

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 613 Repeal of Public Campaign Financing Requirement

**SPONSOR(S):** Roth and others

**TIED BILLS:** HB 615 **IDEN./SIM. BILLS:** SJR 270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	8 Y, 5 N	Toliver	Harrington
2) Public Integrity & Ethics Committee	10 Y, 6 N	Rubottom	Rubottom
3) State Affairs Committee			

### SUMMARY ANALYSIS

In 1998, the Florida electorate approved an amendment to the Florida Constitution requiring the establishment of a method of public financing for campaigns for statewide office. The amendment was incorporated into the Florida Constitution as article VI, s. 7, the public campaign financing amendment. The amendment requires the Legislature to establish in law a method of public financing for campaigns for statewide office. The amendment further requires spending limits be created for any candidate who chooses to use the public financing option.

The joint resolution proposes an amendment to the Florida Constitution that repeals the public campaign financing amendment. If passed, the joint resolution will be considered by the electorate at the next general election on November 3, 2020.

The joint resolution, if passed in conjunction with HB 615, which is linked to this resolution, will likely have a positive fiscal impact on the state. See Fiscal Comments.

**Article XI, s. 1 of the Florida Constitution requires a three-fifths vote of the members present and voting for final passage of a joint resolution proposing an amendment to the Florida Constitution. This joint resolution proposes a constitutional amendment, thus it requires a three-fifths vote for final passage.**

**Article XI, s. 5 of the Florida Constitution requires 60 percent voter approval for adoption of a proposed constitutional amendment.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Campaign Financing Amendment

In 1998, the Constitutional Revision Commission,<sup>1</sup> 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 state-wide office.<sup>2</sup> The proposed amendment was approved by the electorate, garnering 64.1 percent of the vote.<sup>3</sup> The constitutional provision is presently found in Article VI, s. 7 and provides that “[i]t is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively.”<sup>4</sup> The provision requires the Legislature to establish in law a method of public financing for campaigns for statewide office.<sup>5</sup> The provision further requires spending limits be created for any candidate who chooses to use the public financing option.<sup>6</sup> In 2009, the Legislature passed HJR 81 (2009), which proposed a constitutional amendment to repeal the public campaign financing amendment. The proposed amendment was placed on the ballot at the 2010 general election. The amendment failed to pass the required 60 percent threshold, garnering 52.5 percent of the vote, and therefore was not incorporated into the Florida Constitution.<sup>7</sup>

##### The Florida Election Campaign Financing Act

In 1986,<sup>8</sup> 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,<sup>9</sup> created the Florida Election Campaign Financing Act (the Act).<sup>10</sup> The Act created a framework for the public financing of statewide campaigns, setting eligibility requirements, expenditure limitations for participating candidates, and establishing a supporting trust fund.

Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a ‘single’ candidate for public financing purposes) or Cabinet offices are eligible for funding.<sup>11</sup> 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;<sup>12</sup>
- Agree to abide by the Act’s expenditure limits;<sup>13</sup>
- Raise a certain amount of contributions;<sup>14</sup>

---

<sup>1</sup> Article XI, s. 2, Fla. Const.

<sup>2</sup> Revision 11, CONSTITUTIONAL REVISION COMMISSION 1998, available at <http://fall.fsulawrc.com/crc/ballot.html> (last visited March 5, 2019).

<sup>3</sup> 1998 Election Results, DEPARTMENT OF STATE, available at <https://results.elections.myflorida.com/?ElectionDate=11/3/1998&DATAMODE=> (last visited March 5, 2019).

<sup>4</sup> Article VI, s. 7, FLA. CONST.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 2010 Election Results, DEPARTMENT OF STATE, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/2/2010&DATAMODE=> (last visited March 13, 2019).

<sup>8</sup> Chapter 86-276, L.O.F.

<sup>9</sup> Section 106.31, F.S.

<sup>10</sup> Section 106.30, F.S., states that ss. 106.30-106.36, F.S., may be cited as the “Florida Election Campaign Financing Act.”

<sup>11</sup> Section 106.33, F.S.

<sup>12</sup> *Id.*; see also Fla. Admin. R. 1S-2.047.

<sup>13</sup> Section 106.33(1), F.S.; see also s. 106.34, F.S.

<sup>14</sup> Section 106.33(2), F.S. A candidate for Governor must raise at least \$150,000 and a candidate for a cabinet office must raise at least \$100,000.

- 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,<sup>15</sup> and
- Submit to a postelection audit of the campaign account by the division.<sup>16</sup>

Gubernatorial candidates and candidates for cabinet member must limit their expenditures<sup>17</sup> according to the following schedule: \$2.00 for each Florida-registered voter<sup>18</sup> for Governor and Lieutenant Governor or \$1.00 for each Florida-registered voter for Cabinet Officer. The expenditure limits for the 2018 election cycle were as follows:

- Governor and Lieutenant Governor: \$27,091,462.00 (\$2.00 for each Florida-registered voter); and
- Cabinet Officer: \$13,545,731.00 (\$1.00 for each Florida-registered voter).<sup>19</sup>

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.<sup>20</sup> The division reviews each request for public contributions and certifies whether the candidate is eligible before distribution.<sup>21</sup> If certified, the candidate receives qualifying matching contributions on a two-to-one basis for contributions making up the amount of funds needed to initially become eligible for public financing and on a one-to-one basis thereafter.<sup>22</sup> The one-to-one match only applies to contributions of \$250 or less per individual; any amount contributed by an individual in excess of \$250 will only be matched up to \$250.<sup>23</sup> Additionally, for the match to occur, the individual from whom the contributions are received must be a resident of the state.<sup>24</sup> The funds are distributed from the general revenue fund. Total distributions for the 2010, 2014, and 2018 election cycles were as follows:

<b>2010 Election Cycle – Total Distributions<sup>25</sup></b>	
<b>Office</b>	<b>Distribution</b>
Governor (Lt. Gov.)	\$1,816,014.47
Chief Financial Officer	\$1,204,321.09
Attorney General	\$2,176,956.17
Commissioner of Agriculture	\$868,264.38
<b>TOTAL</b>	<b>\$6,065,556.11</b>

<b>2014 Election Cycle – Total Distributions<sup>26</sup></b>	
<b>Office</b>	<b>Distribution</b>
Governor (Lt. Gov.)	\$2,830,194.03
Chief Financial Officer	\$418,396.06
Attorney General	\$628,440.64

<sup>15</sup> Section 106.33(3), F.S.

<sup>16</sup> Section 106.33(4), F.S.

<sup>17</sup> See s. 106.011(10)(a), F.S.

<sup>18</sup> The Florida Election Campaign Financing Act defines the term “Florida-registered voter” to mean 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. Section 106.34(3), F.S.

<sup>19</sup> 2018 Public Campaign Financing Handbook, Department of State, available at <https://dos.myflorida.com/media/698987/public-campaign-financing-2018.pdf> (last visited March 5, 2019).

<sup>20</sup> Section 106.355, F.S.

<sup>21</sup> Section 106.35(1), F.S.

<sup>22</sup> Section 106.35(2)(a), F.S.

<sup>23</sup> Section 106.35(2)(b), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Public Campaign Finance 2010, DEPARTMENT OF STATE, available at <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/> (last visited March 5, 2019).

<sup>26</sup> Public Campaign Finance 2014, DEPARTMENT OF STATE, available at <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/> (last visited March 5, 2019).

Commissioner of Agriculture	\$459,009.31
<b>TOTAL</b>	<b>\$4,336,040.04</b>

<b>2018 Election Cycle – Total Distributions<sup>27</sup></b>	
<b>Office</b>	<b>Distribution</b>
Governor (Lt. Gov.)	\$8,151,124.58
Chief Financial Officer	\$334,604.00
Attorney General	\$933,187.02
Commissioner of Agriculture	\$433,690.16
<b>TOTAL</b>	<b>\$9,852,605.76</b>

For 2006 through 2018, \$30,502,964.18 in public funds were distributed to statewide candidates. Five candidates<sup>28</sup> who lacked prior state political experience have received a combined \$4,324,255.51, while 48 such candidates received nothing. Four incumbents seeking re-election have received \$1,540,025, and 2 incumbents received no funds. Twenty-five non-incumbents having prior state legislative, Congressional or state office-holding experience have received \$24,638,713.30 while 6 such candidates received no funds. (Rick Scott did not participate in 2010 as a new politician nor in 2014 as the incumbent Governor.)

The purpose of the constitutional provision is that all qualified candidates “may compete effectively.”<sup>29</sup> This purpose has been questioned by at least one court.<sup>30</sup>

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.<sup>31</sup>

### **Effect of the Joint Resolution**

The joint resolution repeals article VI, s. 7, of the Florida Constitution, the public campaign financing amendment.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by 60 percent of the electors voting. If approved, the amendment will take effect January 5, 2021.

#### **B. SECTION DIRECTORY:**

Not applicable.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

See Fiscal Comments.

##### **2. Expenditures:**

<sup>27</sup> Public Campaign Finance 2018, DEPARTMENT OF STATE, available at <https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/> (last visited March 5, 2019).

<sup>28</sup> 2018 Democrat nominee Andrew Gillum received \$2,621,401.65 or 61% of the amount received by all such candidates.

<sup>29</sup> Section 7, Art. VI, FL. CONST.

<sup>30</sup> *Scott v. Roberts*, 612 F.3d 1279, 1293 (11th Cir. 2010) (“the system levels the electoral playing field, and that purpose is constitutionally problematic”, citations omitted)

<sup>31</sup> Section 106.36, F.S.

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:**

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The division is required to advertise the full text of a proposed constitutional amendment twice in a newspaper of general circulation in each county before the election. The division is also required to provide each supervisor of elections with either booklets or posters displaying the full text of a proposed amendment.

If passed in conjunction with HB 615, which is linked to this resolution, the resolution will likely have a positive fiscal impact on the state. Elimination of the public campaign financing 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 \$9,852,605.76 was spent on the public financing of campaigns in 2018,<sup>32</sup> \$4,336,040.04 in 2014<sup>33</sup> and \$6,065,556.11 in 2010.<sup>34</sup> As the original trust fund for the public campaign financing program expired in 1996,<sup>35</sup> these funds are currently distributed from general revenue.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

---

<sup>32</sup> Public Campaign Finance 2018, Department of State, available at <https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/> (last visited March 5, 2019).

<sup>33</sup> Public Campaign Finance 2014, DEPARTMENT OF STATE, available at <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/> (last visited March 5, 2019).

<sup>34</sup> Public Campaign Finance 2010, DEPARTMENT OF STATE, available at <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/> (last visited March 5, 2019).

<sup>35</sup> The trust fund expired, effective November 4, 1996, by operation of s. 19(f), Art. III of the State Constitution. *See* s. 106.32, F.S.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.