

BILL ANALYSIS

Senate Research Center

H.B. 2
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State Affairs
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Engrossed

DIGEST AND PURPOSE

The amount of money invested in campaigns is a significant factor in many elections. It has been argued that the current campaign finance system discourages competition in elections and discourages small contributions from individuals. Current disclosure laws contain several loopholes which may prevent full disclosure of campaign contributions. H.B. 2 modifies provisions relating to the regulation and disclosure of certain political contributions and expenditures.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 251.001, Election Code, by amending Subdivisions (14) and (16) and adding Subdivisions (21) and (22), as follows:

(14) Redefines “general-purpose committee.”

(16) Redefines “political advertising.”

(21) Defines “prospective measure.”

(22) Defines “express advocacy.”

SECTION 2. Amends Chapter 251A, Election Code, by adding Section 251.010, as follows:

Sec. 251.010. PROTECTION OF INFORMATION. (a) Prohibits information obtained from any reports required to be maintained or filed under this title from, without the express written consent of the filer, being sold or used by any person other than the filer for any commercial purposes, recognizing that contributor information required to be included in reports required by Chapter 254 is proprietary information having substantial value.

(b) Provides that the use of certain information is permissible under certain conditions.

(c) Requires any person found to have violated Subsection (a), in addition to any penalties imposed by the Texas Ethics Commission (commission), to be liable in damages to the person filing the report. Defines “damages” under this subsection. Requires the person filing the report, in addition to damages, to be entitled as a matter of right to an injunction prohibiting a violation of this section and an order recovering reasonable attorney's fees incurred to obtain the injunctive relief from any district court in this state.

SECTION 3. Amends Chapter 253A, Election Code, by adding Section 253.006, as follows:

Sec. 253.006. COERCION PROHIBITED. Sets forth conditions under which a person, including a candidate, officeholder, or political committee, commits an offense. Provides that an offense under this section is a Class C misdemeanor.

SECTION 4. Amends Chapter 252, Election Code, by adding Section 252.0011, as follows:

Sec. 252.0011. INELIGIBILITY FOR APPOINTMENT AS CAMPAIGN TREASURER. Provides that a person is ineligible for appointment as a campaign treasurer if the person is the campaign treasurer of a political committee that does not file a report required by Chapter 254.

SECTION 5. Amends Sections 253.031(e) and (f), Election Code, to delete text providing that this section does not apply to an out-of-state political committee unless the committee is subject to Chapter 252 under Section 251.005 and to make a nonsubstantive change.

SECTION 6. Amends Sections 253.042(a), (b), and (e), Election Code, as follows:

(a) Prohibits a candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds from reimbursing those personal funds from political contributions in amounts that in the aggregate exceed certain amounts for each election in which the person's name appears on the ballot.

(b) Prohibits a candidate or officeholder who accepts one or more political contributions in the form of loans from certain persons from using political contributions to repay the loans in amounts that in the aggregate exceed the amount prescribed by Subsection (a). Prohibits a candidate or officeholder from using political contributions, in amounts that in the aggregate exceed the amount prescribed by Subsection (a), to repay any other loan or extension of credit for which the candidate or officeholder is personally liable.

(e) Prohibits a candidate or officeholder from paying interest on a loan from the candidate's or officeholder's personal funds or on a loan from the personal funds of any person related to the candidate or officeholder within the second degree by affinity or consanguinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code. Deletes text providing that this section does not prohibit the payment of interest on loans covered by this section at a commercially reasonable rate, except for certain interest on loans.

SECTION 7. Amends Section 253.096, Election Code, to authorize a corporation or labor organization to make campaign contributions from its own property in connection with an election on a measure only if the election occurs on a uniform election date.

SECTION 8. Amends Section 253.097, Election Code, to make a conforming change.

SECTION 9. Amends Section 253.098, Election Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes a corporation or labor organization to make one or more campaign expenditures from its own property for certain purposes. Prohibits a corporation or labor organization from making an expenditure under this subsection for transportation or lodging.

