

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 308

SPONSOR: Senator Saunders

SUBJECT: Political Committee

DATE: February 2, 2001

REVISED: 03/28/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 308 amends the definition of **Apolitical committee@** in Chapter 106, Florida Statutes, to include any group which: 1) makes or accepts contributions in support or opposition to any candidate, ballot issue, or political party; or, 2) expressly advocates any candidate or ballot issue, in an aggregate amount of more than \$500 in a calendar year.

Senate Bill 308 is a direct response to the federal district court's decision in *Florida Right to Life v. Mortham*, No. 98-770-CIV-ORL-19A (M.D. Fla. 1999), striking the current definition as unconstitutionally over broad and enjoining the Florida Elections Commission from enforcing the section.

This bill substantially amends section 106.011(1) of the Florida Statutes.

II. Present Situation:

On December 15, 1999, the Federal District Court for the Middle District of Florida held that several provisions of Florida law, including the definition of **Apolitical committee,@** violated the First and Fourteenth Amendments to the U.S. Constitution. *Florida Right to Life v. Mortham*, No. 98-770-CIV-ORL-19A (M.D. Fla. 1999). The court held that the existing statutory definition was too broad because it subjected pure issue advocacy groups --- groups which support a particular non-ballot issue, are not controlled by a candidate, and whose *major purpose* is not the election or defeat of a candidate --- to the registration and reporting requirements of Florida's campaign finance laws. On January 17, 2001, the Eleventh Circuit U.S. Court of Appeals affirmed the district court opinion, *per curium. Florida Right to Life, Inc. v. Lamar*, No. 00-10245 (11th Cir. 2001).

The courts' decision permanently enjoins the Florida Elections Commission from enforcing the definition of political committee in section 106.011(1), Florida Statutes. For practical purposes, there is currently no statutory definition of political committee. Since this definition impacts numerous other provisions of the campaign finance law dealing with political committee registration and reporting requirements, its precise impact is unclear.

During the 2000 election, new political groups (those not registered with the Division of Elections as a political committee prior to the district court's ruling on December 15, 1999) were not required to register as political committees and file contribution and expenditure reports. As a result, a number of negative advertising campaigns surfaced during the 2000 elections funded by "shadow" groups with no public accountability.

Some very adverse consequences may accompany the Legislature's failure to adopt a new definition of political committee. Possible adverse impacts include:

- \$ *Contribution Limits*: although persons and groups are still limited to making \$500 contributions to *candidates*, *Florida Right to Life* may allow any person or group to make an unlimited contribution to groups supporting or opposing candidates (formerly known as political committees).
- \$ *Contribution and Expenditure Reports*: *Florida Right to Life* may eliminate the requirement that groups which were formerly known as political committees file periodic reports of contributions and expenditures pursuant to s. 106.07.
- \$ *Political Advertising Disclaimers*: sponsorship disclaimers are still required on political advertisements and independent expenditures after *Florida Right to Life*; however, since new political groups no longer need to register as political committees, it would be very difficult to trace the source of funding for such groups who use misleading names --- such as the Committee for Goodness and Virtue or the Committee for Equity and Justice.

Any one, or a combination, of these impacts could undermine the overall integrity of Florida's campaign finance laws.

III. Effect of Proposed Changes:

Senate Bill 308 requires all groups making or receiving contributions, or making express advocacy expenditures, in excess of \$500 per calendar year to register and report as a political committee --- while carving out a narrow exemption for groups which engage exclusively in non-ballot issue advocacy. Specifically, the bill amends the definition of political committee to include any group which: 1) makes or accepts contributions¹ in support or opposition to any candidate, ballot issue, or political party; or, 2) expressly advocates the election or defeat of any candidate or ballot issue, in an aggregate amount of more than \$500 per calendar year.

¹ Contribution means essentially anything of value, including money, gifts, loans, etc., *made for the purpose of influencing the results of an election*. s. 106.011(3), F.S. As such, pure issue advocacy groups do not make or receive contributions as defined by Florida Statutes, although their activities and advertisements may have an *incidental effect* upon the election of a candidate or issue. See, e.g., *Buckley v. Valeo*, 96 S.Ct. 612, 645-47 (1976) (candidates may be intimately tied to public issues).

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:

None.

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:

In August, 2000, a federal district court in North Carolina addressed the constitutionality of North Carolina's newly-adopted "political committee" definition. *North Carolina Right to Life, Inc. v. Leake*, 108 F.Supp2d 498 (E.D.N.C. 2000). While North Carolina's new definition incorporates the concept of "express advocacy," the court stated that "campaign-related" groups whose "major purpose is electioneering" may be regulated without regard to the express advocacy standard. *Id.* at 505. The court held that the U.S. Supreme Court imposed a "major purpose," not an express advocacy, requirement on political committees. The court stated that "the gist of the major purpose test must be whether a group may fairly be called 'campaign-related,'" and that it may be possible for groups to have other major purposes and still be campaign-related. *Id.* at 508. Unfortunately, the court provided little guidance as to the proper standards to apply in determining whether a group's "major purpose" is campaign-related.

VIII. Amendments:

#1 by Ethics and Elections Committee:

Clarifies that an intent element is not necessary to define a group as a political committee in connection with express advocacy expenditures.

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