

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB SAC 24-03 Public Financing for Campaigns of Candidates for Elective Statewide Office

**SPONSOR(S):** State Affairs Committee

**TIED BILLS:** PCB SAC 24-04 **IDEN./SIM. BILLS:** SJR 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	15 Y, 5 N	Toliver	Williamson

**SUMMARY ANALYSIS**

In 1998, the Florida electorate approved an amendment to the Florida Constitution requiring the establishment of a method of public financing for campaigns for statewide office. The amendment was incorporated into the Florida Constitution as Art. VI, s. 7, the public campaign financing amendment. The amendment requires the Legislature to establish in law a method of public financing for campaigns for statewide office. The amendment further requires spending limits be created for any candidate who chooses to use the public financing option.

The joint resolution proposes an amendment to the Florida Constitution that repeals the public campaign financing amendment. If passed, the joint resolution will be considered by the electorate at the next general election on November 5, 2024.

The joint resolution, if passed in conjunction with PCB SAC 24-04 (2024), will likely have a positive fiscal impact on the state. PCB SAC 24-04, which is linked to the passage of the joint resolution, repeals the Florida Election Campaign Public Financing Act that contains the statutory framework for the public financing of statewide campaigns.

**Article XI, s. 1 of the Florida Constitution requires a three-fifths vote of the membership of each house of the Legislature for final passage of a joint resolution proposing an amendment to the Florida Constitution. Article XI, s. 5(e) of the Florida Constitution requires 60 percent voter approval for adoption of a proposed constitutional amendment.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Campaign Financing Amendment

In 1998, the Constitution Revision Commission,<sup>1</sup> a body that meets every 20 years to consider amendments to the Florida Constitution, placed an amendment on the general election ballot requiring the establishment of a method of public financing for candidates for statewide office.<sup>2</sup> The amendment was approved by the electorate, garnering 64.1 percent of the vote.<sup>3</sup> The constitutional provision is presently found in Article VI, s. 7 of the Florida Constitution and provides that “[i]t is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively.”<sup>4</sup> The provision requires the Legislature to establish in law a method of public financing for campaigns for statewide office.<sup>5</sup> The provision further requires spending limits be created for any candidate who chooses to use the public financing option.<sup>6</sup>

In 2009, the Legislature passed HJR 81, which proposed a constitutional amendment to repeal the public campaign financing amendment. The proposed amendment was placed on the ballot at the 2010 general election. The amendment failed to pass the required 60 percent threshold, garnering 52.5 percent of the vote, and therefore was not incorporated into the Florida Constitution.<sup>7</sup>

##### The Florida Election Campaign Financing Act

In 1986,<sup>8</sup> the Legislature, concerned that the costs of running a campaign for statewide office limited the persons who would run to only those who were independently wealthy or those supported by special interests,<sup>9</sup> created the Florida Election Campaign Financing Act (the Act).<sup>10</sup> The Act created a framework for the public financing of statewide campaigns, setting eligibility requirements and expenditure limitations for participating candidates, and establishing a supporting trust fund.<sup>11</sup>

Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a ‘single’ candidate for public financing purposes) or Cabinet are eligible for funding.<sup>12</sup> A candidate for one of those offices seeking to receive public funding under the Act must:

- File a request with the Division of Elections (division) within the Department of State upon qualifying for office.<sup>13</sup>
- Agree to abide by the Act’s expenditure limits.<sup>14</sup>
- Raise a certain amount of contributions (\$150,000 for gubernatorial candidates, \$100,000 for cabinet candidates).<sup>15</sup>

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<sup>1</sup> Article XI, s. 2, FLA. CONST.

<sup>2</sup> Department of State, *1998 Election Results*, <https://results.elections.myflorida.com/?ElectionDate=11/3/1998&DATAMODE=> (last visited Feb. 2, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> Article VI, s. 7, FLA. CONST.

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

<sup>6</sup> *Id.*

<sup>7</sup> Department of State, *2010 Election Results*, <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/2/2010&DATAMODE=> (last visited Feb. 3, 2024).

<sup>8</sup> Chapter 86-276, L.O.F.

<sup>9</sup> Section 106.31, F.S.

