

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 31

Relating to: SUFFRAGE AND ELECTIONS, repeal s. 7

Introducer(s): Commissioner Donalds

Article/Section affected: Article VI, Section 7

Date: November 22, 2017

REFERENCE	ACTION
1. <u>EE</u>	<u>Pre-meeting</u>

I. SUMMARY:

Repeals Section 7 of Article VI of the State Constitution to remove the requirement that a method of public financing for campaigns for statewide office be established by law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Campaign Financing Systems – General

A public campaign financing system is one where government funds are provided to candidates running for elected offices to help fund their campaigns. The funds are provided if candidates adhere to the system's established requirements.

According to the National Conference on State Legislatures, 13 states – Arizona, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, Rhode Island, Vermont, and West Virginia - provide some form of public financing option for campaigns. Each of these plans require the candidate to accept public money for his or her campaign in exchange for a 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. In most cases, these systems provide funding only to certain types of candidates, for example those running for Governor.

Public Campaign Financing Systems – Types

The two main types of programs states offer for public financing of elections are the clean elections programs, offered in states such as Maine and Arizona, 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, and the matching funds programs provide a candidate with a portion of the funds needed to run the campaign.

Clean Elections Programs

In the clean elections programs offered in Arizona, Connecticut, Maine and New Mexico, candidates are encouraged to collect small contributions from a number of individuals (depending on the position sought) to demonstrate that he or she has enough public support to warrant public funding of his or her campaign. In return, the commission established for the program gives the candidate a sum of money equal to the expenditure limit set for the election.

As an example of a clean elections program, a candidate for state office in Arizona must raise \$5 contributions from at least 200 people in order to qualify for the program. In return, the state provides the candidate with public money in an amount equal to the expenditure limit. In the 2014 election, the expenditure limit for gubernatorial candidates was \$1,130,424, and the limit for legislative positions was \$22,880. Arizona Governor Doug Ducey, who declined participation in the clean elections program, raised \$2.4 million for his 2014 campaign, more than double the amount authorized for the program’s participants.

The program is funded through a 10 percent surcharge on all civil penalties and criminal fees, civil penalties paid by the candidates, and the qualifying contributions the candidate raised.

Matching Funds Programs

The other type of public financing program, offered in states such as Florida and Hawaii, provide matching funds for candidates up to a certain amount. In Hawaii, candidates are encouraged to limit their contributions and expenditures to an amount set by the legislature. For the 2014 election, the expenditure limit for the general election was \$1,597,208. The candidate who participates in the matching funds program is eligible to receive 10 percent of this limit in public funds, or \$159,721. A candidate must first receive \$100,000 in qualifying contributions during the primary season for the state to provide a matching \$100,000 during the general election. The candidate can then raise an additional \$59,721 in qualifying contributions that the state will match, for a total of \$319,442. The candidate can then raise additional money from other sources, like PACs, parties, or individuals, to reach the expenditure limit of \$1,597,208.

For example, Hawaii governor David Ige received \$105,164.73 in public funds for his 2014 gubernatorial campaign, and spent the maximum of \$1,597,208 during the general election. His challenger, Duke Aiona, who elected to not participate in the public financing program, spent \$1,532,306.65 on his unsuccessful election. Mr. Aiona, like all candidates, had to comply with the state’s contribution limits, but did not have to worry about collecting the smaller qualifying contributions from many different sources.

The program is funded through a tax return checkoff, whereby citizens choose whether they want to contribute three dollars from their tax burden to the Hawaii Election Campaign Fund.

Florida's Public Campaign Financing System

1986 Florida Election Campaign Financing Act

The Florida Election Campaign Financing Act was enacted in 1986. Effective July 1, 1987, this law established a procedure for partial public funding of campaigns for statewide office (governor/lieutenant governor and cabinet officers) for candidates who voluntarily limit campaign expenditures. Resources for this system were provided through the Election Campaign Financing Trust Fund, which was funded by fines assessed for late filed campaign treasurer reports, the one percent election assessment for municipal candidates, and the three percent filing fee for all other candidates. This trust fund expired by law on November 4, 1996; since then, distribution of public campaign financing to participating candidates has been from the state General Revenue Fund.

1998 Amendment to the Constitution

At the time the Florida Constitution Revision Commission met in 1998, a number of legal challenges had been made to the Florida Elections Campaign Financing Act, with existing sentiment in some quarters that the law be repealed. Others were of the opinion that the state campaign financing system be expanded, and initial proposals before the 1998 Constitution Revision Commission would have increased spending limits and extended public funding to elections for legislators. In the end, the 1998 Commission's recommendation simply maintained the status quo by requiring the retention of the existing campaign financing act or a similar general law that provides public funds to those statewide candidates who limit their campaign expenditures.

The 1998 Constitution Revision Commission voted to place Proposition 11 on the ballot for the November 1998 general election. Among several election-related changes, Proposition 11 proposed adding a new Section 7 to Article VI of the Florida State Constitution that included the following language:

“Campaign spending limits and funding of campaigns for elective state-wide office.--It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide 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 funds as the general law in effect on January 1, 1998.”

Proposition 11 was approved and placed into the Constitution by the voters of Florida, with 64.1 percent voting in favor.

