

- SUBJECT:** Regulation of certain political contributions and expenditures
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 7 ayes — Danburg, J. Jones, Averitt, Denny, Greenberg, Hodge, Madden  
0 nays — None  
2 absent — Gallego, Uher
- WITNESSES:** For — Harold Cook, Texas Democratic Party; Fred Lewis, Public Citizen  
Against — None  
On — Kenneth R. Anderson, Republican Party of Texas
- BACKGROUND:** Financing of political campaigns in Texas is regulated primarily by means of reporting requirements. Candidates, officeholders, political parties, and other political committees must report each contribution from an individual that exceeds \$50, along with the donor's name and address and the date of the contribution. There is no limit on the number of independent political committees that can receive contributions and make campaign expenditures on behalf of a candidate. These committees, however, must file financial reports with the Texas Ethics Commission (TEC).
- Political committees are designated as either general-purpose or specific-purpose. A general-purpose committee supports or opposes a cause but does not identify specific candidates. An example would be a committee that pays for a television ad denouncing gambling without advocating the defeat of any one candidate. A specific-purpose committee, on the other hand, supports or opposes identified candidates or measures to be voted on. Such a committee may make expenditures on behalf of, but not coordinated with, a candidate's campaign. These "direct expenditures" are not considered campaign contributions for reporting purposes.
- DIGEST:** CSHB 4 would establish a single principal political committee for all statewide candidates; increase disclosure of information on persons making contributions; increase reporting requirements for general-purpose committees;

establish reporting requirements for direct campaign expenditures during the last 10 days of an election; and increase reporting requirements for in-kind contributions.

The provisions in CSHB 4 would apply to:

- ! a statewide office;
- ! the office of state senator;
- ! the office of state representative;
- ! the office of a State Board of Education member; and
- ! the office of chief justice or justice of a court of appeals.

**Designating committees.** Each candidate or officeholder would have to designate in writing a principal political committee and file that designation with TEC 15 days after becoming a candidate or officeholder. A candidate or officeholder could not have more than one principal political committee, and a candidate who became an officeholder would not have to designate a new principal political committee. The appointment of a campaign treasurer by the committee would have to include the candidate's or officeholder's telephone number and a statement signed by the candidate or officeholder that they were aware of the nepotism law, Government Code, chapter 573. A treasurer appointment would not be invalid if the statement was not included.

The bill would specify that candidates and officeholders could not accept campaign contributions or make campaign expenditures without a campaign treasurer. Likewise, candidates and officeholders could not knowingly accept a contribution in connection with their own campaign unless the contribution was received on behalf of the principal campaign committee. They could not accept a contribution that their committees could not accept. A violation would be a civil penalty not greater than \$4,000.

Candidates and officeholders could not make political contributions or expenditures from personal funds in connection with their own campaigns. They could make expenditures from personal funds if the expenditure was reported as a reimbursable expense or a personal loan. A candidate or officeholder could make a contribution from personal funds to the principal political committee. A violation would be a civil penalty not to exceed \$4,000.

An officeholder who was not a judicial candidate but who became a judicial candidate could designate a second principal committee, as could a judicial officeholder who became a candidate for a nonjudicial office.

Any prohibition or restriction on a candidate or officeholder would apply to the principal political committee.

CSHB 4 would raise to \$100 from \$50 the threshold above which individual political contributions and expenditures would have to be reported.

**Reporting expenditures.** An individual or committee, other than a state or county political party, who made a direct campaign expenditure for the purpose of supporting or opposing a candidate, during the period beginning the ninth day before an election and ending at noon on the second day before an election, that in the aggregate exceeded \$5,000, would have to file a report with TEC no later than 24 hours after the expenditure was made.

These reports would have to be filed electronically, by fax, or by overnight mail and would have to include:

- the amount and purpose of the direct campaign expenditure;
- the full name, address, and principal occupation of the person making the expenditure;
- the name and address of the person to whom the expenditure was made;
- the name of each candidate whom the expenditure supported or opposed;
- an indication of whether the expenditure supported or opposed a candidate;
- and
- the date of the expenditure.

Direct campaign expenditures made by a political committee or association that consisted of costs incurred in communicating with members would not have to be reported under this section. This provision also would not apply to expenditures made by a candidate's principal political committee in connection with the campaign.

Political expenditures that in the aggregate exceeded \$100 would have to be reported, and if the expenditure was in the form of an in-kind contribution, a description of the property or services contributed would have to be included. In addition to general content requirements, reports filed by the principal

political committee would have to include every expenditure made by the candidate from personal funds if the expenditures were over \$100 and would have to indicate if the expenditure was in-kind.

