

**Palm Beach County Municipal Clerks Association**



# **Election Manual**

# **2018**

Updated June 2018 by the 2017/2018 Election Committee

## PREFACE

Source materials used in the preparation of this Manual are the Laws of Florida, Chapter 83-498, aka “Uniform Municipal Elections” for Palm Beach County; Florida Statutes (F.S.); and Florida Administrative Code (FAC) as of 2016.

Users of this Manual should first be proficient and astute to their municipality’s Charter and Code governing elections and be mindful that their Charter and Code may take precedence over the contents of this Manual, and, when in doubt, consult with your attorney.

**All DS-DE (Department of State - Division of Elections) Forms mentioned in this manual can be downloaded from the State Division of Elections website at:**

**<http://election.dos.state.fl.us/forms/index.shtml>**

Inspired by the 2013-2014 Election Committee

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# Chapter 1: Introduction

**Conduct of Municipal Elections -** The Florida Election Code, chapters 97-106 F.S., governs the conduct of a municipality's election **in the absence of an applicable special act, charter, or ordinance provision.** No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

The governing body of a municipality may, by ordinance, change the dates for qualifying and for the election of members of the governing body of the municipality and provide for the orderly transition of office resulting from such date changes.

*Sections 100.3605(2), 166.021(4) F.S. and Chapter 83-498 Laws of Florida*

**Laws of Florida – Chapter 83-498 -** Laws of Florida, Chapter 83-498, governs uniform filing and election dates in Palm Beach County, see copy below. However, not all municipalities in Palm Beach County are governed by this Law, therefore, you should refer to your municipality's Code of Ordinances, most likely the Charter, to determine your qualifying period.

CHAPTER 83-498  
House Bill No. 742

An act relating to Palm Beach County; providing for legislative intent; providing uniform filing dates and uniform election dates for municipal elections; providing for terms of office; providing for correspondence of terms of municipal office to the common dates provided in this act; providing that the general law for absentee ballots shall apply to all absentee ballots in municipal elections; providing for exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. It is the intent of this act to provide for uniform filing and election dates for all municipal elections to elect municipal officers in Palm Beach County. It is not the intent of this act to determine the length of terms of municipal offices.

Section 2. Candidates for any municipal office in Palm Beach County shall file such papers and pay such fees as may be required by law with the applicable municipal clerk no earlier than noon on the last Tuesday in January nor later than noon on the second Tuesday in February of the calendar year in which the election is to be held. The names of all candidates and the offices for which they have filed shall be received by the supervisor of elections from the municipal clerks by 5 p.m. on the first Friday after the close of qualifying.

Section 3. Any election relating to a municipal office, ~~other than run-off elections held pursuant to section 4 of this act or special elections,~~ shall be held on the second Tuesday in March of the calendar year.

Section 4. Any municipality which by charter or local ordinance requires that a run-off election be held in the event no candidate

Qualifying Period begins

Election Date

receives a majority of the votes for an office shall hold such election on the 4th Tuesday in March of the calendar year.

Section 5. Municipal officers elected pursuant to this act shall take office no later than the last day in March of the year in which they are elected, with the specific day to be decided by local ordinance.

Section 6. Initially, any municipal officer whose term of office expires subsequent to July 1 in any calendar year shall stand for reelection in March of the following calendar year and shall continue in office until the election of his successor. Initially, any municipal officer whose term of office expires prior to and including July 1 in any calendar year shall stand for reelection in March of that calendar year. The provisions of this section shall apply only to the first election for each office to be held under the provisions of the act. Thereafter, the terms of all municipal offices shall correspond to the dates provided pursuant to this act.

Section 7. The general law in regard to absentee ballots shall apply to all absentee ballots for municipal elections, except that the words "municipal clerk" shall be substituted whenever the word "supervisor" appears in those sections concerning absentee ballots. However, the supervisor of elections may handle absentee ballots for any municipality which so requests.

Section 8. The provisions of this act shall supercede any municipal charter provisions; however, the governing body of any municipality may exempt itself from the provisions of subsections (1) through (7) of this section by adopting an ordinance declaring its exemption. Also the governing body of any municipality may, by ordinance and without referendum, amend its municipal charter to conform to the provisions of this act.

Section 9. This act shall take effect January 2, 1984.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 14, 1983.

Complete document can be accessed at <http://edocs.dlis.state.fl.us/fldocs/leg/actsflorida/1983/1983V2.pdf>.

**Municipal SOE (Clerk's) Role -** In addition to being the Supervisor of Elections for your Municipality, you are also the Qualifying (Filing) Officer for your municipal election.

Pursuant to F.S. 99.061(7)(c), the filing officer (FO) performs only a ministerial function in reviewing qualifying papers. In determining whether a candidate is qualified, the filing officer shall review the qualifying papers to determine whether all items required have been properly filed and whether each item is complete on its face, including whether items that must be verified have been properly verified (by oath or affirmation) pursuant to F.S. 92.525(1)(a).

The filing officer shall not determine whether the contents of the qualifying papers are accurate.

[F.S. 106.011(14)]

Further confirmation and documentation can be found in DE (Division of Elections) Advisory Opinion No. 09-05 relating to Qualifying – Role of Qualifying Officer: “Prior opinions by the Division of Elections, the Attorney General, and the Florida Supreme Court consistently state that a filing officer to whom candidates submit their qualifying papers performs a purely ministerial function and that the filing officer must accept completed qualifying papers submitted under oath or affirmation.”

This opinion goes on to say “A filing officer governed by Florida's Election Code may not reject qualifying documents when they appear complete on their face and are properly executed under oath or affirmation. An opposing candidate's recourse to question the correctness of an opposing candidate's qualifications is to challenge the qualifications in a competent court of law.”

If you have election questions,  
please contact a  
Palm Beach County municipal clerk with  
election experience and/or  
the Florida Division of Elections.  
**Please do not** contact the  
County Supervisor of Elections or her/his  
staff before reaching out to a local clerk  
**WITH ELECTION EXPERIENCE.**

# Chapter 2: Election Process Overview

In general, there are three types of elections:

- A. Primary Elections are defined as an election which nominates candidates to the ballot for the General Election.
- B. General Elections are defined as an election in which candidates are elected, as well as ballot measures, also known as referendums, or initiative petitions.
- C. Special Elections are held to fill vacancies created by death, resignation or removal from office, as well as ballot measures or initiative petitions.

Regardless of the type of election, the process is basically the same. However, there are different advertising requirements for special elections and referendums, for both of which you should work closely with your Attorney.

**Process in Brief** - A brief synopsis of the election process is as follows:

- Finalize County SOE Agreement and composition of your Canvassing Board early in the process
- Formulate your Election Dates/Calendar
- Coordinate your Polling Locations
- Prepare Legal Notices
- Coordinate your Poll Workers
- Prepare Candidate Packets
- Qualify Candidates
- Campaign Reporting
- Canvass L&A
- Poll Watcher Verification
- Election Day Activities
- Canvass vote by mail and provisional ballots
- Post-Election Audit
- Run-off
- Election Close-Out

Although the above appears to be simple, it can be very complex, and the earlier you begin

preparing for your election, the less stressed you will be.

**Success Factors** - In order to conduct a successful election, it is important to adhere to the following factors:

- Accuracy
- Timeliness
- Compliance with all laws
- Expertise, skill and knowledge of responsibilities
- IT Systems: Stable, accurate, consistent access
- Standardized, documented procedures
- Recruit & train, reliable poll workers
- Locate reliable, well-suited (ADA) polling locations early in the process
- Communications (internal & external)
- Remain neutral at all times
- What you do for one, do for all

It is vital you CYA (Cover Your Assets) in the event of a law suit, as such:

- Document Everything
- Keep a "Candidate Contact Information Sheet"
- Have Candidate acknowledge receipt of Candidate Package, with appropriate disclaimers, and implement a "Candidate Check List" (include all qualifying documents required, fees due, due dates of Treasurer's Report, etc.)
- Date and time stamp everything you receive from a Candidate

**Time Line** - There are primarily three phases to the election time line: Pre-election, Election Day; and Post-Election. There would be an additional time line should you have a Run-off election.

**Pre-Election** - It is strongly recommended that you begin preparing for your election at least 120 days, if not sooner, prior to the date of

the election. This time allows you to effectively and efficiently organize your election, and check, recheck and triple check applicable laws and dates that impact you, your candidates, and your municipal election.

Within the first 30-days of the Pre-election phase (120 days prior to the election), it is recommended that you:

- (a) Prepare your election calendar, which includes any and all dates relating to your election. (Refer to “Important Dates to Remember” in this publication.)
- (b) Take necessary steps to effectuate the passage of the required ordinance or resolution, the approval of the County SOE Agreement, and the designation of your Canvassing Board. It is also highly recommend that your municipality consider including appointment of alternate Canvassing Board members. Be mindful, the makeup of your Canvassing Board must be in accordance with your City Charter and the County SOE Agreement.
- (c) Prepare your legal notices, advertisements, and, if applicable, form DS-DE 104, Candidate Petition Form, for Alternative Method of Qualifying.

Within the next 30 days (or 90 days prior to the election), it is recommended that you:

- (a) Mail out polling location agreement forms. Flag your calendar for two weeks after mailing to follow up with polling site request.
- (b) Prepare Candidate Packets
- (c) Hire Poll Workers (make sure they are available to work both the election and run-off). Notify each of assigned

precinct and location, and training schedule. The training scheduled will be supplied to you by the County SOE.

- (d) During this time be mindful of the deadline for which a Candidate can file under the Petition Process, if applicable to your municipality, [F.S. 99.095] or governed by your Code of Ordinances.

Within the next 30 days (or 60 days prior to the election), it is recommended that you:

- (a) Email Notice of Election and Qualifying ad to English and Spanish Newspapers (Voting Rights Act of 1965). Palm Beach Post at [legals@pbpost.com](mailto:legals@pbpost.com) and el Latino (translates ad for you) at [uzal@msn.com](mailto:uzal@msn.com). Notice must be published twice within the 30 days prior to qualifying [F.S. 100.021]), however, check your Code of Ordinances to determine if your municipality governs otherwise.
- (b) Post election information, in English and Spanish, on your municipal website. (Post the ad regarding Notice of Election and Qualifying Information).
- (c) Send notice of annexation or de-annexation to County SOE. (County SOE will provide deadline date.)
- (d) During this period be mindful of the Resign-to-Run deadline [F.S. 99.012(3)(c)].
- (e) Qualifying begins during this period if your municipality is governed by the Laws of Florida, Chapter 83-498, if not, refer to your Code of Ordinances.
- (f) Send County SOE list of Poll Workers and assigned Precincts. Email poll worker training list to the County SOE

Poll Workers Department, currently  
Kathryn Curvino at  
kathryn@pbcelections.org.

Within the next 30 days (or 30 days prior to the election), it is recommended that you:

- (a) Submit Ballot Question (Referendum) to County SOE by or before the deadline. F.S. 100.342 mandates a 30-day notice prior to election, published 5<sup>th</sup> and 3<sup>rd</sup> weeks.
- (b) Be mindful of Voter Registration Books Closing during this period [F.S. 97.055].
- (c) Qualifying ends during this period if you are governed by the Laws of Florida, Chapter 83-498, if not, refer to your Code of Ordinances. Also, contribution deadline for unopposed candidates is during this time.
- (d) After qualifying ends, send notice to County SOE regarding qualified candidates; include Loyalty Oath (Form DS-DE<sup>1</sup> 25) and final ballot wording relating to referendums.
- (e) Proof Ballot immediately upon receipt and return to County SOE.
- (f) Advise County SOE number of ballots to print for your election.
- (g) Publish sample ballot and notice of election in English and Spanish newspapers once prior to the election [F.S. 101.20] or as governed by your Code of Ordinances, and post on

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<sup>1</sup> Note: All “DS-DE” (which stands for “Department of State - Division of Elections”) forms can be downloaded at <http://election.dos.state.fl.us/>.

website. (Depending upon your Code of Ordinances, be prepared for a run-off if there are 3 or more candidates in a seat.

- (h) Prepare and submit State Assessment Fee (Form 005) to Florida Elections Commission [F.S. 99.093].
- (i) Send current boundaries to Jodi Bradley in a shape file.
- (j) Arrange escort/transportation with Police/Sheriff regarding the return of ballots, cartridges, etc. to County SOE the night of election.
- (k) Verify that all ads are published correctly as proof of publication may not be received one or two week later.
- (l) Canvassing Board, or a designated representative, must attend L&A (Logic and Accuracy) Test – Per County SOE Agreement. Date to be determined by County SOE.
- (m) Follow up on outstanding polling location agreements.
- (n) Should the County SOE hold a Candidate Workshop, advise your candidates.
- (o) During this period Voter Registration Books Close for Run-Off election [F.S. 97.055].
- (p) Deadline for Candidates to submit list of Poll Watcher names occurs during this period [F.S. 101.131(2)]. Immediately submit poll watcher names and addresses to County SOE for verification. The deadline to approve Poll Watchers and advise candidate is during this period [F.S. 101.131(2)].

Prepare and provide Poll Worker name badges.

- (q) Publish and post on website temporary polling location changes in English and Spanish newspapers. [F.S. 101.71(2)] Publish at least once no more than 30 days, no fewer than 7 days, prior to Election.
- (r) Deadline to mail temporary polling location change notice, in English and Spanish, to voters. [F.S. 101.71] Notice shall be mailed at least 14 days prior to election.

No later than the week prior to the election, it is recommended that you:

- Be mindful of the contribution deadline for opposed candidates [F.S. 106.08(3)(b)].
- Verify delivery of voting equipment to each precinct.
- Prepare supplies for Precinct Clerks, such as: scratch pads, paper clips, scissors, etc.
- Pick up Precinct Clerk bags from County SOE, date to be determined by County SOE.
- Arrange for Precinct Clerks to pick up county bags and supplies from your office.
- Canvassing Board must attend Canvassing Board meeting called by the County SOE to canvass vote by mail ballots.
- Precinct Clerks are required to update their assigned epoll books the day before the election. You will be required to remain at your office until all your Precinct Clerks have completed the updates.
- Email final Poll Worker list to County SOE.

**Election Day** - On Election Day you may find yourself wondering what to do with yourself or be so overwhelmed with complaints and running between polling locations that you are ready to pull out your hair. The best advice for the later, just breathe and look towards the end of the tunnel, as after today, things will become somewhat normal again.

After the close of the polls, your Canvassing Board must be present at County SOE tabulation center after polls close to canvass any questionable provisional and/or vote by mail ballots and tabulation of the ballots. (For more information, refer to Chapter 14 “Canvassing Board Responsibilities”.)

It is recommended that you contact winners to advise date and time for administering Oath of Office.

- Prepare Oaths of Office and Certificates for newly elected officials.
- Process payment for poll workers and polling locations.
- Canvassing Board must attend Post Election Audit meeting called by the County SOE to audit the results of your election.

**Run-Off Election** - If you have a run-off election be prepared to address the following:

- Notify Poll Workers.
- Notify Polling Locations.
- Advertise Sample Ballot.
- Canvassing Board to attend L&A testing scheduled by County SOE.
- Pick up of election supplies.
- Canvassing Board must attend Canvassing Board meeting called by the County SOE to canvass vote by mail ballots.
- Canvassing Board must be present at County SOE office after polls close to

canvass any questionable provisional and/or vote by mail ballots.

- Canvassing Board must attend Post Election Audit meeting called by the County SOE to audit the results of your election.

**Post-Election** - The Post-election phase is considered the close-out or wrap-up period. During this phase you could be dealing with outgoing and incoming Commissioners, and be aware that may not always be pleasant.

- Prepare Oaths of Office and Certificates for newly elected officials.
- Process payment for poll workers and polling locations.
- Canvassing Board must attend Post Election Audit meeting called by the County SOE to audit the results of your election.
- Administer Oath of Office and provide Certificate of Election.
- Schedule Orientation of newly elected officials.
- Forward original Form 1 of newly elected officials to County SOE or have elected official fill out a new Form 1 and submit to County SOE.
- Inform defeated incumbent candidates and/or retiring elected officials to file Form 1F within 60 days of leaving their elected office.
- Send termination report reminders to unopposed, opposed, and run-off candidates.
- Monitor submittal of treasurer reports, as F.S. [106.07(8)(a)] mandates late submittals shall be fined.

For additional information, please refer to 1S-5.026 F.A.C. (Florida Administrative Code)

# Chapter 3: Election Calendar – Important Dates

This section addresses important dates defined by State Statutes. You are reminded to refer to your Code of Ordinances, as it may govern certain dates differently.

