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 27, 1998 Revised: 04/14/98

Subject: Campaign Finance; Filing Fees; Contributions

	Analyst	Staff Director	Reference	Action
1.	Fox	Bradshaw	EE	Fav/3 amendments
2.				
3.				
4.				
5.				

I. Summary:

Senate Bill 1140 reduces qualifying fees for federal candidates. The bill also imposes an aggregate annual limit of $5,000 on contributions to the state or county executive committees of political parties. Finally, SB 1140 prohibits a political party from making contributions to a candidate, and prohibits such candidate from accepting contributions, in excess of $5,000 in the aggregate, including in-kind contributions.

The effective date of the bill is July 1, 1998.

This bill substantially amends sections 99.092 and 106.08 of the Florida Statutes.

II. Present Situation:

Filing Fees

Partisan candidates seeking to qualify for office (other than candidates qualifying by the petition or write-in method, or municipal candidates) must pay a total of 6% of the annual salary of the office sought. s. 99.092(1), F.S. (1997). These qualifying fees are comprised of the following costs: filing fees (3%); election assessment (1%); and, party assessment (2%). *Id*. In 1997, the Legislature reduced the total qualifying fee for partisan candidates from 7.5% to 6%. ch. 97-13, s. 11, Laws of Florida (1997).

Contributions to Political Parties

Florida law limits contributions by individuals and most groups to candidates to $500, with minor exceptions. A political party is limited to an aggregate contribution of $50,000 per candidate.

s. 106.08(2)(a), F.S. (1997). Expenditures by the political party for polling services, research services, campaign staff, professional consulting services, and telephone calls are not counted toward the $50,000 aggregate limit. s. 106.08(2)(b), F.S. (1997).

Florida law contains no limit on contributions by persons or groups *to* the executive committee of state or county political parties. However, Florida law does prohibit "earmarked" contributions to political parties — contributions specifically designated for use by a particular candidate. s. 106.08(6), F.S. (1997). Despite this prohibition against earmarking, it is claimed that corporations, special interest groups, and wealthy donors are able to funnel large sums of money in support of candidates through unrestricted contributions to the candidates' political parties.

Federal law limits contributions to the executive committee of a national party "in connection with" federal elections, known as "hard money." However, there is no limit to the amount of "soft money" which a person or organization, including a corporation or labor union, can contribute to a national political party for so-called "get-out-the-vote" or "party-building" activities.

Twenty-three states plus the District of Colombia in some way limit contributions by individuals and PACs to political parties. Thirty-six states plus the District of Columbia limit or prohibit contributions by corporations or labor unions to political parties. In a few of the states, like Maryland, New York, and Ohio, the limits apply only to "hard money" contributions.

Contributions by Political Parties to Party Candidates

Candidates are currently prohibited from accepting contributions from political parties of more than $50,000 in the aggregate. s. 106.08(2)(a), F.S. (1997). Expenditures for polling services, research services, campaign staff, professional consulting services, and telephone calls are not counted toward the $50,000 aggregate limit. s. 106.08(2)(b), F.S. (1997). All other expenditures and in-kind contributions are counted toward the $50,000 limit. Such expenses must be reported by both the candidate and the party.

III. Effect of Proposed Changes:

Filing Fees

The bill reduces the overall qualifying fee for federal candidates from 6% of the salary of the office sought to 3.5%, broken down as follows: filing fee, 1.5%; election assessment, 0.5%; and party assessment, 1.5%.

Contributions to Political Parties

Senate Bill 1140 limits contributions to any state or county political party executive committee, or any subordinate committee, to an aggregate amount of $5,000 per calendar year.

Contributions by Political Parties to Party Candidates

Senate Bill 1140 reduces the contribution limit which applies to political parties from an aggregate contribution of $50,000 per candidate, to $5,000. The bill also eliminates all the current exceptions to the $50,000 contribution limit — for polling services, costs of campaign staff, professional consulting services, and telephone calls provided by the party. Under the terms of the bill, these items, along with any other in-kind contribution, are allocable toward the reduced $5,000 aggregate contribution limit.

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:

Contributions to Political Parties

There is an ongoing debate among legal scholars and practitioners concerning the constitutionality of limiting contributions to political parties. No court has ruled definitively on the issue. However, on balance, it appears more likely than not that some form of restriction on contributions to political parties will pass constitutional muster.

The landmark case on the constitutionality of campaign finance laws is *Buckley v. Valeo*, 424 U.S. 1 (1976). In *Buckley*, the United States Supreme Court upheld a $1,000 limit on contributions to federal candidates by an individual. The Court also upheld a $25,000 annual limit on contributions by an individual in federal elections. The Court's analysis equated limiting the flow of money in the context of a political campaign as tantamount to limiting speech itself. Therefore, the Court reasoned, any limits on campaign contributions must pass the strict scrutiny test - namely, that the contribution limit must be "narrowly tailored" to serve a "compelling" state interest. The *Buckley* Court held that the *only* "compelling" state interest which would justify a contribution limit is the state's interest in preventing the appearance or reality of corruption. *Buckley*, 424 U.S. at 23-29. Subsequently, the Court upheld a complete ban on direct contributions by corporations, citing the government's

interest in preventing corporations from using their immense wealth to influence elections. *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

In *Federal Elections Comm'n v. National Conservative Political Action Committee*, 105 S.Ct. 1459 (1985), the court expanded on the definition of corruption:

> Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial *quid pro quo*: dollars for political favors.

