

SUBJECT: Regulating certain political contributions, expenditures, and advertising

COMMITTEE: Elections — committee substitute recommended

VOTE: 7 ayes — Danburg, J. Jones, Gallego, Hodge, Madden, Truitt, Wilson

0 nays

2 absent — Denny, Sadler

WITNESSES: *(On committee substitute:)*

For — Maxine Barkan, League of Women Voters; Fred Lewis and Jim Murray, Campaigns for People; Suzy Woodford, Common Cause of Texas;  
*Registered but did not testify:* James Gaston, Texas Democratic Party; Tom “Smitty” Smith, Public Citizen

Against — None

On — Ken Anderson, Republican Party of Texas; Karen Lundquist, Texas Ethics Commission

BACKGROUND: State governments regulate the financing of political campaigns in three ways: by public financing, by contribution limits and disclosure, and by disclosure only. Texas law does not limit how much money individuals or political committees can contribute to campaigns for state office, except for judicial elections. Since 1995, statewide judicial candidates have been subject to a limit of \$5,000 per contributor per election and must report occupation and employer information on contributions of more than \$50. These requirements apply to candidates for statutory county courts up through appellate courts.

Texas regulates the financing of political campaigns primarily through disclosure requirements. Officeholders, candidates, political parties, political committees, and legislative caucuses must report individual contributions and expenditures that exceed \$50, along with the name and address of the contributor and the date of the contribution or expenditure. They must file their campaign finance reports electronically with the Texas

Ethics Commission (TEC) unless they spend less than \$20,000 or do not use a computer to maintain their contributor and expenditure lists. The TEC posts this information, excluding the addresses of donors, on the Internet for access by the public. Donor address information is available at the TEC on paper copies of campaign finance reports.

Political committees are designated as either general-purpose or specific-purpose. General-purpose committees are not established to support or oppose identified or specific candidates or measures but can support or oppose as many candidates or measures as they wish. A specific-purpose committee supports or opposes identified candidates or measures. Either type of committee can make direct campaign expenditures — also called independent expenditures — on behalf of, but not coordinated with, a candidate's campaign.

Texas does not limit the number of political committees that can receive contributions and make campaign expenditures on behalf of a candidate. Committees must file financial reports with the TEC and must be established at least 30 days before an election.

DIGEST:

CSHB 2 would:

- ! raise the cap on reportable campaign contributions and expenditures and require disclosure of the occupations and employers of contributors;
- ! protect donor information from being used for commercial purposes;
- ! expand late-reporting rules;
- ! require out-of-state political action committees (PACs) to file state campaign finance reports, unless the PAC filed a report with the Federal Elections Commission (FEC);
- ! limit the amount that candidates could reimburse themselves from campaign accounts for personal money spent on their campaigns;
- ! prohibit candidates from raising or spending money if they had not filed their reports in a timely manner;
- ! prevent a campaign treasurer from continuing in that capacity if the campaign did not follow reporting rules;
- ! make it a Class B misdemeanor to intentionally submit false information or file late;

- ! define express advocacy for the purpose of political advertising; and
- ! require the TEC to maintain an index of contributor information.

The provisions of CHSB 2 would apply to:

- ! officeholders and candidates, both judicial and non-judicial;
- ! political committees;
- ! legislative caucuses; and
- ! members of the State Board of Education (SBOE).

**Reporting contributions and expenditures.** CSHB 2 would raise the threshold for reporting contributions and expenditures to \$200 and would require the disclosure of the occupation and employer of each person from whom a candidate or political committee received aggregate contributions of more than \$200 during the reporting period. If the contributions were in-kind, the report would have describe the property or services contributed.

Total political expenditures that exceeded \$200 would have to be reported. Contributions and expenditures of \$200 or less could be itemized or reported as a total. All loans made during the reporting period, regardless of the amount, would have to be itemized. The aggregate principal amount of each outstanding loan as of the last day of a reporting period also would have to be reported.

A report on a contribution from a child would have to identify the child's parents or guardians and, if the contribution was in-kind, would have to describe the contribution.

A report from a general-purpose committee would have to identify contributions from corporate or union general treasury funds intended to be used for administrative, overhead, or fund-raising purposes, unless disclosed elsewhere in the report. Also, the bill would increase the itemization reporting threshold from \$10 to \$30 for general-purpose committees that filed monthly and would apply the best-efforts provisions (see below) to them.

CSHB 2 would prohibit anyone who failed to file a required report from accepting a contribution or making an expenditure, beginning on the day after the date that the required report was due and ending once the report was filed. If the campaign treasurer of a committee also was the treasurer of another committee that failed to file a report, the treasurer could not accept contributions or make expenditures until the required report was filed. The bill would prohibit a person from being a campaign treasurer who was the campaign treasurer of a committee that had not filed a required report.

