

- SUBJECT:** Attributing portions of joint expenditures made by lobbyists
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 7 ayes — Berman, Bohac, England, Anchia, Burnam, Farias, C. Howard
0 nays
- WITNESSES:** For — Jack Gullahorn, Professional Advocacy Association of Texas;
(*Registered, but did not testify:* Trey Blocker, Texas Association of
Manufacturers)

Against — None

On — (*Registered, but did not testify:* Natalia Luna Ashley, Texas Ethics
Commission)
- BACKGROUND:** Government Code, ch. 305 covers registration and expenditure reporting
by lobbyists. Sec. 305.003 establishes criteria under which a person must
register with the Texas Ethics Commission (TEC) as a lobbyist to make
expenditures for the benefit of members of the Legislative and officials of
the executive branch.

Sec. 305.024 details restrictions on lobbying expenditures. A person
registered as a lobbyist or a person on the registrant's behalf and with the
registrant's consent or ratification may not offer, confer, or agree to confer
an expenditure or series of expenditures for entertainment or gifts that in
the aggregate exceed \$500 in a calendar year or an expenditure for an
award or memento that exceeds \$500. Likewise, a member of the
legislative or executive branches may not solicit, accept, or agree to accept
from a registered lobbyist or from a person on the registrant's behalf and
with the registrant's consent or ratification any of these items that in the
aggregate exceed \$500 in value.

TEC rule sec. 34.11(a) states that a lobby expenditure made on a person's
behalf and with the person's consent or ratification is an expenditure by
that person for purpose of registration and reporting under ch. 305.

Penal Code, sec. 36.02 makes bribery a criminal offense, with the exception that providing or accepting a benefit to take action as a public servant does not apply if the benefit was reported under Government Code, ch. 305.

Penal Code, sec. 36.10 creates an exception to violation of sec. 36.08, gift to a public servant by a person subject to the public servant's jurisdiction, or sec. 36.09, offering a gift to a public servant, if the gift is food, lodging, transportation, or entertainment required to be reported under other law.

DIGEST:

CSHB 2735 would amend Government Code, ch. 305 to establish reporting requirements for joint expenditures by registered lobbyists. If a registrant, or a person on the registrant's behalf and with the registrant's consent or ratification, joined with another person to make an expenditure, the amount of the expenditure made by or on behalf of the registrant would include only:

- the amount of the portion of the joint expenditure contributed by the registrant; and
- the amount of any portion of the joint expenditure that was made on behalf of the registrant by a person who was not a registrant and that otherwise was not necessary to be reported.

The amount of a joint expenditure attributed to a person who was not a registered lobbyist would not be considered an expenditure made and reported in accordance with ch. 305 and thus would not be covered by the exceptions to the Penal Code offenses for bribery of public officials (sec. 36.02) and gifts to public servants (sec. 36.10).

The bill also would amend sec. 305.024 involving restrictions on lobbying expenditures to establish that the total value of a joint expenditure could exceed \$500 if each portion were made by a registrant and did not exceed \$500.

The bill would take effect September 1, 2007, and would apply only to an expenditure made or an offense committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2735 would codify reporting practices for lobbying expenditures made jointly and would implement a clarifying change recommended by the Texas Ethics Commission. The bill would encourage reasonable reporting and attribution of joint lobbying expenditures and would

promote more registration of non-lobbyists. The bill also would permit lobbying expenditures acceptable under current law, sec. 305.024, to exceed \$500 if each portion of the expenditure were made by a registrant and each registrant's portion of the expenditure did not exceed \$500. The public would benefit from more accurate reporting of lobbying activities that the bill could generate.

An issue often arises about whether an expenditure may be split among multiple lobbyists for the purposes of expenditure limits. TEC's long-standing interpretation has been that the entire amount of an expenditure is credited to each lobbyist's limits and thus not split for purposes of the spending limits. One of the lobbyists reports the expenditure in its entirety because, according to TEC, double reporting should be avoided. If the amount of the group expenditure exceeds the limit, then each lobbyist is considered to have exceeded the expenditure limit, regardless of whether that lobbyist's share went beyond the limit.

Under the clarification made by CSHB 2735, if a registrant, or a person on the registrant's behalf, joined with another person to make a joint expenditure, the amount of the joint, reported expense would include only the portion contributed by the registrant and any portion made on behalf of the registrant by a person not registered.

The involvement of non-lobbyists (non-registrants) frequently arises with joint expenditures. Under current law, registered lobbyists are subject to reporting requirements under the lobbying laws, and their reported expenditures are not subject to the Penal Code offenses for bribery or unauthorized gifts to public servants. CSHB 2735 would specify that when non-registrants are involved in joint expenditures, their expenditures would not be covered by the exceptions to the Penal Code offenses for bribery or gifts to public servants. This would be a strong inducement for non-registrants to register as lobbyists and report their part of any joint expenditures.

**OPPONENTS
SAY:**

CSHB 2735 would encourage the questionable practice of joint expenditures by lobbyists in order to bestow expensive gifts. By aligning with other registrants, lobbyists could jointly purchase more costly gifts or spend more lavishly on entertainment than they could otherwise. Since the bill would permit lobbyists to report joint expenditures separately, determining the total amount spent on a group expenditure, such as

underwriting a hunting trip, would be more difficult. These practices should be restricted rather than specifically permitted by law.

NOTES:

The committee substitute added the provision that non-registrants would not be covered by the exceptions to the Penal Code offenses for bribery of public officials and unauthorized gifts to public servants if they made a joint expenditure that was not reported in accordance with the lobbyist expenditure requirements.