

SUBJECT: Omnibus ethics bill

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Cook, Giddings, Farney, Farrar, Geren, Harless, Huberty,
Kuempel, Minjarez, Oliveira

0 nays

3 absent — Craddick, Smithee, Sylvester Turner

SENATE VOTE: On final passage, April 28 — 31-0

WITNESSES: For — None

Against — Jack Gullahorn, Professional Advocacy Association of Texas

On — Erica Cole and Amy Long-Manuel, Clean elections; Joanne Richards, Common Ground for Texans; Carol Birch and Tom “Smitty” Smith, Public Citizen Texas; Craig McDonald, Texans for Public Justice; Sara Smith, Texas Public Interest Research Group; Todd Jagger; Paul Silver; (*Registered, but did not testify*: Grace Chimene, League of Women Voters of Texas)

BACKGROUND: Title 15 of the Election Code governs the regulation of political funds and campaigns, including requirements for financial reports by campaigns, candidates, officeholders, and political committees. These campaign financial reports must be filed with the Texas Ethics Commission.

Under Election Code, sec. 251.001 a political committee means a group of persons that has as a principal purpose accepting political contributions or making political expenditures.

Government Code, ch. 572 requires the following individuals to file a personal financial statement with the Ethics Commission:

- appointed officers and executive heads of state agencies;
- board members and executive heads of river authorities;
- officeholders and candidates for the Legislature, statewide offices, justices of a court of appeals, district judges, district or criminal district attorneys, and members of the State Board of Education;
- former or retired judges sitting by assignment; and
- state chairs of political parties receiving more than 2 percent of the votes for governor in the most recent general election.

DIGEST:

CSSB 19 would create new contribution reporting requirements for certain politically active persons or groups; expand and require the online posting of information included in personal financial statements; establish an ethics counselor to advise legislators on conflicts of interest; prohibit certain oral recordings of communications with legislators in the Capitol; and prohibit certain automated calls to legislative offices.

Disclosure of political contributions and expenses. The bill would create political contribution report requirements for a person or group of persons that:

- did not meet the definition of a political committee;
- accepted political contributions; and
- made one or more political expenditures, with certain exceptions, that exceeded \$25,000 during a calendar year.

The bill would define “contribution” to include dues and gifts, except for commercial transactions involving the transfer of anything of value pursuant to a contract or agreement that reflected an industry’s normal business practices. A “donor” would be defined as a contributor to a person or group subject to the disclosure requirements, regardless of whether the contributor was a member of the person or group that accepted the contribution.

The bill would define “contribution in connection with campaign activity” to mean a contribution that a donor knew or would have had reason to know could be used to make a political contribution or political

expenditure or that could be comingled with other funds to make a political contribution or expenditure. A donor who signed a statement indicating that a contribution could not be used to make a political contribution or expenditure would not have had reason to know that it could be used in such a manner.

Disclosure of contributions would be required only if the contribution was made in connection with a campaign activity and the aggregate amount exceeded \$2,000 during the reporting period. A report would not be required to include:

- contributions not connected with campaign activity;
- the total amount of un-itemized political contributions or expenditures;
- the total amount of political contributions maintained by the person or group;
- expenditures that were not political expenditures; or
- the principal amount of outstanding loans.

The first report filed in a calendar year in which the \$2,000 or \$25,000 thresholds were exceeded would have to include all contributions in connection with campaign activity accepted from a person that in the aggregate exceeded \$2,000 and all political expenditures made in the 12 months immediately preceding the acceptance of the contribution in connection with campaign activity or the making of the political expenditure that triggered the reporting requirements and had not been previously reported.

Personal financial statements. The bill would make changes to the personal financial statements that certain state officers are required to file. It would require that statements be submitted electronically through the Texas Ethics Commission website and made available in a searchable format to the public not later than the third business day after the date it was required to be filed or was actually filed, whichever is later. The commission would redact the home address of a filer before posting it on the website.

Financial statements would be required to include each source of a referral fee paid to a firm or other business entity in which the filer had a substantial interest. Filers also would be required to identify each contract or subcontract with the state or a political subdivision to which the filer or the filer's spouse was a party and each paid relationship the filer or the filer's spouse had with the state or a political subdivision.

Filers also would have to identify any other source of earned or unearned income not reported elsewhere on the form, including federal or state governmental disability payments, other public benefits, or a pension, individual retirement account, or other retirement plan, and the category of the amount of income derived from each source. A "public benefit" would include the value of an exemption from taxation of the total appraised value of a residence homestead.

An individual filing a personal financial statement would be required to include an affirmation that the filer had filed a federal personal income tax return for the preceding year and had paid all income taxes owed, or that the filer had receive an extension. The filer also would include a statement that the filer had paid all property taxes due.