<sup>10</sup> Section 106.30, F.S., states that ss. 106.30-106.36, F.S., may be cited as the “Florida Election Campaign Financing Act.”

<sup>11</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 in the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.

<sup>12</sup> Section 106.33, F.S.

<sup>13</sup> *Id.*; see also r. 1S-2.047, F.A.C.

<sup>14</sup> Section 106.33(1), F.S.; see also s. 106.34, F.S.

<sup>15</sup> Section 106.33(2), F.S.

- Limit loans or contributions from the candidate’s personal funds to \$25,000 and contributions from national, state, and county executive committees of a political party to \$250,000 in the aggregate.<sup>16</sup>
- Submit to a postelection audit of the campaign account by the division.<sup>17</sup>

Gubernatorial candidates and candidates for cabinet officer must limit their expenditures<sup>18</sup> according to the following schedule: \$2.00 for each Florida-registered voter<sup>19</sup> for Governor and Lieutenant Governor or \$1.00 for each Florida-registered voter for cabinet officer.<sup>20</sup> The expenditure limits for the 2022 election cycle were as follows:

- Governor and Lieutenant Governor: \$30,286,714.00.
- Cabinet Officer: \$15,143,357.00.<sup>21</sup>

If a candidate who is not receiving public campaign funds exceeds the expenditure limitations set forth in the Act, then a participating candidate is released from abiding by the expenditure limits.<sup>22</sup> The division reviews each request for public contributions and certifies whether the candidate is eligible before distribution.<sup>23</sup> If certified, the candidate receives qualifying matching contributions on a two-to-one basis for contributions making up the amount of funds needed to initially become eligible for public financing and on a one-to-one basis thereafter.<sup>24</sup> The one-to-one match only applies to contributions of \$250 or less per individual; any amount contributed by an individual in excess of \$250 will only be matched up to \$250.<sup>25</sup> Additionally, for the match to occur, the individual from whom the contributions are received must be a resident of the state.<sup>26</sup> The funds are distributed from the general revenue fund.<sup>27</sup> Total distributions for the 2014, 2018, and 2022 election cycles were as follows:

<b>Election Cycle Distributions</b>			
<b>Office</b>	<b>2014 Election Cycle<sup>28</sup></b>	<b>2018 Election Cycle<sup>29</sup></b>	<b>2022 Election Cycle<sup>30</sup></b>
Governor (Lt. Gov.)	\$2,830,194.03	\$8,151,124.58	\$12,135,026.82
Attorney General	\$628,440.64	\$933,187.02	\$468,918.76
Chief Financial Officer	\$418,396.06	\$334,604.00	\$411,204.23
Commissioner of Agriculture	\$459,009.31	\$433,690.16	\$0
<b>Total</b>	<b>\$4,336,040.04</b>	<b>\$9,852,605.76</b>	<b>\$13,015,149.81</b>

The purpose of the constitutional provision is so that all qualified candidates “may compete effectively.”<sup>31</sup> This purpose has been questioned by at least one court.<sup>32</sup>

<sup>16</sup> Section 106.33(3), F.S.

<sup>17</sup> Section 106.33(4), F.S.

<sup>18</sup> See s. 106.011(10)(a), F.S., for the definition of “expenditure.” For purposes of the Act, “expenditure” does not include the payment of compensation for legal and accounting services rendered on behalf of a candidate. Section 106.34(4), F.S.

<sup>19</sup> The Act defines the term “Florida-registered voter” as a voter who is registered to vote in Florida as of June 30 of each odd-numbered year. The division must certify the total number of Florida-registered voters no later than July 31 of each odd-numbered year. Section 106.34(3), F.S.

<sup>20</sup> Section 106.34(1), F.S.

<sup>21</sup> Department of State, *2022 Public Campaign Financing Matching Funds Handbook*,

[https://files.floridados.gov/media/705135/public\\_campaign\\_financing\\_2022\\_final-1.pdf](https://files.floridados.gov/media/705135/public_campaign_financing_2022_final-1.pdf) (last visited Feb. 2, 2024).

<sup>22</sup> Section 106.355, F.S.

<sup>23</sup> Section 106.35(1), F.S.

<sup>24</sup> Section 106.35(2)(a), F.S.

