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: CS/SB 314

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

SUBJECT: Elections; campaign finance

DATE: February 3, 1999 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Bradshaw	EE	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 314 imposes an aggregate annual limit of $5,000 on contributions to the state or county executive committees of political parties. The bill doubles the amount which may be contributed to statewide candidates --- raising from $500 to $1,000 the maximum which may be contributed by most persons to each candidate per election; and, raising from $50,000 to $100,000 the maximum which may be contributed by a political party to a statewide candidate per election cycle.

The bill modifies the requirements for political committee and political party expenditures which jointly endorse three or more candidates. The bill revises the current exemption for these so-called "3-packs," providing that such multiple endorsement advertisements are only exempt from campaign finance requirements if: the endorsement allocates substantially equal time, space, or service to each candidate; or, for endorsements in a general election, the endorsement lists all the nominees of a political party in the area covered by the broadcast or mailing.

Committee Substitute for Senate Bill 314 modifies the definition of "political advertisement" to include any paid advertisement which mentions or shows a clearly-identified candidate and which is distributed during the election cycle, with limited exceptions. The change is targeted at regulating so-called "issue ads," ads which may advocate the election or defeat or certain candidates under the guise of educating the public on issues.

The bill also expands the definition of "political committee" to include any group that anticipates spending more than $500 in the aggregate per year on political advertisements in support of or opposition to an *elected public official*. A committee of continuous existence is prohibited from making an expenditure in support of or opposition to an *elected public official*, unless it first registers as a political committee. The effect of this change is to require these groups to register with the Division of Elections or the supervisor of elections and to file periodic campaign finance reports.

Finally, CS/SB 314 modifies the registration and campaign finance reporting requirements for political committees and committees of continuous existence ("CCEs"). The bill requires that the committee's name include the business, labor union, association, other committee, or special or economic interest responsible for setting up the committee, if any. If the committee name doesn't include one of these special interests, the committee's campaign finance treasurer's reports must include a description of the special or economic interest, if any, of a majority of the committee's contributors.

This bill substantially amends ss. 106.011, 106.021, 106.03, 106.04, and 106.07, 106.08, Florida Statutes, and re-enacts ss. 106.04(2), 106.075(2), 106.087(1)(a), 106.19(1), and 106.29(6), Florida Statutes.

II. Present Situation:

General Limits Applicable to Candidate Contributions

In most election contests, including statewide elections, a person or entity other than a political party may contribute no more than $500 per candidate for each election. s. 106.08(1), F.S. (1997). Certain regulated interests have even lower contribution limits in connection with candidates for the office of Governor, Commissioner of Agriculture, Treasurer, and Comptroller. ss. 106.082, 420.512(5)(a), 627.0623, 655.019, F.S. (1997).

Contributions by Political Parties to Candidates

Candidates are currently prohibited from accepting contributions of more than $50,000 in the aggregate from a political party. 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. These expenditures must be reported by both the candidate and the party.

Limits on Contributions to Political Parties

Florida law places 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 earmarked funds, public interest groups claim that corporations, special interest groups, and wealthy individual donors are able to funnel large sums of money in support of candidates through unrestricted contributions to the candidates' political parties --- thereby effectively circumventing the $500 general contribution limit.

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 Columbia place some limits on the amount which an individual or political action committee may contribute to a political party. 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.

3-Packs

Florida law exempts a political committee or political party advertisement jointly endorsing three or more candidates from the contribution limits. s. 106.021(3), F.S. (1997). The law provides that any expenditure for these so-called "3-packs" is considered neither an expenditure nor a contribution for campaign finance purposes. *Id.* The Legislature created the "3-packs" in the major election reform package of 1997, reducing the minimum number of candidates which the ad needs to jointly endorse from six to three in order to qualify for the exemption. Ch. 97-13, s. 9, at 22, Laws of Fla.

Issue Advocacy

So-called "issue ads," ads which discuss non-referendum issues of interest to the electorate which include references to or likenesses of candidates, are arguably not regulated under Florida law. The ad does not need to include the phrase "paid political advertisement" or similar expression. It does not need to identify the sponsoring individual or group. It is not considered a contribution nor an expenditure under Florida's campaign finance laws, thus there is no limit to the amount which can be spent on issue ads in coordination with or independent of any candidate.

Campaign Finance Reporting Requirements

With very few exceptions, "political advertisements" must carry a "paid for by" disclaimer indicating the person or group sponsoring the advertisement. ss. 106.071 and 106.143, F.S. (1997); *Doe v. Mortham*, 708 So.2d 929 (Fla. 1998). A "political advertisement" is a paid expression in a communications media (other than by the spoken word in direct conversation), which supports or opposes any candidate, *elected public official*, or issue. s. 106.011(17), F.S. (1997).

