

**STORAGE NAME:** h0461.er  
**DATE:** February 17, 1997

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

**BILL #:** HB 461

**RELATING TO:** ELECTIONS

**SPONSOR(S):** Representative Thrasher

**STATUTE(S) AFFECTED:** Amending ss. 10.1008, 97.012, 97.021, 97.052, 97.053, 97.055, 97.071, 97.1031, 98.045, 98.081, 98.095, 98.212, 98.461, 99.061, 99.092, 99.093, 99.095, 99.097, 99.103, 100.061, 100.071, 100.081, 100.111, 100.141, 100.371, 101.141, 101.251, 101.252, 101.591, 101.62, 102.012, 102.031, 103.021, 103.022, 103.091, 104.011, 104.012, 104.185, 104.271, 105.031, 105.041, 105.051, 106.021, 106.04, 106.07, 106.08, 106.141, 106.143, 106.18, 106.19, 106.22, 106.23, 106.24, 106.25, 106.26, 106.265, 106.29, and 125.01, F.S.; repealing ss. 98.391, 98.401, 98.412, 98.421, 98.431, 98.441, 100.091 and 100.096, F.S.; creating ss. 98.097, 99.013, 106.147 and 106.148, F.S.

**COMPANION BILL(S):** SB 568(s); HB 75(c); HB 293(c); HB 463(c); HB 681(c); SB 120(c); and SB 522(c)

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

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

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I. SUMMARY:

HB 461 is an omnibus election reform bill incorporating many of the Secretary of State's 1997 legislative proposals. The bill addresses twelve specific areas: campaign financing, with particular regard to political party contribution limits, earmarked funds, and parties, and turnbacks of contributions from candidates to parties; candidate filing fees; approval and disclaimer requirements for political advertisements; telephone and computer solicitation; initiative petitions; second primaries; solicitation at the polls; clarification of residency requirements for candidates; voter registration; creation of a central voter file; voting system audits; and the restructuring and transfer of the Florida Election Commission (Commission). Among its primary components, HB 461: redefines what constitutes a contribution for purposes of the cap on campaign contributions by a political party; provides enhanced penalties for violations of campaign finance laws; eliminates the portion of the candidate filing fee and municipal candidate election assessment assessed for purposes of public campaign financing; limits the turnback of surplus campaign funds to political parties to \$10,000; requires sponsor identification for political solicitation via telephone or computer; requires disclaimers regarding candidate approval of political advertisements; repeals the second primary; restructures the Commission; and, transfers the Commission to the Department of Legal Affairs, Office of the Attorney General.

The bill will have fiscal impacts at the state and local governmental level, although many of those impacts are currently indeterminable.

HB 461 will become effective January 1, 1998.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Campaign Financing**

*a. Contribution Limits Applicable to Political Parties*

Candidates are currently prohibited from accepting contributions from political parties of more than \$50,000 in the aggregate. The value of print, broadcast, cable and mailing advertisements are counted toward the contribution limit. Polling services, research services, technical assistance and voter mobilization efforts are specifically excluded. [s. 106.08(2)(b), F.S. (1995)] The absence of a statutory definition for the terms "technical assistance" and "voter mobilization" have caused a great deal of confusion and debate over which services provided by a party are properly included within the contribution limit and which are not.

While no state or county executive committee of each political party is to give, pay, or expend money in the furtherance of a candidate or political party in violation of Chapter 106, F.S., contributions of funds by one executive committee to another, to established party organizations for legitimate party or campaign purposes or to individual candidates of the respective political party in a general election in amounts exceeding those set forth in s.106.08, F.S., is not prohibited. [s. 106.29(4), F.S. (1995)]

*b. Earmarked Funds*

Persons, political committees, and committees of continuous existence are prohibited from contributing more than \$500 per election to any candidate or political committee supporting or opposing a candidate. [s. 106.08, F.S. (1995)] Candidates are prohibited from accepting more than \$50,000 in contributions from a political party. There is no limit to the amount of money a person, political committee or committee of continuous existence may contribute to a political party. Although it is illegal for anyone to give "earmarked funds," that is, funds identified by the contributor to benefit particular candidates, to a political party, the party is not currently prohibited from accepting such funds.

*c. Surplus Funds*

Every candidate who withdraws his or her candidacy, becomes unopposed, is eliminated as a candidate or is elected to office is required to dispose of funds in the campaign account within 90 days. [s. 106.141, F.S. (1995)] A candidate may choose to give, or "turnback," these surplus funds to the candidate's political party. A candidate may also dispose of such funds by: returning a pro rata share to contributors; donating to a charity organization; or, contributing to the state or the political subdivision, depending on what office the candidate sought. Surplus funds obtained through public financing must be returned to the Election Campaign Financing Trust Fund. After disposing of the surplus funds, the candidate must file a report reflecting the disposition of the funds.

**STORAGE NAME:** h0461.er

**DATE:** February 17, 1997

**PAGE 3**

*d. Illegal Campaign Contributions*

Any person who makes a contribution to a candidate or political committee in excess of the limits provided by law or makes a contribution in the name of another or refuses to return a contribution as provided by law, is guilty of a misdemeanor of the first degree. [s. 106.08(6), F.S. (1995)] Similarly, any corporation, partnership, or other business entity or any political committee or committee of continuing existence convicted of these same violations shall be fined not less than \$1,000 and not more than \$10,000. [s. 106.08(6), F.S. (1995)] Officers, partners, agents, attorneys, or other representatives of a corporation, partnership, or other business entity or of a political committee or committee of continuing existence who aid, abet, advise, or participate in any of the violations cited herein, are guilty of a misdemeanor of the first degree. [s. 106.08(6), F.S. (1995)] Currently, penalties are not increased with subsequent violations.

*e. Campaign Finance Reports*

Committees of continuing existence must file regular reports at the same times and under the same filing conditions as are required for candidates' reports or be subject to a \$50 per day fine, said moneys to be deposited in the Election Campaign Financing Trust Fund. [s. 106.04(8)(a), F.S. (1995)] An exception is made for first-time offenders who have had no activity during the applicable reporting period. [s. 106.04(8)(e), F.S. (1995)] Likewise, any candidate or political committee that fails to timely file their report shall be fined \$50 per day, said moneys to be deposited in the Election Campaign Financing Trust Fund in the case of a candidate for state office or a political committee that registers with the Division of Elections (Division). [s. 106.07(8)(a)(1), (b), F.S. (1995)] An exception is made for first-time offenders who have had no activity during the applicable reporting period. [s. 106.07(8)(e), F.S. (1995)]

The state executive committee and each county executive committee of each political party must file regular reports of all contributions received and all expenditures made. Any political party failing to timely file a report, is subject to a \$50 per day fine, said moneys to be deposited in the Election Campaign Financing Trust Fund. [s. 106.29(1), F.S. (1995)]

*f. Joint Endorsements by Political Committees or Parties*

All contributions or expenditures, with the exception of independent expenditures, directly or indirectly made or received in furtherance of a candidate or a political committee must be made through a duly appointed campaign treasurer. Expenditures may be made by a political committee or party directly for obtaining time, space, or services in or by a communications medium for the purpose of jointly endorsing six or more candidates. Such an expenditure is not considered a contribution or expenditure to or on behalf of any of the candidates for purposes of campaign financing. [s. 106.021(3), F.S. (1995)]

**Qualifying Fees of Candidates**

Florida's qualifying fees are believed to be the highest in the nation. The current filing fee breakdown, per annual salary, is as follows:

	<u>Partisan Candidate</u>	<u>Nonpartisan Candidate</u>
Filing Fee	3.0%	3.0%
Election Commission Trust Fund	1.0%	1.0%
Election Campaign Trust Fund	1.5%	1.5%
Party Assessment	2.0%	
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Qualifying Fee	7.5%	5.5%

[ss. 99.092(1); 99.093(1); and 105.031(3), F.S. (1995)]

**Political Advertisements**

Section 106.143, F.S., currently requires disclaimers on virtually all political advertisements, stating "paid political advertisement" or "pd. pol. adv." and identifying the person or organization sponsoring the advertisement. There is no requirement that a candidate approve the content of an advertisement prior its publication, nor is there any requirement that an advertisement identify whether a candidate has approved an ad.

