STORAGE NAME: h0565.er
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HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
ANALYSIS

BILL #: HB 565

RELATING TO: Campaign Financing

SPONSOR(S): Representative Logan

COMPANION BILL(S): HB 171(c); CS/SB 314 (2nd Engrossed)(c); SB 968 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) ELECTION REFORM (PRC)
(2) JUDICIARY (CRC)
(3) GOVERNMENT OPERATIONS (PRC)
(4)
(5)

I. SUMMARY:

HB 565 is a campaign finance reform measure which seeks to amend various aspects of Chapter 106, Florida Statutes as follows.

- Political advertising commonly known as “3-packs,” allowing contribution and expenditure exemptions when used to jointly endorse three candidates, have been eliminated.
- Political committees and committees of continuous existence (CCE’s) have more stringent disclosure requirements with respect to the committees organizational structure.
- Annual reports required of political committees and CCE’s will be required to disclose information as to the common economic or special interest of contributors if a majority of contributors hold such a common interest.
- Contributions (including in-kind contributions) to political parties are limited to $5,000 in the aggregate per calendar year.
- Contributions which a candidate may receive from a political party has been increased from $50,000 to $75,000 however, political services such as polling, research, cost for staff, telephone calls and other nonallocable political services will no longer be exempt from the contribution limits.
- The prohibition on making independent expenditures to support or oppose a candidate or public official by political committees and CCE’s which use public resources to collect dues from its members is eliminated.

This bill has a minimal fiscal impact.

This bill has an effective date of January 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Reporting Requirements of Political Parties and CCE's

Political committees and committees of continuous existence (CCE's) are required to register with the Division of Elections and file a statement of organization which include in part:

- Name and address of the committee;
- Names, addresses, and relationship of affiliated organizations;
- Area, scope, and jurisdiction of the committee;
- Name, address, and position of the custodian of accounts and other principal officers; and
- Name and address of candidates being supported or issues being opposed or supported by the committee.

[ss. 106.03 and 106.04, F.S.]

Political committees and CCE's are also required to file periodic reports with the Division of Elections outlining all contributions and expenditures received and expended. [s. 106.07, F.S.] Further, CCE's must file an annual report outlining essentially the same organizational information required of the committee's initial report. [s. 106.04, F.S.]

3-Packs

Except for independent expenditures, all contributions and expenditures made to further a person's candidacy must be made through the candidate's campaign treasurer. All other contributions and expenditures are prohibited. Contributions to candidates, other than by a political party, are limited to $500 per election cycle (the first primary, second primary, and general election are each considered an election for this purpose). Political parties may currently give up to $50,000 to a particular candidate not including certain non-allocable services. An exception to these limits allows political parties and political committees to jointly endorse at least three candidates through political advertising. Costs for these advertisements are not considered to be an expenditure nor a contribution to the candidates listed on the advertisement. [s. 106.021, F.S.] Prior to 1997, this section provided this exemption only if at least six candidates where endorsed. [see, 1997 Fla. Laws, ch. 97-13, §. 9.]

Contributions

Except for political parties, no person, political committee, or CCE can make a contribution to a candidate or political committee in excess of $500 for each election, that is, for the first primary, second primary, and general election. Candidates are prohibited from accepting, in the aggregate, more than $50,000 from a political party or its committees however, polling services and other nonallocable political services are exempt from the contribution cap. Also, contributions to political parties are currently unlimited, however are subject to disclosure requirements.

Independent Expenditures

In an election reform package passed in 1997, the legislature included a provision which sought to restrict political committees and CCE's which accepted the use of public funds from making independent expenditures supporting or opposing candidates or elected public officials if they accepted the use of public funds for certain purposes. These resources included equipment, personnel, or other resources to collect dues from its members. [see, 1997 Fla. Laws ch. 97-13, §. 5. and s. 106.087, F.S.]

