

STORAGE NAME: h0183s1.er
DATE: March 19, 1997

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

BILL #: CS/HB 183

RELATING TO: Campaign Financing

SPONSOR(S): Committee on Election Reform and Rep(s). Diaz de la Portilla, Feeney, Byrd and Culp

STATUTE(S) AFFECTED: Amending ss. 106.011, 106.085 and 106.1405, F.S.

COMPANION BILL(S): SB 926

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

- (1) ELECTION REFORM (GRC) YEAS 8 NAYS 1
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 183 prohibits a candidate or the spouse of a candidate from using the candidate's campaign funds either to draw a salary or to defray normal living expenses, other than expenses actually incurred for transportation, meals, and lodging by the candidate or a family member during travel in the course of the campaign.

This bill amends the definition of "independent expenditure" under current Florida law, to provide that an expenditure is not independent if it is "controlled by, coordinated with, made upon consultation with, or made through the national or state political party, or the state or county executive committee, including any subordinate committee of a national or state committee of a political party or executive committee." In addition, this bill provides that notice of obligating funds for an independent expenditure must be made at least 10 days prior to the election and a copy of the advertisement must be provided with the notice. The potential civil penalty for violations of this section is increased.

This bill does not appear to have significant fiscal impacts at the state or local level.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Salary and Expenses from Campaign Accounts

Under current law, a candidate or a candidate's spouse is able to draw a salary from the campaign account of said candidate. [s. 106.1405, F.S. (1995)]. Any funds on deposit in a campaign account may also be used by a candidate or a candidate's spouse to defray normal living expenses for the candidate or the candidate's family, whether or not the expenses are incurred during travel in the course of the candidate's campaign. [s. 106.1405, F.S. (1995)].

If a candidate or a candidate's spouse intends to draw a salary or use funds on deposit in the campaign account for living expenses, the candidate must file a statement to such effect with the officer before whom the candidate qualifies. [s. 106.1405, F.S. (1995)]. This statement must be filed at the time the candidate appoints a treasurer and designates a campaign depository. [s. 106.1405, F.S. (1995)]. If the statement of intent is not filed at the required time, the funds may not be used for such purpose.

Independent Expenditures

Subsection (5) of s. 106.011, F.S. states:

"Independent expenditure" means 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 such candidate shall not be deemed an independent expenditure.

Currently under s. 106.085, F.S., any individual, group, organization, or committee making an independent expenditure in excess of \$1,000 on behalf of or in opposition to a candidate shall deliver notice in writing of such independent expenditure, as well as the amount of such expenditure and a detailed description of the media type or use of such expenditure, within 24 hours after obligating funds for such expenditure. An expenditure is obligated upon the purchase of any political advertising or the entering into of any agreement to purchase any political advertising. The notice shall be delivered to all other candidates in the race as well as the filing officer for the particular race.

Under current law, violations of s. 106.085, F.S., are punishable by a civil fine of up to \$5,000 or an amount equal to 10 percent of the expenditure noticed, whichever is greater. [s. 106.085(2), F.S. (1995)].

B. EFFECT OF PROPOSED CHANGES:

Salary and Expenses from Campaign Accounts

CS/HB 183 would eliminate the ability of a candidate or a candidate's spouse to either draw a salary from or use funds in the candidate's campaign account for expenses,

other than those actually incurred for transportation, meals, and lodging by the candidate or a family member during travel in the course of the candidate's campaign. Under the provisions of this bill, a violation of the foregoing would be punishable as provided in s. 106.19, F.S. (1995), (a misdemeanor of the first degree and a possible civil penalty equal to three times the amount involved in the illegal act).

Independent Expenditures

This bill amends the definition of "independent expenditure" under current Florida law, to provide that an expenditure is not independent if it is "controlled by, coordinated with, made upon consultation with, or made through the national or state political party, or the state or county executive committee, including any subordinate committee of a national or state committee of a political party or executive committee".

CS/HB 183 also amends s. 106.085, F.S., to require a person or organization making an independent expenditure to give notice of the obligation of the expenditure at least 10 days prior to the election. Additionally, with each notice required under s. 106.085, F.S., the entity making the independent expenditure will be required to provide a copy of the advertisement or the text of the advertisement.

The bill amends the penalty provision of s. 106.085, F.S., to provide for a civil fine of up to \$5,000 or the entire amount of the expenditure noticed, whichever is greater.

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?

Not applicable.

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

Under current law, candidates and candidates' spouses may draw salaries from candidate campaign accounts. Funds on deposit in campaign accounts may also be used to defray normal living expenses for candidates and their families, other than those expenses that are actually incurred during travel in the course of a campaign. This bill would eliminate this activity.

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?

Not applicable.

- 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:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

STORAGE NAME: h0183s1.er

DATE: March 19, 1997

PAGE 7

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:

The private cost to individuals running for office and unable to draw a salary or living expenses from their campaign account will be dependent upon their particular circumstances.

2. Direct Private Sector Benefits:

Not applicable.

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

Not applicable.

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:

Salary and Expenses from Campaign Accounts

None.

Independent Expenditures

This amendment provides that an expenditure that is controlled by a political party or is made in consultation with a political party is not an independent expenditure. In Buckley v. Valeo, 424 U.S. 1 (1976), the U.S. Supreme Court ruled that the government could limit contributions to political campaigns but that the government may not limit expenditures of candidates, campaigns, citizens, political committees, or other organizations. However, the court allowed that expenditures made by persons other than the candidate that are made in consultation with the candidate or campaign may be treated as a contribution to the candidate or campaign. In Colorado Republican Campaign Committee v. F.E.C., 116 S.Ct. 2309 (1996), the court rejected the premise that all expenditures made by a party are deemed to be coordinated with the candidate or campaign. The court held that in order for an expenditure to be held not independent, the regulating agency must show coordination "in fact" and could not base such a determination on assumptions by the regulating agency. This provision seems to create a presumption of coordination in situations where no "in fact" coordination may exist.

CS/HB 183 requires that a person making an independent expenditure in excess of \$1,000 give notice of the obligation of such expenditure at least 10 days prior to any election. A copy of the particular advertisement must be included with the notice. Any person who was found in violation of this provision would be liable for a civil fine of up to \$5,000 or the entire amount of the expenditure not noticed, whichever was greater. In 1974, the Supreme Court of Florida ruled unconstitutional a town ordinance that required that candidates be informed of attack advertisements against them at least 7 days before an election. See, Town of Lantana v. Pelczynski, 303 So.2d 326 (Fla. 1974).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute eliminates the section relating to the Campaign Finance Reform Study Commission.

The committee substitute adds a section that amends the definition of "independent expenditure" found in s. 106.011, F.S. (1995).

The committee substitute adds a section that amends s. 106.085, F.S. (1995), to provide that notice of obligating funds for an independent expenditure must be made at least 10 days prior to the election and also requires that a copy of the advertisement be provided with the notice. Additionally, this section increases the potential civil penalty for a violation of s. 106.085, F.S..

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

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STORAGE NAME: h0183s1.er

DATE: March 19, 1997

PAGE 9