

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 Rules

BILL: CS/SB 1890

INTRODUCER: Ethics and Elections Committee and Senator Rodrigues

SUBJECT: Campaign Financing

DATE: April 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|--------------------|
| 1. | <u>Biehl</u> | <u>Roberts</u> | <u>EE</u> | <u>Fav/CS</u> |
| 2. | <u>Biehl</u> | <u>Phelps</u> | <u>RC</u> | <u>Pre-meeting</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1890 adds political committees sponsoring constitutional amendments proposed by initiative to the list of entities subject to a \$3,000 contribution limit from a person or political committee. The contribution limit will no longer apply to such a political committee once the Secretary of State has issued a certificate of ballot position and a designating number for the proposed constitutional amendment.

The bill also revises the authorized methods for disposing of surplus campaign funds to:

- Prohibit a candidate from donating such funds to a charitable organization by which he or she is employed; and
- Eliminate restrictions on which candidates may donate to which government funds to allow all candidates for state and local office to deposit surplus funds in the general revenue fund of a political subdivision, the state General Revenue Fund, or the Election Campaign Financing Trust Fund.

The bill takes effect July 1, 2021.

II. Present Situation:

Political Committees

Florida law defines “political committee” to mean:

- A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year:
 - Accepts contributions for the purpose of making contributions to any candidate,¹ political committee, affiliated party committee, or political party;
 - Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
 - Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
 - Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.
- The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.²

Each political committee must file a statement of organization within 10 days after its organization.³ A political committee which is organized to support or oppose statewide, legislative, or multicounty candidates or issues to be voted upon on a statewide or multicounty basis must file its statement of organization with the Department of State's Division of Elections.⁴

Each political committee must, through a designated campaign treasurer, file regular reports of all contributions received, and all expenditures made, by or on behalf of the political committee.⁵ Generally, such reports must include a list of specified information, including, but not limited to, the full name, address, and occupation, if any, of each person who made one or more contributions to or for such committee within the reporting period, together with the amount and date of such contributions.⁶

Proposed Constitutional Amendments, Generally

Amendments to the Florida Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizens' initiative, 4) a

¹ Section 106.011(3), F.S., defines "candidate" to mean a person to whom any of the following applies: 1) a person who seeks to qualify for nomination or election by means of the petitioning process; 2) a person who seeks to qualify for election as a write-in candidate; 3) a person who receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office; 4) a person who appoints a treasurer and designates a primary depository; or 5) a person who files qualification papers and subscribes to a candidate's oath as required by law. The definition excludes any candidate for a political party executive committee.

² Section 106.011(16)(a), F.S. The following entities are not considered political committees: 1) national political parties, the state and county executive committees of political parties, and affiliated party committees; 2) corporations or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, affiliated party committees, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities; or 3) electioneering communications organizations (s. 106.011(16)(b), F.S.).

³ Section 106.03(1)(a), F.S.

⁴ Section 106.03(3)(a), F.S.

⁵ Section 106.07(1), F.S.

⁶ Section 106.07(4)(a), F.S.

constitutional convention, or 5) the Taxation and Budget Reform Commission.⁷ Depending on the method, all proposed amendments or revisions to the Florida Constitution must be submitted to the electors at the next general election held more than 90 days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, or for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election will be held.⁸

The Florida Constitution mandates that all proposed amendments or revisions⁹ be adopted by at least a 60 percent affirmative vote of those electors voting on the measure.