(c) Makes a nonsubstantive change.

SECTION 10. Amends Section 253.162, Election Code, as follows:

Sec. 253.162. (a) Prohibits a judicial candidate or officeholder who makes political expenditures from the person's personal funds from reimbursing the personal funds from political contributions in certain aggregate amounts for each election in which the person's name appears on the ballot.

(b) Prohibits a judicial candidate or officeholder from performing certain functions regarding the repayment of loans or other extensions of credit.

(c) Prohibits the total amount of both reimbursements under Subsection (a) and repayments under Subsection (b)(2) made by a candidate or officeholder from exceeding the amount prescribed by Subsection (a).

(d) Authorizes a person who is both a candidate and an officeholder to reimburse the person's personal funds or repay loans from political contributions only in one capacity.

(e) Prohibits a judicial candidate or officeholder from paying interest on a loan from the candidate's or officeholder's personal funds or on a loan from the personal funds of certain other persons.

(f) Makes a nonsubstantive change. Provides that a person who violates this section is liable for a civil penalty not to exceed three times the amount by which the reimbursement or repayment made in violation of this section exceeds the applicable limit prescribed by Subsection (a).

SECTION 11. Amends Section 254.031, Election Code, as follows:

Sec. 254.031. Requires each report filed under this chapter, except as otherwise provided by this chapter, to include certain information. Requires each report filed under this chapter by an out-of-state political committee to include, instead of the information required by Subsections (a)(3), (5), and (6), certain other types of information. Provides that this section does not require an out-of-state political committee that is established by a state political party as the party's primary political committee for making political contributions and political expenditures to report a contribution to a similar political committee established by a different state political party. Makes a nonsubstantive change.

SECTION 12. Amends Section 254.0311(b), Election Code, to require a report filed under this section to include certain information. Makes conforming changes.

SECTION 13. Amends Chapter 254B, Election Code, by adding Section 254.0312, as follows:

Sec. 254.0312. **REPORTING BY OUT-OF-STATE POLITICAL COMMITTEE.** Provides that an out-of-state political committee that files reports with the Federal Election Commission is not required to file reports under this chapter. Requires an out-of-state committee, not later than a certain date, to provide to the Texas Ethics Commission certain information necessary to locate the committee's report covering that reporting period on the Federal Election Commission's Internet website. Requires the Texas Ethics Commission to promptly place on the commission's Internet website a link to that report. Requires an out-of-state political committee that does not file reports with the Federal Election Commission to comply with this chapter in the same manner as any other political committee.

SECTION 14. Amends Sections 254.038(a)-(c), Election Code, as follows:

(a) Requires certain persons, in addition to other reports required by this chapter, to file additional reports during the period beginning the ninth day before election day and

ending at 5 p.m. (rather than 12 noon) on the day before (rather than the second day before) election day.

(b) Requires each report required by this section to include certain information.

(c) Requires a report under this section to be filed by telegram or telephonic facsimile machine, by hand, or electronically with the Texas Ethics Commission (commission) not later than 48 hours after the contribution is accepted.

SECTION 15. Amends Section 254.039(a), Election Code, to require certain general-purpose committees, in addition to other reports required by this chapter, to file a report by telegram or telephonic facsimile machine, by hand, or electronically with the commission not later than 24 (rather than 48) hours after the expenditure is made.

SECTION 16. Amends Chapter 254B, Election Code, by adding Section 254.0392, as follows:

Sec. 254.0392. REPORTS CONCERNING CERTAIN CANDIDATE-SPECIFIC ADVERTISING. (a) Requires a person who makes an expenditure that exceeds \$2,500 for targeted, candidate-specific advertising in a covered preelection period, except as provided by Subsection (e) or (f), to file a report of contributions and expenditures as provided by this section.

(b) Defines “advertising,” “candidate-specific,” “covered preelection period,” and “targeted” advertising for purposes of this section.

