

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1793 Campaign Finance  
**SPONSOR(S):** Procedures & Harrington  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics and Elections (Sub.)	12 Y, 0 N	Mitchell	Randle
2) Procedures	35 Y, 1 N	Mitchell	Randle
3)			
4)			
5)			

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### SUMMARY ANALYSIS

HB 1793 is directed to several areas of campaign finance law in ch. 106, F.S. It amends the definitions of terms in s. 106.011, F.S., requires certain groups that run electioneering advertisements (ads) to register as political committees, imposes more detailed disclosure of dues paid to committees of continuous existence (CCE's), creates a reporting framework for individuals that run electioneering ads, creates a disclaimer requirement for all electioneering ads, imposes a \$500 limit on dues that can be collected by CCE's, and creates an electronic campaign reporting system within the Division of Elections for candidates, committees and political parties.

In 2001, HB 273, sponsored by the Procedural Council, proposed similar reporting requirements for CCE dues. The bill passed the House 118-0, but died in the Senate.

In 2003, a proposed committee bill (PCB PR-10) containing electronic filing requirements was heard by the Subcommittee on Ethics & Elections and the Committee on Procedures. The bill passed both committees without any objection.

The bill is effective upon becoming a law, except section 4, which is effective January 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1793.pr.doc  
**DATE:** March 19, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain: The bill requires additional disclosure for membership dues paid to CCE’s and a new registration and reporting framework for electioneering ads.

#### B. EFFECT OF PROPOSED CHANGES:

HB 1793 is directed to several areas of campaign finance law in ch. 106, F.S. It amends the definitions of terms in s. 106.011, F.S., requires certain groups that run electioneering advertisements (ads) to register as political committees, imposes more detailed disclosure of dues paid to committees of continuous existence (CCE’s), creates a reporting framework for individuals that run electioneering ads, creates a disclaimer requirement for all electioneering ads, imposes a \$500 limit on dues that can be collected by CCE’s, and creates an electronic campaign reporting system within the Division of Elections for candidates, committees and political parties.

### **CHAPTER 106 DEFINITIONS**

The bill makes a number of changes to the definitions contained in s. 106.011, F.S., listed below.

#### “Political Committee” -

It amends the definition of “political committee” to include combinations of individuals or persons who make contributions to a common fund from which contributions are then made to political organizations organized under 26 U.S.C. s. 527 of the Internal Revenue Code (527 organizations); and combinations of persons or individuals who accept contributions or make expenditures for the purpose of disseminating electioneering advertisements (including 527 political organizations). Thus, pursuant to the bill’s provisions, a group who wishes to run electioneering advertisements would be required to register as a political committee and be subject to the certain reporting requirements.

#### “Electioneering Advertisement” -

The bill creates a new definition for the term, “electioneering advertisement.” The definition closely tracks the definition of “electioneering communication” contained in the Bipartisan Campaign Reform Act of 2002<sup>1</sup> (BCRA) which was upheld in the United States Supreme Court’s decision in *McConnell v. Federal Election Commission*.<sup>2</sup>

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<sup>1</sup> Public Law No. 107-155.

<sup>2</sup> Case No. 02-1674; 540 U.S. \_\_\_\_ (2003).

The bill defines an “electioneering advertisement” to mean a paid broadcast, cable, satellite or printed communication that:

- (a) Is *publicly disseminated* within 30 days preceding any election or on the day of any election; an electioneering advertisement is considered “publicly disseminated” if it is aired, broadcast, or distributed by cable or other means for a fee.
- (b) Refers to a *clearly identified candidate* for office in that election; and
- (c) Is *targeted to the relevant electorate*; an electioneering advertisement is considered “targeted to the relevant electorate” if the communication can be received by 1,000 or more households in the district that the candidate would represent if elected.

The bill contains a number of exceptions from the definition of electioneering advertisements:

- A political advertisement or independent expenditure as defined in section 106.011;
- A statement or depiction by an organization, in existence prior to the time during which the candidate named or depicted qualifies for such election, made in that organization's newsletter, which newsletter is distributed only to members of that organization;
- An editorial endorsement by any newspaper, radio, or television station or other recognized news medium so long as such media are not owned or controlled by a candidate, political party, or political committee;
- A news story, commentary, or editorial broadcast by a radio or television station, cable television system, or satellite system.
- A fundraising or public service announcement publicly aired by a corporation organized under 26 U.S.C. s. 501(c)(3);
- A candidate debate or forum or a communication that solely promotes a debate or forum made by or on behalf of the sponsor; and
- A government publication or official correspondence from government officials.

The bill’s definition includes only candidate-related advertisements and does not attempt to regulate advertisements that are directed to ballot issues.