This area of the law is infused with constitutional considerations involving the First Amendment right to free speech.

**Telephone & Computer Solicitation**

There is no restriction against a candidate or other person or entity engaged in telephone solicitation from falsely stating or implying that they represent any real or fictitious organization or person. Section 106.143, F.S., requires all "political advertisements" to identify the sponsor. [s. 106.143(1), F.S.] A related provision makes it unlawful for any candidate or person on behalf of a candidate to represent that any other person or organization supports such candidate, unless the person or organization represented first authorizes the representation in writing. [s. 106.143(3), F.S.] However, the definition of "political advertisement" specifically excludes paid communications by the "spoken word in direct conversation." [s. 106.011(17), F.S. (1995)] Therefore, telephone solicitation is not presently covered by any disclaimer requirement or proscription against sponsorship misrepresentation.

Senate hearings into alleged improprieties involving political telephone solicitations during the final days of the 1994 Florida gubernatorial campaign concluded that there is a need for legislation addressing telephone solicitation.

### **Initiative Petitions**

Article XI, section 3, Florida Constitution gives the people of Florida the power to propose constitutional amendments or revisions by initiative, provided the amendment embraces only one subject and matter, with the exception that initiatives relating to tax issues may contain multiple subjects. The sponsor of an initiative must register as a political committee and obtain a number of signatures of registered voters equal to eight percent of the votes cast in each of one-half of the congressional districts and in the state as a whole in the last election in which presidential electors were chosen. Political committees are allowed to sponsor more than one proposed initiative amendment.

Signatures obtained must be submitted to the supervisor of elections in the county in which the petitions were circulated. Supervisors check the signatures to insure that each signature belongs to a registered voter in that county and that the date the petition was signed is not more than four years prior to the date the petition is checked. Presently, if the petition lists an address other than the address contained in the registration records, supervisors have been instructed by the Division to assume that the address on the petition is the correct address. Accordingly, supervisors must change the voter's address on the registration records, and count the petition for the district that the new address is in. Many voters place other addresses, especially business addresses, on their petition forms even though they have not moved and did not intend to change their legal residence address.

The signatures are verified using a name-by-name, signature-by-signature check. Sponsors are charged a ten-cent-per-signature verification fee. However, if a sponsor is unable to pay this fee, the sponsor may claim undue burden under s. 99.097(4), F.S., and the cost for verification is reimbursed to the supervisors by the state.

As signatures are verified, supervisors certify the number of valid signatures to the Secretary of State. When it is determined that the number of verified petition forms equals ten percent of the required number of signatures statewide in at least one-fourth of the required congressional districts, the Secretary of State submits the initiative petition to the Attorney General. The Attorney General requests the Supreme Court to provide an advisory opinion regarding compliance with the single subject requirement (Florida Constitution, art. XI, s. 3) and with the ballot title and summary specifications. [s. 101.161, F.S.] If the Court decides that the initiative fails to meet the single subject requirement or fails to meet the ballot title or summary requirements, it will strike the proposal from the ballot, regardless of the number of valid signatures obtained.

If the requisite number of signatures has been obtained, article XI, section 5, Florida Constitution, requires a proposed initiative amendment to the Constitution, which has passed the review of the Supreme Court, to be submitted to the electors at the next general election held more than ninety days after the initiative petition is filed with the Secretary of State. There is no earlier deadline for submitting petitions to the supervisors for verification. Consequently, when petitions are submitted close to the deadline, they often do not get verified for upcoming election. In 1980, a rule promulgated by the Secretary of State which attempted to resolve this problem was brought before the Florida Supreme Court. See Citizens Proposition for Tax Relief v. Firestone, 386 So.2d 561 (1980). The rule would have required committees to submit the required number of signatures of electors to supervisors of elections no later than the 122nd day prior to the general election, rather than 91 days prior to the general

election, as required by article XI, section 5, Florida Constitution. While the Supreme Court agreed that the Legislature and the Secretary of State had the duty and obligation to ensure ballot integrity and a valid election process, it also held that the Secretary of State did not have the authority to adopt, by rule, time periods that differed from those established by the Constitution for the receipt of initiative petitions.

During the 1994 elections there was concern among elections officials regarding fraudulent signatures. Many reports were filed with the Secretary of State, and State Attorneys were asked to monitor signature drives in their circuits to prevent misrepresentation and fraud from occurring. Often, the signatures of different individuals appeared to be written by the same hand, or the same name appeared numerous times in different handwriting. Some attribute this to paid signature gatherers, who are often paid per signature obtained, and to the fact that signatures are not currently required to be witnessed by anyone. Under s. 104.185, F.S., a person who knowingly signs a petition more than once commits a misdemeanor, but there is no such provision for a person who signs a fictitious name or the name of another person to a petition, and it is often difficult to trace a forgery.

Elections officials have also expressed concern that many committees who paid signature gatherers to collect signatures also claimed undue burden, stating that they could not afford to pay the ten-cent-per-signature verification fee to counties. According to the Division, in the 1994 general election 16 out of the 29 committees which presented initiative petitions claimed undue burden. In the most recent general election, 23 out of 37 committees claimed undue burden. No information is currently available to ascertain how many committees claiming undue burden utilized paid gatherers to collect signatures.

As stated previously, after a general election counties are able to request reimbursement for fees waived under s. 99.097(4), F.S. to be paid out of the General Revenue Fund. In 1994 the State reimbursed the counties \$150,255.40 in waived fees. To date, the State has received requests for reimbursement from the 1996 general election in the amount of \$149,000. It should be noted, however, that the dollar figures cited herein are inclusive of all petition drives where undue burden may be claimed.

### **Repeal of Second Primary**

Section 100.061, F.S., provides for a first primary election to be held nine weeks prior to the general election for the purpose of electing a party nominee. If no candidate receives a majority of the votes cast, the names of the candidates placing first and second in the first primary are placed on the ballot at a second primary election held four weeks later. In primary elections, an elector is entitled to vote the primary ballot of the political party which is designated in his registration.

In the early 1980's, the federal government sued the State of Florida for violating the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. This suit was brought because the nine week span in which three elections were held (first primary, second primary, general election) did not permit the supervisors of elections to prepare the absentee ballots and mail them to overseas voters in sufficient time for the voters to return them by election day. In 1982, a consent order was entered into between the parties whereby the overseas absentee ballots for federal office for the presidential preference primary and the general election must be counted if the ballot is

postmarked or signed and dated no later than the date of the election and received by the supervisor of elections no later than 10 days after the election.

In 1989, the Legislature passed CS/CS/HB 1362 (Chapter 89-338, Laws of Florida), which requires the supervisors of elections to mail an advance ballot to overseas electors, in addition to the regular absentee ballots. The advance ballots must be mailed at least 45 days prior to the second primary and general election. Since the advance ballots must be mailed before the nominating process is completed, these ballots generally contain the names of candidates who were subsequently eliminated in the first or second primary.

In 1994, the second primary election cost taxpayers over \$4.3 million, with an average voter turnout of 11.9% of registered voters. Eight states continue to hold a second primary.

### **Solicitation at the Polls**

Presently, s. 102.031, F.S., restricts solicitation within 50 feet of the entrance to any polling place, or polling room where the polling place is also a polling room. However, this section also provides a number of exceptions to the restriction. The restriction does not apply if the solicitation of voters is occurring in a marked area that does not disturb, hinder, impede, obstruct or interfere with voter access to the polling place, and the solicitation activities and subject matter are easily identifiable by the voters as an activity in which they may voluntarily participate. In addition, the restriction does not apply if the solicitation activity is conducted at a residence, an established business, private property, a sidewalk, a park or property traditionally utilized as a public area for discussion within the 50-foot zone.

The various exceptions to the 50-foot no-solicitation zone have created a lot of confusion and make the zone difficult, if not impossible, to apply. First, the exceptions are so numerous that there is almost no area or activity that can be restricted. Second, the law contains conflicting provisions. For example, while paragraph (3)(c)1.c., states that solicitation on a sidewalk cannot be restricted, paragraph (3)(c)2. provides that solicitation on the sidewalk can be restricted if it is determined that the solicitation is impeding, obstructing or interfering with voter access to the polling place or room. This leaves a lot of discretion in the hands of the poll workers and has the potential to be applied inconsistently and in an arbitrary manner.

