

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.)

Prepared By: The Professional Staff of the Rules Subcommittee on Ethics and Elections

BILL: SPB 7220

INTRODUCER: For consideration by Rules Subcommittee on Ethics and Elections

SUBJECT: Elections

DATE: March 24, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox/Seay	Roberts		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This proposed committee bill is an omnibus elections package that establishes procedures for the Attorney General to cure defective ballot language in a joint resolution, and also makes numerous, primarily technical changes to Florida’s campaign finance laws. Some of the more significant changes in the bill include:

- Specifying the time period to initiate a challenge to an amendment proposed by the Legislature to the State Constitution, and directing the Attorney General to revise ballot language found to be defective by a court;
- Requiring committees of continuous existence (CCEs) and political committees (PCs) who participate in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections;
- Increasing the penalty for CCEs that late-file their final campaign finance report due before a primary or general election for the first three days the report is late, from \$50 per day to \$500 per day (to conform to current law regarding PC and candidate filings);
- Requiring CCEs, candidates, and PCs to include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement;
- Creating an additional election violation for filing three campaign finance reports late in a two-year period; and,
- Providing that the failure of a candidate to comply with the campaign finance laws has no effect upon whether the candidate has qualified for the office the candidate is seeking.

This bill substantially amends ss. 101.161, 106.011, 106.022, 106.023, 106.04, 106.07, 106.0703, 106.0705, 106.08, 106.09, 106.11, 106.141, 106.143, 106.18, 106.19, 106.29, and 106.35 of the Florida Statutes.

II. Present Situation:

Challenge of Constitutional Amendments

Amendments can be removed from the ballot if the ballot title and summary fail to inform the voter, in clear and unambiguous language, of the chief purpose of the amendment.¹ This has been referred to by the courts as the “accuracy requirement.”² All constitutional amendments are subject to this requirement, including amendments proposed by the Legislature.³ In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the ballot by Florida courts; the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.⁴

If a court rules to remove an amendment from the ballot and the Legislature is not in session, there is no opportunity to correct a deficiency in the ballot title or ballot summary — absent calling a special session.

Independent Expenditures

Independent expenditures are expenditures by a person for the purpose of expressly advocating the election or the approval or rejection of an issue which are not controlled by or coordinated with any candidate, political committee, or their respective agents.⁵ Under s. 106.011, F.S., an expenditure is not considered an independent expenditure if a committee or person, after the last day of qualifying for statewide or legislative office, consults about the candidate’s plans, projects, or needs, and then uses that information to plan, create, design, or prepare an independent expenditure or advertising campaign.⁶

Appointment of Registered Agents

Each political committee, committee of continuous existence, or electioneering communications organization is required to file a statement of appointment for both the registered office and registered agent with the Division of Elections (Division).⁷ In the event that the registered office or registered agent changes, the entity is required to complete a written statement of change and file with the Division.⁸

¹ *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010).

² *Armstrong v. Harris*, 773 So.2d 7, 11-12 (Fla. 2000); *see also* §101.161(1), F.S.

³ *Id.* at 13.

⁴ *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010); *Fla. Dept. of State v. Mangat*, 43 So.3d 642 (Fla. 2010); *Fla. Dept. of State v. Fla. State Conference of NAACP Branches*, 43 So.3d 662 (Fla. 2010).

⁵ Section 106.011(5)(a), F.S.

⁶ Section 106.011(5), F.S.; section 106.011(6), F.S.

⁷ Section 106.022(1), F.S.

⁸ When filing the original statement of appointment for the registered office and registered agent, the entity also pledges the undertaking to inform the Division of any change of the originally designated address of the entity. Section 106.022(1)(d).

Statement of Candidates

Candidates are required to file a statement with their filing officer that they have received, read, and understood the requirements of Chapter 106 of the Florida Statutes.⁹ The candidate must file such statement within 10 days of the appointment of the candidate's campaign treasurer and designation of the campaign depository.¹⁰

Committees of Continuous Existence

Under Florida law, committees of continuous existence are defined as any group, organization, association, or other entity certified under the requirements of s. 106.04, F.S. Committees of continuous existence must file annual reports with the Division.¹¹ If the CCE fails to meet the criteria in s. 106.04(1), F.S., the Division revokes the committee's certification until the criteria is met.¹² The Legislature has granted the Division rulemaking authority to establish the procedure of revoking the CCE's certification.¹³ If a CCE does not file its annual report on its designated due date, the Division must levy a fine.¹⁴ Once a report is found to be late, a Division filing officer must provide notice to the committee's treasurer.¹⁵ The committee's treasurer may appeal or dispute a late filing fine by requesting a hearing before the Florida Elections Commission.¹⁶ The Division's filing officer is to notify the commission of repeated late filing by a committee; the failure of a committee to file a report after given notice; or the failure to pay the imposed fine.¹⁷

