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 Ethics and Elections

BILL:	SJR 1114
INTRODUCER:	Senator Hutson
SUBJECT:	Public Financing for Campaigns of Candidates for Elective Statewide Office
DATE:	January 11, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cleary	Roberts	EE	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SJR 1114 proposes an amendment to the State Constitution to repeal the public financing program for statewide elections.

The joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature. If so enacted, the proposal will be presented to the electors of Florida at the general election or at an earlier special election specifically authorized by law for that purpose. Approval requires a favorable vote from at least 60 percent of the electors voting on the matter. Repeal of the program would take effect upon approval by the voters of Florida.

The joint resolution proposes an amendment to the Florida Constitution to repeal Section 7 of Article VI.

II. Present Situation:

Public Campaign Financing in Florida

Currently, the State Constitution requires public campaign financing for statewide candidates (Governor and Cabinet Officers), with implementation by general law. The State Constitution provides:

> It is the policy of this state to provide for statewide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at least as protective of effective competition by a candidate who uses public as the general law in effect on January 1, 1998.[1]

[1] Article VI, s. 7, Fla. Const.

This constitutional provision has been in place since 1998, after being proposed by the Constitution Revision Commission and approved by the voters in the 1998 general election. The program itself, however, has been in place in statute since 1986.[2]

The matching funds program is provided by general law in ss. 106.30-106.36, F.S., and administered by the Department of State's Division of Elections (division). The program can be summarized as follows:

- Statewide candidates must have opposition;
- Only personal contributions from state residents are eligible for matching from the General Revenue Fund.[3] Corporate and political committee contributions are not matched;
- Contributions received after September 1 of the calendar year preceding the election are eligible for matching;
- Candidates choosing to participate in the public financing program must raise an initial amount of money - $150,000 (for gubernatorial candidates) or $100,000 (for candidates for Cabinet offices) – in order to be eligible to receive public funds. This upfront money is matched with public funds on a two-to-one basis.
- After that, eligible contributions are matched on a dollar-for-dollar basis, up to $250 per individual contribution For example, if a Florida individual makes a $250 contribution, it is matched with $250 from the state. If a person makes a $500 contribution, only $250 of that contribution will be matched with state money.
- In exchange for receiving public money, candidates agree to abide by certain limits on their overall campaign expenditures (see discussion, below).

Participating candidates must complete a form declaring their intention to apply for public campaign financing at the time of qualifying, and subsequently submit their contributions for audit by the division to determine eligibility for the match. The division audits the submission and makes payment to the candidate, beginning immediately on the 32nd day before the primary election and every seven days thereafter.

The program was originally funded from the Election Campaign Financing Trust Fund, which was established in 1986. The trust fund was funded with a portion of candidate qualifying fees and civil penalties collected by the Florida Elections Commission. The trust fund expired by operation of s. 19 (f), Article III, Fla. Constitution, on November 4, 1996. That section of the Constitution required state trust funds in existence prior to 1992 to terminate not more than four years from November 4, 1992. Since the trust fund terminated, the program has been funded from the General Revenue Fund.

Statewide candidates participating in the public financing program must agree to abide by campaign expenditure limits.[4] In 2005, the Legislature increased these expenditures limits to the following amounts for the general election:[5]

[2] Chapter 86-276, s. I, Laws of Fla.
[3] In 2001, the Legislature enacted a law that excluded out-of-state contributions from eligibility for matching. Ch. 2001-40, s. 69, Laws of Fla.
[4] Section 106.34, F.S. (2008)
[5] Ch. 2005-278, s. 48, at 2735, Laws of Fla. The changes became effective January 1, 2006. *Id.* at 2738. Primary expenditure limits for candidates with primary opposition is 60 percent of the general election limits. *Id.* at 2735.

