STORAGE NAME: h0463.er
DATE: March 20, 1997

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

BILL #: HB 463

RELATING TO: ELECTIONS

SPONSOR(S): Representative Miller

STATUTE(S) AFFECTED: Amending ss. 99.021, 104.271, 106.08, 106.085, 106.141, 106.143, 106.19, 106.22, 106.23, 106.24, 106.25, 106.26, 106.295, 921.0012, F.S., and creating ss. 106.087, 106.1431 and 106.297, F.S.

COMPANION BILL(S): HB 75(c); CS/HB 461(c); HB 993(c); CS/SB 120(c); CS/SB 568(c); SB 1406(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) ELECTION REFORM (GRC)
(2)
(3)
(4)
(5)

I. SUMMARY:

HB 463 is an omnibus election reform bill incorporating many of the Governor's 1997 legislative proposals. The bill addresses eight specific areas: (1) nomination requirements for candidates of political parties; (2) campaign financing; (3) independent expenditures; (4) disposition of surplus funds; (5) political advertisements and solicitation by telephone; (6) the Florida Elections Commission - revises responsibilities and administrative/organizational structure; (7) leadership funds; and (8) voluntary expenditure limits for candidates for legislative office.

Among its primary components, HB 463: revises the candidate oath required for qualification for nomination to a political party to include a six month affiliation requirement; provides a lower limit for contributions from certain lobbyists to candidates who were legislators within a specified period of time; requires the reporting of illegal contributions and attempts to make illegal contributions; provides enhanced penalties for certain repeat offenses; revises notice requirements for independent expenditures and prohibits political parties that accept filing fees from making independent expenditures; prohibits reimbursement by a campaign for reported contributions by a candidate; requires advance approval of political advertisements paid for by independent expenditures; provides restrictions on certain telephone solicitations; restructures the Florida Elections Commission; prohibits contributions to legislative campaigns if the funds are raised as leadership funds and provides for voluntary expenditure limits for candidates for legislative office with a designation of such to be printed on sample and official ballots.

This bill may have a fiscal impact at the state level with the creation of the Florida Elections Commission as a separate budget entity with the ability to hire an executive director and staff, but the amount is indeterminate at this time.

With the exception of the provisions relating to candidate oaths and leadership funds, HB 463 has an effective date of January 1, 1998.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Nomination Requirements

Under current law, all candidates, other than candidates for judicial office, must take and subscribe to an oath or affirmation in writing in order to qualify for nomination or election to an office. [s. 99.021(1)(a), F.S. (1995)]. In addition, any person seeking to qualify for nomination as a candidate of a political party shall, at the time of subscribing to the oath or affirmation, state certain things in writing: (1) the party of which the person is a member; (2) that the person is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of six months preceding the general election for which the person is seeking qualification; (3) that the person has paid the assessment levied, if any, by the executive committee of the particular party. [s. 99.021(1)(b), F.S. (1995)].

Campaign Financing

Section 106.08(1)(a), F.S., sets forth a $500 contribution limit to candidates for certain political offices. Currently, there is no specific provision in the statutes dealing with contributions by lobbyists to a candidate who served in the last regular legislative session.

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.

Section 921.0012, F.S., ranks felony offenses by severity. The statute states that "[a] single offense severity ranking chart must be used to compute a sentence score for each felony offender." [s. 921.0012(1), F.S. (1995)].

Independent Expenditures

Under current law, any individual, group, organization, or committee making an independent expenditure in excess of $1,000 on behalf of or in opposition to a candidate must deliver written notice of the independent expenditure within 24 hours of obligating the funds. [s. 106.085, F.S. (1995)]. Along with the notice, a detailed description of the media type or use of the expenditure must be provided to all of the candidates in the affected race and to the qualifying officer of such candidates. The notice must state the name of the candidate whom the independent expenditure is designed to support or oppose. A person who violates s. 106.085, F.S., is liable for a civil fine of up to $5,000, or an amount equal to 10 percent of the expenditure not noticed, whichever is greater.

Surplus Funds

Section 106.141(2), F.S., allows a candidate, prior to disbursement of surplus funds, to be reimbursed by the campaign, in full or in part, for any reported contributions the candidate made to the campaign.

Political Advertisements/Telephone Solicitations

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 to 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.

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.

