

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 991 Campaign Finance
SPONSOR(S): White
TIED BILLS: HJR 989 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 1 N	Toliver	Harrington
2) Public Integrity & Ethics Committee	13 Y, 5 N	Kiner	Kiner

SUMMARY ANALYSIS

In 1986, the Legislature created the Florida Election Campaign Public Financing Act (Act), for the public financing of statewide candidates. The Act created a framework for the public financing of statewide campaigns, setting eligibility requirements and expenditure limitations for participating candidates, established a supporting trust fund, and created a distribution formula for public contributions to candidates.

Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a 'single' candidate for public financing purposes) or the Cabinet are eligible for funding under the Act. The Division of Elections reviews each request for public contributions and certifies whether the candidate is eligible before distribution.

In 1998, the Florida electorate approved amendment 10 to the Florida Constitution that required the establishment of a method of public financing for campaigns for statewide office. The amendment was incorporated in the Florida Constitution as art. VI, s. 7.

The bill repeals the Act in its entirety along with any references thereto. The bill is linked to HJR 989 (2018) and will only become law if that resolution passes the Legislature, is approved by the electorate, and becomes an amendment to the Florida Constitution.

The bill, if passed in conjunction with HJR 989, with which this bill is linked, will likely have a positive fiscal impact on the state. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Election Campaign Financing Act

In 1986,¹ the Legislature, concerned that the costs of running a campaign for statewide office limited the persons who would run to only those who were independently wealthy or those supported by special interests,² created the Florida Election Campaign Financing Act (the Act).³ The Act created a framework for the public financing of statewide campaigns, setting eligibility requirements and expenditure limitations for participating candidates, and established a supporting trust fund.

Only candidates for the offices of Governor, Lieutenant Governor, or the Cabinet are eligible for funding.⁴ A candidate for one of those offices seeking to receive public funding under the Act must:

- File a request with the Division of Elections (division) upon qualifying for office;⁵
- Agree to abide by the Act's expenditure limits;⁶
- Raise a certain amount of contributions;⁷
- Limit loans or contributions from the candidate's personal funds to \$25,000 and contributions from national, state, and county executive committees of a political party to \$250,000 in the aggregate;⁸ and
- Submit to a postelection audit of the campaign account by the division.⁹

Gubernatorial candidates and candidates for cabinet member must limit their expenditures: \$2.00 for each Florida-registered voter for Governor and Lieutenant Governor or \$1.00 for each Florida-registered voter for cabinet officer.¹⁰ The expenditure limits for the 2014 election cycle were as follows:

- Governor and Lieutenant Governor: \$25,067,768 (\$2.00 for each Florida-registered voter); and
- Cabinet Officer: \$12,533,884 (\$1.00 for each Florida-registered voter).¹¹

If a candidate who is not receiving public campaign funds exceeds the expenditure limitations set forth in the Act, then a participating candidate is released from abiding by the expenditure limits.¹²

The division reviews each request for public contributions and certifies whether the candidate is eligible before distribution.¹³ If certified, the candidate receives qualifying matching contributions¹⁴ on a two-to-one basis for contributions making up the amount of funds needed to initially become eligible for public

¹ Chapter 86-276, L.O.F. (1986).

² Section 106.31, F.S.

³ Section 106.30, F.S., states that sections 106.30-106.36 may be cited as the "Florida Election Campaign Financing Act."

⁴ Section 106.33, F.S.

⁵ *Id.*

⁶ Section 106.33(1), F.S.; *see also* s. 106.34, F.S.

⁷ Section 106.33(2), F.S. A candidate for Governor must raise at least \$150,000; a candidate for a cabinet office must raise at least \$100,000.

⁸ Section 106.33(3), F.S.

⁹ Section 106.33(4), F.S.

¹⁰ Section 106.34(1), F.S.

¹¹ The term 'Florida-registered voter' means a voter who is registered to vote in Florida as of June 30 of each odd-numbered year. The Division is required to certify the total number of Florida-registered voters no later than July 31 of each odd-numbered year. For the 2013 calculation, the total number was 12,533,884.

¹² Section 106.355, F.S.

¹³ Section 106.35(1), F.S.

