

BILL ANALYSIS

C.S.H.B. 2586
By: Leach
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that, in the absence of more specific direction, the Texas Ethics Commission has relied on its rulemaking process to establish the method of operations for direct campaign expenditures following the decision handed down by the U.S. Supreme Court in 2010 in *Citizens United v. Federal Election Commission*. Concerns have been raised that this situation has resulted in unnecessary confusion and overly burdensome requirements imposed on political committees. C.S.H.B. 2586 seeks to address these concerns by establishing provisions relating to political contributions and political expenditures made to or by political committees or other persons.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2586 amends the Election Code to redefine the term "political committee," as that term relates to provisions regulating political funds and campaigns, as two or more persons acting in concert with a principal purpose of accepting political contributions or making political expenditures and to exclude from the term a group composed exclusively of two or more individual filers or political committees required to file reports under those provisions who make reportable expenditures for a joint activity. The bill clarifies that a campaign expenditure does not constitute a contribution by the person making the expenditure to a candidate or officeholder if the expenditure is made without the prior consent or approval of the candidate or officeholder on whose behalf the contribution is made and that a campaign expenditure made in connection with a measure does not constitute a contribution by the person making the expenditure if it is not made as a political contribution to a political committee supporting or opposing the measure. The bill defines "in-kind contribution" and specifies that the term does not include a direct campaign expenditure.

C.S.H.B. 2586 establishes that, for purposes of determining whether a campaign expenditure qualifies as a direct campaign expenditure, communication between a person and a candidate, officeholder, or candidate's or officeholder's agent is not evidence that the person obtained the candidate's or officeholder's consent or approval for a campaign expenditure made after the communication by the person on behalf of the candidate or officeholder unless the communication establishes that:

- the expenditure is incurred at the request or suggestion of the candidate, officeholder, or

candidate's or officeholder's agent;

- the candidate, officeholder, or candidate's or officeholder's agent is materially involved in decisions regarding the creation, production, or distribution of a campaign communication related to the expenditure; or
- the candidate, officeholder, or candidate's or officeholder's agent shares information about the candidate's or officeholder's plans or needs that is material to the creation, production, or distribution of a campaign communication related to the expenditure and is not available to the public.

C.S.H.B. 2586 establishes that a person using the same vendor as a candidate, officeholder, or political committee established or controlled by a candidate or officeholder is not acting in concert with the candidate, officeholder, or committee to make a campaign expenditure unless the person makes the expenditure using information from the vendor about the campaign plans or needs of the candidate, officeholder, or committee that is material to the expenditure and not available to the public.

C.S.H.B. 2586 requires a campaign treasurer appointment by a general-purpose committee or by a specific-purpose committee for supporting or opposing a candidate for office to include an affidavit stating the following before the committee may use a political contribution from a corporation or a labor organization to make a direct campaign expenditure in connection with a campaign for an elective office:

- the committee is not established or controlled by a candidate or an officeholder; and
- the committee will not use any political contribution from a corporation or a labor organization to make a political contribution to any of the following:
 - a candidate for elective office;
 - an officeholder; or
 - a political committee that has not filed an affidavit under this provision as a general-purpose or as a specific-purpose committee.

C.S.H.B. 2586 specifies that filing such an affidavit does not create any additional reporting requirements with regard to a direct campaign expenditure exceeding \$100 and authorizes a corporation or labor organization to make campaign contributions from its own property to a political committee that has filed such an affidavit. The bill excludes a corporation or labor organization making such an expenditure from prohibition against a corporation or labor organization making certain election-related expenditures.

C.S.H.B. 2586 establishes that the prohibition against a political committee assisted by expenditures made by a corporation or labor organization from making a political contribution or political expenditure in whole or part from money that is known by a member or officer of the political committee to be dues, fees, or other money required as a condition of employment or condition of membership in a labor organization does not prohibit a political committee from making a political contribution or political expenditure wholly or partly from a campaign contribution made by a corporation or labor organization to the committee.

C.S.H.B. 2586 includes an expenditure for creating and maintaining the public web pages of a general-purpose committee that do not contain political advertising among the permissible political expenditures a corporation may make.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2586 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a definition of "acting in concert" and does not include provisions relating to the consideration of meeting with a candidate, or a candidate's agent or staff, as evidence of acting in concert with the candidate.

The substitute includes provisions providing for the consideration of certain campaign expenditures as direct campaign expenditures and includes provisions providing for the consideration of communication between a person and a candidate, officeholder, or candidate's or officeholder's agent as evidence that the person obtained the candidate's or officeholder's consent or approval for a campaign expenditure made after the communication by the person on behalf of the candidate or officeholder. The substitute includes provisions regarding when a person using the same vendor as a candidate, officeholder, or political committee established or controlled by a candidate or officeholder is not acting in concert with those entities to make a campaign expenditure.

The substitute revises requirements relating to the affidavit included as part of a campaign treasurer appointment and includes a specification that filing such an affidavit does not create any additional reporting requirements relating to a direct campaign expenditure exceeding \$100.

The substitute does not repeal the prohibition against a political committee making a political contribution or political expenditure in whole or part from money that is known by a member or officer of the political committee to be money required as a condition of employment or condition of membership in a labor organization. The substitute includes a provision establishing instead that such prohibition does not prohibit a political committee from making a political contribution or political expenditure wholly or partly from a campaign contribution made by a corporation or labor organization to the committee.

The substitute revises the exclusions provided from the prohibition against a corporation or labor organization making certain election-related expenditures.

The substitute includes a procedural provision clarifying that the bill's changes in law apply only to an offense committed on or after the bill's effective date.