

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.)

Prepared By: Judiciary Committee

BILL: CS/CS/SBs 716 & 2660

INTRODUCER: Judiciary Committee, Ethics and Elections Committee, Senators Posey, Rich, and others

SUBJECT: Campaign Finance

DATE: April 26, 2006

REVISED: _____

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

I. Summary:

The bill is an omnibus campaign finance reform measure. Some of the more significant provisions of the bill include:

- Defining “electioneering communications organizations” (ECOs) and prohibiting these organizations 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 two 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 two days of receipt, electronically file a supplemental contribution report detailing the contribution.

- Providing reporting requirements for statewide and legislative officer's and candidate's solicitation of contributions for committees of continuous existence, ECOs, or certain tax-exempt, federal 527 or 501(c)(4) organizations.¹
- 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.
- Prohibiting committees of continuous existence, ECOs, or certain tax-exempt, federal 527 or 501(c)(4) organizations from accepting contributions in excess of \$500 when certain conditions are present.
- Describing "immediate family" for purposes of restricted contributions to certain organizations and limiting a minor's contributions to these organizations to \$100.
- Revising registration provisions to require 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.

This bill substantially amends the following sections of the Florida Statutes: 106.011, 106.022, 106.03, 106.0705, and 106.08. The bill creates sections 106.0701 and 106.0703, Florida Statutes. The bill republishes the following sections of the Florida Statutes: 106.07, 106.08(8), and 106.19.

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.

¹ Organizations classified under 26 U.S.C. ss. 527 and 501(c)(4), respectively.

Section 106.011(18), F.S. (emphasis added). “Communications media” includes virtually all manner of mass media,² including *direct mailing companies*.³

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.⁴ 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.

While 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 which are 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.

An ECO must have and continuously maintain in this state a registered office and a registered agent and must file with the division a statement of appointment for the registered office and registered agent. 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.⁵

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 32nd, 18th, and 4th 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:⁶

- A person executes a contract for an electioneering communication;

² For example, broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mailing companies, advertising agencies, the Internet, and telephone companies.

³ 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.

⁴ “Electioneering communications organization” (“ECO”) is not currently defined in statute. The references to ECOs throughout the “Present Situation” of this staff analysis are based upon current s. 106.011(1)(b)3., F.S., which requires **organizations** whose activities are limited to making expenditures for **electioneering communications** to register and report contributions and expenditures in the same manner, at the same time, subject to the same penalties, and with the same filing officer as a political committee supporting or opposing a candidate or issue contained in the electioneering communication.

⁵ Section 106.022, F.S.

⁶ Section 106.011(4)(b), F.S.

- 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 527s and 501(c)(4) charitable organizations can use their funds, provided that they do not violate federal laws and their political activities do not become so extensive that they qualify as a reporting entity under Florida's campaign finance law (e.g., political committee, committee of continuous existence, political party).

There is currently no provision in Florida law that requires officeholders or candidates soliciting contributions for committees of continuous existence, ECOs, or federal 527 or 501(c)(4) organizations to report those activities to the Division of Elections.

III. Effect of Proposed Changes:

Section 1. Amends s. 106.011, F.S.; defines the terms "electioneering communications organization" (ECO); makes conforming and technical changes to the terms "contribution," "expenditure," and "political committee"; 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. 106.022, F.S.; technical; conforms registered agent requirement for an "electioneering communications *entity*" to the new term of "electioneering communications *organization*" as defined in the bill.

Section 3. Amends s. 106.03, F.S.; requires each ECO that anticipates receiving contributions or making expenditures to register within 24 hours of organizing or, if later, within 24 hours of 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 ECOs 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 4. Creates s. 106.0701, F.S.; establishes reporting requirements for statewide and legislative officer's and candidate's for solicitation of contributions for committees of continuous existence, ECOs, or certain tax-exempt, federal 527 or 501(c)(4) organizations;⁷ applies these requirements to the Governor, the Lieutenant Governor, a member of Cabinet, a state legislator, or a candidate for any of these offices who solicits or causes to be solicited a contribution for a committee of continuous existence, an ECO, or a federal 527 or 501(c)(4) organization; requires solicitations for contribution to be reported to the Division of Elections within 48 hours of

⁷ Organizations classified under 26 U.S.C. ss. 527 and 501(c)(4), respectively.

solicitation and to include the information specified in statute; subjects officers or employees who fail to file a timely solicitation report to the penalties provided in s. 106.07(8), F.S.

