responsibility for collection of the fines to
29 the department; amending s. 106.27, F.S.;
30 authorizing the department to initiate certain
31 civil actions; amending s. 106.29, F.S.,

1 relating to reports by political parties;
2 conforming provisions to the elimination of the
3 Florida Elections Commission; amending s.
4 106.35, F.S., relating to the distribution of
5 certain campaign-financing funds; conforming
6 provisions to the elimination of the Florida
7 Elections Commission; amending s. 104.271,
8 F.S., relating to false charges against
9 opposing candidates; conforming provisions to
10 the elimination of the Florida Elections
11 Commission; providing for aggrieved candidates
12 to file complaints with the Department of Legal
13 Affairs; providing for assessment of penalties
14 by the Division of Administrative Hearings;
15 requiring the Department of Legal Affairs and
16 the Division of Administrative Hearings to
17 submit funding recommendations; prescribing
18 terms and conditions governing the transfer or
19 reassignment of functions under the act;
20 providing effective dates.

21

22 Be It Enacted by the Legislature of the State of Florida:

23

24 Section 1. The Legislature finds that, in light of the
25 expected decline in revenue growth for the state, it is in the
26 public interest to reduce the size of state government and to
27 identify means of improving the operation of state government
28 and its agencies for the benefit of the residents of the
29 state. The Legislature further finds that the current process
30 governing the prosecution of alleged violations of campaign
31 financing and election laws, as well as governing the

1 determination of whether such violations have occurred,
2 through the Florida Elections Commission is unnecessarily
3 cumbersome, is vulnerable to political interference, and is an
4 inefficient use of limited public resources. The Legislature
5 further finds that the presence on the commission of
6 individuals who, as part of their regular occupations,
7 frequently lobby elected officials undermines public
8 confidence in the ability of the commission to evaluate
9 alleged violations in an objective manner that serves the
10 electorate and that ensures elected officials a fair and
11 impartial hearing. It is, therefore, the intent of the
12 Legislature to abolish the Florida Elections Commission,
13 eliminate its staff, eliminate or redirect its other budgetary
14 resources, and reassign its responsibilities to the Department
15 of Legal Affairs and the Division of Administrative Hearings.
16 It is the intent of the Legislature that the Division of
17 Administrative Hearings shall be responsible for determining
18 whether a violation of campaign financing or election laws has
19 occurred and that the Department of Legal Affairs shall be
20 responsible for the functions currently assigned to the
21 commission relating to the prosecution of violations of such
22 laws.

23 Section 2. Effective July 1, 2002, section 106.24,
24 Florida Statutes, is repealed.

25 Section 3. Effective July 1, 2002, section 106.25,
26 Florida Statutes, is amended to read:

27 106.25 Reports of alleged violations to Florida
28 Elections Commission; disposition of findings.--

29 (1) Jurisdiction to investigate and determine
30 violations of this chapter and chapter 104 is vested in the
31 Department of Legal Affairs and the Division of Administrative

1 Hearings ~~Florida Elections Commission~~; however, nothing in
2 this section limits the jurisdiction of any other officers or
3 agencies of government empowered by law to investigate, act
4 upon, or dispose of alleged violations of this code.

5 (a) The Department of Legal Affairs is responsible for
6 receiving and investigating complaints alleging violations of
7 this chapter and chapter 104, including, but not limited to,
8 determining whether a complaint is legally sufficient,
9 preparing a report to the Attorney General on the results of
10 the investigation, and, through the Attorney General,
11 submitting a statement of findings and a recommendation to the
12 Division of Administrative Hearings as to whether there is
13 probable cause or no probable cause to believe that there has
14 been a violation of this chapter or chapter 104.

15 (b) The Division of Administrative Hearings is
16 responsible for making final determinations, subject to appeal
17 to courts of competent jurisdiction, as to whether there has
18 been a violation of this chapter or chapter 104, including,
19 but not limited to, reviewing statements of findings submitted
20 by the Department of Legal Affairs, issuing orders relating to
21 the finding by the Division of Administrative Hearings of
22 probable cause or no probable cause, conducting hearings as
23 provided under this chapter and chapter 120, and issuing
24 final, written orders as provided in s. 106.26.