B. EFFECT OF PROPOSED CHANGES:

Reporting Requirements for Political Committees and CCE's

In addition to the reporting requirements enumerated in the statement of organization found in

s. 106.03(2), F.S., political committees and CCE's will be required to include the name of the corporation, labor union, or professional association whose officials, employees, or members established the committee, if applicable. Additionally, the committee will be required to report the names of the principal employer of each principal officer of the committee including officers and members of the political committees or CCE's finance committee.

Additionally, political committees and CCE's will be required to provide as clear a description as practicable of the economic or special interest of a majority of the contributors of the political committee or CCE if they share a common interest. Majority is defined as those contributions over $100 which make up more than 50 percent of aggregate contributions.

3-Packs

The "3-Pack" provision has been stricken. Any advertisement, not considered an independent expenditure, which endorses a candidate will be considered an in-kind contribution to the benefiting candidate. This change places these type of advertisements within the $500 limit on contributions to candidates. Additionally, political parties will have to count the costs of such advertisements towards the $75,000 (amended by this bill - see following topic) contribution limits to candidates imposed on political parties.

Contributions

Contributions, including in-kind contributions, to political parties will be limited to $5,000 per calendar year. Contributions by political parties which may be given to and accepted by a candidate has been raised from the current cap of $50,000 to $75,000. This provision also specifically includes in-kind contributions such as polling and research services, cost for campaign staff, professional consulting services, and other nonallocable services as part of the contribution limit. Additionally, the provision which limited a candidate from accepting $25,000 within 28 days of the general election has been eliminated.

Independent Expenditures

CCE's and political committees which use public resources to collect dues from its members are no longer prohibited from making independent expenditures.

Technical Changes

HB 565 eliminates unnecessary language relating to contribution limits to candidates or political committee by CCE's which is provided in other sections of ch. 106, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

No.

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

No.

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

No.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

No.

4. Individual Freedom:

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

Yes. To the extent that CCE's and political committees using public resources to collect dues from members will no longer be prohibited from making independent expenditures.

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

Yes. Individuals and political groups who wish to make contributions to political parties will be limited to the amount they may give.

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

This bill amends ss. 106.021, 106.03, 106.04, 106.07, 106.08, 106.087, 106.29, F.S.

SECTION-BY-SECTION ANALYSIS:

Section 1. Removes the provision which exempts advertisements endorsing at least three candidates, known as “3-Packs,” from the contribution limits to candidates.

Section 2. Registration requirements for political committees are amended to include the name of the corporation, labor union, or professional association whose officials, employees, or members established the committee, if applicable. Additionally, the committee will be required to report the names of the principal employer of each principal officer of the committee including officers and members of the political committees finance committee.

Section 3. Registration and annual reporting requirements for CCE's are amended to provide as clear a description as practicable of the economic or special interest of a majority of the contributors of the CCE if they share a common interest. Majority is defined as those contributions over $100 which make up more than 50 percent of aggregate contributions.

Section 4. Requires political committees to report as clear a description as practicable of the economic or special interest of a majority of the contributors of the political committee if they share a common interest. Majority is defined as those contributions over $100 which make up more than 50 percent of aggregate contributions.

Section 5. Limits to $5,000 per calendar year the amount a person, political committee, or committee of continuous existence may contribute to a political party. Additionally, this section increases from $50,000 to $75,000, the amount a candidate may receive from various political committees; removes a prohibition which limited to $25,000 any contribution a candidate could accept 28 days prior to the general election; includes in-kind contributions and nonallocable political services, such as polling, staff support, consulting services, etc., in the $75,000 contribution ceiling; provides a penalty reference.

Section 6. Removes the prohibition on CCE's and political committees which use public resources to collect dues from its members from making independent expenditures.

Section 7. Clarifies reporting requirements imposed on political parties and affiliated committees.

Section 8. Reenacts s. 106.19, F.S. for reference purposes.

Section 9. Provides and effective date of January 1, 2000.

FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

E. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   Minimal. Can be accomplished with current staff.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   None.

F. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

G. 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.

H. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art VII, s. 18, of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

IV. COMMENTS:

When Congress passed the Federal Election Campaign Act of 1974 ("FECA"), it sought to regulate federal campaigns by placing limitations and disclosure requirements on campaign contributions and expenditures. Challenges to the constitutionality of various provisions of the Act placed it before the U.S. Supreme Court in Buckley v. Valeo, 96 S.Ct. 612 (1976). In reviewing the Act, the Supreme Court held unconstitutional a number of expenditure limits but upheld limitations on contributions as passing constitutional muster. In their analysis, the Court used the long established practice of applying a "strict scrutiny" standard to test the infringement of First Amendment rights against governmental interests. This standard dictates that any encroachment on constitutionally protected freedoms must be *narrowly tailored* to advance a demonstrated *compelling state interest*. [Williams v. Rhodes, 393 U.S., at 31 and NAACP v. Button, 371 U.S. 415, 438]. The Buckley Court and its progeny have asserted that the only compelling interest to justify infringement on First Amendment rights is the *prevention of corruption or the appearance of corruption*.

The Buckley Court, in upholding ceilings of $1,000 and $5,000 from individuals and political committees, respectively, to candidates, did so recognizing that other outlets of political expression and support were available. The Court noted that:

> [T]he Act's $1,000 contribution limitation focuses precisely on the problem of large campaign contributions the narrow aspect of political association where the actuality and potential for corruption have been identified while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.

[Id. at 28.] However, the Court's decision was predicated on other avenues of expression:

> The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression. [(Emphasis added). Buckley, at 21.]

Given the Court's rational, it is arguable that these contribution limits would not have been upheld if there existed no other means of political expression such as the ability to contribute to political committees or political parties or via other avenues such as independent expenditures.

Nonetheless, the Courts have upheld contribution limits to candidates and political committees on the principal established by Buckley, that is the prevention of corruption or appearance thereof. In upholding a $5,000 contribution limitation to a political action committee by individuals and unincorporated organizations, the U.S Supreme Court in California Med. Ass'n v. Federal Elec. Com'n, 453 U.S. 182, noted that these limits imposed "... far *fewer* restrictions on individuals and unincorporated associations than it does on corporations and unions." [id at 200.] In their decision, the Court exhibited a tolerance for these limits since, by comparison, they were less restrictive than other requirements imposed on other political organizations. While these limits have been reviewed with respect to individuals and political committees, they have not been directly challenged with respect to political parties.

In addition to contribution limits to political parties, this bill proposes a contribution ceiling of $75,000, including in-kind contributions, to candidates. Florida currently requires any expenditure which is coordinated with a candidate to be considered a contribution to that candidate and is therefore subject to contribution limitations found in s. 106.08, F.S. The U.S. Supreme Court has ruled unconstitutional provisions that limit the right of individuals and political committees from making independent expenditures which are independent of and **not coordinated** with a candidate. [See, Buckley, at 14-23; Federal Election Comm'n v. National Conservative Political Action Comm., 470 U.S. 480, 497; and Colorado Republican Federal Campaign Committee v. Federal Election Com'n, 116 S.Ct. 2309.] Recently however, the U.S. District Court for the District of Colorado, on remand from the U.S. Supreme Court held that limits on **coordinated** expenditures between political parties and their candidates are unconstitutional. [Federal Election Commission v. Colorado Republican Federal Campaign Committee, 1999 WL 86840 (D. Colo.), ("Colorado II").] Based on these rulings, it appears that expenditures made on behalf of a candidate, whether coordinated or not, may not be restricted. The Court in Colorado II, recognized that "[p]arty spending 'in cooperation, consultation, or concert with' a candidate ... is indistinguishable in substance from expenditures by the candidate..." [Id. at 17.]

Therefore, it appears that limitations on contributions to political parties, although not squarely placed before the U.S. Supreme Court, may be upheld on constitutional grounds. However, limitations on

expenditures a political party may make on behalf of its candidate(s), either coordinated or independent of that candidate, may fail.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

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