

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 569 Florida Election Code

**SPONSOR(S):** State Affairs Committee; Appropriations Committee; Ethics & Elections Subcommittee and Schenck

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics & Elections Subcommittee	10 Y, 2 N, As CS	Davison	Marino
2) Appropriations Committee	15 Y, 10 N, As CS	Kramer	Leznoff
3) State Affairs Committee	11 Y, 6 N, As CS	Davison	Camechis

### SUMMARY ANALYSIS

Campaign finance activities in Florida are primarily governed by chapter 106, Florida Statutes, which is part of the Florida Election Code. Specifically, the chapter regulates the campaign finance activities of candidates for state and local office, committees of continuous existence (CCEs), political committees (PCs), electioneering communications organizations (ECOs), affiliated party committees (APCs), and political parties. As of December 2012, there were approximately 670 CCEs, 260 PCs, and 155 ECOs. This bill changes several aspects of Florida's campaign finance laws, as follows:

Issue	Provisions in HB 569
Committees of Continuous Existence	<ul style="list-style-type: none"> <li>• Requires the Division of Elections to notify CCEs of new laws by 7/15/13.</li> <li>• Prohibits acceptance of contributions by CCEs after 8/1/13.</li> <li>• Revokes all CCE certifications effective 9/30/13.</li> <li>• Requires submission of any outstanding reports after revocation.</li> <li>• All CCE statutes are deleted on 11/1/13 (The laws stay in place until 11/1 to help ensure that CCEs submit final reports).</li> </ul>
Limits on Campaign Contributions to Candidates	<ul style="list-style-type: none"> <li>• Increases limit from \$500 to \$5,000 for candidates for statewide office or retention as a Supreme Court justice.</li> <li>• Increases limit from \$500 to \$3,000 for candidates for retention as a district court of appeal judge, legislative office, multicounty office, countywide office, county court judge, or circuit judge, and for candidates in any election conducted on less than a countywide basis.</li> </ul>
Limits on Contributions to Political Committees	Removes current \$500 limit to allow unlimited contributions to political committees.
Surplus Campaign Funds	<ul style="list-style-type: none"> <li>• Allows a candidate elected to state office to retain up to \$50,000 in surplus campaign funds for use in the next election for the same office. If the candidate does not run for the same office in the next election, the funds must be disposed of as usual.</li> <li>• Increases the amount of surplus funds that may be transferred to an office account and specifies permissible uses for surplus funds transferred to an office account.</li> <li>• Limits surplus funds given to an affiliated party committee or political party of which the candidate is a member to \$50,000.</li> <li>• Eliminates the requirement that certain state or local candidates pay the election assessment prior to disposing of surplus campaign funds.</li> </ul>
Disclosures by Candidates, Political Committees, and ECOs that file with the Division of Elections	Requires submission of: <ul style="list-style-type: none"> <li>• Monthly contribution and expenditure reports until the 60th day before the primary (7 days after qualifying ends);</li> <li>• Weekly reports beginning on the 60th day before the primary, with the last weekly report due on the 11th day before the general election; and</li> <li>• Daily reports beginning on the 10th day before the general election, with the last report due on the day before the general election.</li> </ul>
Disclosures by Candidates, Political Committees, and ECOs that file with a Supervisor of Elections or a municipal clerk	Requires submission of: <ul style="list-style-type: none"> <li>• Monthly contribution and expenditure reports until the 60th day before the primary (7 days after qualifying ends); and</li> <li>• Weekly reports beginning on the 60th day before the primary, with the last weekly report due on the 4th day before the general election.</li> </ul>
Statewide Campaign Finance Database	Requires the Division of Elections to submit a proposal to the House and Senate by 12/1/13 for a mandatory statewide electronic filing system for all state and local campaign finance reports and filings reporting the disposition of campaign funds.
Campaign Fund Raisers and Accounts	Requires that tickets and advertising for campaign fund raisers contain sponsorship disclaimers and meet the other requirements applicable to political advertisements. Revises certain campaign account requirements.
Candidates for Political Party Executive Committee	Subjects candidates for political party executive committee to all campaign finance requirements in Chapter 106, including contribution limits and reporting requirements.

This bill appropriates \$85,000 to the Division of Elections of the Department of State for two FTEs to implement reporting requirements imposed by this bill. This bill also appropriates \$42,900 for one FTE to the Florida Elections Commission to prepare additional cases as a result of the reporting requirements imposed by this bill.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0569e.SAC

**DATE:** 3/15/2013

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### 1. *Committees of Continuous Existence (CCEs)*

##### *Current Situation*

A CCE is a group, organization, association, or other such entity that is involved in making contributions to candidates, PCs, ECOs, other CCEs, or political parties.<sup>1</sup> A CCE may not make electioneering communications or independent expenditures.