CCEs must file campaign finance reporting forms at the same time as candidates and political committees, which must include transaction information from each credit card statement that will be included in the next report.¹⁸ Failure to file subjects CCEs to a \$50 per day fine for the first three days late, thereafter \$500 per day, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater.¹⁹ Unlike candidates and political committees, there is no enhanced \$500 penalty for the first three days late with respect to the final campaign finance report due immediately preceding a primary or general election.²⁰

Reports by Candidates and Political Committees

Campaign treasurers for candidates and political committees are to file regular reports detailing all contributions received and all expenditures made, by or on behalf of the candidate or political committee.²¹ The reports are normally due on the 10th day following the end of each calendar quarter.²² Additionally, a candidate facing opposition to nomination or election to an office, a

⁹ Section 106.023(1), F.S.

¹⁰ Section 106.023(1), F.S.

¹¹ Section 106.04(4)(a), F.S.

¹² Section 106.04(7), F.S.

¹³ *Id.*

¹⁴ Section 106.04(8)(a), F.S.

¹⁵ Section 106.04(8)(b), F.S.

¹⁶ Section 106.04(8)(c), F.S.

¹⁷ Section 106.04(8)(d), F.S.

¹⁸ Section 106.04(4)(b), F.S.

¹⁹ Section 106.04(8)(a), F.S.

²⁰ See *infra* note 28 and accompanying text (political committees and candidates are subject to a \$500 per day penalty for each day that they are late in filing their final campaign finance report).

²¹ Section 106.07(1), F.S.

²² The section provides variances in the event that the tenth day following the end of each calendar quarter falls on a Saturday, Sunday, or legal holiday. *Id.*

political committee, or a committee of continuous existence must file a report on the 32nd, 18th, and 4th days immediately preceding the primary election and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. A candidate who has opted to receive public campaign financing is required to file reports at more frequent increments.²³ When a special election is called to fill a vacancy in office, all political committees and committees of continuous existence making contributions or expenditures to influence the results of the special election must file campaign treasurers' reports with the Division of Elections' filing officer on the dates set by the Department of State.²⁴

The Division's filing officer may conditionally accept a report that is deemed incomplete. If a report is deemed incomplete, the Division must notify the campaign treasurer why the report was found to be incomplete by registered mail. The Division must allow the campaign treasurer 3 days from receipt of the notice to complete the report by filing an addendum. The filing officer may opt to notify the campaign treasurer of the report's deficiency by a telephone call in lieu of sending a notice via registered mail. If no additional information is received from the campaign treasurer within 3 days of the telephone notification, the filing officer shall send notice via registered mail.

Each report submitted to the Division must include each credit card statement after it is received by the campaign treasurer.²⁵ Additionally, the campaign depository is required to return all checks drawn from the campaign account to the campaign treasurer — which, in turn, the campaign treasurer is required to retain for records.²⁶ The maintained records are subject to inspection by the Division or the Florida Elections Commission (Commission) anytime during normal business hours.²⁷

If the Division determines that a report is late, the filing officer must notify either the candidate or the chair of the political committee that the report is late and that a fine is levied for each day that the report is late.²⁸ Reports due immediately preceding each primary and general election are subject to a higher late fine.²⁹ The appropriate filing officer must notify the Commission of repeated late filing of reports.³⁰

All candidates that are required to file reports with the Division pursuant to s. 106.07, F.S., must use the Division's electronic filing system.

²³ Candidates who opt to receive public campaign financing through the Florida Election Campaign Financing Act must file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election. Section 106.07(1)(b), F.S.

²⁴ Section 106.07(1)(d)1, F.S.

²⁵ Section 106.07(4)(a)11, F.S.

²⁶ Section 106.07(6), F.S.

²⁷ *Id.*

²⁸ Section 106.07(8)(b), F.S. The fine is \$50 per day for the first three days late, followed by \$500 per day thereafter, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater. *Id.*

²⁹ *Id.* The fine for late-filing the final report is \$500 per day, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater. *Id.*

³⁰ Section 106.07(8)(d), F.S.

