

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 1428

INTRODUCER: Ethics and Elections Committee and Senator Perry and others

SUBJECT: Disposition of Surplus Funds by Candidates

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	Fav/CS
2.	<u>Hackett</u>	<u>McVane</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1428 amends s. 106.141, F.S., regarding the disposition of surplus funds by candidates following elections. The bill places a limitation on the current charitable option for the disposition of surplus campaign funds. It prohibits a candidate, the candidate's spouse, parent, child, and sibling from being a principal of the 501(c)(3) organization to which surplus funds are donated, or receiving compensation, such as earnings, tips, or paid employment, from the organization in exchange for such donation.

The bill takes effect July 1, 2019.

II. Present Situation:

A candidate who withdraws his or her candidacy, becomes unopposed, or is eliminated or 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.¹ Florida law generally provides former candidates with 7 nonexclusive options for disposing of surplus funds:²

¹ Section 106.141, F.S.

² Sections 106.11(5) and 106.141(4)(a), F.S. Successful candidates have 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." Section 106.141(5), F.S. 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. Section 106.141(4)(b), F.S.

- Return funds *pro rata* to contributors;
- Give the funds as a charitable donation;
- Rebate up to \$25,000 to the candidate's political party;
- Deposit funds to General Revenue Fund of State (candidates for state office) or local political subdivision (local candidates);
- 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.

The statutory language for the charitable donation option authorizes candidates to:

Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the requirements of s. 501(c)(3) of the Internal Revenue Code.³

Thus, the only limitation is that funds must be given to a 501(c)(3) organization(s).

III. Effect of Proposed Changes:

Section 1 provides that, for charitable donations involving surplus campaign funds, the candidate, and the candidate's spouse, parent, child, or sibling, may not:

- Be a principal of the 501(c)(3) organization; or
- Receive a direct benefit in the form of compensation, such as earnings, stipend, tips, or paid employment, from the organization in exchange for such donation.

The term "principal" is not defined in state law. However, for federal tax purposes, a "principal officer" of a 501(c)(3) corporation is "a person who has ultimate responsibility for implementing the decisions of the organization's governing body, or for supervising the management, administration, or operation of the organization."⁴ The first restriction on being a principal is based on the *position* held within the charity, such as a member of the board of directors.

The second restriction prohibits a *quid pro quo* arrangement: something of monetary value in exchange for the donation.

Any candidate who violates these restrictions commits a first-degree misdemeanor and may be subject to additional administrative penalties.

Section 2 provides that the bill takes effect July 1, 2019.

³ Section 106.141(4)(a)2., F.S.

⁴ <https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-form-990-parts-i-v-reporting-compensation-of-principal-officers>

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 a state tax shares 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 106.141 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 March 20, 2019:

Narrows the scope of the restriction regarding candidates donating surplus campaign funds to certain charitable organizations.

- B. **Amendments:**

None.