

# SENATE STAFF ANALYSIS AND ECONOMIC 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: Ethics and Elections Committee

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BILL: CS/SB's 716 & 2660

INTRODUCER: Ethics and Elections Committee and Senators Posey and Rich

SUBJECT: Elections; Campaign Finance

DATE: April 7, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	<b>Fav/Combined CS</b>
2.			JU	
3.			CJ	
4.			TA	
5.			WM	
6.			RC	

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## I. Summary:

The combined committee substitute for Senate Bills 716 and 2660 (“the CS”) is an omnibus campaign finance reform measure. Some of the more significant provisions of the CS include:

- Prohibiting “electioneering communications organizations” (ECOs) from using contributions received within 10 days of an election for that election, including for any obligations that arise prior to the date of the election that are paid post-election.
- Removing the temporal restriction applicable to “electioneering communications” involving candidates, which currently are restricted to the period after qualifying in mid-July of an election year.
- Expanding the trigger events for when a reportable electioneering *expenditure* occurs.
- Requiring ECOs to register within 24 hours after they organize or, if later, within 24 hours after it anticipates receiving contributions or making expenditures for the purpose of electioneering.
- Creating special reporting requirements for ECOs as follows:
  - Within 2 days after it registers and receives its initial secure sign-on from the Department of State, it must electronically file all campaign finance reports that would have been required for reportable activities dating back to the date of the last general election; and,
  - For each contribution received of \$5,000 or more, the ECO must, within 2 days of receipt, electronically file a supplemental contribution report detailing the contribution (which must also be reported on the ECOs periodic campaign finance report for the reporting period in which it occurs).
- Prohibiting an ECO from accepting a contribution from certain tax-exempt, federal 527 or 501(c)(4) organizations, unless the contributing organization is registered as if it were an ECO and has filed all campaign finance reports due to the Division of Elections.

- Effective upon becoming law, prohibiting the Governor, Lieutenant Governor, members of the Florida Cabinet, state legislators, and candidates for these offices from directly or indirectly soliciting, causing to be solicited, or accepting any contribution on behalf of a political committee, committee of continuous existence, ECO, or federal tax-exempt 527 or 501(c)(4) organization, excluding their own political party, their own campaign, or the campaign of any other candidate.
- Requiring political committees and ECOs to register using a street address for the organization, its affiliated organizations, and its principal officers.
- Clarifying that “direct mail” of any kind is a “communications media” for purposes of Chapter 106.

Except as noted above, the CS takes effect July 1, 2006.

This CS substantially amends ss. 106.011, 106.03, 106.0705, 106.08, creates s. 106.0703, and republishes ss. 106.07, 106.08(8), and 106.19 of the Florida Statutes.

## II. Present Situation:

Issue ads, or “electioneering communications” as they are termed under Florida law, are:

A paid expression in any *communications media* ... that:

1. Refers to or depicts a clearly identified candidate for office or contains a clear reference indicating that an issue is to be voted on at an election, without expressly advocating the election or defeat of a candidate or the passage or defeat of an issue.
2. For communications referring to or depicting a clearly identified candidate for office, is targeted to the relevant electorate. A communication is considered targeted if 1,000 or more persons in the geographic area the candidate would represent if elected will receive the communication.
3. For communications referring to or depicting a clearly identified candidate for office, is published *after the end of the candidate qualifying period* for the office sought by the candidate.
4. For communications containing a clear reference indicating that an issue is to be voted on at an election, is published after the issue is designated a ballot position or 120 days before the date of the election on the issue, whichever occurs first.

Section 106.011(18), F.S. (*emphasis added*). “Communications media” includes virtually all manner of mass media, including *direct mailing companies*.<sup>1</sup>

Florida law requires any organization whose activities are limited to making “electioneering communications” (“electioneering communications organization” or “ECO”) to register and report contributions and expenditures as if it were a political committee. Florida law also requires ECOs to put sponsorship disclaimers on electioneering advertisements. There are no other substantive requirements or restrictions on how an ECO does business in Florida.

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<sup>1</sup> Section 106.011(13), F.S.. Some have argued that the use of the term “direct mailing companies” instead of “direct mail” allows a corporation or entity to produce in-house issue ads and distribute them directly by mail without the ads qualifying as “electioneering communications” since an outside “company” was not used.

Because candidate-related electioneering communications are limited to the period between the end of candidate qualifying and the election (“the election period”), federal 527 political organizations ultimately responsible for the bulk of electioneering activities are able to receive contributions and make expenditures for electioneering activities well in advance of the election period without being subject to any of Florida registration and reporting requirements.

Florida law requires an ECO that anticipates receiving contributions or making expenditures to register within 10 days of its organization or, if later, within 10 days of anticipating the receipt of contributions or making expenditures for electioneering purposes. If the ECO is organized within 10 days of an election, however, it must register immediately.