Florida Elections Commission

The Florida Elections Commission (hereinafter referred to as "the Commission") is a seven member body appointed by the Governor, approved by three members of the Cabinet, and subject to Senate confirmation. The Commission is statutorily created within the Department of State. Section 106.24, F.S., 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 of Elections (hereinafter referred to as "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 is responsible for providing advisory opinions when requested by any supervisor of elections, candidate, local officer having election-related duties, political party, political committee, committee of continuing existence, or other person or organization engaged in political activity, relating to any provision or possible violation of Florida election laws. [s. 106.23(2), F.S. (1995)]. 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.

Leadership Funds

"Leadership funds" are defined as: "accounts comprised of any moneys contributed to a political party, directly or indirectly, which are designated to be used at the partial or total discretion of a leader". [s. 106.295, F.S. (1995)]. "Leader" is defined as: "the President of the Senate, the Speaker of the House of Representatives, the majority leader and the minority leader of each house, and any person designated by a political caucus of members of either house to succeed to any such position". [s. 106.295, F.S. (1995)]. Leadership funds are prohibited by law in this state.

Voluntary Expenditure Limits

The only provision in the Florida Statutes which expressly deals with "voluntary" expenditure limits is found in the "Florida Elections Campaign Financing Act." [s. 106.353, F.S. (1995)]. This provision allows candidates for the office of Governor or member of the Cabinet to voluntarily abide by the expenditure limits set forth in s. 106.34, F.S., and provides for the filing of an irrevocable statement and penalties.

B. EFFECT OF PROPOSED CHANGES:

Nomination Requirements

HB 463 amends s. 99.021(1)(b)2., F.S. to require any person seeking to qualify for nomination as a candidate of a political party to state in writing that the person is not, and for the immediately preceding 6 months has not been, a registered member of any other political party. Under current law, a person seeking to qualify for nomination as a candidate of a political party cannot qualify if they have been a candidate for nomination for any other political party during the previous 6 months. This bill expands the existing prohibition by including persons who may have been registered with, but not actual candidates for, another political party during the 6 months preceding the general election at issue. Therefore, any person seeking to qualify for nomination as a candidate with a political party will not be able to qualify if that person was a registered member of another political party at any time during the 6 months immediately preceding the general election for which the person is seeking to qualify.

This section has an effective date of October 1, 1997.

Campaign Financing

Under current law, registered lobbyists and other individuals are able to contribute up to $500 to any candidate or political committee in any election. [See generally, s. 106.08, F.S. (1995)]. This bill would prohibit a registered lobbyist from contributing more than $100 to the candidacy of a member of the Legislature if the candidate is or was a member of the Legislature within a period of one year preceding the contribution and the lobbyist personally, or in behalf of another person for compensation, appeared before the candidate at the last regular session, extension thereof, or any subsequent special session.

This provision may run afoul of the First Amendment of the U.S. Constitution, as it relates to free speech. [See, Comments].

HB 463 provides that when a candidate is in a race with an independent candidate who has filed as required under s. 99.0955, F.S. (pg. 7, line 20 of HB 463 references s. 99.095, this is a technical error), but the qualification of the independent candidate is pending a determination of whether the required number of signatures have been obtained: The Department of State or supervisor of elections shall notify all other candidates within 3 days of the determination being made and if that determination leaves a candidate unopposed any contribution received after the notification shall be returned to the contributor.

This bill requires the reporting of illegal contributions and attempts to make illegal contributions. Reports are to be made to the Florida Elections Commission.
Any person who commits no more than one violation of this provision is considered a misdemeanor of the first degree. Subsequent violations will be considered felonies of the third degree.

HB 463 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. (split into new sections (6) and (7) in this bill, dealing with contributions made in the name of another and contributions to and from charitable organizations); persons who fail or refuse to return contributions on more than one occasion as required in s. 106.08(3), F.S.; or persons who fail or refuse to report illegal contributions commit a felony of the third 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, or an amount equal to three times the amount contributed or attempted to be contributed, whichever is greater, 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 third degree felony.

With respect to sentencing guidelines, HB 463 amends s. 921.0012, F.S. (1995) to provide an offense level for “indirect political contributions”, a third degree felony under s. 106.08(8)(b), F.S. It should be noted that the label, “indirect political contributions”, does not appear to reflect all of the violations enumerated under s. 106.08(8)(b), F.S.

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.

Independent Expenditures

This bill amends s. 106.085, F.S. to require any individual, group, organization, political party or committee making an independent expenditure in excess of $1,000 on behalf of or in opposition to a candidate to deliver a notice of the obligation of the expenditure at least 14 days prior to an election. Application of this provision is excluded in primary elections if the candidate is unopposed.