Section 5. Creates s. 106.0703, F.S.; establishes campaign reporting requirements for ECOs; subjects ECOs to campaign reporting requirements already provided in s. 106.07, F.S.; requires ECOs, within two days after registering and receiving its initial password or secure sign-on from the Department of State, to electronically file all campaign finance reports that would have been required under s. 106.07, F.S., for reportable activities dating back to the date of the last general election;⁸ requires ECOs to electronically submit supplemental reports to the department within two days of receiving any donations of \$5,000 or more.

Section 6. 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 5 of this bill.

Section 7. Amends s. 106.08, F.S., *effective upon becoming a law*; places a \$500 cap on any donations to a committee of continuous existence, an ECO, or a federal 527 or 501(c)(4) organization—other than a political party—that, during a general election cycle:

- Reimburses or pays for any expenses of the Governor, the Lieutenant Governor, a member of the Cabinet, a state legislator, a candidate for any of these offices, an employee or agent of the officer or candidate, or a member or the officer or candidate's immediate family;
- Is, in whole or in part, established, organized, operated, or controlled by any of the above-named persons, provided the committee or organization directly or indirectly makes or has made a contribution to, or an expenditure for the benefit of, the officer's or candidate's campaign; or
- Knowingly receives contributions solicited by, caused to be solicited by, or accepted on behalf of the committee or organization by any of the above-named persons, provided the committee or organization directly or indirectly makes or has made a contribution to, or an expenditure for the benefit of, the same above-named person or person's campaign for publicly-elected office in an amount exceeding \$500 in any election.

This section also defines "immediate family" members as the spouse, parent, child, grandparent, or sibling of an officer or candidate; places a \$100 cap on a minor's contribution to a committee or organization regulated by this section; and provides that contribution limits under this section apply separately to each election (i.e., primary and general elections are treated separately) except retention elections of judges or justices.

Section 8. 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

⁸ Most ECOs are subject to federal reporting laws that would require the same information at the federal level that is now being required under the bill at the state level; thus, the required records should already be assembled.

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.; reenacts to incorporate amendment to cross-referenced subsection.

Section 9. Reenacts s. 106.07, F.S.; technical; incorporates amendments to cross-referenced sections.

Section 10. Reenacts s. 106.19, F.S.; technical; incorporates amendments to cross-referenced sections.

Section 11. Provides that, except as provided in Section 7, 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 the freedom of association clauses of the federal and state constitutions. Among these issues is whether, and to what extent, a state may regulate federal 527 and 501(c)(4) organizations outside of the election period.⁹

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

⁹ For purposes of this statement, the election period is considered to be the time period following candidate qualifying in mid-July of an election year until the general election in November).

The bill creates s. 106.0701, F.S., which establishes reporting requirements for statewide and legislative officer's and candidate's for solicitation of contributions for committees of continuous existence, ECOs, or certain tax-exempt, federal 527 or 501(c)(4) organizations. The Governor, the Lieutenant Governor, a member of Cabinet, a state legislator, or a candidate for any of these offices who solicits or causes to be solicited a contribution for a committee of continuous existence, an ECO, or a federal 527 or 501(c)(4) organization must report these solicitations to the Division of Elections within 48 hours of solicitation. If the above-named officer or employee fails to file a timely solicitation report, the person will be subject penalties provided in s. 106.07(8), F.S. The amount of the penalty under this section is twice the amount of the contribution received in violation of ch. 106, F.S., in addition to any other penalty provided in this chapter.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The current disclosure requirements for electioneering communications organizations were adopted in the 2004 general session in CS/SB 2346, by the Ethics and Elections Committee, Senator Lee and Senator Constantine.

VIII. Summary of Amendments:

None.

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