

**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.)

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

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BILL: SJR 270

INTRODUCER: Senator Baxley

SUBJECT: Repeal of Public Campaign Financing Requirement

DATE: March 4, 2019

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------|----------------|-----------|------------------|
| 1. | Mitchell | Roberts        | EE        | <b>Favorable</b> |
| 2. |          |                | JU        |                  |
| 3. |          |                | AP        |                  |
| 4. |          |                | RC        |                  |

**I. Summary:**

SJR 270 proposes an amendment to the State Constitution to repeal the public financing program for statewide elections.

The joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature. If so enacted, the proposal will be presented to the electors of Florida at the 2020 general election. Approval requires a favorable vote from at least 60 percent of the electors voting on the matter. If approved, repeal of the program would take effect January 4, 2021.

The joint resolution proposes an amendment to the Florida Constitution to repeal Section 7 of Article VI.

**II. Present Situation:**

**Florida**

Currently, the State Constitution requires public campaign financing for statewide candidates (Governor and cabinet officers), with implementation by general law. The State Constitution provides:

It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at

least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.<sup>1</sup>

This constitutional provision has been in place since 1998, after being proposed by the Constitution Revision Commission and approved by the voters in the 1998 general election. The program itself, however, has been in place in statute since 1986.<sup>2</sup>

The matching funds program is provided by general law in ss. 106.30-106.36, F.S., and administered by the Department of State's Division of Elections (division). The program can be summarized as follows:

- Statewide candidates must have opposition;
- Only personal contributions from state residents are eligible for matching from the General Revenue Fund.<sup>3</sup> Corporate and political committee contributions are not matched;
- Contributions received after September 1 of the calendar year preceding the election are eligible for matching;
- Candidates choosing to participate in the public financing program must raise an initial amount of money – \$150,000 (for gubernatorial candidates) or \$100,000 (for candidates for Cabinet offices) – in order to be eligible to receive public funds. This upfront money is matched with public funds on a two-to-one basis;
- After that, eligible contributions are matched on a dollar-for-dollar basis, up to \$250 per individual contribution. For example, if a Florida individual makes a \$250 contribution, it is matched with \$250 from the state. If a person makes a \$500 contribution, only \$250 of that contribution will be matched with state money; and
- In exchange for receiving public money, candidates agree to abide by certain limits on their overall campaign expenditures (see discussion, below).

Participating candidates must complete a form declaring their intention to apply for public campaign financing at the time of qualifying, and subsequently submit their contributions for audit by the division to determine eligibility for the match. The division audits the submissions and makes payment to the candidate, beginning immediately on the 32<sup>nd</sup> day before the primary election and every seven days thereafter.

The program was originally funded from the Election Campaign Financing Trust Fund, which was established in 1986. The trust fund was funded with a portion of candidate qualifying fees and civil penalties collected by the Florida Elections Commission. The trust fund expired by operation of s. 19(f), Article III, Fla. Constitution, on November 4, 1996, which required state trust funds in existence prior to 1992 to terminate not more than four years from November 4, 1992. Since the trust fund terminated, the program has been funded from the General Revenue Fund.

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<sup>1</sup> Article VI, s. 7, Fla. Const.

<sup>2</sup> Chapter 86-276, s. 1, Laws of Fla.

<sup>3</sup> In 2001, the Legislature enacted a law that excluded out-of-state contributions from eligibility for matching. Ch. 2001-40, s. 69, Laws of Fla.