ECO registration requires a statement of organization, which must include: the name and address of the ECO; the name, addresses, and relationships of affiliated or connected organizations; the name, address, and position of the custodian of records; and, the name, address, and position of other principal officers.

After registering, an ECO must electronically report contributions and expenditures as if it were a political committee, which corresponds to reporting on the tenth day following the end of each calendar quarter and the 32<sup>nd</sup>, 18<sup>th</sup>, and 4<sup>th</sup> days before the election. However, the reporting covers only the prior reporting period, a maximum of 3 months.

With respect to expenditures for electioneering communications, they occur under Florida law when any one of the following actions takes place:

- A person executes a contract for an electioneering communication;
- A person makes a payment, in whole or in part, for applicable goods or services; or,
- The electioneering communication is publicly disseminated.

An ECO can only make expenditures in connection with electioneering communications. Prior to becoming an ECO during the election cycle, however, there are no restrictions on how 527's and 501(c)(4) charitable organizations can use their funds, provided that they don't violate federal laws and their political activities don't become so extensive that they qualify as a reporting entity under Florida's campaign finance law (political committee, committee of continuous existence, political party).

### **III. Effect of Proposed Changes:**

Section 1. Amends s. 106.011, F.S.; defines the terms “electioneering communications organization;” makes conforming and technical changes to the terms “contribution” and “expenditure;” provides that an “expenditure” for the purpose of an electioneering communication occurs when a person *enters into* a contract for an electioneering communication or makes a full or partial payment *for the production or dissemination of* an electioneering communication; clarifies that a “communications media” for purposes of determining electioneering communications and political advertisements includes any form of direct mail, not just direct mailing *companies*; removes the temporal limitations applicable to an “electioneering communication” involving candidates.

Section 2. Amends s. 106.03, F.S.; requires each ECO which anticipates receiving contributions or making expenditures to register within 24 hours of organizing or, if later, receiving information causing the organization to anticipate that it will receive contributions or make expenditures for electioneering purposes; clarifies that a political committee's and an ECO's statement of organization must include the *street* address for the organization, *street* address of principal officers, including the treasurer, and *street* address of affiliated organizations.

Section 3. Creates s. 106.0703, F.S.; requires ECOs, within 2 days after registering and receiving its initial secure sign-on from the Department of State, to electronically file all campaign finance reports that would have been required for reportable activities dating back to the date of the last general election; for each contribution received of \$5,000 or more, requires the ECO to, within 2 days of receipt, electronically file a supplemental contribution report detailing the contribution (which must also be reported on the ECOs periodic campaign finance report for the reporting period in which it occurs).

Section 4. Amends s. 106.0705, F.S.; requires the Division of Elections to modify its electronic reporting system to accommodate the new ECO reporting requirements created in Section 3 of the bill.

Section 5. Amends s. 106.08, F.S., *effective upon becoming a law*; prohibits the Governor, Lieutenant Governor, members of the Florida Cabinet, state legislators, and candidates for such offices from directly or indirectly soliciting, causing to be solicited, or accepting any contribution on behalf of a political committee, committee of continuous existence, ECO, or tax-exempt federal 527 or 501(c)(4) organization, excluding their own political party, their own campaign, or the campaign of any other candidate; establishes penalties for violations.

Section 6. Amends s. 106.08, F.S.; restricts an ECO from obligating or expending contributions received within 10 days of an election until after the election, and precludes such contributions from being expended post-election to pay for obligations arising before the election; prohibits an ECO from accepting a contribution from a tax-exempt federal 527 or 501(c)(4) organization, other than a political party, political committee, or committee of continuous existence, unless the contributing organization has registered as if it were an ECO and has filed all back campaign finance reports due to the Division of Elections; establishing penalties; republishes s. 106.08(8), F.S.; re-enacts cross-referenced sections.

Section 7. Reenacts s. 106.07, F.S.; technical; incorporates cross-referenced sections.

Section 8. Reenacts s. 106.19, F.S.; technical; incorporates cross-referenced sections.

Section 9. Except as provided in Section 5, the effective date of the bill is July 1, 2006.

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

##### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The bill presents a number of issues of first impression for the courts under the free speech clauses and associational clauses of the federal and state constitutions, not the least of which is whether, and to what extent, a state may regulate federal 527 and 501(c)(4) organizations outside of the election period (following candidate qualifying in Mid-July of an election year).

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

ECOs and federal 527 and 501(c)(4) organizations, may see increased administrative costs associated with registration and campaign finance reporting.

**C. Government Sector Impact:**

Representatives from the Department of State have testified that the department expects to incur additional administrative costs in connection with the enhanced electronic campaign finance reporting requirements that apply to ECOs and certain federal 527 and 501(c)(4) organizations making contributions to ECOs. Staff is awaiting the Department's fiscal impact statement: the fiscal impact indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The current disclosure requirements for ECOs were adopted in the 2004 general session (CS/SB 2346, by the Ethics and Elections Committee and Senators Lee and Constantine).



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## **VIII. Summary of Amendments:**

None.

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

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