

STORAGE NAME: h4067.go

DATE: April 16, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4067

RELATING TO: Elections/Campaign Contributions

SPONSOR(S): Representatives Carlton and Brown

COMPANION BILL(S): SB 960(c)

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

- (1) ELECTION REFORM (GRC) YEAS 7 NAYS 1
 - (2) CRIME AND PUNISHMENT (JC) (W/D)
 - (3) GOVERNMENTAL OPERATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill defines "affiliated corporations" for the purposes of Chapter 106, Florida Statutes, relating to campaign financing. Under the definition, affiliated corporations will be deemed to be one "person" for the purpose of applying the \$500 per person cap on campaign contributions.

This bill prohibits such business entities from giving anything of value to an employee to effect a campaign contribution, to reimburse an employee for making a campaign contribution, or to directly or indirectly mandate that an employee make a contribution in support of or opposition to any candidate, issue, political party, political committee, or committee of continuous existence. Any business entity so doing, subjects itself to the penalties provided in ss. 106.08 (7) and (8), F.S.

Additionally, it provides that any candidate who knowingly and willfully receives a prohibited contribution commits a misdemeanor of the first degree. It provides that notwithstanding any requirement of willfulness, the prohibited contribution must be returned within 30 days of receipt and, if it is not, the candidate must pay a sum equal to the contribution to general revenue. This bill provides that this payment may be made from several sources of funds and provides for contribution limits and reporting requirements.

This bill has indeterminate fiscal impact.

This bill takes effect on July first of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

With certain exceptions, Florida Law limits contributions to a candidate by a "person," including a corporation, to \$500 per election. [s. 106.08(1), F.S.] The law treats each corporation as a "person" for purposes of the contribution limits. [s. 106.011(8), F.S.] Thus, a corporation and its subsidiaries could each contribute up to \$500 per candidate, per election.

Florida law does prohibit any person from making a direct or indirect contribution in the name of another; however, proving the same is a difficult evidentiary matter. [s. 106.08(5), F.S.] This does not, however, prevent corporations or groups from collecting otherwise legal contributions, combining them, and delivering them to the candidate in order to achieve maximum recognition and impact. This activity has come to be known as "bundling."

B. EFFECT OF PROPOSED CHANGES:

This bill defines "affiliated corporations" as two or more corporations that do any of the following:

- File consolidated state or federal income tax returns;
- Share the majority of members on their boards of directors;
- Share two or more officers;
- Are owned or controlled by the same majority shareholder or shareholders;
- Are in a parent subsidiary relationship; or
- Have a relationship in which one corporation directly or indirectly owns or controls the management and policies of one or more other corporations through the ownership of voting shares or by contract, arrangement, understanding, relationship, or any other factor establishing control.

This bill provides that corporations that are found to be affiliated under this definition will be treated as a single "person" for the purpose of the \$500 per person contribution cap.

Additionally, this bill provides that the following acts are violations of the prohibition on giving a contribution either directly or indirectly in the name of another:

- Giving money or any bonus, award, or thing of value to an employee for the purpose of effecting a contribution in support of or in opposition to any candidate, issue, political party, political committee, or committee of continuous existence;
- Giving money or any bonus, award, or thing of value to an employee for the purpose of reimbursing the employee, in whole or in part, for making a contribution in support of or in opposition to any candidate, issue, political party, political committee, or committee of continuous existence; or
- By bribery, menace, threat, or other corruption, including the possibility of termination of employment, either directly or indirectly mandate that an employee make a contribution in support of or in opposition to any candidate, issue, political party, political committee, or committee of continuous existence.

This bill provides that a candidate receiving a prohibited contribution must return any such contribution from corporations that are found to be affiliated under the provisions of this bill within 30 days of receipt. If the contribution is not returned within this time, the candidate receiving it must pay to the Comptroller a sum equal to the amount of such contribution, to be deposited in the General Revenue Fund. The funds to accomplish this requirement may come from the following sources: any campaign account of the candidate, any office account of the candidate, funds raised for the specific purpose of paying this amount due, provided that contribution limits and reporting requirements are met, or out of personal funds.