These dates are an essential element to your election process and need to be predetermined at least four months prior to the date of your election. The construction of an election calendar (in word or excel format) is highly recommended as it will be a resource you can refer to throughout the election process.

**Calculating Dates** - Calculating your dates can be confusing and errors can easily be made. However, there is an on-line service that enables you to add or subtract days, months and years to a date to calculate a past or future date, simply go to <http://www.timeanddate.com/date/dateadd.html>.

This service is easy to use and it's free. You are cautioned to carefully input your dates, as incorrect input results in incorrect dates.

If you do not have on-line access, your best option is to print out the appropriate calendar(s) and manually add/subtract your days to obtain your dates.

When calculating your dates, be aware that your designated date may need to be modified, should it fall on a holiday or weekend, depending upon the law that governs such date or deadline.

**\*\* Important \*\***

In the remainder of this chapter when you see a checkbox  place that date or those dates in your election calendar.

**Getting Started** - The most important dates to know upfront are the date of your election and dates of your qualifying period (when it begins and ends) , as they will be the

determining factor of various dates and deadlines that will be calculated and placed in your calendar. These dates or references to the laws that governs these dates should be found in your Code of Ordinances or will be governed by State Election Laws.

**Notice of Election, When to Publish** - F.S. 100.021 governs that “The Department of State [in our case, the *municipal* SOE, unless your Code of Ordinances governs otherwise] shall, in any year in which a general election is held, make out a notice stating what offices and vacancies are to be filled at the general election in the state, and in each county and district thereof. During the 30 days prior to the beginning of qualifying, the Department of State shall have the notice published two times in a newspaper of general circulation in each county; ...”, which also applies to municipal elections that do not have a Charter/Code that governs otherwise.

As such, your notice of election must be published two times within 30 days prior to the beginning of qualifying.

**Resign-To-Run Deadline** - F.S. 99.012(3)(c) governs the written resignation must be submitted at least 10 days prior to the first day of qualifying  for the office he or she intends to seek. This law essentially prohibits an elected or appointed “officer” from qualifying as a candidate for another state, district, county or municipal public office if the terms or any part of the terms overlap with each other if the person did not resign from the office the person presently holds. F.S. 99.012(1)(a) governs that an “Officer” means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, the term “officer” means a person, whether elected or appointed, who has the authority to exercise municipal

powers as provided by the State Constitution, state laws, or municipal charter.

There are exemptions to the “resign-to-run” law, as it does not apply to 1) political party offices, or 2) persons serving without salary on an appointed board or authority. [F.S. 99.012(6)]. Also, portions of the “resign-to-run” law do not apply to federal officers, persons seeking the office of President or Vice President, or candidates for federal office.

If an officer must resign under this Law the resignation must be submitted in writing at least 10 days prior to the first day of qualifying for the office the person intends to seek. [F.S. 99.012(3)(c)] The resignation must take effect no later than the earlier of the following dates:

- a. The date the officer would take office, if elected; or
- b. The date the officer’s successor is required to take office.

[F.S. 99.012(3)(d)]

If the officer missed the deadline for submitting the resignation 10 days prior to the beginning of the qualifying period and still wishes to run for office, the officer may submit his or her resignation to take effect immediately or to take effect on a date prior to qualifying for office. In this situation, the officer qualifies as a non-officeholder and the “resign-to-run” law does not apply. [F.S. 99.012(3)(g)]

The resignation must be submitted to:

For *elected* district, county, or municipal officers, the resignation must be submitted to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

For *appointed* district, county, or municipal officers, the resignation must be submitted to

the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

*All other officers* must submit their resignations to the Governor with a copy to the Department of State.

[F.S. 99.012(3)(e)]

Once the resignation is submitted it is irrevocable. [F.S. 99.012(3)(b)]

If you have questions about the resign-to-run law contact:

The Assistant Director, Division of Elections:  
Florida Department of State  
R.A. Gray Building, Room 316  
500 S. Bronough Street  
Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6200; or  
Email: [DivElections@dos.myflorida.com](mailto:DivElections@dos.myflorida.com)

**Qualifying Period** - The qualifying period is determined by your municipality’s Code of Ordinances, most likely in the Charter section.

Immediately following the close of qualifying, but not later than noon the following Friday , you must submit your list of qualified candidates and their respective seats to the County Supervisor of Elections. You are encouraged to submit your list expeditiously in order to facilitate proofing, publishing, and printing of your ballots.

**Ballot Question Deadline** - Advance planning is crucial when preparing for a ballot question, also known as a referendum, and should be carefully coordinated with your elected officials and city attorney.

F.S. 100.342 mandates a 30-day  notice prior to the election and it must be published in the 5<sup>th</sup> and 3<sup>rd</sup> weeks . Additionally, you must notify the County SOE of the ballot question, and

provide the ballot language, no later than the date to which is provided by the County SOE .

**Sample Ballot Publication** - F.S. 101.20 (2) governs that upon completion of the list of qualified candidates, a sample ballot shall be published by the *[municipal]* supervisor of elections in a newspaper of general circulation in the county, prior to the day of election . This is also applicable to a run-off election.

**Voter Registration Closing-** In order for a resident to qualify to vote in your election, they must register no later than 29 days  prior to the election, as governed by F.S. 97.055.

**Campaign Treasurer’s Reporting Deadlines** - Campaign treasurers must file their reports with the officer to whom the candidate filed *(municipal SOE)*. [106.07(2)(a)1]

Upon the candidate filing for office, reports are due on the 10th day following the end of each calendar month , except for the reports due on the 25<sup>th</sup> , 11<sup>th</sup> , and 4<sup>th</sup>  days immediately preceding the general election.<sup>2</sup> [106.07(1); 106.07(1)(b); 106.07(2)(a)(1)]

Monthly reports must contain information on all previously unreported contributions received and expenditures made for the preceding month.

The reports due on the 25<sup>th</sup> and 11<sup>th</sup> days before the general election must contain information on all previously unreported contributions received

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<sup>2</sup> Gary J. Holland, Assistant Director, Division of Elections, Florida Department of State, issued the following statement: “Consistent with Division of Elections Formal Opinion 98-03, for municipal elections in which no municipal primary is held, the only applicable reporting dates other than monthly reports are those reports due on the 25th, 11th, and 4th days preceding the municipal general election.”

and expenditures made as of the preceding Friday .

The report due on the 4<sup>th</sup> day before the election must contain information on all previously unreported contributions received and expenditures made as of the day preceding that designated due date  [F.S. 106.07(2)(a)(1)].

All reports are due no later than 5:00 p.m.  of the due date.

F.S. 106.141(1) governs that “Each candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office shall, within 90  days, dispose of the funds on deposit in his or her campaign account and file a report reflecting the disposition of all remaining funds. Such candidate shall not accept any contributions, nor shall any person accept contributions on behalf of such candidate, after the candidate withdraws his or her candidacy, becomes unopposed, or is eliminated or elected.” This also applies to a run-off candidate.

Thus, the Campaign Treasurer must submit a termination report to the filing officer, however, the *municipal SOE* (filing officer) shall notify each candidate at least 14  days before the date the termination report is due. [F.S. 106.141(7)(b)]

Be mindful, an unopposed candidate (which is a candidate without opposition after the last day of qualifying) need only file a report within 90 days after the date such candidate became unopposed. Such report shall contain all previously unreported contributions and expenditures and shall reflect disposition of funds as required by §106.141, F.S. [F.S. 106.07(1)(c)]

**Contribution Deadline** - Contribution deadline for unopposed candidates is governed by F.S. 106.08.(3)(b), “Any contribution

received by a candidate or by the campaign treasurer or a deputy campaign treasurer of a candidate after the date  at which the candidate withdraws his or her candidacy, or after the date the candidate is defeated, becomes unopposed, or is elected to office must be returned to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.”

Opposed and run-off candidates contribution deadline is further defined in F.S. 106.08(3), whereby “Any contribution received by a candidate with opposition in an election or by the campaign treasurer or a deputy campaign treasurer of such a candidate on the day of that election or less than 5  days prior to the day of that election must be returned.”

**Expenditure Deadline** [F.S. 106.07(2)(a)1.] – governs that “Reports other than daily reports must contain information on all previously unreported contributions received and expenditures made as of the preceding Friday , except that the report filed on the Friday immediately preceding the election must contain information on all previously unreported contributions received and expenditures made as of the day preceding that designated due date ;” As such, there will be different expenditure deadlines for unopposed, opposed, and run-off candidates, based upon when their last treasurer’s report is due.

**State Assessment Fee Deadline** - F.S. 99.093(1) governs ”Each person seeking to qualify for nomination or election to a municipal office shall pay, at the time of qualifying for office, an election assessment. The election assessment shall be an amount equal to 1 percent of the annual salary of the office sought. Within 30  days after the close of qualifying, the qualifying officer shall forward all assessments collected pursuant to this section to the Florida Elections Commission

for deposit in the Elections Commission Trust Fund.”

Submittal of the assessments must be accompanied with the required State “Municipal Election Assessment Form” which can be downloaded at [www.fec.state.fl.us/FECWebFi.nsf/pages/Forms](http://www.fec.state.fl.us/FECWebFi.nsf/pages/Forms) and mail to:

Florida Elections Commission  
107 West Gaines Street  
The Collins Building, Suite 224  
Tallahassee, FL 32399-1050

Note: If your elected officials do not receive a salary, you do not collect the assessment fee.

**Poll Watchers Deadline-** F.S. 101.131(2) provides that a candidate requesting to have poll watchers shall designate, in writing to the supervisors of elections, on a form prescribed by the division (Form DS-DE 125), before noon of the second Tuesday preceding the election . Immediately following the noon deadline you are to forward your list to the County Supervisor of Elections for verification that they are a qualified and registered elector of the county in which he or she serves.

Furthermore, F.S. 101.131(2) provides that poll watchers shall be approved by the [*municipal*] supervisor of elections on or before the Tuesday before the election . This Statute further states that the [*municipal*] supervisor of elections shall furnish to each election board (election workers) a list of the poll watchers designated and approved for such polling rooms. (5) of this Statute states the [*municipal*] supervisor of elections shall provide to each designated poll watcher, no later than 7 days before early voting begins  (or the date of the election), a poll watcher identification badge that identifies the poll watcher by name. Each poll watcher must wear his or her identification badge while in the polling room.

**Miscellaneous Important Dates / Deadlines** - The County SOE will provide dates/deadlines for various events, to include, but not limited to:

- Notification of annexations subsequent to your last election
- L&A Testing for the General and Run-off Elections
- Delivery/Pickup of election equipment to/from polling locations
- Pick up Precinct Clerk bags
- Post Election Audit for the General and Run-off Elections

These dates are important as they may require action/attendance by you or your Canvassing Board.

# Chapter 4: Legal Notices

This section addresses legal notices and requirements as governed by State Statutes. As previously mentioned in this manual, refer to your Code of Ordinances to ensure it does not govern otherwise.

**Language Requirements** - The Voting Rights Act (VRA) of 1965, and expanded in 1975, requires states and counties with substantial populations of those protected language minorities (American Indians, Asian Americans, Alaskan Natives, and citizens of Spanish Heritage) to provide ballot and election materials in languages other than English. Although the bilingual ballot provisions, like other parts of the VRA, were originally intended to be temporary remedies, they were renewed in 1982, 1992, and again in 2006 for another 25 years.

Eleven counties in Florida, including Palm Beach, are required to provide Spanish-language ballots, including Spanish-language advertisements, because of their Hispanic populations. The counties must also have at least one Spanish-speaking poll worker to provide assistance to voters and conduct bilingual voter education.

**Notice of Qualifying and Election** - F.S. 100.021 governs that the Department of State (including a municipality, unless your Charter/Code prevails) shall, in any year in which a general election is held, make out a notice stating what offices and vacancies are to be filled at the general election in the state, and in each county and district thereof. During the 30 days prior to the beginning of qualifying, the Department of State shall have the notice published two times in a newspaper of general circulation in each county; and, in counties in which there is no newspaper of general circulation, it shall send to the sheriff a notice of the offices and vacancies to be filled at such general election by the qualified voters of the sheriff's county or any district thereof, and the

sheriff shall have at least five copies of the notice posted in conspicuous places in the county.

**Sample Ballot** - F.S. 101.20(2) provides that upon completion of the list of qualified candidates, a sample ballot shall be published by the [municipal] supervisor of elections in a newspaper of general circulation in the county, prior to the day of election. If the county has an addressograph or equivalent system for mailing to registered electors, a sample ballot may be mailed to each registered elector or to each household in which there is a registered elector, in lieu of publication, at least 7 days prior to any election.

**Special Elections or Referendums** – You should review your municipality's Charter and Code for any provisions relating to a special election or referendum, otherwise refer to F.S. 100.101, 100.111, 100.91 and other applicable sections of F.S. Chapter 100.

F.S. 100.342 governs that in any special election or referendum not otherwise provided for there shall be at least 30 days' notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality, as the case may be. The publication **shall be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held.** If there is no newspaper of general circulation in the county, district, or municipality, the notice shall be posted in no less than five places within the territorial limits of the county, district, or municipality.

Special Elections are addressed in the County SOE's agreement with the municipalities. However, in most cases, the entire cost for a special election is the responsibility of the municipality calling the special election.

# Chapter 5: Candidate Packets

A candidate packet is a compilation of documents that the candidate will need to further their candidacy and understand applicable laws.

Below is a suggested list of items to include in the candidate packet.

The following are required documents:

DS-DE 9; Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates

DS-DE 84; Statement of Candidate (file within 10 days of filing DS-DE 9)

DS-DE 302NP; Candidate Oath - Nonpartisan Office

Campaign Treasurer's Reporting Schedule

Campaign Treasurer's Reporting Forms:

DS-DE 12; Report Summary  
DS-DE 13; Itemized Contributions  
DS-DE 14; Itemized Expenditures  
DS-DE 87; Waiver of Report  
DS-DE 2; Contributions Returned  
DS-DE 86; Request for Return of Contributions

DS-DE 125; Designation of Poll Watchers

Form 1; Statement of Financial Interests (this form can be downloaded from the Florida Commission on Ethics website at <http://www.ethics.state.fl.us/FinancialDisclosure/DownloadAForm.aspx>)

Affidavit of Undue Burden (if applicable)

Notice of Canvassing Board Meetings<sup>3</sup>

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<sup>3</sup> F.S. 101.5612 - The County SOE will publish/post required notices of Canvassing Board meetings and will

The following documents are highly recommended to be part of your Candidate Packet:

Candidate and Campaign Treasurer Handbook

List of Precincts and Polling Locations

Polling Location Rules

Florida and Municipal Laws governing Campaign Signs

Compilation of Election Laws

Florida Commission on Ethics Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees

Gifts Law

Palm Beach County Code of Ethics and Ethics Pledge

Municipal Charter and Code governing Elections

Municipal Charter and Code governing responsibilities of elected officials

How to file a complaint of alleged violation of Election Laws

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provide the *municipal* SOE with a copy of the notices to post within your municipality and provide to candidates.

It is strongly suggested to obtain a signed receipt as proof that the notice was provided to the candidate, and political parties, if applicable.

If a notice was not available at the time the candidate qualified, the notice shall be sent by certified mail. The filing officer must have proof that the candidate has been provided a copy of the notice and that the candidate received the notice.

Should your municipality utilize the petition process, you will also need to include form DS-DE 104, Candidate Petition.

It is also helpful to a candidate to have a one-page document that includes: the positions/seats up for election and who is currently holding those positions/seats; qualifying period; voter registration book closing dates; and election dates.

Additionally, a summary of the qualifying process would be very beneficial to the candidate as it would outline step-by-step instructions of what to file and when, amount of the filing/assessment fees, and other qualifying requirements.

Also, banks are starting to require candidates to obtain an Employer Identification Number (EIN) prior to opening their campaign account. As such, providing the candidate information on how to obtain an EIN would be beneficial.

To obtain an EIN, candidates can apply online at:

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/How-to-Apply-for-an-EIN>

The Internet EIN application is the preferred method for customers to apply for and obtain an EIN. Once the application is completed, the information is validated during the online session, and an EIN is issued immediately. During the process of obtaining an EIN, Candidates will most likely identify themselves as a “Political Organization”, as they will primarily operate for the purpose of accepting contributions and influencing the election of themselves.