A candidate who violated this provision would be liable for a civil penalty of \$100 per day until the late report was filed. A campaign treasurer of a committee that violated this provision would be liable for a civil penalty of \$500 per day until the late report was filed. A violation of this provision would be a Class B misdemeanor, punishable by up to 180 days in jail or a maximum fine of \$2,000.

CSHB 2 would require statewide candidates, state senators and representatives, SBOE members, and the specific-purpose committees that support them, who accepted contributions beginning the ninth day before election day and ending at 5 p.m. on the day before election day that in the aggregate exceeded \$1,000, to file a report within 24 hours after accepting a contribution. A general-purpose committee that supported one candidate and made direct campaign expenditures exceeding \$1,000 in the aggregate and a committee that supported a group of candidates and spent \$15,000 in the aggregate would have to report the contributions within 24 hours after they were accepted. The reports could be filed electronically.

**Criminal penalty for untimely or incomplete report.** The campaign treasurer of a political committee would commit a Class B misdemeanor if the person knew of the legal obligation to file, intentionally failed to file a required report on time, or failed to include required information that was substantial and material to a complete understanding of the committee's reportable activity.

**Reporting by out-of-state political committees.** Out-of-state political committees that spent money in connection with elections in Texas would have to report expenditures made in a reporting period that in the aggregate

exceeded \$200, along with identifying information, and the total amount or an itemization of contributions and expenditures of \$200 or less accepted during the reporting period. Also, the reports would have to include the total amount of all contributions accepted and expenditures made in Texas during a reporting period. An out-of-state political committee established by a state political party as the party's primary political committee for making contributions and expenditures would not have to report a contribution to a similar political committee established in another state.

Out-of-state political committees that registered with the FEC would not have to file with the TEC. However, they would have to provide the TEC with information necessary to locate the committee's report on the FEC's Internet website. The TEC would have to provide a link on its website to that report. If an out-of-state committee did not file with the FEC, it would have to comply with the reporting provisions of CSHB 2.

**Best efforts.** An officeholder, candidate, campaign treasurer, committee, or legislative caucus would be considered to have used best efforts to request, maintain, and report the identifying information of individuals making contributions of more than \$200, including the occupation and employer, as long as they had complied with the bill's provisions. The bill would stipulate specific requirements for written solicitations for contributions and notices to potential contributors regarding compliance with state reporting laws. Follow-up requests for information could not be made in conjunction with a solicitation for additional contributions, and information received after the filing deadline would have to be reported in the next filing period.

**Protection of information.** CSHB 2 would prohibit contributor information from being sold or used for commercial purposes without written consent of the filer. Information obtained from newspaper reports, magazines, books, or other similar communications could be used as long as the purpose was to educate the public and not to solicit contributions. A filer could submit up to 10 pseudonyms on each report to guard against illegal use of the information, as long the total amount of fictitious contributions did not exceed the greater of 5 percent of contributions reported or \$2,500. The filer would have to notify the TEC with a separate list of pseudonyms and amounts contributed. Using pseudonyms for the purpose of inflating the

amount of contributions would be prohibited. A person violating this section could be liable for civil penalties imposed by the TEC, damages, and attorney's fees, and a filer would be entitled to injunctive relief.

CSHB 2 would prohibit anyone, including a candidate, officeholder, or political committee, from using donor information to coerce or threaten anyone else to contribute to a campaign.

**Availability of reports on the Internet.** The TEC would have to make electronically-filed reports available to the public on the Internet no later than the second business day after the report was filed. The TEC could remove the street address but not the street name of a person making a contribution.

The TEC would have to compile and maintain an index of information about contributors, including names, addresses, and dates of contributions and the names of the candidates, officeholders, or committees that received the contributions. The information would be taken from reports filed with the TEC and would have to be available on the Internet.

**Disclosure on political advertising.** CSHB 2 would define "express advocacy" as a broadcast communication that advocates the election or defeat of a candidate or measure by using specific phrases, including "vote for," "reelect," "support," "cast your ballot for," or conversely, "vote against," "defeat," "reject," or by using a campaign slogan that advocates the election or defeat of an identified candidate or measure. The broadcast would be presumed to be express advocacy if:

- ! it contained the specific words or phrases listed in the bill, or
- ! it referred to one or more clearly identified candidates or officeholders in a paid advertisement that was distributed or delivered during the last 60 days before an election by means of television, radio, newspaper, or other forms of media and was delivered to an audience that included people living in an area within the territory from which the candidate or officeholder was seeking election.

CSHB 2 would prohibit political advertising that did not indicate within the advertisement itself that it was political advertising and that did not include certain identifying information about the candidate, officeholder, or political committee. Advertising that contained express advocacy would be presumed to be political advertising for the purpose of influencing an election.

