

**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 Judiciary Committee

BILL: CS/SB 1672

INTRODUCER: Ethics and Elections Committee, Senator Crist, and others

SUBJECT: Political Advertisements

DATE: April 16, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	<b>Fav/CS</b>
2.	Treadwell	Maclure	JU	<b>Favorable</b>
3.			TA	
4.			GPSC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |  |   |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>                   | Technical amendments were recommended   |
|                              | <input type="checkbox"/>                   | Amendments were recommended             |
|                              | <input type="checkbox"/>                   | Significant amendments were recommended |

**I. Summary:**

The bill authorizes an abbreviated political advertisement sponsorship disclaimer for ads by candidates, eliminating superfluous words and the “approved by” attestation. It also creates a series of technology-based disclaimer exemptions for certain campaign messages or political advertisements used by a candidate, the candidate’s supporters, or a political committee.

This bill substantially amends section 106.143, Florida Statutes.

**II. Present Situation:**

Section 106.011(17), F.S., defines “political advertisement” to mean:

A paid expression in any *communications media* prescribed in subsection (13), 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.<sup>1</sup>

The term “communications media” includes the Internet, provided the expenditure is made “for the cost of creating or disseminating a message on a computer information system accessible by more than one person but excluding internal communications of a campaign or any group.”<sup>2</sup>

Most political advertisements require some form of general sponsorship disclaimer that states that the ad is a paid political advertisement, identifies who paid for it, and, for ads offered by or on behalf of a candidate, specifies that the ad was approved by the candidate and indicates the office sought and the candidate’s party affiliation (if running for a partisan nomination). The requisite disclaimer can be quite lengthy – i.e., requiring a *bare minimum* of about 60-70 characters for a candidate’s ad.

Florida’s political advertising disclaimer requirements pre-date the Internet and other modern electronic technologies (i.e., text messaging), the use of which has become fairly prevalent in many modern campaigns. As such, the lengthy disclaimer requirements that worked well for print and broadcast media are simply outdated when it comes to the character and space limitations of modern computer and communications technology.

For example, a number of web search engines, such as Google and Yahoo, have “sponsored results” or “sponsored links” that appear on the right side of a results page when you run a search – paid ads with text links to websites related to the user’s inquiry. For Google AdWords, the ad itself is limited to 70 characters (in addition to a 25-character title and 35 characters for a display URL). Similarly, text messaging services are currently limited to 160 characters per message. Most Florida political advertising disclaimers wouldn’t fit within these character limits or, if they did, would be so distracting as to significantly detract from the message of the ad.

The Florida Elections Commission recently determined that there was no probable cause to proceed against a local mayoral candidate who expressly advocated his election using a Google AdWords link that did not include the requisite political advertising disclaimer, finding that the candidate’s actions were not “willful” in light of the technical limitations of the advertisement.<sup>3</sup> The Staff’s Recommendation, which was incorporated into the Commission’s final Order of No Probable Cause, stated:

. . .due to various technological advances and the increased use of electronic advertising in political campaigns, it is staff’s opinion that the Legislature should address this issue prior to charging a candidate with a willful violation as a result of the facts set forth herein.<sup>4</sup>

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<sup>1</sup> Section 106.011 (17), F.S. (emphasis added).

<sup>2</sup> Section 106.011(13), F.S.

<sup>3</sup> Florida Elections Commission, *Staff Recommendation*, Case No. FEC 09-160 (Nov. 25, 2009).

<sup>4</sup> *Id.* at 6.

### III. Effect of Proposed Changes:

The bill authorizes an abbreviated political advertisement sponsorship disclaimer for advertisements by candidates, eliminating the term “political advertisement” and the “approved by” attestation, which are implied in the fact that the candidate himself or herself is paying for the advertisement.

It also exempts any campaign message or political advertisement used by a candidate, the candidate’s supporters, or a political committee, from the full-disclosure and other requirements in s. 106.143, F.S., if the message or advertisement is:

- Placed as a paid text link on an Internet website, provided the message or ad is no more than 200 characters and the link directs the user to another website that complies with the full disclaimer requirements (i.e., Google AdWords, Yahoo Sponsored Search).
- Placed as a graphic or picture link on an Internet website where compliance with the disclaimer requirements is not reasonably practical, provided that the link directs the user to another website that complies with the full disclaimer requirement.
- Placed at no cost on an Internet website for which there is no cost for the public to post content (i.e., blogs, comment boards, discussion boards).
- Placed on an unpaid public profile or account available for free to the public on a social networking Internet site, provided the source of the message or advertisement is patently clear from the content or format (i.e., Facebook, MySpace). Further, the bill provides that a social networking website or account may only state that it is “official” if approved by the candidate or political committee.
- Distributed as a text message or Short Message Service message, provided the message is no more than 200 characters or the recipient signed-up or opted-in to receive it.
- Connected or included with a 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 contains the full disclaimer (i.e., screen saver, video player).
- Sent by a third-party user from or through a campaign or committee website, provided the website complies with the full disclaimer requirement (i.e., e-mail campaign or newsletter services).
- Contained in or distributed through any other “technology-related” item, service, or device for which compliance with the full disclaimer requirements is not reasonably practical due to the size or nature of such item, service, or device, or the means of displaying the full disclaimer makes compliance impractical (catch-all provision designed to address future technological innovation without the need to modify the statute).

It may be difficult to establish a consistent standard for what difficulties associated with displaying a full disclaimer would make compliance “impractical,” as provided in the catch-all provision. As a result, application of this provision may exempt some

unintended campaign messages or political advertisements from compliance with the disclosure requirements in s. 106.143, F.S.

The bill takes effect upon becoming law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The disclaimer exemptions in the bill for online text link advertisements and graphics or picture link ads will enable website providers to realize additional revenue from candidate and political committee advertisements. The other exemptions could lead to additional revenue for various website services, text message providers, and support services companies.

C. Government Sector Impact:

The Department of State reports no anticipated fiscal impact.<sup>5</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>5</sup> Department of State, *Senate Bill # 1672* (March 24, 2010) (on file with the Senate Committee on Judiciary).

**VIII. Additional Information:**

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

**CS by Ethics and Elections on April 12, 2010:**

The committee substitute differs from the original bill in that it: changes the effective date from July 1, 2010, to upon becoming law; corrects a technical error with respect to the disclaimer exemption for graphic and picture link ads; and provides the circumstances under which a social networking website or profile may be marked “official.”

- B. **Amendments:**

None.