

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 81 Repeal of Public Campaign Financing Requirement
SPONSOR(S): Hays and others
TIED BILLS: HB 83 **IDEN./SIM. BILLS:** SJR 566

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	8 Y, 4 N	McDonald	Williamson
2)	Economic Development & Community Affairs Policy Council		McDonald	Tinker
3)	Transportation & Economic Development Appropriations Committee			
4)	Full Appropriations Council on Education & Economic Development			
5)				

SUMMARY ANALYSIS

HJR 81 is a joint resolution intended to repeal Florida's public financing program for statewide candidates. The program is found in Article VI, s. 7, Fla. Const., and 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.

The joint resolution to repeal the program must be approved by a 3/5 vote of the membership of each house of the Legislature. If enacted by such vote, the proposal will be presented to the electors of Florida at the November 2, 2010 general election. Approval requires a favorable vote from 60 percent or more of the electors voting on the measure.

This joint resolution would potentially avoid future state expenditures from the General Revenue Fund by an indeterminate amount. State expenditures for the past four statewide election cycles have been: in excess of \$11 million for 2006; \$5.2 million for 2002; \$915,000 for 2000; and \$4.6 million for 1998.

According to the Division of Elections of the Department of State, based upon the costs involved in the 2008 election the estimated average cost of advertising a proposed constitutional amendment is \$102,053. The cost varies according to the length of the full text with an average per word cost of \$94.68.

If approved, repeal of the program would take effect January 4, 2011.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, the Florida Constitution requires public campaign financing for statewide candidates (Governor and cabinet officers), with implementation by general law. Article VI, s. 7, Fla. Const., 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.

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.¹ The program itself, however, has been in place 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:

- Participating statewide candidates must have opposition;
- Only personal contributions from state residents are eligible for matching;³ corporate and political committee contributions are not eligible for matching;

¹ The 1998 amendments were part of Revision 11 proposed by the Constitution Revision Commission, and were approved by 64 percent of the voters. Revision 11 was an omnibus proposal made up of several election-related changes. It provided that ballot access requirements for independent and minor party candidates cannot be greater than requirements for majority party candidates, allowed all voters, regardless of party, to vote in any party's primary election if the winner will have no general election opposition, provided *public financing of campaigns for statewide candidates*, permitted candidates for governor to run in primary elections without a lieutenant governor, made school board elections nonpartisan and corrected the required voting age of 21 for voters of presidential electors.

² Chapter 86-276, Laws of Fla.

- Contributions received after September 1 of the calendar year preceding the election are eligible for matching;
- Participating candidates must raise an initial amount of \$150,000 (for gubernatorial candidates) or \$100,000 (for candidates for Cabinet offices); and
- The threshold amounts above are matched on a two-to-one basis, and after that, a contribution is eligible to be matched on a one-to-one basis, up to \$250. Thus, if a person makes a \$250 contribution, it is matched with \$250 from the state.

Participating candidates must complete a form declaring their intention to apply for public campaign financing at the time of qualifying and after this declaration, 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.

Participating candidates must abide by certain expenditure limits, pursuant to s. 106.34, F.S. In 2005, the Legislature increased those expenditure limits (ch. 2005-278, Laws of Fla.) to the following amounts:

Gov./Lt. Gov. – Increased from \$5 million to \$2.00 per each Florida-registered voter, or roughly \$20.5 million.⁴

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

The program originally was funded from the Election Campaign Financing Trust Fund, which was established in 1986. The Trust Fund was funded with filing fees, assessments and civil penalties collected by the Florida Elections Commission. The Trust Fund expired by operation of s. 19(f), Article III, Fla. Const., on November 4, 1996, which requires state trust funds in existence prior to 1992 to terminate not more than four years from November 4, 1992, unless recreated. Since the Trust Fund terminated, the program has been funded from General Revenue.

A number of other states have some form of public matching funds program in place, whether it be partial matching from a variety of sources such as legislative funding or taxpayer check-offs, or a “Clean Elections” program, whereby a campaign is fully funded with state funds once he or she has raised sufficient “seed” money.⁵

New Jersey operates a public financing program similar to that of Florida, whereby a gubernatorial candidate must initially raise \$300,000 to qualify. After the candidate qualifies and declares intent to participate in the program, the candidate receives \$6,000 from the state for every \$3,000 raised from private sources. Participating candidates must also agree to limit their expenditures in the primary and general elections.

Maine has operated a “Clean Elections” program since 2000. Gubernatorial candidates must initially collect 2,500 contributions of \$5 each. State house and senate candidates also are eligible to participate in the program. Once a candidate has raised the requisite “seed money,” the candidate is prohibited from receiving additional private funds.

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

⁴ As of May 2007, there were 10,251,312 registered voters in the State of Florida.

⁵ National Conference of State Legislatures web site, www.ncsl.org/programs/legismgt/elect/elect.htm

The following states have some form of public campaign funds program that is available to candidates.⁶

Candidate Public Financing Programs			
State	Candidates Eligible	Type of Program	Full/Partial Funding
Arizona	All statewide offices Legislature	"Clean Elections"	Full
Connecticut ⁷	All statewide offices Legislature	"Clean Elections"	Full
Florida	Governor Cabinet members	Matching grants	Partial
Hawaii	Governor/Lt. Gov. Offc. Hawaiian Affairs	Matching grants	Partial
Maine	Governor Legislature	"Clean Elections"	Full
Maryland	Governor/Lt. Gov.	Matching grants	Partial
Massachusetts	All statewide offices	Matching grants	Partial
Michigan	Governor	Matching grants & fixed subsidy	Partial
Minnesota	All statewide offices Legislature	Fixed subsidy	Partial
Nebraska	All statewide offices Legislature	Matching grants	Partial
New Jersey ⁸	Governor	Matching grants	Partial
	Select legislative districts pilot program	"Clean Elections"	Full
New Mexico	Public Regulation Commission Statewide judicial offices	"Clean Elections"	Full
North Carolina	Judicial offices	"Clean Elections"	Full
Rhode Island	All statewide offices	Matching grants	Partial
Vermont	Governor/Lt. Gov.	"Clean Elections"	Full
Wisconsin	All statewide offices State Supreme Court Legislature	Fixed subsidy	Partial

Proposed Changes

HJR 81 is a joint resolution that would repeal Florida's public financing program for statewide candidates and must be approved by a 3/5 vote of the membership of each house of the Legislature. If enacted, the proposal will be presented to the electors of Florida at the November 2, 2010 general election. Approval requires a favorable vote from 60 percent or more of the electors voting on the measure.⁹

If approved, HJR 81 would take effect January 4, 2011.

B. SECTION DIRECTORY:

None

⁶ Report by the National Conference of State Legislatures, *Public Financing of Election Campaigns: An Overview*, Jennie Drage Bowser, May 2007.

⁷ Connecticut's program took effect in 2008 for legislative offices, and takes effect in 2010 for statewide offices.

⁸ New Jersey has had a "Clean Elections" pilot program for candidates since 2005; however, it has been suspended for 2009.

⁹ Art. XI, sec. 5(e), Fla. Const.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

In excess of \$11 million from the General Revenue Fund was disbursed in 2006 to participating candidates. In the prior three election cycles (normally every 4 years), the following aggregate amounts were distributed to statewide candidates from the General Revenue Fund:

- 1998 - \$4.6 million
- 2000 - \$914,885¹⁰
- 2002 - \$5.2 million

According to the Division of Elections of the Department of State, based upon the costs involved in the 2008 election the estimated average cost of advertising a proposed constitutional amendment is \$102,053. The cost, however, varies depending on the length of the full text of the amendment. The average per word cost of \$94.68.¹¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

There is an indeterminate cost to local government for possible costs related to the printing of the ballot. There could be a cost if additional pages were needed to print the language that appears on the ballot.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposal is adopted, candidates would no longer be able to depend on matching funds from the program to help fund their statewide campaigns.

D. FISCAL COMMENTS:

This joint resolution would potentially avoid future state expenditures from the General Revenue Fund by an indeterminate amount.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹⁰ In 2000, a non-gubernatorial election year, the two cabinet offices of State Treasurer and Commissioner of Education were up for election. At the time, Bill Nelson, as the State Treasurer, resigned from that office to run for U.S. Senate. Tom Gallagher, as the Commissioner of Education, ran for the State Treasurer post vacated by Nelson. Charlie Crist then ran for the Commissioner of Education post vacated by Mr. Gallagher. Crist, Gallagher and John Cosgrove received matching funds from the program in the 2000 election in the total amount listed above.

¹¹ Received from staff of the Department of State on January 27, 2009.

Not applicable – joint resolution proposes constitutional amendment to be approved by voters.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None