A state officer who received compensation for performing government contract consulting services would be required to report the name of each person to whom the officer provided the services and the category of the amount of compensation received.

Late and amended filings. The Ethics Commission could not grant a request for an extension of the deadline for filing a personal financial statement unless the commission determined that good cause existed. A statement could be amended without penalty after the eighth day only if the amendment was made before any complaint was filed with the commission and the commission determined that the original report was made without intent to mislead or misrepresent.

Pre-appointment statement of political contributions. Before being

selected as an appointed officer by the governor, lieutenant governor, or House speaker, an individual would be required to have filed with the Ethics Commission a statement that disclosed any political contributions made by the nominee or the nominee's spouse during the two years preceding the nomination to:

- the appointing officer as a candidate or officeholder; or
- a specific-purpose political committee for supporting the appointing officer, opposing the appointing officer's opponent, or assisting the appointed officer as an officeholder.

Conflicts of interest. The bill would restrict a lobbyist from knowingly making a political contribution or expenditure from contributions accepted by the person as a candidate or officeholder for two years after the person left office. A violation would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Detailed reporting. Beginning on September 1, 2015, the detailed reporting threshold for lobbyists' expenditures for transportation, lodging, food, beverages, entertainment, and gifts would be set by the Ethics Commission at an amount between \$50 and 60 percent of legislative per diem. The threshold for reporting also would apply to the immediate family of a member of the legislative or executive branch. The bill would specify that "expenditure" did not include a payment benefiting a member of the legislative or executive branch if the member fully reimbursed the expenditure before the reporting date.

Governor's staff. The bill would limit communication between former members of the governor's senior staff and the governor or a member of the governor's current senior staff if the former staff member received a benefit and intended to influence action. The communication would be banned until the end of the governor's term — or, if a staff member ceased work during the final 12 months of the governor's term, until the end of that term and any succeeding term. The bill would define "member of the governor's senior staff" as a person who helped formulate legislative policy or supervised others who did so.

Lawyer referrals. A member of the Legislature or a statewide elected official who was a member of the State Bar of Texas would be allowed to make or receive a referral for legal services only if the referral complied with State Bar rules and was evidenced by a written contract between the parties who were subjected to the referral. A violation would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Ethics counselor. The Texas Legislative Council would designate a licensed attorney as an ethics counselor. Not later than 30 days after the Legislature convened, the ethics counselor would be required to review legislators' financial statements and provide each member with an ethics analysis of the member's financial interests. The analysis would identify the subjects of legislation that had the potential to violate the statutory prohibition against voting on a bill that directly benefitted a specific transaction of a business entity in which the member had a controlling interest. A legislator who reasonably relied on an ethics analysis would not be subject to a criminal penalty or other sanction for violating the voting prohibition. An ethics analysis would be public information.

Capitol recordings. CSSB 19 would add a section to Government Code, ch. 306 regarding recorded oral communications made inside the Capitol. A person would have a justified expectation that oral communication with a legislator or the lieutenant governor while in the Capitol would not be subject to interception. "Intercept" would mean the aural acquisition of the contents of communication through the use of an electronic, mechanical, or other device that was made without the consent of all parties. It would not include the ordinary use of a telephone; hearing aid designed to correct subnormal hearing; radio, television, or other wireless receiver; or a cable system that relayed a public wireless broadcast from a common antenna to a receiver.

A party to a protected oral communication with a legislator or the lieutenant governor would have a civil cause of action against a person who:

- intercepted, attempted to intercept, or employed or obtained another to intercept or attempt to intercept the communication; or
- used or divulged information that the person knew or reasonably should have known had been obtained by interception of the communication.

A person who established a cause of action would be entitled to:

- an injunction prohibiting a further interception, attempted interception, or divulgence of information;
- statutory damages of \$10,000 for each occurrence;
- all actual damages in excess of \$10,000;
- punitive damages in an amount determined by a court or jury; and
- reasonable attorney's fees and costs.

Journalist privilege. Under the bill, the qualified testimonial privilege in Civil Practice and Remedies Code, ch. 22 for journalists would not apply to a person who:

- was required to report direct campaign contributions;
- controlled a political committee;
- served as the campaign treasurer of a candidate or political committee; or
- made a corporate political expenditure to finance the establishment or administration of a general purpose committee.

In addition, a person could not claim the journalist privilege if the individual was required to be disclosed on an IRS Form 990 in one of the above-listed categories.

The journalist privilege also could not be claimed by a person who was an employee or contractor or who acted on behalf of anyone described above who could not claim the privilege.

