

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 919 Artificial Intelligence Use in Political Advertising

SPONSOR(S): State Affairs Committee, Rizo and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 850

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics, Elections & Open Government Subcommittee	15 Y, 2 N	Skinner	Toliver
2) Justice Appropriations Subcommittee	12 Y, 0 N	Saag	Keith
3) State Affairs Committee	18 Y, 2 N, As CS	Skinner	Williamson

SUMMARY ANALYSIS

The Florida Election Code requires certain disclaimers for political advertisements, electioneering communications, miscellaneous advertisements, and voter guides. Such disclaimers generally must disclose who has paid for or sponsored the advertisement or electioneering communication. The Florida Elections Commission (Commission) has jurisdiction to investigate and determine campaign finance violations, as well as other violations of the Florida Election Code.

Recently, concerns have emerged regarding the use of artificial intelligence (AI) in political campaigns and other election-related activities, including the use of artificially manipulated audio or video content in political advertisements, as it can be used to deceive voters or damage political rivals.

The bill requires a political advertisement, electioneering communication, or other miscellaneous advertisement of a political nature that contains an image, a video, audio, graphic, or other digital content, created in whole or in part, with the use of generative AI that appears to depict a real person performing an action that did not occur in reality, and was created with intent to injure a candidate or to deceive regarding a ballot issue, to include a certain disclaimer, in addition to all other applicable disclaimers. The bill creates specific requirements for the disclaimer that are dependent upon the media used. The bill defines “generative artificial intelligence” as a machine-based system that can, for a given set of human-defined objectives, emulate the structure and characteristics of input data in order to generate derived synthetic content including images, videos, audio, text, and other digital content.

The bill provides that in addition to any civil penalties provides by law, a person identified pursuant to another disclaimer required for campaign finance purposes as paying for, sponsoring, or approving an advertisement or electioneering communication of a political nature that is required to include the AI disclaimer and fails to do so commits a first-degree misdemeanor.

The bill permits a complaint to be filed with the Commission if such disclaimer is not included on the advertisement or communication. The bill subjects a person who fails to include the required disclaimer to civil penalties. Lastly, the bill requires the Commission to adopt rules to provide for expedited hearings of such complaints.

The bill may have an indeterminate positive fiscal impact on state revenues associated with a possible increase in the collection of civil penalties. However, the bill may also have an indeterminate, but likely insignificant negative impact on state expenditures due to workload associated with enforcement. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Campaign Finance – Required Disclaimers

Political Advertisements

A political advertisement is a paid expression in a communications medium¹ that expressly advocates² the election or defeat of a candidate or the approval or rejection of an issue.³

The Florida Election Code⁴ requires political advertisements to have certain disclaimers, such as statements disclosing who is paying for the political advertisement along with the address of such persons, the name of candidate, the candidate's party affiliation, and the office sought.⁵

Electioneering Communications

Electioneering communications⁶ are text messages or communications publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone that:

- Refer to or depict 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.
- Are made within 30 days before a primary or special general election or for 60 days before any other election for the office sought by the candidate.
- Are targeted to the relevant electorate in the geographic area the candidate would represent if elected.⁷

Any electioneering communication, other than a text message or a telephone call, must prominently state the following:

“Paid electioneering communication paid for by (*Name and address of person paying for the communication*).”⁸

Miscellaneous Advertisements

Any advertisement — other than a political advertisement, independent expenditure,⁹ or electioneering communication — on billboards, bumper stickers, radio, or television, or in a newspaper, a magazine, or a periodical, that is intended to influence public policy or the vote of a public official, must clearly

¹ “Communications media” means broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies. *See s. 106.011(4), F.S.*

² “Expressly advocates,” while not defined in the Florida Election Code, has been determined by the Division of Elections to mean any communication which uses phrases including, but not limited to: “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” “oppose,” and “reject.” *See Div. of Elections Op. 16-12 (Oct. 5, 2016); see also Buckley v. Valeo*, 424 U.S. 1 (1976).

³ Section 106.011(15), F.S. Specified types of advertisements are exempted from this definition. *See s. 106.011(15)(a)-(b), F.S.*

⁴ Chapters 97-106, F.S., are known as the Florida Election Code. Section 97.011, F.S.

⁵ *See s. 106.143, F.S.*, for which disclaimers are required for certain political advertisements.

⁶ Section 106.011(8)(a), F.S.

⁷ *Id.* Specified types of communications are exempted from this definition. *See s. 106.011(8)(b), F.S.*

⁸ Section 106.1439(1), F.S.

