

**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 Committee on Community Affairs

BILL: CS/CS/SB 1382

INTRODUCER: Community Affairs Committee; Ethics and Elections Committee; and Senator Latvala

SUBJECT: Campaign Finance

DATE: March 21, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Fav/CS
2.	Anderson	Yeatman	CA	Fav/CS
3.			AP	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/CS/SB 1382 is a multipurpose campaign finance bill with the following major provisions:

- Eliminates committees of continuous existence (CCE) and provides for an orderly transition process through de-certification on September 30, 2013; however, the bill retains the \$250 aggregate reporting limit for former CCEs reporting “multiple uniform contributions” (formerly “member dues”) as a political committee (PC).
- Removes the “3-pack” exemption that allows PCs to run political advertisements jointly endorsing 3 or more candidates outside the scope of the contribution limits in Chapter 106.
- Provides for unlimited contributions to PCs supporting/opposing candidates, in lieu of the current \$500/election limit.
- Returns individual candidate contribution limits per election from a flat \$500 to a *tiered* system, similar to the one in place prior to 1992 (\$3,000, statewide and Supreme Court; \$2,000, DCA judges; \$500, all others — including legislative).
- Authorizes *county* political party executive committees to contribute an aggregate of \$50,000 to each *non-statewide* candidate, in addition to the aggregate limit of \$50,000 for *all* other political party contributions.
- Limits political party turn backs from candidate surplus funds to \$25,000.

- Increases the frequency of campaign finance reporting.
- Requires persons seeking a publicly-elected political party executive committee position *who receive contributions or make expenditures* to file a *single* campaign finance report on the Friday immediately preceding the primary election.
- Prohibits candidates who switch races from “double-dipping” contributors for maximum contributions in *both* races.
- Increases the amount certain successful candidates can contribute to an office account, and expands the permissible uses of such funds.
- Allows a successful state candidate to retain up to \$20,000 of campaign funds for reelection.
- Incorporates the PC expenditure ban from CS/SB 2 into Chapter 106, by limiting the permissible type of expenditures and authorizing a personal treble civil penalty for violations.
- Removes the requirement for petition candidates to pay a deferred 1 percent election assessment before disposing of surplus funds, transferring funds to an office account, or rolling over funds for reelection.
- Reinstates sponsorship identification disclaimers for campaign fund raiser tickets and advertising.
- Modifies the titling of campaign depositories and associated checks and debit cards.

This bill creates numbered and unnumbered sections, republishes sections, makes technical and cross-referencing changes to sections, repeals s. 106.04, and substantively amends the following sections of the Florida Statutes: 106.011, 106.021, 106.025, 106.07, 106.0703, 106.08, 106.11, 106.141, 106.29.

## II. Present Situation:

The present situation is discussed below in **Effect of Proposed Changes** in this bill analysis.

## III. Effect of Proposed Changes:

### **Elimination of Committees of Continuous Existence (CCEs)**

#### *Current Situation*

CCEs were created in Florida law in 1973.<sup>1</sup> A CCE is a group, organization, association, or other such entity that is involved in making contributions to candidates, PCs, electioneering communications organizations (ECOs), other CCEs, or political parties.<sup>2</sup>

A CCE must register with the Division of Elections and provide a copy of its bylaws and membership dues structure. It must report contributions and expenditures on the same schedule as a comparable political committee, though there are some differences in how certain items are reported.<sup>3</sup> A CCE is statutorily prohibited from making independent expenditures or

<sup>1</sup> Ch. 73-128, § 6, LAWS OF FLA.

<sup>2</sup> § 106.04(1), F.S.

<sup>3</sup> For example, CCEs are not required to provide a detailed list of members paying dues so long as each member pays no more than \$250 per calendar year; rather, CCEs are only required to report the total amount of dues collected and the total number of dues-paying members. § 106.04(4)(c)1., F.S.

electioneering communications, though it may contribute to an electioneering communications organization.

CCEs amass funds through dues collected from a membership base, which, in turn enables a CCE to collect additional contributions without limitation as to individual amount, provided at least 25 percent of the CCE’s overall income is attributable to member dues. Thus, the more money a CCE receives in member dues the more it can collect in non-member contributions, thereby enhancing its so-called political “clout.”

Due to its membership structure, CCEs have historically been the permanent, ongoing campaign finance vehicle of choice for *groups* and *organizations*. In the early to mid 2000s, Florida saw the emergence of “elected officer” CCEs, CCEs created and controlled by *individual* public officials or legislators. Public officers establishing these CCEs have reportedly used funds for a variety of purposes, including funding future legislative leadership battles and, in some of the worst-reported recent cases, wining and dining colleagues on a regular basis or paying for personal expenses of the individual legislator and/or friends, family, and colleagues (sometimes colloquially referred to as “living out of your CCE”).

