

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 491 Disposition of Surplus Funds by Candidates

**SPONSOR(S):** Public Integrity & Ethics Committee, Payne and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 814

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Toliver	Smith
2) Public Integrity & Ethics Committee	16 Y, 0 N, As CS	Rubottom	Rubottom
3) State Affairs Committee	22 Y, 0 N	Toliver	Williamson

### SUMMARY ANALYSIS

A candidate who withdraws his or her candidacy, becomes unopposed in an election, is eliminated, or is elected to office must dispose of surplus funds in his or her campaign account within 90 days and file a termination report reflecting the disposition of all remaining funds. The candidate or former candidate, as the case may be, may dispose of his or her funds by four authorized methods:

- Return funds pro rata to each contributor;
- Donate the funds to a charitable organization or organizations that meet the requirements of s. 501(c)(3) of the Internal Revenue Code;
- Rebate up to \$25,000 to the candidate's political party or an affiliated party committee; or
- Deposit funds to the state in either the Election Campaign Financing Trust Fund or the General Revenue Fund, in the case of a candidate for state office, or to a local political subdivision in the general fund thereof, in the case of a candidate for local office.

A successful candidate has the additional option to transfer a certain amount of the surplus funds to an office account to be used for "legitimate expenses in connection with the candidate's public office."

The bill revises the authorized methods for disposing of surplus funds. Specifically, the bill provides that if the surplus funds are disposed of by donation to a charitable organization, the candidate may not be employed by the same charitable organization. The bill also allows all candidates for state and local office to deposit surplus funds in the general revenue fund of a political subdivision, the state General Revenue Fund, or the Election Campaign Financing Trust Fund.

The bill may result in a positive fiscal impact to state and local government revenues as both state and local candidates would be permitted to deposit surplus funds in either the state general revenue fund or the general revenue fund of a political subdivision.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

A candidate who withdraws his or her candidacy, becomes unopposed, is eliminated, or is elected to office must dispose of surplus funds in his or her campaign account within 90 days and file a termination report reflecting the disposition of all remaining funds.<sup>1</sup> Florida law generally provides former candidates may dispose of surplus funds by one or more of the following four options:

- Return funds pro rata to each contributor;
- Donate the funds to a charitable organization or organizations that meet the requirements of s. 501(c)(3) of the Internal Revenue Code;
- Rebate up to \$25,000 to the candidate's political party or an affiliated party committee; or
- Deposit funds to the state General Revenue Fund or the Election Campaign Financing Trust Fund,<sup>2</sup> in the case of a candidate for state office, or to a local political subdivision general fund, in the case of a candidate for local office.<sup>3</sup>

Before disposing of surplus funds, a candidate may expend funds from his or her campaign account to:

- Purchase "thank you" advertising for up to 75 days;
- Pay for items obligated before the candidate withdrew, became unopposed, or was eliminated or elected; and
- Pay for necessary expenses to close down the campaign office and prepare final reports.<sup>4</sup>

A successful candidate has the additional option to transfer a certain amount of the surplus funds to an office account to be used for "legitimate expenses in connection with the candidate's public office."<sup>5</sup> Candidates receiving public campaign financing must return all excess funds to the state General Revenue Fund after paying for any items for which the campaign was liable before withdrawing, becoming unopposed, or being eliminated or elected.<sup>6</sup>

A candidate who fails to dispose of funds in his or her campaign account in the manner provided by law commits a misdemeanor of the first degree.<sup>7</sup> A person convicted of a misdemeanor of the first degree may be sentenced to a maximum term of imprisonment not to exceed one year and a fine not to exceed \$1,000.<sup>8</sup>

#### Effect of the Bill

The bill revises the authorized methods for disposing of surplus funds. Specifically, the bill provides that if the surplus funds are disposed of by donation to a charitable organization, the candidate may not be employed by the same charitable organization. The bill also allows all candidates for state office or local office to deposit surplus funds in the general revenue fund of a political subdivision, the state General Revenue Fund, or the Election Campaign Financing Trust Fund.

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<sup>1</sup> Section 106.141, F.S.

<sup>2</sup> On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See note* in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.

<sup>3</sup> Section 106.141(4), F.S.

<sup>4</sup> Section 106.11(5), F.S.; *see also* Division of Elections, Candidate & Campaign Treasurer Handbook, available at <https://dos.myflorida.com/media/699202/candidate-and-campaign-treasurer-handbook-2018.pdf> (last visited Jan. 24, 2020).

<sup>5</sup> Section 106.141(5), F.S.

<sup>6</sup> Section 106.141(4)(b), F.S.

<sup>7</sup> Section 106.141(11), F.S.

<sup>8</sup> Sections 775.082-775.083, F.S.

**B. SECTION DIRECTORY:**

Section 1 amends s. 106.141, F.S., relating to the disposition of surplus funds by candidates.

Section 2 provides an effective date of July 1, 2020.

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

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

1. Revenues:

The bill may result in a positive fiscal impact to state government revenues, as local candidates would now be permitted to deposit surplus funds in the state General Revenue Fund.

2. Expenditures:

None.

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

1. Revenues:

The bill may result in a positive fiscal impact on local government revenues, as state candidates would now be permitted to deposit surplus funds in the general revenue fund of a political subdivision.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution as it is a law concerning elections.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not confer rulemaking authority nor does it require the promulgation of rules.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 23, 2020, the Public Integrity & Ethics Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment allows candidates for state office to deposit funds in

the general revenue fund of a political subdivision and candidates for local office to deposit funds in the state General Revenue Fund or the Election Campaign Financing Trust Fund.

This analysis is drafted to the committee substitute as approved by the Public Integrity & Ethics Committee.