

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.)

Date: March 23, 1998 Revised: _____

Subject: Political Advertising

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 886 provides that a political advertisement that includes a picture in which a candidate's or elected public official's physical appearance has been altered from the original must contain a statement that the picture has been changed. In addition, the candidate, elected public official, or other person or organization paying for such an advertisement must provide the advertising medium with a written statement that the picture in the advertisement has been changed.

In addition, the bill makes the "approved by" disclaimer language already in Florida law applicable to political advertisements offered by or on behalf of an elected public official, excluding independent expenditures.

This bill amends section 106.143 of the Florida Statutes.

II. Present Situation:

Florida law requires that all political advertisements carry a sponsorship disclaimer. ss. 106.071(1) and 106.143(1), F.S. (1997). A "political advertisement" is a paid expression in any communications medium (i.e. television, newspaper), other than the spoken word in direct conversation, which supports or opposes a candidate, elected public official, or issue. s. 106.011(17), F.S. (1997). The advertisement must identify that it is a paid political advertisement and must identify the sponsor. ss. 106.071(1) and 106.143(1), F.S. (1997). The recent Florida Supreme Court decision in *Doe v. Mortham* creates a narrow exemption to the sponsorship disclaimer requirement for certain individuals making independent expenditures. *Doe v. Mortham*, 23 Fla. L. Weekly S152 (March 19, 1998).

A political advertisement, other than an independent expenditure, offered by or on behalf of a candidate must be approved in advance by the candidate. s. 106.143(4)(a), F.S. (1997). Such an advertisement must expressly state that the content of the advertisement was approved by the candidate and must state who paid for the advertisement. Id. In addition, the candidate must provide a written statement of authorization to the appropriate advertising medium for each such advertisement submitted for publication, display, broadcast, or other distribution. s. 106.143(4)(a), F.S. (1997).

A political advertisement paid for by an independent expenditure must contain a statement that the advertisement is paid for independently of any candidate or committee and that no candidate has approved the ad. ss. 106.071(1) and 106.143(4)(b), F.S. (1997) Also, the advertisement must contain the name and address of the person paying for the advertisement, subject to the *Doe* exemption for certain individuals. s. 106.071(1), F.S. (1997); *Doe*, 23 Fla. L. Weekly at S154 & n.17. Finally, the person making the independent expenditure must provide a written statement to the advertising medium that no candidate has approved the ad. s. 106.143(4)(b), F.S. (1997).

III. Effect of Proposed Changes:

Committee Substitute to Senate Bill 886 imposes a disclaimer and a filing requirement with regard to political advertisements which use a changed or manipulated picture of a candidate or elected public official. The bill appears to be targeted at providing some *accountability* on the part of candidates, elected public officials, or other persons and groups using manipulated image ads.

Committee Substitute to Senate Bill 886 provides that a political advertisement using an altered picture of a candidate or elected public official must contain a statement that the picture has been changed. In addition, the candidate, elected public official, or other person or organization paying for a manipulated image advertisement must provide the advertising medium with a written statement that the picture in the advertisement has been changed. Finally, the bill expands the “approved by” disclaimer requirements in current Florida law to include political advertisements offered by or on behalf of an elected public official, excluding independent expenditures.

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 courts have consistently held that sponsorship or identification disclaimers implicate the First Amendment's right to free speech. See generally, *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1511, (1995); *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637 (6th Cir.), *cert. denied*, 118 S.Ct. 162 (1997); *Shrink Missouri Government PAC v. Maupin*, 892 F.Supp. 1246 (E.D.Mo. 1995), *aff'd*, 71 F.3d 1422; *Federal Elections Commission v. Survival Education Fund, Inc.*, 65 F.3d 285 (2nd Cir. 1995); *Arkansas Right to Life State Political Action Committee v. Butler*, 983 F.Supp. 1209 (W.D.Ark. 1997). The United States Supreme Court has stated, "[w]hen a law burdens core political speech we apply exacting scrutiny, and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest." *McIntyre*, 115 S.Ct. at 1519.

On March 19, the Florida Supreme Court spoke for the first time on the constitutionality of Florida's political advertising disclaimer requirements. In *Doe v. Mortham*, the Court upheld the facial constitutionality of Florida's *sponsorship* disclaimer requirements, carving out a narrow judicial exemption for independent expenditures by certain categories of individuals. *Doe*, 23 Fla. L. Weekly at S154 & n.17. The decision *did not* address the constitutionality of the "approved by" disclaimers which the Legislature adopted during the 1997 session. The court's holding, however, generally argues in favor of the constitutionality of the political advertising disclaimer requirement imposed in the bill, except as applied to independent expenditures by certain individuals.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.