25 (2) The Department of Legal Affairs ~~commission~~ shall
26 investigate all violations of this chapter and chapter 104,
27 but only after having received either a sworn complaint or
28 information reported to it by the Division of Elections. Any
29 person, other than the Division of Elections, having
30 information of any violation of this chapter or chapter 104
31 shall file a sworn complaint with the Department of Legal

1 Affairs ~~commission~~. Such a sworn complaint must ~~shall~~ state
2 whether a complaint of the same violation has been made to any
3 state attorney. Within 5 days after receipt of a sworn
4 complaint, the Department of Legal Affairs ~~commission~~ shall
5 transmit a copy of the complaint to the alleged violator. All
6 sworn complaints alleging violations of the Florida Election
7 Code over which the Department of Legal Affairs and the
8 Division of Administrative Hearings have ~~commission~~ has
9 jurisdiction shall be filed with the Department of Legal
10 Affairs ~~commission~~ within 2 years after ~~of~~ the alleged
11 violations take place. The period of limitations is tolled on
12 the day a sworn complaint is filed with the Department of
13 Legal Affairs ~~commission~~.

14 (3) For the purposes of ~~commission~~ jurisdiction by the
15 Department of Legal Affairs and the Division of Administrative
16 Hearings, a violation shall mean the willful performance of an
17 act prohibited by this chapter or chapter 104 or the willful
18 failure to perform an act required by this chapter or chapter
19 104.

20 (4) The Department of Legal Affairs ~~commission~~ shall
21 undertake a preliminary investigation to determine if the
22 facts alleged in a sworn complaint or a matter initiated by
23 the Division of Elections constitute probable cause to believe
24 that a violation has occurred. Upon completion of the
25 preliminary investigation, the Department of Legal Affairs
26 ~~commission~~ shall submit to the Division of Administrative
27 Hearings a written recommendation finding probable cause to
28 believe that this chapter or chapter 104 has been violated.
29 Upon reviewing the recommendation and supporting documents
30 from the department, the Division of Administrative Hearings
31 shall, by written report, find probable cause or no probable

1 cause to believe that this chapter or chapter 104 has been
2 violated.

3 (a) If no probable cause is found, the Division of
4 Administrative Hearings ~~commission~~ shall dismiss the case and
5 the case shall become a matter of public record, except as
6 otherwise provided in this section, together with a written
7 statement of the findings of the preliminary investigation and
8 a summary of the facts which the Division of Administrative
9 Hearings ~~commission~~ shall send to the complainant and the
10 alleged violator.

11 (b) If probable cause is found, the Division of
12 Administrative Hearings ~~commission~~ shall so notify the
13 complainant and the alleged violator in writing. All
14 documents made or received in the disposition of the complaint
15 shall become public records upon a finding by the Division of
16 Administrative Hearings ~~commission~~.

17
18 With respect to a case in which ~~In a case where~~ probable cause
19 is found, the Division of Administrative Hearings ~~commission~~
20 shall make a preliminary determination to consider the matter
21 or to refer the matter to the state attorney for the judicial
22 circuit in which the alleged violation occurred.

23 ~~(5) When there are disputed issues of material fact in~~
24 ~~a proceeding conducted under ss. 120.569 and 120.57, a person~~
25 ~~alleged by the Elections Commission to have committed a~~
26 ~~violation of this chapter or chapter 104 may elect, within 30~~
27 ~~days after the date of the filing of the commission's~~
28 ~~allegations, to have a hearing conducted by an administrative~~
29 ~~law judge in the Division of Administrative Hearings.~~

30 (5)(6) It is the duty of a state attorney receiving a
31 complaint referred by the Division of Administrative Hearings

1 ~~commission~~ to investigate the complaint promptly and
2 thoroughly; to undertake such criminal or civil actions as are
3 justified by law; and to report to the Division of
4 Administrative Hearings and the Department of Legal Affairs
5 ~~commission~~ the results of such investigation, the action
6 taken, and the disposition thereof. The failure or refusal of
7 a state attorney to prosecute or to initiate action upon a
8 complaint or a referral by the Division of Administrative
9 Hearings ~~commission~~ shall not bar further action by the
10 Department of Legal Affairs or the Division of Administrative
11 Hearings ~~commission~~ under this chapter.

12 (6)(7) Every sworn complaint filed pursuant to this
13 chapter with the Department of Legal Affairs ~~commission~~, every
14 investigation and investigative report or other paper of the
15 Department of Legal Affairs or the Division of Administrative
16 Hearings ~~commission~~ with respect to a violation of this
17 chapter or chapter 104, and every proceeding of the Division
18 of Administrative Hearings ~~commission~~ with respect to a
19 violation of this chapter or chapter 104 is confidential, is
20 exempt from the provisions of ss. 119.07(1) and 286.011, and
21 is exempt from publication in the Florida Administrative
22 Weekly of any notice or agenda with respect to any proceeding
23 relating to such violation, except under the following
24 circumstances:

25 (a) As provided in subsection (5)(6);

26 (b) Upon a determination of probable cause or no
27 probable cause by the Division of Administrative Hearings
28 ~~commission~~; or

29 (c) For proceedings conducted with respect to appeals
30 of fines levied by filing officers for the late filing of
31 reports required by this chapter.