¹⁴ Section 106.35(2)(b), F.S., defines "qualifying matching contributions" to mean contributions of \$250 or less from an individual, made after September 1 of the calendar year prior to the election.

financing and on a one-to-one basis thereafter.¹⁵ The funds are distributed from the general revenue fund. Total distributions for the 2014 and 2010 election cycles were as follows:

2014 Election Cycle – Total Distributions¹⁶	
Office	Total Distribution
Governor (Lieutenant Governor)	\$2,830,194.03
Chief Financial Officer	\$418,396.06
Attorney General	\$628,440.64
Commissioner of Agriculture	\$459,009.31
	\$4,336,040.04

2010 Election Cycle – Total Distributions¹⁷	
Office	Total Distribution
Governor (Lieutenant Governor)	\$1,816,014.47
Chief Financial Officer	\$1,204,321.09
Attorney General	\$2,176,956.17
Commissioner of Agriculture	\$868,264.38
	\$6,065,556.11

A participating candidate who exceeds the expenditure limit or falsely reports qualifying matching contributions and thereby receives contributions to which the candidate was not entitled shall be fined an amount equal to three times the amount at issue.¹⁸

Public Campaign Financing Amendment

In 1998, the Constitutional Revision Commission,¹⁹ a body which meets every 20 years to consider amendments to the Florida Constitution, placed an amendment on the general election ballot requiring the establishment of a method of public financing for candidates for statewide office.²⁰ The proposed amendment garnered 64.1 percent of the vote, meeting the 60 percent threshold necessary for it to become a part of the Florida Constitution.²¹ The amendment provides that “[i]t is the policy of this state to provide for statewide election in which all qualified candidates may compete effectively.”²² The amendment requires the Legislature to establish in law a method of public financing for campaigns for statewide office.²³ The amendment further requires spending limits be created for any candidate who chooses to use the public financing option.²⁴

HJR 989 (2018)

HJR 989 repeals art. VI, s. 7., of the Florida Constitution, the public campaign financing amendment. If the joint resolution passes each chamber with a three-fifths vote it will be placed on the general election ballot in 2018. If the electorate approves the amendment with at least 60 percent of electors voting in favor of its passage,²⁵ it will repeal the public financing amendment.

¹⁵ Section 106.35(2), F.S.

¹⁶ Public Campaign Finance 2014, DEPARTMENT OF STATE, available at <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/> (last visited 1/23/18)

¹⁷ Public Campaign Finance 2010, DEPARTMENT OF STATE, available at <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/> (last visited 1/23/18)

¹⁸ Section 106.36, F.S.

¹⁹ Article XI, s. 2, Fla. Const.

²⁰ Revision 11, Constitutional Revision Commission 1998, available at <http://fall.fsulawrc.com/crc/ballot.html> (last visited January 9, 2018).

²¹ 1998 Election Results, Department of State, available at <https://results.elections.myflorida.com/?ElectionDate=11/3/1998&DATAMODE=> (last visited January 9, 1998).

²² Article VI, s. 7, Fla. Const.

²³ *Id.*

²⁴ *Id.*

²⁵ Article XI, s. 5, Fla. Const.

Effect of the Bill

The bill repeals the Florida Election Campaign Financing Act in its entirety along with any references thereto. The bill is linked to HJR 989 (2018) and will only become law if that resolution passes the Legislature, is approved by the electorate, and becomes an amendment to the Florida Constitution.

B. SECTION DIRECTORY:

Section 1 repeals ss. 106.30, 106.31, 106.32, 106.33, 106.34, 106.35, 106.353, 106.355, and 106.36, F.S., relating to the Florida Election Campaign Financing Act.

Section 2 amends s. 106.021, F.S., relating to campaign treasurers and depositories.

Section 3 amends s. 106.141, F.S., relating to the disposition of surplus funds by candidates.

Section 4 amends s. 106.22, F.S., relating to duties of the Division of Elections.

Section 5 amends s. 328.72, F.S., relating to vessel classification and registration.

Section 6 amends s. 607.1622, F.S., relating to annual reports due to the Department of State.

Section 7 provides an effective date that is contingent upon the passage of HJR 989 and its approval by the voters.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill if passed in conjunction with HJR 989, which this bill is linked to, will likely have a positive fiscal impact on the state. Elimination of the public financing campaign amendment and the public financing campaign act in chapter 106, F.S., would allow the funds currently expended for those purposes to be diverted elsewhere. The Department of State asserts that \$4,336,040.04 was spent on the public

financing of campaigns in 2014²⁶ and \$6,065,556.11 in 2010.²⁷ The funds are distributed from the general revenue fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is an election law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²⁶ Public Campaign Finance 2014, DEPARTMENT OF STATE, available at <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/> (last visited 1/23/18).

²⁷ Public Campaign Finance 2010, DEPARTMENT OF STATE, available at <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/> (last visited 1/23/18).