The State of Florida has a vital interest in preserving the integrity of the election process. The solicitation of voters in close proximity to polling places leads to voter intimidation and interferes with the maintenance of order at the polls. Supervisors of elections have complained that the current law does not give them the adequate authority to restrict solicitation around polling locations. They have also noted that many voters have objected to the proximity and intensity of solicitors, finding the practice intimidating and coercive, and a disincentive to vote.

### **Residency Requirements**

The Florida Constitution and statutes specify residency requirements for most elected officials. The residency requirements vary depending on the office, but most require that an officer reside within the territorial jurisdiction of the office during the term. Neither the



Constitution nor the statutes provide a definition of resident or residency as applied to candidates and public officers. Numerous court cases and Attorney General Opinions have dealt with the issue of residency on a case-by-case basis.

Currently, any challenge to a candidate's residency must be made through the courts. Complaints against public officers for failing to maintain the required residence are made to the Governor, or, in the case of a legislator, to the presiding officer of the appropriate House.

### **Voter Registration**

In response to a mandate from Congress, during the 1994 Legislative Session the Florida Legislature made sweeping changes to its voter registration process. Under the Florida Voter Registration Act, a person may register to vote by mail, at a driver's license office, at a voter registration agency or at the office of the supervisor of elections. The changes in the voter registration procedures and information required to be provided by the applicant have caused concerns about voter registration fraud.

Article VI, Florida Constitution, and s. 97.041, F.S., provide the eligibility requirements for voting in Florida. In order to register to vote, a person must be at least 18 years of age, a citizen of the United States, and a legal resident of Florida and of the county where he seeks to register. Persons who have been convicted of a felony and who have not had their civil rights restored or persons who have been adjudicated mentally incapacitated with respect to voting and who have not had their right to vote restored are not eligible to register or vote.

A statewide voter registration form has been developed for use throughout the state. The form may be used for an initial registration, change of address, change of party affiliation, or change of name.

The statewide form, as well as the federal voter registration application form, must be provided, upon request, to individuals or groups conducting voter registration programs. There is currently no charge for providing these forms, and there is no limit to the number of forms an individual or group may request.

The registration form is designed to elicit the applicant's name, date of birth, legal residence address, mailing address, county of legal residence, race or ethnicity, sex, party affiliation, whether the applicant needs assistance in voting, name and address where last registered, social security number, telephone number, and whether the applicant is a United States citizen. The applicant is required to sign an oath under penalty of false swearing that he or she will protect and defend the Constitutions of the United States and the State of Florida; that he or she is qualified to register to vote under the Constitution and laws of Florida; and that he or she is a United States citizen and a legal resident of the State of Florida. The applicant provides the date of signature on the application form.

In order to be complete, a voter registration form must contain the applicant's name, legal residence address, date of birth, and signature swearing that the information provided is true and subscribing to the oath. This information provided by the applicant on the registration form must indicate the applicant's eligibility. In other words, the date of birth must indicate that the applicant is 18 years of age or older and the legal

residence address must be in the state and the county where the applicant wishes to be registered. Since the applicant signs an oath that he is a United States citizen and that he meets all other eligibility requirements, the statutes do not require that the applicant complete the question regarding citizenship. There are no specific questions regarding status as a convicted felon or regarding adjudication of mental incapacity. The additional information requested on the voter registration application is not required in order for the applicant to be registered to vote.

The registration date for an initial voter registration application which is hand delivered is based on when the application is received by a driver's license office, a voter registration agency, an armed forces recruitment office, the Division, or the office of any supervisor of elections in the state. The date of registration for an application which has been mailed is the postmark date. If the postmark is missing or unclear, the registration date is determined by receipt of the application by any supervisor of elections or the Division. Although the voter registration applications are dated by the applicant when signed, this date has no bearing on the registration date.

A registration identification card is provided to each person who is registered to vote in this state. Two items which are required to be included on the registration identification card are race or ethnicity, and sex of the applicant. Therefore, the law requires items on the registration identification card which are not required to be provided by the applicant.

In order to receive a replacement of a registration identification card, a voter must inform the supervisor of elections that his card has been defaced, lost or stolen. The supervisor may then issue the voter a duplicate registration identification card.

When a voter changes his or her name, moves within the county, or changes his or her party affiliation, the voter must notify the supervisor of elections in writing. The supervisor of elections makes the change in the voter's record and issues a new voter identification card.

Section 98.461, F.S., allows the supervisor of elections to provide a precinct register at the polls, in lieu of the actual voter registration application. Currently, the precinct register is required to contain information which is not required to be provided by the voter.

Sections 98.391 through 98.441, F.S., combine to create an alternative procedure for registering voters and conducting elections in counties using voting machines. The procedures outlined in these sections are no longer being used in Florida.

Any person who willfully submits false voter registration information is guilty of a first degree misdemeanor. [s. 104.011(2), F.S.]

### **Central Voter File**

There is no comprehensive, statewide list of registered voters for the State. The supervisor of elections for each of Florida's 67 counties currently maintains the registration books containing the list of registered voters in the supervisor's own county. In order to obtain a statewide or multi-county list of registered voters, it is necessary to obtain and coordinate the individual county lists. This process can be time-consuming, inconvenient, and costly.

The county registration books are open to all citizens as public records and can be examined while in the custody of the supervisor. However, only select persons and groups are entitled to copy or receive such information: the courts, for purposes of jury selection; municipalities; other governmental agencies; candidates, to further their candidacy; registered political committees, registered committees of continuous existence, and political parties, for political purposes only; and, incumbent officeholders, to report to their constituents. In addition, the county lists cannot be used for commercial purposes nor for any purposes unrelated to elections, political or governmental activities, voter registration, law enforcement, or jury selection. Persons or groups eligible to obtain the list are required to swear and subscribe an oath indicating that they are authorized to acquire the registered voter information, that the information will only be used for the aforementioned purposes, and that they will not permit any unauthorized copying of the list.

Declinations to register to vote and information relating to where a person registered or updated a registration is confidential and exempt from public records requirements. [s. 97.0585, F.S.] Also, although a voter's signature, social security number, and telephone number may be viewed pursuant to public records, they may not be copied.

### **Voting System Audits**

The Department of State is charged with conducting audits on each county supervisor of elections office and conduct of elections, at least every five years. [s. 101.591(1), F.S. (1995)] In many cases, counties are already having independent audits conducted on their own. The statute is silent as to how these audits are to be funded.

### **Florida Elections Commission**

The Florida Elections Commission is a seven member body appointed by the Governor, approved by three members of the Cabinet, and subject to Senate confirmation. The Chairperson is designated by the Governor. No more than four members may be of the same political party. Members are appointed to four-year terms, and members may not serve more than two terms. Members do not receive a salary, but do receive travel and per diem in the performance of their duties.

A Commission member may not:

- be a member of any county, state, or national committee of a political party;
- be an officer in any partisan political club or organization;
- hold or be a candidate for any other public office; or
- have held an elective public office or office in a political party in the year immediately preceding appointment.

The Commission is statutorily created within the Department of State. Section 106.24, Florida Statutes, provides that the Commission shall not be subject to the control, supervision or direction by the Department of State in the performance of its duties. The Division provides the administrative support and services to the Commission. The Commission has no staff of its own. The Division employs 11 full-time staff members within the Elections Commission Section to carry out the duties of the Division and Commission in enforcing Florida's campaign finance laws. The Division is responsible

for hiring and firing of staff and setting salaries. The Attorney General's office provides the Commission with an Assistant Attorney General who acts as General Counsel.

The Commission's budget is part of the Department of State's budget. Therefore, final authority on the Commission's budget request rests with the Secretary of State. Section 106.24(7), F.S., directs the Department of State, in consultation with the Commission, to develop the budget request for the Commission. Funding for the Commission comes from a 1% election assessment paid by candidates as part of the qualifying fee. Funds are received from election assessments of municipal candidates as well.