Additionally, with each notice required under s. 106.085, F.S., the entity making the independent expenditure will be required to provide a copy of the advertisement or the text of the advertisement, whichever the case may be. If the independent expenditure is for telephone solicitation, a copy of the script must be provided, along with the number of intended recipients. Any person who violates s. 106.085, F.S., shall be liable for a civil fine of up to $5,000 or the entire amount of the expenditure not noticed, whichever is greater.

HB 463 creates s. 106.087, F.S., entitled, Independent expenditures; restrictions on political parties. This provision prohibits any political party that accepts the return of any candidate filing fees from any supervisor of elections or the Department of State, after the close of qualifying for an election cycle, from making independent expenditures on behalf of or in opposition to any candidate during the remainder of that election cycle. Violators of this section shall pay to the state a sum equal to the amount of candidate filing fees received by that political party for all candidates during that election cycle, to be deposited in the General Revenue Fund. For reasons discussed more thoroughly under Comments, this provision may have constitutional implications.

Surplus Funds

With respect to the disposition of surplus funds, this bill amends s. 106.141(2), F.S., to prohibit a candidate, prior to disposition, from being reimbursed, in whole or in part, by the candidate's campaign for any reported contributions the candidate made to the campaign. This provision does not prohibit a candidate from being reimbursed for reported contributions the candidate made to the campaign. However, if a candidate wants to be reimbursed, the candidate would be treated like any other contributor under s. 106.141(4)(a)1., F.S., and be reimbursed on a pro rata basis, from campaign funds which have not been spent, or have not been obligated to be spent.

Political Advertisements/Telephone Solicitation

HB 463 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 or authorization must be stated in the advertisement along with a statement telling who paid for the advertisement. Prior to publishing, displaying, or circulating the advertisement, the candidate must provide a written statement of authorization to the distribution medium (i.e. newspaper, radio station, television) which may be provided by electronic means.

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.

HB 463 creates s. 106.1431, F.S., entitled, Telephone solicitation; restrictions; penalties. This provision requires that any telephone call supporting or opposing any candidate, elected public official, or issue must identify the person or organization sponsoring the call. If the expenditure for the telephone call is a contribution to a candidate, the name of the candidate and the office sought must be identified. An exception is made for calls in which the person making the telephone call is not being paid or the individuals participating in the call know each other prior to the call.

In order to protect legitimate polling, any telephone call which exceeds 3 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.

Additionally, the bill prohibits telephone calls supporting or opposing any candidate, elected public official, or issue in which it is stated or implied that the caller represents a person or organization unless the person or organization has given specific written approval. Likewise, the bill prohibits stating or implying that the caller represents a nonexistent person or organization.

Willful failure to comply with these new provisions would subject violators to a civil fine of up to $1,000.

Florida Elections Commission

HB 463 transfers certain duties and authority from the Division to the Commission. In particular, this bill authorizes filing of complaints with the Commission relating to false statements made against candidates and turns over the rulemaking authority to the Commission. This bill eliminates the authority of the Division to bring civil actions to recover certain civil penalties and extends that authority to the Commission. HB 463 eliminates duties of the Division as they relate to the investigation of complaints, and requires the Division to report any failure to file a report or information required by Chapter 106, F.S., or any apparent violation of said chapter, to the Commission. Under this bill, the Commission would have the authority to issue advisory opinions relating to Florida election laws. The power of the Division to issue subpoenas and administer oaths relating to investigations of alleged violations of the campaign financing provisions is deleted under HB 463.

This bill also makes the Commission a separate budget entity within the Department of State. The administrative and organizational structure of the Commission is revised. For example, the bill provides for the appointment of an executive director and employment of a staff. The director would be appointed by the members of the Commission and would be the agency head for all purposes. The Commission's budget would not be subject to change by the Division under HB 463 and the Commission is authorized to contract or consult with appropriate agencies of state government as needed in the discharge of its duties.

The Commission is vested with the jurisdiction to investigate and determine violations of campaign financing laws. This bill requires the transmittal of a copy of a sworn complaint to the alleged violator and provides for an administrative hearing upon a written request from an alleged violator. The Commission is given rulemaking authority relating to these investigative responsibilities.

Leadership Funds

Leadership funds are currently prohibited in this State. HB 463 expands this prohibition to include the acceptance or solicitation of contributions for any legislative campaign by any person, political party, political committee, or committee of continuous existence if the funds are raised to directly or indirectly enable a legislator to acquire or maintain a leadership position. This provision would apply to contributions accepted or solicited on or after the effective date of the bill.

This provision would become effective upon this bill becoming a law.