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

26 (7)~~(8)~~ Any person who files a complaint pursuant to
27 this section while knowing that the allegations contained in
28 such complaint are false or without merit commits a
29 misdemeanor of the first degree, punishable as provided in s.
30 775.082 or s. 775.083.

31

1 Section 4. Effective July 1, 2002, section 106.26,
2 Florida Statutes, is amended to read:

3 106.26 Powers of Department of Legal Affairs and
4 Division of Administrative Hearings ~~commission~~; rights and
5 responsibilities of parties; findings by division
6 ~~commission~~.--

7 (1) The Department of Legal Affairs ~~commission~~ shall,
8 pursuant to rules adopted and published in accordance with
9 chapter 120, consider all sworn complaints filed with it and
10 all matters reported to it by the Division of Elections. In
11 order to carry out the responsibilities prescribed by this
12 chapter, the Division of Administrative Hearings ~~commission~~ is
13 empowered to subpoena and bring before it, or its duly
14 authorized representatives, any person in the state, or any
15 person doing business in the state, or any person who has
16 filed or is required to have filed any application, document,
17 papers, or other information with an office or agency of this
18 state or a political subdivision thereof and to require the
19 production of any papers, books, or other records relevant to
20 any investigation, including the records and accounts of any
21 bank or trust company doing business in this state. Duly
22 authorized representatives of the Division of Administrative
23 Hearings ~~commission~~ are empowered to administer all oaths and
24 affirmations in the manner prescribed by law to witnesses who
25 shall appear before them concerning any relevant matter.
26 Should any witness fail to respond to the lawful subpoena of
27 the Division of Administrative Hearings ~~commission~~ or, having
28 responded, fail to answer all lawful inquiries or to turn over
29 evidence that has been subpoenaed, the division ~~commission~~ may
30 file a complaint before any circuit court of the state setting
31 up such failure on the part of the witness. On the filing of

1 such complaint, the court shall take jurisdiction of the
2 witness and the subject matter of said complaint and shall
3 direct the witness to respond to all lawful questions and to
4 produce all documentary evidence in the witness's possession
5 which is lawfully demanded. The failure of any witness to
6 comply with such order of the court shall constitute a direct
7 and criminal contempt of court, and the court shall punish
8 said witness accordingly. However, the refusal by a witness
9 to answer inquiries or turn over evidence on the basis that
10 such testimony or material will tend to incriminate such
11 witness shall not be deemed refusal to comply with the
12 provisions of this chapter. The sheriffs in the several
13 counties shall make such service and execute all process or
14 orders when required by the Division of Administrative
15 Hearings ~~commission~~. Sheriffs shall be paid for these
16 services by the Division of Administrative Hearings ~~commission~~
17 as provided for in s. 30.231. Any person who is served with a
18 subpoena to attend a hearing of the Division of Administrative
19 Hearings ~~commission~~ also shall be served with a general
20 statement informing him or her of the subject matter of the
21 division's ~~commission's~~ investigation or inquiry and a notice
22 that he or she may be accompanied at the hearing by counsel of
23 his or her own choosing.

24 (2) All witnesses summoned before the Division of
25 Administrative Hearings ~~commission~~, other than on the request
26 of the subject of a hearing, shall receive reimbursement for
27 travel expenses and per diem at the rates provided in s.
28 112.061. However, the fact that such reimbursement is not
29 tendered at the time the subpoena is served shall not excuse
30 the witness from appearing as directed therein.