The Division investigates and makes a probable cause determination on all violations of the campaign finance laws with or without having received a sworn complaint. Findings of probable cause are reported to the Commission. The Division also has the duty to conduct random audits and investigations with respect to reports and statements filed under Chapter 106, F.S., and with respect to alleged failure to file any reports and statements.

The Commission determines violations of Chapter 106 (campaign finance) or s. 104.271(2), F.S. (false statements about opposing candidates). Upon finding a violation, it may levy civil penalties up to \$1,000 per count for violations of Chapter 106 and up to \$5,000 for violation of s. 104.271(2), F.S. The Commission also hears appeals of fines levied for late filing of campaign treasurers' reports. The Commission meets on average, once every two months. It conducts a hearing, if requested when probable cause is found. Beginning in 1994, some of the formal hearings have been referred to a Division of Administrative Hearings Officer. Following the hearing, the Commission makes final determination of whether there has been a violation.

B. EFFECT OF PROPOSED CHANGES:

**Campaign Financing**

*a. Contribution Limits Applicable to Political Parties*

HB 461 seeks to clarify the \$50,000 per candidate contribution limit applicable to political parties. Polling services, research services, costs for campaign staffs, professional consulting services and telephone calls are excluded from computing contribution limits as nonallocable items. They are the only items listed as being nonallocable. Any item not expressly identified as nonallocable is deemed a contribution in an amount equal to the fair market value of the item and must be counted toward the \$50,000 contribution limit. Furthermore, nonallocable, in-kind contributions must be reported by the candidate and by the political party.

HB 461 also prohibits political parties from contributing more to candidates than the current amount that candidates are allowed to accept from the parties. Specifically, this bill prohibits national, state, or county executive committees of a political party from contributing to any candidate an amount in excess of \$50,000 and all contributions required to be reported by the national executive committee of a political party must be reported by the state executive committee of that particular party. Violations of same are deemed felonies in the third degree and the chair or treasurer of an executive committee

found guilty of this provision will be held personally accountable. The bill also provides for civil penalties equal to three times the amount involved in the illegal contribution.

*b. Earmarked Funds*

HB 461 restricts political parties from accepting contributions which are designated for the partial or exclusive use of any candidate. This bill is targeted at closing a loophole in the campaign financing laws which enables persons, political committees and committees of continuous existence to effectively circumvent the \$500 contribution limit by funneling earmarked funds through the political parties to their candidate or candidates of choice.

*c. Surplus Funds*

HB 461 specifically allows a candidate to endorse, cash and dispose of refund checks received after all surplus funds from a campaign have been disposed of and the necessary disposition reports filed with the Department of State, provided the candidate files an amended report with the Department.

The bill also limits to \$10,000 the amount of surplus funds, or "turnbacks", which the candidate may give to the candidate's political party. There are still a number of eligible recipients of surplus funds provided by Florida Statutes, including charity organizations, contributors, etc. Limiting the amount of funds which may be turned back to the candidate's party should serve to diminish the public perception that these dollars are buying influence with the party and party leaders, and remove the appearance of impropriety.

*d. Illegal Campaign Contributions*

HB 461 provides for enhanced penalties for repeat violations of campaign contribution limits or prohibitions and for failure to report illegal campaign contributions or attempts to make campaign contributions. For example, persons making two or more contributions in violation of s. 106.08(1), F.S. (\$500 cap); persons making two or more contributions in violation of s. 106.08(5), F.S. (renumbered as (6) in this bill, dealing with contributions made in the name of another and contributions to and from charitable organizations); or persons who fail or refuse to report illegal contributions commit a felony of the second degree. Corporations, partnerships, other business entities, political committees and committees of continuing existence are subject to a fine of not less than \$10,000 and not more than \$50,000 if convicted of violating any of the foregoing provisions. Domestic entity may be subject to dissolution and foreign entities may forfeit rights to do business in this state if convicted of violating the foregoing provisions. The bill also imposes personal liability on officers, partners, agents, attorneys or other representatives of corporations, partnerships, other business entities, political committees and committees of continuing existence who participate in these violations, making them guilty of a second degree felony.

Significant penalties, including raising fine levels to felony penalties and dissolution of corporations should act as a significant deterrent to circumventing contributions by giving in the name of another.

*e. Campaign Finance Reports*

HB 461 increases the fine for late filing of campaign finance reports by candidates, political committees, committees of continuous existence, and political parties and provides for deposit of those fines into the Elections Commission Trust Fund rather than the Election Campaign Financing Trust Fund, which was terminated by operation of law during the 1996 legislative session. Specifically, committees of continuous existence, candidates and political committees will be fined \$500 per day for reports filed late. The bill eliminates waivers for first-time offenders. Under this bill, state or county executive committees for each political party shall be subject to a \$50,000 per day fine for reports filed late. An appeal process is provided.

Based on the current \$50 per day fine for late reports, the Division assessed candidates, political committees, committees of continuous existence and political parties \$37,050 in fines during the 1996 elections. If the proposed fines of \$500 per day for candidates, political committees, committees of continuous existence and the \$50,000 per day for state or county executive committees had been in effect during the 1996 elections, the Division would have assessed fines of \$362,585. This figure does not include fines assessed on county executive committees, as this function is handled by the local supervisors of elections.

*f. Joint Endorsements by Political Committees or Parties*

Under the provisions of this bill, political committees or parties may endorse as few as three candidates without expenditures for obtaining time, space or services in or by a communications medium being considered as contributions to or expenditures on behalf of the jointly endorsed candidates.

**Qualifying Fees of Candidates**

This bill reduces the amount of the candidate filing fee for federal, state and county candidates from 4.5 percent to 3 percent and further reduces the municipal candidate election assessment from 1.5 to .5 percent, thereby eliminating the portion currently being deposited into the Elections Campaign Financing Trust Fund.

The Division, counties and municipalities collected \$1,267,859 from candidates during the 1996 elections to be deposited in the Elections Campaign Trust Fund. Therefore, with the passage of this bill, it is entirely possible that many candidates who have qualified by the petition method (no fee required) will pay the reduced qualifying fee. However, a dollar amount cannot be determined with any reasonable degree of certainty.

**Political Advertisements**

HB 461 imposes additional approval, filing and disclaimer requirements on candidates and others disseminating political advertisements. Campaign buttons, shirts, hats and other items designed to be worn by a person are specifically excluded from the requirements.

Under the provisions of the bill, any political advertisement by or on behalf of a candidate, except an independent expenditure, must be approved in advance by the

candidate. The candidate's approval must be stated in the advertisement and the candidate must provide a written statement of authorization to the distribution medium (i.e. newspaper, radio station, television).

Those making independent expenditures must provide a written statement to the medium that no candidate has approved the advertisement. The advertisement must also contain a disclaimer stating that there was no candidate approval.

Political advertisements paid for by a political party must state whether or not the candidate approved the content of the advertisement. In addition, the burden of proof regarding such approval in an administrative proceeding before the Commission is on the political party.

Requiring disclaimers on political advertisements identifying to the public whether or not a candidate approved a particular ad will provide greater accountability and lessen the opportunity for candidates to distance themselves from negative or false messages.

Although the bill does not specifically require that the candidate or person making an independent expenditure to provide the written authorization in advance of publication or distribution of the advertisement, the distribution medium is likely to require such written authorization as a condition of publishing the advertisement. This advance, or, at the very least, concurrent, filing requirement may constitute an unconstitutional prior restraint on speech in violation of the First Amendment. Irrespective, requiring candidates to approve the content of their advertisements and include disclaimers to that effect may be an unconstitutional infringement on other free speech grounds. (See Comments.)

### **Telephone & Computer Solicitation**

The bill requires any candidate, political party, political committee or committee of continuous existence engaged in telephone solicitation or polling regarding a candidate, ballot issue or political organization to identify who paid for the solicitation. The effect is to subject telephone solicitation and political polling to a sponsor identification requirement like other political advertisements under current law.

If the telephone call is a contribution to a candidate, the name of the candidate and the office sought must also be identified. In order to protect legitimate polling, any telephone call which exceeds three minutes in duration and is part of a series of like telephone calls consisting of fewer than 1,000 completed calls is presumed to be a political poll under this bill and not subject to the disclosure requirements.