<sup>25</sup> Section 106.35(2)(b), F.S.

<sup>26</sup> *Id.*

<sup>27</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>28</sup> Department of State, *Public Campaign Finance 2014*, <https://dos.fl.gov/elections/candidates-committees/campaign-finance/public-campaign-finance-matching-funds-program/public-campaign-finance-2014/> (last visited Feb. 2, 2024).

<sup>29</sup> Department of State, *Public Campaign Finance 2018*, <https://dos.fl.gov/elections/candidates-committees/campaign-finance/public-campaign-finance-matching-funds-program/public-campaign-finance-2018/> (last visited Feb. 2, 2024).

<sup>30</sup> Department of State, *Public Campaign Finance 2022*, <https://dos.fl.gov/elections/candidates-committees/campaign-finance/public-campaign-finance-matching-funds-program/public-campaign-finance-2022/> (last visited Feb. 2, 2024).

A participating candidate who exceeds the expenditure limit or falsely reports qualifying matching contributions and thereby receives contributions to which the candidate was not entitled is fined an amount equal to three times the amount at issue.<sup>33</sup>

### **Effect of the Joint Resolution**

The joint resolution repeals Art. VI, s. 7 of the Florida Constitution, the public campaign financing amendment.

The joint resolution must pass each house by a three-fifths vote of the membership before it may be placed on the ballot. If passed, the joint resolution will be considered by the electorate at the next general election on November 5, 2024. The proposed amendment must then be approved by 60 percent of the electors voting. If approved, the amendment will take effect January 7, 2025.

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

Not applicable.

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

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

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

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<sup>31</sup> Article VI, s. 7, FLA. CONST.

<sup>32</sup> *Scott v. Roberts*, 612 F.3d 1279, 1293 (11th Cir. 2010) (“the system levels the electoral playing field, and that purpose is constitutionally problematic”).

<sup>33</sup> Section 106.36, F.S.

#### D. FISCAL COMMENTS:

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The division must advertise the full text of a proposed constitutional amendment twice in a newspaper of general circulation in each county before the election,<sup>34</sup> and provide each supervisor of elections with either booklets or posters displaying the full text of a proposed amendment.<sup>35</sup> The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

If passed in conjunction with PCB SAC 24-04 (2024), the resolution will likely have a positive fiscal impact on the state. PCB SAC 24-04 (2024), which is linked to the passage of the joint resolution, repeals the Act that contains the statutory framework for the public financing of statewide campaigns. Elimination of the public campaign financing amendment and the Act in chapter 106, F.S., would allow the funds currently expended for those purposes to be diverted elsewhere. The Department of State asserts that \$13,015,149.81 was spent on the public financing of campaigns in 2022,<sup>36</sup> \$9,852,605.76 in 2018,<sup>37</sup> \$4,336,040.04 in 2014,<sup>38</sup> and \$6,065,556.11 in 2010.<sup>39</sup> As the original trust fund for the public campaign financing program expired in 1996, these funds are currently distributed from general revenue.<sup>40</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Not applicable.

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

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>34</sup> Article XI, s. 5(d), FLA. CONST.

<sup>35</sup> Section 101.171, F.S.

<sup>36</sup> Department of State, *Public Campaign Finance 2022*, <https://dos.fl.gov/elections/candidates-committees/campaign-finance/public-campaign-finance-matching-funds-program/public-campaign-finance-2022/> (last visited Feb. 2, 2024).

<sup>37</sup> Department of State, *Public Campaign Finance 2018*, <https://dos.fl.gov/elections/candidates-committees/campaign-finance/public-campaign-finance-matching-funds-program/public-campaign-finance-2018/> (last visited Feb. 2, 2024).

<sup>38</sup> Department of State, *Public Campaign Finance 2014*, <https://dos.fl.gov/elections/candidates-committees/campaign-finance/public-campaign-finance-matching-funds-program/public-campaign-finance-2014/> (last visited Feb. 2, 2024).

<sup>39</sup> Department of State, *Public Campaign Finance 2010*, <https://dos.fl.gov/elections/candidates-committees/campaign-finance/public-campaign-finance-matching-funds-program/public-campaign-finance-2010/> (last visited Feb. 2, 2024).

<sup>40</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.