# Chapter 6: Polling Locations

A polling location is a designated facility that houses one or more precincts. Most municipalities utilize the same polling locations/precincts designated by the County SOE, as their polling locations have been determined to be ADA (Americans with Disabilities Accessibility Implementation Act) compliant.

It is very important to obtain signed Polling Location Agreement(s) early on in your election planning process. When securing a facility for your election:

- a. Be sure to include the run-off election date;
- b. Determine availability to access the polling location before and after the election(s) for delivery and pick up of election equipment;
- c. Confirm facility can be accessed no later than 6 a.m. on the day of the election(s);
- d. Be sure to obtain the emergency contact person's name and phone numbers for the polling location(s); and
- e. Ensure all polling places comply with the Federal Americans With Disabilities Accessibility Implementation Act (ADA), ss. 553.501-553.513. [F.S. 101.715]

F.S. 102.031(3)(a) governs no person may enter any polling room or polling place where the polling place is also a polling room or any early voting area during voting hours. The restriction in this subsection does not apply where the polling room is in an area commonly traversed by the public in order to gain access to businesses or home or in an area traditionally utilized as a public area for discussion.

No person or group may solicit voters inside the polling place. Subject to the exception below, no person or group may solicit voters within 100

feet (also known as the “no-solicitation” zone) of the entrance to the polling place or early voting site.

The only exception to the no-solicitation law is for exit polling which media or others may conduct. They may approach voters only after voters leave the polling place.

The supervisor of elections or the *municipal* SOE may take any reasonable action to ensure order is maintained at the polling place. That means, if necessary, having law enforcement officers remove disruptive persons from either the polling room or from the no-solicitation zone.

[F.S. 101.051(2), 102.031]

It is recommended that the *municipal* SOE visit all polling locations prior to the election to make sure equipment has been delivered.

While the polls are open, the only persons allowed in the polling room on Election Day or during the early voting period are:

- Poll workers
- The supervisor of elections or deputy supervisor of elections
- Voters
- A person (such as an elderly person or a child) in the care of a voter
- A person caring for a voter or assisting a voter (for example, someone assisting a voter who cannot read or does not speak English or assisting an elderly person or a person with disabilities)
- A person who is helping with or participating in a simulated election for minors which has been approved by the supervisor of elections (for example, the Kids Voting program)
- Poll watchers approved by the supervisor of elections

- Election observers appointed by the Department of State
- The public is allowed to enter the polling room and watch the procedures before the polls open and after the polls close and all voters have cast their ballots.

comply with the requirements of s. 101.715, refer to 101.71(2) F.S. for additional instructions.

[F.S. 101.051, 102.031(3)]

While the polls are open, the following persons or activities **are not allowed** in the polling room on Election Day or during the early voting period:

- Candidates are not allowed in the polling room except to vote.
- Members of the media are not allowed in the polling room except to vote.
- Law enforcement officers or emergency service personnel in a capacity other than as voter unless permitted by the precinct clerk or a majority of the Election Board.
- No photography by any means is allowed in the polling room or early voting area.

If the polling room is in a location commonly used by the public to gain access to businesses or homes (such as the lobby of a condominium) or in an area traditionally used as public area for discussion (such as a mall), there may be other people traveling through the polling area. However, care should be taken that these people do not interfere with the voting process.

[F.S. 102.031]

Should it be determined that the accommodations for holding any election at a polling place designated for any precinct in the county are unavailable, are inadequate for the expeditious and efficient housing and handling of voting and voting paraphernalia, or do not

# Chapter 7: Poll Workers

Poll workers are registered voters who have received specialized training, provided by the County SOE, and are qualified to work elections.

It is the responsibility of the municipality to contact, contract, coordinate training classes, and pay poll workers for municipal elections. If your municipality requires your poll workers to complete and submit an IRS W9 Form in order to receive payment for services, the form can be downloaded at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. A pay schedule is provided by the County SOE each year, and although the municipality is not required to pay the same rates, it is strongly recommended. It is also recommended that you secure standby poll workers for all positions, in the event of accidents, injury or illnesses.

Additionally, F.S. 119.071(5)(a)2.a. governs “An agency may not collect an individual’s social security number unless the agency has stated in writing the purpose for its collection and unless it is:

- (I) Specifically authorized by law to do so; or
- (II) Imperative for the performance of that agency’s duties and responsibilities as prescribed by law.”

The above section is subject to the Open Government Sunset Review Act in accordance with [§119.15, F.S.](#), and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

If you are not familiar with your Precinct Clerk, it is recommended that you meet with him/her prior to the election to review election night procedures, make arrangements to pick up Precinct Clerk bag (prepared by the County SOE), address any questions/concerns they or you may have, determine which Poll Worker

will be responsible to deliver election cartridges to regional drop-off site established by the County SOE.

The Department of State, Division of Elections, has developed a guide for election officials and poll workers in the proper implementation of election procedures and laws. Form DS-DE 11 (effective 1/2012), entitled “Polling Place Procedures Manual” is available at: <https://www.flrules.org/gateway/reference.asp?NO=Ref-00946> and is a good resource to review and to be familiar with.

The Polling Place Procedures Manual defines Election Team; sample polling room set-up; rules for the polling room; voter eligibility; voting process; ballot accounting; interacting with voters; Voter’s Bill of Rights and Responsibilities; and other matters.

# Chapter 8: Palm Beach County Supervisor of Elections (County SOE) Agreement

In 2009, the Palm Beach County League of Cities, Inc. formed an Ad Hoc Committee on Municipal Elections to work with the Palm Beach County Supervisor of Elections (County SOE) to set forth terms and conditions under which services are provided by the County SOE to the municipalities for municipal elections and to set forth the responsibilities of the County SOE and the municipalities.

The Agreement begins on January 1 of each year and only covers your general and run-off elections. Special Elections will require a separate agreement. Any proposed changes to this Agreement are supposed to be provided to the municipalities no later than August 1 of the applicable year, but it usually comes around December.

**The Ordinance/Resolution that accompanies the agreement** - The Agreement with the County SOE governs the municipality shall issue an ordinance or a resolution requesting the County SOE to conduct the municipality's election and it should define the members of the municipality's Canvassing Board, which may or may not include the County SOE. It is important that you review your Code of Ordinances to determine the makeup of your Canvassing Board.

If your Code specifically defines the members of your Canvassing Board and the County SOE is not one of them, you cannot appoint the County SOE as an additional member of your Canvassing Board by Resolution. However, if your Code is silent to this matter (thereby the Canvassing Board members can be appointed by Resolution) or specifically designates the County SOE as one of the members of your Canvassing Board, the County SOE can and will serve on your Canvassing Board.

The Canvassing Board's responsibilities are outlined in Chapter 14.

**What are the *Municipal SOE's* (your) overall responsibilities:**

- Review all provisions of your Municipal Code and Charter
- Work in concert with the County SOE in accordance with the Agreement for Voting Services
- Respond to Media
- Respond to Candidates
- Respond to incumbents and other elected officials
- Coordinate adoption of Ordinance or Resolution approving the Agreement For Vote Processing Equipment Use and Election Services with the County SOE and appointment of Canvassing Board members prior to January 1<sup>st</sup> of each election year.

The Agreement further details responsibilities of both parties. You are encouraged to read and understand the agreement to ensure you know what are your responsibilities.

# Chapter 9: Candidate Filing and Qualifying

First, you need to have a clear understanding of the difference between “intent to run”, “filed for office”, and “qualified for office”.

A registered voter can, at any point, discuss/announce they are considering running for office, this is known as their “intent to run”.

Once the registered voter files form DS-DE 9 “Appointment of Campaign Treasurer and Designation of Depository” they have officially “filed for office”, they are now a candidate, and can begin their campaign efforts.

A candidate can only become “qualified for office” during the qualifying period, providing they have submitted all the required documents and paid their filing fees or file an Affidavit of Undue Burden.

F.S. 99.061(8) states a qualifying officer *may* accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.

**Checklist** - Having a checklist of required items needed during qualifying and throughout the election process will ensure that the filing officer does not omit required items from a candidate or appointed treasurer, and will assist you in keeping track of what the candidate/treasurer has submitted and when.

The checklist should be based upon Florida Statutes and your municipality’s Code requirements. It can be simple, or detailed, depending upon your needs.

**Required Forms and Fees** - During qualifying period a candidate must submit the following forms:

- **Form DS-DE 9**; Appointment of Campaign Treasurer and Designation of Campaign Depository

- **Form DS-DE 84**; Statement of Candidate (must be filed within 10 days of submittal of Form DS-DE 9)
- **Form DS-DE 302NP**; Oath of Candidate
- **Form 1**; Statement of Financial Interests – Send County SOE copies of all Candidates’ Form 1.
- Filing / State Assessment Fees or Affidavit of Undue Burden
- Other items that may be required by your municipal Code of Ordinances

The above described forms are explained in further detail as follows:

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Form **DS-DE 9** is the first form a candidate must file. This form:

1. Shall be filed with the filing officer prior to opening the campaign account;

Note: The campaign depository should not be opened until after the DS-DE 9 is on file with the filing officer.

2. Is not effective until the campaign treasurer signs it and it is filed with the filing officer;

3. Is considered “filed” only when the filing officer receives the form, not upon mailing;

4. Shall be on file with the filing officer **prior** to the candidate accepting any contributions, making any expenditures, or authorizing another to accept contributions or make expenditures on the person’s behalf;

5. Shall be on file with the filing officer **prior** to obtaining signatures on a DS-DE 104, Candidate Petition; and

6. Candidate declares office sought by completing section 6 of this form.

[F.S. 106.021(1)]

A candidate is allowed to change the designation of the office for which he/she is a candidate, however, they must notify all contributors in writing of the intent to seek a different office and offer to return pro rata, upon their request; notification shall be given within 15 days after the filing of the change of designation and shall include a standard form developed by the Division of Elections for requesting the return of contributions.

If, within 30 days after being notified by the candidate of the intent to seek a different office, the contributor notifies the candidate in writing that the contributor wishes his or her contribution to be returned, the candidate shall return the contribution, on a pro rata basis, calculated as of the date the change of designation is filed.

Up to a maximum of the contribution limits specified in s. 106.08, a candidate who runs for an office other than the office originally designated may use any contribution that a donor does not request be returned within the 30-day period for the newly designated office, provided the candidate disposes of any amount exceeding the contribution limit pursuant to the options in s. 106.11(5)(b) and (c) or s. 106.141(4)(a)1., s. 106.141(4)(a)2., or s. 106.141(4)(a)4.; notwithstanding, the full amount of the contribution for the original office shall count toward the contribution limits specified in s. 106.08 for the newly designated office.

If the primary campaign treasurer resigns or is removed, a copy of the written resignation or removal letter must accompany the reappointment of Campaign Treasurer (Form DS-DE 9) and be filed with the filing officer for the reappointment to be effective.

[F.S. 106.021]

In an effort to minimize confusion by the candidate and the candidate's depository, it is suggested, but not required, to issue a letter, on City letterhead, to the candidates' depository advising the bank that the candidate has selected their bank as their depository and who are authorized to sign checks, being the appointed Treasurer and/or Deputy Treasurer.

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Within 10 days of the candidate filing the DS-DE 9 form they are required to file **DS-DE 84 (Statement of Candidate)**, which states the candidate has been provided access to read and understand the requirements of Chapter 106, F.S. The execution and filing of the statement of candidate does not in and of itself create a presumption that any violation of Chapter 106, F.S., or Chapter 104, F.S., is a willful violation as defined in Section 106.37, F.S.

In an effort to assist the candidate with compliance of this provision, and to avoid future complications, it is recommended at the time the candidate files their DS-DE 9 form you should provide them with a copy of Chapter 106, F.S. and request their execution and submittal of their DS-DE 84 form.

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**DS-DE 302NP, Candidate Oath<sup>4</sup> - Nonpartisan Office** [F.S. 99.021 (1)(a)1.] Each candidate, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105 or a federal office, shall take and subscribe to an oath or affirmation in writing. A copy of the oath or affirmation shall be made available to the

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<sup>4</sup> F.S. 92.50(1): **Oaths, affidavits, and acknowledgements required under law...may be taken or administered by** or before a judge, clerk, or deputy clerk of any court of record within the state, or before a US commissioner, or any **notary public within the state.**

candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the form provided by State Statutes and must be notarized.

F.S. 99.061 (7)(a)(2): The candidate's oath must contain the name of the candidate as it is to appear on the ballot; ...; and the signature of the candidate, which must be verified under oath or affirmation pursuant to § 92.525(1)(a) F.S.

*Note:* DS-DE 302NP is the form where the Candidate shall print their name as they wish it to appear on the Ballot. It is suggested that you include communications from Division of Elections relating to Use of Nickname on Ballot and other matters, Formal Opinions DE 86-06 - May 1, 1986 and DE 09-05 – July 15, 2009.

This form also requires the candidate to print their name phonetically for pronunciation on the audio ballot for persons with disabilities. You are highly encouraged not to assist the candidate with their phonetic spelling, as you do not want to assume responsibility for the mispronunciation of the candidate's name.

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**Form 1, Statement of Financial Interests** [F.S. 112.3145(2)(a) and F.A.C. Rule 34-8.202(6)] A candidate for an elective state or local office specified in Section 112.3145, F.S., must file with the officer before whom he or she qualifies a statement of financial interests on the form prescribed by the Commission, CE Form 1 – Statement of Financial Interests, adopted by reference in subsection 34-8.202(1), F.A.C., together with and at the same time he or she files qualifying papers as a candidate.

Form 1, “Statement of Financial Interests” form can be downloaded at <http://www.ethics.state.fl.us/FinancialDisclosure/DownloadAForm.aspx>.

The Commission on Ethics Opinion (CEO) No. 82-72 governs the financial disclosure period for municipal candidates and public officers was the taxable year ending on December 31, as set forth in the U.S. Internal Revenue Code. An incumbent should file, at the time of qualifying, a disclosure form reflecting financial interests for the year proceeding the election year, as would a non-incumbent candidate.

F.S. 99.061(5) governs that at the time of qualifying for office, each candidate shall file a disclosure of financial interests, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

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**Election Assessment** F.S. 99.093(1) governs that each person seeking to qualify for nomination or election to a municipal office shall pay, at the time of qualifying for office, an election assessment. The election assessment shall be an amount equal to 1 percent of the annual salary of the office sought. Within 30 days after the close of qualifying, the qualifying officer shall forward all assessments collected pursuant to this section to the Florida Elections Commission for deposit in the Elections Commission Trust Fund.

The State's “Assessment Fee Form” can be downloaded at:

<http://www.fec.state.fl.us/FECWebFi.nsf/pages/Forms>

and mailed to:

Florida Elections Commission  
107 West Gaines Street  
The Collins Building, Suite 224  
Tallahassee, FL 32399-1050

F.S. 99.093(2) governs any person seeking to qualify for nomination or election to a municipal office who is unable to pay the

election assessment without imposing an undue burden on personal resources or on resources otherwise available to him or her shall, upon written certification of such inability given under oath to the qualifying officer, be exempt from paying the election assessment.

If your elected officials do not receive a salary, they do not pay the State assessment fee.

**Filing/Qualifying Fee** [governed by Municipality's Code] Candidate(s) may be required to pay, in addition to the State assessment fee, a filing or qualifying fee that is established by your City's Code.

For municipalities that use the petition process, the candidate will not have to pay the filing fee.

Division of Elections Advisory Opinion, No. DE 13-04, relating to Candidate Qualifying; Qualifying Fees; Election Assessment - check drawn upon campaign account - § 100.3605, 99.093 and 99.061, Florida Statutes, in summary states: In the absence of an applicable special act, charter, or ordinance provision providing otherwise, a municipal candidate, in order to qualify, must pay the election assessment required by section 99.093, Florida Statutes (2012), with a check drawn upon the candidate's campaign account.

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**Affidavit of Undue Burden** (if applicable) [F.S. 99.093(2)] Any person seeking to qualify for nomination or election to a municipal office who is unable to pay the election assessment without imposing an undue burden on personal resources or on resources otherwise available to him or her shall, upon written certification of such inability given under oath to the qualifying officer, be exempt from paying the election assessment. This Affidavit can be downloaded from the State Division of Elections website.

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**Petition Process** [F.S. 99.095] A useful resource in the petition process is the Florida Division of Elections' publication "Candidate Petition Handbook". This should answer most questions you may have on the Petition Process.