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1 (3) Upon request of any person having business before
2 the Division of Administrative Hearings, the administrative
3 law judge commission, and with the approval of a majority of
4 ~~the commission, the chair or, in the chair's absence, the vice~~
5 ~~chair~~ shall instruct all witnesses to leave the hearing room
6 and retire to a designated place. The witness will be
7 instructed by the administrative law judge chair or, in the
8 ~~chair's absence, the vice chair~~ not to discuss his or her
9 testimony or the testimony of any other person with anyone
10 until the hearing has been adjourned and the witness
11 discharged by the administrative law judge chair. The witness
12 shall be further instructed that should any person discuss or
13 attempt to discuss the matter under investigation with him or
14 her after receiving such instructions the witness shall bring
15 such matter to the attention of the Division of Administrative
16 Hearings commission. ~~No member of the commission or~~
17 ~~representative thereof may discuss any matter or matters~~
18 ~~pertinent to the subject matter under investigation with~~
19 ~~witnesses to be called before the commission from the time~~
20 ~~that these instructions are given until the hearing has been~~
21 ~~adjourned and the witness discharged by the chair.~~

22 (4) The administrative law judge commission, when
23 interrogating witnesses as provided herein, shall cause a
24 record to be made of all proceedings in which testimony or
25 other evidence is demanded or adduced. This record shall
26 include rulings of the administrative law judge chair,
27 questions of the administrative law judge or other staff of
28 the Division of Administrative Hearings commission and its
29 ~~counsel~~, testimony or responses of witnesses, sworn written
30 statements submitted to the Division of Administrative
31 Hearings commission, and all other pertinent matters. A

1 witness at a hearing, upon his or her advance request and at
2 his or her own expense, shall be furnished a certified
3 transcript of all testimony taken at the hearing.

4 (5) Before or during a hearing, any person noticed to
5 appear before the Division of Administrative Hearings
6 ~~commission~~, or the person's counsel, may file with the
7 Division of Administrative Hearings ~~commission~~, for
8 incorporation into the record of the hearing, sworn written
9 statements relevant to the purpose, subject matter, and scope
10 of the Department of Legal Affairs' or the division's
11 ~~commission's~~ investigation or inquiry. Any such person shall,
12 however, prior to filing such statement, consent to answer
13 questions from the Division of Administrative Hearings
14 ~~commission~~ regarding the contents of the statement.

15 (6) Any person whose name is mentioned or who is
16 otherwise identified during a hearing being conducted by the
17 Division of Administrative Hearings ~~commission~~ and who, in the
18 opinion of the Division of Administrative Hearings ~~commission~~,
19 may be adversely affected thereby may, upon his or her request
20 or upon the request of the Division of Administrative Hearings
21 ~~any member of the commission~~, appear personally before the
22 Division of Administrative Hearings ~~commission~~ and testify on
23 his or her own behalf or, with the division's ~~commission's~~
24 consent, file a sworn written statement of facts or other
25 documentary evidence for incorporation into the record of the
26 hearing. Any such person shall, however, prior to filing such
27 statement, consent to answer questions from the Division of
28 Administrative Hearings ~~commission~~ regarding the contents of
29 the statement.

30 (7) The Division of Administrative Hearings ~~Upon the~~
31 ~~consent of a majority of its members, the commission~~ may

1 permit any other person to appear and testify at a hearing or
2 submit a sworn written statement of facts or other documentary
3 evidence for incorporation into the record thereof. No
4 request to appear, appearance, or submission shall limit in
5 any way the ~~commission's~~ power of subpoena of the Division of
6 Administrative Hearings. Any such person shall, however,
7 prior to filing such statement, consent to answer questions
8 from the Division of Administrative Hearings ~~commission~~
9 regarding the contents of the statement.

10 (8) Any person who appears before the Division of
11 Administrative Hearings ~~commission~~ pursuant to this section
12 shall have all the rights, privileges, and responsibilities of
13 a witness appearing before a court of competent jurisdiction.

14 (9) If the Division of Administrative Hearings
15 ~~commission~~ fails in any material respect to comply with the
16 requirements of this section, any person subject to subpoena
17 or subpoena duces tecum who is injured by such failure shall
18 be relieved of any requirement to attend the hearing for which
19 the subpoena was issued or, if present, to testify or produce
20 evidence therein; and such failure shall be a complete defense
21 in any proceeding against such person for contempt or other
22 punishment.

23 (10) Whoever willfully affirms or swears falsely in
24 regard to any material matter or thing before the Division of
25 Administrative Hearings ~~commission~~ shall be guilty of a felony
26 of the third degree and punished as provided by s. 775.082, s.
27 775.083, or s. 775.084.

28 (11) At the conclusion of its hearings concerning an
29 alleged violation, the Division of Administrative Hearings
30 ~~commission~~ shall immediately begin deliberations on the
31 evidence presented at such hearings and shall proceed to

1 determine ~~by affirmative vote of a majority of the members~~
2 ~~present~~ whether a violation of this chapter or chapter 104 has
3 occurred. Such determination shall promptly be made public.
4 The order shall contain a finding of violation or no
5 violation, together with brief findings of pertinent facts,
6 and the assessment of such civil penalties as are permitted by
7 this chapter or no such assessment and shall bear the
8 signature or facsimile signature of the administrative law
9 judge chair or vice chair.