⁹ *See s. 106.011(12)(a), F.S.*

designate the sponsor of such advertisement.¹⁰ In the instance of being broadcast on television, there must also be a verbal statement of sponsorship.¹¹

Voter Guides

Voters guides are direct mail that is either an electioneering communication or a political advertisement sent for the purpose of advocating for or endorsing particular issues or candidates by recommending specific electoral choices to the voter or by indicating issue or candidate selections on an unofficial ballot.¹²

A voter guide circulated before or on the day of an election must display the required disclaimer — a political advertisement disclaimer or an electioneering communication disclaimer as applicable — in bold font with a font size of at least 12 point at the top of the first page.¹³ The voter guide must also be marked “Voter Guide” with such text appearing immediately below the political advertisement or electioneering communication disclaimer.¹⁴

Florida Elections Commission

The Florida Elections Commission (Commission) is an investigatory and quasi-adjudicatory body housed within the Department of Legal Affairs (DLA), but is not subject to the control, supervision, or direction of DLA.¹⁵ The Commission has jurisdiction¹⁶ to investigate and determine campaign finance violations, as well as other violations of the Florida Election Code.¹⁷

Complaints and Investigations

In order for the Commission to investigate a campaign finance violation or other violation of the Florida Election Code, it must first receive either information reported by the Division of Elections (Division)¹⁸ within the Department of State or a sworn complaint based upon information other than hearsay.¹⁹ Complaints of a violation must be filed with the Commission, and the Commission may investigate only the alleged violations in the complaint.²⁰

The Commission must transmit a copy of the complaint to the alleged violator within five days after receiving the complaint.²¹ The respondent then has 14 days after receipt of the complaint to file an initial response,²² and, if the complaint is determined to be legally sufficient, the respondent must be notified of such finding, as well as the alleged violations and factual basis that support such findings. The Commission must then undertake a preliminary investigation to determine if the alleged facts constitute probable cause to believe a violation occurred.²³ Once the investigation report is complete, the respondent must receive the report and be given at least 14 days to file a written response.²⁴ Counsel for the Commission must review the report and make a written recommendation for the

¹⁰ Section 106.1437, F.S.

¹¹ *Id.*

¹² Section 106.1436(1), F.S. Direct mail or publications made by government entities or government officials in their official capacity are not included this definition.

¹³ Section 106.1436(3)(a), F.S.

¹⁴ Section 106.1436(3)(b), F.S.

¹⁵ Section 106.24(1), F.S.

¹⁶ For the purposes of Commission jurisdiction, a violation means the willful performance of an act prohibited by chapter 106 or chapter 104 or the willful failure to perform an act required by such chapters. Willfulness is a determination of fact. Section 106.25(3), F.S.

¹⁷ Section 106.25(2), F.S.

¹⁸ The Division of Elections is an administrative unit of the Department of State. *See s. 97.021(9)*, F.S.

¹⁹ Section 106.25(2), F.S.

²⁰ *Id.* Failure of a complainant to allege all violations that arise from facts or allegations in a complaint bars the Commission from investigating a subsequent complaint based on facts or allegations that were raised or could have been raised in the first complaint.

²¹ *Id.*

²² *Id.*

²³ Section 106.25(4), F.S.

²⁴ Sections 106.25(4)(a) and (b), F.S.

disposition of the complaint.²⁵ If it is recommended probable cause be found, a copy of the counsel's recommendation, as well as the charges, must be given to the respondent, who then must be given at least 14 days to file a written response.²⁶

The Commission, at a hearing in which all parties and their counsels are permitted to attend, then makes a probable cause determination.²⁷ The respondent must receive notice of the hearing at least 14 days before it occurs.²⁸ The probable cause determination is the conclusion of the preliminary investigation.²⁹

If the Commission finds no probable cause exists, then the Commission dismisses the case.³⁰ If the Commission finds that probable cause exists, the complainant and the alleged violator must be notified in writing.³¹ Thereafter, the Commission's counsel and the alleged violator must attempt to reach a consent agreement.³²

A person alleged by the Commission to have committed a violation may elect, within 30 days after the date of the Commission's allegations, to have a formal administrative hearing conducted by an administrative law judge (ALJ) in the Division of Administrative Hearings (DOAH).³³ If the person does not elect to have a hearing by an ALJ and does not elect to resolve the complaint by a consent order, he or she is entitled to a formal or informal hearing before the Commission.³⁴

All sworn complaints that the Commission has jurisdiction over must be filed with the Commission within two years after the alleged violations.³⁵

Fines for Election Law Violations

The Commission or, in cases referred to DOAH, an ALJ, may impose fines for such violations.³⁶ Such fines must not exceed \$2,500 per count, and a fine may be multiplied by three, not to exceed \$7,500, after a person commits three counts of the same category of offense.³⁷

Artificial Intelligence

While strictly describing or defining artificial intelligence (AI) can be difficult as the term encompasses a large field of existing and emerging technologies, methodologies, and application areas, the Congressional Research Service has recently stated that AI is "generally thought of as computerized systems that work and react in ways commonly thought to require intelligence."³⁸ The application of AI extends to areas such as "natural language processing, facial recognition, and robotics."³⁹ A subset of AI, called generative AI, a term which refers to "machine learning models developed through training on

²⁵ Section 106.25(4)(c), F.S.