Automated calls. The bill would amend Government Code, sec. 305.027

regarding disclosure of legislative advertising to include automated phone calls or “robocalls” that convey a prerecorded or synthesized voice message. A person would commit an offense if the person knowingly communicated or entered into a contract to communicate legislative advertising to a member of the Legislature using an automated dial announcing device. An offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Felony conviction. A legislator convicted of a felony would be required to vacate his or her office on the date the conviction became final.

Ethics Commission. CSSB 19 would revise standards of judicial review to require review by substantial evidence for Ethics Commission final orders in appeals involving lobbyist registrations.

The bill would allow the commission to disclose confidential information to law enforcement and require the commission to maintain confidentiality of the information. A violation would be a class C misdemeanor (maximum fine of \$500).

Under the bill, a complaint would be considered “frivolous” if groundless and brought in bad faith or for purposes of harassment. A complaint would be considered “groundless” if it did not allege a violation that was material, nonclerical, or nontechnical. The commission would be required to award to the respondent of a frivolous complaint:

- costs, reasonable attorney’s fees, and other expenses; and
- sanctions sufficient to deter similar frivolous complaints.

Effective date. The bill contains provisions for transitions and effective dates for various sections.

Except as otherwise provided in the bill, CSSB 19 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSSB 19 proposes a number of reforms that significantly would improve ethics laws and ensure a more responsible government for Texans.

The governor declared legislation related to ethics an emergency matter for the 84th Legislature. CSSB 19 would include provisions to meet the governor's call for strengthening ethics laws related to disclosure of state contracts with elected officials, prohibiting lawmakers from voting on legislation from which they could profit, and increasing disclosure of campaign finance information.

The bill would close a loophole in existing political contribution reporting requirements and ensure that all entities spending money to influence elected were treated the same. Allowing major contributors to give money in secret could open the door to corruption.

Currently, certain nonprofit 501(c)(4) organizations that spend more than \$25,000 in political expenditures every year but do not qualify as a political action committees, are not required to report their political expenditures. These organizations have become increasingly active in Texas elections and should be subject to the same reporting requirements as other political organizations. Persons who were in compliance with campaign finance laws should have no reason to stop contributing to 501(c)(4) organizations because they would be required to disclose their political donations.

The bill would reduce opportunities for elected officials to use their official positions for personal gain by requiring more disclosure of referral fees, contractual relationships with state and local governments, and other sources of income. It would place financial statements online in a searchable format, echoing a successful practice in other states, while redacting a filer's address.

The bill's prohibition on secret recording of conversations involving legislators would help address concerns that have arisen this session. A person has a justified expectation that his or her oral communication with a member of the Legislature or the lieutenant governor while in the

Capitol is not subject to recording unless the communication is public testimony at a legislative hearing.

The ban on robocalls would free up legislators' phone lines for calls from individual constituents who want to discuss pending legislation. Unlike robocalls, many individual constituents want to leave their contact information so that staff can follow up on their concerns.

OPPONENTS
SAY:

CSSB 19 would go beyond reforming ethics laws to infringing on protected constitutional rights related to free speech and political association.

In trying to increase transparency of the activities of 501(c)(4) organizations, the bill could have a detrimental effect on anonymous political speech while implicating the First Amendment rights of corporations as associations of individuals. It could discourage political giving by requiring reporting of any donation greater than \$2,000. Donors who did not want to be scrutinized or harassed based on their political views and donations would have to be more circumspect with their political donations.

The bill would infringe on the First Amendment by prohibiting the recording of conversations with members of the Legislature in the Capitol and creating a civil cause of action against a person who made or divulged such a recording. This could further insulate legislators from their constituents. In addition, citizen journalists would lose protections that could prevent them from being compelled to provide testimony and disclose confidential sources.

The bill also would prohibit citizens from making auto-dial calls to members of the Legislature with pre-recorded messages expressing a view on pending legislation. Political candidates still would be able to use robocalls to reach voters, but those voters would be restricted from using the same technology to call their elected representatives.

The bill would require a "cooling off" period before former senior staff

members of the governor's office could try to influence legislation but would not require the same of former legislators. It also should contain stronger provisions than the proposed ethics counselor to prevent legislators from voting to benefit their businesses.

Placing detailed personal financial information online could allow some who would misuse the information to target elected officials or their families.

NOTES:

CSSB 19 differs in several ways from the Senate engrossed version, including that the House committee substitute would:

- specify the criteria for people to whom qualified testimonial privilege for journalists would not apply;
- require certain politically active nonprofits to disclose campaign expenditures that exceeded \$25,000 a year;
- ban automated calls to legislative offices; and
- require disclosure of all contracts with a public entity to which the filer or the filer's spouse is a party; and
- require affirmations that a state officer has paid federal income tax and property tax obligations.

Unlike the House committee substitute, the Senate engrossed version would have:

- banned registered lobbyists from running for elected office; and
- required drug testing for people filing for elected office.