#### “Person” and “Individual” -

The bill expands the definition of “person” to include 527 organizations, limited liability companies and limited liability partnerships, and defines an “individual” as a natural person.

### **POLITICAL COMMITTEE REGISTRATION**

The bill adds two new categories of political committees: those that in the aggregate of more than \$500 accept contributions to publicly disseminate electioneering ads and those that in an aggregate amount of more than \$500 make expenditures to publicly disseminate electioneering ads. Such committees are exempt from the reporting requirements for electioneering ads contained in the newly

created s. 106.1439(1), F.S. Those requirements apply only to individuals who publicly disseminate electioneering ads.

The bill requires individuals in their individual and representative capacity to swear under oath to the contents of a political committee's statement of organization and makes them potentially liable to pay any fines from personal funds.

The bill also requires political committees to include in their statement of organization whether they intend to run electioneering ads.

Finally, the bill requires persons who intend to publicly disseminate electioneering ads within 10 days of a primary or general election *using corporate or labor union funds*, to register as a political committee at least 30 days before the election. The bill does not require such persons when they register to identify the contents of any ads to be run during that period. Failure to register may result in a fine of \$5,000 or the total cost of the ads in question, whichever is greater.

### **CCE ACTIVITY AND REPORTING**

Currently, CCE's must file periodic financial reports with the Division of Elections detailing a CCE's contributions, dues payments (in the aggregate) and transfers.<sup>3</sup> Under current law, CCE's are not required to report their expenditures. The reports must be filed on the 10<sup>th</sup> day following the end of each calendar quarter.<sup>4</sup>

Each report must contain the full name and address of each person contributing to the committee, along with the date and amount of the contribution. If the contribution is over \$100, an occupation or principal type of business must also be reported.<sup>5</sup>

Any contributions that represent the payment of dues by members in a fixed amount according to the dues schedule of the CCE that has been filed with the Division of Elections *need only be listed in the aggregate amount of such contributions, along with the number of members paying the dues*.<sup>6</sup> For example, a CCE would only report that 1,000 members paid \$15,000 in dues in a quarter, but the names of those members do not have to be disclosed.

The bill requires CCE's to report the name, address and occupation of each person making a dues payment to the committee during an applicable reporting period. In an effort to minimize or eliminate the reporting of *de minimis* dues payments, the bill contains an exception for \$50 payments that do not exceed \$250 in the aggregate in a calendar year.

Under current law, there is no limit on the amount of dues that may be paid to a CCE. The bill imposes a \$500 limit per election on the total dues that may be paid by a member to a CCE.

The bill amends s. 106.04(5), F.S., to prohibit CCE's from making expenditures to conduct electioneering advertisements or transferring funds to a political committee formed to support or oppose issues. Finally, the bill amends s. 106.04(4)(c)5., F.S., to require CCE's to report all of their expenditures, including the full name and address of each person to whom an expenditure for personal services or salary was made.

In 2001, HB 273, sponsored by the Procedural Council, proposed similar reporting requirements for CCE dues. It passed the House 118-0, but died in the Senate.

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<sup>3</sup> s. 106.04, F.S.

<sup>4</sup> s. 106.07(1), F.S.

<sup>5</sup> s. 106.04(4)(c)1., F.S.

<sup>6</sup> Id.

## **ELECTRONIC FILING**

The bill creates an Internet-based, electronic filing system within the Division of Elections. Filing under the system will be mandatory for candidates, political committees, CCE's and political parties, effective January 1, 2005.

All reports that are filed must be submitted not later than midnight of the day designated. Each report that is filed electronically is considered to be under oath and subjects the offending candidate, chair or treasurer to same fines currently imposed under ch. 106, F.S.

Candidates, political committees, CCE's and political parties will be given a secure sign-on to access the electronic filing system. The bill requires the electronic filing system developed by the Division to:

- Be Internet-based and accessible by anyone with Internet access.
- Provide for direct entry of campaign finance information as well as upload of such information from campaign finance software certified by the division.
- Prevent unauthorized access to the system.
- Handle the filing of a substantial number of reports within a short period.

The bill also grants rulemaking authority to the Division to provide for alternate filing procedures in the event the system becomes inoperable and for the issuance of an electronic receipt that verifies the time and date that the report was electronically filed.

In 2003, a proposed committee bill (PCB PR-10) containing electronic filing requirements was heard by the Subcommittee on Ethics & Elections and the Committee on Procedures. The PCB passed both committees without any objection.<sup>7</sup>

The electronic filing provisions contained in section 4 of the bill are effective January 1, 2005.

