

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/CS/HB 921 Campaign Financing  
**SPONSOR(S):** State Affairs Committee, Public Integrity & Elections Committee, Drake  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Elections Committee	18 Y, 0 N, As CS	Roy	Rubottom
2) State Affairs Committee	15 Y, 7 N, As CS	Roth	Williamson

**SUMMARY ANALYSIS**

The Federal Election Campaign Act of 1971 prohibits any foreign national from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, or disbursement, in connection with a federal, state, or local election. Under the Act, a “foreign national” is defined as:

- A “foreign principal” as defined in 22 U.S.C. § 611(b), which includes a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of a business in a foreign country.
- An individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence.

Under Florida law, no person or political committee, except for political parties or affiliated party committees, may contribute in excess of:

- \$3,000 to a candidate for statewide office or for retention as a Supreme Court Justice;
- \$3,000 to a political committee that is the sponsor of a constitutional amendment proposed by initiative until the Secretary has issued a certificate of ballot position and a designating number for the proposed constitutional amendment; 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.

The bill revises the contribution limitation applicable to political committees that are the sponsors of a constitutional amendment proposed by initiative to apply only to contributions:

- Made to a political committee sponsoring a constitutional amendment that does not have a registered office with a Florida address.
- Made to a political committee sponsoring a constitutional amendment by a person who is not a resident of the state.

The bill prohibits foreign nationals from directly or indirectly making or offering to make a contribution or expenditure in connection with any election held in the state. The bill defines “foreign national” to mean a foreign government; a foreign political party; a foreign corporation, partnership, association, organization, or other combination of persons organized under the laws of or having its principle place of business in a foreign country; a person with foreign citizenship; or a person who is not a citizen or national of the United States and is not lawfully admitted to the United States for permanent residence. It does not include a person who is a dual citizen or dual national of the United States and a foreign country, nor does it include domestic subsidiaries of foreign business organizations under certain circumstances.

The bill may have an insignificant negative fiscal impact on state government expenditures.

This bill has an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Federal Law

The Federal Election Campaign Act of 1971<sup>1</sup> prohibits any foreign national from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, or disbursement, in connection with a federal, state, or local election.<sup>2</sup> Under the Act, a “foreign national” is defined as:

- A “foreign principal” as defined at 22 U.S.C. § 611(b), which includes a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of a business in a foreign country.
- An individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence.<sup>3</sup>

The Act defines “election” to mean a general, special, primary, or runoff election as well as a convention or caucus of a political party which has authority to nominate a candidate.<sup>4</sup>

The United States Supreme Court decision in *Buckley v. Valeo*<sup>5</sup> found that the constitutionality of campaign-finance laws regarding the activities of American citizens rely on how well the laws serve the government’s interest in limiting “the actuality and appearance of corruption.”<sup>6</sup> Alternatively, restrictions on foreign-national involvement in American politics serve a different governmental interest: “preventing foreign influence over the U.S. political process.”<sup>7</sup>

##### Florida Law

##### *Political Committees*

A “political committee” means 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, 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.<sup>8</sup>

In addition, a “political committee” means the sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.<sup>9</sup>

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<sup>1</sup> FECA, Pub. L. 92-225, 86 Stat.

<sup>2</sup> 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f).

<sup>3</sup> 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

<sup>4</sup> 52 U.S.C. § 30101(1); the Federal Election Commission ruled that under the Act, the term “election” does not encompass state and local ballot issues, allowing political donations by foreign nationals to a domestic ballot initiative committee. MUR 7523 (Stop I-186 to Protect Mining and Jobs, *et al.*) (2021).

<sup>5</sup> 424 U.S. 1 (1976).

<sup>6</sup> *Id.* at 26.

<sup>7</sup> *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).

<sup>8</sup> S. 106.011(16)(a), F.S.

