

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.)

BILL: SB 1656

SPONSOR: Committee on Ethics and Elections, Senator Saunders, and others

SUBJECT: Political committees

DATE: March 13, 2000

REVISED: _____

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

I. Summary:

Senate Bill 1656 amends the definition of “political 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 1656 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 “political 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 only advocate non-ballot political issues and which never *expressly advocate* for or against a candidate or ballot issue --- to the registration and reporting requirements of Florida’s campaign finance laws. The case is currently on appeal to the Court of Appeals for the Eleventh Circuit.

Of immediate concern is the court’s decision to permanently enjoin 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.

Committee staff met with the staffs of the House Election Reform Committee, the Division of Elections, and the Florida Elections Commission to obtain their input. Despite some differences of opinion, all the staffs agreed on the following point: it is imperative that the Legislature act with urgency to adopt a new definition of “political committee.”

The most immediate impact of the case on which there was *generally* consensus was that new political groups which are not currently registered with the Division of Elections as political committees under s. 106.03, F.S., are no longer required to do so. These groups, consequently, would not be required to file contribution and expenditure reports.

Some Elections Commission staff felt that *Florida Right to Life* had no further impact on any other provision of Florida law. In fact, the Commission staff intends to continue to enforce contribution and expenditure reporting requirements for political committees (s. 106.07, F.S.) and limits of \$500 on contributions to political committees supporting or opposing candidates (s. 106.08(1), F.S.), for groups who are *currently registered* with the Division of Elections as political committees. While Senate committee staff believes that this narrow interpretation of *Florida Right to Life* may be the appropriate stance for the Elections Commission to adopt given their charge to enforce Florida’s campaign finance laws, we believe there is a very real danger that the case has a much broader impact.

Some very adverse consequences may accompany the Legislature’s failure to adopt a new definition of “political committee” prior to the 2000 election season. 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 during the upcoming 2000 election cycle.

The Executive Director of the Elections Commission testified before the Senate Ethics and Elections Committee that if the Legislature did not act to fill the void left by the court’s ruling, the Commission might have the authority to construct and adopt a definition of “political committee” which comports with the *Florida Right to Life* decision on a case-by-case basis. While this appears a convenient solution, Senate committee staff cannot see where the Elections Commission

would derive such authority. In any event, the Commission will probably not proceed down that path until at least May, giving the Legislature ample time in the 2000 session to fill the void left by the court in striking down the definition as unconstitutional.

The *Florida Right to Life* case is currently on appeal to the U.S. Court of Appeals for the 11th Circuit.

III. Effect of Proposed Changes:

Senate Bill 1656 seeks to require 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 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.

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.

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).

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.