An “independent expenditure” is defined as “an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period shall not be deemed an independent expenditure.”<sup>2</sup>

An electioneering communication is defined by Florida law as “any communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone” that:

- 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 election or 60 days before a general election; and
- C. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.<sup>3</sup>

An organization that registers as a CCE may exist for purposes other than influencing the outcome of an election in Florida, and may make expenditures of funds for non-election related activities.<sup>4</sup> However, if an entity wishes to conduct political activities as a CCE, it must apply for and receive certification from the Division of Elections.<sup>5</sup>

CCEs are required to file periodic reports of contributions received and expenditures made.<sup>6</sup> CCEs are not required to provide a detailed list of members paying dues so long as each member pays no more than \$250 in dues per calendar year; rather, CCEs are only required to report the total amount of dues collected and the total number of dues-paying members.<sup>7</sup>

##### *Effect of Proposed Changes*

This bill establishes a process to eliminate CCEs. As of August 1, 2013, CCEs are not permitted to accept contributions as that term is defined in the Florida Election Code,<sup>8</sup> and on September 30, 2013, all CCE certifications are revoked. Before revocation, CCEs must disburse funds as currently authorized by law. In order to provide sufficient notice to CCEs

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<sup>1</sup> § 106.04(1), F.S.

<sup>2</sup> § 106.011(5)(a), F.S.

<sup>3</sup> § 106.011(18), F.S.

<sup>4</sup> § 106.04(5), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Please see Section 4 of this analysis for a discussion of the frequency of campaign finance reporting.

<sup>7</sup> §§ 106.04(4)(b)1. and 106.04(4)(c)1., F.S.

<sup>8</sup> “Contribution” is defined in § 106.011(3), F.S., as: (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 committees of continuous existence, between electioneering communications organizations, or between any combination of these groups. (c) The payment, by any 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. (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 any interest earned on such account or certificate. Notwithstanding the foregoing meanings of “contribution,” the term may not be construed to 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.

in advance of revocation, the Division of Elections is required to notify CCEs of the new laws by July 15, 2013. Even though CCE certifications are revoked by operation of law on September 30, 2013, s. 106.04, F.S., which governs CCEs, remains effective until November 1, 2013. Therefore, a CCE whose certification is revoked on September 30, 2013, must file required campaign finance reports, including the report due in October 2013 for the third quarter of 2013, disclosing contributions received and expenditures made that have not been previously reported.

The following table describes the current law and the effect of the bill's proposed changes:

Committees of Continuous Existence		
	Current Law	Effect of Proposed Changes
Political Purpose	To make contributions to candidates, political committees, CCEs, <sup>9</sup> ECOs, or political parties. <sup>10</sup>	This bill eliminates CCEs.
Limits on Contributions to a CCE	There are no limits as long as the CCE maintains the following organizational requirements: <ul style="list-style-type: none"> <li>• Must be organized and operated under a written charter or bylaws specifying procedures for the election of officers and defining membership.<sup>11</sup></li> <li>• At least 25% of the income, excluding interest, of the organization must come from dues of members.<sup>12</sup></li> </ul>	
Limits on Contributions by a CCE	<ul style="list-style-type: none"> <li>• \$500 maximum to each candidate or political committee supporting candidates.<sup>13</sup></li> <li>• No limit on contributions to ECOs, CCEs, political committees, or political parties.</li> <li>• 25% of annual income to a political committee supporting or opposing issues.<sup>14</sup></li> </ul>	
Permissible and Prohibited Activities	<ul style="list-style-type: none"> <li>• May contribute to candidates, ECOs, CCEs, political committees, and political parties.</li> <li>• May not make electioneering communications or independent expenditures.<sup>15</sup></li> <li>• In order to directly support or oppose an issue, a CCE must register as a political committee.<sup>16</sup></li> </ul>	

## 2. Electioneering Communications Organizations (ECOs)

### Current Situation

At the federal level, ECOs were first extensively regulated by the Bipartisan Campaign Reform Act of 2002 (the McCain-Feingold Act).<sup>17</sup> After these provisions were upheld, Florida adopted similar standards for electioneering communications. Florida's initial attempt was struck down on First Amendment grounds in 2008,<sup>18</sup> but the revised version was upheld on appeal in 2012 and remains the current law.<sup>19</sup>

### Effect of Proposed Changes

The following table describes the current law and effect of the bill's proposed changes as they relate to ECOs:

Electioneering Communications Organizations		
	Current Law	Effect of Proposed Changes
Purpose	Any group, other than a political party, political committee, or CCE, whose <i>election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications</i> and whose activities would not otherwise require the group to register as a political party, political committee, or committee of continuous existence under chapter 106, F.S. <sup>20</sup>	No change.
Limits on Contributions to an ECO	No limit on any contributions to an ECO.	No change.
Limits on Contributions by an ECO	May NOT contribute to candidates, political parties, political committees, or CCEs. <sup>21</sup>	No change.
Permissible and Prohibited Activities	<ul style="list-style-type: none"> <li>• May make electioneering communications, but may not "expressly advocate" the election or defeat of a candidate.</li> <li>• May NOT make independent expenditures.</li> </ul>	No change.

<sup>9</sup> DEO 76-31.

<sup>10</sup> § 106.04(1), F.S.

<sup>11</sup> § 106.04(1)(a), F.S.

<sup>12</sup> § 106.04(1)(b), F.S.

<sup>13</sup> § 106.08, F.S.

<sup>14</sup> § 106.04(5), F.S.

<sup>15</sup> § 106.04(5); DEO 04-09.

<sup>16</sup> § 106.04(5), F.S.

<sup>17</sup> 2 U.S.C.A. § 431.

<sup>18</sup> See *Broward Coalition of Condominiums v. Browning*, 2009 WL 1457972 (N.D. Fla. 2009).

<sup>19</sup> See *National Organization for Marriage, Inc. v. Secretary, State of Fla.*, 447 Fed. Appx. 584 (11th Cir. 2012).

