

FINAL BILL ANALYSIS

BILL #: SB 330

FINAL HOUSE FLOOR ACTION:

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SPONSOR: Sen. Gaetz (Rep. Eisnaugle)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: HB 553

SUMMARY ANALYSIS

SB 330 passed the House on May 4, 2011. The bill was approved by the Governor on June 17, 2011, chapter 2011-148, Laws of Florida, and takes effect July 1, 2011.

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.

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.

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 appears to have a positive fiscal impact on state government.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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 (Commission) pursuant to s. 106.25, F.S. The offense is punishable by an administrative fine of up to \$5,000 to be deposited in the General Revenue Fund.¹ The respondent has 30 days after the filing of formal allegations to choose a hearing before the Commission, otherwise a hearing is conducted by an administrative law judge appointed by the Division of Administrative Hearings (DOAH).² The statute provides final order authority to both the Commission and the administrative law judge in their respective proceedings but DOAH presently lacks any authority to impose a fine or other sanctions in proceedings under this section.³ The present rules of the Commission do not expressly provide for an expedited hearing.⁴ Currently, s. 120.574, F.S., provides procedures for a summary hearing before DOAH but only by the voluntary agreement of the parties.⁵

Federal Law

The "Stolen Valor Act of 2005,"⁶ 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 six months up to one year depending upon the type of medal.⁷ There is currently disagreement among courts in different federal judicial circuits with regard to the constitutionality of the federal law.⁸

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 Section 106.25(5), F.S.

³ *Florida Elections Commission v. Davis*, 44 So. 3d 1211 (Fla. 1st DCA 2010).

⁴ Fla. Admin. Code R. 2B-1.004.

⁵ Section 120.574(1)(b), F.S.

⁶ Public Law 109-437.

⁷ The longer imprisonment of up to one 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.

⁸ *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. While 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 *Alvarez* the Court relied upon the reasoning in *U.S. v. Stevens*, 130 S. Ct. 1577, 176 L.Ed.2d 435 (2010), to find the First Amendment to the U.S. Constitution did not permit sanctioning speech content because of its relative lack of social worth. *Alvarez* at 1206. 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. This conclusion conflicts with the decision in *U.S. v. Stevens*.

Effect of Proposed Changes⁹

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.¹⁰ A civil penalty of up to \$5,000 may be assessed for each violation by the Commission or an administrative law judge for the DOAH depending upon which authority renders the final order. 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. It requires the Commission 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.

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.

⁹ The changes proposed to the Florida Election Code are similar to the federal Stolen Valor Act in that the changes 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.

¹⁰ Military service in the bill refers to prior service, active duty, or reserve.