2010 Proposed Amendment to the Constitution

In 2009, the Florida Legislature voted 80-34 and the Florida Senate voted 29-11 to place a constitutional amendment - House Joint Resolution (HJR) 81 - on the 2010 general election ballot. HJR 81 repealed Section 7 of Article VI of the Florida State Constitution, thus removing the language added in 1998. HJR 81 was supported by a majority of those voting on the amendment – 52.5 percent. However, Florida's Constitution then (and

now) required amendments to receive 60 percent of the vote to pass, so HJR 81 was not adopted.

Operation and Administration of Florida's Public Campaign Financing System

Florida's public campaign financing system is administered by the Florida Department of State's Division of Elections (Division.) The program can be summarized as follows:

- Participating statewide candidates must have opposition.
- Candidates must submit an irrevocable statement to abide by overall expenditure limits as well as contribution limits on personal (\$25,000) and party (\$250,000) funds
- Only personal contributions of \$250 or less from state residents are eligible for matching; corporate and political committee contributions are not eligible for matching.
- Participating candidates must raise an initial threshold amount of \$150,000 (for gubernatorial candidates) or \$100,000 (for candidates for Cabinet offices.) Contributions received from the candidate, political parties or non-Florida residents are not counted towards meeting the threshold amount.
- Contributions received after September 1 of the calendar year preceding the election are eligible for matching; contributions prior to September 1 can be counted towards meeting the threshold amount but are not matched.
- The threshold amounts are matched on a two-to-one basis, and after that, a contribution is eligible to be matched on a one-to-one basis, up to \$250. Thus, if a person makes a \$250 contribution, it is matched with \$250 from the state.
- Distribution of public financing begins on the 32nd day prior to the primary election and every seven days thereafter; the last distribution occurs one week after the general election.

Participating candidates must complete a form declaring their intention to apply for public campaign financing at the time of qualifying and after this declaration, submit their contributions for audit by the Division to determine eligibility for the match. The Division audits the submissions and makes payment to the candidate.

Participating candidates must abide by campaign expenditure limits that are based on the total number of Florida registered voters as of June 30th of each odd numbered year. For Governor/Lt. Governor races, the expenditure limit is \$2 for each registered voter; for Cabinet races, the limit is \$1 for each registered voter. According to the Division, the total number of Florida registered voters as of June 30, 2017 was 13,545,731. Therefore, candidates for Governor in the 2018 election cycle that want to accept public financing would be limited to approximately \$27.1 million in campaign expenditures, and candidates for Cabinet offices that want to accept public financing would be limited to approximately \$13.5 million in campaign expenditures.

Distribution Amounts from Florida's Public Campaign Financing System

From 1994 through 2016, distribution of funds through Florida's public campaign financing system have been as follows:

1994	
• Governor (5 Candidates):	\$8.8 million
• Cabinet (6 Offices, 13 Candidates):	\$4.1 million
1998	
• Governor (1 Candidate):	\$1.1 million
• Cabinet (6 Offices, 13 Candidates):	\$3.5 million
2000	
• Cabinet (2 Offices, 4 Candidates):	\$1.6 million
2002	
• Governor (3 Candidates):	\$3.0 million
• Cabinet (2 Offices, 7 Candidates):	\$2.2 million
2006	
• Governor (4 Candidates):	\$7.4 million
• Cabinet (3 Offices, 6 Candidates):	\$3.7 million
2010	
• Governor (1 Candidate):	\$1.8 million
• Cabinet (3 Offices, 9 Candidates):	\$4.3 million
2014	
• Governor (2 Candidates):	\$2.8 million
• Cabinet (3 Offices, 5 Candidates):	\$1.6 million
TOTAL 1994-2014:	\$46 million
Distributions to Governor Candidates	
• Low (1998):	\$1.1 million
• High (1994):	\$8.8 million
• Average:	\$4.2 million
Distributions to Cabinet Candidates	
• Low (2000):	\$1.6 million
• High (2010):	\$4.3 million
• Average:	\$3.0 million

B. EFFECT OF PROPOSED CHANGES:

This proposal repeals Section 7 of Article VI of the State Constitution, removing this existing language:

“SECTION 7. Campaign spending limits and funding of campaigns for elective state-wide office.—It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide 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 funds as the general law in effect on January 1, 1998.”

Although repeal of this language would remove the requirement that a public campaign financing system be established in Florida by law, if taken literally it does not specifically prohibit statutory continuation of the existing system or the creation of a new system in the future. If placed on the ballot and approved by Florida voters, a legal argument could potentially be made that the intent of the amendment was to eliminate Florida’s public campaign financing system by deleting the constitutional requirement. However, another legal argument could potentially be made that a public campaign financing system in Florida can exist if the Constitution is silent on the issue, as was the case from passage of the Florida Election Campaign Financing Act in 1986 to passage of the constitutional requirement for such a system in 1998.

If adopted by the 2018 Florida Constitution Revision Commission, the proposed amendment will be submitted to Florida’s electors for approval or rejection at the next general election (November 6, 2018). If approved, it would be in place for Florida’s 2020 election cycle.

C. FISCAL IMPACT:

If passage of the amendment ultimately resulted in the elimination of the existing Florida public campaign financing system, based on distributions from 1994 through 2014 the state General Revenue Fund could save somewhere between \$2.7 million and \$13.1 million every four years when the Governor and Cabinet are up for election, with a likely savings in the range of \$4-\$6 million.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.