NCPAC, 105 S.Ct. at 1468. However, the Court has not fully developed the "boundaries of the notion of the appearance of corruption." *California Prolife Council Political Action Committee v. Scully*, 1998 WL 7173 at p. 8 (E.D. Cal. January 6, 1998). As one federal court put it:

> Whatever else is true, the appearance of corruption must be more than illusory or conjectural; instead, "there must be real substance to the fear of corruption; mere suspicion, that is, 'a tendency to demonstrate distrust ... is not sufficient,' no matter how widely the suspicion is shared."

Id. The critical elements to be proved are the "corruption of candidates or the *public perception* of the corruption of candidates." *NCPAC*, 105 S.Ct. at 1470.

Perhaps the most instructive case bearing on the issue of the constitutionality of limiting contributions to political parties is *California Medical Ass'n v. Federal Election Comm'n*, 101 S.Ct. 2712 (1981). In *California Medical*, the U.S. Supreme Court upheld a $5,000 per year limit on the amount an individual or unincorporated association could contribute to a political action committee under the Federal Election Campaign Act. The Court held that the restriction furthered the government's interest in preventing actual or apparent corruption, by preventing individuals and unincorporated associations from circumventing the limitations on contributions upheld as constitutional in Buckley ($1,000 limit on contributions from individuals and unincorporated associations *directly* to candidates). *Id*. at 2722-23. The Court explained:

> If appellants' position -- that Congress cannot prohibit individuals and unincorporated associations from making unlimited contributions to multicandidate political committees -- is accepted, then . . . (this) contribution limit could easily be evaded. . . . It is clear that this provision is an appropriate means by which Congress could seek to protect the integrity of the contribution restrictions upheld by this Court in *Buckley*.

Id. at 2723. *California Medical* can reasonably be read for the proposition that limits on contributions to certain groups *other than candidates* can be constitutional if they prevent

persons from circumventing the type of direct contribution limits held constitutional under *Buckley*. *Cf. Colorado Republican Federal Campaign Committee v. Federal Election Comm'n*, 116 S.Ct. 2309, 2316 (1996) (if evasion of individual contribution limits was a serious issue, Congress could change the limitations on contributions to political parties in the Federal Election Campaign Act).

A strong argument can be made that the contribution limits in Senate Bill 1140 are similar to those approved by the U.S. Supreme Court in *California Medical*; they restrict contributions to a political party for the purpose of preventing corporations, labor unions, wealthy individuals, and other groups from circumventing the $500 direct contribution limit in Florida law. This, so the argument goes, promotes the state's compelling interest in preventing the "reality or appearance of corruption" by restricting large campaign contributions from special interest donors. Provided that sufficient evidence can be produced to demonstrate that the contribution limits are being circumvented by unrestricted donations to political parties, this argument may well prove determinative.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will result in a significant reduction in the amount of money a political party is able to raise through contributions. The political parties will also see a reduction in the amount of money they receive from party assessments and filing fees. In 1996, the Republican Executive Committee received $84,168 and the Democratic Executive Committee received $129,058 from fees and assessments paid by federal candidates. Under this bill the distribution to the parties will be reduced by 25 percent.

In addition, reducing the aggregate amount a political party may contribute to a candidate from $50,000 to $5,000 will require candidates to raise more money from other private sources, and adversely impact vendors of nonallocable items under current law.

C. Government Sector Impact:

Based on 1996 numbers (38 major party federal candidates), reducing the federal candidate qualifying fees will result in the state's general revenue fund realizing a reduction of $20,307, while the Elections Commission Trust Fund will realize a reduction of $25,384. Of course, these reductions will vary depending upon the number of candidates qualifying for federal office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Executive Business, Ethics and Elections:
Limits the amount of contributions a candidate may accept from a political party to $5,000 *per year*.

#2 by Executive Business, Ethics and Elections:
Limits the amount a political party may contribute to a candidate to $5,000 *per year*.

#3 by Executive Business, Ethics and Elections:
Expands the definition of "political advertisement" to include paid expressions which support or oppose a *political party*; clarifies that words of express advocacy, such as "vote for" or "vote against," are not necessary for a paid expression to be considered a "political advertisement"; provides that certain political advertisements which refer to a clearly identified candidate are coordinated expenditures which must be treated as contributions; revises requirements for political party "3-pack" endorsements which are presently excluded from contribution and expenditure requirements under chapter 106, F.S.; eliminates provision allowing political committees and committees of continuous existence that accept public funds or resources to jointly endorse three or more candidates; modifies reporting requirements. (WITH TITLE AMENDMENT)