

**STORAGE NAME:** h1537.er

**DATE:** October 20, 1997

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

**BILL #:** HB 1537

**RELATING TO:** Campaign Contributions by the Gaming Industry

**SPONSOR(S):** Representative(s) Futch, Posey, Bronson and Carlton

**COMPANION BILL(S):**

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

- (1) ELECTION REFORM (GRC)
  - (2) CRIME & PUNISHMENT (JC)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill would prohibit any applicant for or holder of a casino gambling license in any state, and any holding, intermediary, or subsidiary company thereof, any officer, director, or employee of such applicant, licensee, or holding, intermediary, or subsidiary company, and any person or agent on behalf of any of the foregoing persons, from making any contribution to any candidate for nomination or election to any public office subject to the provisions of this chapter, to any political committee supporting or opposing one or more candidates, to any committee of continuous existence, or to the state or county executive committee of any political party. The bill also prohibits candidates, political committees, committees of continuous existence, or state or county executive committee of any political party from soliciting or accepting any such contribution.

The violation of the above would be a felony in the third degree, punishable as provided in section 775.082 or 775.083, Florida Statutes, except that the amount of the fine may be up to \$100,000 for a natural person and up to \$250,000 for other persons.

This bill creates section 106.081, Florida Statutes, and amends paragraph (3)(d) of section 921.001, Florida Statutes.

This bill has indeterminable fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Under current law casino gambling interests may contribute up to \$500 per election to candidates or political committees supporting or opposing a candidate, and may contribute an unlimited amount to a political party or to a political committee supporting or opposing a ballot issue. § 106.08(1), Florida Statutes

B. EFFECT OF PROPOSED CHANGES:

This bill would prohibit any applicant for or holder of a casino gambling license in any state, and any holding, intermediary, or subsidiary company thereof, any officer, director, or employee of such applicant, licensee, or holding, intermediary, or subsidiary company, and any person or agent on behalf of any of the foregoing persons, from making any contribution to any candidate for nomination or election to any public office subject to the provisions of this chapter, to any political committee supporting or opposing one or more candidates, to any committee of continuous existence, or to the state or county executive committee of any political party. The bill also prohibits candidates, political committees, committees of continuous existence, or state or county executive committee of any political party from soliciting or accepting any such contribution.

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C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

any authority to make rules or adjudicate disputes?N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

This bill would effectively prohibit the participation of persons affiliated with the casino gambling interests from participating in the political process.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

- 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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION RESEARCH:

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

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

An indeterminable amount would be received by the state as fines for violations of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

HB 1537's absolute prohibition against contributions by gaming interests to candidates, political committees supporting or opposing a candidate, committees of continuous existence and political parties raises constitutional questions. Although some courts have upheld contribution prohibitions applicable to specific groups, such blanket prohibitions are generally disfavored. *Zeller v. The Florida Bar*, 909 F.Supp. 1518, 1526 & n. 12 (N.D. Fla.

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1995), citing, *First National Bank of Boston v. Bellotti*, 435 U.S. 765, reh'g denied, 438 U.S. 907 (1978).

However, at least one state court has upheld a similar prohibition against constitutional attack. In *Soto v. New Jersey*, 565 A.2d 1088 (N.J. Super. 1989), the Superior Court of New Jersey upheld the constitutionality of a complete ban of contributions by the gaming industry to candidates or any party or group organized to support such candidates. The Soto court noted that: gambling is an activity "rife with evil"; that the gaming industry can bring a massive concentration of wealth to bear disproportionately on the political process; and, that the state's pronounced policy of strictly regulating and controlling the casino industry was essential to public confidence and trust in the integrity of state government. *Id.* at 1094, 1096.

A contribution limit will be upheld only where the state can demonstrate that its' statute is *narrowly tailored* to advance a *compelling state interest* ("strict scrutiny" test). See, generally, *Buckley v. Valeo*, 424 U.S. 1 (1976). The only interest that the United States Supreme Court has recognized as sufficiently compelling to withstand first amendment scrutiny is the prevention of the actuality or appearance of *quid pro quo* corruption. *Id.* at 27. The Soto court, adopting a New Jersey State Commission of Investigation report to the Governor, found the State's interest in barring contribution to candidates compelling:

[C]ontributions by casino licensees, both corporate and individual, give the appearance of attempting to "buy" political influence and favoritism and in fact have the very real potential for causing such favoritism to occur.

*Soto*, 565 A.2d at 1096. Refusing to second guess determinations by the state legislature, the Soto court upheld the absolute ban on contributions to candidates and organizations supporting them.

Although the proposed Florida Statute is similar to the New Jersey model approved in *Soto*, there is no guarantee that a court would uphold its constitutionality. The New Jersey statute was enacted at the inception of legalized casino gambling in that state pursuant to a state constitutional amendment and the Casino Control Act. Therefore, the corruption and the threat of corruption in New Jersey could reasonably be perceived as presenting a "clear and present danger" to the integrity and honesty of the state government. Florida has no similar constitutional or statutory provisions, and state law prohibits most forms of gambling.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Legislative Research Director:

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Clay Roberts

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