

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: SB 1372

INTRODUCER: Senator Ingoglia

SUBJECT: Political Advertisements for Nonpartisan Office

DATE: March 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Biehl	Roberts	EE	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 1372 repeals the following provisions applicable to candidates for nonpartisan office:

- A prohibition against including the candidate’s political affiliation in his or her political advertisement.
- A prohibition against campaigning based on party affiliation.

The bill takes effect July 1, 2023.

II. Present Situation:

Current law defines “political advertisement” to mean a paid expression in a communications medium,¹ 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.² However, the term does not include:

- A statement by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or in opposition to a candidate or issue, in that organization’s newsletter, which newsletter is distributed only to the members of that organization.
- Editorial endorsements by a newspaper, a radio or television station, or any other recognized news medium.³

Each political advertisement paid for by a candidate running for a partisan office must prominently state a specified disclaimer that provides the candidate’s name; party affiliation or

¹ Section 106.011(4), F.S., defines “communications medium” to include broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies.

² Section 106.011(15), F.S.

³ *Id.*

“write-in candidate,” as applicable; and office sought.⁴ A political advertisement of a candidate running for nonpartisan office, however, may not state the candidate’s political affiliation, although the advertisement may state the candidate’s partisan-related experience. In addition, a candidate for nonpartisan office is prohibited from campaigning based on party affiliation.⁵

Current law defines “nonpartisan office” as an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation.⁶ The Election Code⁷ specifies that judicial offices and school board seats are nonpartisan offices.⁸ The specification that school board seats are nonpartisan offices is also provided in the Florida Constitution.⁹ In addition, many local government offices are nonpartisan.¹⁰

In a recent case filed in federal district court, a school board candidate alleged the law prohibiting candidates for nonpartisan office from advertising or campaigning based on party affiliation unconstitutionally violated his First Amendment political speech rights.¹¹ On November 8, 2022, the judge in the case ruled in favor of the school board candidate and permanently enjoined the named defendants from enforcing the challenged statutory provisions with regard to nonpartisan candidates.¹²

III. Effect of Proposed Changes:

The bill deletes provisions generally prohibiting candidates for nonpartisan office from advertising or campaigning based on party affiliation. Judicial candidates will still be prohibited from campaigning based on party affiliation.¹³

The bill does not affect the process for elections for nonpartisan offices; its impact is limited to candidates for such offices’ ability to advertise and campaign.

⁴ Sections 106.143(1) and (3), F.S.

⁵ Section 106.143(3), F.S.

⁶ Section 97.021(23), F.S.

⁷ Chapters 97-106, F.S.

⁸ See, specifically, ch. 105, F.S.

⁹ Article IX, s. 4(a), FLA. CONST. School board seats were historically partisan offices, until the adoption by voters of a 1998 amendment to the Florida Constitution that, among other provisions, made school board seats nonpartisan (see Florida Constitution Revision, *Analysis of the Revisions for the November 1998 Ballot*, <http://library.law.fsu.edu/Digital-Collections/CRC/CRC-1998/tabloid.html#R11>, last visited March 17, 2023).

¹⁰ Section 100.3605, F.S., provides that the Election Code governs the conduct of a municipality’s election in the absence of an applicable special act, charter, or ordinance provision. It prohibits the adoption of a charter or ordinance provision that conflicts with or exempts a municipality from any provision in the Florida election Code that expressly applies to municipalities.

¹¹ *Hetherington v. Madden*, United States District Court, N.D. Florida, 2022 WL 18356994, November 8, 2022.

¹² Although the judge enjoined enforcement of the challenged provisions against nonpartisan candidates generally, earlier in the order she noted that while “a school board member’s decisions can and should be responsive to the electorate, contrary to a judicial officer’s, the free exchange of ideas during the election is core.” Also see *Williams-Yulee v. Florida Bar*, 575 U.S. 443 (2015) at 447 (noting the role of judges, who must decide cases based on fairness and independence, differs from the role of politicians, who may decide issues based on the preferences of their supporters).

¹³ Section 105.10, F.S., provides that if any provision of the chapter conflicts with any other provision in the Election Code, the provision in ch. 105 prevails. Section 105.011(2), F.S., specifies that a judicial candidate is a nonpartisan office, and a candidate for election or retention thereto is prohibited from campaigning or qualifying for such an office based on party affiliation.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. Bills that affect state or local elections are exempt from Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The political advertisement disclaimer specified in current law does not distinguish between advertisements for partisan and nonpartisan offices. As a conforming change to the bill's provisions, the Legislature may wish to consider providing for separate disclaimer formats for partisan and nonpartisan offices.

The statutory definition for “nonpartisan office” refers to an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation.¹⁴ Although the definition does not independently ban statements of party affiliation, the Legislature may wish to consider whether the definition should be revised in light of this bill’s provisions.

VIII. Statutes Affected:

This bill substantially amends section 106.143, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁴ Section 97.021(23), F.S.