A person who made an expenditure for what was presumed to be political advertising could file with the TEC an affidavit claiming that the expenditure was not made with the intent to influence the election of a candidate. The TEC would have to determine by a preponderance of the evidence whether the expenditure was made with the intent to influence the election of a candidate and would have to notify the person submitting the affidavit of the commission's determination.

**Loan reimbursement.** CSHB 2 would prohibit a nonjudicial candidate or officeholder who made political expenditures from personal funds from using political contributions in amounts that in the aggregate exceeded the amounts listed below to reimburse those personal funds:

- ! \$100,000 for governor;
- ! \$50,000 for statewide office other than governor;
- ! \$25,000 for state senator, state representative, or SBOE member; and
- ! \$10,000 for other offices.

These limits also would apply to the repayment of loans from certain family members within the second degree by affinity or consanguinity. The limits would apply to each election in which the person's name appeared on the ballot. A nonjudicial candidate or officeholder could not use contributions to repay interest on loans made from personal funds or interest on loans from certain family members.

Judicial candidates or officeholders could not use contributions to reimburse an expenditure made from personal funds or to repay a loan that in the aggregate exceeded, for each election:

- ! \$50,000 for statewide judicial office, or
- ! for a non-statewide judicial office, five times the applicable contribution limit.

Judicial candidates or officeholders could not use contributions to repay loans or interest on loans made from certain family members, nor could they use contributions to pay interest on loans made from personal funds.

CSHB 2 would prohibit a committee from using a contribution in an amount that exceeded these totals to repay any loan or extension of credit for which the committee's judicial or nonjudicial candidate or officeholder was personally liable.

**Disposition of unexpended political contributions.** A person could not retain political contributions, assets purchased with contributions, or interest and other income earned on the contributions for more than six years after the later of the date the person ceased to be an officeholder or the date of the most recent election for which the person was a candidate. A person who ceased to be an officeholder or who was last a candidate in an election before September 1, 1995, would have to dispose of unexpended contributions and assets no later than January 1, 2002.

**Corporations and labor organizations.** CSHB 2 would prohibit a corporation or labor organization from making contributions and direct expenditures in connection with an election unless the election was held on a uniform election date. Corporations and labor organizations could make expenditures to permit a candidate to make a speaking appearance before the corporation or labor organization, but could not pay for the candidate's transportation or lodging.

The bill would take effect September 1, 2001.

SUPPORTERS  
SAY:

The TEC's interim report to the 77th Legislature found that "Texas election law related to the financing of campaigns has loopholes which deny the public the capability to determine the source of campaign funds." CSHB 2 would remedy this situation by requiring accurate and timely disclosure of



campaign financing in Texas. This voter-friendly initiative would serve the interests of candidates, donors, and voters alike.

CSHB 2 would not limit contributions. Its intent is to “follow the money.” It would enhance the accountability and integrity of campaigns by establishing a reporting system that would allow citizens to be fully informed about who was funding political campaigns and how candidates were spending their money. In his State of the State address in January, Gov. Rick Perry advocated shining a light on election financing so that voters could make more informed choices.

Full disclosure would highlight patterns of special-interest giving and could reveal concentrations of giving by an industry or a certain group. Requiring the TEC to post a donor’s street name on the Internet would not violate contributors’ privacy because this information already is available at the TEC for anyone who wants to see it.

Requiring statewide candidates and political committees who made large contributions and expenditures during the last 10 days of a campaign to report those expenditures would go a long way toward informing citizens who was backing whom. Most importantly, that information would be available before the election rather than afterward. Candidates for state Senate and House seats already must report late contributions and expenditures, and there is no compelling reason why statewide candidates also should not have to do so. The reporting requirement would not be burdensome because it would apply only to contributions of more than \$1,000, and, in most cases, a campaign receives only one or two large contributions per day during the last days of an election.

CSHB 2 would expand disclosure standards significantly by requiring disclosure of the occupation and employer of a contributor who gave more than \$200. This information would allow voters to know if a candidate’s contributors were concentrated in certain industries or economic interests. The federal government has required this information for contributions of \$200 or more since the 1970s, and 29 states require disclosure of employer and/or occupation information.

A PAC registered out of state usually is exempt from listing its contributions. This makes it easy to influence Texas elections surreptitiously, as donors can disguise their contributions by sending money to an out-of-state PAC, which then can send money to Texas without reporting it. Out-of-state PACs should have to report their activities in Texas just as in-state PACs must do.

Imposing stiffer penalties on campaigns that intentionally submitted false information or filed late would increase the accountability of campaigns in Texas. The current maximum fine of \$500 for failing to report is so minimal that it has become a part of doing business. The prohibition against raising or spending funds if campaign reports were not filed in a timely manner would be an effective enforcement tool.