Voluntary Expenditure Limits

HB 463 creates s. 106.297, F.S. entitled, Voluntary campaign expenditure limitations for legislative candidates; affidavit; postelection audit; exemption from filing fees; penalties; ballot designation. This provision provides for voluntary expenditure limits for candidates for legislative office. At the time of qualifying, all candidates for legislative office are required to file an affidavit stating whether they accepted or rejected the voluntary expenditure limitations. If a candidate accepts the voluntary expenditure limits, the candidate must also state if the affidavit that the candidate will submit an independent postelection audit of the campaign account to the Division of Elections.

Candidates agreeing to the voluntary expenditure limits are exempt from paying filing fees. The expenditure limits are as follows: (1) in a primary election, $1 per person in the voting age population of the district; (2) in a general election, $1 per person in the voting age population of the district; and (3) in a special election, $1 per person in the voting age population of the district. Independent expenditures are excluded from the computation. Any candidate who voluntarily agrees to abide by the expenditure limits but exceeds the limits, shall be fined an amount equal to three times the amount in excess. In addition, the candidate must also pay the filing fee from which the candidate had previously been exempted.

Under this provision of HB 463, the Secretary of State and local elections officials are required to designate on sample ballots and official ballots, those candidates for legislative office who have voluntarily agreed to abide by the expenditure limitations. The displaying of a candidate's view on an issue on a ballot may run afoul of the constitution. [See, Comments].

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. See B. EFFECT OF PROPOSED CHANGES - Florida Elections Commission.

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

Yes. See B. EFFECT OF PROPOSED CHANGES - Florida Elections Commission.

The provisions of HB 463 which deal with campaign financing, political advertisements/telephone solicitation and independent expenditures will impose new responsibilities and obligations onto candidates, political parties, committees and their supporters.

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

No.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

No.

4. Individual Freedom:

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

      Not applicable.

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

      HB 463 prohibits party switching within 6 months of an election. Certain lobbyists and candidates will be affected by this bill with respect to contributions. As campaign advertising and telephone solicitation are lawful activities within the confines of our current statutes and case law, HB 463 does create some governmental interference with the imposition of requiring disclaimers and identification of sponsors and/or candidates. HB 463 also imposes restrictions on independent expenditures made by political parties and their ability to accept candidate filing fees. Candidates seeking to be reimbursed for personal contributions made to their campaigns would not have the option of taking the reimbursement prior to disposing of the surplus funds.

5. Family Empowerment:

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

      (1) Who evaluates the family's needs?

      Not applicable.

      (2) Who makes the decisions?

      Not applicable.

      (3) Are private alternatives permitted?

      Not applicable.

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

      Not applicable.

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

      Not applicable.

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

No.

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

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

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

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Campaign Financing

The state may realize revenues from increases in fines for certain offenses imposed by HB 463, although the amount is indeterminate at this time.

Independent Expenditures

The state may realize revenues from fines collected for violations of the independent expenditure provisions in HB 463, although the amount is indeterminate at this time.

Political Advertisements/Telephone Solicitation

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

Florida Elections Commission

Fiscally, the most significant item in HB 463 is the creation of the Commission as a separate budget entity with the ability to hire an executive director and a staff. The Commission's budget for the 1996/1997 budget year is $628,479. Whether and how much this would increase is indeterminable at this time.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Campaign Financing

Counties may realize revenues for increases in fines for certain offenses; however, the amount is indeterminable at this time.

Political Advertisements/Telephone Solicitation

Counties may realize revenues from fines, although the amount is indeterminable at this time.

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:

HB 463 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:

Nomination Requirements

Substantial burdens on the right to vote or to associate for political purposes are constitutionally suspect and invalid under the First and Fourteenth Amendments and under the Equal Protection Clause unless essential to serve a compelling state interest. See generally, Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972); and Kramer v. Union Free School District, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969). The U.S. Supreme Court has held that states have a compelling interest in protecting the integrity and stability of its political system. Storer v. Brown, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974). In Storer, the Court recognized that states have a strong interest in maintaining the integrity of the political process by preventing interparty raiding.

The Fourth District Court of Appeal of Florida upheld the constitutionality of s. 99.021(1)(b), F.S., citing the Storer opinion. See, Polly v. Navarro, 457 So.2d 1140 (Fla.App. 4 Dist. 1984). Based on the foregoing, requiring a disaffiliation period of six months for all persons seeking to qualify for nomination should withstand a constitutional challenge.