- Governor/Lt. Governor – Increased from $7.1 million;[6] to $2.00 per each Florida-registered voter;[7] and
- Cabinet Offices – Increased from $2.82 million[8] per race to $1.00 per each Florida-registered voter.[9]

A Florida-registered voter is defined 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. The total number must be calculated by adding the number of registered voters in each county as of June 30 in the year of the certification date.[10] The 2022 election cycle campaign expenditure limits for statewide candidates participating the in public financing program were approximately $ 30,286,714 for the Governor's and Lieutenant Governor's races and $15,143,357 for the remaining cabinet races.[11]

Total public financing expenditures in the last four general election cycles for the Governor's race and the three cabinet races are as follows:
2022 election cycle – $13,015,149.81;
2018 election cycle – $9, 852,605.76;
2014 election cycle – $4,336,040.04; and
2010 election cycle – $6,065,556.11.[12]

Current Florida law provides that, in addition to the matching funds specifically authorized for participating candidates for the general election and contested primaries, if a nonparticipating statewide candidate exceeds the expenditure limit, all opposing candidates participating in the public financing program receive a dollar-for-dollar match of public funds for the amount that nonparticipating candidate exceeds the limit, up to a maximum of twice the applicable expenditure limit.[13] The constitutionality of this provision has been challenged, however, in a decision by the 11th U.S. Circuit Court of Appeals.[14] (See discussion under "Other Constitutional Issues").

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[6] Section 106.34(1)(a), F.S. (2004). Although Florida law in 2005 explicitly provided for a cap of $5 million for gubernatorial candidates, the law also required that the limit be adjusted quadrennially for inflation; therefore, at the end of 2005, this $5 million expenditure limit, which was originally established in law in 1992, had risen to an inflation-adjusted figure of $7,135,606.
[7] Section 106.34(1)(a), F.S.
[8] Ch. 2005-278, s. 48, at 2735, Laws of Fla. Although Florida law in 2005 explicitly provided for a cap of $2 million for Cabinet office candidates, the law also required the limit to be adjudged quadrennially for inflation; therefore, at the end of 2005, this $2 million expenditures limit, which was originally established in 1992, had risen to an inflation-adjusted figure of $2,854,242.
[9] Section 106.34(1)(b), F.S.
[10] Section 106.34(3), F.S.
[11] The number of Florida voters registered as of June 30, 2021, was 15,143,357 *See* Florida Division of Elections, 2022 *Public Campaign Financing Handbook*, 6 at https://files.floridados.gov/media/705135/public_campaign_financing_2022_final-1.pdf (last viewed on January 10, 2024).
[12] *See* Florida Division of Elections, Candidates and Committees, Campaign Finance at https://dos.fl.gov/elections/candidates-committees/campaign-finance/ (last viewed on January 10, 2024).
[13] Section 106.355, F.S. The candidates participating in public financing are also released from the expenditure limit to the extent the nonparticipating candidate exceeds the limit.
[14] *Scott v. Roberts*, 612 F.3d 1279 (11th Cir. 2010).

An identical resolution to repeal the public financing program for statewide elections was adopted in the 2009 legislative session.[15] The measure appeared on the ballot in November 2010, but did not receive the necessary 60 percent affirmative votes required for adoption.[16]

Public Campaign Financing in Other States

According to the National Conference of State Legislatures, Florida is one of a small number of states that offer some form of full or partial public matching funds to political candidates:

> Public financing of campaigns, in which the government provides financial support to candidates running for office, remains the least-used method of regulating money in elections, partly due to the result of the U.S. Supreme Court ruling in *Buckley v. Valeo* (1976). In that decision, the court struck down a provision of the Federal Election Act of 1971 mandating public financing for presidential elections.
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> Based on that decision, state public financing programs must be optional for candidates. The financial advantages of private fundraising frequently prompt candidates to opt out of public financing programs, which often include campaign to spending limits. Candidates who opt not to use public funds can raise funds without having to abide by state limits. For states that elect to provide a public financing option, money is available for either individual candidates or political parties . . .
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> Thirteen states provide some form of statewide public financing option for candidates. Each of these plans require a candidate who accepts public money for their campaign to promise to limit both how much the candidate spends on the election and how much they receive in donations from any one group or individual. These options are frequently limited, applying only to candidates running for specified offices[17] . . .
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> The two main types of state programs for public financing are the clean elections programs and programs that provide a candidate with matching funds for each qualifying contribution they receive. The "clean election states" offer full funding for the campaign; the matching funds programs provide a candidate with a portion of the funds needed to run the campaign.[18]