Citizens' Initiatives

The Florida Constitution provides citizens the right to propose constitutional amendments through an initiative petition process.¹⁰ The process includes the following signature requirements:

- The total number of signatures must be equal to at least eight percent of the number of voters in the last presidential election.
- The signatures must come from voters in at least one-half of the congressional districts of the state.¹¹

The steps in the citizens' initiative petition process are as follows:

- The individual or group wishing to propose an amendment must register as a political committee with the Department of State's Division of Elections (Division).¹²
- The sponsoring political committee must submit its initiative petition form to the Division for approval of its format.¹³
- After the Division approves the format of a petition form, the Division assigns a serial number to the initiative petition.¹⁴
- After assignment of a serial number, the sponsoring political committee may begin circulating petitions for signature by registered Florida voters.¹⁵
- Each signed initiative petition form must be submitted by the sponsoring political committee to the supervisor of elections' office in the county of residence of the signee for signature verification.¹⁶

⁷ See FLA. CONST. art XI, ss. 1-4 and 6.

⁸ See FLA. CONST. art XI, s. 5.

⁹ When the Florida Constitution uses the word 'amendment' it is in reference to a section of the constitution, while the word 'revision' relates to one or more articles or the whole constitution. See FLA. CONST. art. XI, s. 1.

¹⁰ FLA. CONST. art. XI, s. 3.

¹¹ FLA. CONST. art. XI, s. 3.

¹² Section 100.371(2), F.S.

¹³ Rule 1S-2.009 (Constitutional Amendment by Initiative Petition), F.A.C.

¹⁴ *Id.*

¹⁵ See *id.* and s. 100.371(2), F.S.

¹⁶ Section 100.371(11)(a), F.S. Each signature must be verified by the relevant supervisor of elections. The sponsoring political committee must pay the actual cost of verification to the supervisor of elections.

- When the sponsoring political committee has obtained specified thresholds for verified signatures,¹⁷ the Secretary of State (Secretary) sends the petition to the Attorney General,¹⁸ who must within 30 days of receipt petition the Florida Supreme Court (Court) for an advisory opinion as to whether the text of the proposed amendment complies with state constitutional requirements¹⁹, whether the proposed amendment is facially invalid under the United States Constitution, and whether the proposed ballot title and substance comply with statutory requirements^{20, 21}. The Secretary concurrently sends a copy of the petition to the Financial Impact Estimating Conference, which completes and submits to the Court a financial impact statement for the proposed amendment.²²
- By February 1 of the year of the general election, the Secretary determines whether the required number and distribution of signatures has been met.²³ If so, the Secretary issues a certificate of ballot position to the sponsoring political committee.²⁴ No later than the next day, the Division director assigns the designated number for the proposed amendment.²⁵

Political Contribution Limits

No person²⁶ or political committee (except for political parties or affiliated party committees²⁷) may contribute in excess of:

- \$3,000 to a candidate for statewide office or for retention as a Supreme Court Justice; or
- \$1,000 to a candidate for retention as a judge of a district court of appeal, a candidate for legislative office, a candidate for countywide office or in any election conducted on less than a countywide basis, or a candidate for county judge or circuit judge.²⁸

Florida law does not currently limit contributions to a political committee.

¹⁷ The verified signatures on petitions must be equal to at least 25% of the number of signatures required statewide and in at least one-half of Florida's congressional districts.

¹⁸ Section 15.21, F.S.

¹⁹ FLA. CONST. art. XI, s. 3, in part limits citizens' initiatives (except those limiting the power of government to raise revenue) to a single subject.

²⁰ Section 101.161, F.S., provides format and content requirements for ballot titles and summaries. The ballot summary must be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title must consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. However, those requirements do not apply to amendments or revisions proposed by joint resolution of the Legislature. All proposals are subject to requirements pertaining to a financial impact statement that must be included in the ballot summary.

²¹ Section 16.061(1), F.S.

²² Section 100.371(13), F.S.

²³ Section 100.371(1), F.S.

²⁴ Section 100.371(12), F.S.

²⁵ Rule 1S-2.0011 (Constitutional Amendment Ballot Position), F.A.C.

²⁶ A "person" is an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity (s. 106.011(14), F.S.). The term includes a political party, affiliated party committee, or political committee.

