

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 553 Violations of the Florida Election Code

SPONSOR(S): Eisnaugle

TIED BILLS: **IDEN./SIM. BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	McDonald	Williamson
2) Rulemaking & Regulation Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill provides that it is a violation of the Florida Election Code for a candidate, in any election, to directly or indirectly falsely represent past or current service in the military. A civil penalty of up to \$5,000 may be assessed for each violation by the Florida Elections Commission or an administrative law judge for the Division of Administrative Hearings, as appropriate. Assessed civil penalties are deposited in the General Revenue Fund.

The bill also provides that anyone may file a complaint with the Florida Elections Commission alleging such violation.

The Florida Elections Commission and the Division of Administrative Hearings are required to provide expedited hearings in such cases coming before them.

The fiscal impact on state government is minimal.

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Law

Currently, the Florida Election Code does not govern false representations made by a candidate concerning the candidate's own background. It does, however, prohibit a candidate from knowingly making false or malicious statements or causing such statements to be made about an opposing candidate in an election.

An aggrieved candidate may file a complaint with the Florida Elections Commission pursuant to s. 106.25, F.S. The offense is punishable as an administrative fine of up to \$5,000 to be deposited in the General Revenue Fund.¹

Federal Law

The "Stolen Valor Act of 2005,"² signed into law on December 20, 2006, makes it a crime to falsely represent having been awarded a military honor, declaration, or medal, with penalties including fines, imprisonment, or both. The length of imprisonment ranges from 6 months up to 1 year depending upon the type of medal.³ There is currently disagreement among courts in different federal judicial circuits with regard to the constitutionality of the federal law.⁴

Effect of Proposed Changes⁵

The bill provides that it is a violation of the Florida Election Code for a candidate, in any election, to directly or indirectly falsely represent past or current service in the military.⁶ A civil penalty of up to \$5,000 may be assessed for each violation by the Florida Elections Commission or an administrative law judge for the Division of Administrative Hearings (DOAH), as appropriate. Assessed civil penalties are deposited in the General Revenue Fund.

The bill provides that any person may file a complaint with the Florida Elections Commission alleging that a candidate has falsely represented his or her military service. The Commission is required to adopt rules to provide for the expedited hearing of complaints before the Commission and requires the director of DOAH to assign an administrative law judge to provide an expedited hearing on cases before DOAH.

B. SECTION DIRECTORY:

Section 1. Creates s. 104.2715, F.S., providing that it is a violation of the Florida Election Code for a candidate to falsely represent his or her military service; permitting anyone to file a complaint with the Florida Elections Commission alleging a violation; requiring the adoption of rules to provide for an

¹ Section 104.271(2), F.S. This appears to be the only provision in the Florida Election Code that addresses false political speech.

² Public Law 109-437.

³ The longer imprisonment of up to 1 year is provided for false claims involving a Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, Purple Heart, and Congressional Medal of Honor.

⁴ See *U.S. v. Alvarez*, 617 F.3d 1198 (9th Cir. 2010) (holding that the Stolen Valor Act violates First Amendment free speech rights); but see, *U.S. v. Robbins*, 2011 WL 7384 (W.D. Va. 2011) (false statements of fact implicated by the federal statute are not protected by the First Amendment). *U.S. v. Alvarez* is the only appellate decision interpreting the Stolen Valor Act. The U.S. Circuit Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits. In *Robbins*, the federal district judge expressly refused to follow the 2-1 majority decision in *Alvarez* by adopting the dissent's position that *false speech* is not entitled to First Amendment protection.

⁵ The changes proposed to the Florida Election Code are similar to the federal Stolen Valor Act in that they refer to false statements of fact involving military service. The federal law, however, does not relate to having served or serving in the military but to honors, declarations, or medals received related to such service.

⁶ Military service in the bill refers to prior service, active duty, or reserve.

expedited hearing for complaints filed with the Commission; requiring the director of DOAH to assign an administrative law judge to provide an expedited hearing in certain cases; and requiring the assessment of a civil penalty.

Section 2. Provides a July 1, 2011, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Violation penalties may provide additional, but minimal, revenues that will be deposited into the General Revenue Fund.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

The U.S. Circuit Court of Appeals for the Ninth Circuit in *U.S. v. Alvarez*⁷ held that the Stolen Valor Act violates First Amendment free speech rights. This is the only appellate decision on the Act. However, in *U.S. v. Robbins*,⁸ a federal district judge held that "false statements of fact implicated by the federal statute are not protected by the First Amendment." The U.S. Circuit Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits. In *Robbins*, the federal district judge expressly refused to follow the 2-1 majority decision in *Alvarez* by adopting the dissent's position that false speech is not entitled to First Amendment protection.

⁷ 617 F.3d 1198 (2010).

⁸ 2011 WL 7384 (W.D. Va. 2011).

B. RULE-MAKING AUTHORITY:

The bill requires the Florida Elections Commission to adopt rules to provide an expedited hearing of complaints filed with the Commission that relate to false misrepresentation of military service.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill grants specific penalty power to the administrative law judge at DOAH in response to the recent First District Court of Appeals decision in *Davis v. Florida Elections Commission*.⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁹ 44 So.3d 1211 (Fla. 1st DCA 2010) (The court found that the ALJ has no statutory authority to institute penalties for election violations originating with the Florida Elections Commission).