Statewide candidates participating in the public financing program must agree to abide by campaign expenditure limits.<sup>4</sup> In 2005, the Legislature increased these expenditure limits to the following amounts for the general election:<sup>5</sup>

- Governor/Lt. Governor – Increased from \$7.1 million<sup>6</sup> to \$2.00 for each Florida-registered voter<sup>7</sup>; and
- Cabinet Offices – Increased from \$2.82<sup>8</sup> million per race to \$1.00 for each Florida-registered voter.<sup>9</sup>

A Florida-registered voter is defined as a voter who is registered to vote in Florida as of June 30 of each odd-numbered year. The division must certify the total number of Florida-registered voters no later than July 31 of each odd-numbered year. The total number must be calculated by adding the number of registered voters in each county as of June 30 in the year of the certification date.<sup>10</sup> The 2018 election cycle campaign expenditure limits for statewide candidates participating in the public financing program were approximately \$27.09 million for the Governor's and Lieutenant Governor's races and \$13.55 million for the remaining cabinet races.<sup>11</sup>

Total public financing expenditures in the last four general election cycles for the Governor's race and 3 cabinet races are as follows:

- 2018 election cycle – \$9.85 million;
- 2014 election cycle – \$4.34 million;
- 2010 election cycle – \$6.07 million; and
- 2006 election cycle – \$11.1 million.<sup>12</sup>

Current Florida law provides that, in addition to the matching funds specifically authorized to participating candidates for the general election and contested primaries, if a nonparticipating statewide candidate exceeds the expenditure limit, all opposing candidates participating in the public financing program receive a dollar-for-dollar match of public funds for the amount that the nonparticipating candidate exceeds the limit, up to a maximum of twice the applicable

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<sup>4</sup> Section 106.34, Florida Statutes (F.S.)

<sup>5</sup> Chapter 2005-278, Laws of Fla. Expenditure limits for candidates with primary opposition only is 60 percent of the general election limits.

<sup>6</sup> Section 106.34(1)(a), F.S. Although Florida law in 2005 explicitly provided for a cap of \$5 million for gubernatorial candidates, the law also required that the limit be adjusted quadrennially for inflation; therefore, at the end of 2005, this \$5 million expenditure limit, which was originally established in law in 1992, had risen to an inflation-adjusted figure of \$7,135,606.

<sup>7</sup> Section 106.34(1)(a), F.S.

<sup>8</sup> Ch. 2005-278, s. 48, at 2735, Laws of Fla. Although Florida law in 2005 explicitly provided for a cap of \$2 million for Cabinet office candidates, the law also required the limit to be adjusted quadrennially for inflation; therefore, at the end of 2005, this \$2 million expenditure limit, which was originally established in law in 1992, had risen to an inflation-adjusted figure of \$2,854,242.

<sup>9</sup> Section 106.34(1)(b), F.S.

<sup>10</sup> Section 106.34(3), F.S.

<sup>11</sup> The number of Florida-registered voters as of June 30, 2017 was 13,545,731. See Florida Division of Elections, *2018 Public Campaign Financing Handbook*, 3 at <https://www.dos.myflorida.com/media/698987/public-campaign-financing-2018.pdf> (last viewed on March 1, 2019).

<sup>12</sup> See Florida Division of Elections, Candidates and Committees, Campaign Finance at <https://www.dos.myflorida.com/elections/candidates-committees/campaign-finance/> (last viewed on March 1, 2019).

expenditure limit.<sup>13</sup> The constitutionality of this provision has been challenged, however, in a decision by the 11<sup>th</sup> U.S. Circuit Court of Appeals.<sup>14</sup> (see below)

An identical resolution to repeal the public financing program for statewide elections was adopted in the 2009 legislative session.<sup>15</sup> The measure appeared on the ballot in November 2010, but did not receive the necessary 60 percent affirmative votes required for adoption.<sup>16</sup>

### **Other States**

According to the National Conference of State Legislatures, Florida is one of a small number of states that offer some form of full or partial public matching funds to political candidates:

States cannot require candidates to use public financing programs, and the financial advantages of private fundraising frequently prompt candidates to opt out of public financing programs, which often include expenditure limits for participants. Candidates who opt not to use public funds can solicit contributions from individuals, PACs, unions, parties, and corporations, without having to abide by state expenditure limits ...

Today, 14 states provide some form of public financing option for campaigns. Each of these plans require the candidate to accept public money for his or her campaign in exchange for a promise to limit both how much the candidate spends on the election and how much they receive in donations from any one group or individual ...