F.S. 99.095(2)(a) governs a candidate must obtain the number of signatures of voters in the geographical area represented by the office sought equal to at least 1 percent of the total number of registered voters of that geographical area, as shown by the compilation by the department for the immediately preceding general election. Signatures may not be obtained until the candidate has filed the appointment of campaign treasurer and designation of campaign depository pursuant to s. 106.021 and are valid only for the qualifying period immediately following such filings.

F.S. 99.095(2)(c) governs the format of the petition shall be prescribed by the division and shall be used by candidates to reproduce petitions for circulation (again, this is form DS-DE 104, Candidate Petition). If the candidate is running for an office that requires a group or district designation, the petition must indicate that designation and, if it does not, the signatures are not valid. A separate petition is required for each candidate.

F.S. 99.095(3) governs each petition must be submitted before noon of the 28th day preceding the first day of the qualifying period for the office sought to the supervisor of elections of the county in which such petition was circulated. Each supervisor shall check the signatures on the petitions to verify their status as voters in the county, district, or other geographical area represented by the office sought. No later than the 7th day before the first day of the qualifying period, the supervisor shall certify the number of valid signatures.

The candidate pays costs to verify signatures. According to the “Candidate Petition Handbook”, there are three ways to pay for the verification fees:

The verification fee is paid with a campaign check or the campaign’s petty cash;

The candidate pays the verification fee with personal funds and reports it as an in-kind contribution or is reimbursed by the campaign; or,

Someone else pays for the verification fees and is reimbursed by the campaign.

F.S. 99.095(5) governs if the required number of signatures has been obtained, the candidate is eligible to qualify pursuant to § 99.061 F.S.

A candidate may claim an undue burden status whereby the candidate certifies, under oath, that he/she is unable to pay the fee for signature verification without imposing an undue burden on his/her personal resources or resources otherwise available.

A candidate must submit their certification of undue burden status at the time they submit their petitions for signature verification.

The undue burden status cannot be claimed after the signature verification process has commenced.

The Supervisor of Elections shall certify the number of valid signatures submitted by the candidate and shall issue an official certification to the filing officer. The certification shall be issued in the time prescribed in municipal charter or Florida Law, whichever is applicable.

A candidate who obtains the required number of candidate petition signatures will not have to pay the filing fee, but is required to pay the 1%

election assessment, unless the candidate files an Affidavit of Undue Burden.

If a candidate, who claimed an undue burden status, has campaign funds left over at the end of his/her campaign, the candidate must reimburse the Supervisor of Elections for any unpaid signatures verification fees, but is not required to pay the State Assessment fee.

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**Acknowledgement and Certification of Logic & Accuracy (L&A) Testing** This is not a requirement, however, it is recommended that you have your candidates acknowledge, in writing, that they have been advised of the date, time, and location of the L&A Testing(s) and were afforded an opportunity to attend. The acknowledgement could be as simple as the candidate signing a copy of the public notice (which you would provide them with a copy and place the executed original in the candidate file), to designing your own form.

Should any of your candidates wish to attend the L&A test(s), notice of such should be sent to the County SOE.

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**Proof of Residency/Registered Voter** Check your Code of Ordinances to determine if there are any provisions that require the candidate to provide proof of residency and if they are required to live within the municipality for a specify length of time prior to start of qualifying.

Some municipalities require a candidate provide the following either before or during qualifying:

1. Copy of Driver’s License
2. Copy of Voter Registration Card
3. Confirmation from the County SOE
4. Copy of Utility Bill in their name

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The following is additional information you need to know as it relates to qualifying a candidate.

**Missing or Incomplete Qualifying Forms** If the filing officer receives qualifying papers during the qualifying period prescribed in this section which do not include all items as required by law prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying. [F.S. 99.061(7)(b)]

**Exemption of Personal Identifying Information** [AGO 2004-18] A custodian who is not the employer of an individual whose personal information is made confidential pursuant to section 119.07(6)(i), Florida Statutes, must maintain the confidentiality of such information only when requested to do so in writing by the protected person or his or her employing agency. This exemption is also applicable to a candidate's documents. Accordingly, in the event you are requested, in writing, to maintain the confidential status of personal information appearing in a petition or campaign papers pursuant to section 119.07(6)(i)4., Florida Statutes, it is the opinion of the Florida Attorney General that you must maintain the confidentiality of such information.

**Returned Checks** F.S. 99.061(7)(a)(1): ...If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee, as provided in this subparagraph, shall disqualify the candidate.

### After Qualifying Ends - You must:

- Immediately send a list of Qualified Candidates to the County SOE (this is so they can begin preparing your ballot).
- Immediately proof the sample ballot and, when finalized, advertise the sample ballot.
- Process payment for State Assessment Fees, be sure to include Municipal Election Assessment Form previously mentioned and, if applicable, any Affidavits of Undue Burden.

# Chapter 10: Poll Watchers

Political parties, candidates and some political committees are allowed to have poll watchers in each polling room during the early voting period and on Election Day. Poll watchers must be approved by the supervisor of elections prior to the election. The supervisor of elections will provide each polling place a list of the names of approved poll watchers. Approved poll watchers are allowed in all polling locations within the county [municipality] designated. However, each political party, candidate or political committee may have only one poll watcher present at any one time in each polling room when the polls are open on Election Day, or during designated early voting hours.

- Poll watchers must wear their identification badges.
- Poll watchers are allowed within the polling room to observe the conduct of the election. They may not obstruct the orderly conduct of the election.
- Poll watchers may observe the voter check-in process. They may not come closer to the inspectors' table or the voting booths than is reasonably necessary to perform the poll watcher's functions.
- Poll watchers may not speak to or otherwise interact with voters.
- Poll watchers may make written voter challenges with the precinct clerk.
- Poll watchers are not allowed to wear campaign buttons, shirts, hats, or other campaign items while they are in the polling room.
- Poll watchers should pose any questions regarding polling place procedures to the precinct clerk for resolution.

[Sections 101.111, 101.131, 101.23, 102.031(3), Fla. Stat.]

F.S. 101.131(2) provides that a candidate requesting to have poll watchers shall designate, in writing to the supervisors of elections, on a

form prescribed by the division (Form DS-DE 125), before noon of the second Tuesday preceding the election. Immediately following the noon deadline you are to forward your list to the County Supervisor of Elections for verification that they are a qualified and registered elector of the county in which he or she serves.

Furthermore, F.S. 101.131(2) provides that poll watchers shall be approved by the supervisor of elections on or before the Tuesday before the election. This Statute further states that the (*municipal*) supervisor of elections shall furnish to each election board (election workers) a list of the poll watchers designated and approved for such polling rooms. (5) of this Statute states the (*municipal*) supervisor of elections shall provide to each designated poll watcher, no later than 7 days before early voting begins (or the date of the election), a poll watcher identification badge that identifies the poll watcher by name. Each poll watcher must wear his or her identification badge while in the polling room.

The identification badge can be designed as you deem appropriate, but it must identify each individual as a poll watcher. Below is an example to consider:

**POLL WATCHER IDENTIFICATION CARD**

**NAME OF POLL WATCHER**

I, insert name of candidate, have designated the above named person to serve as a poll watcher for the insert name of municipality Municipal Election to be held on insert date of election.

Issued by: Insert Name of Municipality, Florida

# Chapter 11: Campaign Financing

**Campaign Treasurer** - The campaign treasurer shall keep detailed accounts, current within not more than 2 days after the date of receiving a contribution or making an expenditure, of all contributions received and expenditures made by or on behalf of the candidate, and shall preserve all account documentation for a number of years equal to the term of office to which the candidate seeks election. [F.S. 106.06 (1); F.S. 106.06 (3)]

**IMPORTANT:** When a campaign treasurer resigns or is removed by the candidate, a copy of the letter of resignation or removal must be filed with the filing officer. [F.S. 106.021(2)]

**Campaign Depository/Bank Account** - The campaign account must be separate from any personal or other account and used only for depositing campaign contributions and making expenditures. [F.S. 106.11(1)(a)]

Any bank, savings and loan association, or credit union authorized to transact business in this state may be designated as a campaign depository. [F.S. 106.021(b)]

**Campaign Checks** - Only a campaign treasurer or deputy campaign treasurer is allowed to sign checks drawn on the campaign account. **Candidates are prohibited from signing campaign checks unless they appointed themselves campaign treasurer or deputy campaign treasurer.** [F.S. 106.021(3)]

Campaign checks must contain name of the campaign account of the Candidate or political committee, account number and name of bank, exact amount of expenditure, signature of campaign treasurer or deputy treasurer, exact purpose of expenditure, and name of payee. [F.S. 106.11(1)(b)]

John Doe Campaign Account		Date <u>7/2/10</u>		00001
State Senate District 3				
PAY TO THE		XYZ Lumber Company		\$ 200.00
ORDER OF				
Two Hundred and 00/100				DOLLARS
<b>BANK OF FLORIDA</b>				
<b>TALLAHASSEE, FL 32323</b>				
FOR <u>Sign materials</u>		Signature of Campaign Treasurer		
003382538:0326 0073894				

The campaign treasurer or deputy campaign treasurer who signs a check shall be responsible for the completeness and accuracy of the information on the check and for ensuring it is an authorized expenditure. [F.S. 106.11(3)]

**Contributions** - A contribution is:

1. A gift, subscription, conveyance, deposit, loan, payment or distribution of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. These include contributions in-kind, having an attributable monetary value in any form ; [F.S. 106.011(5)(a)]
2. A transfer of funds between political committees or between electioneering communications organizations. [F.S. 106.011(5)(b)] ;
3. The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate without charge to the candidate for such services [F.S. 106.011(5)(c)]; or
4. The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit. The term includes any interest earned on such account or certificate [F.S. 106.011(5)(d)].

The exceptions are:

1. Services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate including, but not limited to, legal and accounting services; and

2. Editorial endorsements [F.S. 106.011(5)].

IMPORTANT: The law provides no exceptions for reporting contribution information, regardless of the size of the contribution (e.g., the reporting requirements would be the same for a 50 cent contribution as it would be for a \$1,000 contribution).

[F.S. 106.011(5)9a]

Contributions are considered received for reporting purposes when received by the candidate, the campaign or deputy treasurer or an agent of the campaign.

- Not when mailed
- Not the date of check
- Not the date deposited

### **Contribution Limits for Candidates -**

Except for political parties or affiliated party committees, no person or political committee may make contributions in excess of \$1000 per election to any candidate for election or retention in office. The primary and general elections are separate elections. Contributions are specifically limited as follows:

- \$50.00 cash or cashier's check [F.S. 106.09(1)(b)]
- \$1,000.00 by check, money order, credit card, or debit card [F.S. 106.08(1)(a)2]
- No limit on amounts contributed by the candidate to his/her own campaign. [F.S. 106.08(1)(b)]

These limits do not apply to contributions made by a state or county executive committee of a political party or affiliated party committee regulated by Chapter 103, F.S.

A candidate may not:

1. Accept contributions until Form DS-DE 9, Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates, is filed with the filing officer;
2. Accept a contribution in excess of \$1,000 from any one person per election, provided the candidate is an opposed candidate and the contribution is received within the timeframe applicable to each election;
3. Accept contributions from family members in excess of \$1,000 per election; and
4. Accept contributions after the date he or she withdraws his or her candidacy, is defeated, becomes unopposed or is elected.

[F.S. 106.08 and 106.19]

### **Unauthorized Contributions -**

Any contribution received by a candidate with opposition in an election or by the campaign treasurer or deputy campaign treasurer on the day of that election or less than five days prior to the day of the election must be returned to the contributor and may not be used or expended by or on behalf of the candidate. [F.S. 106.08(3)(a)]

Any contribution received by a candidate or by the campaign treasurer or a deputy campaign treasurer of a candidate after the date at which the candidate becomes unopposed, withdraws, is defeated, or elected to office must be returned to the contributor and may not be used or expended by or on behalf of the candidate. [106.08(3)(b)]

A person may not make any contribution through or in the name of another, directly or indirectly, in any election. [106.08(5)(a)]

### **Contributions From/To Public Organizations**

– Candidates may not solicit contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good, and candidates may not make contributions, in exchange for political support, to these organizations. [106.08(5)(b); 106.08(5)(c)]

### **Contribution within a Government Building**

- No person shall make and no person shall solicit or knowingly accept any political contribution in a building owned by a governmental entity.

“Accept” means to receive a contribution by personal hand delivery from a contributor or the contributor’s agent. This prohibition does not apply when a government-owned building or any portion thereof is rented for the specific purpose of holding a campaign fund raiser. [F.S. 106.15(4)(a)] A violation of this section is a first degree misdemeanor. [F.S. 106.15(4)(b)]

### **Anonymous Contributions**

- When a candidate receives an anonymous contribution it must be reported on the candidate's campaign treasurer's report as an anonymous contribution. A letter should be submitted to the filing officer explaining the circumstances surrounding the acceptance of the anonymous contribution.

The candidate cannot spend the anonymous contribution, but at the end of the campaign can donate the amount to an appropriate entity under Section 106.141, F.S. (Division of Elections Opinion 89-02)

### **Foreign Contributions**

– Federal law prohibits contributions from foreign nationals to any federal, state, or local candidate, unless the foreign national possesses a green card. Further information is available from the Federal Election Commission 1-800-424-9530 or <http://www.fec.gov>.

**In-Kind Contributions** - In-kind contributions are anything of value made for the purpose of influencing the results of an election. The exceptions are:

1. Money;
2. Personal services provided without compensation by individual volunteers;
3. Independent expenditures, as defined in Section 106.011(5), F.S.; or
4. Endorsements of three or more candidates by political committees or political parties.

In-kind contributions have an attributable monetary valuation; can be combined with a monetary contribution; and cannot exceed the \$1,000 per person, per election contribution limit.

[F.S. 106.011; and Division of Elections Opinion 04-06]

Any person who makes an in-kind contribution shall, at the time of making the contribution, place a fair market value on the contribution. In-kind contributions are subject to contribution limitations. Travel conveyed upon private aircraft shall be valued at the actual cost of per person commercial air travel for the same or a substantially similar route. [F.S. 106.055, and Division of Elections Opinion 09-08]

### **Cash Contributions**

- A candidate may **not accept** an aggregate cash contribution or contribution by means of a cashier’s check from the same contributor in **excess of \$50 per election**. A money order or traveler’s check is not considered cash. [F.S. 106.09(1)(b)]

IMPORTANT: Cash contributions should be reported on campaign treasurer’s reports to include the full name and address of each person

who gave a cash contribution during the reporting period, together with the amount and date of such cash contribution.

[F.S. 106.07(4) and 106.09]

### **Debit and Credit Card Contributions -**

A candidate may accept contributions via a credit card, debit card, or money order. These contributions are categorized as a "check" for reporting purposes. [Division of Elections Opinions 94-02 and 00-03]

**Loans -** Are considered contributions and are subject to contribution limitations. Loans to or from each person or political committee must be reported together with names, addresses, occupations, and principal places of business, if any, of the lenders and endorsers, including the date and amount of each loan on the campaign treasurer's report. [F.S. 106.011(5)(a)]

Loans made by a candidate to his or her own campaign are not subject to contribution limitations. A candidate who makes a loan to his or her campaign and reports the loan as required by Section 106.07, F.S. may be reimbursed for the loan at any time the campaign account has sufficient funds to repay the loan and satisfy its other obligations. [F.S. 106.07(4)(a)3; 106.08(1)(b); 106.11(6)]

**Fund Raisers -** No campaign fund raiser may be held unless the person for whom such funds are to be so used is a candidate for public office. All money and contributions received with respect to such a campaign fund raiser shall be deemed to be campaign contributions, and shall be accounted for, and subject to the same restrictions, as other campaign contributions. All expenditures made with respect to such a campaign fund raiser which are made or reimbursed by a check drawn on the campaign depository of the candidate for whom the funds are to be used and shall be deemed to be campaign expenditures to be accounted for, and

subject to the same restrictions, as other campaign expenditures.

Any tickets or advertising for a campaign fund raiser must comply with the requirements of F.S. 106.143.

Any person or candidate who holds a campaign fund raiser, or consents to a campaign fund raiser being held, in violation of the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in F.S. 775.082 or 775.083.

[F.S. 106.025]

**Deposit of Contributions -** All funds received by the campaign treasurer of any candidate shall, prior to the end of the 5th business day following the receipt thereof, Saturdays, Sundays, and legal holidays excluded, be deposited in a campaign depository designated pursuant to F.S. 106.021, in an account that contains the name of the candidate. All deposits shall be accompanied by a bank deposit slip containing the name of each contributor and the amount contributed by each. [F.S. 106.05]

**Contribution Deadlines -** Candidates without opposition may not accept contributions after the date they become unopposed (close of qualifying period or date of withdrawal by opponent). Candidates with opposition may not accept contributions less than five days prior to the election. (This topic is also addressed in Chapter 4, "Important Dates".)

