

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 Governmental Oversight and Accountability

BILL: CS/SB 884

INTRODUCER: Ethics and Elections Committee and Senator Hutson

SUBJECT: Audits of Campaign Finance Reports

DATE: January 26, 2024

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 884 authorizes a candidate required to dispose of surplus funds and report such funds to request that the Division of Elections (division) audit the required report prior to the disposition of funds. The bill:

- Tolls the deadline to dispose of surplus funds and file the report until 10 business days after the audit is completed; 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.

The bill also provides for tolling of the 90-day deadline and for limited authorization to keep a campaign account open when a candidate is selected for a random audit of his or her campaign finance reports.

The bill eliminates the division's general authority to conduct audits and field investigations of reports and statements required under ch. 106, F.S., absent a failure to file a required report or statement or outside the new randomized selection process set forth in the bill. In addition, the bill clarifies the authority of the division to audit campaign finance reports using a randomized selection process.

The division may incur additional workload in implementing the requirements of the bill. The bill is not expected to otherwise impact state and local government revenues and expenditures.

The bill takes effect upon becoming a law.

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

- 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

election, for the purpose of printing or distributing such organization’s newsletter, containing a statement by such 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 23, 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 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:

Section 1 amends s. 106.141, F.S., regarding termination reports, to:

- Authorize a candidate required to dispose of surplus funds to request, before the disposition of the funds, that the division audit the termination report and tolls the 90-day deadline to dispose of funds until 10 business days after the audit is completed.
- Allow 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.

Section 2 amends s. 106.141, F.S., to authorize the tolling of the 90-day deadline to dispose of funds in an account and for limited authorization to keep a campaign account open when a candidate is selected for a random audit of his or her campaign finance reports.

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 requires each sample selection process to be completed no later than 30 days after each general election.
- Eliminating the general authority of the division to conduct audits and field investigations of reports and statements filed under ch. 106, F.S., absent a failure to file a required report or statement or outside the new randomized selection process set forth in the bill.

Section 3 amends s. 106.021, F.S., to update a cross-reference changed by section 1.

Section 4 amends s. 106.07, F.S., to update a cross-reference changed by section 1, and reenacts subsection (1) to incorporate by reference the changes made in section 2.

Sections 5 and 6 reenact ss. 106.11 and 717.1235, F.S., respectively, to incorporate by reference the changes made in section 2.

Section 7 provides the bill takes effect upon becoming a law.

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

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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:

Lines 65-72 allow a candidate to request an audit of a termination report. The candidate's duties to dispose of the funds and report such disposition are tolled until after the completion of the audit of the report. It is unclear what the division will be auditing if the candidate has not disposed of the funds in order to allow for filing of the report.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

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 January 16, 2024:

The committee substitute:

- Applies the tolled deadlines and the limited timeframe for which an audited candidate may maintain a campaign account to situations in which a candidate is randomly audited, in addition to when a termination report audit is requested by a candidate;
- Clarifies the time period during which random audits may be conducted; and
- Creates a deadline by which the division must complete each random selection process.

- B. **Amendments:**

None