10 (12) The Division of Administrative Hearings
11 ~~commission~~ by rule may determine violations which constitute
12 minor offenses that can be resolved without further
13 investigation by means of a plea of nolo contendere and
14 payment of a fine.

15 (13) The Division of Administrative Hearings
16 ~~commission~~ may not issue advisory opinions and must, in all
17 its deliberations and decisions, adhere to statutory law and
18 advisory opinions of the Division of Elections.

19 Section 5. Effective July 1, 2002, section 106.265,
20 Florida Statutes, is amended to read:

21 106.265 Civil penalties.--

22 (1) The Division of Administrative Hearings ~~commission~~
23 is authorized upon the finding of a violation of this chapter
24 or chapter 104 to impose civil penalties in the form of fines
25 not to exceed \$1,000 per count. Fines imposed under this
26 section must be paid to the Department of Legal Affairs.In
27 determining the amount of such civil penalties, the Division
28 of Administrative Hearings ~~commission~~ shall consider, among
29 other mitigating and aggravating circumstances:

30 (a) The gravity of the act or omission;

31 (b) Any previous history of similar acts or omissions;

1 (c) The appropriateness of such penalty to the
2 financial resources of the person, political committee,
3 committee of continuous existence, or political party; and

4 (d) Whether the person, political committee, committee
5 of continuous existence, or political party has shown good
6 faith in attempting to comply with the provisions of this
7 chapter or chapter 104.

8 (2) If any person, political committee, committee of
9 continuous existence, or political party fails or refuses to
10 pay to the Department of Legal Affairs ~~commission~~ any civil
11 penalties assessed under ~~pursuant to the provisions of this~~
12 section, the Department of Legal Affairs ~~commission~~ shall be
13 responsible for collecting the civil penalties resulting from
14 such action.

15 (3) Any civil penalty collected pursuant to the
16 provisions of this section shall be deposited into the
17 Election Campaign Financing Trust Fund.

18 (4) Notwithstanding any other provisions of this
19 chapter, any fine assessed pursuant to the provisions of this
20 chapter, which fine is designated to be deposited or which
21 would otherwise be deposited into the General Revenue Fund of
22 the state, shall be deposited into the Election Campaign
23 Financing Trust Fund.

24 Section 6. Effective July 1, 2002, section 106.27,
25 Florida Statutes, is amended to read:

26 106.27 Determinations ~~by commission~~; legal
27 disposition.--

28 (1) Criminal proceedings for violations of this
29 chapter or chapter 104 may be brought in the appropriate court
30 of competent jurisdiction. Any such action brought under this
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1 chapter or chapter 104 shall be advanced on the docket of the
2 court in which filed and put ahead of all other actions.

3 (2) Civil actions may be brought by the Department of
4 Legal Affairs on its own behalf or on behalf of the Division
5 of Administrative Hearings ~~commission~~ for relief, including
6 permanent or temporary injunctions, restraining orders, or any
7 other appropriate order for the imposition of civil penalties
8 provided by this chapter. Such civil actions shall be brought
9 by the Department of Legal Affairs ~~commission~~ in the
10 appropriate court of competent jurisdiction, and the venue
11 shall be in the county in which the alleged violation occurred
12 or in which the alleged violator or violators are found,
13 reside, or transact business. Upon a proper showing that such
14 person, political committee, committee of continuous
15 existence, or political party has engaged, or is about to
16 engage, in prohibited acts or practices, a permanent or
17 temporary injunction, restraining order, or other order shall
18 be granted without bond by such court, and the civil fines
19 provided by this chapter may be imposed.

20 (3) Civil actions may be brought to enjoin temporarily
21 the issuance of certificates of election to successful
22 candidates who are alleged to have violated the provisions of
23 this chapter or chapter 104. Such injunctions shall issue upon
24 a showing of probable cause that such violation has occurred.
25 Such actions shall be brought in the circuit court for the
26 circuit in which is located the officer before whom the
27 candidate qualified for office.

28 Section 7. Effective July 1, 2002, subsection (3) of
29 section 106.29, Florida Statutes, is amended to read:

30 106.29 Reports by political parties; restrictions on
31 contributions and expenditures; penalties.--

1 (3)(a) Any state or county executive committee failing
2 to file a report on the designated due date shall be subject
3 to a fine as provided in paragraph (b) for each late day. The
4 fine shall be assessed by the filing officer, and the moneys
5 collected shall be deposited in the Elections Commission Trust
6 Fund.