The definition of express advocacy is important, and current Texas law does not define it at all. In a 1976 Supreme Court decision, *Buckley v. Valeo*, 424 U.S. 1, 26, the court held that if a person makes an independent expenditure for an advertisement that is not coordinated with a campaign or candidate and that expressly advocates the election or defeat of the candidate, constitutionally that person can be required to reveal who paid for the ad. CSHB 2 would not prohibit political advertising but would set clear guidelines for regulating express advocacy and political advertising and would allow people who felt they were not engaging in express advocacy to file affidavits with the TEC. The burden of proof then would fall on the TEC. If the commission determined that an ad was not express advocacy, the donor(s) would not have to be revealed and the disclaimer would not be required. A reporting obligation is not an imposition on free speech and would not limit the amount of information available to voters.

The bill would not address the statutory requirements of the TEC to enforce campaign finance laws in Texas. The agency's sunset review, scheduled during the upcoming biennium, will be an appropriate venue in which to address any proposals regarding the TEC.

OPPONENTS  
SAY:

CSHB 2 would impose time-consuming and burdensome requirements on candidates and officeholders by requiring additional information on donors. It is not clear what public good would be served by identifying a contributor's employer.

The proposed \$200 threshold for requiring occupation and employer information is too low. The threshold should be no lower than \$500. Complying with the bill's best-efforts provisions and the requirement for additional donor information would not be as great an administrative burden if the threshold were higher, especially for smaller committees and filers that might not have full-time staff or depend on volunteer workers. Likewise, the 48-hour last-minute filing requirement should not be reduced to 24 hours because of the administrative burden it would place on filers during the last days of a campaign.

Last session, in the interest of protecting privacy on the Internet, lawmakers considering this legislation chose to exclude the addresses of donors from the requirements for electronic postings of finance reports. CSHB 2 should not change that exclusion.

Part of this bill's definition of express advocacy likely is unconstitutional. The majority of federal judicial decisions have held that a definition of express advocacy other than one that meets the "magic words" test may not survive constitutional scrutiny. If an advertisement does not use the magic words, it qualifies as "issue advocacy," which cannot be regulated legally. Likewise, the definition of "prospective measure" to which some of the bill's provisions would apply is too broad and unclear.

The provision regarding ineligibility for appointment as a campaign treasurer if the person was a treasurer of a committee that did not file a timely report is confusing and needs to be clarified. It is unclear if this provision would affect the current operations of a complying committee whose treasurer was also the treasurer of an offending committee, or if it merely would prohibit future appointments for the treasurer.

The prohibition against accepting contributions or making expenditures for a committee whose campaign treasurer was the treasurer of another committee

that did file timely would penalize complying candidates unfairly. Also, it is doubtful whether a prohibition against expenditures is constitutional.

The provision regarding the index of contributor information is unnecessary because the TEC electronic data base is searchable now. The TEC would have to make programming changes that, according to the bill's fiscal note, would cost about \$94,000.

Prohibiting corporations or labor organizations from making direct campaign expenditures in connection with a measure election unless the election was on a uniform election day would impede the ability of labor organizations and the corporate community to participate in non-uniform elections. Ultimately, this would prevent voters from being completely informed on measures they would be voting on.

The bill's proposed limits on repayment and reimbursement of loans are too low. These restrictions would burden candidates who could not afford to run without incurring significant debt. Indirectly, this would benefit wealthier candidates, who could afford to contribute large amounts to their campaigns without relying on loans or being concerned with reimbursement.

OTHER  
OPPONENTS  
SAY:

CSHB 2 would be a good first step toward enacting meaningful disclosure, but it would not address the issue of reporting cash-on-hand balances. Candidates and officeholders should have to report cash reserves at the close of business on the last day of each reporting period.

NOTES:

The committee substitute modified the original bill by deleting provisions that would establish a principal political committee for candidates and officeholders, a fair campaign spending fund, and a voter's guide.

The substitute removed provisions regarding early-voting ballots, restrictions on certain telephone advertising, and disclosure in advertising of unpaid civil penalties.

The substitute lowered the proposed threshold for reporting donor occupation and employer information from \$1,000 to \$200 and changed the cap on reportable contributions and expenditures from \$100 to \$200. It also

added the provision that would require TEC to establish an index of contributor information.

According to the bill's fiscal note, the bill would cost the state \$313,636 in general revenue during fiscal 2002-03 and \$55,787 each year thereafter.

The author intends to accept several floor amendments, including technical "cleanup" amendments. The amendments will address concerns regarding:

- ! the index of donor information required to be maintained by the TEC;
- ! provisions relating to the definition of express advocacy; and
- ! loan reimbursement and repayment amounts.

A similar bill during the 76th Legislature, HB 4 by Gallego, passed the House by 138-4, but died in the Senate during the final days of the session.

SB 6 by Shapiro, relating to the fair conduct of elections and campaigns, was referred to the House Elections Committee on March 19.