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**HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS**

BILL #: HB 495
RELATING TO: Violation of the Election Code
SPONSOR(S): Representative(s) Gelber
TIED BILL(S):

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

- (1) RULES, ETHICS & ELECTIONS (PRC) YEAS 12 NAYS 0
- (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 13 NAYS 0
- (3)
- (4)
- (5)

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

I. SUMMARY:

HB 495 provides that any person who agrees, conspires, combines, or confederates with another person to commit a violation of the Florida Election Code (Code) shall be punished as if that person had committed the violation. Further, the bill provides that any person who knows of a violation of the Code and gives any aid to the violator, with the intent that the violator avoid or escape detention, arrest, trial, or punishment, shall be punished as if he or she had committed the violation.

The above prohibitions do not preclude a member of the Florida Bar from rendering legal advice to a client.

HB 495 is effective October 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

The bill will result in additional criminal prosecutions against offenders of s. 104.091, F.S., although the pool of likely offenders will be relatively small.

B. PRESENT SITUATION:

The Code and Section 104.091

Chapter 104, F.S., sets out a series of various criminal violations of the Code and establishes penalties for those violations. Among others, these violations include: fraud in connection with casting a ballot, vote selling, interfering with a person's right to vote, voting in person after voting an absentee ballot and submitting a false voter registration application. Section 104.091, F.S., provides that any person who knowingly aids, abets, or advises the violation of the Florida Election Code shall be punished in like manner as the principal offender. This provision is the Code's version of "aiding and abetting," a principle that applies to all crimes and is codified in s. 777.011, F.S. Chapter 777, F.S., also contains the offenses of accessory after the fact and conspiracy.

Law Relevant to Accessory After the Fact and Conspiracy

Section 777.03, F.S., provides that the offense of accessory after the fact is committed when a person maintains, assists or gives other aid to an offender with the intent that the offender avoid or escape detection, arrest, trial or punishment. With the exception of crimes against children, close relatives of an offender are exempted from the accessory after the fact offense. As a general rule, a person convicted of accessory after the fact is punished one felony level below the main offense committed. Accessory after the fact does not apply to misdemeanor offenses.

Section 777.04(3), F.S., defines the offense of conspiracy to include a person who agrees, conspires, combines, or confederates with another person or persons to commit any offense. As a general rule, a person convicted of conspiracy is punished one level below the main offense committed. However, there are three exceptions in Florida law providing that a conviction of conspiracy will be punished at the same level as the main offense: (1) killing or aggravated abuse of registered breed horses or cattle [s. 828.125(2), F.S.], (2) bookmaking [s. 849.24(4), F.S.], and (3) trafficking a controlled substance [s. 893.135(5), F.S.].

The accessory after the fact and conspiracy provisions in ch. 777, F.S., are currently applicable to ch. 104, F.S. For example, a conspiracy to commit a third degree felony violation of the election code is punished as a first degree misdemeanor. Likewise, punishment for being an accessory after the fact to a third degree felony violation of the Code is punished as a first degree

misdemeanor. There would be no offense committed for being an accessory after the fact to a misdemeanor.

Recommendations of the Public Corruption Study Commission

The Public Corruption Study Commission was created by executive order on September 15, 1999. [See, Executive Order 99-237]. The Commission submitted a number of recommendations in response to public corruption, including the revision of s. 104.091, F.S., to:

- Provide that any person who agrees, conspires, combines, or confederates with another person to commit a violation of the Florida Election Code shall be punished as if he or she had actually committed the violation; and to
- Provide that any person who knowingly aids, abets, or advises another person who has violated the Florida Election Code with the intent that the principal offender avoid detection, arrest, or prosecution, shall be punished in like manner as the principal offender.

C. EFFECT OF PROPOSED CHANGES:

HB 495 provides that any person who agrees, conspires, combines, or confederates with another person to commit a violation of the Code shall be punished as if that person had committed the violation.

The bill further provides that any person who knows of a violation of the Code and gives any aid to the violator, with the intent that the violator avoid or escape detention, arrest, trial, or punishment, shall be punished as if that person (the person assisting the violator as specified) had committed the violation.

The effect of these two new provisions is to enhance the current penalties for conspiracy and accessory after the fact. Currently, a conspiracy to commit a third degree felony violation of the Code is punishable as a first degree misdemeanor. Under the bill a conspiracy to commit, for example, a third degree felony violation of the Code would be punished as a third degree felony. Currently, punishment for being an accessory after the fact to a third degree felony violation of the Code is punishable as a first degree misdemeanor. Under the bill the aiding or abetting of another person who has committed, for example, a third degree felony violation of the Code with the intent that the violator avoid detection would be punished as a third degree felony.

"Aiding or abetting" another person on a misdemeanor violation of the Code with the intent that the violator avoid detection would be punished as a misdemeanor, an act which is not currently an offense. In addition, a close relative who "aids or abets" a violator of the Code with the intent that the violator avoid detection would be punished as if he or she actually committed the offense, an act which also is not currently an offense.

Smarter Government staff additions:

No other conspiracy law treats mere conspirators, aiders or abettors with the same degree of severity as primary actors. Thus, conspirators to violate the election code would be the most severely treated conspirators in Florida law. The use of the terms "agree", "combine", and "confederate" in the conspiracy language is consistent with the terminology of s. 777.04(3). It is presumed that the judicial interpretation of the identical language will be consistent. Unlike other jurisdictions, no overt act is required to be guilty of conspiracy in Florida. As result, a member of a political committee who agreed to a plan of action that turned out to include a violation of the code, would be guilty and punished with the same severity as the person who committed the illegal acts.

The bill takes effect October 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Smarter Government Council staff comments:

*The bill could raise a question of proportionality under Florida's broad interpretation of "cruel or unusual punishment" because it punishes an unsophisticated **campaign-meeting participant** with the same degree of severity as a more sophisticated **person who does the act** that violates the code. In addition, it may be argued that adding such strict regulation to the First Amendment activity involved in political campaigns unreasonably quenches political rights.*

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS & ELECTIONS:

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AS FURTHER REVISED BY THE SMARTER GOVERNMENT COUNCIL:

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