

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: SB 1352

INTRODUCER: Senator Brodeur

SUBJECT: Limitations on Political Contributions

DATE: January 27, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rey	Roberts	EE	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1352 defines the term “foreign national” and prohibits a “foreign national” from making a contribution, directly or indirectly, in connection with any election held in the state.

The bill will take effect on July 1, 2022.

II. Present Situation:

Since *Buckley v. Valeo*,¹ the constitutionality of campaign-finance laws regarding the activities of American citizens relied on how well they serve the government’s interest in limiting “the actuality and appearance of corruption.”² Alternatively, restrictions on foreign-national involvement in American politics serve a different governmental interest: “preventing foreign influence over the U.S. political process.”³

The Federal Election Campaign Act of 1971 (“Act”)⁴ prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, or disbursement, in connection with a federal, state, or local election.⁵ Under the Act, a “foreign national” is defined as an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22. U.S.C. § 611(b), which includes a “partnership, association, corporation,

¹ 424 U.S. 1 (1976).

² *Id.* at 26.

³ *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).

⁴ FECA, Pub. L. 92-225, 86 Stat.

⁵ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f).

organization, or other combination of persons organized under the laws of or having its principal place of a business in a foreign country.”⁶

The Act defines “election” to mean “a general, special, primary, or runoff election” as well as “a convention or caucus of a political party which has authority to nominate a candidate.”⁷ Florida Statutes define “election” to mean “any primary election, special primary election, special election, general election, or presidential preference primary election.”⁸

III. Effect of Proposed Changes:

SB 1352 defines “foreign national” to mean:

- a) A foreign government;
- b) A foreign political party;
- c) A foreign corporation, partnership, association, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country;
- d) A person with foreign citizenship; or
- e) A person who is not a citizen or national of the United States and is not lawfully admitted to the United States for permanent residence.

Under SB 1352, the term “foreign national” includes foreign governments and foreign political parties, which are not included in the federal definition of “foreign national”.⁹

SB 1352 incorporates into Florida Statutes the federal prohibition against a foreign national making or offering to make, directly or indirectly, a contribution or an expenditure in connection with any election held in the state.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

⁷ 52 U.S.C. § 30101(1); The Federal Election Commission ruled that under the Act, the term “election” does not encompass state and local ballot issues, allowing political donations by foreign nationals to a domestic ballot initiative committee. . MUR 7523 (Stop I-186 to Protect Mining and Jobs, *et al.*)(2021).

⁸ Section 97.021(13), F.S.

⁹ 52 U.S.C. § 30121(b).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The U.S. Supreme Court has upheld statutes barring foreign nationals from activities “intimately related to the process of democratic self-government.”¹⁰ Barring foreign nationals from participation in democratic political institution upholds a State’s obligation to “preserve the basic conception of a political community.”¹¹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

It is unclear if a dual national of the United States and a foreign country would be included in the definition of “foreign national” under SB 1312.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 106.08.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

¹⁰ *Bernal v. Fainter*, 467 U.S. 216, 220 (1984).

¹¹ *Foley v. Connelie*, 435 U.S. 291 at 295 – 96 (1978).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