7 (b) Upon determining that a report is late, the filing
8 officer shall immediately notify the chair of the executive
9 committee as to the failure to file a report by the designated
10 due date and that a fine is being assessed for each late day.
11 The fine shall be \$1,000 for a state executive committee, and
12 \$50 for a county executive committee, per day for each late
13 day, not to exceed 25 percent of the total receipts or
14 expenditures, whichever is greater, for the period covered by
15 the late report. However, if an executive committee fails to
16 file a report on the Friday immediately preceding the general
17 election, the fine shall be \$10,000 per day for each day a
18 state executive committee is late and \$500 per day for each
19 day a county executive committee is late. Upon receipt of the
20 report, the filing officer shall determine the amount of the
21 fine which is due and shall notify the chair. The filing
22 officer shall determine the amount of the fine due based upon
23 the earliest of the following:

- 24 1. When the report is actually received by such
25 officer.
- 26 2. When the report is postmarked.
- 27 3. When the certificate of mailing is dated.
- 28 4. When the receipt from an established courier
29 company is dated.

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1 Such fine shall be paid to the filing officer within 20 days
2 after receipt of the notice of payment due, unless appeal is
3 made to the Division of Administrative Hearings ~~Florida~~
4 ~~Elections Commission~~ pursuant to paragraph (c). An officer or
5 member of an executive committee shall not be personally
6 liable for such fine.

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

19 (d) The appropriate filing officer shall notify the
20 Division of Administrative Hearings ~~Florida Elections~~
21 ~~Commission~~ of the repeated late filing by an executive
22 committee, the failure of an executive committee to file a
23 report after notice, or the failure to pay the fine imposed.

24 Section 8. Effective July 1, 2002, subsection (1) of
25 section 106.35, Florida Statutes, is amended to read:

26 106.35 Distribution of funds.--

27 (1) The Division of Elections shall review each
28 request for contributions from the Election Campaign Financing
29 Trust Fund and certify whether the candidate is eligible for
30 such contributions. Notice of the certification decision shall
31 be provided to the candidate. An adverse decision may be

1 appealed to the Division of Administrative Hearings ~~Florida~~
2 ~~Elections Commission~~. The Division of Elections shall adopt
3 rules providing a procedure for such appeals.

4 Section 9. Effective July 1, 2002, subsection (2) of
5 section 104.271, Florida Statutes, is amended to read:

6 104.271 False or malicious charges against, or false
7 statements about, opposing candidates; penalty.--

8 (2) Any candidate who, in a primary election or other
9 election, with actual malice makes or causes to be made any
10 statement about an opposing candidate which is false is guilty
11 of a violation of this code. An aggrieved candidate may file
12 a complaint with the Department of Legal Affairs under ~~Florida~~
13 ~~Elections Commission~~ pursuant to s. 106.25 for hearing by the
14 Division of Administrative Hearings. The Division of
15 Administrative Hearings ~~commission~~ shall adopt rules to
16 provide an expedited hearing of complaints filed under this
17 subsection. Notwithstanding any other provision of law, the
18 Division of Administrative Hearings ~~commission~~ shall assess a
19 civil penalty of up to \$5,000 against any candidate found in
20 violation of this subsection, which shall be deposited to the
21 account of the General Revenue Fund of the state.

22 Section 10. By January 15, 2002, the Division of
23 Administrative Hearings and the Department of Legal Affairs
24 shall submit to the Governor, the President of the Senate, and
25 the Speaker of the House of Representatives recommendations on
26 the levels of staffing and other funding or resources needed
27 by the division and the department to implement the provisions
28 of this act during the 2002-2003 fiscal year.

29 Section 11. The transfer or reassignment of any
30 program, activity, or function under this act must include the
31 transfer of any records or unexpended balances of

1 appropriations, allocations, or other funds related to the
2 program, activity, or function. The transfer or reassignment
3 of any program, activity, or function under this act must not
4 include the automatic transfer of personnel of the Florida
5 Elections Commission.

6 Section 12. Except as otherwise expressly provided in
7 this act, this act shall take effect upon becoming a law.

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SENATE SUMMARY

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Eliminates the Florida Elections Commission and transfers
jurisdiction over violations of campaign-financing and
election laws from the elections commission to the
Department of Legal Affairs and the Division of
Administrative Hearings. (See bill for details.)

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