<sup>9</sup> S. 106.011(16)(a), F.S. The following entities are not considered political committees: national political parties, the state and county executive committees of political parties, and affiliated party committees; corporations or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to

All political committees must file a statement of organization within 10 days after their organization.<sup>10</sup> A political committee that 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 Division of Elections (division) within the Department of State.<sup>11</sup>

Each political committee must file regular reports of all contributions received, and all expenditures made, by or on behalf of the political committee.<sup>12</sup> The reports must include, but is 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.<sup>13</sup>

#### *Constitutional Amendments Proposed by Citizen Initiative*

The Florida Constitution is the charter of the liberties of Floridians. It may be amended only if the voters approve an amendment originating in the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a constitutional convention, or a citizen initiative.<sup>14</sup> The Florida Constitution mandates that all proposed amendments or revisions<sup>15</sup> be adopted by at least a 60 percent affirmative vote of those electors voting on the measure. An amendment proposed by citizen initiative must embrace only one subject,<sup>16</sup> unless it concerns limiting the power of government to raise revenue, but proposals originating from other methods are not so limited.<sup>17</sup>

The Florida Constitution requires the sponsor of an amendment proposed by citizen initiative to obtain a specified number of signatures on a petition to place the proposal on the ballot.<sup>18</sup> The petition must contain the signatures of a number of voters equal to 8 percent of the votes cast in the state in the preceding presidential election as well as 8 percent of the votes cast in that election in each of at least half of the congressional districts of the state.<sup>19</sup> The number of signatures required for placement on the 2022 ballot is 891,589, with a specified number of that total required to come from at least 14 of the state's 27 congressional districts.<sup>20</sup>

In order for a citizens' initiative petition to get placed on the ballot, the individual or group wishing to propose an amendment must register as a political committee with the division.<sup>21</sup> The sponsoring political committee must then submit its initiative petition form to the division for approval.<sup>22</sup> After the division approves the format of a petition form, the division assigns a serial number to the initiative petition.<sup>23</sup> Once a serial number has been assigned, the sponsoring political committee may begin circulating petitions for signature by registered Florida voters.<sup>24</sup> 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.<sup>25</sup>

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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 electioneering communications organizations S. 106.011(16)(b), F.S.

<sup>10</sup> S. 106.03(1)(a), F.S.

<sup>11</sup> S. 106.03(3)(a), F.S.

<sup>12</sup> S. 106.07(1), F.S.

<sup>13</sup> S. 106.07(4)(a), F.S.

<sup>14</sup> FLA. CONST. art. XI.

<sup>15</sup> 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.

<sup>16</sup> FLA. CONST. art. XI, s. 3.

<sup>17</sup> FLA. CONST. art. XI, ss. 1, 2, 4, 6.

<sup>18</sup> FLA. CONST. art. XI, s. 3.

<sup>19</sup> *Id.*

<sup>20</sup> FLORIDA DEPARTMENT OF STATE, 2022 Initiative Petition Handbook, <https://files.floridados.gov/media/705249/final-updated-20220124-initiative-petition-sponsoring-political-committee-user-guide.pdf> (last visited Feb. 18, 2022).

<sup>21</sup> S. 100.371(2), F.S.

<sup>22</sup> Rule 1S-2.009 (Constitutional Amendment by Initiative Petition), F.A.C.

<sup>23</sup> *Id.*

<sup>24</sup> See *id.* and s. 100.371(2), F.S.

<sup>25</sup> S. 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.

Once the sponsoring political committee obtains the thresholds for verified signatures,<sup>26</sup> the Secretary of State (Secretary) sends the petition to the Attorney General,<sup>27</sup> 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 requirements,<sup>28</sup> whether the proposed amendment is facially invalid under the United States Constitution, and whether the proposed ballot title and substance comply with statutory requirements.<sup>29</sup> 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.<sup>30</sup> By February 1 of the year of the general election, the Secretary determines whether the required number and distribution of signatures has been met.<sup>31</sup> If so, the Secretary issues a certificate of ballot position to the sponsoring political committee.<sup>32</sup> No later than the next day, the division director assigns the designated number for the proposed amendment.<sup>33</sup>

### *Political Contribution Limits*

No person<sup>34</sup> or political committee, except for political parties or affiliated party committees,<sup>35</sup> may contribute in excess of:<sup>36</sup>

- \$3,000 to a candidate for statewide office or for retention as a Supreme Court Justice;
- \$3,000 to a political committee that is the sponsor of a constitutional amendment proposed by initiative until the Secretary has issued a certificate of ballot position and a designating number for the proposed constitutional amendment;<sup>37</sup> 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.

Any person who knowingly and willfully makes or accepts contributions in violation of the restrictions, or fails or refuses to return any contribution violating the restrictions, commits a first degree<sup>38</sup> misdemeanor.<sup>39</sup> If any corporation, partnership, or other business entity or any political party, affiliated party committee, political committee, or electioneering communications organization is convicted of the above, it must be fined no less than \$1,000 and no more than \$10,000.<sup>40</sup> If it is a domestic entity, it may

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<sup>26</sup> 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.