²⁷ The leader of each political party conference of the House of Representatives and the Senate may establish a separate, affiliated party committee to support the election of candidates of the leader's political party (s. 103.092(2), F.S.). Affiliated party committees are subject to the same provisions of ch. 106, F.S., as are political parties.

²⁸ Section 106.08(1)(a), F.S.

Disposition of Surplus Funds by Candidates

Florida law specifies authorized methods for disposition of surplus funds by candidates.²⁹ Generally,³⁰ each candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office must, within 90 days:

- Dispose of the funds on deposit in his or her campaign account; and
- File a report reflecting the disposition of all remaining funds.³¹

A candidate may dispose of such funds that have not been spent or obligated by any of the following means, or any combination thereof:

- Return them pro rata to each contributor;
- Donate them to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code;³²
- Give not more than \$25,000 of the funds to the affiliated party committee or political party of which the candidate is a member; or
- In the case of a candidate for state office, give the funds to the state, to be deposited in either the Election Campaign Financing Trust Fund³³ or the General Revenue Trust Fund, as designated by the candidate, or in the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.³⁴

III. Effect of Proposed Changes:

The bill adds political committees sponsoring constitutional amendments proposed by initiative to the list of entities subject to a \$3,000 contribution limit from a person or political committee. The contribution limit will no longer apply to such a political committee once the Secretary of State has issued a certificate of ballot position and a designating number for the proposed constitutional amendment.

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²⁹ Section 106.141, F.S.

³⁰ Section 106.141(6), F.S., provides an option to retain specified funds for a candidate elected to state office or a candidate who will be elected to state office by virtue of his or her being unopposed after candidate qualifying ends.

³¹ Section 106.141(1), F.S.

³² Section 501(c)(3) of the Internal Revenue Code provides tax exemptions for organizations that serve certain charitable purposes and meet other specified requirements.

³³ On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. (see note in s. 106.32, F.S.). All balances and income from the defunct fund were deposited into the state General Revenue Fund pursuant to Art. III, s. 19(f)(4), FLA. CONST.

³⁴ Section 106.141(4)(a), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. Bills that affect state or local elections are exempt from Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The United States Supreme Court has issued numerous opinions defining First Amendment freedom of speech limits on election laws, including some specifically related to ballot-initiative petitions.

The Court has concluded that the circulation of such petitions represents core political speech and merits the highest level of protection.³⁵ However, the Court also has recognized that regulation of elections is necessary to ensure fairness and order.³⁶ States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally.³⁷ So, restrictions on an initiative process will only be upheld against a First Amendment challenge if such restrictions “protect the integrity and reliability of the initiative process” and do not “unjustifiably inhibit the circulation of ballot-initiative petitions.”³⁸

In First Amendment challenges to laws governing initiative petitions, the Court has analyzed whether the restrictions in question significantly inhibit communication with voters about proposed political change and, if so, whether they are warranted by the state interests alleged to justify those restrictions.³⁹ A key factor considered by the Court in this context is whether the effect of the law will limit the number of persons who carry the initiative proponents’ message, and, consequently, reduce the size of the audience initiative proponents can reach.⁴⁰ In striking down a ban on paid petition circulators, the

³⁵ *Meyer v. Grant*, 486 U.S. 414 (1988).

³⁶ *Storer v. Brown*, 415 U.S. 724 (1974); see *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

³⁷ *Biddulph v. Mortham*, 89 F.3d 1491 (11th Cir. 1996).

³⁸ *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182 (1999).

³⁹ *Meyer*, 486 U.S. 414; *Buckley*, 525 U.S. 182 at 192.

⁴⁰ *Meyer*, 486 U.S. 414 at 422-423.