*Effect of Proposed Changes (Sections 1-2)*

CS/CS/SB 1382 eliminates CCEs, and provides for an orderly transition process.

As of August 1, 2013, CCEs are no longer allowed to accept contributions; on September 30, 2013, all CCE certifications are revoked by operation of law. Before revocation, CCEs must disburse all funds as currently authorized by law. In order to provide sufficient notice to CCEs in advance of revocation, the Division of Elections is required to notify CCEs of the new laws by July 15, 2013. Even though CCE certifications are revoked on September 30, 2013, CCEs must still file required campaign finance reports, including the quarterly report due by October 10 for the third quarter of 2013. PCs or ECOs established, maintained, or controlled by the same person or group as the de-certified CCE that also received funds from the CCE are liable for any ch. 106, F.S., penalty or fine incurred or payable by the defunct CCE after September 30; in the absence of any such organization, the officers of the former CCE are jointly and severally liable.

The following table describes the current law and the effect of the bill’s proposed changes:

Committees of Continuous Existence		
	Current Law <sup>4</sup>	Effect of Proposed Changes
Political Purpose	To make contributions to candidates, political committees, political parties, CCEs, or ECOs. <sup>5</sup>	This bill
Limits on Contributions to a CCE	There are no limits, <i>provided</i> at least 25 percent of the CCE’s income, excluding interest, comes from member dues.	

<sup>4</sup> §106.04, F.S.

<sup>5</sup> CCE-to-CCE contributions and contributions from CCEs to ECOs are authorized pursuant to s. 106.011(3)(b), F.S., which defines the term “contribution” to include transfers of funds between these entities.

Limits on Contributions <b>made by</b> a CCE	<ul style="list-style-type: none"> <li>• \$500, to each candidate or political committee supporting <i>candidates</i>.<sup>6</sup></li> <li>• <u>Unlimited</u>, for contributions to ECOs, CCEs, or political parties.</li> <li>• <u>Unlimited</u>, for contributions to political committees supporting or opposing ballot <i>issues</i>, <i>provided</i> such contributions aggregate to no more than 25 percent of the CCE's annual income for the prior year.<sup>7</sup></li> </ul>	eliminates CCEs.
Permissible and Prohibited Activities	<ul style="list-style-type: none"> <li>• May contribute to candidates, ECOs, CCEs, political committees, and political parties.</li> <li>• May not make direct electioneering communications or independent expenditures.</li> <li>• In order to directly support or oppose an issue, a CCE must register as a political committee.</li> </ul>	

### Frequency of Committee Campaign Finance Reports

#### *Present Situation*

Pursuant to s. 106.011(16), F.S., individuals running for a political party executive committee position are specifically excluded from the definition of the word “candidate” for Chapter 106 purposes, and as such are not required to file campaign finance reports.

PCs, ECOs, CCEs, and most other candidates are required to file periodic campaign finance reports consisting principally of contributions received and expenditures made. CCEs, however, are not required to provide a detailed list of members paying dues so long as each member pays no more than \$250 in dues per calendar year; rather, CCEs are only required to report the total amount of dues collected and the total number of dues-paying members.<sup>8</sup>

Except for the third calendar quarter immediately preceding a general election, reports must be filed on the 10th day following the end of *each calendar quarter* from the time a campaign treasurer is appointed.<sup>9</sup> Quarterly reports must include all contributions received and expenditures made during the quarter. In an election year, reports must also be filed every other week on the 32nd, 18th, and 4th days immediately preceding the primary and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. Any statewide candidate who has requested to receive contributions pursuant to the Florida Election Campaign Financing Act or any statewide candidate in a race with a candidate who has requested to receive contributions must file weekly 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. In addition, there are different filing requirements during special elections.

State and county executive committees of a political party and Affiliated Party Committees (APCs) are *only* required to file periodic reports of contributions received and expenditures made on a quarterly basis and on the Friday (4<sup>th</sup> day) immediately preceding a special primary, primary, special general or general election.<sup>10</sup>

Although all final campaign finance reports are due on the Friday (4<sup>th</sup> day) immediately preceding an election, ECOs and CCEs can raise contributions and spend those contributions

<sup>6</sup> § 106.08(1), F.S.

<sup>7</sup> § 106.04(1)(b), F.S.

