

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Ethics and Elections Committee

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BILL: SB 536

INTRODUCER: Senator Justice

SUBJECT: Elections/Supervisor of Elections

DATE: February 23, 2009      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	<b>Favorable</b>
2.	Wolfgang	Yeatman	CA	<b>Favorable</b>
3.			TA	
4.			RC	
5.				
6.				

**I. Summary:**

Senate Bill 536 requires supervisors of elections to be elected on a non-partisan basis.

This bill shall take effect July 1, 2009.

This bill substantially amends the following sections of the Florida Statutes: 98.015, 101.151, 105.031, 105.035, 105.041, 105.051, 105.061, 105.08, and 105.09.

**II. Present Situation:**

Each of Florida’s 67 counties has a supervisor of elections whose responsibilities include voter registration and conducting elections.<sup>1</sup> Supervisors of elections are elected constitutional officers with the exception of Miami-Dade County.<sup>2</sup> The Florida Constitution specifically states:

There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the

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<sup>1</sup> See Chapter 98, F.S.

<sup>2</sup> Miami-Dade County’s charter specifically abolished the supervisor’s office in 1958, and transferred the power and function of this office to the Mayor, who was given the authority to appoint a suitable person to carry out the functions of the office. See Miami-Dade Home Rule Amendment and Charter, § 9.01, available at <http://www.miamidade.gov/charterreview/library/08-01-29-charter.pdf> (Site accessed on Feb. 11, 2009).

circuit court; except, when provided by county charter<sup>3</sup>] or special law approved by the vote of the electors of the county, any county officer may be chosen in another manner therein specified, . . .<sup>4</sup>

A majority of the supervisors in Florida's 67 counties run on a partisan basis; however, supervisors in Columbia, Leon, Palm Beach, Polk, and Volusia are elected on a non-partisan basis pursuant to county charter. Furthermore, in 2012, the Lee County supervisor will also be elected on a non-partisan basis, due to a recent change to the Lee County charter.

### III. Effect of Proposed Changes:

Senate Bill 536 requires the election of supervisors to be on a non-partisan basis. The bill does the following:

- It removes supervisors from the ballot specifications for partisan offices found in s. 101.151, F.S., since the office will be included with other non-partisan offices on the ballot as specified in 105.041, F.S.
- It requires supervisors to qualify for office in accordance with other non-partisan offices pursuant to s. 105.031, F.S.
- It allows candidates for supervisor to utilize the petition process for non-partisan candidates set forth in s. 105.035, F.S., if they do not want to pay the qualifying fees required under s. 105.031, F.S.
- It adds the office of supervisor of elections to the list of offices in chapter 105, F.S. for which space must be made available on the ballot for write-in candidates.
- It also adds the office of supervisor of elections to the list of offices for which an unopposed candidate will not be listed on the ballot and will be deemed to have voted for himself or herself at the general election.
- It clarifies that the election of a supervisor shall be by the qualified electors of a county.
- It clarifies that candidates for the office of supervisor of elections must follow the law with regard to campaign contributions and expenses, and they must keep records and file reports in accordance with chapter 106, F.S.
- It adds candidates for the office of supervisor of elections to the current prohibition that does not allow any political party or partisan organization to endorse, support, or assist any candidate for judicial office. This prohibition is found in s. 105.09, F.S. The penalty for violating s. 105.09, F.S., is a second degree misdemeanor.

<sup>3</sup> Currently, 20 of Florida's 67 counties have a county charter: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla. Fla. Assoc. of Counties, Florida's Charter Counties, *available at* [www.fl-counties.com/aboutflco/chartercounties.shtml](http://www.fl-counties.com/aboutflco/chartercounties.shtml) (Site accessed on Feb. 23, 2009).

<sup>4</sup> FLA. CONST. art. VIII, § 1.

If the bill becomes law, it will apply to every county without a charter and will apply to counties with charters unless the charter specifically states otherwise. It would not affect Miami-Dade County.

This bill shall take effect July 1, 2009.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

There is some disagreement among the courts regarding the constitutionality of s. 105.09, F.S., which forbids political parties or partisan political organizations from supporting, endorsing, or assisting any candidate for election to a judicial office.<sup>5</sup>

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The political parties will realize a loss from the filing fees and party assessments of candidates for supervisor of elections who currently run on a partisan basis. The political parties receive the 2 percent party assessment and the 3 percent filing fee from partisan

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<sup>5</sup> See *Concerned Democrats of Florida v. Reno*, 458 F.Supp. 60 (S.D. Fla. 1978) (where plaintiffs sought ruling that statute was unconstitutional on First Amendment grounds; court, finding that plaintiffs were likely to prevail on the merits, granted a preliminary injunction preventing the state attorney from enforcing s. 105.09, F.S., pending a final determination of the case on the merits.). See also *Martin County Republican Executive Comm. v. Butterworth*, Case No. 98-411-CA (Fla. 19<sup>th</sup> Cir. June 23, 1998) (where trial court, based on ruling in *Concerned Democrats of Florida v. Reno*, ruled s. 105.09, F.S. unconstitutional); *Pinellas County Republican Executive Comm. v. Butterworth*, Case No. 98-1570-CI-07 (Fla. 6<sup>th</sup> Cir. June 9, 1998)(where court granted summary judgment in favor of plaintiffs holding that s. 105.09, F.S. is unconstitutional); *Hillsborough County Republican Executive Comm. v. Butterworth*, Case No. 98-2855 (Fla. 13<sup>th</sup> Cir., June 29, 1998) (where court held s. 105.09, F.S., facially unconstitutional); but see *Seminole County Republican Comm. v. Butterworth*, Case No. 98-350-CA-16-K (Fla. 18<sup>th</sup> Cir., Jan. 21, 1999), *per curiam aff'd*, Case No. 5D99-446 (5<sup>th</sup> DCA 2000)(where trial court determined that s. 105.09, F.S., was facially constitutional and constitutional as applied).

candidates for supervisors of elections.<sup>6</sup> In addition, candidates for supervisor of elections who pay a qualifying fee would see a reduction in the fees since they would not be required to pay a party assessment.<sup>7</sup>

**C. Government Sector Impact:**

Election officials would be relieved of the administrative costs associated with the collection and remittance of the party assessment for candidates seeking the office of supervisor of elections.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>6</sup> See § 99.061(2), F.S., and § 99.092(1), F.S.

<sup>7</sup> See § 105.031(3), F.S.