Limitations on Campaign Contributions

Independent or minor party candidates may qualify to be placed on the ballot through the petition method.³¹ Once a determination of qualification is made by the Department of State or the appropriate supervisor of elections, the department or supervisor must notify in writing all other candidates who have qualified for that same office within 3 days of the determination.³² If an independent or minor party candidate failed to qualify through petition, any contribution received by a candidate, campaign treasurer, or deputy campaign treasurer after notification of the other candidate's failure to qualify must be returned to the contributor and may not be used on behalf of the candidate.³³

More restrictions are placed on candidates' acceptance of campaign contributions by cash or cashier's check. An individual is prohibited from contributing or accepting a cash contribution or contribution by cashier's check in excess of \$50.³⁴

Expenditures by Candidates and Political Committees

Candidates and political committees may use debit cards when making expenditures. Before a candidate or political committee does use a debit card, they must provide a list of all persons authorized to use the card with the Division.³⁵ Any debit cards that are issued for a candidate's campaign or a political committee must expire by midnight of the last day of the month of the general election.³⁶

Political Advertising

Political advertisements that are circulated prior to an election and paid for by the candidate must prominently state certain information such as: the name of the candidate; the party affiliation; and the office sought.³⁷ Current law does not address statements that must be featured on the advertisements of write-in candidates.

If a candidate is running for partisan office, any political advertisement must feature the name of the political party for which the candidate is seeking nomination or is the nominee.³⁸ If a candidate is running for a partisan office but is running with no party affiliation, any political advertisements must state that the candidate is running with no party affiliation.³⁹ Any political advertisements, offered on behalf of a candidate, must state that the advertisement was approved by the candidate and must disclose who paid for the advertisement.⁴⁰ The "approved by" disclaimer is not required for campaign messages used by a candidate or his or her supporters if the message is displayed on clothing.⁴¹

³¹ Pursuant to Section 99.0955, F.S.

³² Section 106.08(3)(c), F.S.

³³ Section 106.08(3)(c)2, F.S.

³⁴ Section 106.09(1), F.S.

³⁵ Section 106.11(2)(a)4, F.S.

³⁶ Section 106.11(2)(a)5, F.S.

³⁷ Section 106.143(1)(a), F.S.

³⁸ Section 106.143(2), F.S.

³⁹ *Id.*

⁴⁰ Section 106.143(4)(a), F.S.

⁴¹ Section 106.143(4)(c), F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 101.161, F.S., providing that any action for a judicial determination that a ballot title or substance is misleading or otherwise deficient in a constitutional amendment adopted through joint resolution of the Legislature must commence within 30 days after the joint resolution is filed with the Secretary of State or at least 150 days before the election that the amendment is to appear on the ballot; whichever date occurs later; providing that any court hearing such an action must accord priority to this case and must render a decision expeditiously; directing the Attorney General to prepare a revised ballot title or substance that corrects the deficiency identified by the court if a court determines that the ballot title or substance is defective and appeal of the decision is either declined, abandoned, or exhausted; requiring the Department of State to provide a designated number to the revised ballot and substance for supervisors of elections to place on the ballot; specifying that a defect in the ballot title or substance of a constitutional amendment adopted through joint resolution is not grounds for removal from the ballot.

Section 2. Amends s. 106.011, F.S., clarifying the time period during which consultation by a committee or person about a candidate's plans, projects, or needs will constitute an exemption from the definition of an independent expenditure; ties the time frame to the candidate's specific qualifying period instead of the qualifying period for legislative and statewide candidates.

Section 3. Amends s. 106.022, F.S., providing that a PC's, CCE's, or electioneering communications organization's filing of the appointment of a registered agent and registered office will be with the same filing officer that the entity registered with originally.

Section 4. Amends s. 106.023, F.S., revising the "Statement of Candidate" mandated for every candidate to state that the candidate has been *provided access* to Chapter 106 of the Florida Statutes, instead of *providing a copy*.

Section 5. Amends s. 106.04, F.S., requiring CCEs participating in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections; providing that CCEs include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement (to conform to the functionality of the electronic filing system); clarifying when campaign treasurer's reports for committee of continuous existence are due and how notification is provided when reports are late or incomplete; clarifies the procedures for imposition of fines against committees of continuous existence; defining the term "repeated late filings," providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

Section 6. Amends s. 106.07, F.S., deleting a redundant requirement to file a third-quarter campaign finance report during an election season, as reports are due more frequently after qualifying — generally in 2-week intervals; providing that a campaign treasurer must be notified by certified mail or another method that provides a proof of delivery of notice when a filing officer has deemed a report as incomplete; establishing that, within 7 days of receiving the notice, the campaign treasurer must provide an addendum to the filing officer containing the

information needed to complete the report; requiring PCs participating in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections; providing that PCs and candidates include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement (to conform to the functionality of the electronic filing system); defining the term “repeated late filings,” providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

Section 7. Amends s. 106.0703, F.S., defining the term “repeated late filings,” providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

Section 8. Amends s. 106.0705, F.S., requires campaign finance *office account* reports and *termination* reports (surplus funds) for individuals who file with the Division of Elections to be filed electronically, for consistency with other campaign finance filings and to enhance public access; deletes a time-delimited, outdated provision related to campaign finance filings.