Court held that the challenged restriction reduced the chances that initiative proponents would gather signatures sufficient in number to qualify for the ballot, and thus limited proponents' ability to make the matter the focus of statewide discussion; the restriction imposed a burden on political expression that the state failed to justify.⁴¹

Additional examples of initiative petition restrictions struck down by the Court include:

- A requirement that petition circulators be registered voters.⁴²
- A requirement that petition circulators wear a name badge.⁴³
- A requirement that initiative sponsors disclose specified information about all petition circulators.⁴⁴
- A \$250 limit on contributions to committees formed to support or oppose ballot measure referenda.⁴⁵

Examples of initiative petition restrictions upheld by the courts include:

- A minimum age requirement for petition circulators.⁴⁶
- A six-month limit on the time period in which petitions can be circulated.⁴⁷
- A requirement that a circulator attach to each petition section an affidavit containing the circulator's identifying information and a statement that he or she has read and understands the laws governing the circulation of petitions.⁴⁸
- Single subject and unambiguous title requirements.⁴⁹
- A requirement that the names of contributors and the amounts contributed be disclosed.⁵⁰

This bill creates a limit on contributions to political committees sponsoring ballot initiatives during the time period in which the sponsoring committees are circulating petitions and attempting to gather a number of signatures sufficient to gain access to the ballot.

Courts also have generally held that regulations seeking to forbid or limit communication of specific ideas and viewpoints are in violation of the First Amendment. To justify a "content-based" regulation of speech, the government must show that the regulation is necessary to serve a compelling state interest and narrowly drawn to further that interest. Examples of content-based limitations on speech upheld by courts include regulations related to:

⁴¹ *Meyer*, 486 U.S. 414 at 423-425.

⁴² *Buckley*, 525 U.S. 182 at 197.

⁴³ *Buckley*, 525 U.S. 182 at 200.

⁴⁴ *Buckley*, 525 U.S. 182 at 204.

⁴⁵ *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, California*, 102 U.S. 434 (1981). In this case, the Court determined that the restraint imposed by the ordinance on rights of association and in turn on individual and collective rights of expression contravened both the right of association and the speech guarantees of the First Amendment.

⁴⁶ *American Constitutional Law Found., Inc., v. Meyer*, 120 F.3d 1092 (10th Cir. 1997).

⁴⁷ *Id.* at 1099.

⁴⁸ *American Constitutional Law Found., Inc.*, 120 F.3d 1092 at 1100.

⁴⁹ *Biddulph*, 89 F.3d 1491.

⁵⁰ *American Constitutional Law Found., Inc.*, 120 F.3d 1092 at 1104-1105. Specifically, the court held that disclosure of the names of initiative sponsors, and of the amounts they had spent gathering support for their initiatives, responded to a substantial state interest in maintaining a check on domination of the initiative process by affluent special interest groups.

- Obscenity.⁵¹
- Clear and present danger.⁵²
- Fighting words and hate speech.⁵³
- Hate crimes.⁵⁴
- Defamation.⁵⁵
- Compelling interest, as in matters connected with national security or protecting public safety.⁵⁶

Restrictions distinguishing among different speakers also are generally prohibited.⁵⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may result in an indeterminate fiscal impact to state and local government revenues to the extent that the elimination of the restriction on which candidates may donate to which government funds results in a change in donation patterns.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 106.08 and 106.141, Florida Statutes.

⁵¹ *Miller v. California*, 413 U.S. 15 (1973).

⁵² *Hess v. Indiana*, 414 U.S. 105 (1973).

⁵³ *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

⁵⁴ *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

⁵⁵ *Beauharnais v. Illinois*, 343 U.S. 250 (1952).

⁵⁶ *Holder v. Humanitarian Law Project*, 130 S.Ct. 2705 (2010).

⁵⁷ *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Elections on March 30, 2021:

The committee substitute:

- Relocates the addition of political committees sponsoring constitutional amendments proposed by initiative to the section governing contribution limits for statewide candidates, thereby making the applicable contribution limit \$3,000 instead of \$1,000 as in the original bill.
- Adds to the bill provisions revising authorized methods of disposal of surplus campaign funds.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