In addition to the disclaimer requirement, political committees and CCEs making expenditures for political advertising must register and *file* periodic campaign finance reports detailing their contribution and expenditure activities. ss. 106.03, 106.04 and 106.07, F.S. (1997). However, the statutory definitions of "political committee" and "committee of continuous existence" do not encompass groups who make expenditures for political advertising which support or oppose an *elected public official* and does not involve a candidate or issue. ss. 106.011(1) and 106.04(1), F.S. (1997). Therefore, although such groups have to identify their name on the advertisement's disclaimer, they do not have to file any documentation with the Division of Elections detailing the names and addresses of the principal officers of the group, the source of contributions made to the group, or expenditures made. Where groups use generic names (i.e. the Florida Committee for Better Government or the Coalition for Citizens Rights) the disclaimer information alone may not be sufficient to identify the affiliations or motivations of the sponsors or principal officers.

III. Effect of Proposed Changes:

General Limits Applicable to Candidate Contributions

Committee Substitute for Senate Bill 314 doubles the amount which may be contributed to a statewide candidate by a person other than a political party, from $500 to $1,000 per election. The limit for other than statewide candidates remains at $500, with lower limits remaining in effect for certain regulated interests.

Contributions by Political Parties to Candidates

Committee Substitute for Senate Bill 314 doubles the amount which a political party may contribute to a *statewide* candidate, from an aggregate of $50,000 to $100,000 per election cycle. The limit for other than statewide candidates remains $50,000.

Limits on Contributions to Political Parties

Committee Substitute for Senate Bill 314 limits contributions to any state or county political party executive committee, or any subordinate committee, to an aggregate amount of $5,000 per person, per calendar year.

3-Packs

The bill revises the current exemption for "3-packs," providing that such multiple endorsement advertisements are only exempt from campaign finance requirements if: the endorsement allocates substantially equal time, space, or service to each candidate; or, for endorsements in a general election, the endorsement lists all the nominees of a political party in the area covered by the broadcast or mailing.

Issue Advocacy

The bill modifies the definition of "political advertisement" to include any paid expression in a communications media (other than the spoken word in direct conversation) which:

- Mentions or shows a clearly-identifiable candidate for election or reelection; *and*,
- Is distributed at any point during the period following the last day of qualifying for that candidacy through the ensuing general election ("the election cycle").

There are two exemptions. The bill excludes from the definition any paid expression in a communications medium which mentions or shows a clearly-identifiable candidate for election or reelection and which:

- Advertises a business rather than the candidate, is paid out of funds of that business, and is similar to other advertisements for that business which have mentioned or shown the candidate and have been distributed regularly over a period of at least 1 year before the qualifying period for that candidacy; *or*,

- Is distributed or broadcast only to areas other than the geographical area of the electorate for that candidacy.

One clear effect of the definition change is to require the sponsors of such issue ads to identify them as "paid political advertisements" and, in most cases, to include a sponsorship disclaimer identifying who they are. s. 106.143(1), F.S. (1997); see *Doe v. Mortham*, 708 So.2d 929 (Fla. 1998) (sponsorship identification disclaimer requirement unconstitutional as applied to individuals acting independently and using only their own modest resources).

It is less clear whether the modification would bring issue ads within the scope of the terms "contribution" and/or "expenditure" for campaign finance reporting and contribution limit purposes. If so, the effects would be significant. Issue ads by a political party which are coordinated with a candidate would be allocable to the party contribution limit ($100,000 for statewide candidates; $50,000 for all other candidates). Political committees coordinating an issue ad with a candidate would be limited to spending a maximum of $500 per election. Uncoordinated expenditures by political parties and political committees for issue ads would need to be reported on campaign finance treasurers' reports.

However, the ability of a state to regulate issue advocacy ads raises significant constitutional free speech issues (see IV. Constitutional Issues; D. *Other Constitutional Issues*, below).

Campaign Finance Reporting Requirements

Committee Substitute for Senate Bill 314 requires groups that spend or anticipate spending more than $500 per year on political advertisements in support of or opposition to an *elected public official*, or any CCE making any such expenditures without regard to amount, to: (1) register with the Division of Elections as a "political committee"; and, (2) file periodic campaign finance reports. The registration component will require the group to name its principal officers, any relationship with affiliated or connected persons or organizations, as well as other identifying information. s. 106.03(2), F.S. (1997). The filing requirement will cause the group to detail its contribution and expenditure activities. The bill modifies the definitions of "contribution" and "expenditure," to conform.