<sup>8</sup> § 106.04(4)(c)1., F.S.

<sup>9</sup> §§ 106.04(4)(b)1.; 106.07(1); 106.0703(1), F.S. Quarterly reports are due on the 10th day after the quarter, unless the 10th day is a Saturday, Sunday, or legal holiday, in which case the report is due on the next business day.

<sup>10</sup> § 106.29(1), F.S.

right up to and including election day; only candidates,<sup>11</sup> political committees,<sup>12</sup> and political parties<sup>13</sup> are prohibited from obligating or expending contributions raised in the 5 days before an election for *that* upcoming election.<sup>14</sup>

Reports are filed either with the Division of Elections or a local filing officer, typically the county Supervisor of Elections, as follows:

- *Candidates*: Reports are filed with the officer before whom the candidate qualifies. Candidates filing reports with the Division of Elections do so through the Electronic Filing System.
- *Political Committees*: Reports are electronically filed with the Division of Elections if the PC supports or opposes statewide, legislative, or multicounty candidates or issues; reports are filed with the county supervisor of elections if the PC supports or opposes solely candidates or issues in a countywide or less than a countywide election, or if a municipality contracts with the supervisor to run the city's elections (common).
- *Committees of Continuous Existence*: Reports are filed electronically with the Division of Elections.
- *Electioneering Communications Organizations*: Reports are electronically filed with the Division of Elections if the ECO's communications involve statewide, legislative, or multicounty candidates; reports are filed with the county supervisor of elections if the ECO's communications involve solely candidates or issues in a countywide or less than a countywide election, or if a municipality contracts with the supervisor to run the city's elections (common).
- *Political Party Executive Committees/APCs*: *State* political party executive committees and APC must file electronically with the Division of Elections; *county* political party executive committees file with the county Supervisor of Elections.

Reports filed with the Division of Elections are submitted electronically, while reports filed at the local level are typically filed on paper forms.

#### *Effect of Proposed Changes (Sections 9-11, 16)*

For statewide candidates and committees that file electronically with the Division of Elections (state political party executive committees and APCs, certain PCs and ECOs), the bill mandates:

- **Monthly** campaign finance reports until the 60th day before the primary (7 days after qualifying ends in June for most non-federal candidates);
- **Weekly** reports beginning on the 60th day before the primary, with the last weekly report due on the 11<sup>th</sup> day before the general election; and,

<sup>11</sup> § 106.08(3)(a), F.S.

<sup>12</sup> § 106.08(4), F.S.

<sup>13</sup> § 106.29(4), F.S.

<sup>14</sup> Candidates are required to return the contribution; political committees and political parties can retain the contribution for use in future elections. §§ 106.08(3)(a), (4); 106.29(4), F.S. *But see, Worley v. Detzner*, No.4:10-cv-00423-RH-CAS, at pp. 14-17 (N.D. Fla., July 2, 2012) (enjoining on First Amendment grounds the statutory prohibition barring a political committee from using contributions received in the last 5 days before an election provided, *before the contribution is spent, the committee fully discloses the contribution in an electronic filing with the Division*).

- **Daily** reports beginning on the 10th day before the general election, with the last report due on the **4<sup>th</sup> day before** the general election (last report for ECOs is due on the *day before* the general election).

For all other candidates reporting pursuant to Chapter 106 and local committees (county political party executive committees and PCs/ ECOs that file reports with a supervisor of elections or municipal clerk), the bill requires:

- **Monthly** campaign finance reports until the 60th day before the primary (7 days after qualifying ends in June for most non-federal candidates); and,
- **Bi-Weekly** reports every other Friday beginning on the 60th day before the primary through the Friday (4<sup>th</sup> day) before the general election, with an additional report due on the 25<sup>th</sup> and 11th days before the primary and general election.

For persons seeking a publicly-elected political party executive committee position who receive contributions or make expenditures, the bill requires the filing of a single campaign finance report on the Friday immediately preceding the primary election. The reporting scheme is patterned on local candidate reporting pursuant to s. 106.07, F.S., with the attendant criminal penalties for willfully reporting incorrect, false, or incomplete information as well as administrative fines for late filings.

The bill provides for aggregate reporting by PCs of uniform, multiple contributions from the same person totaling less than \$250 annually that are collected by PC “affiliated sponsors,” mirroring in large measure the current \$250 aggregate reporting exemption for CCE dues. The PC, however, must report the identities of such systematic contributors annually.