Campaign Financing

The U.S. Supreme Court upheld the constitutionality of a $1,000 limit on individual contributions to federal candidates. See, Buckley v. Valeo, 96 S.Ct. 612 (1976). In upholding the limit, the Court cited the government's compelling interest in eliminating corruption or the appearance of corruption. The Court found that the $1,000 limit was narrowly tailored to further this compelling governmental interest. A number of states have sought to reduce the perceived influence of special interest money by drastically reducing contribution limits. Whether or not these reduced contribution levels are constitutional is the subject of much debate. The Buckley court refused to specify at what point a contribution limit would become unconstitutional, stating only that "distinctions in degree become significant when they can be said to amount to differences in kind".

Arguably, the provision in HB 463 which limits the amount of contributions a legislator/candidate may accept from a lobbyist who appeared before the legislator within the past year is narrowly tailored to serve a compelling state interest in preventing corruption or the appearance of corruption. Statutes in this context which have been struck down as violative of the First Amendment because they were not narrowly drawn, generally limited campaign contributions to as low as $100, and the limitation applied to a substantially larger group of contributors than does the provision in HB 463. See generally, Carver v. Nixon, 72 F.3d 633 (8th Cir. 1995); Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994); and National Black Police Association v. District of Columbia Board of Elections, 924 F.Supp. 270 (D.D.C. 1996).

Independent Expenditures

HB 463 requires that a person making an independent expenditure in excess of $1,000 give notice of the obligation of such expenditure at least 14 days prior to any election. A copy of the particular advertisement must be included with the notice. Any person who was found in violation of this provision would be liable for a civil fine of up to $5,000 or the entire amount of the expenditure not noticed, whichever was greater. In 1974, the Supreme Court of Florida ruled unconstitutional a town ordinance that required that candidates be informed of attack advertisements against them at least 7 days before an election. See, Town of Lantana v. Pelcznyski, 303 So.2d 326 (Fla. 1974).

This bill also requires that a political party forfeit their filing fees if they accept a return of a candidate's filing fees and, subsequently, makes an independent expenditure on behalf of or in opposition to any candidate during the election cycle. In Colorado Republican Federal Campaign Committee v. Federal Elections Commission, 518 U.S. ___, 116 S.Ct. 2309, 135 L.Ed.2d 795 (1996), the U.S. Supreme Court upheld the right of a political party to make unlimited independent expenditures. It is unclear under Colorado Republican whether a regulation prohibiting independent expenditures in exchange for the receipt of a governmental benefit would withstand a constitutional challenge. But see, Perry v. Sinderman, 408 U.S. 593 (1973), in which the Court stated that a government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." The Court did uphold the constitutionality of limiting the expenditures of the major parties to a specified dollar amount in exchange for public money used to defray presidential nominating conventions. See, Buckley v. Valeo.

Surplus Funds

None.

Political Advertisements/Telephone Solicitation

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 this bill.

Florida Elections Commission

None.

Leadership Funds

None.

Voluntary Expenditure Limits

Recently, the U.S. Supreme Court, without comment, refused to hear an appeal of an Arkansas Supreme Court ruling overturning a voter-initiated amendment adopted in 1996. The amendment required elected officials who failed to support political term limits to have the words "Disregarded Voter Instruction on Term Limits" printed next to their names of future ballots. In addition, the amendment required the words "Refused to Pledge to Support Term Limits" to be printed next to the name of any non-incumbent who failed to sign the pledge.

The amendment in question expressed the will of the people in Arkansas that an amendment be added to the United States Constitution imposing Congressional term limits.
The Arkansas Supreme Court, in analyzing the initiative amendment, found that the amendment directed both state and federal legislators to use the power of their respective offices to advance the cause of adopting an amendment to the United States Constitution that would limit terms of United States Representatives and Senators. The Arkansas Supreme Court held that the initiative amendment was unconstitutional. Because the amendment purported to place the power to ratify proposed amendments to the U. S. Constitution in the hands of the people of the states, thus taking such power away from the state legislatures, it conflicted with Article V of the Constitution. Donovan v. Priest, 931 S.W.2d 119 (Ark. 1996).

The Arkansas Supreme Court recognized that placing such words on ballots was a coercive attempt to compel certain action and acted to bind the legislators in an "extortive manner" because failure to support term limits would "result in their threatened and potential political deaths." An argument could be made that requiring the Secretary of State to designate on a ballot those candidates who have voluntarily agreed to abide by certain expenditure limits rises to the level of "compelled speech" and possibly violative of the First Amendment. On the other hand, the facts in Donovan are distinguishable from the ballot provision in HB 463.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:
Prepared by: Legislative Research Director:

Dawn Roberts Clay Roberts