**Expenditures -** An expenditure is a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election.

[F.S. 106.011(10)(a)]

A candidate shall:

1. Pay all campaign expenditures by a check drawn on the campaign account (except petty cash) [F.S. 106.11(1)(a)];
2. Pay the qualifying fee by a check drawn on the campaign account [F.S. 99.061(7)(a)1];
3. Pay for all expenses authorized or incurred for the purchase of goods or services upon final delivery and acceptance of the goods or services [F.S. 106.11(4)]; and
4. Pay for public utilities such as telephone, electric, gas, water and like services when the bill is received. Utility companies providing services to candidates must charge a deposit sufficient to meet all anticipated charges during a billing period [F.S. 106.14].

No candidate, campaign manager, treasurer, deputy treasurer, or any person acting on behalf of the foregoing, shall authorize any expenses, unless there are sufficient funds on deposit in the primary depository account of the candidate to pay the full amount of the authorized expense, to honor all other checks drawn on such account, which checks are outstanding, and to meet all expenses previously authorized but not yet paid. [F.S. 106.11(4)]

A candidate or other individual may be reimbursed for expenses incurred in connection with the campaign by a check drawn on the campaign account and reported pursuant to Section 106.07(4), F.S. The full name and address of each person to whom the candidate or other individual made payment for which reimbursement was made by check drawn upon the campaign account shall be reported pursuant

to Section 106.07(4), F.S., together with the purpose of such payment. [F.S. 106.021(3)(b)]

**Living Expenses** - A candidate or the spouse of a candidate may not use campaign funds to defray normal living expenses for the candidate or the candidate's immediate family other than expenses actually incurred during the campaign for transportation, meals and lodging. [F.S. 106.1405]

**Petty Cash Funds** - A campaign treasurer may provide a petty cash fund for the candidate. To establish a petty cash fund, the campaign treasurer must write a check drawn on the primary campaign account. Petty cash may only be used for office supplies, transportation expenses, and other necessities. [F.S. 106.12]

A candidate must:

1. Spend petty cash in amounts of less than \$100 that can be used to purchase office supplies, transportation expenses and other necessities [F.S. 106.12(3)];
2. Report the total amount withdrawn and the total amount spent for petty cash in each reporting period [F.S. 106.07(4)(a)];
3. Keep complete records of petty cash although each expenditure does not have to be reported individually [F.S. 106.07(4)(a)6];
4. Not mix cash contributions with petty cash; and
5. Not use petty cash for the purchase of time, space, or services from communications media as defined in s. 106.011(13) [F.S. 106.12(3)].

**Limits on Petty Cash Fund Amounts** -

From the day a candidate appoints his or her campaign treasurer until the last day a candidate

can qualify for office the campaign treasurer may withdraw from the campaign account for the purpose of providing a petty cash fund for the candidate is \$500 per calendar quarter. [F.S. 106.12(1)]

After qualifying is over and until the election in which the candidate is eliminated or elected to office or the time at which the candidate becomes unopposed the treasurer may withdraw \$100 per week. [F.S. 106.12(2); 106.12(2)(b)] [F.S. 106.07 and 106.12, F.S., and Division of Elections Opinion 06-10]

**Credit Cards** - Can only be used for statewide office (Governor, Cabinet, and Supreme Court Justice) candidates under certain conditions. [F.S. 106.125]

**Debit Cards** - May be used in lieu of campaign checks and are considered bank checks if:

1. Obtained from the same bank as the primary campaign depository.
2. Issued in the name of the treasurer, deputy treasurer, or authorized user.
3. Contain the name of the campaign account of the candidate.
4. No more than three are issued.
5. The person using the card does not receive cash as part of, or independent of, any transaction for goods or services.

[F.S. 106.11(2)(a)1-4]

All debit card receipts must contain:

1. Last four digits of the debit card number.
2. Exact amount of expenditure.

3. Name of payee.
4. Signature of campaign treasurer, deputy treasurer, or authorized user.
5. Exact purpose of expenditure.

[F.S. 106.11(2)(a)5.a-e]

Any of the above listed information, if not included on the receipt, may be handwritten on, or attached to, the receipt by the authorized user before submitting to the campaign treasurer. The debit card user shall be responsible for the completeness and accuracy of the information and for insuring that such expenditure is authorized. [F.S. 106.11(2)(a)5.e]

**Reporting** - Each campaign treasurer designated by a candidate shall file regular reports of all contributions received and all expenditures made by or on behalf of such candidate. [F.S.106.07(1)]

The candidate and his or her campaign treasurer shall certify as to the correctness of each report. Each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer or candidate who willfully certifies the correctness of any report while knowing that such report is incorrect, false or incomplete commits a misdemeanor of the first degree. [F.S. 106.07(5)]

Reports shall be filed with the officer before whom the candidate qualifies (*municipal* SOE). [F.S. 106.07(2)(a)1]

**Reporting Due Dates** - Upon the candidate filing for office, reports are due on the 10th day following the end of each calendar month, except for the reports due on the 25th, 11th, and

4th days immediately preceding the general election.<sup>5</sup>

[F.S. 106.07(1); 106.07(1)(b); 106.07(2)(a)(1)]

Monthly reports must contain information on all previously unreported contributions received and expenditures made for the preceding month.

The reports due on the 25<sup>th</sup> and 11<sup>th</sup> days before the general election must contain information on all previously unreported contributions received and expenditures made as of the preceding Friday.

The report due on the 4<sup>th</sup> day before the election must contain information on all previously unreported contributions received and expenditures made as of the day preceding that designated due date [F.S. 106.07(2)(a)(1)].

All reports are due no later than 5:00 p.m. of the due date.

F.S. 106.141(1) governs that “Each candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office shall, within 90 days, dispose of the funds on deposit in his or her campaign account and file a report reflecting the disposition of all remaining funds. Such candidate shall not accept any contributions, nor shall any person accept contributions on behalf of such candidate, after the candidate withdraws his or her candidacy, becomes unopposed, or is eliminated or elected.” This also applies to a run-off candidate.

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<sup>5</sup> Gary J. Holland, Assistant Director, Division of Elections, Florida Department of State, issued the following statement: “Consistent with Division of Elections Formal Opinion 98-03, for municipal elections in which no municipal primary is held, the only applicable reporting dates other than monthly reports are those reports due on the 25th, 11th, and 4th days preceding the municipal general election.”

**Report Types** - Each reporting period is identified by a report type code. Monthly reports are M plus the numeral for the month (i.e. M1 = January, M12 = December). General Election reports are G1, G2, and G3. If the report is for a special election, add “S” in front of the report code (i.e. SG3). A termination report, type TR, is due from the candidate 90 days after the candidate becomes unopposed, withdraws, was elected, or was defeated. [F.S. 106.141(1)]

**Sequence Numbers** - Each contribution, expenditure, other distribution or fund transfer record shall have a sequence number assigned to it. Sequence numbers should start at 1 and increase by 1 for each record type. Thus for each report, the record type and sequence number will combine to create a unique identifier for each a contribution, expenditure, other distribution or fund transfer record. For example, a M1 report having 75 contributions, 40 expenditures, 5 other distributions and 2 fund transfers records would use sequence numbers 1 through 75 for contributions, 1 through 40 for expenditures, 1 through 5 for other distributions and 1 through 2 for fund transfers. The next report (M2), comprised of 40 contributions, 30 expenditures, 2 other distributions, and 4 fund transfers would use sequence numbers 1 through 40 for contributions, 1 through 30 for expenditures, 1 through 2 for other distributions and 1 through 4 for fund transfers. Contributions added via amended M1 reports would begin with sequence number 76 and via amended M2 reports would begin with sequence number 41.

**Reporting Forms** - Campaign finance reports are submitted on Division of Elections forms. A typical report will consist of:

- Form DS-DE 12, Campaign Treasurer’s Report Summary
- Form DS-DE 13, Campaign Treasurer’s Report – Itemized Contributions

- Form DS-DE 14, Campaign Treasurer’s Report – Itemized Expenditures

Other reporting forms, as applicable, may include:

- DS-DE 73, Campaign Loans Report
- DS-DE 73A, Campaign Loans Report Itemized
- Form DS-DE 86, Request for Return of Contributions
- Form DS-DE 87, Waiver of Report
- Form DS-DE 2, Contributions Returned

### **How To Complete Typical Reporting Forms**

- Again, the three typical reporting forms are DS-DE 12, 13, and 14. Before DS-DE 12, Report Summary, can be completed, DS-DE 13 and 14, Contributions and Expenditures Reports, respectively, must be completed.

### **Reporting Total Sums – Form DS-DE 12, Report Summary**

- Each campaign treasurer’s report required by Chapter 106, F.S., shall contain the total sums of all loans, in-kind contributions, and other receipts by or for such candidate, and total sums of all expenditures made by such candidate during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts. [F.S. 106.07(4)(a)5]

Form DS-DE 12, Report Summary, is completed after all other reporting forms have been completed.

### **Reporting Contributions – Form DS-DE 13, Campaign Treasurer’s Report – Itemized Contributions**

- Each report must contain:

1. Full name, address, specific occupation, amount, and date of each person making a contribution. Reports must provide as clear a description as practicable of the principal type

of business conducted for corporations contributing. The principal type of business or the occupations are not required if the contribution is \$100 or less, or from a relative provided the relationship is reported.

2. Name, address, amount, and date of each political committee making any transfer of funds.
3. Full name, address, specific occupation, principal place of business of the lender and endorser, date and amount of each loan.
4. Statement of each contribution, rebate, refund, or other receipts not listed in 1. through 3. above.

*[F.S. 106.07(4) and 112.312(21)]*

### **Refunds: Negative Contributions**

- All refunds (contribution type of ‘REF’) should be entered as a negative money amount. Examples of refunds include bad checks or a refund/return of a previously deposited contribution.

### **Returning Contributions – Form DS-DE 2, Contributions Returned**

- Contributions must be returned to the contributor if:

1. A candidate receives a contribution in excess of the limitations provided by law.
2. A candidate with opposition in an election receives a contribution on the day of that election or less than five days before the date of that election.
3. A candidate receives a contribution once he or she is elected, defeated, becomes unopposed, or withdraws his or her candidacy. If the contribution to be returned has not been deposited into the campaign account, report the contribution as a contribution returned

using form DS-DE 02. If the contribution has been deposited into the campaign account: 1. Report the contribution; and 2. Write a check from the campaign account to the contributor for the amount of the contribution and report this on the itemized contribution report using the contribution type "Refund." This amount is reported as a negative. The candidate may also wish to submit a written explanation to the filing officer.

[F.S. 106.08(3)(a); F.S. 106.08(3)(b)]

**Reporting Expenditures – Form DS-DE 14, Campaign Treasurer’s Report – Itemized Contributions** [F.S. 106.07] - Each report must contain:

1. Full name and address of each person to whom expenditures have been made along with the amount, date, and clear purpose of the expenditure. Name, address, and office sought by each candidate on whose behalf such expenditure was made. [F.S. 106.07(4)(a)6]
2. Full name and address of each person to whom an expenditure for personal services, salary or reimbursed authorized expenses was made along with the amount, date, and clear purpose of the expenditure. [F.S. 106.07(4)(a)7]
3. Total amount withdrawn and the total amount spent from the petty cash fund. Each expenditure from the petty cash fund need not be individually reported but complete records of petty cash expenditures must be kept. [F.S. 106.07(4)(a)8]

Petty cash withdrawn is reported in monetary expenditure totals. Petty cash

spent is reported as an expenditure but is not included in the totals.

Petty cash left over at the end of the campaign should be re-deposited and reported under expenditures as negative petty cash withdrawn.

4. Total sum of expenditures during the reporting period. [F.S. 106.07(4)(a)9]

**No Activity During Reporting Period – Form DS-DE87, Waiver of Report** - In any reporting period during which a candidate has not received funds or made any expenditures, the filing of the required report for that period is waived; however, the candidate must indicate there is no activity by filing a waiver of report. The next report filed must specify that the report covers the entire period between the last submitted report and the report being filed. [F.S.106.07(7)]

**Incomplete Reports** - F.S. 106.07(2)(b)1 governs that “Any report that is deemed to be incomplete by the officer with whom the candidate qualifies shall be accepted on a conditional basis.” As such, you are required to check the report for completeness and accuracy. You do not, however, have to verify names and address of contributors or expenditures.

This Statutes goes on to say “The campaign treasurer shall be notified by certified mail or by another method using a common carrier that provides a proof of delivery of the notice as to why the report is incomplete and within 7 days after receipt of such notice must file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.”

An incomplete report could mean, but is not limited to:

- The word “Confidential” used in place of an address
- Generic phrase in occupation field such as “business person”
- Vague or no description of in-kind contribution
- Dues listed incorrectly – number of members or amount per member not reported
- Office sought not reported when contribution given to candidate
- Contribution received / expenditure made prior to becoming a candidate
- Contribution limits exceeded
- Refund of expenditure reported as a contribution
- Refund of contribution or returned check reported as expenditure
- Joint contributions – Bob and Sue Smith
- Petty cash spent in increments greater than \$100
- Petty cash withdrawals in excess of limits per week or quarter
- Reporting petty cash withdrawn without reporting petty cash spent or vice versa
- Incorrect expenditure/contribution codes used
- Anonymous contributions – explanation for file
- Reimbursements or prepaid expenses not itemized
- Payment to a credit card company (other than statewide candidate)
- Activity reported in wrong cover period
- Not using correct codes:
  - ♦ TOA – transfer of office account
  - ♦ DIS – disposing of surplus funds
- Improper post election use of funds
- Failing to pay petition verification fees
- Termination report reflects a balance or deficit
- Contributions received after the deadline

**Amending Reports** - An amendment report summary includes only the contributions, expenditures, other distributions and fund

transfers being reported as additions, updates or deletions. Please read the instructions for the sequence number field and the amendment type field.

To *add a new (previously unreported)* contribution, expenditure, other distribution or fund transfer for the reporting period being amended, enter “ADD” in amendment type on a line with ALL of the required data. The sequence number for contributions with amendment type “ADD” will start one plus the number of contributions in the previous report for the specified coverage period. For example, amending an original M1 report that had 75 contributions, means the sequence number for the first contribution having amendment type “ADD” will be 76; the second “ADD” contribution would be 77, etc. When amending an original M2 report that had 40 contributions and 30 expenditures, the sixth “ADD” contribution would have sequence number 46 and the ninth “ADD” expenditure would have sequence number 39.

To *correct a previously submitted* contribution, expenditure, other distribution, or fund transfer (hereafter “item”) use the following drop/add procedure. Enter “DEL” in amendment type on a line with the sequence number of the item to be corrected. In combination with the report number being amended, this sequence number will identify the item to be dropped from your active records. On the next line enter “ADD” in amendment type and ALL of the required data with the necessary corrections thus replacing the dropped data. Assign the sequence number as described above.

**Late Filing of Reports** - F.S. 106.07(8)(a) governs that “Any candidate or political committee failing to file a report on the designated due date is subject to a fine as provided in paragraph (b) for each late day, and, in the case of a candidate, such fine shall be paid only from personal funds of the candidate.

The fine shall be assessed by the filing officer and the moneys collected shall be deposited:

1. In the General Revenue Fund, in the case of a candidate for state office or a political committee that registers with the Division of Elections; or
2. In the general revenue fund of the political subdivision, in the case of a candidate for an office of a political subdivision or a political committee that registers with an officer of a political subdivision.”

F.S. 106.07(8)(b) governs that “Upon determining that a report is late, the filing officer shall immediately notify the candidate or chair of the political committee as to the failure to file a report by the designated due date and that a fine is being assessed for each late day.

The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.
2. When the report is postmarked.
3. When the certificate of mailing is dated.
4. When the receipt from an established courier company is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). Notice is deemed complete upon proof of delivery of written notice to the mailing or street address on record with the filing officer. In the case of a candidate, such fine shall not be an allowable campaign expenditure and shall be paid only from personal funds of the candidate.

