

STORAGE NAME: h0463s1.er

DATE: April 9, 1997

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

BILL #: CS/HB 463

RELATING TO: ELECTIONS

SPONSOR(S): The Committee on Election Reform and Representative Miller

STATUTE(S) AFFECTED: Amending ss. 106.011, 106.08, 106.085 and 106.29, F.S., and creating s. 106.087, F.S.

COMPANION BILL(S): HB 75(c); CS/HB 183(c); HB 281(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) YEAS 9 NAYS 1
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 463 redefines the term "independent expenditure" to exclude expenditures made by an executive committee of a political party for the purpose of advocating the election or defeat of a candidate if the committee participates in certain acts. In addition, CS/HB 463 requires that any individual, group, organization, political party or committee making an independent expenditure in excess of \$1,000 deliver notice of the obligation of the expenditure at least 14 days prior to an election.

CS/HB 463 requires that any political party accepting the return of any candidate filing fees after the close of qualifying for an election cycle is prohibited from making any independent expenditure on behalf of or in opposition to any candidate during the remainder of that election cycle. Violators of this provision are subject to a penalty equal to three times the amount involved in the illegal expenditure.

This bill clarifies that contributions by subordinate committees and affiliated legal entities of political parties are included when computing contribution limitations. The bill also provides that national, state, and county executive committees, subordinate committees and affiliated legal entities of political parties may not make contributions to candidates which, in the aggregate, are in excess of the limits candidates may accept.

CS/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., 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 does not appear to have a significant fiscal impact on state or local governments.

CS/HB 463 has an effective date of January 1, 1998.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

In s. 106.011(5), F.S., "independent expenditure" is defined as:

An expenditure by a person for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period shall not be deemed an independent expenditure.

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.

Candidates may not accept aggregate contributions of more than \$50,000 from the national, state, and county executive committees of a political party, no more than \$25,000 of which may be accepted prior to the 28th day before the election. [s. 106.08(2), F.S., (1995)]. There is no prohibition against a political party providing excess contributions to a candidate. However, if the party executive committee chair and treasurer certify that the committee's campaign expenditure report is correct, knowing it to be false or incomplete due to the excess contribution, they would be guilty of a third degree felony subject to incarceration and up to \$5,000 in civil fines. [s. 106.29(2), F.S., (1995)]. Alternatively, the Florida Elections Commission could obtain jurisdiction and assess administrative fines of up to \$1,000 per violation. [See, *Div. of Elections v. Brady*, Case No. 95-011 (Florida Elections Commission, 1996)].

B. EFFECT OF PROPOSED CHANGES:

CS/HB 463 modifies the definition of "independent expenditure" to preclude activities which constitute coordination. Specifically, an expenditure made by an executive committee of a political party advocating the election or defeat of a candidate shall not be considered "independent" if the committee: (1) participates in joint fundraising activities with the candidate; (2) participates in the solicitation or receipt of any contribution on behalf of a candidate; or (3) communicates with the candidate or an agent of the candidate (includes pollsters, media consultants, vendors, advisors and staff members) concerning advertising, message, allocation of resources, fundraising, or other campaign matters related to the candidate's campaign, including campaign operations, staffing, tactics, or strategy. For purposes of this provision, the executive committee and all other subordinate committees of a national political party, the state

executive committee of the political party, and the county executive committees of the political party are considered a single entity.

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.

CS/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.

CS/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., 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.

Under the provisions of this bill, national, state and county executive committees of political parties, including subordinate committees and affiliated legal entities, are prohibited from making contributions to candidates which, in the aggregate, are in excess of the limits the candidate is authorized to accept under current law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

- (1) any authority to make rules or adjudicate disputes?

No.

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

The provisions of CS/HB 463 which deal with 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?

Not applicable.

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?

CS/HB 463 imposes restrictions on independent expenditures made by political parties and their ability to accept candidate filing fees.

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 RESEARCH:

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

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The state may realize revenues from fines collected for violations of the independent expenditure provisions in CS/HB 463, although the amount is indeterminate 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:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/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:

CS/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 is found in violation of this provision would be liable for a civil fine of up to \$5,000 or the entire amount of the expenditure not noticed, whichever was greater. In 1974, the Supreme Court of Florida ruled unconstitutional a town ordinance that required that candidates be informed of attack advertisements against them at least 7 days before an election. See, Town of Lantana v. Pelczynski, 303 So.2d 326 (Fla. 1974).

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.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute substantially reduced the number of provisions within the Florida Election Code amended by this bill. Specifically, the committee substitute eliminated those provisions dealing with nomination requirements for candidates of political parties, campaign financing, disposition of surplus funds, political advertisements and solicitation by telephone, the Florida Elections Commission, leadership funds and voluntary expenditure limits for

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candidates for legislative office. On the other hand, the committee substitute modified the definition of "independent expenditure".

VII. SIGNATURES:

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