

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7221 PCB ETEL 06-01 Campaign Finance
SPONSOR(S): Ethics & Elections Committee and Reagan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Ethics & Elections Committee	9 Y, 2 N	Mitchell	Mitchell
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 7221 makes a number of changes with regard to disclosure for certain entities that produce electioneering communications (EC) under ch. 106, F.S. The bill:

- Requires organizations that make expenditures for EC’s (ECO’s) to register, if not previously registered, and initially report, *within 48 hours*, their contributions and expenditures since the last general election. Reporting will be done with the Division of Elections.
- Requires ECO’s to “disaggregate” contributions they have received from section 527 organizations, and list those made to such *section 527 organizations* that exceed \$10,000.
- Codifies and expands the disclosure and reporting requirements of House Rule 15.3 in new section 106.0701, F.S., and requires registration with the Division of Elections.

The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – The bill will require certain groups that run last minute EC's to report their contributions and expenditures in a timelier manner, thereby allowing the public to know more about the source of their funding. The bill also requires legislators, statewide officeholders and candidates for such offices to report activity made on behalf of certain tax exempt organizations with the Division of Elections.

B. EFFECT OF PROPOSED CHANGES:

Current Situation –

Section 527 Organizations

Section 527 of the Code has been around for over 30 years. It was added to the Internal Revenue Code (Code) in 1974 to provide an exemption from federal income tax and gift tax to "political organizations." The rationale for creating section 527 was that campaigns, party committees and political action committees should not pay taxes on funds contributed to such entities and used for political purposes.¹

Beginning in 1996 the IRS, in several private letter rulings, said that groups seeking to influence elections through candidate-specific issue advertising would qualify as political organizations, regardless of whether they were registered with the FEC or state election agencies.²

Since 2004, EC's in Florida have been conducted primarily by groups know as "527 political organizations." A political organization (PO) is a creature of federal tax law, organized under section 527 of the Code, and defined as a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an "exempt function." An "exempt function" of a "political organization" is defined as "influencing or attempting to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office or office in a political organization. . . ." ³ PO's that accept contributions and make expenditures for the purpose of influencing "the election, nomination, or the appointment of any individual to Federal, State, or local public office" must file certain forms with the IRS as a condition of tax-exempt status.⁴

As a second condition of tax-exempt status, persons making contributions that aggregate \$200 or more, and persons receiving \$500 or more, per calendar year must be disclosed. Otherwise, the PO is subject to tax on the contributions and expenditures not disclosed at a rate of 35% (the highest corporate tax rate).

¹ http://www.brook.edu/gs/cf/headlines/527_intro.htm

² Id.

³ 26 U.S.C. 527(e)(2).

⁴ A PO that expects to receive \$25,000 or more in gross receipts in any taxable year must file an initial report with the IRS, notifying the agency of its tax-exempt status.

Federal Reporting Requirements for Section 527 Organizations

Section 527 organizations are generally required to file one or more of the following with the Internal Revenue Service (IRS):

- An [initial notice](#) (Form 8871)
- [Periodic reports](#) on contributions and expenditures (Form 8872)
- [Annual income tax returns](#)
- [Annual information returns](#)

State and local candidate campaigns as well as state and local committees of political parties are political organizations that are not required to file the initial notice. In addition, changes made in 2002 to the federal law exempt “qualified state or local political organizations” (QSLPO’s) from Form 8872 reporting, if they are subject to state laws that already require the reporting of contributions and expenditures that they would otherwise have to report on Form 8872. Political committees organized under s. 106.03, F.S., and committees of continuous existence organized under s. 106.04, F.S., are QSLPO entities that do not have to report contributions and expenditures to the IRS.

EC’s in Florida

In 2004, the Florida Legislature passed campaign finance legislation designed to regulate “issue advocacy,” advertisements that do not contain any express advocacy such as “vote for” “elect” or “vote against” when referring to a particular candidate or ballot issue.⁵

Florida law now regulates what are known as “EC’s” --- paid issue advocacy advertisements affecting candidates or ballot issues that are run close to an election (after the end of the qualifying period) and, for candidate ads, are targeted to 1,000 or more persons in the district the candidate seeks to represent. s. 106.011(18), F.S. There is a regulatory scheme with the Federal Election Commission governing similar advertising in federal races.⁶

EC’s in Florida are regulated in essentially the same manner as political committees and persons making independent expenditures with regard to registration, reporting, and disclaimer requirements. s. 106.071, F.S. Individuals who make expenditures for EC’s exceeding \$100 are required to file a report of their expenditures at the same time, in the same manner, and subject to the same penalties as persons making “independent expenditures” that expressly advocate for or against a candidate or ballot issue. Independent expenditures are reported on the same schedule as periodic campaign finance reporting by political committees (and candidates not accepting public financing).⁷ If an issue advocacy advertisement is published *prior to the end of the qualifying period* it is not considered an EC, and no registration or reporting requirements are triggered for the individual or group running the advertisement.

In 2005, the Division of Elections was asked whether an EC could be coordinated with or made upon consultation with a candidate affected by the communication. In DE 05-04, the Division opined that EC’s do not constitute a contribution to or on behalf of a candidate who is referenced or depicted in the electioneering communication, and that candidates may indeed coordinate and consult with groups who conduct EC’s.

