

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1106

SPONSOR: Criminal Justice Committee and Senator Sebesta

SUBJECT: Elections

DATE: February 22, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bradshaw</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1106 provides that a person who conspires with another person to knowingly commit a violation of the election code or who knowingly aids or abets a person who has violated the code with the intent that the violator avoid detection, will be punished as if he or she had actually committed the violation. The effect of these two provisions is to enhance the current penalties for conspiracy and accessory after the fact under the election code. Such an offense would currently be punished one level lower than the main offense, if at all.

This bill takes effect on July 1, 2000.

This bill substantially amends s. 104.091 and s. 777.04, Florida Statutes.

II. Present Situation:

Chapter 104, F.S., provides criminal penalties for various election code violations. Some examples of the types of offenses contained in ch. 104, F.S., include: submission of false voter registration information; fraud in connection with casting a vote; and vote selling.

Section 104.091, F.S., provides that any person who knowingly aids, abets, or advises in the violation of the election code is to be punished in like manner as the principal offender. This provision is the election code's version of "aiding and abetting," a concept which applies to all crimes and is codified in s. 777.011, F.S. Chapter 777 also contains the offenses of accessory after the fact and conspiracy.

Section 777.03, F.S., provides that the offense of accessory after the fact offense is committed when a person maintains, assists or gives other aid to an offender with the intent that the offender avoid or escape detection, arrest, trial or punishment. With the exception of crimes against children, close relatives of an offender are exempted from the accessory after the fact offense. As

a general rule, a person convicted of accessory after the fact is punished one felony level below the main offense committed. Accessory after the fact does not apply to misdemeanor offenses.

Section 777.04(3), F.S., defines the offense of conspiracy to include a person who agrees, conspires, combines, or confederates with another person or persons to commit any offense. As a general rule, a person convicted of conspiracy is punished one level below the main offense committed. However, there are 3 exceptions in Florida law which provide that a conviction of conspiracy will be punished at the same level as the main offense. These are: killing or aggravated abuse of registered breed horses or cattle, s. 828.125(2), F.S.; bookmaking, s. 849.24(4), F.S.; and trafficking a controlled substance, s. 893.135(5), F.S.

The accessory after the fact and conspiracy provisions in ch. 777 are applicable to ch. 104, the election code. For example, a conspiracy to commit a third degree felony violation of the election code is punished as a first degree misdemeanor. Likewise, punishment for being an accessory after the fact to a third degree felony violation of the election code is punished as a first degree misdemeanor. (Again, there would be no offense committed for being an accessory after the fact to a misdemeanor).

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1106 incorporates one of the recommendations of the Public Corruption Study Commission. This Commission was established by the Governor to review current laws, policies and procedures related to Florida's response to public corruption and to make recommendations on how Florida might better prevent and respond to public corruption.

The bill amends s. 104.091, F.S., to provide that a person who "agrees, conspires, combines, or confederates with another person" to knowingly violate the election code would be punished as if he or she committed the violation. In addition, a person who knowingly "aids or abets" another person who *has* violated the election code "with the intent that the principal offender avoid detection, arrest, or prosecution" would be punished in like manner as the principal offender.

The effect of these two new provisions is to enhance the current penalties for conspiracy and accessory after the fact. Currently, a conspiracy to commit a third degree felony violation of the election code is punished as a first degree misdemeanor. This bill provides that a conspiracy to commit a third degree felony violation of the election code is punished as a third degree felony. Currently, punishment for being an accessory after the fact to a third degree felony violation of the election code is punished as a first degree misdemeanor. This bill provides that a person who "aids or abets" another person who has committed a third degree felony violation of the election code with the intent that the violator avoid detection would be punished as a third degree felony.

"Aiding or abetting" another person on a misdemeanor violation of the election code with the intent that the violator avoid detection would be punished as a misdemeanor, an act which is not currently an offense. As well, a close relative who "aides or abets" a violator of the election code with the intent that the violator avoid detection would be punished as if he or she actually committed the offense, an act which also is not currently an offense.

This bill amends s. 777.04, F.S., the general conspiracy statute, by specifying that those provisions are not applicable to violations of the election code. Section 777.04, F.S., contains similar cross-references to other sections of statutes which provide for conspiracy penalties equivalent to the main criminal offense.

This bill takes effect on July 1, 2000.

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:

The Criminal Justice Estimating Conference has not reviewed this bill for its impact on state resources, but it is expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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