²⁶ *Id.*

²⁷ Section 106.25(4)(d), F.S.

²⁸ *Id.*

²⁹ Section 106.25(4)(e), F.S.

³⁰ Section 106.25(4)(g), F.S. A finding of no probable cause is a full adjudication of all such matters; the Commission may not charge a respondent in a subsequent complaint alleging violations based upon the same actions, nonactions, or circumstances wherein the Commission found no probable cause.

³¹ Section 106.25(4)(h), F.S.

³² Section 106.25(4)(i)1., F.S.

³³ Section 106.25(5), F.S.

³⁴ *Id.*

³⁵ Section 106.25(2), F.S.

³⁶ Section 106.265(1), F.S.

³⁷ *Id.*

³⁸ *Artificial Intelligence: Overview, Recent Advances, and Considerations for the 118th Congress*, Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/R/R47644> (last visited Jan. 22, 2024).

³⁹ *Id.*

large volumes of data” for the purpose of generating new content, has undergone rapid advancement over the past few years.⁴⁰

AI and Elections

Recently, concerns have emerged regarding the use of AI in political campaigns and election-related activities, especially generative AI.⁴¹ Areas of concern include voter misinformation by chatbots and phishing scams on election officials through AI-generated voices.⁴² The use of “deepfakes” in political advertising, which is artificially manipulated audio or video content, has also become a large area of concern, as it can be used to damage political rivals and deceive voters.⁴³

According to the National Conference of State Legislatures, legislation was introduced in several states in 2023 related to the use of AI in political advertisements.⁴⁴ Indiana, Michigan, New York, Washington, and Wisconsin all had some type of legislation that required disclaimers or disclosures on political advertisements or media that were generated by AI or that contained synthetic or doctored media.⁴⁵ Michigan and New Jersey had legislation introduced that prohibited deepfake videos or materially deceptive media from being disseminated a certain number of days before an election, unless there was a disclosure that the media had been manipulated. Other states⁴⁶ had legislation introduced that prohibited the use of deepfake technology a certain number of days before an election, with no exception.⁴⁷ New Jersey also had legislation introduced that prohibited the use of videos that falsely depict an election or policy debate.⁴⁸

The Federal Elections Commission (FEC) has received petitions requesting that the FEC clarify in rule that AI-generated campaign advertisements are subject to a statutory prohibition against the fraudulent misrepresentation of other candidates or political parties.⁴⁹ The FEC sought public testimony on the petition.⁵⁰ Public comment closed on October 16, 2023, and the FEC has not yet taken further action.⁵¹

Effect of the Bill

The bill requires that a political advertisement, an electioneering communication, or other miscellaneous advertisement of a political nature that contains an image, a video, audio, graphic, or

⁴⁰ *Id.*; See also *Generative Artificial Intelligence: Overview, Issues, and Questions for Congress*, Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IF/IF12426> (last visited Jan. 22, 2024).

⁴¹ See *How 2024 presidential candidates are using AI inside their election campaigns*, CNBC, Dec. 17, 2023, available at <https://www.cnbc.com/2023/12/17/how-2024-presidential-candidates-are-using-ai-in-election-campaigns.html> (last visited Jan. 22, 2024); see also *Meta prohibits generative AI tools for political ads*, CNN, Nov. 7, 2023, available at <https://www.cnn.com/2023/11/07/tech/meta-ai-political-ads/index.html> (last visited Jan. 22, 2024).

⁴² *Challenges Ahead for Lawmakers Seeking to Legislate AI in Campaigns*, National Conference of State Legislators, available at https://www.ncsl.org/state-legislatures-news/details/challenges-ahead-for-lawmakers-seeking-to-legislate-ai-in-campaigns?utm_source=national+conference+of+state+legislatures&utm_term=0_-61bea1f450-%5blist_email_id%5d&utm_campaign=8fbf8e40e8-canvass-jan-4&utm_medium=email (last visited Jan. 22, 2024).

⁴³ *Id.*; see also *Artificial Intelligence (AI) and Campaign Finance Policy: Recent Developments*, Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IN/IN12222> (last visited Jan. 22, 2024).

⁴⁴ *Artificial Intelligence (AI) in Elections and Campaigns*, National Conference of State Legislatures, available at <https://www.ncsl.org/elections-and-campaigns/artificial-intelligence-ai-in-elections-and-campaigns> (last visited Jan. 22, 2024).

