

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Ethics and Elections Committee

BILL: SB 1860

INTRODUCER: Senator Aronberg

SUBJECT: Election Code Violations; Political Defamation

DATE: February 27, 2006

REVISED: 03/14/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Fav/1 amendment
2.			JU	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 1860 expands the authority of the Florida Elections Commission (“the commission”) to investigate and assess fines against any “candidate, person, political committee, electioneering communication entity, or political organization subject to the requirements of 26 U.S.C. s. 527” that makes a defamatory statement against a candidate; current law only grants the commission jurisdiction when the defamatory statement is made by a *candidate* against an opposing candidate.

The bill takes effect July 1, 2006.

The bill substantially amends section 104.271 of the Florida Statutes.

II. Present Situation:

Section 104.271(2), Florida Statutes, provides that a *candidate* who makes, or causes to be made, a defamatory statement¹ about an opposing candidate commits a violation of the election code.

¹ A “defamatory statement” is a *false* statement made with “actual malice.” The term “actual malice” is a misnomer. In a defamation context, “actual malice” means that the person making the false statement had *knowledge* of its falsity or made the statement with *reckless disregard* for its truth or falsity: it *does not* require that the statement be made with malice or ill-will. See generally, New York Times v. Sullivan, 376 U.S. 254 (1964).

The statute grants the commission jurisdiction to prosecute alleged violations upon the filing of a complaint by an aggrieved candidate, and to assess an administrative fine of up to \$5,000 upon finding a violation. The jurisdiction of the commission is supplemental to other legal remedies available to the aggrieved candidate, namely, legal redress through the civil court system for defamation.

III. Effect of Proposed Changes:

The bill expands the scope of the political defamation statute to include defamatory statements about candidates made, or caused to be made, *not only* by opposing candidates but by any “person, political committee, electioneering communication entity, or political organization subject to the requirements of 26 U.S.C. s. 527.” Upon the filing of a complaint by an aggrieved candidate, the commission will determine whether a violation exists and, if so, may assess an administrative penalty of up to \$5,000 per violation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Expanding the scope of persons subject to prosecution for political defamation will likely increase the commission’s caseload. The precise fiscal impact is indeterminate, as there is no way to accurately predict the number of additional complaints which might be filed during a highly-negative campaign season.

VI. Technical Deficiencies:

Florida law provides that the term “person” includes all manner of individuals and groups, unless the context indicates otherwise. Section 1.01(3), F.S. In order to avoid confusion, the words “candidate, person, political committee, electioneering communications entity, or political organization subject to the requirements of 26 U.S.C. s. 527” on page 1, lines 26-28 and page 2, lines 7-9, should be amended to read “candidate *or other individual*, political committee, electioneering communications entity, or political organization subject to the requirements of 26 U.S.C. s. 527” (emphasis added).

VII. Related Issues:

Expanding the scope of the political defamation statute to subject all persons, not just candidates, to liability for political defamation is one of the recommendations contained in a 1995 interim project report by the Florida House of Representatives. House Ethics and Elections Committee, *Deceptive and False Advertising in the Political Process* 26 (December, 1995).

This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 540816 by Ethics and Elections:

Technical amendment replacing the word “person” with “individual,” to avoid any potential ambiguity with section 1.01(3), Florida Statutes (which defines “person” generally to include all manner or individuals and groups).

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