

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 Ethics and Elections Committee

BILL: SJR 566

INTRODUCER: Senators Haridopolos, Oelrich, and Gaetz

SUBJECT: Elections; public campaign financing

DATE: February 13, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Favorable
2.			TA	
3.			WPSC	
4.			RC	
5.				
6.				

I. Summary:

This joint resolution proposes an amendment to the State constitution to repeal the public financing program for statewide elections.

The joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature. If so enacted, the proposal will be presented to the electors of Florida at the 2010 general election. Approval requires a favorable vote from at least 60 percent of the electors voting on the matter. If approved, repeal of the program would take effect January 4, 2011.

The joint resolution proposes an amendment to the Florida Constitution to repeal Section 7 of Article VI.

II. Present Situation:

Florida

Currently, the Florida Constitution requires public campaign financing for statewide candidates (Governor and cabinet officers), with implementation by general law. The Constitution provides:

It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at

least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.¹

The Constitutional provision has been in place since 1998, after being proposed by the Constitution Revision Commission and approved by the voters in the 1998 general election. The program itself, however, has been in place in statute since 1986.²

The matching funds program is provided by general law in ss. 106.30-106.355, F.S., and administered by the Department of State's Division of Elections (Division). The program can be summarized as follows:

- Statewide candidates must have opposition.
- Only personal contributions from state residents are eligible for matching from the General Revenue Fund.³ Corporate and political committee contributions are not matched.
- Contributions received after September 1 of the calendar year preceding the election (Sept. 1, 2009, for the 2010 election cycle) are eligible for matching.
- Candidates choosing to participate in the public financing program must raise an initial amount of money – \$150,000 (for gubernatorial candidates) or \$100,000 (for candidates for Cabinet offices) – in order to be eligible to receive public funds. This upfront money is matched with public funds on a two-to-one basis.
- After that, eligible contributions are matched on a dollar-for-dollar basis, up to \$250 per individual contribution. For example, if a Florida individual makes a \$250 contribution, it is matched with \$250 from the state. If a person makes a \$500 contribution, only \$250 of that contribution will be matched with state money.
- In exchange for receiving public money, candidates agree to abide by certain limits on their overall campaign expenditures (see discussion, below).

Participating candidates must complete a form declaring their intention to apply for public campaign financing at the time of qualifying, and subsequently submit their contributions for audit by the Division to determine eligibility for the match. The Division audits the submissions and makes payment to the candidate, beginning immediately on the 32nd day before the primary election and every seven days thereafter.

The program was originally funded from the Election Campaign Financing Trust Fund, which was established in 1986. The trust fund was funded with a portion of candidate qualifying fees and civil penalties collected by the Florida Elections Commission. The trust fund expired by operation of s. 19(f), Article III, Fla. Constitution, on November 4, 1996, which required state trust funds in existence prior to 1992 to terminate not more than four years from November 4,

¹ Article VI, s. 7, Fla. Const.

² Chapter 86-276, s. 1, Laws of Fla.

³ In 2001, the Legislature enacted a law that excluded out-of-state contributions from eligibility for matching. Ch. 2001-40, s. 69, Laws of Fla.

1992. Since the trust fund terminated, the program has been funded from the General Revenue fund.

Statewide candidates participating in the public financing program must agree to abide by campaign expenditure limits.⁴ In 2005, the Legislature increased these expenditure limits to the following amounts for the general election:⁵

Gov./Lt. Gov. – Increased from \$5 million to \$2.00 per each Florida-registered voter, or roughly \$20.5 million.⁶

Cabinet Offices – Increased from \$2 million per race to \$1.00 per each Florida-registered voter, or roughly \$10.2 million.⁷

The 2006 election cycle saw a total public financing expenditure of \$11.1 million. There were four cabinet offices up for election, three of which could be described as hotly-contested races where candidates from both major parties accepted public financing money.

In the prior three regular election cycles where public financing was involved (normally every four years when the Governor and cabinet offices are up for election), the following amount of public funds were distributed to statewide candidates:⁸

- 2002: \$5.2 million
- 1998: \$4.6 million
- 1994: \$10.4 million

Notwithstanding the legislative increase in expenditure limits in 2005, it is very difficult to draw meaningful comparisons between the foregoing expenditure figures given that the circumstances of each election cycle were so different. For example, in 2002, only three statewide offices were eligible for public financing,⁹ one of those three races was only lightly-contested (Commissioner of Agriculture), and in the marquee governor's match-up between Jeb Bush and Bill McBride, Governor Bush elected not to receive public funds. Further, in 1994 and 1998, there were six (6) cabinet offices eligible for public financing;¹⁰ after the Cabinet reorganization in the early 2000's

⁴ Section 106.34, F.S.

⁵ Chapter 2005-278, Laws of Fla. Primary expenditure limits for candidates with primary opposition is 60 percent of the general election limits.

⁶ Approximately 11.25 million voters were registered in Florida to vote in the 2008 general election. See, Florida Div. of Elec. Website at <http://election.dos.state.fl.us/voter-registration/statistics/pdf/2008/2008genParty.pdf> (p.4).

⁷ Id.

