

STORAGE NAME: h0075.er

DATE: February 24, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 75

RELATING TO: elections

SPONSOR(S): Representatives Crow and Feeney

STATUTE(S) AFFECTED: amending s. 106.143, F.S. and creating ss. 106.1431-106.1433, F.S.

COMPANION BILL(S): SB 120(i), HB 461(c), HB 463(c), and SB 568(c)

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

- (1) ELECTION REFORM (GRC)
- (2) CRIME & PUNISHMENT (JC)
- (3) GOVERNMENTAL OPERATIONS (GRC)
- (4)
- (5)

I. SUMMARY:

HB 75 requires that any advertisement, other than an independent expenditure, offered on behalf of a candidate must be approved in advance by the candidate and must state in the advertisement that it was approved by the candidate and must state who paid for the advertisement. A person who makes an independent expenditure for a political advertisement must provide a written statement that no candidate approved the advertisement to the medium carrying the advertisement. Any advertisement paid for by a political party must state in the advertisement whether the candidate approved the advertisement or not.

HB 75 also requires that political solicitations conducted by telephone must within the call disclose the identity of the person or organization paying for the call. A caller is prohibited from stating or implying that he represents a person or organization unless the caller has the written permission of the person or organization prior to making the call.

Violation of the above is subject to a term of imprisonment not exceeding 3 years and a fine not exceeding \$50,000.

HB 75 also requires any person who contracts for the purpose of providing political campaign services must, prior to conducting such business, file with the Division of Elections a form appointing a registered agent for the purpose of service of process. Violation of this provision subjects a person to a term of imprisonment not to exceed 3 years and a fine not exceeding \$50,000.

Under HB 75 messages available by computer must contain the information required by 106.143(1), F.S.

Provides an effective date of August 1, 1997.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 106.143, F.S., requires that any political advertisement and any campaign literature published, displayed, or circulated prior to an election must be marked "paid political advertisement" and identify the persons or organizations sponsoring the advertisement.

B. EFFECT OF PROPOSED CHANGES:

HB 75 requires that any advertisement, other than an independent expenditure, offered on behalf of a candidate must be approved in advance by the candidate and must state in the advertisement that it was approved by the candidate and must state who paid for the advertisement. An written authorization from the candidate must be supplied to the newspaper, radio station, television station, or other medium for each such advertisement.

A person who makes an independent expenditure for a political advertisement must provide a written statement that no candidate approved the advertisement to the medium carrying the advertisement.

A political advertisement that supports or opposes any candidate and is paid for by a political party must expressly state that the content of the advertisement was or was not approved by the candidate it was intended to benefit. In any proceeding before the elections commission between the candidate and the candidate's political party concerning approval of a political advertisement, the political party bears the burden of proof regarding the approval.

HB 75 also requires that political solicitations conducted by telephone must disclose within the call the identity of the person or organization paying for the call. The content of a political telephone solicitation, other than an independent expenditure, must be approved in advance by the candidate and must state it was approved by the candidate. A signed statement of approval from the candidate must be filed with the Division of Elections no later than five days after the solicitation has begun.

A caller is prohibited from stating or implying that he represents a person or organization unless the caller has the written permission of the person or organization prior to making the call. A caller may not state or imply that the person represents a nonexistent person or organization.

Violation of the above is subject to a term of imprisonment not exceeding 3 years and a fine not exceeding \$50,000.

HB 75 also requires any person who contracts with a candidate, political party, political committee, or committee of continuous existence for the purpose of providing political campaign services or products must, prior to conducting such business, file with the division of elections a form appointing a registered agent for the purpose of service of process. Violation of this provision subjects a person to a term of imprisonment not to exceed 3 years and a fine not exceeding \$50,000.

Under HB 75 messages available by computer must contain the statements "paid political advertisement" or "pd. pol. adv." and identify the person or organization sponsoring the advertisement as required by 106.143(1).

The effective date for HB 75 is August 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

HB 75 requires a candidate for office to provide additional information in campaign advertisements. Additionally, persons providing campaign services in the state must have a registered agent for the service of process.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

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5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Division of Elections reports that HB 75 will have minimal economic impact and that it can meet the requirements of the bill with current staff.

2. Recurring Effects:

The Division of Elections reports that HB 75 will have minimal economic impact and that it can meet the requirements of the bill with current staff.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The impact on revenues generated by the fine contained in HB 75 is indeterminate. The Division of Elections reports that HB 75 will have minimal economic impact and that it can meet the requirements of the bill with current staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

HB 75 requires a candidate for office to provide additional information in campaign advertisements. The costs associated with these requirements are indeterminate. Additionally, persons providing campaign services in the state must have a registered agent for the service of process. Some indeterminate costs will be associated with this requirement.

2. Direct Private Sector Benefits:

Not applicable.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The impact on revenues generated by the fine contained in HB 75 is indeterminate. The Division of Elections reports that HB 75 will have minimal economic impact and that it can meet the requirements of the bill with current staff.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

There is an apparent conflict in the federal courts regarding the constitutionality of "approved and authorized by" disclaimers. In Shrink Missouri Government PAC v. Maupin, 892 F.Supp. 1246 (E.D.Mo. 1995), a federal district court held that a Missouri state statute requiring an "approved and authorized by" disclaimer on negative advertising in addition to a "paid for by" disclaimer violated first amendment free speech guarantees. The court stated:

It seems that to whatever extent the state wishes to impose accountability and lessen the opportunity for deniability, the "paid for by" requirement promotes that goal, without the need for "approved and authorized by" language.

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Id. at 1256. Conversely, in Federal Elections Commission v. Survival Education Fund, Inc., 65 F.3d 285 (2nd Cir. 1995), the Second Circuit Court of Appeals upheld the constitutionality of an “authorized by” disclaimer in the context of the Federal Election Campaign Act.

Neither case is controlling in Florida, and it is not clear to what extent, if any, the cases would be looked to by a Florida court is resolving the constitutionality of the “approved by” disclaimers contained in HB 75.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

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Clay Roberts

Clay Roberts