In addition, this bill prohibits the use of false or unauthorized representations regarding the sponsorship of political telephone solicitations supporting or opposing candidates, elected public officials or issues.

Willful failure to comply with the new prohibitions would subject violators to criminal penalties; a misdemeanor of the first degree.

HB 461 also subjects all messages of candidates, political parties, political committees or committees of continuous existence, or their agents, accessible by computer, to the disclosure requirements applicable to other political advertisements under s. 106.143,

F.S. This would clearly include world wide web sites and communications on the Internet, including e-mail and home pages, and arguably includes personal e-mail and other information on a computer system not otherwise accessible to the public. Since the bill does not distinguish between types of messages, requiring all messages of candidates, political parties and committees to contain the disclaimer requirements, arguably any information put on a computer by such parties would be subject to the disclaimer requirements.

### **Initiative Petitions**

The bill clarifies that petitions signed by a voter listing an address other than the legal residence where the voter is registered shall be treated as if the voter had listed the address where the voter is registered. The bill also provides that a petition shall not be declared invalid which otherwise meets verification requirements but which fails to include the name and address of the paid circulator who obtained the signature of the voter. The bill requires that the supervisor of elections be paid in advance the requisite costs to verify petition signatures. The bill provides that petitions be submitted to supervisors by the 151st day prior to the general election. Supervisors would continue to have until the 91st day prior to the general election to certify the number of valid signatures to the Secretary of State. This would allow supervisors a sixty-day period in which to verify petitions before they are required to be certified to the Secretary of State.

In an effort to reduce the number of fraudulent signatures being submitted by signature gatherers, the bill provides that the sponsor of an initiative petition who pays petition circulators must file an affidavit with the Division, notifying it of the use of paid circulators. The sponsor must provide a list of the names and addresses of its paid circulators to the Division at the time it files the reports required by s. 106.07, F.S.. Sponsors who file an affidavit stating that they intend to pay petition circulators will be prohibited from claiming undue burden in lieu of paying signature verification fees to supervisors of elections.

A paid petition circulator is required to place his or her name and address on each petition form for which he or she is gathering signatures on behalf of the sponsor. The sponsor of the proposed initiative is responsible for ensuring that the name and address of the paid circulator appears on the petition form before it is submitted to the supervisor of elections for verification. A political committee which submits a petition for verification and does not ensure that the name and address of the paid circulator is on the petition is subject to the civil penalties in s. 106.265, F.S.

HB 461 requires an advance payment to the supervisor of elections to verify petition signatures.

Section 104.185 F.S., is amended to make it a misdemeanor to sign another person's name or a fictitious name to any petition to secure ballot position for a candidate, a minor party, or an issue, punishable as provided in ss. 775.082 or 775.083, F.S.

### **Repeal of Second Primary**



HB 461 abolishes the second primary election for the nomination of major political party candidates and makes the candidate receiving the most votes in the primary election the party nominee. It also moves the primary election one week closer to the general election. With the elimination of the second primary, the bill requires the supervisors of elections to mail to each absent qualified elector overseas who has requested a ballot, not fewer than 35 days before the primary and not fewer than 45 days before the general election, a regular ballot. This would eliminate the need to mail out the advance absentee ballots as required under current statutes. By not having to mail out the advance absentee ballots, the counties will realize a cost savings, however, this will vary from county to county depending on the requests for absentee ballots.

The State could then negotiate a modification to, or seek relief from, the existing consent order with the federal government which requires supervisors of elections to count valid overseas absentee ballots received 10 days after the date of the election.

### **Solicitation at the Polls**

The bill increases the no-solicitation zone around polling places from 50 feet to 100 feet. In addition, the exceptions for when the solicitation restrictions will not apply have been removed. However, the bill creates a limited exemption for solicitation within the restricted zone where the supervisor of elections determines that, because of the location of the polling place, the health or safety of the solicitors will be adversely affected. Where such solicitation is permitted, it must be conducted from a separately-marked area designated by the supervisor which does not impede or interfere with voter access to the polls. Also, solicitors must conduct their activities so that it is clear that voter participation in such activities is voluntary. The proposed exemption maintains many of the current restrictions for soliciting within the 50-foot restricted zone (i.e., not impeding voter access to the polling place or polling room entrance), except that the proposed exemption requires an initial determination by the supervisor that the health or safety of solicitors will be adversely affected before the supervisor may authorize any solicitation.

### **Residency Requirements**

HB 461 defines "residence", "residency requirement" and "resident" as applied to candidates and public officers. The bill provides that, unless otherwise provided in the State Constitution, a residency requirement for a candidate must be met from the time a candidate qualifies for public office, and the residency requirement for an appointed public officer must be met from the time of appointment.

HB 461 provides an additional means of determining violations of the residency requirements by granting jurisdiction to the Commission to investigate alleged violations of candidates and elected or appointed public officers in regards to residency requirements, as defined in this bill. The Commission's jurisdiction is in addition to the jurisdiction of other officers or agencies empowered by law to investigate, act and dispose of alleged residency violations. The bill provides factors which may be considered in determining whether a person has met the residency requirement, including those factors enumerated in the context of determining residency for purposes of Florida's homestead exemption, s. 196.015, F.S. The bill also provides a 15-day time frame in which determinations must be made regarding a residency complaint against a

candidate so that, if a violation is determined, there is sufficient time to remove the candidate's name from the ballot. For determinations of violations against persons in office, the Commission is required to refer its findings to the appropriate officer or agency for action.

This may result in an increase in workload of the Commission staff and in costs as well. However, at this time there is no way to determine how many residency complaints may be filed. Additional meetings of the Commission may be required. Currently, the Commission meets on an average of every six (6) weeks, at an average cost of \$5,380, which covers travel, lodging, and meeting room space for staff and the Commission members. If the meetings could be held by a telephone conference call, the cost would be much less.

### **Voter Registration**

HB 461 provides several changes to the voter registration form and process to address concerns of fraud in registration and to provide clarity.

Under the provisions of the bill, an applicant will be required to provide information on the registration form which affirmatively indicates that he or she is a United States citizen; that he or she has not been convicted of a felony or, if he or she has been so convicted, that his civil rights have been restored; and that he has not been adjudicated mentally incapacitated or, if he or she has been so adjudicated, that his or her voting rights have been restored. Unless the applicant provides this information, the application will be considered incomplete. This will ensure that each applicant affirmatively provides all information necessary to establish eligibility to register.

The bill requires the registration form to be in plain language and directs the Department of State to design the form so that those persons who have been convicted of a felony or adjudicated mentally incapacitated but who have had their rights restored are not required to reveal their prior conviction or adjudication.

The bill removes the provision for the date of the applicant's signature, since that date has no bearing on the registration date.

The bill removes the requirement that a voter must indicate that his registration identification card has been defaced, lost or stolen, in order for a replacement card to be issued. Instead, the voter will be required to provide the supervisor with a signed, written request for a replacement card. The voter registration application can be used for this purpose.

The bill also establishes a one cent per application fee for individuals or groups conducting voter registration programs who request 10,000 or more federal or statewide voter registration forms from the Department of State. Based upon requests received by the Division during 1996, \$2,042 would have been recovered by the Division if the one-cent charge had been in place.

The bill conforms the information required on the voter registration identification card and the precinct register to the information required to be provided by the voter and repeals procedures no longer in use in Florida.

Finally, HB 461 raises the penalty for willfully submitting false voter registration information from a misdemeanor to a third degree felony. This comports with the current penalty for falsely swearing or affirming an oath in connection with voting or elections. A legal technicality currently prevents the state attorney from undertaking the felony prosecution of persons who willfully submit false voter registration information under oath on the state voter registration form. This bill would allow for such prosecution. Alteration of the another's voter registration application is a misdemeanor of the first degree.

### **Central Voter File**

The bill authorizes the Secretary of State, through the Division of Elections, to create and maintain a central voter file. A central voter file is a statewide central database incorporating voter information from all of the counties of the State. The supervisor of elections for each county is required to provide voter registration information in the form requested by the Division. Each supervisor, however, retains control over the list of registered voters in the supervisor's own county. Thus, although the information in the central voter file could be accessed by the Division and others, the ability to add, delete or determine the eligibility of individuals to vote would still remain with the supervisors.