Expenditures made by corporations or labor organizations to finance the establishment or administration of a general-purpose committee or to finance the solicitation of political contributions to a general-purpose committee from employees or stockholders of a corporation would be reportable if in the aggregate they exceeded \$100. Identifying information and the dates of the expenditures would have to be included.

Specific-purpose committees would have to report pledges of money of \$1,000 or more or of 10 percent or more of the anticipated costs of a campaign for an elective office or for a measure.

**Reporting contributions.** Campaign finance reports would have to provide identifying information, including the occupation and employer of each person from whom a candidate or political committee received an aggregate contribution of more than \$100 during the reporting period. If the contributions were in-kind, a description of the property or services contributed would have to be included.

A candidate who received an unsolicited contribution would have to request in writing within 30 days of receiving the contribution that the person making the contribution provide any information required. A candidate would be considered in compliance with these rules if the campaign treasurer showed that the best efforts had been used to obtain, maintain, and report the required information.

The following reports would have to be submitted for the period beginning on the ninth day before an election and ending at noon on the second day before an election, and they would have to be filed within 48 hours after the contribution was accepted:

- ! principal political committees of statewide candidates who accept contributions that exceed \$1,000 in the aggregate;
- ! principal political committees of candidates for state senator who accept contributions that exceed \$1,000 in the aggregate;

- ! principal political committees of candidates for state representative who accept contributions that exceed \$200 in the aggregate;
- ! general-purpose committees that accept contributions that exceed \$5,000 in the aggregate;
- ! general-purpose committees that make direct expenditures for a single candidate that exceed \$5,000 in the aggregate or for a group of candidates that exceed \$15,000 in the aggregate; and
- ! a candidate's or officeholder's principal political committee or a specific-purpose committee that accepts contributions that exceed \$5,000 in the aggregate.

CSHB 4 would require specific-purpose and general-purpose committees that make in-kind contributions to a candidate or officeholder to report in writing the amount of the contribution to the candidate or officeholder by the end of the reporting period in which the contribution occurred.

The bill would define a "major pledge" as an offer of money made to a candidate, officeholder, or specific-purpose committee during a reporting period with the intent that it be used in connection with the campaign or used to defray officeholder expenses that were not reimbursable. Pledges for an amount greater than \$1,000 or 10 percent or more of the anticipated costs of the campaign would have to be reported. A campaign finance report would have to be filed no later than January 15 of each odd-numbered year and would have to include the name of each person who made an offer, the intent, and if the offer was accepted, whether it was received and how much it was.

Campaign finance reports required to be filed under this bill would have to be hand-delivered or mailed to TEC. Reports would be considered timely received if received by the deadline, no matter from where they were mailed.

**Reporting on loans.** The amount of loans made during a reporting period that exceeded \$100 would have to be reported, even if the loans were paid off. If a loan that exceeded \$100 was outstanding on the last day of a reporting period, the report would have to include the name and address of the person or bank that made the loan, the date the loan was made, and the outstanding principal balance of the loan.

Individuals would be civilly liable for acts or omissions by their principal campaign committees. However, this legislation would not prohibit the imposition of other civil penalties.

The bill would prohibit the use of an early voting ballot form that was part of or included with campaign communications or political advertising, unless the form was printed with the return address of the early voting clerk.

A political site on the Internet maintained by a political party would not be subject to disclosure laws relating to political advertising as long as:

- ! each page of the site identified the site as political advertising;
- ! each page contained the party's name and address; and
- ! each page contained the name of the person at the party who could be contacted for information.

The bill would repeal sections of the Election Code that allow a candidate to accept contributions after appointing a campaign treasurer; exempt expenditures for general-purpose committees from reporting requirements; and require general-purpose committees making direct campaign expenditures that support or oppose either a single candidate that in the aggregate exceeds \$5,000 or a group of candidates that in the aggregate exceeds \$15,000 to file a campaign report not later than 48 hours after an expenditure is made. It also would delete the subchapter relating to reporting by officeholders.

CSHB 4 would take effect January 1, 2000. Each person who was candidate on that date would have to designate a principal political committee by January 15. No later than 15 days after a candidate or officeholder designated a principal political committee, the person would have to transfer assets to the principal political committee.

SUPPORTERS  
SAY:

CSHB 4 would revise and enhance the current campaign reporting laws. The integrity of political campaigning would be maintained not by regulating freedom of political speech or expression through campaign finance limitations, but through a reporting system that allows citizens to be fully informed about who is funding political campaigns and how candidates are spending their money.