**Penalty for Late Filing** - Any candidate failing to file a report on the designated due date shall be subject to a fine of \$50 per day for the first three days late and, thereafter, \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each primary, general, or special election the fine is \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. For a candidate’s termination report, the fine is \$50 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater for the period covered by the late report. All fines must be paid from the candidate’s personal funds – not campaign funds. [F.S. 106.07(2); 106.07(8)(a); 106.07(8)(b)]

**Exceptions** - Reports immediately preceding each primary, general or special elections shall incur a fine of \$500 for each day late, however, the fine cannot exceed 25% of contributions or expenditures (whichever is greater).

**Fines** – The fine begins the day after the report is due. If the report is received after 5:00 p.m. on the due date, it is considered 1 day late.

Fines are calculated as follows:

- A. \$50 per day for first 3 days.
- B. \$500 beginning on the 4<sup>th</sup> day and thereafter.

But, fine is not to exceed 25% of the total receipts or expenditures, whichever is greater.

25% - How it works:

Think of the 25% formula as the result of the maximum fine that can be imposed on a candidate for any one reporting period.

The 25% formula has two elements:

1. It is calculated on the greater total of either the contributions or expenditures and only for that reporting period.
2. The fine cannot exceed the amount of contributions or expenditures for the reporting period.

\$50 Fine - How it works:

- A. Begins on 1<sup>st</sup> day late up to and including the 3<sup>rd</sup> day.
- B. Includes weekends and holidays.
- C. Fine can be as much as \$150 if 25% does not apply.
- D. The 3 days late fine can be combined with the 4<sup>th</sup> day and thereafter (\$500) fines.
- E. The fine cannot exceed the amount of contributions or expenditures for the reporting period.

\$500 Fine - How it works:

- A. Begins on the 4<sup>th</sup> day late and accumulates thereafter.
- B. Includes weekends and holidays.
- C. It is combined with fines from the first 3 days.
- D. The fine cannot exceed the amount of contributions or expenditures for the reporting period.

**No Activity for Reporting Period (Filing a Waiver of Report)** - A fine cannot be imposed if there is no activity for the reporting period as there are no contributions or expenditures to calculate the 25%. However, you may file a complaint with the State Elections Commission, who can assess a fine of \$50.

**Final Reports (Termination Reports)** -

Final reports, if late, shall incur a fine of \$50 for each day late not to exceed 25% of contributions or expenditures (whichever is greater) for that reporting period and it does not increase to \$500 after the 3<sup>rd</sup> day late. [F.S. 106.07(8)(b)]

The following are samples of calculating fines:

Sample for a 2-day late report:

1. Contributions for period were \$200 and Expenditures were \$700
2. 25% is based upon the expenditures as they are greater than the contributions
3. 25% of \$700 = \$175 (Maximum fine amount)
4. 2 days late x \$50 per day = \$100

Fine imposed is \$100 as it does not exceed the 25% calculation of \$175.

Sample for a 4-day late report:

1. Contributions for period were \$3,000 and Expenditures were \$2,000
2. 25% is based upon the contributions as they are greater than the expenditures
3. 25% of \$3000 = \$750 (Maximum fine amount)
4. 3 days late x \$50 per day = \$150 + 4<sup>th</sup> day penalty = \$500 = total fine of \$650

Fine imposed is \$650 as it does not exceed the 25% calculation of \$750.

Sample for late report "Immediately Prior to a Primary/General Election":

1. Contributions for period were \$2000 and Expenditures were \$3,000
2. 25% is based upon the expenditures as they are greater than the contributions
3. 25% of \$3,000 = \$750 (Maximum fine amount)
4. 2 days late x \$500 per day = \$1,000

Fine imposed is \$750 as the calculated fine of \$1,000 exceeds the 25% (\$750) of expenditures.

Sample for a 3-day late “Final/Termination Report”:

1. Contributions for period were \$0 and Expenditures were \$700
2. 25% is based upon the expenditures as they are greater than the contributions
3. 25% of \$700 = \$175 (Maximum fine amount)
4. 3 days late x \$50 per day = \$150

Fine imposed is \$150 as it does not exceed the 25% calculation of \$175.

**Late-filed Reports; Unusual Circumstances** - Florida Administrative Code (FAC) Rule No. 2B-1.0055 governs that events that constitute unusual circumstances are:

- Natural disaster
- Death of candidate, campaign treasurer, or an immediate family member of either
- Serious illness, disability or non-elective surgery of candidate, campaign treasurer, or an immediate family member of either
- Computer or equipment failure caused by events that could not have been anticipated
- The abrupt and unexpected loss of the campaign treasurer
- Failure of the filing officer to e-mail, telephone, or mail a letter to the candidate that a report is late no later than seven days after the report was due

**Automatic Fine Appeal Process** - Any candidate may appeal or dispute a fine for a late filed campaign treasurer’s report. The appeal must be based upon, but not limited to, unusual circumstances surrounding the failure to file on the designated due date. The candidate may request and is entitled to a hearing before the Florida Elections Commission, which has the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in Section 106.265(1), F.S., when determining the amount of a fine, if any, to be waived. The appeal must be made within 20 days of the receipt of the notice of payment due. The candidate must, within the 20 day period, notify the filing officer in writing of his or her intention to bring the matter before the Commission. [F.S. 106.07(8)(c)]

Florida Administrative Code (FAC) Rule No. 2B-1.005 governs the appeal process, which is as follows:

- (1) To appeal a fine imposed pursuant to Section 106.04(8) or 106.07(8), F.S., the candidate or chairman of a political committee shall file a notice of appeal. The notice of appeal shall be filed with the Commission clerk, and a copy filed with the filing officer, within 20 days of the appealing party’s receipt of notice that a fine is being imposed. The notice of appeal shall contain:
  - a. The name, address and telephone number of the appealing party;
  - b. A copy of the notice of imposition of fine issued by the filing officer; and
  - c. A request for hearing if a personal appearance before the Commission is desired. If no hearing request is made, the appeal shall be decided solely on the documents submitted by the appealing party and Commission staff.

(2) Upon receipt of a timely notice of appeal, the Commission staff shall notify the appealing party that the appeal has been accepted. The appealing party shall have 20 days from acceptance of the appeal to submit any documents supporting the appeal. Any subsequent supplemental documents shall be filed no later than five business days before the hearing.

(3) The Commission shall uphold the fine imposed by the filing officer unless the appealing party demonstrates that the report was timely filed or that there were unusual or other circumstances beyond the control of the candidate or committee that caused the report to be filed late.

**Repeated Late Filers** - The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by a candidate or political committee, the failure of a candidate or political committee to file a report after notice, or the failure to pay the fine imposed. The commission shall investigate only those alleged late filing violations specifically identified by the filing officer and as set forth in the notification. Any other alleged violations must be separately stated and reported by the division to the commission under s. [106.25](#)(2). [F.S. 106.07(8)(d)]

**Disbursement of Surplus Funds** - Once a candidate withdraws, becomes unopposed, is eliminated, or elected to office, he or she may only expend funds from the campaign account to:

1. Purchase “thank you” advertising for up to 75 days after he or she withdraws, becomes unopposed, is eliminated, or elected to office.
2. Pay for items which were obligated before he or she withdrew, became

unopposed, was eliminated, or elected to office.

3. Pay for expenditures necessary to close down the campaign office and to prepare final campaign reports.
4. Dispose of surplus funds as provided in Section 106.141, F.S.

[F.S. 106.11(5)]

**Prior to Disposing of Surplus Funds** - A candidate may be reimbursed by the campaign for any previously reported contributions/loans by the candidate to the campaign, in full or in part.

A candidate who filed an oath stating that he or she was unable to pay the fee for verification of petition signatures without imposing an undue burden on his or her personal resources or on resources otherwise available to him or her shall reimburse the state or local government entity, whichever is applicable, for such waived fee prior to disposing of any funds under the surplus provisions contained in Section 106.141(4),(5) and (6), F.S. [F.S. 106.141(7)]

Candidates are no longer required to pay for a waived assessment fee. [F.S. 106.141]

**Disposing of Surplus Funds** - A candidate required to dispose of surplus funds must, at the option of the candidate, dispose of such funds (that have not been spent or obligated) within 90 days by any of the following means, or a combination thereof:

1. Return pro rata to each contributor.
2. Donate the funds to a charity organization or organizations that meet the qualifications of Section 501(c)(3) of the Internal Revenue Code.
3. Give funds to the political party of which such candidate is a member.

4. Give the funds, in the case of a candidate for office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.
5. Transfer (up to \$5,000 multiplied by the number of years in the term of office) funds to an office account. [This option requires additional reporting requirements.]

[F.S. 106.141(4)(a)]

**Termination Reports** - F.S. 106.141(7)(b) governs “The filing officer shall notify each candidate at least 14 days before the date the report is due.”

F.S. 106.141(7)(c) governs that “Any candidate failing to file a report on the designated due date shall be subject to a fine as provided in s. 106.07 for submitting late termination reports.

A termination report must include:

1. The name and address of each person or unit of government to whom any of the funds were distributed and the amounts thereof;
2. The name and address of each person to whom an expenditure was made together with the amount and purpose; and
3. The amount of such funds transferred to an office account together with the name and address of the bank in which the office account is located.

If a refund check is received after all surplus funds have been disposed of, the check may be endorsed by the candidate and the refund disposed of pursuant to Section 106.141, F.S. An amended termination report must be filed with the filing officer. [F.S. 106.141(1)]

All reports must be signed by the candidate and the campaign treasurer and certified as true and correct.

[F.S. 106.141]

**Campaign Loans Report** - A person elected to office must report all loans, exceeding \$500 in value, made to him or her and used for campaign purposes, and made in the twelve months preceding his or her election to office, to the filing officer. The report must be made on Forms DS-DE 73 and 73A, Campaign Loans Report within ten days after being elected to office. [F.S. 106.075(1)]

Any person who makes a contribution to an individual to pay all or part of a loan incurred in the twelve months preceding the election, to be used for the individual’s campaign, may not contribute more than the amount which is allowed in Section 106.08(1), F.S.

[F.S. 106.075(2)]

**Electioneering Communication** - F.S. 106.011(8)(a) states that “Electioneering communication” means any communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone and that:

1. Refers to or depicts 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;
2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and

3. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.

Electioneering Communication is not [F.S. 106.011(8)(b)3] a communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that:

- a. The staging organization is either:
  1. A charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or
  2. A newspaper, radio station, television station, or other recognized news medium; and
- b. The staging organization does not structure the debate to promote or advance one candidate or issue position over another.
- c. For purposes of this chapter, an expenditure made for, or in furtherance of, an electioneering communication shall not be considered a contribution to or on behalf of any candidate.
- d. For purposes of this chapter, an electioneering communication shall not constitute an independent expenditure nor be subject to the limitations applicable to independent expenditures.

A candidate that spends \$5,000 in electioneering communications would need to file as an Electioneering Communications Organization

(ECO) and file reports accordingly. [F.S. 106.071(1)]

To become an ECO, the candidate shall file, with the Filing Officer, form DS-DE 103 within:

24 hours after the date the expenditure exceeds \$5,000 providing the expenditure was made within 30 days before a primary or special primary election or 60 days before any other election; or

24 hours after the 30th day before a primary of special primary election, or within 24 hours after the 60th day before any other election, whichever is applicable.

Additionally, DS-DE 41 shall be filed along with DS-DE 103.

An ECO must comply with all laws applicable to a candidate, with one exception: The bank account for an ECO does not have to be separate from other accounts of the ECO.

For further details on an ECO visit the Florida Division of Election website <http://dos.myflorida.com/elections/about-us/>, and locate their publication titled “Electioneering Communications Organization Handbook”.

# Chapter 12: Political Advertisements

A political advertisement is a paid expression in any communications media, whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue. (Section 106.011(15), F.S.)

**Candidate Disclaimers** - Any political advertisement that is paid for by a candidate (except a write-in candidate) and that is published, displayed, or circulated before, or on the day of, any election must prominently state: “Political advertisement paid for and approved by (name of candidate), (party affiliation) for (office sought)” or “Paid by (name of candidate), (party affiliation), for (office sought).” [F.S. 106.143(1)(a)]

The disclaimer language alternatives provided above must be verbatim as quoted in s. 106.143, F.S. Variations are prohibited by law.

Candidates running for non-partisan office may not state the candidate’s political party affiliation in the disclaimer, or in the body of the advertisement. Exception: The candidate is not prohibited from stating the candidate’s partisan related experience. [F.S. 106.143(3)]

A candidate running for an office that has a district, group, or seat number does not have to indicate the district, group, or seat number in the political advertisement or disclaimer. [DE 2016 Candidate & Campaign Treasurer Handbook, page 32]

The candidate shall provide a written statement of authorization to the newspaper, radio station, television station, or other medium for each advertisement submitted for publication, display, broadcast, or other distribution. [F.S. 106.143(5)]

Any political advertisement that is paid for by a write-in candidate and that is published, displayed, or circulated before, or on the day of, any election must prominently state: “Political advertisement paid for and approved by (name of candidate), write-in candidate, for (office sought)” or “Paid by (name of candidate), write-in candidate, for (office sought).” [F.S. 106.143(1)(b)]

It is unlawful for any candidate or person on behalf of a candidate to represent that any person or organization supports such candidate, unless the person or organization so represented has given specific approval in writing to the candidate to make such representation. However, this subsection does not apply to:

- a. Editorial endorsement by any newspaper, radio or television station, or other recognized news medium.
- b. Publication by a party committee advocating the candidacy of its nominees.

[F.S. 106.143(4)]

### **Exceptions to Disclaimer Requirements –**

- Designed to be worn by a person and novelty items, i.e. clothing, buttons, pens/pencils, bumper sticker, etc.
- Placed as a paid link on an Internet website, provided the message or advertisement is no more than 200 characters in length and the link directs the user to another Internet website that complies with the disclaimer requirements in section 106.143(1), Florida Statutes.
- Placed as a graphic or picture link where compliance with the requirements of this section is not reasonably practical due to the size of the graphic or picture link and the link directs the user to another Internet website that complies with section 106.143(1), Florida Statutes.

- Placed at no cost on an Internet website for which there is no cost to post content for public users.
- Placed or distributed on an unpaid profile or account which is available to the public without charge or on a social networking Internet website, as long as the source of the message or advertisement is patently clear from the content or format of the message or advertisement. A candidate or political committee may prominently display a statement indicating that the website or account is an official website or account of the candidate or political committee and is approved by the candidate or political committee. A website or account may not be marked as official without prior approval by the candidate or political committee.
- Distributed as a text message or other message via Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive it.
- Connected with or included in any software application or accompanying function, provided that the user signs up, opts in, downloads, or otherwise accesses the application from or through a website that complies with section 106.143(1), Florida Statutes.
- Sent by a third-party user from or through a campaign or committee's website, provided the website complies with section 106.143(1), Florida Statutes.
- Contained in or distributed through any other technology-related item, service, or device for which compliance with section 106.143(1), Florida Statutes, is not reasonably practical due to the size or nature of such item, service, or device as available, or the means of displaying the message or advertisement makes

compliance with section 106.143(1), Florida Statutes, impracticable.

[F.S. 106.143(10)]

### **Advertisement Provided In-kind -**

Political advertisements made as in-kind contributions from a political party must prominently state: "Paid political advertisement paid for by in-kind by (name of political party) Approved by (name of person, party affiliation, and office sought in the political advertisement)".

### **Other Disclaimers -**

Any political advertisement not paid for by a candidate that is published, displayed, or circulated prior to, or on the day of, any election must prominently be marked "paid political advertisement" or "pd. pol. adv." and must state the name and address of the persons paying for the advertisement.

The political advertisement must also state whether the advertisement and cost of production is paid for or provided in-kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the political advertisement.

[F.S. 106.143(1)(c)]

### **Endorsements in Political**

**Advertisements -** It is unlawful for any candidate or person on behalf of a candidate to represent that any person or organization supports such candidate, unless the person or organization so represented has given specific approval in writing to the candidate to make such representation. However, this paragraph does not apply to editorial endorsement by any newspaper, radio or television station, or other recognized news medium; and publication by a party committee advocating the candidacy of its nominees.