The underlying principle of a central voter file is to provide candidates for public office, political parties, political consultants, political committees, the Legislature, the Division of Elections, state agencies, and others with more convenient access to statewide voter registration information. The Final Report of the Central Voter File Study Committee (Committee), a bipartisan committee authorized by the Legislature to look into the feasibility of creating a central voter file (see Chapter 94-224, s. 44, Laws of Florida), concluded that some of the benefits of a central voter file include: simplifying the process of obtaining updated voter registration lists by candidates and others interested in statewide or multi-county elections; its potential use in detecting possible duplicate registrations; and, its potential use in identifying persons ineligible to vote because of death, felony conviction, or adjudication of mental incompetency. Final Report of the Central Voter File Study Committee, pp. 20-23 (September, 1995) [hereinafter, Final Report]. Conversely, the Committee concluded that a central voter file would not be useful in detecting and preventing fraud, or in implementing the provisions of the National Voter Registration Act ("NVRA"), as counties have already expended the money necessary to implement NVRA. Final Report, p. 23.

The bill designates all information in the central voter file as a public record. This would allow any person to obtain a copy of any information in the central voter file, not exempt under s. 97.0585, F.S. or the Public Records Act, without restriction as to purpose. Opening the central voter file to a public records request would permit use of the voter list for commercial solicitation purposes, a use specifically prohibited under current law with regard to county voter registration information. Despite the open approach in making copies of central voter information available, copies of voter registration information in the county registration books would remain restricted as provided by current law. This means that only certain persons or groups (candidates, political parties, etc.) would be entitled to copy voter information from the county books and only for specific purposes, such as elections, governmental activity and law enforcement.

HB 461 also prohibits the courts from obtaining voter registration lists for the purpose of jury selection from the county registration books beginning in 1998. This change

comports with current law which requires the courts to derive jury lists exclusively from driver registration records of the Department of Highway Safety and Motor Vehicles beginning in 1998. [See ss. 40.011(1) and 322.20, F.S. (1995)]

Finally, although the bill provides that the central voter file shall be "self-sustaining", it does not provide a funding mechanism for the creation or maintenance of the central voter file. It is unclear whether this language is specific enough to allow the Secretary of State to charge user fees for maintenance of the file in excess of the fees designated in Chapter 119, F.S. for public records requests. At this time, there is no way to determine the amount of fees that will be collected by the Division pursuant to s. 119.07, F.S. The amount collected will depend upon the number of candidates, committees, political parties and the public would purchase the list. More significantly, the bill does not address how to initially fund the creation of the central voter file. Subsequent user fees could be used to recoup the costs of initially creating the system, although the bill does not make it clear that this approach is intended.

### **Voting System Audits**

HB 461 revises s. 101.591, F.S. to allow the legislature, upon specific appropriation and directive, to have an independent audit of any Supervisor of Elections conduct of an election. Effectively, this provision relieves the Division from the requirement of conducting the audits. The Division has indicated that they lack the staff and expertise to conduct audits, as no funding was ever given to carry out this mandate.

### **Florida Elections Commission**

Under the provisions of HB 461, the Florida Elections Commission would be transferred, via a type one transfer from the Department of State to the Department of Legal Affairs, Office of the Attorney General. A type one transfer is the transferring intact of an existing agency so that the agency becomes a unit of another agency. [s. 20.06(1), F.S. (1995)] Any agency transferred by a type one transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred to the agency to which it is transferred. [s. 20.06(1), F.S. (1995)] This transfer would become effective on July 1, 1997.

This bill authorizes staff for the Commission and establishes it as a separate budget entity with its director being the agency head for all purposes. Effectively, HB 461 transforms the Commission into an independent body. It increases the Commission from a seven-member to a nine-member body and changes the method of appointment of Commission members to include two appointees by the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the House and Senate. The ninth and final member of the Commission is to be appointed by the Governor and will serve as chair of the Commission. The chair of the Commission serves a maximum term of four years, running concurrently with the term of the appointing Governor. Other members of the Commission serve 4 year terms until their successors are appointed. Six months prior to the expiration of a members term, the ranking officer of the political party in the respective nominating house provides the Governor with a list of three names, of which the Governor chooses one for nomination to the Commission. No member of the Commission may serve more than two full terms and of the nine members, no more than five may be from the same political party at any

one time. The bill also provides procedures to govern the transition between the current Commission and the new Commission; the terms of all current members of the Commission to expire at the end of the day on December 31, 1997.

HB 461 transfers the authority to investigate complaints and determine probable cause regarding campaign finance violations and false or malicious political advertisements from the Division to the Commission. The Division is empowered with conducting preliminary inquiries into voter registration irregularities and fraud as well as voter irregularities and fraud. This provision of the bill, only allows the Division to conduct fact-finding inquiries and write reports to the appropriate law enforcement agencies. The Division will have no authority to prosecute any findings.

The bill provides that the Commission may investigate violations only after having received either a sworn complaint or information reported to it by the Division. Under HB 461, the Commission is required to transmit a copy of a sworn complaint to the alleged violator within five days from receipt of the complaint. In any case where the Commission does not refer a matter to the state attorney, a hearing must be held before a hearing officer from the Division of Administrative Hearings pursuant to Chapter 120, F.S., if the Commission receives a written request for a hearing from the alleged violator within 20 days of receipt of the probable cause determination.

This bill allows the Commission to determine minor offenses that can be resolved by means of a plea of nolo contendere and payment of fine. It also requires that the Commission adhere to statutory law and advisory opinions of the Division. The Commission is expressly prohibited from issuing advisory opinions. Pursuant to HB 461, the State Comptroller would be responsible for collecting civil penalties. HB 461, authorizes the Elections Commission Trust Fund to be used by the Division to provide for rewards for information leading to criminal convictions related to voter registration fraud, voter fraud and vote scams.

### 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?

Yes. HB 461 eliminates the authority of the Division to bring civil actions to recover certain civil penalties and eliminates duties of the Division relating to investigation of certain complaints. Under this bill, the Division would be responsible for conducting preliminary investigations into irregularities or fraud involving voter registration and/or voting, but the authority to prosecute would rest with appropriate law enforcement agency. This bill also restricts the powers of the Division to issue subpoenas.

On the other hand, HB 461 vests the Commission with jurisdiction to investigate and determine violations of both campaign financing and

advertising laws and gives the Commission rulemaking authority related to its investigative responsibilities including, but not limited to, the ability to resolve minor offenses by means of a plea of no contest and a fine. The Commission is prohibited from issuing advisory opinions. The State Comptroller is charged with collecting fines resulting from actions of the Commission in circuit court to enforce payment of civil penalties.

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

Yes. See above, Effect of Proposed Changes.

The provisions of HB 461 which deal with campaign financing and reporting, political advertisements and telephone solicitation and polling will impose new responsibilities and obligations onto candidates, political parties, committees, and their supporters.

This bill also eliminates the mandate that the Division audit voting system methods.

- (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?

Under the random-sampling method of verification, the cost assessed to sponsors of initiative petitions would be less. Assuming that this reduction in cost would provide an incentive for sponsors to pay the fee instead of claiming undue burden, there would be a reduction in the amount of money reimbursed to county commissioners from the General Revenue Fund. See above, discussion regarding public campaign financing.

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?

HB 461 increases the distance between polling places and solicitors. One possible way of looking at this provision is that it interferes with a present lawful activity, solicitation at the polls, by increasing the legal distance a solicitor or supporter must stand from a polling place. Another way of looking at this

**STORAGE NAME:** h0461.er

**DATE:** February 17, 1997

**PAGE 24**

provision is that it protects the voter's inalienable right to vote without feeling threatened and offended by candidates and/ or supporters of initiatives.

As campaign advertising and telephone solicitation are lawful activities within the confines of our current statutes and case law, HB 461 does create some governmental interference with the imposition of requiring disclaimers and identification of sponsors and/or candidates.