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:

This bill does not eliminate or reduce an agency or program.

(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?

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. This bill will limit the amount of campaign contributions some corporate entities may make.

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

Yes. This bill will limit the amount of campaign contributions some corporate entities may make.

5. Family Empowerment:

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

This bill does not purport 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?

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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

This bill creates s.106.084, F.S., and amends ss. 106.011 and 106.08, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 106.011, F.S., adding subsection (18), to define "affiliated corporations" for the purposes of campaign financing.

Section 2: Amends s. 106.08(1)(a), F.S., to provide that affiliated corporations are considered to be one person for the purpose of the \$500 contribution limitation to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates.

Amends s. 106.08(5)(a), F.S., to prohibit any corporation, partnership, or other business entity from improperly seeking to influence its employees to make political contributions, and providing that any entity so doing shall be subject to the penalties provided in ss. 106.08(7) and (8), F.S., for the contribution made by an employee in violation of this prohibition.

Section 3: Creates s. 106.084, F.S., to provide that notwithstanding any requirement of willfulness under s. 106.25(3), F.S., any person who, as a candidate, receives and fails to return within 30 days of receipt any contribution found to be in violation of this chapter must pay to the Comptroller a sum equal to the amount of such contribution, to be deposited in the General Revenue Fund.

Any person required to pay an amount under this section may draw upon any one or more of the following sources to pay the amount due:

Funds on deposit in any current campaign depository maintained by or on behalf of the person who, as a candidate received the illegal contribution;

Funds on deposit in an office account of the person who, as a candidate, received the illegal contribution;

Funds raised for the specific purpose of paying the amount due, not to exceed \$500 per person, however, the contributor who made the illegal contribution may not provide funds nor may the person owing accept such funds, and the funds raised must be kept in a separate account; or

Personal funds of the person owing the amount due.

Additionally, this section provides for reporting requirements, disposition of unused funds, deadline for making the required payment to the Comptroller,

and penalties for accepting funds from a former prohibited contributor and donations or attempts to donate by a former prohibited contributor.

Section 4: Provides an effective date of July first of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

The costs of administering the provisions of this bill are minimal and can be handled with current funds.

This bill will generate an indeterminate amount of revenue to the General Revenue Fund. This money will come from payments the candidate will be required to make to the General Revenue Fund in amounts equal to the amounts that the candidate received in violation of s. 106.804, F.S.

3. Long Run Effects Other Than Normal Growth:

The costs of administering the provisions of this bill are minimal and can be handled with current funds.

This bill will generate an indeterminate amount of revenue to the General Revenue Fund. This money will come from payments the candidate will be required to make to the General Revenue Fund in amounts equal to the amounts that the candidate received in violation of s. 106.804, F.S.

4. Total Revenues and Expenditures:

The costs of administering the provisions of this bill are minimal and can be handled with current funds.

This bill will generate an indeterminate amount of revenue to the General Revenue Fund. This money will come from payments the candidate will be required to make to the General Revenue Fund in amounts equal to the amounts that the candidate received in violation of s. 106.804, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

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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:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 28, 1998, the Committee on Election Reform adopted three amendments to HB 4067 and reported the bill favorably, as amended. The amendments are addressed below:

Amendment 1 Provides that corporations must meet four of the listed criteria rather than one in order to be deemed "affiliated."

Amendment 2 Provides that the designation of a primary campaign depository by a candidate is deemed to be completed when it is postmarked to or filed with, whichever is earlier, the officer before whom the candidate is required to qualify.

Amendment 3 Adds "Share same address or post office box" to the criteria for determining whether corporations are affiliated.

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Legislative Research Director:

Clay Roberts

Clay Roberts

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Jimmy O. Helms

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