<sup>20</sup> § 106.011(19).

<sup>21</sup> *Id.*

Disclosure Requirements	Generally, except for the third calendar quarter immediately preceding a general election, reports must be filed on the 10th day following the end of each calendar quarter from the time the ECO registers, except if the 10th day is a Saturday, Sunday, or legal holiday, the report shall be filed on the next business day that is not a Saturday, Sunday, or legal holiday. Following the last day of qualifying, the reports must be filed on the 32nd, 18th, and 4th days immediately preceding the primary election and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. <sup>22</sup>	Increases the frequency of campaign finance disclosure reporting. Please see discussion of reporting requirements under Section 4 of this analysis.
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### 3. Political Committees (PCs)

#### Current Situation

A “political committee” is defined by Florida law as 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 for the purpose of making contributions to any candidate, political committee, committee of continuous existence, 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, committee of continuous existence, affiliated party committee, or political party.<sup>23</sup>

A “political advertisement” is “a paid expression in any communications media...which *expressly advocates* the election or defeat of a candidate or the approval or rejection of an issue.”<sup>24</sup> “Express advocacy” is defined as “[c]ommunications that in express terms advocate the election or defeat of a clearly identified candidate.”<sup>25</sup>

#### Effect of Proposed Changes

The following table describes the current law and effect of the bill’s proposed changes with regard to political committees:

Political Committees		
	Current Law	Effect of Proposed Changes
Purpose	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 support or oppose any candidate, issue, political committee, CCE, ECO, or political party. <sup>26</sup>	No change (other than the elimination of CCEs).
Limits on Contributions to a PC	<ul style="list-style-type: none"> <li>No limit to a political committee supporting or opposing issues only.<sup>27</sup></li> <li>\$500 per election limit to a political committee supporting or opposing one or more candidates.<sup>28</sup></li> <li>\$500 per election limit to a political committee supporting or opposing both candidates and issues.<sup>29</sup></li> <li>Limits do not apply to contributions from political parties.<sup>30</sup></li> </ul>	The bill allows unlimited contributions to any PC.
Limits on Contributions by a PC	<ul style="list-style-type: none"> <li>To a candidate - \$500 per election.</li> <li>In support of or in opposition to issues, or to a political party, CCE, or ECO - no limit.<sup>31</sup></li> </ul>	PCs may contribute up to \$5,000 to a candidate for statewide office or retention as a Supreme Court justice, and up to \$3,000 to a candidate for retention as a district court of appeal judge, legislative office, multicounty office, countywide office, county court judge, or circuit judge, or to a candidate in any election conducted on less than a countywide basis.
Permissible and Prohibited Activities	<ul style="list-style-type: none"> <li>May contribute to candidates, ECOs, CCEs, PCs, APCs, and political parties.</li> <li>May make independent expenditures and electioneering communications.<sup>32</sup></li> </ul>	No change (other than the elimination of CCEs).
Disclosure Requirements	Generally, except for the third calendar quarter immediately preceding a general election, reports must be filed on the 10th day following the end of each calendar quarter from the time the political committee registers, except if the 10th day is a Saturday, Sunday, or legal holiday, the report must be filed on the next business day that is not a Saturday, Sunday, or legal holiday. In an election year, reports must	Increases the frequency of campaign finance disclosure reporting. Please see discussion of reporting requirements under Section 4 of this analysis.

<sup>22</sup> § 106.0703(1)(a)-(b).

<sup>23</sup> § 106.011(1), F.S.

<sup>24</sup> § 106.011(17), F.S.

<sup>25</sup> *Buckley v. Valeo*, 424 U.S. 1, 44 (1976).

<sup>26</sup> § 106.011(1)(a), F.S.

<sup>27</sup> § 106.08, F.S.

<sup>28</sup> § 106.08(1)(a), F.S.

<sup>29</sup> § 106.08, F.S.

<sup>30</sup> *Id.*

<sup>31</sup> § 106.08, F.S.

<sup>32</sup> § 106.011, F.S.

#### 4. Frequency of Campaign Finance Reporting

##### *Current Situation*

In Florida, candidates, political committees, electioneering communications organizations, and committees of continuous existence<sup>34</sup> are required to file periodic reports of contributions received and expenditures made. CCEs are not required to provide a detailed list of members paying dues so long as each member pays no more than \$250 in dues per calendar year; rather, CCEs are only required to report the total amount of dues collected and the total number of dues-paying members.<sup>35</sup> Except for the third calendar quarter immediately preceding a general election, reports must be filed on the 10th day following the end of *each calendar quarter* from the time the campaign treasurer is appointed.<sup>36</sup> Quarterly reports must include all contributions received and expenditures made during the calendar quarter. In an election year, reports containing this information must also be filed every other week on the 32nd, 18th, and 4th days immediately preceding the primary and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. Any statewide candidate who has requested to receive contributions pursuant to the Florida Election Campaign Financing Act or any statewide candidate in a race with a candidate who has requested to receive contributions must also file weekly reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election. In addition, there are different filing requirements during special elections.<sup>37</sup>

Reports are filed either with the Division of Elections, a Supervisor of Elections, or a municipal clerk as follows:

- *Candidates*: Reports are filed with the officer before whom the candidate qualifies. Candidates filing reports with the Division of Elections are required to electronically file by means of the Electronic Filing System.
- *Political Committees*: Reports are electronically filed with the Division of Elections if the PC supports or opposes statewide, legislative, or multicounty candidates or issues; with the Supervisor of Elections if the PC supports or opposes candidates or issues in a countywide or less than a countywide election, except municipal; or with the municipal clerk if the PC supports or opposes only municipal candidates or issues.
- *Committees of Continuous Existence*: Reports are filed electronically with the Division of Elections.
- *Electioneering Communications Organizations*: Reports are electronically filed with the Division of Elections if the ECO relates to statewide, legislative, or multicounty candidates; with the Supervisor of Elections if the ECO relates to candidates in a countywide or less than a countywide election, except municipal; or with the municipal clerk if the ECO relates to only municipal candidates.<sup>38</sup>

While reports filed with the Division of Elections are submitted electronically, reports filed at the local level are frequently filed on paper forms rather than electronically.

##### *Effect of Proposed Changes*

The bill eliminates committees of continuous existence and all associated reporting requirements.

For candidates, political committees, and electioneering communications organizations that file campaign finance reports with the Division of Elections, the bill increases the frequency of reporting by requiring submission of:

- Monthly contribution and expenditure reports until the 60th day before the primary (7 days after qualifying ends);
- Weekly reports beginning on the 60th day before the primary, with the last weekly report due on the 11th day before the general election;
- Daily reports beginning on the 10th day before the general election, with the last report due on the day before the general election.

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<sup>33</sup> § 106.07, F.S.

<sup>34</sup> In addition to the reporting requirements applicable to all candidates, CCEs, PCs, and ECOs, CCEs are also required to file annual reports in January of each year.

<sup>35</sup> §§ 106.04(4)(b)1. and 106.04(4)(c)1., F.S.

<sup>36</sup> §§ 106.07(1), 106.07(1)(a), 106.07(1)(b), and 106.0703, F.S. Quarterly reports are due on the 10th day after the quarter, unless the 10th day is a Saturday, Sunday, or legal holiday, in which case the report is due on the next business day.

<sup>37</sup> § 106.07, F.S.

<sup>38</sup> §§ 106.0705 and 106.07(2), F.S.

If these reporting requirements had been in effect in 2012, a maximum of 36 reports would have been required rather than the current maximum of 9.

For candidates, political committees, and electioneering communications organizations that file reports with a Supervisor of Elections or a municipal clerk, the bill increases the frequency of reporting by requiring submission of:

- Monthly contribution and expenditure reports until the 60th day before the primary (7 days after qualifying ends);
- Weekly reports beginning on the 60th day before the primary, with the last weekly report due on the 4th day before the general election.

If these reporting requirements had been in effect in 2012, a maximum of 27 reports would have been required rather than the current maximum of 9.

This bill also requires the Division of Elections to submit to the Florida Legislature, by December 1, 2013, a proposal for creating a mandatory electronic filing system for all state and local campaign finance reports and filings reporting the disposition of campaign funds required by ss. 106.07, 106.0703 or 106.29, F.S.

## 5. Campaign Contribution Limits

### Current Situation

Most states place some sort of limit on contributions to candidates from various sources, and also on contributions to political committees and political parties.<sup>39</sup> Four states—Missouri, Oregon, Utah, and Virginia—place no limits on contributions. Seven states—Alabama, Indiana, Iowa, Mississippi, North Dakota, Pennsylvania, and Texas—place few limits on contributions. These seven states allow unlimited contributions from all sources, but prohibit contributions by corporations and unions to candidates. The remaining states typically limit contributions to candidates from individuals, political parties, political committees, corporations, and unions. Sometimes contributions are prohibited outright, particularly contributions from corporations and unions. Limitations are also commonly placed on cash contributions, contributions by minors, and contributions to political committees and political parties made during the legislative session.

In addition, there are limitations applicable to candidates for federal office. According to the Federal Elections Commission, the federal contribution limits for 2013-2014 are as follows:<sup>40</sup>

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year[1]	Special Limits
Individual may give	\$2,600*	\$32,400*	\$10,000 (combined limit)	\$5,000	\$123,200* overall biennial limit: • \$48,600* to all candidates • \$74,600* to all PACs and parties[2]
National Party Committee may give	\$5,000	No limit	No limit	\$5,000	\$45,400* to Senate candidate per campaign[3]
State, District & Local Party Committee may give	\$5,000 (combined limit)	No limit	No limit	\$5,000 (combined limit)	No limit
PAC (multicandidate)[4] may give	\$5,000	\$15,000	\$5,000 (combined limit)	\$5,000	No limit
PAC (not multicandidate) may give	\$2,600*	\$32,400*	\$10,000 (combined limit)	\$5,000	No limit
Authorized Campaign Committee may give	\$2,000[5]	No limit	No limit	\$5,000	No limit

\* These contribution limits are increased for inflation in odd-numbered years.

1. A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the PAC. 11 CFR 110.6. See also 11 CFR 110.1(h).

2. No more than \$48,600 of this amount may be contributed to state and local party committees and PACs.

3. This limit is shared by the national committee and the Senate campaign committee.

4. A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least 6 months and, with the exception of state party committees, has made contributions to 5 or more candidates for federal office. 11 CFR 100.5(e)(3).

5. A federal candidate's authorized committee(s) may contribute no more than \$2,000 per election to another federal candidate's authorized committee(s). 2 U.S.C. 432(e)(3)(B).