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:

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

**Voter Registration**

The Department of State provides the uniform statewide voter registration application. The forms will be required to be reprinted as a result of this bill; however, by providing an effective date of January 1, 1998, the Department will be able to use its current stock of forms before reprinting is required.

**Central Voter File**

<u>Expenditures:</u>	<u>1997-98</u>
Division of Elections	
Operating Capital Outlay	\$ 65,000
Expenses	35,000
	<hr/>
General Revenue Fund	\$100,000

2. Recurring Effects:

**Campaign Financing**

*Contribution Limits Applicable to Political Parties*

As this bill authorizes the assessment of fines up to \$5,000 per offense from political parties found in violation of the contribution limits set forth in s. 106.08(2), F.S., the State may realize revenues however, with the sunset of the Election Campaign Financing Trust Fund in 1996 it is unclear where such revenues would be deposited.

*Illegal Campaign Contributions*

HB 461 provides for enhanced penalties for repeat violations of campaign contribution limits and for failure to report such contributions. The State may realize revenues of up to \$10,000 for these particular offenses and up to \$50,000 per offense for other violations. It is unclear with the sunset of the Election Campaign Financing Trust Fund in 1996 where such revenues would be deposited.

*Campaign Finance Reports*

HB 461 also increases fines for the late filing of campaign finance reports. The Elections Commission Trust Fund may realize revenues as follows: (1) \$500 per day for reports filed late by candidates, committees of continuous existence, and political committees; and (2) \$50,000 per day for reports filed late by state or county executive committees for each political party.

**Qualifying Fees of Candidates**

This bill reduces the qualifying fees of candidates by 1.5% by eliminating that portion of the filing fee which is assessed for public financing of campaigns. Therefore, this bill reduces revenues that would have been recognized by the Elections Campaign Financing Trust Fund.

**Telephone & Computer Solicitation**

The Commission will incur additional costs to investigate and prosecute complaints of violations. Such costs, dependent upon the number of complaints filed, are indeterminable.

As this provision allows for an assessment of up to \$1,000 per offense from persons or groups found in violation of the political telephone and computer solicitation provisions, the State may realize revenues. However, with the sunset of the Elections Campaign Financing Trust Fund in 1996 it is unclear where such funds would be deposited.

**Residency Requirements**

HB 461 requires the Commission to investigate and, where necessary, hold hearings on alleged violations of residency requirements by candidates and elected and appointed public officials. Some of these hearings could be processed at regularly-scheduled Commission meetings. The fiscal impact to the Commission would depend upon the number of complaints filed alleging residency violations.

In the event that a candidate's name is removed from the ballot causing a vacancy in nomination, a special election is required to fill that vacancy. Counties incurring costs for these elections are reimbursed by the state, based upon the actual expenses. These costs vary depending on the office affected.

**Voter Registration**

<u>Revenues:</u>	<u>1997-98</u>	<u>1998-99</u>
General Revenue Fund	\$2,042	\$2,042

Based upon requests received by the Division in 1996, \$2,042 would have been recovered if the Division charged one cent per application for requests of more than 10,000 voter registration forms. However, the Division did discourage requests for up to one million forms, which would result in greater revenue.

**Central Voter File**

<u>Revenues:</u>	<u>1997-98</u>	<u>1998-99</u>
General Revenue Fund	\$0	*

Expenditures:

Division of Elections		
Salaries and Benefits (1 Systems Project Analyst)	\$48,037	\$48,037
Other Personal Services	\$14,463	\$14,463
Expenses	\$13,975	\$13,975
General Revenue Fund	<u>\$76,475</u>	<u>\$76,475</u>

\* The amount of recurring revenues will depend on whether the Division seeks to recover the initial costs of implementing the Central Voter File through user fees. If so, revenues should exceed the costs of operating the system annually.

**Florida Elections Commission**

<u>Revenues:</u>	<u>1997-98</u>	<u>1998-99</u>
General Revenue Fund	\$ 0	\$ 0

Expenditures:

Division of Elections		
Salaries & Benefits (12.00)	(\$406,645)	(\$406,645)
OPS	(18,125)	(18,125)
Expenses	(211,046)	(211,046)
Total Reduction in Elections	<u>(\$635,816)</u>	<u>(\$635,816)</u>
Commission Trust Fund		

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

**Identifiable Revenues & Expenditures:**

<u>Revenues:</u>	<u>1997-98</u>	<u>1998-99</u>
General Revenue Fund	\$2,042	\$78,042

Expenditures:

Division of Elections		
Elections Commission Trust Fund	\$635,816	\$635,816
General Revenue	<u>\$ 76,475</u>	<u>\$ 76,475</u>
	\$712,291	\$712,291

**Additional Revenues and Expenditures:**

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

**Central Voter File**

There will be a minimal expense to local counties to have programs written that would read their voter registration files and write them to files in the format agreed upon with the Division. The expenditure figure for 1997-98 includes funding to assist counties with programming, particularly for smaller counties without the in-house computer capability to generate the necessary software.

2. Recurring Effects:

**Residency Requirements**

In the case of a determination that a candidate has violated the residency requirements, the supervisor of elections would be required to remove the candidate's name from the ballot. The cost for this action would be dependent upon whether or not the ballot had been printed.

**Repeal of Second Primary**

Based on the 1992 election costs borne by the counties for the second primary election, a cost savings of approximately \$4,000,000 will be realized by the counties by eliminating the second primary. With the elimination of the second primary, the bill requires the supervisors of elections to mail to each absent qualified elector oversees who has requested a ballot, not fewer than 35 days before the primary and not fewer than 45 days before the general election, a regular ballot. This eliminates the need to mail out the advance absentee ballots as required under current law. By not having to mail out the advance absentee ballots, the counties will realize a cost savings, however, this will vary from county to county depending on the requests for absentee ballots.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

**Campaign Financing**

Persons or organizations found in violation of the provisions of HB 461 will be subject to larger fines and more severe penalties. The \$10,000 limitation on the turnback of surplus campaign contributions from a candidate to a party may result in significant monetary losses to the party.

**Telephone & Computer Solicitation**

Persons or organizations found in violation of the provisions of HB 461 will be subject to a fine of up to \$1,000 per offense.

**Voter Registration**

Individuals or groups requesting 10,000 or more voter registration forms will be required to pay one cent per form.

**Initiative Petitions**

The bill prohibits the sponsor of a proposed initiative who uses paid petition circulators from claiming undue burden and exemption from the per signature charge for verification of signatures by the supervisor of elections. Consequently an initiative committee which elects to use paid circulators to gather the required number of signatures to secure ballot position will incur the cost of having each of its petitions verified.

The bill requires the sponsor of a proposed initiative to ensure that the name and address of the paid circulator is on the petition upon submittal for verification. The bill provides that noncompliance with this requirement subjects the sponsor to the civil penalties prescribed in s. 106.265, F.S. The civil penalty is a fine, not to exceed \$1,000 per count. Presumably **each** petition presented for verification that is in noncompliance with this bill could cost the sponsoring committee up to \$1,000 in fines.

2. Direct Private Sector Benefits:

**Qualifying Fees of Candidates**

HB 461 reduces the amount of the candidate filing fee for federal, state and county candidates from 4.5 percent to 3 percent. The bill further reduces the municipal

candidate election assessment from 1.5 percent to .5 percent. This provision will lessen the burden on candidates qualifying for office.

**Central Voter File**

The cost of obtaining a statewide list of registered voters for persons or groups eligible to receive central voter file lists, including candidates and political parties, will likely be reduced. Currently, a statewide list is only available by obtaining and compiling the individual list of each supervisor of elections from Florida's 67 counties.

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:**

Although the bill may result in some additional costs to counties or reductions in county revenues, the bill is exempt from the mandates provision of the Florida Constitution because it is an elections law.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

None.

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

None.

V. **COMMENTS:**

**Campaign Financing**

None.

**Qualifying Fees of Candidates**

None.

