

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.)

BILL: SB 172

SPONSOR: Senator Smith

SUBJECT: Election Code; Violations

DATE: December 13, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 172 provides that any person who agrees, conspires, combines, or confederates with another person to commit a violation of the Florida Election Code shall be punished as if that person had committed the violation.

The bill further provides that any person who knows of a violation of the Florida Election Code and gives any aid to the violator, with the intent that the violator avoid or escape detention, arrest, trial, or punishment, shall be punished as if that person (the person assisting the violator, as specified) had committed the violation. However, this prohibition does not preclude a member of the Florida Bar from rendering legal advice to a client.

This bill substantially amends s. 104.091, F.S.

II. Present Situation:

The Florida Election Code and Section 104.091

Chapter 104, F.S., provides for various criminal violations of the Florida Election Code and penalties for those violations. Some examples of the types of offenses contained in ch. 104, F.S. (the Florida Election Code), include: submission of false voter registration information; fraud in connection with casting a vote; and vote selling. Penalties in the Code run the gamut from the second degree misdemeanor penalty for the offense of carrying certain unauthorized items into a voting booth, s. 104.19(1)(a), F.S., to the second degree felony penalty related to a second conviction for the offense of giving or promising something of value to a voter with intent to buy that voter's vote.

Section 104.091, F.S., provides that any person who knowingly aids, abets, or advises the violation of the Florida Election Code shall be punished in like manner as the principal offender. This provision is the 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, F.S., also contains the offenses of accessory after the fact and conspiracy.

Laws Relevant to Accessory After the Fact and Conspiracy

Section 777.03, F.S., provides that the offense of accessory after the fact 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 three exceptions in Florida laws that 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. 849.25(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, F.S., are currently applicable to ch. 104, F.S. 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.)

Recommendations of the Public Corruption Study Commission

The Public Corruption Study Commission was created by executive order. *See* Executive Order 99-237 (September 15, 1999). The Commission submitted numerous recommendations to respond to public corruption, including the revision of s. 104.091, F.S., to:

- ▶ Provide that any person who agrees, conspires, combines, or confederates with another person to commit a violation of the Florida Election Code shall be punished as if he or she had actually committed the violation.
- ▶ Provide that any person who knowingly aids, abets, or advises another person who has violated the Florida Election Code, with the intent that the principal offender avoid detection, arrest, or prosecution, shall be punished in like manner as the principal offender.

III. Effect of Proposed Changes:

Senate Bill 172 provides that any person who agrees, conspires, combines, or confederates with another person to commit a violation of the Florida Election Code shall be punished as if that person had committed the violation.

The bill further provides that any person who knows of a violation of the Florida Election Code and gives any aid to the violator, with the intent that the violator avoid or escape detention, arrest, trial, or punishment, shall be punished as if that person (the person assisting the violator, as specified) had committed the violation. However, this prohibition does not preclude a member of the Florida Bar from rendering legal advice to a client.

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 Code is punished as a first degree misdemeanor. Under the bill, a conspiracy to commit, for example, a third degree felony violation of the Election Code would be punished as a third degree felony. Currently, punishment for being an accessory after the fact to a third degree felony violation of the Code is punished as a first degree misdemeanor. Under the bill, the aiding or abetting of another person who has committed, for example, a third degree felony violation of the 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 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.

The bill takes effect October 1, 2002.

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:

It is unlikely that the bill will have a significant impact on the state's resources or prison population, given the small pool of potential offenders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The substance of this bill was passed by the 2000 Senate (CS/SB 1106 (2000)) (First Engrossed) and the 2001 Senate (SB 1194 (2001)) (First Engrossed). Both bills died in House messages.

VIII. Amendments:

None.

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