### Effect of Proposed Changes

<sup>39</sup> Information in this paragraph was obtained in *Contribution Limits: An Overview*, National Conference of State Legislatures, Oct. 31, 2011, <http://www.ncsl.org/legislatures-elections/elections/campaign-contribution-limits-overview.aspx>.

<sup>40</sup> This table was obtained from the Federal Elections Commission website on February 6, 2013. *Contribution Limits 2013-2014*, <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

The table below summarizes Florida's current campaign contribution limits and the effect of the bill's proposed changes:

CAMPAIGN CONTRIBUTION LIMITS IN FLORIDA <sup>41</sup>			
	Current Limit		Effect of Proposed Changes
Candidates	From any one person, PC, or CCE	\$500 per election	<ul style="list-style-type: none"> <li>Increases the limit to \$5,000 per election for candidates for statewide office or retention as a Supreme Court justice.</li> <li>Increases the limit to \$3,000 per election for candidates for retention as a district court of appeal judge, legislative office, multicounty office, countywide office, county court judge, or circuit judge, and for candidates in any election conducted on less than a countywide basis.</li> <li>Contributions will no longer be available from CCEs because CCEs are eliminated by this bill.</li> </ul>
	From a PP or APC to a candidate for statewide office	\$250,000 per election, in the aggregate	No change.
	From a PP or APC to any other candidate	\$50,000 per election, in the aggregate	No change.
Political Committees (PCs)	To a PC supporting or opposing issues only	No limit	No change.
Political Committees (PCs)	To a PC supporting or opposing one or more candidates	\$500 per election	Allows unlimited contributions to all PCs.
	To a PC supporting or opposing both candidates and issues	\$500 per election	Allows unlimited contributions to all PCs.
	Contributions from political parties	No limit	No change.
Electioneering Communications Organizations (ECOs)	No limit on any contributions to an ECO		No change.
Committees of Continuous Existence (CCEs)	No limit on any contributions to a CCE		This bill eliminates CCEs.
Political Parties (PPs)	No limit on any contributions to a PP		No change.
Affiliated Party Committees (APCs)	No limit on any contributions to an APC		No change.

## 6. Surplus Campaign Funds

### Current Situation

Section 106.141, F.S., governs the disposal of surplus campaign funds. A candidate must dispose of all funds remaining in his or her campaign account and file a report within 90 days after the candidate is elected or eliminated, becomes unopposed, or withdraws from the election. A candidate may dispose of surplus funds in any of the following methods, or any combination thereof:<sup>42</sup>

1. Return funds on a pro rata basis to each contributor.
2. Donate funds to s. 501(c)(3) charitable organizations.
3. Contribute funds to an affiliated party committee or the candidate's political party (there is not a limit on the amount of funds that may be transferred to these entities).
4. For statewide candidates, give funds to the state for use in the Election Campaign Financing Trust Fund or the General Revenue Fund.
5. For candidates for office in a political subdivision, give funds to the political subdivision for deposit in the general fund.
6. Transfer funds to an office account.<sup>43</sup>

If a candidate is elected to office, he or she may transfer surplus campaign funds into an office account up to the following limits:

- \$20,000 for a candidate for statewide office.
- \$5,000 for a candidate for multicounty office.
- \$5,000 multiplied by the number of years in the term of office for which elected, for a candidate for legislative office.
- \$2,500 multiplied by the number of years in the term of office for which elected, for a candidate for county office or for a candidate in any election conducted on less than a countywide basis.
- \$6,000 for a candidate for retention as a justice of the Supreme Court.

<sup>41</sup> § 106.08, F.S.

<sup>42</sup> § 106.141(4)(a), F.S.

<sup>43</sup> Section 106.141(5), F.S., permits a candidate elected to office to transfer surplus campaign funds to an office account, which may be used for "legitimate expenses in connection with the candidate's public office." The amount that may be transferred to an office account varies depending upon the office to which the candidate is elected.

- \$3,000 for a candidate for retention as a judge of a district court of appeal.
- \$1,500 for a candidate for county court judge or circuit judge.<sup>44</sup>

Surplus campaign funds transferred to an office account are also subject to use limitations. Such funds can be used only for legitimate expenses in connection with the candidate's public office, including travel expenses incurred by the officer or a staff member, personal taxes payable on office account funds by the candidate or elected public official, or expenses incurred in the operation of the official's office. Office operations include the employment of additional staff.<sup>45</sup>

Prior to disposing of surplus campaign funds, state and local candidates who qualified by the petition process and were not required to pay an election assessment or who filed an oath stating that he or she was unable to pay the assessment must reimburse the state or local government entity for the waived assessment.<sup>46</sup>

Several states, including Delaware,<sup>47</sup> Maine,<sup>48</sup> South Carolina,<sup>49</sup> and Washington,<sup>50</sup> allow candidates to use remaining campaign funds for future elections. However, other states, such as Connecticut<sup>51</sup> and Montana,<sup>52</sup> expressly prohibit the use of remaining campaign funds for future elections.

Candidates for federal office are permitted to use surplus campaign funds for future federal elections.<sup>53</sup>

### *Effect of Proposed Changes*

This bill amends s. 106.141, F.S., in a number of areas. First, in addition to the current permissible methods of disposing of surplus campaign funds described above, this bill allows a candidate to retain up to \$50,000 in the candidate's campaign account for use in the candidate's next campaign for the same office. Candidates who do not qualify for the same office in the next election for that office are required to dispose of the retained funds within 90 days in one of the methods described above.