Finally, the bill requires the Division of Elections to submit to the Florida Legislature, by December 1, 2013, a proposal for creating a mandatory electronic filing system for *state and local campaign filings* required under the Florida Election Code. **(Section 17)**

## **Contribution Limits**

### *Present Situation*

#### Candidate and Political Committees

In 1991, the Legislature significantly reduced most of Florida’s candidate and political committee contribution limits to the current level: **\$500 per election/\$1,000 per election cycle**,<sup>15</sup> regardless of the office sought.<sup>16</sup> The 1991 Act barred PCs, CCEs, and adult individuals from contributing more than \$500/election to any candidate or to a political committee supporting or opposing candidates; contributions from unemancipated minors under 18 years of age were capped at \$100.<sup>17</sup>

<sup>15</sup> A primary election and general election are considered separate elections for purposes of the \$500 contribution limits, unless a candidate is unopposed. § 106.08(1)(c), F.S.

<sup>16</sup> Ch. 91-107, § 11, at 886-87, LAWS OF FLA.

<sup>17</sup> *Id.* In August 2012, a federal district judge in south Florida preliminarily enjoined the Florida Elections Commission from enforcing the \$100 contribution limit on minors, based on a substantial likelihood that it unconstitutionally curtailed First

Before the Act took effect in 1992, Florida followed a “tiered” approach; contribution limits for each election increased commensurate with the stature and scope of the office sought. An individual or group could contribute:

1. Up to **\$3,000** to candidates for statewide office and to Supreme Court justices in a retention election;
2. Up to **\$2,000** to district court of appeal judges in a retention election; and,
3. Up to **\$1,000** to a PC supporting or opposing candidates, and to candidates for all other elected offices:
  - a. State legislators and multicounty office.
  - b. Circuit and county court judge.
  - c. Countywide or less than countywide office.

#### Political Party Contributions to Non-Statewide Candidates

Legislative and other non-statewide candidates may accept an aggregate of \$50,000 from all political party sources, including national, state, or county committees, including subordinate committees, and APCs.<sup>18</sup> In addition, political party committees can also provide candidates with unlimited polling services, research services, campaign staff, professional consulting services, and telephone calls (so-called “nonallocables”).<sup>19</sup>

#### *Effect of Proposed Changes (Section 13)*

##### Candidate and Political Committees

The bill re-adopts Florida’s retro, *tiered*-limits approach to individual contributions to *candidates*, except that the bottom tier remains at the current \$500/election instead of \$1,000/election as existed pre-1992; the constitutionally-suspect \$100 contribution limit applicable to minors is repealed.<sup>20</sup>

The *candidate* limits in the bill are as follows:

1. Up to **\$3,000** to candidates for statewide office and to Supreme Court justices in a retention election;
2. Up to **\$2,000** to district court of appeal judges in a retention election; and,
3. Up to **\$500** to candidates for all other elected offices:
  - a. State legislators and multicounty office.
  - b. Circuit and county court judge.
  - c. Countywide or less than countywide office.

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Amendment rights of free speech and association. *Towbin v. Antonacci*, Case No. 12-80069-CV-WILLIAMS (S.D. Fla., Aug 6, 2012).

<sup>18</sup> § 106.08(2)(a), F.S.

<sup>19</sup> § 106.08(2)(b), F.S.

<sup>20</sup> See *supra* note 17 and accompanying text (discussing constitutionality of unemancipated minor contribution limit).

Further, the bill provides for *unlimited* contributions to PCs supporting or opposing candidates instead of the current \$500/election.

Political Party Contributions to Non-Statewide Candidates

CS/CS/SB 1382 allows *county* political party committees to contribute an aggregate of \$50,000 to non-statewide candidates, in addition to the current \$50,000 aggregate which *all* other political party committees may collectively contribute.

The table below summarizes Florida’s current campaign contribution limits and the effect of the bill’s proposed changes:

CAMPAIGN CONTRIBUTION LIMITS IN FLORIDA <sup>21</sup>			
	Current Limits		Proposed Limits
<b>Candidates</b>	From any person, PC, or CCE.	\$500/election	<ul style="list-style-type: none"> <li>• <u>Statewide or supreme court candidates: \$3,000/election.</u></li> <li>• <u>DCA candidates: \$2,000/election.</u></li> <li>• <u>Legislative and other candidates: No change.</u></li> </ul> <p>No CCE contributions, because CCEs are eliminated by this bill.</p>
	From PPs and APCs to a statewide candidate	\$250,000, aggregate from all	No change.
	From PPs and APCs to any other candidate	\$50,000, aggregate from all	<u>\$50,000 aggregate from a county PP executive committee; \$50,000 aggregate from all other party committees and APCs.</u>
<b>Political Committees (PCs)</b>	To a PC supporting or opposing <i>issues only</i>	No limit	No change.
	To a PC <i>supporting or opposing candidate(s)</i>	\$500/election	<u>No limit.</u>
<b>Electioneering Communications Organizations (ECOs)</b>	No limit on any contributions to an ECO.		No change.
<b>Committees of Continuous Existence (CCEs)</b>	No limit on any contributions to a CCE, <i>provided</i> at least 25 percent of the CCE’s income comes from membership dues.		<u>This bill eliminates CCEs.</u>
<b>Political Party Executive Committee (PP) or Affiliated Party Committee (APC)</b>	No limit on contributions to a PP.		No change.

