

STORAGE NAME: h1313.er
DATE: March 22, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1313
RELATING TO: Campaign Financing
SPONSOR(S): Representatives Peaden and Carlton
STATUTE(S) AFFECTED: amends ss. 106.011 and 106.08, F.S.
COMPANION BILL(S): SB 1902 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELECTION REFORM (GRC)
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1313 revises the definition of "independent expenditure" to specify what level of contact between a political campaign and a political party amounts to coordination between a candidate and a political party such that the party will be prevented from making independent expenditures. Under this bill, parties that make independent expenditures are limited to making contributions to a candidate's campaign of no more than \$500. The bill provides that a political party that makes independent expenditures may not transfer money either to or from the national, state, or county executive committee of that party including any subordinate committees of the national, state, or county executive committees. Provides that the national, state, and county executive committees of a party, including any subordinate committee of a party are to be considered one entity for the purposes of determining what is a coordinated expenditure and whether a party has made an independent expenditure for the purposes of the restrictions on transferring funds detailed above.

This bill has an indeterminate fiscal impact.

This bill has an effective date of January 1, 1998.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Subsection (5) of s. 106.011, F.S., defines "independent expenditure" as an "expenditure by a person for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of candidate or committee in a given election period shall not be deemed an independent expenditure."

Section 106.08, F.S., provides that the maximum amount that may be contributed to a candidate for any office in the state is \$500. This section also provides that a political party may contribute up to \$50,000 to a candidate. Additionally, a political party may provide services such as polling services, research services, technical assistance, and voter mobilization efforts that are not to be counted toward the \$50,000 party contribution limit. Furthermore, political parties may make independent expenditures. See, Colorado Republican Congressional Campaign Committee v. Federal Election Commission, 116 S.Ct. 2309 (1996).

B. EFFECT OF PROPOSED CHANGES:

This bill amends subsection (5) of s. 106.011, F.S., to make several changes to the definition of "independent expenditure." Under this bill an expenditure for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period shall not be deemed an independent expenditure. Additionally, an expenditure for the purpose of advocating the election or defeat of a candidate made by an executive committee of a political party, any political committee, or committee of continuous existence is not an independent expenditure if the committee does any of the following:

- Participates in joint fundraising with the candidate or in any way solicits or receives a contribution on behalf of the candidate.
- Communicates with the candidate or an agent of the candidate acting on behalf of the candidate, vendor, advisor, or staff member, about advertising, message, allocation of resources, fundraising, or other campaign matters related to the candidate's campaign, including campaign operations, staffing, tactics, or strategy.
- Provides in-kind services, polling data, research services, technical assistance, or anything of value to the candidate.
- Makes a payment for a communication or anything of value that is for the purpose of influencing an election and that is a payment made in coordination with a candidate.
- Makes a payment in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any general or particular understanding with the candidate, the candidate's campaign committee, or an agent acting on behalf of the candidate or campaign committee.

- Makes a payment for dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by the candidate, the candidate's campaign committee, or an agent of the candidate or the campaign committee.
- Makes a payment based on information about the candidate's plans, projects, or needs provided to the committee by the candidate or the candidate's agent who provides the information with a view toward having the payment made.
- Makes a payment for such purpose if, in the same election cycle in which the payment is made, an employee or agent of the committee is serving or has served as a member, employee, fundraiser, or agent of the candidate's campaign committee in an executive or policy making position.
- Makes a payment for such purpose if, in the same election cycle in which the payment is made, an employee or agent of the committee has served in any formal policy or advisory position with the candidate's campaign or has participated in strategic or policy making discussions with the candidate's campaign relating to the candidate's pursuit of nomination for or election to office.
- Makes a payment for such purpose if, in the same election cycle in which the payment is made, an employee or agent of the committee retains the professional services of any individual or person who has provided or is providing campaign-related services in the same election cycle to a candidate in connection with the candidate's pursuit of nomination or election, including services relating to the candidate's decision to seek office, and the professional is retained to work on activities relating to that candidate's campaign. For purposes of this sub-subparagraph, professional services include, but are not limited to, services in support of a candidate's pursuit of nomination for or election to office such as polling, media advice, direct mail, fundraising, or campaign research.

Subsection (2) of s. 106.08, F.S., is amended to provide that before a political party executive committee may make a contribution to a candidate in excess of \$500, the executive committee must file with the division of elections a certification, signed by the treasurer, that the political party has not made and will not make any independent expenditures in connection with that campaign. A political party executive committee that makes a contribution in excess of \$500 pursuant to this subsection may not transfer any funds to or from any other executive committee of that political party, or any other executive committee of that party, or any political committee of that party, or any committee of continuous existence of that party.

The bill provides that for the purposes of this bill, the executive committee and all other party committees of a national political party, and all political committees established and maintained by that national political party, including all congressional campaign committees for candidates of that party, and the state executive committee of that political party and all political committees and committees of continuous existence established by that state executive committee shall be considered a single entity.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

This bill restricts the ability of political parties to make an independent expenditure for the purpose of supporting or opposing a candidate for public office or an issue election.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

This bill greatly increases the number of current political practices that are violations of the Florida Election Code. It is possible that the workload of the Florida Elections Commission will be increased in prosecuting such violations. However, the fiscal impact of this bill is indeterminate.

3. Long Run Effects Other Than Normal Growth:

This bill greatly increases the number of current political practices that are violations of the Florida Election Code. It is possible that the workload of the Florida Elections Commission will be increased in prosecuting such violations. However, the fiscal impact of this bill is indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

In Colorado Republican Federal Campaign Committee v. Federal Election Commission, 116 S.Ct. 2309 (1996), the U. S. Supreme Court established that political parties have a right under the First Amendment to make independent expenditures. In Colorado Republican the Federal Election Commission sought to advance the theory that all party expenditures are coordinated and therefore not independent. The Court rejected this theory, requiring actual proof of "in fact" coordination.

It is not clear how successful the attempt in this bill to define what makes an expenditure coordinated will be. In Colorado Republican the Court rejected the attempt of the F.E.C. to define what is independent and what is coordinated by stating,

An agency's simply calling an independent expenditure a "coordinated expenditure" cannot (for constitutional purposes) make it one. See, e.g., NAACP v. Button, 371 U.S. 415 (1963) (the government "cannot foreclose the exercise of constitutional rights by mere labels"); Edwards v. South Carolina, 372 U.S. 229 (1963) (State may not avoid First Amendment's strictures by applying the label "breach of peace" to peaceful demonstrations).

Id. at 2319.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

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