**Political Advertisements**

There is an apparent conflict in the federal courts regarding the constitutionality of "approved and authorized by" disclaimers. In Shrink Missouri Government PAC v. Maupin, 892 F.Supp. 1246 (E.D.Mo. 1995), a federal district court held that a Missouri state statute requiring an "approved and authorized by" disclaimer on negative advertising in addition to a "paid for by" disclaimer violated first amendment free speech guarantees. The court stated:

It seems that to whatever extent the state wishes to impose accountability and lessen the opportunity for deniability, the "paid for by" requirement promotes that goal, without the need for "approved and authorized by" language.

Id. at 1256. Conversely, in Federal Elections Commission v. Survival Education Fund, Inc., 65 F.3d 285 (2nd Cir. 1995), the Second Circuit Court of Appeals upheld the constitutionality of an "authorized by" disclaimer in the context of the Federal Election Campaign Act.

Neither case is controlling in Florida, and it is not clear to what extent, if any, the cases would be looked to by a Florida court is resolving the constitutionality of the "approved by" disclaimers contained in HB 461.

### **Telephone & Computer Solicitation**

None.

### **Initiative Petitions**

The Florida First District Court of Appeal has ruled that the provisions of Section 99.097(1) and (2), Florida Statutes, providing for verification by random sampling of names and signatures on petitions, were not applicable to the initiative petition verification process since the Florida Constitution has mandated that at least eight percent of the described electors must sign an initiative petition before it can attain ballot status. (See, Let's Help Florida v. Smathers, 360 So.2d 494 (Fla. 1st DCA 1978)). Therefore, in order to implement random sampling verification of initiative petitions, Article XI, Section 3 of the Constitution would have to be amended. Similarly, the Florida Supreme Court has held that the Secretary of State does not have the authority to provide a different deadline from that stated in the Florida Constitution therefore, changing the deadline for sponsors to submit their petitions to Supervisors for verification requires a constitutional amendment. (See, Citizens Proposition for Tax Relief v. Firestone, 386 So.2d 561 (Fla. 1980)).

See, HJR 293 - Amending Article XI, Section 3 of the State Constitution.

HB 461 affects a sponsor's ability to pay petition circulators by conditioning that if payment is used, the sponsor cannot sign the undue burden oath in lieu of paying for the verification of signatures. In Meyer v. Grant, 108 S. Ct. 1886 (1988), the United States Supreme Court determined that paying petition circulators is an important form of political expression and is therefore protected by the first amendment. In Clean-Up '84 v. Heinrich, 759 F.2d 1511 (11th Cir. 1985), the lower court established that denying initiative sponsors the option of signing an undue burden oath in lieu of paying for verification of petitions violated the sponsor's equal protection rights. While the provisions in HB 461 do not completely deny the sponsor's the right to use the undue burden oath or pay petition circulators, they do limit these important constitutional rights as established by the above referenced cases. Accordingly, a state law limiting these rights will be strictly scrutinized and the State will have to offer compelling reasons why these rights should be limited.



**STORAGE NAME:** h0461.er

**DATE:** February 17, 1997

**PAGE 33**

**Repeal of Second Primary**

None.

### Solicitation at the Polls

Section 102.031, F.S., in its present form was drafted in conformity with three court decisions: Clean-Up '84 v. Heinrich, 759 F.2d 1511 (11th Cir. 1985); News-Press Pub. Co., Inc. v. Firestone, 527 So.2d 223 (Fla. 2nd DCA 1988), *modified on other grounds*, 538 So.2d 457 (Fla. 1989) and; Florida Comm. for Liability Reform v. McMillan, 682 F.Supp. 1536 (M.D. Fla. 1988). In Clean-Up '84, the United States 11th Circuit Court of Appeals reviewed s. 104.36, F.S., making it a misdemeanor to solicit voters within 100 yards of a polling location. The court determined that while the state had a significant interest in maintaining order at the polls, the law was not narrowly tailored as required where fundamental first amendment rights were at stake. The court held that the statute was unconstitutionally overbroad and facially invalid for a number of reasons, including the fact that the 100-yard radius at certain polling sites would encompass private homes and businesses posing little or no threat to the voting process. The Legislature subsequently repealed s. 104.36, F.S., in 1987 (see Chapter 87-184, s. 5, Laws of Florida).

In 1988, the Florida Second District Court of Appeals in News-Press was faced with the constitutionality of s. 101.121, F.S., which prohibited non-voters from coming within 50 feet of any polling place, but which exempted commercial businesses and private property from the restriction. The News Press court held the statute unconstitutionally overbroad, because the 50-foot restriction would: encompass traditional public forums for free speech (i.e. streets, sidewalks), and; prohibit the presence of individuals within the restricted area who in no way interfere with the orderly process of voting or the secrecy of the ballot. The Legislature subsequently repealed s. 101.121, F.S. (see Chapter 89-338, s. 37, Laws of Florida).

Also in 1988, the United States District Court for the Middle District of Florida in McMillan, for many of the same reasons cited in Clean Up '84 and News Press, struck down s. 102.031(3), F.S., which prohibited any voter solicitation, without exception, within 150 feet of any polling place or room.

In 1989, the Legislature amended s. 102.031, F.S., to conform with the rulings of the above three cases. Specifically, the Legislature decreased the restricted zone from 150 feet to 50 feet and added a number of exceptions for when solicitation would be permissible. The changes were intended to create a no-solicitation zone that would pass constitutional muster. Because of the broad application of the exceptions, however, the legislation failed to provide supervisors of elections with an effective tool for limiting solicitation in the restricted zone and furthering the state's interests in maintaining order and security at the polls. While supervisors of elections have been aware that many voters are intimidated by the coercive atmosphere created by solicitors at the polls, the 1989 legislation, which exists essentially unmodified in current Florida statutes, did not and does not allow supervisors to adequately address those concerns.

In 1992 the United States Supreme Court upheld a Tennessee statute that created a 100-foot "campaign-free zone." A plurality of the Supreme Court in Burson v. Freeman, 112 S.Ct. 1846 (1992), held that while this zone clearly affected fundamental first amendment rights, Tennessee's interest in protecting against voter intimidation and election fraud was sufficiently compelling and that the law was sufficiently narrowly tailored to achieve this objective. The Court went into great detail analyzing the state's interests in creating no-solicitation zones and determined that, "[t]he only way to preserve the secrecy of the ballot is

to limit access to the area around the voter." Burson, 112 S.Ct. at 1856. With respect to the choice of making the zone 100 feet, the Court did not employ a litmus paper test that separated valid from invalid restrictions. The Court did note, however, that "the state of Tennessee has decided that the last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible. We do not find that this is an unconstitutional choice." Burson, 112 S.Ct. at 1857.

The Burson case demonstrates that a state may legitimately create a no-solicitation zone provided: there is in fact a compelling reason to do so and the statute is narrowly tailored to serve that objective. Given the problems regarding solicitation at the polls that have been reported by the supervisors of elections, it appears that Florida has a compelling interest in creating a no-solicitation zone that can be uniformly applied. Utilizing the same geographic restriction as in Burson (100-foot restricted zone) supports the proposition that a court would view the statute as narrowly tailored to serve the state's compelling interests.

### **Residency Requirements**

None.

### **Voter Registration**

None.

### **Central Voter File**

The Final Report of the Central Voter File Study Committee (September 1995), available from the House Economic and Demographic Research Department, details many of the costs and benefits of the central voter file concept. Based on the Final Report, the committee recommended a periodic collection system that would provide the benefits of a central voter file without intruding into the daily operation of the supervisors. Further, with the implementation of a system that periodically collects data from existing voter registration systems and aggregates it into a central voter file, supervisors would not need to abandon any of the equipment or software purchased to comply with the National Voter Registration Act. The Division would need to identify a common data transfer format and each county supervisor of elections would need to have programs written that would read their voter registration files and transfer them to the Division in the common format.

However, the bill fails to designate a specific system, leaving the issue to the Secretary of State's discretion. Given the extraordinary costs associated with a real-time system (\$15-20 million to develop and \$2-5 million annually to operate) it is likely that a periodic system is envisioned by the legislation.

### **Voting System Audits**

None.

**STORAGE NAME:** h0461.er

**DATE:** February 17, 1997

**PAGE 36**

**Florida Elections Commission**

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Legislative Research Director:

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Dawn Roberts

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Clay Roberts