Second, this bill increases the amount of surplus campaign funds that may be transferred to an office account. The following table illustrates the amount of surplus campaign funds that may be transferred into an office account under the

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<sup>44</sup> § 106.141(5), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> § 106.141(6), F.S.

<sup>47</sup> DEL. CODE ANN. § 8022.

<sup>48</sup> ME. REV. STAT. tit. 21-A, § 1017(8).

<sup>49</sup> S.C. CODE ANN. § 8-13-1370.

<sup>50</sup> WASH. REV. CODE § 42.17A.430.

<sup>51</sup> CONN. GEN. STAT. § 9-608(e)(A)(i).

<sup>52</sup> MONT. CODE ANN. § 13-37-240; MONT. ADMIN. R. 44-10-335.

<sup>53</sup> See 11 C.F.R. §§ 110.3(c)(4), 110.1(b)(3)(ii) and 116.2(c)(2); Federal Elections Commission Advisory Opinion 1980-30.

current law, and the changes in those amounts proposed by this bill:

OFFICE	CURRENT LIMIT	PROPOSED LIMIT
Candidates for statewide office	\$20,000	\$50,000
Candidates for multicounty office	\$5,000	\$10,000
Candidates for legislative office	\$5,000 multiplied by the number of years in the term of office for which elected	\$10,000 multiplied by the number of years in the term of office for which elected
Candidates for county office or candidates in any election conducted on less than a countywide basis	\$2,500 multiplied by the number of years in the term of office for which elected	\$5,000 multiplied by the number of years in the term of office for which elected
Candidates for retention as a Supreme Court justice	\$6,000	No change
Candidates for retention as a judge of a district court of appeal	\$3,000	No change
Candidates for county court judge or circuit judge	\$1,500	\$3,000

Third, the bill expressly authorizes payment of the following expenses using office account funds:

- CPA services for preparation of the public official's financial disclosure filing.
- Costs to prepare, print, produce, and mail holiday cards or newsletters about the elected public official's public business to constituents, so long as the correspondence does not constitute a political advertisement, independent expenditure, or electioneering communication.
- Fees or dues to religious, civic, or charitable organizations of which the elected public official is a member.
- Items of modest value such as flowers, greeting cards, or personal notes given as a substitute for, or in association with, an elected public official's personal attendance at special events or family occasions of constituents.
- Personal expenses incurred in connection with attending a constituent meeting or event where public policy is discussed, if such meetings or events are limited to no more than once a week.

Fourth, the bill limits surplus funds contributed to an affiliated party committee or political party of which the candidate is a member to \$50,000.

Lastly, the bill removes the requirement for state or local candidates who qualified by the petition process and were not required to pay an election assessment or who filed an oath stating that he or she was unable to pay the assessment to reimburse the state or local government entity for the waived assessment prior to disposing of surplus campaign funds.

## 7. Campaign Fund Raisers and Political Advertisements

### *Current Situation*

A campaign fund raiser may not be held unless the person for whom the funds are to be used is a candidate for public office.<sup>54</sup> All money and contributions received during a campaign fund raiser are considered campaign contributions subject to the same requirements as other campaign contributions.<sup>55</sup> In 2011, the Florida Legislature deleted a statutory requirement that campaign fund raiser tickets and advertising comply with the disclaimer requirements applicable to political advertisements.<sup>56</sup> As a result, such tickets and advertisements are exempt from sponsorship disclaimer requirements, unless they otherwise meet the definition of a political advertisement.<sup>57</sup>

Political advertisements are governed by section 106.143, F.S., which requires certain sponsorship disclaimers and disclosures for any paid political advertisement that is published, displayed, or circulated on or before election day.<sup>58</sup> The requirements of that section may be summarized as follows:

<sup>54</sup> § 106.025, F.S.

<sup>55</sup> *Id.*

<sup>56</sup> Ch. 2001-40, § 56 Laws of Fla.

<sup>57</sup> A "political advertisement" is "a paid expression . . . which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue." § 106.011(17), F.S.

<sup>58</sup> § 106.143(1), F.S.

1. Any political advertisement that is paid for by a candidate, except a write-in candidate, and that is published, displayed, or circulated before, or on the day of, any election must prominently state:
  - A. "Political advertisement paid for and approved by (name of candidate) , (party affiliation) , for (office sought) "; or
  - B. "Paid by (name of candidate) , (party affiliation) , for (office sought) ."
2. Any political advertisement that is paid for by a write-in candidate and that is published, displayed, or circulated before, or on the day of, any election must prominently state:
  - A. "Political advertisement paid for and approved by (name of candidate) , write-in candidate, for (office sought) "; or
  - B. "Paid by (name of candidate) , write-in candidate, for (office sought) ."
3. Any other political advertisement published, displayed, or circulated before, or on the day of, any election must prominently:
  - A. Be marked "paid political advertisement" or with the abbreviation "pd. pol. adv."
  - B. State the name and address of the persons paying for the advertisement.
  - C. State whether the advertisement and the cost of production is paid for or provided in kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the political advertisement.
4. Any political advertisement of a candidate running for partisan office must express the name of the political party of which the candidate is seeking nomination or is the nominee. If the candidate for partisan office is running as a candidate with no party affiliation, any political advertisement of the candidate must state that the candidate has no party affiliation. A political advertisement of a candidate running for nonpartisan office may not state the candidate's political party affiliation. However, a political advertisement may state the candidate's partisan-related experience. A candidate for nonpartisan office is prohibited from campaigning based on party affiliation.