## **ELECTIONEERING ADVERTISEMENTS**

Groups and individuals that publish advertisements that discuss non-ballot issues of public interest and which may include references to or likenesses of candidates, but that do not "support or oppose" the candidates, are not required to report contributions and expenditures or register with the Division of Elections. Thus, persons engaging solely in this type of issue advocacy are often able to conceal the source of the funding for these ads.

Currently, s. 106.1439, F.S., requires a sponsorship identification disclaimer for ads intended to influence public policy or the vote of a public official that are published on billboards, bumper stickers, radio, and television, and in newspapers, magazines, or periodicals (exempting editorial endorsements). This section arguably requires a disclaimer on so-called "issue ads" that do not support or oppose candidates.

The United States Supreme Court recently upheld in *McConnell v. Federal Elections Commission*, certain regulations in BCRA related to "electioneering" communications that mention candidates and are published within a certain period before an election. Prior to the Court's ruling in *McConnell*, there was little reason to believe that such ads could be regulated.

### **Reporting Requirements:**

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<sup>7</sup> The votes were: 7-0 in the Subcommittee on Ethics and Elections; 28-0 in the Committee on Procedures.

The bill subjects individuals and groups funding or sponsoring certain "electioneering advertisements" (non-ballot, issue advocacy ads) to reporting and sponsorship disclaimer requirements. The ads subject to regulation are those published in any broadcast, cable, satellite or printed communication which are run 30 days before an election and refer to a clearly identified candidate for office in that election. As in BCRA, the bill does not address ads run on behalf of issues that will appear on the ballot (such as a proposed constitutional amendment). The bill specifically exempts:

1. Political advertisements and independent expenditures which are by definition express advocacy.
2. Statements by an organization in that organization's newsletter which is distributed only to members of that organization.
3. Editorial endorsements by any newspaper, radio, or television station or other recognized news medium.
4. News stories, commentaries, or editorial broadcasts by a radio or television station, cable television system or satellite system.
5. Certain fundraising or public service announcements publicly aired by non-profit corporations.
6. Candidate debates or forums, or communications that solely promote a debate or forum made by or on behalf of the sponsor.
7. Government publication or official correspondence from government officials.

Each *individual* publicly disseminating an ad must file periodic reports detailing contributions and expenditures at the same time, in the same manner, and subject to the same requirements and penalties as candidates filing such reports who do not accept public financing. Groups that raise or spend more than \$500 to run electioneering ads must register as a political committee and are subject to the reporting requirements imposed on such committees by s. 106.07, F.S.

In addition, if an ad is publicly disseminated for the first time after the last report before an election is due (4th day before the election), the individual or political committee must file the same information with the Division electronically (Internet) or by fax *within one hour after the ad's initial publication*.

The bill directs the Division to adopt rules to develop the electronic filing system, insure its reasonable security, and elicit certain information to authenticate the identity of the filer. The electronic filing provisions for electioneering ads are effective upon becoming a law.

The bill clearly identifies certain individuals who are responsible for the filing of reports (dependent on who is publicly disseminating the ad), and makes those individuals personally liable for any fines imposed by the Florida Elections Commission.

#### Disclaimer Requirements:

The bill requires that all electioneering ads contain a disclaimer that identifies the person responsible for the ad, including the name and street address of the person and a list of the person's largest four contributors in excess of \$500 in aggregated contributions. There are specific requirements regarding the size and display of the disclaimers, depending on the communications media used for the ad.

The bill imposes fines for violations of the disclaimer requirements, independent of any fines that may be levied for reporting violations. The Florida Elections Commission is authorized to impose a civil penalty of up to \$5,000 or the total cost of the ad(s) that do not contain a proper disclaimer, whichever is greater.

Finally, the bill prohibits contributions made in the name of another, directly or indirectly, for the purpose of funding an electioneering ad.

Except for section 4 which is effective January 1, 2005, the bill is effective upon becoming a law.

C. SECTION DIRECTORY:

None.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures: There may be costs incurred by the Division of Elections for the development and implementation of the electronic filing system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

- B. **RULE-MAKING AUTHORITY:** The bill grants rulemaking authority to the Division to provide for alternate filing procedures in the event its electronic filing system becomes inoperable and for the issuance of an electronic receipt that verifies the time and date that a campaign report was electronically filed.
- C. **DRAFTING ISSUES OR OTHER COMMENTS:** The disclaimer requirements for electioneering ads may prove to be cumbersome for persons running such ads. It is possible for a person to publicly disseminate an ad that is funded by more than four largest contributors (i.e., there are 5 largest contributors who each contributed \$5,000 each), in which case the bill is unclear as to how those contributors must be listed. In most cases however, the contributions cannot exceed \$500, depending on the person publicly disseminating the ad.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**