<sup>21</sup> § 106.08, F.S.



## Political Committee Depository and Expenditures

### *Present Situation*

Political committees must set-up and make expenditures exclusively from a primary campaign depository.<sup>22</sup> The depository must be designated specifically as “...(name of the candidate or committee)... Campaign Account.”<sup>23</sup> Checks and debit cards for expenditures from the depository must contain the statement “...(name of candidate or political committee)... Campaign Account.”<sup>24</sup>

An “expenditure” is defined as a:

[P]urchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value *made for the purpose of influencing the results of an election or making an electioneering communication.*<sup>25</sup> (emphasis added)

### *Effect of Proposed Changes (Section 8, 14)*

CS/CS/SB 1382 removes the specific-wording requirements for the titles of campaign depositories along with the words that must appear on checks and debit cards, requiring only the name of the candidate or committee.

The bill further limits political committee expenditures to those that are:

[P]rimarily related to raising or making a contribution, influencing the results of an election, making an electioneering communication, or other political activity authorized by this chapter [106].

Persons making expenditures in violation of this provision are subject to the personal treble civil penalty provided in s. 106.19(2), F.S.

This provision of the bill is similar to the PC/CCE total gift prohibition in CS/SB 2 (Ethics), though it only reaches the person *making* the expenditure on behalf of the CCE.

## Race Switching

### *Present Situation*

Florida law provides that any candidate who changes the office that he or she is seeking must offer in writing to return funds received *pro rata* to contributors, and upon request of the contributor must do so; the candidate may use contributions that are not requested to be returned

<sup>22</sup> §§ 106.021(1), 106.11(1)(a), F.S.

<sup>23</sup> § 106.05, F.S.

<sup>24</sup> § 106.11(1)(b)1., (2)(a)2., F.S.

<sup>25</sup> § 106.011(4)(a), F.S.

for the newly-designated office.<sup>26</sup> A candidate may receive up to \$500 per non-political-party contributor, per election.<sup>27</sup>

The current statute allows a candidate to “double-dip” certain contributors, collecting the maximum \$500 contribution for the original race, using that contribution (or part thereof) for advertising to get the candidate’s name out, rolling over any *pro rata* amount not requested to be returned, and then tapping the *same* contributor for up to \$1,000 in *additional* contributions (\$500 for the primary, \$500 for the general election) for the newly-designated office — thereby, arguably, circumventing the \$500/election limit in spirit if not in actual practice.

#### *Effect of Proposed Changes (Section 4)*

The bill provides that the total amount of the contribution for the original office counts toward the contribution limits for the newly-designated office. For example, if a candidate were to raise \$500 from a contributor for a House seat and subsequently qualify for a contested Senate seat, the \$500 contributed in the House race would port over to the Senate race and allow the candidate to collect only an additional \$500 from *that* contributor for the Senate run (total of \$1,000 for both elections).

Further, because the bill adopts a variable, *tiered* contribution limit system for candidates (\$3,000/\$2,000/\$500 depending on the office sought), the bill provides that a candidate moving from a race with a higher contribution limit to one with a lower limit may only “roll down” funds that have not been requested to be returned *up to the maximum of the lower contribution limit*, and *must* dispose of excess contributions as if they were surplus funds.<sup>28</sup>

### **Surplus Campaign Funds**

#### *Present Situation*

Sections 106.11(5) and 106.141, F.S., govern the disposal of surplus campaign funds. Those sections require a candidate to dispose of all funds remaining in his or her campaign account and file a report within 90 days after the candidate is elected or eliminated, becomes unopposed, or withdraws from the election. A candidate may dispose of surplus funds in any of the following ways, or any combination thereof:<sup>29</sup>

1. Purchase “thank you” advertising for up to 75 days;
2. Pay for items which were obligated before the candidate withdrew, became unopposed, or was eliminated or elected;
3. Make expenditures to close the campaign office and prepare final campaign reports;
4. Return funds on a *pro rata* basis to each contributor;

<sup>26</sup> § 106.021(1)(a), F.S.