#### *Effect of Proposed Changes*

This bill reinstates the statutory requirement that tickets and advertising for campaign fund raisers must contain sponsorship disclaimers and meet the other requirements applicable to political advertisements in s. 106.143, F.S., as described above.

### **8. Campaign Accounts**

#### *Current Situation*

Section 106.05, F.S., requires all funds received by the campaign treasurer of any candidate or political committee to be deposited into a campaign depository in an account designated "(name of candidate or committee) Campaign Account."

Section 106.11, F.S., requires that all checks drawn on the campaign depository and all debit cards contain the statement "(name of candidate or political committee) Campaign Account."

#### *Effect of Proposed Changes*

This bill removes the requirement that the campaign account, and checks and debit cards associated therewith, contain the exact phrase "Campaign Account"; however, the name of the candidate or committee must still appear on the campaign account, checks, and debit cards.

### **9. Political Party Executive Committee Candidates**

#### *Current Situation*

Section 103.091, F.S., provides for the establishment of political party executive committees and the selection of members. Each political party of the state must be represented by a state executive committee. County executive committees and other committees may be established in accordance with the rules of the state executive committee. A political party may provide for the selection of its national committee and its state and county executive committees in such manner as it deems proper. Unless otherwise provided by party rule, the county executive committee of each political party must consist of at least two members, a man and a woman, from each precinct, who are called the precinct committeeman and committeewoman. For counties divided into 40 or more precincts, the state executive committee may adopt a district unit of representation for such county executive committees. Upon adoption of a district unit of representation, the state executive committee must request the supervisor of elections of that county, with approval of the board of county commissioners, to provide for election districts as nearly equal in number of registered voters as possible. Each county committeeman or committeewoman must be a resident of the precinct from which he or she is elected. Each

state committeeman or committeewoman must be a member in good standing of the county executive committee for the county in which the state committeeman or committeewoman is a registered voter.

Any political party other than a minor political party may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the primary election in each year a presidential election is held. The terms commence on the first day of the month following each presidential general election, but the names of candidates for political party offices may not be placed on the ballot at any other election. The results of such election must be determined by a plurality of the votes cast. In such event, electors seeking to qualify for such office must do so with the Department of State or supervisor of elections not earlier than noon of the 71st day, or later than noon of the 67th day, preceding the primary election. The outgoing chair of each county executive committee must, within 30 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers.

Pursuant to section 106.011(16), F.S., candidates for a political party executive committee are excluded from the definition of "candidate" for purposes of the campaign finance laws in chapter 106. Therefore, candidates for a political party executive committee are exempt from the chapter 106 campaign finance requirements, including disclosure requirements and contribution limits, currently imposed on candidates for public office.

#### *Effect of Proposed Changes*

This bill amends s. 106.011(16), F.S., to remove the provision exempting candidates for a political party executive committee from the definition of "candidate." Therefore, candidates for a political party executive committee will be subject to all campaign finance requirements in Chapter 106, including contribution limits and reporting requirements.

#### **B. SECTION DIRECTORY:**

Section 1 repeals s. 106.04, F.S., relating to the certification and political activities of committees of continuous existence.

Section 2 creates an unnumbered section of law, prohibiting a committee of continuous existence from accepting a contribution after a certain date; providing for revocation of the certification of each committee of continuous existence on a certain date; requiring the Division of Elections of the Department of State to provide certain notifications to committees of continuous existence.

Section 3 amends s. 101.62, F.S., conforming provision.

Section 4 amends s. 102.031, F.S., conforming provision.

Section 5 amends s. 111.075, F.S., conforming provision.

Section 6 amends and reorders s. 106.011, F.S., relating to definitions applicable to provisions governing campaign financing; deleting the definition of the term "committee of continuous existence," to conform; removing the provision exempting candidates for political party executive committee from the definition of candidate; conforming provisions and cross-references.

Section 7 amends s. 106.022, F.S., conforming provision.

Section 8 amends s. 106.025, F.S., relating to campaign fund raisers to require tickets or advertising to comply with requirements for campaign fund raisers.

Section 9 amends s. 106.03, F.S., conforming cross-references.

Section 10 amends s. 106.05, F.S., revising requirements related to names of campaign accounts.

Section 11 amends s. 106.07, F.S., revising reporting requirements for candidates and political committees; conforming provisions.

Section 12 amends s. 106.0703, F.S., revising reporting requirements for electioneering communications organizations.

Section 13 amends s. 106.0705, F.S., conforming provisions and cross-references.

Section 14 amends s. 106.08, F.S., increasing campaign contribution limits.

Section 15 amends s. 106.08, F.S., conforming provisions and cross-reference.

Section 16 amends s. 106.087, F.S., conforming provisions.

Section 17 amends s. 106.11, F.S., revising requirements related to information that must appear on campaign account checks.

Section 18 amends s. 106.12, F.S., conforming provisions and cross-reference.

Section 19 amends s. 106.141, F.S., revising provisions related to surplus campaign funds and office accounts.

Section 20 amends s.106.147, F.S., conforming provisions.

Section 21 amends s. 106.17, F.S., conforming provisions.

