

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 Ethics and Elections

BILL: SB 884

INTRODUCER: Senator Hutson

SUBJECT: Audits of Campaign Finance Reports

DATE: January 12, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 884 authorizes a candidate required to dispose of surplus funds and report such to, before disposition, request the Division of Elections (division) audit the required report. It also:

- Tolls the deadline to dispose of surplus funds and file the report until 10 business days after the audit is final; and
- Allows the requesting candidate to keep his or her campaign account open during the audit for the sole purpose of making expenditures to correct audit findings.

In addition, the bill clarifies the authority of the division to audit campaign finance reports.

The bill takes effect July 1, 2024.

II. Present Situation:

Campaign Finance Requirements

Chapter 106, F.S., governs campaign financing and prescribes requirements for candidates, political committees,¹ and electioneering communications organizations,² including but not limited to provisions regarding:

- Registration and officers;
- Reporting;
- Contributions³ and expenditures;⁴

¹ Section 106.011(16)(a), F.S., defines “political committee” to mean (a) 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 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; or (b) the sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors. The following are not considered political committees for purposes of ch. 106, F.S.: 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 contributions or expenditures in support of or in opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities; and electioneering communications organizations.

² Section 106.011(9), F.S., defines “electioneering communications organization” to mean any group, other than a political party, affiliated party committee, or political committee, whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party or political committee under this chapter. Section 106.011(8)(a), F.S., defines “electioneering communication” to mean a text message or communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone which (a) refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate; (b) is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and (c) is targeted to the relevant electorate in the geographic area the candidate would represent if elected. Specified types of communications are exempted from the definition.

³ Section 106.011(5), F.S., defines “contribution” to mean (a) a gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication; (b) a transfer of funds between political committees, between electioneering communications organizations, or between any combination of these groups; (c) the payment, by a person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services; or (d) the transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes interest earned on such account or certificate. However, “contribution” does not include services, including, but not limited to, legal and accounting services, provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or editorial endorsements.

⁴ Section 106.011(10)(a), F.S., defines “expenditure” to mean a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. The term does not include a purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election when made by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, for the purpose of printing or distributing such organization’s newsletter, containing a statement by such

- Closure of candidate campaign accounts and disposition of surplus funds; and
- Disclaimers.

“Candidate” means a person who:

- Seeks to qualify for nomination or election by means of the petitioning process;
- Seeks to qualify for election as a write-in candidate;
- 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;
- Appoints a treasurer and designates a primary depository; or
- Files qualification papers and subscribes to a candidate’s oath as required by law.⁵

However, the term “candidate” does not include any candidate for a political party executive committee.⁶

Closure of Campaign Accounts

Each candidate who withdraws his or her candidacy, becomes an unopposed candidate, is eliminated as a candidate, or is elected to office must, within 90 days, dispose of the funds⁷ in his or her campaign account and file a report reflecting the disposition of all remaining funds.⁸ This report is commonly known as the “termination report.”⁹

Audits of Campaign Finance Reports

Current law provides that it is the duty of the division to:

- Make, from time to time, audits and field investigations with respect to reports and statements filed pursuant to ch. 106, F.S., and with respect to alleged failures to file required reports or statements.¹⁰
- Conduct random audits with respect to reports and statements filed pursuant to ch. 106, F.S., and with respect to alleged failures to file required reports or statements.¹¹

organization in support of or opposition to a candidate or issue, which newsletter is distributed only to members of such organization.

⁵ Section 106.011(3), F.S.

⁶ *Id.*

⁷ A candidate may dispose of surplus funds by any of the following means or any combination thereof: (a) return the funds pro rata to each contributor; (b) donate the funds to a charitable organization or organizations that meet Internal Revenue Code qualifications, except that the candidate may not be employed by the organization; (c) give not more than \$25,000 of the funds to the affiliated party committee or political party of which such candidate is a member; or (d) give the funds to the state, to be deposited in the General Revenue Fund, or to a political subdivision, to be deposited in the general fund thereof (s. 106.141(4)(a), F.S.).

⁸ Section 106.141(1), F.S.

⁹ See page 61, *Candidate & Campaign Treasurer Handbook (2024 Election Cycle)*, Florida Division of Elections, available at <https://files.floridados.gov/media/707325/candidate-and-campaign-treasurer-handbook-2024-working.pdf> (last visited January 11, 2024).

¹⁰ Section 106.22(6), F.S.

¹¹ Section 106.22(1), F.S.

There is no statutory timeframe for which reports are “eligible” for audit or by when an audit must be completed. This means that reports can be audited, and deficiencies found, for campaign accounts that have been closed after dispersing any remaining funds.

III. Effect of Proposed Changes:

Regarding termination reports, the bill:

- Authorizes a candidate required to dispose of surplus funds to, before disposition, request the division audit the termination report, and tolls the 90-day deadline until 10 business days after the audit is final.
- Allows a candidate who requests an audit of a termination report to keep the campaign account open during the audit for the sole purpose of making expenditures to correct audit findings.

In addition, the bill clarifies provisions governing the division’s audits of campaign finance reports by:

- Specifying that the two provisions in current law apply to different situations. Under the bill, the division must conduct audits and investigations of alleged failures to file required reports, and separately must randomly audit a sample of all reports.
- Prescribing requirements for the division’s random audits of a sample of all reports. Specifically, the bill provides that after each general election cycle, the division must audit a random sample of 3 percent of all political committees, of all electioneering communication organizations, and of all qualified candidates in each of the following office groups – state, judicial, multicounty, and special district.

The bill takes effect July 1, 2024.

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:

None.

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

None.

B. Private Sector Impact:

The bill's authorization of candidates to keep open campaign accounts in specified circumstances will allow them to correct any audit findings from the campaign account instead of from their personal funds.

C. Government Sector Impact:

The workload of the division may increase to the extent that candidates request audits of termination reports.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 106.141, 106.22, 106.021, 106.07, 106.11, and 717.1235.

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.