A good reporting system must require disclosure of both those who give and those who receive political contributions to ensure the accuracy of the information submitted. Full disclosure would highlight patterns of special-interest giving and show a concentration of giving by an industry or a certain employer. It would allow easier identification of which groups might be concentrating donations in a given campaign.

Requiring individuals or political committees who make large direct campaign expenditures during the last 10 days of a campaign to report those expenditures would go a long way toward informing citizens about who is backing whom, and this information would be available before the election rather than after.

CSHB 4 would centralize campaign fund-raising under one principal political committee so that contributions and expenditures could be identified and tracked more easily. Allowing only one committee to be established for each candidate would create a mini-clearinghouse for campaign funds, simplifying the reporting process and the monitoring of campaign finance for candidates, TEC, and concerned citizens alike.

CSHB 4 would add significantly to disclosure requirements by requiring corporations and labor organizations to report their administrative and solicitation expenses. This is currently not reportable and would highlight which corporations and unions were infusing money into the political system.

Raising the \$50 threshold on reporting of contributions and expenditures to \$100 would lessen the administrative burden of having to report small contributions over \$50. It also would benefit campaigns in small, rural areas, protecting individuals who give small amounts of money because they do not want their names to appear on a campaign report. An individual might not want to support an incumbent and might fear political or social repercussions. It would raise the limit a little and still offer those individuals protection from having their names appear on a report.

CSHB 4's additional reporting requirements for direct expenditures made by persons unaffiliated with a campaign would increase those persons' level of accountability and prevent candidates from being blind-sided by unexpected or unwelcome ad campaigns. The requirements would not hinder the

independence of those making direct campaign expenditures, but candidates would be made aware of them.

Requiring the description of in-kind contributions and expenditures would enhance disclosure and would clarify that pledges or offers must be reported, even if the pledge is not received. This would create a more accurate financial report because candidates could “zero out” in-kind contributions and expenditures.

OPPONENTS  
SAY:

CSHB 4 would impose many burdensome requirements for candidates and officeholders by requiring additional identifying information about contributors. For example, it is not clear what public good would be served by knowing a contributor’s employer.

The proposed civil penalty of \$4,000 for someone who knowingly accepted illegal contributions or made a contribution or expenditure from personal funds that are prohibited is too low. A better solution would be to make the civil penalty proportionate to the amount of the prohibited contribution or expenditure.

The provision defining the presumption of best efforts when reporting information on contributors is too vague. The definition of what constitutes best efforts should be left to TEC to determine.

CSHB 4 would not address the issue of out-of-state political action committees (PACs), for which Texas needs clear guidelines. PACs registered outside Texas do not have to file disclosure reports unless their Texas expenditures exceed 20 percent of the PAC’s total political expenditures in other states. This loophole needs to be closed so that out-of-state PACs are held to the same disclosure standard as Texas-based PACs. Currently, 40 states have mandatory out-of-state reporting.

Current law limits the use of campaign contributions to repay personal wealth loaned to the candidate’s campaign. However, the bill does not address at all the issue of a candidate’s use of political contributions to repay a bank loan for which the candidate is personally liable does not count toward the limits on reimbursement.



OTHER  
OPPONENTS  
SAY:

The real problem with political campaigns today is that they too often cost huge sums of money, and campaign contributions translate into political influence. No amount of reporting requirements can change that fact. Candidates need money to reach the public with their messages, and challengers need more money to overcome the incumbent's advantages. It is the staggering cost of television air time that keeps politicians on the fund-raising trail. If television stations would give candidates a supply of free air time, it would reduce politicians' quest for ever more money.

Until a workable system of reasonable limits on campaign contributions is enacted or some degree of public financing of campaigns is considered, Texas will not have true campaign finance reform. Texas is the largest of six states that places no limits on the amount of money an individual or PAC can give to a candidate, except in judicial races. Currently, 44 states limit campaign contributions.

NOTES:

The author plans to offer a floor amendment that would reinstate deleted section 254.039, relating to a general-purpose committee that makes a direct campaign expenditure supporting or opposing either a single candidate that in the aggregate exceeds \$5,000 or a group of candidates that in the aggregate exceeds \$15,000, and would remove the reference to this issue in section 16 of the bill, relating to additional reporting requirements.

Another potential floor amendment would delete the application of this bill to the office of chief justice or justice of a court of appeals and instead would state that members of the Supreme Court and Court of Criminal Appeals would have to comply with this legislation.

Related bills, HB 1421 by Madden, relating to limits on certain political contributions and to disclosure limits on political contributions and expenditures, and HB 1835 by Naishtat, relating to restrictions on payment of certain loans with political contributions, were reported favorably by the House Elections Committee on April 14.