Section 22 amends s. 106.23, F.S., conforming provisions.

Section 23 amends s. 106.265, F.S., conforming provisions.

Section 24 amends s. 106.27, F.S., conforming provisions.

Section 25 amends s. 106.32, F.S., conforming cross-reference.

Section 26 amends s. 106.33, F.S., conforming cross-reference.

Section 27 amends s. 112.3148, F.S., conforming provisions.

Section 28 amends s. 112.3149, F.S., conforming provisions.

Section 29 amends s. 1004.28, F.S., conforming provision.

Section 30 amends s. 1004.70, F.S., conforming provision.

Section 31 amends s. 1004.71, F.S., conforming provision.

Section 32 creates an unnumbered section of law, directing the Division of Elections to submit a proposal to the Legislature for a mandatory statewide electronic filing system for campaign finance disclosures.

Section 33 provides an appropriation.

Section 34 provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: *Department of State:* According to the Department of State, the increase in the number of campaign finance reports filed with the Division of Elections will increase their workload, requiring two FTEs and a recurring fiscal impact of \$85,000. The Department asserts that, “[t]he increase in reports would cause an increase in fail to file letters, fine letters, incomplete report letters and Election Commission referrals. All of these documents must be scanned and posted to the web. One entry level FTE would be required to handle incomplete letters and Election Commission referrals. One additional FTE would be required to handle fail to file letters, scanning and posting the letters to the web and to handle the increased traffic on the help desk answering phone calls. In total if you take an average salary of \$30,000 for each FTE plus benefits would total \$85,000.”

The Department of State intends to produce the report on the feasibility of a statewide database using current resources, so production of the report should not have a fiscal impact on the department.

The bill authorizes two full-time equivalent positions, with associated salary rate of 57,297 and appropriates \$85,000 in recurring funds from the General Revenue Fund to the Division of Elections of the Department of State to carry out the provisions of this bill.

*Florida Elections Commission:* According to the Florida Elections Commission (Commission), the increase in campaign finance reports filed will increase the number of cases against candidates, political committees, and electioneering communications organizations that fail to file reports. The Commission also expects the increase in reports will increase the number of cases appealing fines imposed for late filing of reports. According to the Commission, investigating and preparing these cases for presentation to the Commission requires one additional FTE at a salary of \$33,000, plus benefits for a total cost of \$42,900.

The bill authorizes one full-time equivalent position, with associated salary rate of 33,000 and appropriates \$42,000 in recurring funds from the Elections Commission Trust Fund within the Department of Legal Affairs to the Florida Elections Commission to carry out the provisions of this bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: The supervisors of elections and municipal clerks will receive and process more campaign finance reports, but the fiscal impact is indeterminate at this time.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** The increased frequency of reporting may result in increased preparation costs for candidates seeking public office and private entities operating as political committees or electioneering communications organizations.

D. **FISCAL COMMENTS:** None.

### **III. COMMENTS**

A. **CONSTITUTIONAL ISSUES:**

1. **Applicability of Municipality/County Mandates Provision:** The mandates provision does not apply to this bill because subsection 18(d) of Article VII, Fla. Const., explicitly exempts election laws from the provision.

2. **Other:** None.

B. **RULE-MAKING AUTHORITY:** This bill does not appear to require rulemaking.

C. **DRAFTING ISSUES OR OTHER COMMENTS:** None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 11, 2013, the Ethics & Elections Subcommittee adopted two amendments, the effect of which was to eliminate language authorizing a candidate to use campaign funds to make a campaign contribution to another candidate.

On February 21, 2013, the Appropriations Committee adopted four amendments. The amendments:

- Appropriated funds and authorized FTEs which were requested by the Division of Elections and the Florida Elections Commission to carry out the provisions of the bill;
- Changed the effective date of one section of the bill;
- Clarified that the Department of State study regarding the feasibility of a statewide database will only include state and local campaign finance reports rather than all elections filings;
- Amended ss. 106.025, 106.05, and 106.11, F.S. to require tickets or advertising for a campaign fund raiser to comply with the requirements of political advertisements and revised certain campaign account requirements.

On March 14, 2013, the State Affairs Committee adopted a strike-all amendment that made the following changes to the bill:

- Increased the limit on campaign contributions to candidates from \$500 to:
  - \$5,000 for candidates for statewide office or retention as a Supreme Court Justice.
  - \$3,000 for candidates for retention as a district court of appeal judge, legislative office, multicounty office, countywide office, county court judge, or circuit judge, and for candidates in any election conducted on less than a countywide basis.
- Subjected candidates for political party executive committee to all campaign finance requirements in chapter 106, including contribution limits and reporting requirements.
- Required the Division to include filings reporting the disposition of campaign funds in its proposal for a mandatory statewide electronic filing system.
- Increased the amount of surplus campaign funds that may be transferred to an office account by certain candidates.
- Limited the amount of surplus campaign funds that may be given to an affiliated party committee or political party of which the candidate is a member to \$50,000.
- Allowed a candidate elected to state office to retain up to \$50,000 in surplus campaign funds for use in the next election for the same office.
- Eliminated the requirement for a state or local candidate who qualified by the petition process or who filed an oath stating that he or she was unable to pay the election assessment to reimburse the state or local government entity for the assessment prior to disposing of surplus campaign funds.
- Specified expenses that may be paid out of an office account.

This analysis is drafted to the bill as amended.