<sup>27</sup> § 106.08(1), F.S.

<sup>28</sup> A candidate may dispose of excess contributions by: paying for items obligated before the candidate switched offices; paying for necessary expenditures to close down the campaign office and prepare final campaign reports; returning contributions *pro rata* to contributors; donating to a charity or 501(c)(3) organization; or, depositing in the state’s General Revenue Fund (state candidates) or the general revenue fund of the applicable political subdivision (local candidates).

<sup>29</sup> §§ 106.11(5); 106.141(4)(a), F.S.

5. Donate funds to s. 501(c)(3) charitable organizations;
6. Contribute *unlimited* funds to an affiliated party committee or the candidate's political party ("turn backs");<sup>30</sup>
7. For statewide candidates, give funds to the state for use in the Election Campaign Financing Trust Fund or the General Revenue Fund;
8. For candidates for office in a political subdivision, give funds to the political subdivision for deposit in the general fund; or,
9. Transfer funds to an office account (see *infra*, section heading "**Office Accounts**").<sup>31</sup>

Florida law does not allow successful candidates to "roll over" campaign funds for reelection from one election to the next.

Prior to making certain dispositions or transferring funds to an office account, any candidate who filed an oath stating that he or she was unable to pay the election assessment<sup>32</sup> or fee for verification of petition signatures without imposing an undue burden on his or her personal resources, or who qualified by the petition process and was not required to pay an election assessment, is required to reimburse the state or local governmental entity, whichever is applicable, for the waived assessment or fee or both.<sup>33</sup>

### *Effect of Proposed Changes (Section 15)*

#### Political Party Turn Backs

CS/CS/SB 1382 limits political party turn backs from surplus campaign funds to \$25,000 per candidate.

#### "Roll Over" Campaign Funds

In addition to the current methods of disposing of surplus campaign funds, the bill allows a winning candidate for state office to retain up to \$20,000 in the candidate's campaign account (or transfer it to another interest-bearing account) for use in the candidate's reelection to the same office,<sup>34</sup> *provided* the candidate has paid any outstanding amounts owed for petition signature verification or any unpaid political party assessment.<sup>35</sup> Candidates who do not qualify for

<sup>30</sup> Political party turn backs from surplus funds were first authorized in 1982; they remained *unlimited* until January 1, 1999, when the Legislature adopted a \$10,000 maximum turn back as part of an omnibus 1997 election reform bill. Ch. 97-13, § 16, LAWS OF FLA.; Ch 82-404, § 1, LAWS OF FLA. In 2004, the limit expanded to \$30,000 *for Senate candidates only*. Ch. 04-252, § 20, LAWS OF FLA. In 2011, the Legislature returned to *unlimited* turn backs for the 2012 election cycle and beyond. Ch. 11-40, § 65, LAWS OF FLA.

<sup>31</sup> Section 106.141(5), F.S., permits a candidate elected to office to transfer surplus campaign funds to an office account (after certain requirements are met), which may be used for "legitimate expenses in connection with the candidate's public office." The amount that may be transferred to an office account varies depending upon the office to which the candidate is elected.

<sup>32</sup> The election assessment is 1 percent of the annual salary of the office sought, and is ultimately deposited into the Florida Elections Commission Trust Fund. § 99.092(1), F.S.

<sup>33</sup> § 106.141(6), F.S.

<sup>34</sup> To deal with candidates running to represent different districts, and changing district numbers associated with reapportionment, the term "same office" with respect to a *legislative* office means an office in the same legislative *body*, irrespective of district number, designation, or geographic boundary.

<sup>35</sup> These conditions would only impact candidates who qualified by the petition method; candidates paying the qualifying fee would have no preconditions to rolling over funds.

reelection to the same office must dispose of the retained funds within 90 days pursuant to the surplus funds' statutes.

### Election Assessment Fee

The bill eliminates the requirement that candidates who are excused from paying an election assessment *at the time of qualifying* because they qualified by petition, or because they claimed a financial hardship, pay back the election assessment before making certain dispositions of surplus funds, transferring funds to an office account, or, as newly-authorized in the bill, rolling over up to \$20,000 for reelection.