[F.S. 106.143(4)]

### **Independent Expenditure Disclaimers**

- Any person who makes an independent

expenditure for a political advertisement shall provide a written statement that no candidate has approved the advertisement to the newspaper, radio station, television station, or other medium for each such advertisement submitted for publication, display, broadcast, or other distribution. The advertisement must also contain a statement that no candidate has approved the advertisement. This paragraph does not apply to campaign messages used by a candidate and his or her supporters if those messages are designed to be worn by a person. [F.S. 106.143(5)(b) and (10)]

**Disclaimers for Other Than Independent Expenditures** - Any political advertisement, not paid for by a candidate, including those paid for by a political party or affiliated party committee, other than an independent expenditure, offered on behalf of a candidate must be approved in advance by the candidate. Such political advertisement must expressly state that the content of the advertisement was approved by the candidate and must state who paid for the advertisement. The candidate shall provide a written statement of authorization to the newspaper, radio station, television station, or other medium for each such advertisement submitted for publication, display, broadcast, or other distribution. This paragraph does not apply to messages used by a candidate and his or her supporters if those messages are designed to be worn by a person. [F.S. 106.143(5)(a) and (10)]

**Removal of Campaign Signs – 106.1435**  
**Usage and removal of political campaign advertisements.—**

(1) Each candidate, whether for a federal, state, county, or district office, shall make a good faith effort to remove all of his or her political campaign advertisements within 30 days after:

- (a) Withdrawal of his or her candidacy;

- (b) Having been eliminated as a candidate; or
- (c) Being elected to office.

However, a candidate is not expected to remove those political campaign advertisements which are in the form of signs used by an outdoor advertising business as provided in chapter 479. The provisions herein do not apply to political campaign advertisements placed on motor vehicles or to campaign messages designed to be worn by persons.

(2) If political campaign advertisements are not removed within the specified period, the political subdivision or governmental entity has the authority to remove such advertisements and may charge the candidate the actual cost for such removal. Funds collected for removing such advertisements shall be deposited to the general revenue of the political subdivision.

(3) Pursuant to chapter 479, no political campaign advertisements shall be erected, posted, painted, tacked, nailed, or otherwise displayed, placed, or located on or above any state or county road right-of-way.

(4) The officer before whom a candidate qualifies for office shall notify the candidate, in writing, of the provisions in this section.

(5) This provision does not preclude municipalities from imposing additional or more stringent requirements on the usage and removal of political campaign advertisements.

**History.**—s. 1, ch. 84-221; s. 20, ch. 84-302; s. 14, ch. 87-224; s. 647, ch. 95-147.

However, municipal ordinance will override state requirements and may require removal of campaign advertisements and campaign signs sooner.

[F.S. 106.1435]

# Chapter 13: What to Expect on Election Day

Depending upon the political atmosphere on the day of your election, you could be tested to the max or, if all goes well, it could be a good day to start processing your paperwork to pay your poll workers.

However your day may go, here is some good advice to help get you through the day:

- Dress comfortably, arrive early and expect a very, very long, and sometimes stressful, day;
- Poll Workers can't gain access into polling location - be sure to have all contact info, as well as alternate contact info;
- Poll Workers don't report for duty - be sure to have trained alternates/back-up;
- Poll Worker unprepared - be sure they bring their manual as a reference tool;
- Equipment malfunctions - contact County SOE ASAP;
- Visits to your polling locations several times throughout the day. Check-in with Precinct Clerk(s) to discuss any concerns;
- Communicate with Canvassing Board members to ensure their attendance at the tabulation center;
- Anything outside the 100' zone is not your responsibility. Allegations of unlawful conduct should be referred to law enforcement;
- Expect the unexpected!

# Chapter 14: Canvassing Board Responsibilities

Your Canvassing Board has a *huge* responsibility. They must certify the accuracy of the tabulating equipment, compare write-in votes with the votes cast on the ballot, certify the election, conduct manual audits, canvass vote by mail ballots, examine provisional ballots, and participate in recounts.

It is essential to have your Canvassing Board members present at all meetings that call for their service. As such, you should keep them informed of all such meetings and, if your governing authority permits, provide for alternates in the event of accidents or illness.

The County Supervisor of Elections requires each municipality to appoint three members to their Canvassing Board. The County SOE has agreed to serve as a member of the municipal Canvassing Board, but will not serve as its sole member. **IMPORTANT**: If your Charter or Code specifically names the members of the municipal Canvassing Board and does not specify or provide for the appointment of the County SOE, the County SOE will not serve on the municipal Canvassing Board.

Canvassing Board members must remain unbiased at all times, and must *NEVER* touch the ballots. When determining if a vote should count or not count, the Canvassing Board shall not base their decision upon the area in which a voter lives or their personal knowledge of a voter's intent in voting on a candidate or issue.

Below are some of the Laws that govern the Canvassing Board's responsibility:

F.S. 101.048 Provisional ballots. - The canvassing board shall examine each Provisional Ballot Voter's Certificate and Affirmation to determine if the person voting that ballot was entitled to vote at the precinct where the person cast a vote in the election and that the person had not already cast a ballot in the election.

F.S. 101.5612 Testing of tabulating equipment. — The canvassing board shall convene, and each member of the canvassing board shall certify to the accuracy of the test. For the test, the canvassing board may designate one member to represent it.

F.S. 101.5614 Canvass of returns. — For each ballot or ballot image on which write-in votes have been cast, the canvassing board shall compare the write-in votes with the votes cast on the ballot.

F.S. 101.591 Voting system audit. — Immediately following the certification of each election, the county canvassing board or the local board responsible for certifying the election shall conduct a manual audit of the voting systems used in randomly selected precincts.

F.S. 101.68 Canvassing of vote by mail ballot. — The supervisor shall safely keep the ballot unopened in his or her office until the canvassing board canvasses the vote. The canvassing board may begin the canvassing of vote by mail ballots at 7 a.m. on the 15th day before the election, but not later than noon on the day following the election.

F.S. 101.733 Election emergency; purpose; elections emergency contingency plan. - The Governor may, upon issuance of an executive order declaring a state of emergency or impending emergency, suspend or delay any election. The Governor may take such action independently or at the request of the Secretary of State, a supervisor of elections from a county affected by the emergency circumstances, or a *municipal* SOE from a municipality affected by the emergency circumstances.

## **Recounts**

A machine recount is to be performed when the unofficial returns reflect that a candidate for any

office was defeated or eliminated by one-half of a percent or less of the votes cast for such office. [F.S. 102.141(7)]

A manual recount shall be preformed when the second set of unofficial returns pursuant to s. 102.141 indicates that a candidate for any office was defeated or eliminated by one-quarter of a percent or less of the votes cast for such office, or that a measure appearing on the ballot was approved or rejected by one-quarter of a percent or less of the votes cast on such measure, a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure shall be ordered unless:

(a) The candidate or candidates defeated or eliminated from contention by one-quarter of 1 percent or fewer of the votes cast for such office request in writing that a recount not be made; or

(b) The number of overvotes and undervotes is fewer than the number of votes needed to change the outcome of the election.

[F.S. 102.166]

# Chapter 15: Determining Voter's Choice on a Ballot and Recount Procedures

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**1S-2.027 Standards for Determining Voter's Choice on a Ballot** - The standards in this rule apply to determine whether the voter has clearly indicated a definite choice for purposes of counting a vote cast on a ballot in a manual recount as provided specifically by Section 102.166, F.S.

The direct recording electronic voting system is where the voter marks the ballot electronically, which we no longer use.

Optical scan voting system is where the voter marks the ballot, which is our current method of voting.

A vote cast on this voting system is valid for a particular write-in candidate when the voter writes in the name of a candidate in the designated write-in space and fills in the oval or arrow next to the write-in candidate's name.

**Manual review and tabulation** - The standards under this subsection apply in all instances where a contest is not marked as specified in the ballot instructions and a manual review of the voter's markings on a ballot is required to determine whether there is a clear indication that the voter has made a definite choice in a contest.

The canvassing board must first look at the entire ballot for consistency. Then the provisions of paragraph (c) apply to determine whether the voter has made a definite choice in a contest, provided the voter has not marked any other contest on the ballot, or if the voter has marked other contests, he or she has marked them in the same manner, subject to the exceptions in subparagraphs 7., 10., and 15. The following are examples of valid votes after review for consistency:

The following are examples of determining a voter's intent:

Ballot Situation 1:

Recount in race of State Representative. The two ovals in the first two races are filled in properly, but the voter has circled the candidate's name in the state representative race. Since the voter did not mark the state representative race in the same manner as in the other races, it cannot be determined whether the voter has clearly indicated a definite choice for Don Nichols.

<p><b>For Attorney General</b> (Vote for one)</p> <p><input type="radio"/> Lucille Ball</p> <p><input checked="" type="radio"/> Jack Benny</p> <p><input type="radio"/> Desi Arnaz</p> <p><input type="radio"/> Lenny Bruce</p>
<p><b>For Commissioner of Agriculture</b> (Vote for one)</p> <p><input type="radio"/> Jack Ritter</p> <p><input type="radio"/> Audra Lindley</p> <p><input checked="" type="radio"/> Francis Bavier</p> <p><input type="radio"/> Jack Dodson</p>
<p><b>For State Representative</b> (Vote for one)</p> <p><input type="radio"/> <u>Don Nichols</u></p> <p><input type="radio"/> Michael Ross</p> <p><input type="radio"/> Bernie West</p> <p><input type="radio"/> Norman Fell</p>

**Ballot Situation 2:**

Recount in race of State Representative. All races on this ballot are marked in the same manner. Since the ballot is consistently marked as in paragraph (c), the vote cast for Michael Ross in the state representative race is a valid vote.

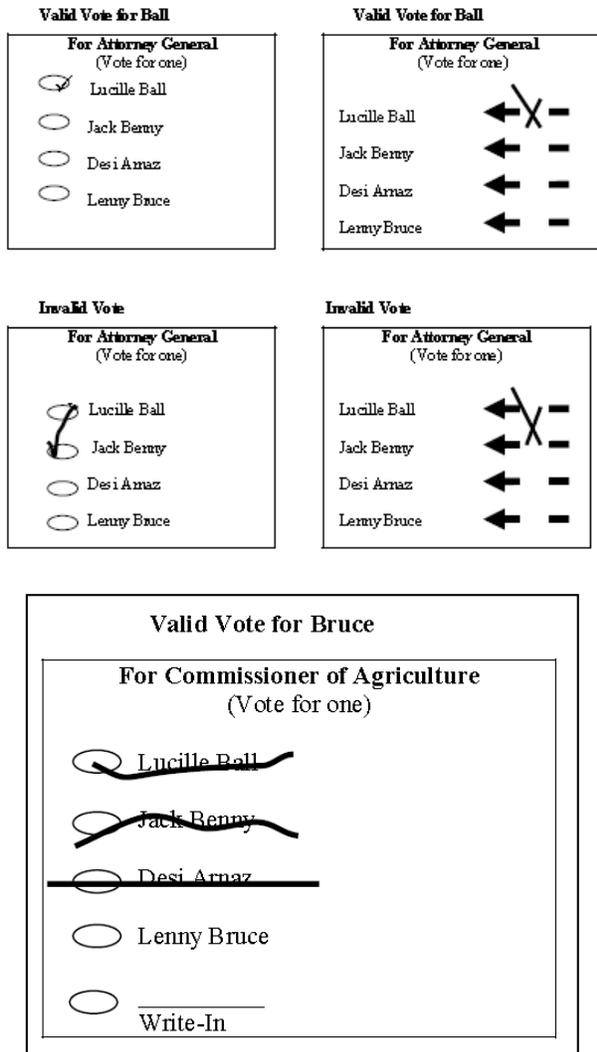
<b>For Attorney General</b> (Vote for one)		
Lucille Ball	←	—
Jack Benny	←	—
Desi Arnaz	←	—
Lenny Bruce	←	—
<b>For Commissioner of Agriculture</b> (Vote for one)		
Jack Ritter	←	—
Audra Lindley	←	—
Francis Bavier	←	—
Jack Dodson	←	—
<b>For State Representative</b> (Vote for one)		
Don Nichols	←	—
Michael Ross	←	—
Bernie West	←	—
Norman Fell	←	—

**Ballot Situation 3:**

Recount in State Representative race. Each race is marked differently so that no consistency in marking exists. It cannot be determined which marking, if any, is clearly indicative of the voter's choice. Therefore, the vote cast for Bernie West is not valid.

<b>For Attorney General</b> (Vote for one)		
Lucille Ball	←	—
Jack Benny	←	—
Desi Arnaz	←	—
Lenny Bruce	←	—
<b>For Commissioner of Agriculture</b> (Vote for one)		
Jack Ritter	←	—
Audra Lindley	←	—
Francis Bavier	←	—
Jack Dodson	←	—
<b>For State Representative</b> (Vote for one)		
Don Nichols	←	—
Michael Ross	←	—
Bernie West	←	—
Norman Fell	←	—

The voter marks an “X,” a check mark, a cross, a plus sign, an asterisk or a star, any portion of which is contained in a single oval or within the blank space between the head and tail of a single arrow. The marking must not enter into another oval or the space between the head and tail of another arrow.



### 1S-2.031 Recount Procedures

There are two types of recount procedures: Machine; and Manual. These procedures are governed by FAC Rule 1S-2.031. Furthermore, all recounts are performed by County SOE staff.

The machine recount does not require the attendance of your Canvassing Board; however, the manual recount does.

**Optical Scan Ballot - Machine Recounts** - The following procedures apply to machine recounts of optical scan ballots involving all county, multicounty, federal or statewide offices or issues required by law to be recounted:

1. The tabulating equipment being used in the recount must be tested pursuant to the provisions of Section 101.5612, F.S. The county canvassing board may, but is not required to, use the same tabulating equipment that ballots were originally tabulated on. If the test shows no error, the county canvassing board shall proceed with the machine recount. If the test indicates an error, the county canvassing board shall correct the error and proceed with the machine recount.
2. Procedure when only one race is being recounted or where more than one race is being recounted and the voting system will allow for the sorting of overvotes and undervotes in more than one race at the same time:
  - a. The supervisor of elections shall change the election parameters so that the recounted race or races will be tabulated and so that ballots containing overvotes and undervotes in the recounted race or races can be sorted from the other ballots during the machine recount.
  - b. The county canvassing board or its representatives shall put each ballot through the tabulating equipment and determine the votes in the recounted race or races. During this process, the overvoted and undervoted ballots in the recounted race or races must be sorted.

- c. Sorted ballots shall be placed in a sealed container or containers until it is determined whether a manual recount will be conducted. Seal numbers shall be recorded at the time the ballots are placed in the containers.
3. Procedure when more than one race is being recounted by machine and the voting system does not allow the sorting of overvotes and undervotes on more than one race at a time:
    - a. The county canvassing board or its representatives shall put each ballot through the tabulating equipment and determine the votes in the affected races.
    - b. The county canvassing board shall produce vote counts for those races involved in the machine recount.
    - c. Prior to a manual recount being conducted, the supervisor of elections shall change the election parameters and the ballots for the manually recounted race or races shall be put back through the tabulating equipment and overvotes and undervotes for each race shall be sorted separately.

**Optical Scan Ballot - Manual Recounts** - This procedure is very detailed and extensive, and too vast to include in this manual. However, if you choose to review these procedures they can be accessed at <http://election.dos.state.fl.us/rules/adopted-rules/pdf/1s2031.pdf>.

# Chapter 16: Oath of Office / Certificate of Election

**Certificate of Election** - F.S. 102.155, governs the supervisor shall give to any person the election of whom is certified by the county canvassing board a certificate of the person's election. The Department of State shall give to any person the election of whom is certified by the state canvassing board a certificate of the person's election. The certificate of election which is issued to any person shall be prima facie evidence of the election of such person.

It appears this statute does not apply to municipal canvassing boards, however, it would be beneficial to all concerned to provide the same to municipal elected officials. The Certificate of Election need not be complicated, and could be as simple as the sample provided.

**Oath of Office (Optional, as this is only required for State and County Officers)** - Art II s(5)(b) of the Florida Constitution governs the filing officer shall provide the elected official with an Oath of Office, Form DS-DE 56.

The elected official shall file the Oath of Office with the municipal filing officer.

The municipal filing officer shall record and maintain the Oath of Office as an official record.

Note: Your municipal Charter/Code may require additional language.

**SAMPLE**



# Chapter 17: Orientation for Elected Officials

In more cases than not, newly elected officials are inexperienced in municipal government and an orientation is a great means and opportunity to get your elected official on the right track.