<sup>27</sup> S. 15.21, F.S.

<sup>28</sup> 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.

<sup>29</sup> S. 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.

<sup>30</sup> S. 100.371(13), F.S.

<sup>31</sup> S. 100.371(1), F.S.

<sup>32</sup> S. 100.371(12), F.S.

<sup>33</sup> Rule 1S-2.0011 (Constitutional Amendment Ballot Position), F.A.C.

<sup>34</sup> 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.

<sup>35</sup> 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.

<sup>36</sup> S. 106.08(1)(a), F.S.

<sup>37</sup> The contribution limitation applicable to contributions made to a political committee that is the sponsor of a constitutional amendment proposed by initiative was enjoined on July 1, 2021, by the U.S. District for the Northern District of Florida. *ACLU of Florida, Inc., v. Lee*, 2021 WL 4350174 (N.D. Fla. 2021).

<sup>38</sup> See ss. 775.082 and 775.083, F.S.

<sup>39</sup> S. 106.08(7)(a), F.S.

<sup>40</sup> *Id.*

be ordered dissolved by a court of competent jurisdiction, and if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited.<sup>41</sup>

### **Effect of the Bill**

The bill revises the contribution limitation applicable to political committees that are the sponsors of a constitutional amendment proposed by initiative to apply only to contributions:

- Made to a political committee sponsoring a constitutional amendment that does not have a registered office with a Florida address.
- Made to a political committee sponsoring a constitutional amendment by a person who is not a resident of the state.

The bill prohibits foreign nationals from directly or indirectly making or offering to make a contribution or expenditure in connection with any election held in the state. This provision includes both candidate and ballot question campaigns.

The bill defines “foreign national” to mean:

- A foreign government;
- A foreign political party;
- A foreign corporation, partnership, association, organization, or other combination of persons organized under the laws of or having its principle place of business in a foreign country;
- A person with foreign citizenship; or
- A person who is not a citizen or national of the United States and is not lawfully admitted to the United States for permanent residence.

The term does not include:

- A person who is a dual citizen or dual national of the United States and a foreign country.
- A domestic subsidiary of a foreign corporation, partnership, association, organization, or other combination of persons organized under the laws or having its principal place of business in a foreign country if:
  - The donations and disbursements used toward a contribution or an expenditure are derived entirely from funds generated by the subsidiary's operations in the United States; and
  - All decisions concerning donations and disbursements used toward a contribution or an expenditure are made by individuals who either hold United States citizenship or are permanent residents of the United States. Decisions concerning donations and disbursements do not include decisions regarding the subsidiary's overall budget for contributions or expenditures in connection with an election.

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

Section 1: Amends s. 106.08, F.S., relating to contributions; limitations on.

Section 2: Provides an effective date of July 1, 2022.

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

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

1. Revenues:

None.

2. Expenditures:

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<sup>41</sup> *Id.*

The bill may have an insignificant fiscal impact associated with enforcement of its provisions.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may deter some private sector political fundraising and spending.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The U.S. Supreme Court has held that limits to contributions to political campaigns implicate First Amendment concerns, which would require a court to use a heightened standard of review.<sup>42</sup> Any such limit must be closely drawn to a sufficiently important government interest.<sup>43</sup>

**B. RULE-MAKING AUTHORITY:**

There is neither rule-making authority granted in the bill nor does there seem to be a need for rulemaking.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2022, the Public Integrity & Elections Committee adopted a strike-all amendment and passed the bill as a Committee Substitute. The strike-all added a revision to the \$3,000 contribution limitation, limiting its application to contributions to the sponsors of initiative petitions made by non-residents and political committees without a registered Florida address. The amendment clarified that the foreign contributor ban does not apply to U.S. citizens who are dual citizens or dual nationals of the United States and a foreign country. The amendment also removed reference to federal law that confused the meaning of the proposed ban on foreign contributions.

On February 23, 2022, the State Affairs Committee adopted a proposed committee substitute (PCS) and an amendment to the PCS. The PCS, as amended, differed from the bill in that it changed the relating to clause and provided that the term "foreign national" does not apply to domestic subsidiaries of foreign business organizations under certain circumstances.

This analysis is drafted to the Committee Substitute as adopted by the State Affairs Committee.

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<sup>42</sup> *Buckley v. Valeo*, 421 U.S. 1 (1976).

<sup>43</sup> *Id.* at 25.