Section 9. Amends s. 106.08, F.S., deleting a requirement that persons authorized to accept in-kind contributions to the state or county executive committee of a political party do so in a *signed* acceptance (the written acceptance must still be dated before the in-kind contribution is made); provides that persons accepting on behalf of county executive committees file their in-kind contribution acceptance with the applicable supervisor of elections instead of the Division of Elections; deletes obsolete provisions relating to minor party and independent candidates seeking to qualify by the petition method.

Section 10. Amends s. 106.09, F.S., clarifying that the \$50 limit on contribution by cash and cashier’s check are in the *aggregate, per election*; it also clarifies that the aggregate limits apply to *making* contributions to *the same* candidate or committee or *accepting* contributions from *the same* contributor.

Section 11. Amends s. 106.11, F.S., eliminating a requirement for candidates using debit cards as bank checks to submit a list of authorized users to the Division of Elections (unnecessary in practice); removes the requirement that the debit cards expire no later than November 30 of an election year (banks do not typically issue termination dates for debit cards); clarifies that a candidate may be reimbursed for a loan that he or she has made to the campaign “at any time the campaign account has sufficient funds to repay the loan and satisfy its other obligations;” makes technical changes to the designation of a campaign account.

Section 12. Amends s. 106.141, F.S., directing that surplus campaign funds of candidates that have received public financing be returned to the General Revenue Fund, after paying off: previous monetary obligations of the campaign; costs for closing down campaign offices; and, costs associated with preparing final campaign reports.

Section 13. Amends s. 106.143, F.S., mandating that a write-in candidate use a specified disclaimer for political advertisements; prohibiting candidates for nonpartisan office from referring to party affiliation in their political advertisements, and prohibiting them from

campaigning based on party affiliation; clarifying that if a political advertisement is paid for a candidate, the advertisement need not specify that the candidate “approved” the advertisement (mirroring the treatment of political disclaimers in the 2010 “Technology in Elections Act,”⁴² which created a new disclaimer for electronic ads that merely states: “Paid by (name of candidate), (party affiliation), for (office sought)”; deletes an exclusion from the “approved by” disclaimer for campaign messages designed to be worn, to conform to changes made to the general ‘paid-for-by’ disclaimer in the 2010 Technology in Elections Act.⁴³

Section 14. Amends s. 106.18, F.S., deleting an outdated provision relating to candidates filing copies of their campaign finance reports. Before going to electronic filings, candidates required to file with the Division also had to file copies with the applicable supervisors of elections.

Section 15. Amends s. 106.19, F.S., providing that a candidate’s failure to comply with the requirements of Chapter 106 has no effect on whether the candidate has qualified for the office sought.

Section 16. Amends s. 106.29, F.S., clarifying that political party executive committees making contributions or expenditures in special primary or special elections must file campaign finance reports on the dates set by the Department of State in s. 100.111, F.S.; provides for the filing of such reports on the Friday before a special primary or special election, and subjects the state and county executive committee filing late to a \$10,000-per-day or \$500-per-day fine, consistent with other elections; provides that notice of fines is sufficient upon proof of delivery of written notice to the mailing address or street address on record with the filing officer; establishes repeated late filings (3 late filings in any 2-year period) as a separate violation.

Section 17. Amends s. 106.35, F.S., deleting outdated provisions relating to paper reports associated with public campaign financing. Paper reports have been replaced by the Division’s electronic filing system as mandated by s. 106.0705, F.S.

Section 18. Provides for an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴² Ch. 2010-167, s. 18, LAWS OF FLA.

⁴³ *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may result in very minor additional costs to prepare and file local campaign finance reports, for CCEs who participate in county or municipal elections.

C. Government Sector Impact:

This bill may be expected to produce a minor positive fiscal impact as a result of: higher penalties for late-filed reports by CCEs; potential fines levied on the new election violation of “repeated late filing;” and, abolishing the requirement of providing candidates with a physical copy of Chapter 106 of the Florida Statutes.

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.