The two main types of programs states offer for public financing of elections are the clean elections programs offered in states such as Maine and Arizona, and programs that provide a candidate with matching funds for each qualifying contribution they receive. The “clean election states” offer full funding for the campaign, and the matching funds programs provide a candidate with a portion of the funds needed to run the campaign.<sup>17</sup>

In most states, public funds constitute only a portion of a participating candidate’s expenditures, and candidates continue to raise and spend campaign funds from private sources within the limits provided by law.<sup>18</sup>

### **III. Effect of Proposed Changes:**

The Joint Resolution proposes the repeal of the constitutional authorization for the public financing of statewide elections.

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<sup>13</sup> Section 106.355, F.S. The candidates participating in public financing are also released from the expenditure limit to the extent the nonparticipating candidate exceeds the limit.

<sup>14</sup> *Scott v. Roberts*, 612 F.3d 1279 (11<sup>th</sup> Cir. 2010).

<sup>15</sup> House Joint Resolution No. 81, filed with the Secretary of State on May 19, 2009.

<sup>16</sup> See Florida Division of Elections, Constitutional Amendments at

<https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=71> (last viewed on March 1, 2019).

<sup>17</sup> National Conference of State Legislatures, *Public Financing of Campaigns: Overview* (last viewed on March 1, 2019), available at <http://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx>.

<sup>18</sup> *Id.*

If approved by a three-fifths vote of the membership of each house of the Legislature, the proposal will be presented to the electors of Florida at the 2020 general election. Approval requires a favorable vote from at least 60 percent of the electors voting on the matter.

#### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

In the landmark case of Buckley v. Valeo, the United States Supreme Court ruled that laws imposing limitations on overall campaign expenditures by candidates violated the free speech guarantees of the U.S. Constitution.<sup>19</sup> The Buckley Court, however, upheld the federal statute providing for public financing of presidential elections, finding that overall campaign expenditures may be limited if a candidate voluntarily waives his or her right to make unlimited expenditures in exchange for receiving public campaign funds.<sup>20</sup>

In 2010, gubernatorial candidate Rick Scott brought an action for injunctive relief to prevent the operation of the excess spending subsidy provision<sup>21</sup> of the Florida Election Campaign Financing Act in his primary campaign, alleging that it violated his First and Fourteenth Amendment rights to spend unlimited sums of his personal funds and private donations to his campaign in support of his candidacy. On his appeal from an adverse district court decision, a panel of the 11<sup>th</sup> Circuit Court of Appeals ruled that he was entitled to the preliminary injunction and that there was a substantial likelihood that he would succeed on the merits of his constitutional claim. The court held that candidate Scott would be forced to speak less in order to prevent his opponent from receiving matching funds. The court ruled that the subsidy provision was severable from the rest of the campaign financing act.<sup>22</sup>

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<sup>19</sup> *Buckley v. Valeo*, 424 U.S. 1, 54-58 (1976); *see also, Randall v. Sorrell*, 126 S. Ct. 2479, 2487-2491 (2006) (applying *Buckley* to invalidate Vermont law limiting overall campaign expenditures).

<sup>20</sup> *Buckley* at 57, fn. 65 (Congress “may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations.”)

<sup>21</sup> Section 106.355, F.S.

<sup>22</sup> *Scott v. Roberts*, 612 F.3d 1279 (11<sup>th</sup> Cir. 2010).

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

None.

**B. Private Sector Impact:**

If the public campaign financing program is abolished, statewide candidates would no longer be able to depend on public funds for their campaigns and would likely turn to private contributions to fill the void. The precise fiscal impact is indeterminate.

**C. Government Sector Impact:**

The repeal of public campaign financing would eliminate an expenditure that routinely occurs every four years from the General Revenue Fund typically ranging from \$4 million to \$12 million per election cycle. The first year of the anticipated cost avoidance would occur in Fiscal Year 2024-2025.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill approves the repeal of Section 7 of Article VI of the Florida Constitution and submits the repeal to the electors for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.