⁴⁵ *Id.* Michigan and Washington’s legislation requiring disclosures on political advertisements generated by AI or synthetic media became law, as did Michigan’s legislation prohibiting materially deceptive media a certain number of days before an election, unless a disclosure is provided.

⁴⁶ Illinois, Minnesota, New York, and Texas had such legislation.

⁴⁷ *Id.* Minnesota’s legislation prohibiting the publication of deepfake media a certain number of days before an election became law.

⁴⁸ *Id.*

⁴⁹ *Comments sought on amending regulation to include deliberately deceptive Artificial Intelligence in campaign ads*, Federal Elections Commission, available at <https://www.fec.gov/updates/comments-sought-on-amending-regulation-to-include-deliberately-deceptive-artificial-intelligence-in-campaign-ads/> (last visited Jan. 22, 2024).

⁵⁰ *Id.*

⁵¹ *Id.*; see also *Artificial Intelligence in Campaign Ads, A Proposed Rule by the Federal Election Commission on 08/16/2023*, Federal Register, available at <https://www.federalregister.gov/documents/2023/08/16/2023-17547/artificial-intelligence-in-campaign-ads> (last visited Jan. 22, 2024).

other digital content created, in whole or in part, with the use of generative AI⁵² that appears to depict a real person performing an action that did not occur in reality, and was created with intent to injure a candidate or to deceive regarding a ballot issue, to prominently include the following disclaimer:

“Created in whole or in part with the use of generative artificial intelligence.”

The bill clarifies this disclaimer is in addition to any other disclaimer required for campaign finance purposes. The bill creates specific requirements for the disclaimer that are dependent upon the media used. Specifically, the bill places the following disclaimer requirements by medium:

- Printed communications: The disclaimer must be stated in bold font with a font size of at least 12 points.
- Television or video communications: The disclaimer must be clearly readable throughout the communication and occupy at least 4 percent of the vertical picture height.
- Internet public communications that include text or graphic components: The disclaimer must be viewable without the user taking any action and be large enough to be clearly readable.
- Audio components of a communication: The disclaimer must be at least three seconds in length and spoken in a clearly audible and intelligible manner at either the beginning or the end of the audio component of the communication.
- Graphic communication: The disclaimer must be large enough to be clearly readable but no less than 4 percent of the vertical height of the communication.

The bill provides that in addition to any civil penalties provided by law, a person identified pursuant to another disclaimer required for campaign finance purposes as paying for, sponsoring, or approving a political advertisement, an electioneering communication, or other miscellaneous advertisement of a political nature that is required to include the AI disclaimer and fails to do so commits a first-degree misdemeanor.⁵³

The bill permits a complaint to be filed with the Commission if such disclaimer is not included on the advertisement or communication. The bill requires the Commission to adopt rules to provide for an expedited hearing of such complaints or, in cases referred to DOAH, requires the director to assign an ALJ to provide an expedited hearing.

The bill subjects a person who fails to include such disclaimer to civil penalties that are permitted to be imposed by the Commission or an ALJ.

B. SECTION DIRECTORY:

Section 1 creates s. 106.145, F.S., relating to use of AI.

Section 2 provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive impact on state revenues to the extent that civil penalties may be assessed for violations of the bill's provisions.

2. Expenditures:

⁵² The bill defines “generative artificial intelligence” to mean “machine-based system that can, for a given set of human-defined objectives, emulate the structure and characteristics of input data in order to generate derived synthetic content, including images, videos, audio, text, or other digital content.”

⁵³ A first-degree misdemeanor is punishable by up to one year imprisonment and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

The bill may have an indeterminate, but likely insignificant, impact on state government expenditures due to workload associated with enforcing the provisions of the bill. However, any such impact can be absorbed within existing resources.⁵⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission to adopt rules to provide for an expedited hearing of complaints that allege that a disclaimer required under the bill for political advertisements, electioneering communications, or miscellaneous advertisements has been omitted.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 14, 2024, the State Affairs committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required the AI disclaimer to only be included if the generated content was created with intent to injure a candidate or to deceive regarding a ballot issue. The amendment also:

- Clarified the AI disclaimer is in addition to any other disclaimer required for campaign finance purposes.
- Created specific requirements for the AI disclaimer that are dependent upon the media used.
- Specified that persons who are identified by another disclaimer as paying for, sponsoring, or approving an advertisement or electioneering communication that does not include the required AI disclaimer are liable for violations.
- Made failure to include the required AI disclaimer a first-degree misdemeanor.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

⁵⁴ Division of Administrative Hearings, Agency Analysis of 2024 Senate Bill 850, (Dec. 19, 2023).

