



# Florida Elections Commission

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## Florida Elections Commission 2021 Proposed Legislation

### I. Notices of No Activity Filed by Candidates and Political Committees.

**Current Law:** Section 106.07(7), F.S., provides that in any reporting period in which a candidate or political committee has not received funds, made any contributions, or expended any reportable funds, the filing of **the required report for that period is waived**.

However, the statute further provides at the end of subsection (7) that the candidate or political committee must **"notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date."**

**Problem:** The statute as currently written creates confusion for some candidates and political committees who only focus on the language indicating the report is waived and fail to focus on the requirement regarding notification of no activity. Those who fail to submit a notification of no activity, or submit the notification late, are subject to Commission disciplinary action for violating s. 106.07(7), F.S. Therefore, staff recommends proposed legislation to clarify the requirement to notify the filing officer of no activity.

#### **Proposed amendment:**

106.07 Reports; certification and filing.—

(7) Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate or political committee has not received funds, made any contributions, or expended any reportable funds, the candidate or political committee shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date. ~~the filing of the required report for that period is waived.~~ However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, ~~and any candidate or political committee not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.~~

**Effects of Change:** The change will clarify the requirement to submit notification of no activity and hopefully result in fewer violations of s. 106.07(7), F.S.

### II. Willfulness Standard

**Current Law:** Section 106.25(1), F.S., grants the Florida Elections Commission Jurisdiction to investigate and determine violations of Chapters 106 and 104, F.S. Section 106.25(3), F.S., provides that the Commission's jurisdiction applies to "willful" violations of Chapters 106 and 104, F.S. Currently, Section 106.25(3), F.S., provides that "willfulness is a determination of fact" and prohibits the Commission from adopting rules to define "willfulness".

**History:** From 1997 to 2007, Section 106.37, F.S., defined “willfulness” as an act committed “while knowing that, or showing reckless disregard” for whether, an act is prohibited or required under Chapter 106, F.S.

In September of 2006, the Commission promulgated a rule defining “willful” for purposes of Chapter 104, F.S., which adopted the Chapter 106, F.S., standard. In 2007, the Florida Legislature repealed Section 106.37, F.S., and amended Section 106.25(3), F.S., to provide that “Willfulness is a determination of fact.”

In December 2007, the Commission amended its rule to provide that the definition of “willful” also applied to Chapter 106, F.S. In 2010, the rule was challenged, and the First DCA held that the repeal of Section 106.37, F.S., and the amendment to Section 106.25(3), F.S., were not a legislative prohibition to the FEC’s rule. *FEC v. Blair*, 52 So.3d 9 (Fla. 1st DCA 2010)

In 2011, the Florida Legislature amended Section 106.25(3), F.S., to prohibit the Commission from adopting a definition of “willful” by rule. In the absence of a statutory or rule definition, the Commission has applied the “knowing and reckless disregard” standard, based on existing caselaw that has applied that standard.

**Problem:** In recent years, a number of Division of Administrative Hearings (DOAH) cases have applied a more stringent caselaw definition of “willful” requiring a showing of “specific intent and bad purpose” to violate or disregard the law. DOAH decisions do not establish legal precedent; however, these decisions have created inconsistency with other administrative law cases that have applied the “knowing and reckless disregard” standard. Applying a “specific intent and bad purpose” standard to administrative law cases involving civil fines creates an undue burden, making it extremely difficult for the Commission to carry out its responsibilities. Therefore, staff recommends proposed legislation to reintroduce the “knowing and reckless disregard” standard to apply to Commission disciplinary cases under Chapters 104 and 106, F.S.

**Proposed Amendments:**

106.25 Reports of alleged violations to Florida Elections Commission; disposition of findings. —

(3) For the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104. ~~The commission may not by rule determine what constitutes willfulness or further define the term “willful” for purposes of this chapter or chapter 104.~~ A person willfully violates a provision of this chapter if the person commits an act while knowing that, or showing reckless disregard for whether, the act is prohibited under this chapter or chapter 104, or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under this chapter or chapter 104. Willfulness is a determination of fact; however, at the request of the respondent at any time after probable cause is found, willfulness may be considered and determined in an informal hearing before the commission.

(6) It is the duty of a state attorney receiving a complaint referred by the commission to investigate the complaint promptly and thoroughly; to undertake such criminal or civil actions as are justified by law; and to report to the commission the results of such investigation, the action taken, and the

disposition thereof. In taking criminal action, the state attorney shall demonstrate that the person against whom the complaint has been filed or the investigation has been initiated acted voluntarily and with specific intent and bad purpose to violate or disregard the requirements of the law. The failure or refusal of a state attorney to prosecute or to initiate action upon a complaint or a referral by the commission shall not bar further action by the commission under this chapter.

**Effects of Changes:** The changes will clarify the standard of willfulness to be applied in Commission administrative law cases, enabling the Commission to continue to effectively carry out its statutory responsibilities.

### III. Commission Quorum

**Current Law:** Section 106.24, F.S., provides for the Florida Elections Commission to be composed of nine members. Section 106.24(3), F.S., requires the presence of five Commission members to constitute a quorum.

**Problem:** In recent years, the Commission has averaged as few as six appointed members. The absence of any members during a Commission meeting jeopardizes the existence of a quorum. In the absence of a quorum, the Commission cannot carry out its responsibilities. Therefore, staff recommends proposed legislation amending the quorum requirements to provide that a majority of the appointed members shall constitute a quorum.

**Proposed Amendment:**

106.24 Florida Elections Commission; membership; powers; duties.—

(3) The commission shall convene at the call of its chair or at the request of a majority of the members of the commission. The presence of a majority of the appointed members ~~five members~~ is required to constitute a quorum, and the affirmative vote of the majority of the members present is required for any action or recommendation by the commission. The commission may meet in any city of the state.

**Effects of Change:** The change will reduce the potential for lack of a quorum, enabling the Commission to effectively carry out its responsibilities.