### **Office Accounts**

#### *Present Situation*

A successful or unopposed candidate may transfer surplus funds from his or her campaign account to an office account; the maximum amount that can be transferred depends on the elected office (see chart in Effect of Proposed Changes section below, detailing current amounts).<sup>36</sup>

Office account funds must be separate from any personal or other account, and can only be used for "legitimate expenses in connection with the candidate's public office." Some specific examples of such "legitimate expenses" are detailed in the law:

- Travel expenses incurred by the officer or a staff member;
- Personal taxes payable on office account funds by the candidate or elected public official;
- Expenses incurred in the operation of the elected public official's office, including the employment of additional staff.

Division of Elections Opinion 78-50 offers only minimal guidance as to what activities or expenses are permissible or "legitimate."<sup>37</sup>

Provided the activity or responsibility is something which is generated due to and with regard to a person's public position, rather than something personal in nature, expenses associated with that activity or responsibility could be paid with these retained funds.

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<sup>36</sup> § 106.141(5), F.S.

<sup>37</sup> Given the dearth of specific guidance from the executive and legislative branches, the Senate has developed a list of other permissible office account expenditures. Florida Senate, *Senate Administrative Policies and Procedures* (Dec. 2012) (Senate Policy 2.05, Separate Office Account). The House of Representatives addresses the issue in multiple policies, and handles member questions on an *ad hoc* basis through written decisions of the General Counsel. *See e.g.*, House of Representatives, *Administrative Policy Manual* (November 2012) (Policy Nos. 1.3, 2.3, 2.7, 2.15, 2.19, 3.2, 3.3, 3.7); House Legislative Conduct Opinions 00-02, 02-05, 01-10, 00-02, 97-02, 95-12, *available at*: <http://www.myfloridahouse.gov/FileStores/Adhoc/LegislativeConduct/LegislativeConduct.pdf> (last visited Feb. 20, 2012).

*Effect of Proposed Changes (Section 15)*

The following chart summarizes the current law and the bill’s changes with respect to the amount that certain successful candidates can retain in an office account:

<b>Office Accounts, Maximum Amounts</b>		
<b>Public Officer Candidates</b>	<b>Current Law<sup>38</sup></b>	<b>Effect of Proposed Changes</b>
<b>Statewide Officers<sup>39</sup></b>	\$20,000	\$50,000
<b>Multicounty Office</b>	\$5,000	\$10,000
<b>Legislative</b>	\$5,000, multiplied by the number of years in the term of office for which elected	\$10,000, multiplied by the number of years in the term of office for which elected
<b>County office, or for a candidate in any election conducted on less than a countywide basis</b>	\$2,500, multiplied by the number of years in the term of office for which elected	\$5,000, multiplied by the number of years in the term of office for which elected
<b>Supreme Court Justice</b>	\$6,000	<i>No change.</i>
<b>District Court of Appeal Judge</b>	\$3,000	<i>No change.</i>
<b>Circuit/County Court Judge</b>	\$1,500	\$3,000

Further, the bill expands the statutory list of “legitimate expenses” for which office funds can be used, namely:

- Professional services provided by a certified public accountant or attorney for preparation of an elected public official’s annual financial disclosure filing;<sup>40</sup>
- Costs associated with holiday cards and constituent newsletters that don’t constitute campaign literature;
- Fees or dues payable to religious, civic, or charitable organizations of which the officer is a member;
- Modestly-priced items such as flowers, greeting cards, or personal notes given in connection with a constituent’s special life event — like the birth of a child, graduation, wedding, or funeral; and,
- Personal expenses incurred by the official in connection with attending a constituent meeting or event where public policy is discussed, *provided* such meetings or events are limited to no more than once a week.

**Campaign Fund Raiser Disclaimers**

*Present Situation*

Prior to 2011, two disclaimers were required on fund raiser tickets and advertising:

<sup>38</sup> §106.141(5), F.S.

<sup>39</sup> Governor and Lieutenant Governor considered separate candidates. Section 106.141(5)(a), F.S.

<sup>40</sup> This new authorization is tied to provisions in CS/SB 2 (Ethics) by Rules, Ethics and Elections and Senator Latvala, creating a limited “safe harbor” for elected public officers who use a certified public accountant or lawyer to prepare and file their financial disclosure forms.

Any tickets or advertising for such a campaign fund raiser shall contain the following statement: "The purchase of a ticket for, or a contribution to, the campaign fund raiser is a contribution to the campaign of ...(name of the candidate for whose benefit the campaign fund raiser is held)...." Such tickets or advertising shall also comply with other provisions of this chapter relating to political advertising.<sup>41</sup>

Both disclaimers appear to have been inadvertently repealed in 2011, and a provision erroneously added specifically *exempting* campaign fund raiser tickets and advertising from the general political advertisement disclaimer requirements in s. 106.143, F.S.;<sup>42</sup> there are currently no sponsorship disclaimer requirements for campaign fund raiser materials.