**Orientation** - A one-on-one personal orientation with the City Manager and City Clerk is a great start.

Arrange for a Workshop meeting to:

- Introduce them to all Departments with an overview of their responsibilities, key projects and initiatives (This is a great time for Finance to present and discuss the budget)
- Receive Attorney presentations on the Sunshine Law, State Code of Ethics, Palm Beach County Code of Ethics, Public Records Law and responsibilities of elected officials (as governed by the municipalities Code of Ordinances)

**Ethics Training** - Pursuant to Article XIII, sec. 2-446, of the Palm Beach County Code of Ethics, all Palm Beach County employees and officials are required to receive training on the Palm Beach County [Code of Ethics](#) and sign an acknowledgement form. The following Web page is designed to help you complete these tasks:

<http://www.palmbeachcountyethics.com/trainin g.htm>

Additionally, changes made to the ethics laws during the 2014 legislative session require Florida's elected municipal officers to take a minimum of four hours of ethics training each year, beginning January 1, 2015. The training is required to include:

- Article II, Section 8 of the Florida Constitution

- Part III, Chapter 112, Florida Statutes (Code of Ethics)
- Public Records
- Public Meetings (Sunshine Law)

In addition, Commission on Ethics Rule Chapter 34-7.025, Florida Administrative Code, governs that “In addition to receiving training on Florida’s public records laws (Chapter 119, F.S.) and open meetings laws (Chapter 286, F.S.), constitutional officers [now including local elected officials] are required to obtain ethics training that is derived from Article II, Section 8, Florida Constitution, “Ethics in Government,” and Chapter 112, Part III, F.S., the “Code of Ethics for Public Officers and Employees.” ..... (b) Subjects that must be covered in training shall include one or more of the following:

1. Doing business with one's own agency;
2. Conflicting employment or contractual relationships;
3. Misuse of position;
4. Disclosure or use of certain information;
5. Gifts and honoraria, including solicitation and acceptance of gifts, and unauthorized compensation;
6. Post-office holding restrictions;
7. Restrictions on the employment of relatives;
8. Voting conflicts when the constitutional officer is a member of a collegial body and votes in his or her official capacity;
9. Financial disclosure requirements, including the automatic fine and appeal process;
10. Commission procedures on ethics complaints and referrals; and
11. The importance of and process for obtaining advisory opinions rendered by the Commission.”

**Reference Manual** - To assist a newly elected official with a smooth transition into local government, it is recommended that the

City Clerk compiles pertinent information, possibly in the form of a "Reference Manual". Items to include, but not limited to, are:

- Agenda Process
- Census and Demographic Information
- List of Boards/Committees , their function, and membership roster
- Brief History of the City
- Rules of Conduct for Commission meetings
- Access to Code of Ordinances
- Florida Municipal Officials' Manual
- Map of the City
- Parliamentary Procedures
- Government-In-The-Sunshine Manual
- Administrative Policies specific to elected officials, to include Travel and Training Policy
- Vision and Mission Statement
- List of Acronyms
- Institute for Elected Municipal Officials (IEMO) training information
- List of useful resources, such as: Florida State Government; Florida Associations and Organizations; Palm Beach County Government
- Your contact numbers!

**Miscellaneous Suggestions** - Provide each newly elected official an opportunity to sit in his/her seat on the dais prior to any official meeting , and be sure their name plate is in its proper place.

Arrange for: photos to be taken; business cards to be made; where they are to pick up their mail; contact numbers to provide the public; etc.

Newly elected officials, if compensated, will need to meet with Human Resources to complete any necessary paperwork to get them into the payroll system.

It is suggested that each Department Head (accompanied by the City Manager, if required)

provide a tour of their area of responsibility, to include city-facilities and provide information on current projects.

The list goes on, just be as helpful and courteous as possible, and remember they are most likely new to local government and will greatly appreciate your assistance.

# Chapter 18: Complaints/Concerns

**Authority** - The Florida Elections Commission (FEC) is the administrative agency charged with enforcing Chapters 104 and 106 of Florida's Election Code. The agency is composed of nine appointed Commissioners and its staff is administratively housed within the Department of Legal Affairs. However, the FEC is a separate budget entity and is not subject to the control, supervision or direction of the Attorney General.

The purpose of the FEC is to ensure transparency in Florida's elections. In their capacity as quasi-judicial officers, the Commissioners adjudicate cases. Additionally, they act as the agency head. Commissioners hire an Executive Director who supervises a staff that includes a General Counsel, several investigators and a Commission Clerk.

The FEC is not permitted to give advisory opinions to anyone. Furthermore, the FEC does not have jurisdiction over candidate qualifying issues, how elections are run or how votes get counted.

**Violations** [F.S. 106.19] – (1) Any candidate, campaign manager, campaign treasurer, or deputy treasurer of any candidate, agent or person acting on behalf of any candidate, or other person who knowingly and willfully:

- (a) Accepts a contribution in excess of the limits prescribed by Section 106.08, F.S.;
- (b) Fails to report any contribution required to be reported by Chapter 106, F.S.;
- (c) Falsely reports or deliberately fails to include any information required by Chapter 106, F.S.; or
- (d) Makes or authorizes any expenditure in violation of Section 106.11(4), F.S., or any other expenditure prohibited by Chapter 106, F.S.; is guilty of a misdemeanor of the first degree,

punishable as provided in F.S. 775.082 or 775.083, F.S.

[Penalties (as defined in F.S. 775.082 or 775.083, F.S.): a fine not to exceed \$1,000 and/or definite term of imprisonment not exceeding 1 year, and possible court costs.]

(2) Any candidate, campaign treasurer, or deputy treasurer; any chair, vice chair, or other officer of any political committee; any agent or person acting on behalf of any candidate or political committee; or any other person who violates paragraph (1)(a), paragraph (1)(b), or paragraph (1)(d) shall be subject to a civil penalty equal to three times the amount involved in the illegal act. Such penalty may be in addition to the penalties provided by subsection (1) and shall be paid into the General Revenue Fund of this state.

(3) A political committee sponsoring a constitutional amendment proposed by initiative which submits a petition form gathered by a paid petition circulator which does not provide the name and address of the paid petition circulator on the form is subject to the civil penalties prescribed in s. [106.265](#).

[Penalties (as defined in 106.265): fines not to exceed \$1,000 per count, or, if applicable, to impose a civil penalty as provided in s. 104.271 or s. 106.19.]

(4) Except as otherwise expressly stated, the failure by a candidate to comply with the requirements of this chapter has no effect upon whether the candidate has qualified for the office the candidate is seeking.

**Process** [F.S. 106.25 and 106.28] - Any person who has information of a violation of Chapters 104 or 106, F.S., **shall** file a sworn complaint with the Florida Elections Commission, 107 West Gaines Street, Suite 224, Tallahassee, Florida 32399-1050 or call 850-922-4539. A

complaint form may be obtained from the Florida Elections Commission or downloaded from the Commission's website at [www.fec.state.fl.us](http://www.fec.state.fl.us).

A complaint against a candidate may not be filed or disclosed 30 days before a special, primary, or general election unless the complaint is based upon personal information or information other than hearsay.

[F.S. 112.324(2)(f)]

The Florida Department of State has primary jurisdiction to resolve through an informal resolution process complaints submitted by any person who is aggrieved by a violation of the National Voter Registration Act of 1993 or a violation of a voter registration or removal procedure under the Florida Election Code. Such complaints can only be filed under section 97.023, Florida Statutes, if the alleged violation was committed by the Florida Department of State, a voter registration agency, a supervisor of elections, the Florida Department of Highway Safety and Motor Vehicles, or an Armed Forces Recruitment Center. If the complaint involves the Florida Department of State, a mediator other than a department employee is to be appointed by the Governor.

To initiate the informal dispute resolution process under section 97.023, Florida Statutes, a person must submit a written complaint to the Florida Department of State. Such person shall use Form DS-DE 18 (eff. 01/06), entitled "NVRA Complaint", which is hereby incorporated by reference. This complaint form may be obtained by contacting the Division of Elections at 850/245-6200, by requesting the form from the Division of Elections, 3rd Floor, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399 or by downloading the form from the Division of Elections home page at: <http://election.dos.state.fl.us>.

[Division of Elections Rules, No. 1S-2.036 Complaint Process for Violations of the National Voter Registration Act of 1993 and the Florida Election Code]

The Department of State, Division of Elections, is required to establish a complaint form to be used for HAVA (Help American Voters Act) violations, Form DS DE 59 (Eff. 2/04), which is hereby incorporated by reference and available from the Division of Elections, R.A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250.

[Division of Elections Rules, No. 1S-2.038 HAVA Violations – Complaints]

## General Inquiries

***Municipal SOE Responsibilities*** - The *Municipal SOE* should respond to the following as it relates to a municipal election:

- Election process
- Election deadlines
- Election (Poll) Workers
- Candidate Questions
- Poll Watchers
- Campaign Signs
- Inquiries from the Media

***County SOE Responsibilities*** - The *County SOE* should respond to the following:

- Voter Registration/Changes to Voter Registration/Voter Information
- Vote by mail ballots
- Becoming an Election (Poll) Worker
- Federal, State, and County Election information
- Obtaining information on previously filed Statement of Financial Interests (Form 1)
- Restoration of Civil Rights
- Voting equipment demonstrations

# Chapter 19: Prohibited Acts

F.S. 106.08 and 106.15 govern certain prohibited acts, such as:

- No candidate or any person on behalf of a candidate shall pay money or give anything of value for the privilege of speaking at a political meeting in the furtherance of his/her candidacy.
- No candidate may, in the furtherance of his/her candidacy use the services of any officer or employee of the state, a county, a city or a district during work hours.
- No candidate may solicit contributions from any religious, charitable, civic group, or other causes or organizations that are established primarily for the public good.
- No candidate may make contributions, in exchange for political support, to any religious, charitable, civic group, or other causes or organizations established primarily for the public good.

Furthermore, F.S. 104.271, 106.07, 106.08, and 106.19 govern that

- Any candidate, campaign manager, campaign treasurer, or deputy treasurer who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree.
- A candidate may not, with actual malice, make any false statement about an opposing candidate.
- A person may not, directly or indirectly, make a contribution through or in the name of another, in any election.

- Any candidate, campaign manager, campaign treasurer, or deputy treasurer of any candidate, agent or person acting on behalf of any candidate, or other person who knowingly and willfully:
  - ✓ Accepts a contribution in excess of the limit;
  - ✓ Fails to report any contribution required to be reported;
  - ✓ Falsely reports or deliberately fails to include any information required to be reported; and
  - ✓ Makes or authorizes any expenditure in violation of Florida Statutes Chapter 106, or any other expenditure prohibited by Florida Statutes Chapter 106,

are guilty of a misdemeanor of the first degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes.

# Chapter 20: Gifts Law

Candidates are subject to the State's Gift Law as is anyone who is required to file an annual financial disclosure form.

## **What is a Gift?**

A "Gift" means anything accepted by a person or on that person's behalf, whether directly or indirectly, for that person's benefit, and for which equal or greater consideration is not given within 90 days of the receipt of the gift. "Gift" includes real property or the use thereof; tangible or intangible personal property or the use thereof; a preferential rate or terms on a transaction not available to others similarly situated; forgiveness of a debt; transportation (unless provided by an agency in relation to officially approved governmental business), lodging, or parking; food or beverage; dues, fees, and tickets; plants and flowers; personal services for which a fee is normally charged by the provider; and any other thing or service having an attributable value.

A "Gift" does not include salary, benefits, services, fees, gifts, commissions, or expenses associated primarily with one's employment, business, or service as an officer or director of a corporation or organization; campaign contributions or expenditures pursuant to the election laws; an honorarium or honorarium expense; an award, plaque, certificate, etc., given in recognition of public, civic, charitable, or professional service; honorary membership in a service or fraternal organization; the use of a public facility or public property made available by a governmental agency for a public purpose; and transportation provided by an agency in relation to officially approved governmental business. Also exempted are some gifts from organizations which promote the exchange of ideas between, or the professional development of, governmental officials and employees and whose membership is primarily composed of elected or appointed public officials or staff, if the gift is to a member of the organization.

**Gift Solicitation Prohibitions** - Each person required to file annual financial disclosure Form 1 or Form 6, including candidates for office, and each State procurement employee is prohibited from soliciting any gift from a political committee, or lobbyist<sup>6</sup> or from a partner, firm, employer, or principal of a lobbyist.

**Gift Acceptance Prohibitions** - Individuals, including candidates, required to file annual disclosure Form 1 or Form 6 (other than officials, members, or employees of the State Executive Branch and members or employees of the Legislature) and State procurement employees are prohibited from directly or indirectly accepting a gift worth over \$100 from a lobbyist, from a partner, firm, employer, or principal of the lobbyist, or from a political committee. (However, a gift may be accepted by a person on behalf of a governmental entity or charitable organization, provided the gift is promptly transferred to the intended entity or organization.)

**Gifts Over \$25 and Not Exceeding \$100** - Persons required to file financial disclosure Form 1 or Form 6, including candidates for office and State procurement employees may accept a gift valued at more than \$25 but not exceeding \$100 from a lobbyist, the firm, partner, employer or principal of a lobbyist, or a political committee or vendor. However, any of these persons or entities who gives a gift valued at over \$25 but not exceeding \$100 to a covered reporting individual or State

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<sup>6</sup> "Lobbyist" means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decision-making of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency. [§112.3148(2)(b)1., Fla. Stat.]

procurement employee must report the gift on Commission on Ethics Form 9 by the last day of the calendar quarter for gifts given in the preceding quarter. Additionally, the donor must notify the recipient at the time a reportable gift is made that the gift will be disclosed as required above.

**Quarterly Gift Disclosure By Reporting Individuals** - All persons required to file financial disclosure and State procurement employees must file a Form 9, Quarterly Gift Disclosure, with the Commission on Ethics on the last day of a calendar quarter for the previous calendar quarter during which a gift worth over \$100 was received. Gifts from relatives, gifts prohibited from being accepted, and gifts otherwise required to be disclosed elsewhere are not reported on Form 9. All other gifts worth over \$100 must be reported. The form need not be filed if no such gift was received during the calendar quarter.

# Chapter 21: Division of Elections Advisory Opinions

**Advisory Opinions** - Division of Elections Rule 1S-2.010 governs that the Division of Elections has the responsibility to render advisory opinions as to the application of Chapters 97 through 106, F.S.

Those who may formally request and receive advisory opinions as provided for in this rule include the following:

1. Supervisors of Elections.
2. Candidates.
3. Local officers having election related duties.
4. Political parties.
5. Registered political committees.
6. Other persons or organizations engaged in political activity; that is, persons or members of an organization which are actually involved in the action which is the concern of the request.

Additionally, a representative may request an opinion in the name of his or her principal; however, the opinion will be addressed to the principal.

Advisory opinions may be rendered only with respect to provisions or possible violations of Florida election law with respect to actions taken or proposed to be taken by a person or entity listed in subsection 1S-2.010(2), F.A.C.

Requests for advisory opinions, pursuant to Section 106.23(2), F.S., shall occur only in the form of a written request to the Florida Department of State, Division of Elections. Such request may be accompanied by pertinent attachments, exhibits and memoranda, but must contain the following information in the body of the request:

- (a) Name of Requestor.
- (b) Address of Requestor.
- (c) Statutory provision(s) of Florida election law on which advisory opinion is sought.
- (d) Description of how this statutory provision may or does affect the requestor.

(e) Possible violation of Florida election laws on which advisory opinion is sought.

(f) The precise factual circumstances giving rise to the request.

(g) The point(s) on which the requestor seeks an opinion.

(h) Additional relevant information.

(i) Statement of necessity, if any, to expedite division's response.

The division will prepare a written response to the request in a timely manner. The division shall not be limited to analyzing statutory provisions set forth in a request for an advisory opinion in its preparation of a response to the request.

Once the opinion is rendered, the division shall forward a copy of it to the requestor and each county Supervisor of Elections and to any person or organization upon request.

Advisory opinions shall be dated and indexed by subject matter and shall be numbered sequentially. The first two digits of the advisory opinion shall be the last two digits of the year in which the opinion was rendered. Following the year shall be a dash and the number of the opinion.

The process described in the preceding provisions of Rule 1S-2.010, F.A.C., is the only process by which the Division of Elections is authorized to provide advisory opinions pursuant to Section 106.23(2), F.S. Other telephone, verbal or written advice does not constitute an advisory opinion rendered pursuant to that law.

# Chapter 22: Resources

The following is a list of resources that you may find beneficial in your election process.

- Florida Attorney General: Formal Opinions Database at <http://myfloridalegal.com/ago.nsf/Opinions>
- Florida Commission on Ethics: at <http://www.ethics.state.fl.us/>
- Florida Division of Elections at <http://election.dos.state.fl.us/index.shtml>
- Florida Election Commission at <http://www.fec.state.fl.us/FECWebFi.nsf/pages/home>