Also, CS/SB 314 modifies the registration and reporting requirements for political committees and CCEs. The bill requires that the committee's name include the corporation, labor union, professional association, political committee, CCE, or special or economic interest responsible for setting up the committee, if any. The bill requires that this information be updated, where necessary. If the committee name doesn't include one of these special interests, the committee's treasurer's reports must include a description of the special or economic interest, if any, of a majority of the committee's contributors. The bill also requires the committee's treasurer and other principal officers to identify their principal employer on the committee's statement of organization.

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:

Limits on 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 corruption or the appearance of corruption. *Buckley*, 424 U.S. at 23-29.

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,* 989 F.Supp. 1282 (1998 WL 7173 at p. 8)(E.D. Cal. January 6, 1998) (emphasis added). 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). The same circumvention argument was viewed favorably in *Austin v. Michigan Chamber of Commerce*, 108 L.Ed.2d 652 (1990) to uphold limitations on independent expenditures by the Michigan Chamber of Commerce. See *Austin*, 108 L.Ed.2d at 667 (absent restriction, business corporations could circumvent the contribution limits in Michigan's campaign finance statute by funneling money through the Michigan Chamber of Commerce's general treasury). Restrictions on contributions, such as those contemplated in the bill, require less compelling justification than restrictions on independent expenditures. *FEC v. Mass. Citizens for Life*, 107 S.Ct. 616, 629 (1986).

A strong argument can be made that limits on contributions to political parties are similar to the limits approved by the U.S. Supreme Court in *California Medical*; they restrict contributions to a political organization for the purpose of preventing corporations, labor unions, and wealthy individual donors from circumventing the $500 direct contribution limit in Florida law. This, so the argument goes, is narrowly tailored to promote 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 exists

to demonstrate that the direct contribution limits are being circumvented by unrestricted donations to political parties, this argument may well prove determinative.

Although no court has specifically ruled on the issue, it appears more likely than not that a reasonable limitation on contributions to political parties implemented for the purpose of preventing special interests from circumventing Florida's individual contribution limits will survive First Amendment scrutiny.

Issue Advocacy

The regulation of issue advocacy has arguably not been squarely placed before the U.S. Supreme Court for debate. Therefore, a number of reform groups maintain that the concept of regulation is still "open" and remains a valid subject of state legislation.

In *Buckley v. Valeo,* 96 S.Ct. 612 (1976), the U.S. Supreme Court was faced with the constitutionality of various expenditure limits in the Federal Election Campaign Finance Act of 1974. In order to save the statute from an overbreadth problem, the Court held that the term "expenditure" encompassed "only funds used for communications which *expressly advocate* the election or defeat of a clearly-identified candidate." *Buckley,* 96 S.Ct. at 663. Express advocacy was limited to communications containing express words of advocacy such as "vote for," "elect," "support," "vote against," *etc*. *Id.* at 647.

With very few exceptions, most notably the Ninth Circuit's decision in *Florida Elections Commission v. Furgatch,* 807 F.2d 857 (9th Cir. 1987), the reported case decisions on issue advocacy have adopted and applied a strict interpretation of the "express advocacy" test articulated in *Buckley v. Valeo,* 96 S.Ct. 612 (1976) and affirmed in *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc,* 107 S.Ct. 616 (1986), to invalidate campaign finance laws which seek to regulate pure issue ads. *Federal Elections Commission v. Christian Action Network*, 894 F.Supp. 946, 952 (W.D.Va. 1995); see also, *Planned Parenthood Affiliates of Michigan, Inc. v. Miller*, 21 F.Supp. 2d 740, 743 (E.D. Mich. 1998) (government can regulate express advocacy but issue advocacy cannot be prohibited or regulated, citing *Buckley and MCFL*); *West Virginians for Life, Inc. v. Smith*, 960 F.Supp. 1036, 1039 (S.D.W.Va. 1996) (it is clear from *Buckley* and its progeny that the Supreme Court has made a definite distinction between express advocacy, which generally can be regulated, and issue advocacy, which cannot); *Maine Right to Life Committee, Inc. v. Federal Elections Commission*, 914 F.Supp. 8 (D. Maine 1996) , *affd.*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 118 S.Ct. 52 (1997) (*Buckley* adopted a bright-line test that expenditures must in express terms advocate the election or defeat of a candidate in order to be subject to limitation).

It is unclear whether any law which burdens issue ads that do not include express words of advocacy could pass constitutional muster under the First Amendment free speech and overbreadth doctrines.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will require certain groups to file as a political committee and will also require periodic filings of contribution and expenditure reports. There may be an additional record keeping cost associated with these new requirements. Also, “3-pack” ads allocating equal time or space to all candidates, or general election endorsements listing all candidates within the scope of the ad, may run longer and thus be more costly to political committees and political parties.

Restricting contributions to political parties to an aggregate of $5,000 per person, per year, may adversely impact party fund-raising. The extent to which total dollars contributed will be reduced is indeterminable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.