#### Effect of Proposed Changes (Sections 6)

The bill reinstates the requirement that campaign fund raiser tickets and advertising include the general sponsorship disclaimer for political advertisements in s. 106.143, F.S.

#### **Effective Date (Section 37)**

Except as otherwise expressly provided, the act takes effect November 1, 2013.

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

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

None.

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

None.

##### C. Trust Funds Restrictions:

None.

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

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

None.

##### B. Private Sector Impact:

The increased frequency of campaign finance reporting may result in additional preparation costs for candidates seeking public office and private entities operating as PCs or ECOs, as well as for political party executive committees.

<sup>41</sup> § 106.025(1)(c), F.S. (2010)

<sup>42</sup> Ch. 2011-40, § 56, LAWS OF FLA.

Also, reducing political party turn backs to \$25,000 per candidate will likely force parties to seek those lost funds elsewhere.

C. Government Sector Impact:

1. Revenue

*Florida Elections Commission:* Eliminating the current requirement that petition candidates and others pay back the 1 percent election assessment prior to disposing of surplus funds will result in lost revenue to the Florida Elections Commission. The amount of lost revenue will vary depending primarily on the number of, and offices sought by, candidates that qualify by the petition method.

2. Expenditures

*Department of State:* According to the Department of State, under the *prior* committee substitute, the increase in the number of campaign finance reports filed with the Division of Elections would have increased their workload, requiring two FTEs and a recurring fiscal impact of \$85,000. The Department asserted that, “[t]he increase in reports would cause an increase in fail to file letters, fine letters, incomplete report letters and Election Commission referrals. All of these documents must be scanned and posted to the web. One entry level FTE would be required to handle incomplete letters and Election Commission referrals. One additional FTE would be required to handle fail to file letters, scanning and posting the letters to the web and to handle the increased traffic on the help desk answering phone calls. In total if you take an average salary of \$30,000 for each FTE plus benefits would total \$85,000.”

The current committee substitute reduces the number of reports required of most non-statewide candidates by about 25 percent. It is unclear at this time what impact this reduction will have, if any, on the Department’s fiscal analysis.

On another note, the Department intends to produce the report on the feasibility of a statewide database using current resources, so production of the report should not have a fiscal impact on the department.

*Florida Elections Commission:* According to the Florida Elections Commission (Commission), under the *prior* committee substitute, the increase in campaign finance reports filed would have increased the number of cases against candidates, political committees, and electioneering communications organizations that fail to file reports. The Commission also expected the increase in reports would increase the number of cases appealing fines imposed for late filing of reports. According to the Commission, investigating and preparing these cases for presentation to the Commission would have required one additional FTE at a salary of \$33,000, plus benefits for a total cost of \$42,900.

The current committee substitute reduces the number of reports required of most non-statewide candidates and local PCs/ECOs by about 25 percent. It is unclear at this time what impact this reduction will have, if any, on the Commission's fiscal analysis.

*Supervisors of Elections (and some municipal clerks):* The Supervisors of Elections and municipal clerks will receive and process more campaign finance reports, but the fiscal impact is indeterminate at this time.

**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.)

**CS/CS by Community Affairs on March 20, 2013:**

The committee substitute materially differs from the prior committee substitute in that it: removes the contribution/expenditure exemption for PCs running "3-pack" joint endorsement political advertisements; corrects a timing glitch to allow CCEs to transfer unlimited funds to PCs upon the bill becoming law, to allow for transfers of funds during the CCE de-certification transition period; reduces the number of campaign finance reports most candidates, county political party committees, and local PCs/ECOs must file; and, reinstates a Chapter 106 exemption for persons seeking political party executive committee office, while requiring such persons seeking publicly-elected office who raise contributions or make expenditures to file a single report immediately preceding the primary.

**CS by Ethics and Elections on March 11, 2013:**

The committee substitute materially differs from the original bill in that it: reduces the number of candidates that must file daily campaign finance reports immediately preceding the general election; incorporates the PC expenditure ban in CS/SB 2 into Chapter 106, F.S., by limiting the permissible type of expenditures; modifies the titling of campaign depositories and associated checks and debit cards; authorizes payments to lawyers from office account funds for preparation of financial disclosure forms; removes the requirement for petition candidates to pay back the 1 percent election assessment before disposing of surplus funds; and reinstates political advertising sponsorship disclaimers for campaign fund raiser tickets and advertising.



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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