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[15] House Joint Resolution No. 81, filed with the Secretary of State on May 19, 2009.
[16] *See* Florida Division of Elections, Constitutional Amendments at https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=71 (last viewed January 10, 2024).
[17] *See* National Conference of State Legislatures, Public Financing of Campaigns: Overview (last viewed on January 10, 2024), available at https://www.ncsl.org/elections-and-campaigns/public-financing-of-campaigns-overview. (Public Financing Available for Specified Offices Per State: **Governor/Lieutenant Governor**: Arizona, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Rhode Island, Vermont; **State Legislative Offices**: Arizona, Connecticut, Hawaii, Maine, Minnesota; **State Supreme Court/Other:** New Mexico, West Virginia.).
[18] *Id.* (**States with clean elections programs:** Arizona, Connecticut, Maine, New Mexico, and Vermont; **States with matching funds programs:** Florida, Maryland, Massachusetts, Michigan, Minnesota, and West Virginia).

III. Effect of Proposed Changes:

The Joint Resolution proposes the repeal of the constitutional authorization for the public financing of statewide elections.

If approved by a three-fifths vote of the membership of each house of the Legislature, the proposal will be presented to the electors of Florida at the 2024 general election or at an earlier special election specifically authorized by law for that purpose. Approval requires a favorable vote from at least 60 percent of the electors voting on the matter.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

In the landmark case of *Buckley v. Valeo*, The United States Supreme Court ruled that laws imposing limitations on overall campaign expenditures by candidates violated the free speech guarantees of the U.S. Constitution.[19] The *Buckley* Court, however, upheld the federal statute providing for public financing of presidential elections, funding that overall campaign expenditures may be limited if a candidate voluntarily waives his or her right to make unlimited expenditures in exchange for receiving public campaign funds.[20]

In 2010, gubernatorial candidate Rick Scott brought an action for injunctive relief to prevent the operation of the excess spending subsidy provision[21] of the Florida Election Campaign Financing Act in his primary campaign, alleging that it violated his First and Fourteenth Amendment rights to spend unlimited sums of his personal funds and private donations to his campaign in support of his candidacy. On his appeal from an adverse

[19] *Buckley v. Valeo*, 424 U.S. 1, 54-58 (1976); *see also, Randall v. Sorrell,* 126 S. Ct. 2479, 2487-2491 (2006) (applying *Buckley* to invalidate Vermont law limiting overall campaign expenditures).
[20] *Buckley* at 57, fn. 65 (Congress "may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations.").

[21] Section 106.355, F.S.

district court decision, a panel of the 11th Circuit Court of Appeals ruled that he was entitled to the preliminary injunction and that there was a substantial likelihood that he would succeed on the merits of his constitutional claim. The court held that candidate Scott would be forced to speak less in order to prevent his opponent from receiving matching funds. The court ruled that the subsidy provision was severable from the rest of the campaign financing act.[22]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the public campaign financing program is abolished, statewide candidates would no longer be able to depend on public funds for their campaigns and would likely turn to private contributions to fill the gap. The precise fiscal impact is indeterminate.

C. Government Sector Impact:

The repeal of public campaign financing would eliminate an expenditure that routinely occurs every four years from the General Revenue Fund typically ranging from $4 million to $13 million per election cycle. The first year of the anticipated cost avoidance would occur in fiscal year 2028-2029.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This joint resolution approves the repeal of Section 7 of Article VI of the Florida Constitution and submits the repeal to the electors for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

[22] *Scott v. Roberts*, 612 F.3d 1279 (11th Cir. 2010).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.