⁵ CS/SB 2346/516; ch. 2004-252, Laws of Fla.

⁶ As required by the Bipartisan Campaign Reform Act of 2002, there are rules governing EC’s on television and in radio communications that refer to a clearly identified federal candidate and are distributed to the relevant electorate within 60 days prior to a general election, or 30 days prior to a primary election. The regulations require, among other things, that individuals and other groups not registered with the FEC who make EC’s costing more than \$10,000 in the aggregate disclose that activity *within 24 hours* of the distribution of the communication.

⁷ Reporting is required on a quarterly basis, with the frequency of reporting increasing after the qualifying period. Periodic reporting dates during an election year are the 32nd, 18th and 4th day immediately preceding the first primary election, and the 46th, 32nd, 18th and 4th day immediately preceding the general election). s. 106.07(1), F.S.

Thus, under current law, a candidate may solicit funds for a 527 political organization that is not yet registered with the state's Division of Elections and then coordinate with that organization its expenditures with respect to EC's that may be run on the candidate's behalf. Essentially, the 527 organization becomes a supplemental campaign account for a candidate that is not subject to the contribution limits in s. 106.08, F.S. The 527 organization would be subject to periodic filing requirements with the IRS, but in an election year, the IRS permits either quarterly or monthly reporting, with a 12-day pre-election and 30 day post-election report, under either option. Again, no state registration or reporting requirements are triggered until the organization actually conducts an EC, and even then, the organization has 10 days to register with the Division of Elections.⁸

A recent article in the *Palm Beach Post* highlights how the current state reporting requirement operates in certain circumstances.⁹ A 527 organization¹⁰ began to run ads attacking a particular House candidate in August 2004, just a few weeks before the September 7, 2004 primary. It made its first expenditure on August 25, 2004, and had registered as an ECO on August 10, 2004, with the Division of Elections.¹¹ The ECO used money transferred from a 527 organization¹² that was controlled by the same individuals. The ECO received a total of \$250,000 from the 527 organization between August 8, 2004 and October 8, 2004, and spent all of those funds received during that two-month period. It closed on October 18, 2004, according to reports filed with the Division of Elections. There are currently 26 active ECO's, according to the Division of Elections.

Proposed Situation –

Under current law, a 527 political organization does not have to register or report *any activity* in Florida until 10 days after it makes an expenditure for an EC. An "expenditure" for an EC is made when the earliest of the following occurs:

- A person executes a contract for applicable goods or services;
- A person makes payment, in whole or in part, for applicable goods or services; or
- The electioneering communication is publicly disseminated.

s. 106.011(4)(b), F.S.

The bill requires the registration, if not previously filed, and the initial report of an ECO to be filed *within 48 hours* after an EC is made. The initial report would be made using the Division's electronic filing system and would include all contributions and expenditures made since the date of the last general election. Current law requires an ECO to only report activity during the most recent reporting period.

The bill also requires, for purposes of discussion, "disaggregation" of certain contributions made to an ECO. For example, if an ECO receives any contributions from a 527 political organization, the bill requires the ECO to also include all contributions exceeding \$10,000 made to the donor 527 political organization since the last general election.

House Rule 15.3(3) currently requires a member to register and disclose any solicitation activity made on behalf of a political committee, CCE, or organization established under section 527 or 501(c)(4) of the Internal Revenue Code. An affected member must also create a public web site containing all contributions and expenditures. House Rule 15.3(3) provides:

⁸ s. 106.03(1), F.S.

⁹ palmbeachpost.com; S.V. Date, Jennifer Sorentrve, Feb. 13, 2006.

¹⁰ Floridians for Integrity in Government.

¹¹ Information taken from the Division of Elections web site, <http://election.dos.state.fl.us/>

¹² People for Integrity in Government.

Any member who directly or indirectly solicits, causes to be solicited, or accepts any contributions to an organization described under section 527 or section 501(c)(4) of the Internal Revenue Code, a political committee, or a committee of continuous existence must immediately disclose such activity to, and register with, the Rules & Calendar Council. Upon registration with the council, the member shall promptly create a public website that contains a mission statement and the names of representatives associated with the organization. All contributions received must be disclosed on the website within 10 business days after deposit, together with the name, address, and occupation of the donor. All expenditures made by the organization must be individually disclosed on the website within 10 business days after being made.

The bill essentially codifies the reporting and disclosure requirements of House Rule 15.3(3), and expands its provisions to include statewide officers and candidates for legislative and statewide office. It also reduces the time period for disclosure of contributions and expenditures from 10 to 5 business days,¹³ and clarifies that the disclosure provisions do not apply to a candidate's own campaign account, a person acting on behalf of a political party organized under ch. 103, or to a person associated with a qualified charity organization. The bill would also require registration and reporting with the Division of Elections, rather than the House Rules and Calendar Council.

HB 7221 is effective July 1, 2006.

C. SECTION DIRECTORY:

None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be a nominal yet indeterminate cost to the Division of Elections to allow additional campaign-related filings on its electronic filing system in accordance with the proposed requirements in s. 106.0701, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be some additional costs to persons and organizations that must file reports with the Division of Elections.

¹³ Contributions to a candidate or political committee must be deposited within 5 business days of receipt. s. 106.05, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES