

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1352

INTRODUCER: Rules Committee; Ethics and Elections Committee; and Senator Brodeur

SUBJECT: Limitations on Political Contributions

DATE: February 23, 2022

REVISED: 02/01/22

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rey</u>	<u>Roberts</u>	<u>EE</u>	<b>Fav/CS</b>
2.	<u>Rey</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1352 defines the term “foreign national” and prohibits a “foreign national” from making a contribution or expenditure, directly or indirectly, in connection with any election held in the state. The term “foreign national” does not include a person who is a dual citizen of the United States and a foreign country. A domestic subsidiary of a foreign corporation can disburse donations in connection to an election if it meets specified criteria.

The bill will take effect on July 1, 2022.

**II. Present Situation:**

Since *Buckley v. Valeo*,<sup>1</sup> 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.”<sup>2</sup> Alternatively, restrictions on foreign-national involvement in American politics serve a different governmental interest: “preventing foreign influence over the U.S. political process.”<sup>3</sup>

The Federal Election Campaign Act of 1971 (“Act”)<sup>4</sup> prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an

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<sup>1</sup> 424 U.S. 1 (1976).

<sup>2</sup> *Id.* at 26.

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

<sup>4</sup> FECA, Pub. L. 92-225, 86 Stat.

expenditure, or disbursement, in connection with a federal, state, or local election.<sup>5</sup> 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, organization, or other combination of persons organized under the laws of or having its principal place of a business in a foreign country.”<sup>6</sup>

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.”<sup>7</sup> Florida has a broader definition of the term “election” in reference to campaign financing. Under Ch. 106, F.S., “election” is defined to mean “a primary election, special primary election, general election, special election, or municipal election held in this state for the purpose of nominating or electing candidates to public office, choosing delegates to the national nominating conventions of political parties, selecting a member of a political party executive committee, or submitting an issue to the electors for their approval or rejection.”<sup>8</sup>

### III. Effect of Proposed Changes:

The bill 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.

The bill defines “foreign national” to mean:

- A foreign government;
- A foreign political party;
- 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;
- A person with foreign citizenship; or
- 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.

The term “foreign national” does not include a person who is a dual citizen of the United States and a foreign country.

A domestic subsidiary of a foreign corporation, partnership, association, organization, or other combination of persons organized under the laws of a foreign country will not be considered a “foreign national” under the bill if:

- The donations and disbursements used toward a contribution or expenditure are derived entirely from the subsidiary’s operations in the United States; and
- All decisions concerning disbursement of donations are made by individuals who are either citizens of the United States or a permanent resident of the United States.

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

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

<sup>7</sup> 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).

<sup>8</sup> Section 106.011(7), F.S.

Overall budget for contributions or expenditures in connection with an election can be decided by the foreign parent of the domestic subsidiary.<sup>9</sup>

Under the bill, the term “foreign national” includes foreign governments and foreign political parties, which are not included in the federal definition of “foreign national”.<sup>10</sup>

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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.”<sup>11</sup> Barring foreign nationals from participation in democratic political institution upholds a State’s obligation to “preserve the basic conception of a political community.”<sup>12</sup>

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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<sup>9</sup> See Federal Election Commission Advisory Opinion 2006-15.

<sup>10</sup> 52 U.S.C. § 30121(b).

<sup>11</sup> *Bernal v. Fainter*, 467 U.S. 216, 220 (1984).

<sup>12</sup> *Foley v. Connelie*, 435 U.S. 291 at 295 – 96 (1978).

**VI. Technical Deficiencies:**

None.

**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 Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Rules on February 23, 2022:**

- Clarifies that domestic subsidiaries of foreign corporations or other combination of persons organized under foreign law will be allowed to make political contributions if the donations are derived entirely from the subsidiary's operations in the United States and all decisions on disbursement of donations are made by individuals who are either citizens of the United States or permanent residents of the United States. The foreign parent can still decide the overall budget for contribution or expenditures in connection to an election.

**CS by Ethics and Elections on February 1, 2022:**

- The CS clarifies that individuals who are dual citizens of the United States and a foreign country will not be considered foreign nationals for the purposes of campaign contributions.

- B. **Amendments:**

None.