⁸ In addition, in 2000, a non-gubernatorial election year, the cabinet offices of State Treasurer and Commissioner of Education were up for election. At the time, Bill Nelson resigned as the State Treasurer to run for the U.S. Senate. Tom Gallagher, the Commissioner of Education, ran for the State Treasurer post vacated by Nelson. Charlie Crist, in turn, ran for the Commissioner of Education post vacated by Mr. Gallagher. Crist, Gallagher, and John Cosgrove received matching funds from the program in the amount of \$914,885.

⁹ The race for Governor, Attorney General, and Commissioner of Agriculture were contested: Tom Gallagher was unopposed in the race for Chief Financial Officer.

¹⁰ The Cabinet was composed of six offices: Governor, Secretary of State, Comptroller, Treasurer, Commissioner of Education, and Commissioner of Agriculture.

that number dropped to four for the 2002 and 2006 cycles.¹¹ Finally the 1994 and 1998 expenditures covered up to three elections per race – a first primary, *second primary*, and general election; the 2002 and 2006 expenditures were only for the primary and general election.¹²

In addition to the matching funds *specifically authorized* to participating candidates for the general election and contested primaries, if a *nonparticipating* statewide candidate exceeds the expenditure limit, all opposing candidates participating in the public financing program receive a dollar-for-dollar match of public funds for the amount that the nonparticipating candidate exceeds the limit, up to a maximum of twice the applicable expenditure limit.¹³ For example, if a gubernatorial candidate not participating in public financing spends \$25.5 million on his or her general election campaign, all opposing gubernatorial candidates receiving public financing would be entitled to an additional \$3 million in public funds¹⁴ in addition to matching funds for individual contributions.

Other States

According to the National Conference of State Legislatures, Florida is one of 16 states that offer some form of full or partial public matching funds to political candidates:

Candidate public financing programs are always voluntary, and public funds are provided to candidates on the condition that those who elect to receive public funds must limit their campaign spending. In a few states, the campaigns of candidates who choose to participate in public financing programs are financed solely with public funds; these candidates are prohibited from raising funds from private sources. This version of public financing is relatively new, and is commonly called "Clean Elections" public financing (a term coined by its proponents, but widely used in general to describe these programs).¹⁵

In most states, public funds constitute only a portion of a participating candidate's expenditures, and candidates continue to raise and spend campaign funds from private sources within the limits provided by law.¹⁶

III. Effect of Proposed Changes:

The Joint Resolution repeals the constitutional authorization for the public financing of statewide elections.

¹¹ The Cabinet is currently composed of the Governor, Chief Financial Officer, Attorney General, and Commissioner of Agriculture.

¹² The Legislature suspended the second primary election for the 2002 election cycle and permanently did away with it thereafter.

¹³ Section 106.355, F.S. The candidates participating in public financing are also released from the expenditure limit to the extent the nonparticipating candidate exceeds the limit.

¹⁴ \$25.5 million (total campaign expenditures by nonparticipating gubernatorial candidate) - \$22.5 million (public financing expenditure limit for the gubernatorial general election [11.25 million registered voters in 2008 x \$2 per registered voter]) = \$3 million (extra public campaign financing to be distributed to the participating gubernatorial candidate).

¹⁵ National Conference of State Legislatures, Public Financing of Campaigns: An Overview (February 5, 2008), available at <http://www.ncsl.org/programs/legismgt/about/PubFinOverview.htm#indiv>.

¹⁶ Id.

If approved by a three-fifths vote of the membership of each house of the Legislature, the proposal will be presented to the electors of Florida at the 2010 general election. Approval requires a favorable vote from at least 60 percent of the electors voting on the matter.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In the landmark case of Buckley v. Valeo, the United States Supreme Court ruled that laws imposing limitations on overall campaign expenditures by candidates violated the free speech guarantees of the U.S. Constitution.¹⁷ The Buckley Court, however, upheld the federal statute providing for public financing of presidential elections, finding that overall campaign expenditures *may be limited* if a candidate *voluntarily* waives his or her right to make unlimited expenditures in exchange for receiving public campaign funds.¹⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Statewide candidates would no longer be able to depend on public funds for their campaigns, and would likely turn to private contributions to fill the void. The precise fiscal impact is indeterminate.

C. Government Sector Impact:

The repeal of public financing will reduce an expenditure that routinely occurs every four years --- likely in the vicinity of \$5-\$10 million per election cycle, possibly more.

¹⁷ Buckley v. Valeo, 424 U.S. 1, 54-58 (1976); see also, Randall v. Sorrell, 126 S. Ct. 2479, 2487-2491 (2006) (applying Buckley to invalidate Vermont law limiting overall campaign expenditures).

¹⁸ Buckley at 57, fn. 65 (Congress “may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations.”)

The precise amount of the savings is indeterminate, as it will depend on a variety of factors such as how many candidates choose to participate in public financing, how many contested primaries have active participants, the number of contested primaries per race for statewide office, how actively the primaries and general elections are contested, whether and to what extent nonparticipating candidates exceed the expenditure limits in each race, etc. That being said, the following amounts of public funds were distributed to statewide candidates in the last four statewide election cycles:

- 2006: \$11.1 million
- 2002: \$5.2 million
- 1998: \$4.6 million
- 1994: \$10.4 million

It is also worth noting that the 2005 increases to the expenditure limits dramatically raised the *potential* General Revenue exposure of the public financing program.

The Department of State reports that it will expend approximately \$10,000 to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county, as required by law.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁹ The Department of State estimates the average cost of publishing a proposed constitutional amendment is about \$95/word.