(c) Requires a person who makes an expenditure for which reporting is required under this section to file a report by a certain date under certain conditions.

(d) Requires each report under this section to include certain information.

(e) Provides that this section does not apply in certain cases.

(f) Provides that a person who files reports with the Federal Election Commission is not required to file reports under this section. Requires the person, by a certain date, to provide to the Texas Ethics Commission information necessary to locate the person's report covering that reporting period on the Federal Election Commission's Internet website. Requires the Texas Ethics Commission to promptly place on the commission's Internet website a link to that report.

(g) Provides that a person who, during a covered period, makes an expenditure for advertising that contains a reference to a clearly identified candidate is presumed to have made an expenditure for which reporting is required under this section. Authorizes a person who makes such an expenditure to file with the Texas Ethics Commission (commission) an affidavit stating that the expenditure was not made with the intent to influence the election of a candidate. Requires the commission to perform certain functions.

SECTION 17. Amends Section 254.0401, Election Code, as follows:

Sec. 254.0401. (a) Deletes reference to Subsection (b).

(b) Deletes original Subsections (b) and (c) regarding the availability of certain reports via the Internet or other electronic means. Redesignates original Subsection (d) as Subsection (b).

(c) Redesignates original Subsection (e) as Subsection (c). Requires the Texas Ethics commission, before making a report filed under Section 254.036(b) available on the Internet, to remove each portion, other than street name, city, state, and zip code, of the address of a person listed as having made a political contribution to the person filing the report.

SECTION 18. Amends Section 254.0402, Election Code, by adding Subsection (c) to require the electronic access to information from reports filed with the Texas Ethics Commission (commission) required by Subsection (b) to permit a person to compile a list of the political contributions made by any person. Requires a list compiled under this subsection to include certain information.

SECTION 19. Amends Chapter 254B, Election Code, by adding Section 254.043, as follows:

Sec. 254.043. CONTRIBUTION OR EXPENDITURE PROHIBITED WHEN REPORT OUTSTANDING. Prohibits a person who does not file a report required under this chapter from knowingly accepting a political contribution or knowingly making a political expenditure during a certain period. Prohibits a political committee whose campaign treasurer is also the campaign treasurer of a political committee that does not file a report required under this chapter from knowingly accepting a political contribution or knowingly making a political expenditure during the period prescribed by this section. Provides that a candidate who violates this section is liable for a civil penalty of \$100 for each day during the period prescribed by this section. Provides that the campaign treasurer of a political committee that violates this section is liable for a civil penalty of \$500 for each day during the period prescribed by this section. Provides that a person who violates this section commits an offense that is a Class C misdemeanor.

SECTION 20. Amends Section 254.121, Election Code, to require each report by a campaign treasurer of a specific-purpose committee, in addition to the contents required by Section 254.031, to include certain information.

SECTION 21. Amends Section 254.151, Election Code, to require each report by a campaign treasurer of a general-purpose committee, in addition to the contents required by Section 254.031, to include certain information.

SECTION 22. Amends Section 254.156, Election Code, to require each monthly report filed under this subchapter to comply with Sections 254.031 and 254.151, except that the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is \$30 (rather than \$10) in the aggregate.

SECTION 23. Amends Section 254.203(a), Election Code, to prohibit a person from retaining political contributions covered by this title, assets purchased with the contributions, or interest and other income earned on the contributions for more than six years after the later of the date the person ceases to be an officeholder; or the date of the most recent election in which the person was a candidate (rather than the date the person files a final report under this chapter).

SECTION 24. Amends Section 254.204(a), Election Code, to require the former officeholder or candidate, at the end of the period prescribed by Section 254.203, to remit any unexpended political contributions to certain entities. Deletes text regarding a specific six-year period.

SECTION 25. Amends Section 254.205(a), Election Code, to make a conforming change.

SECTION 26. Amends Section 255.001, Election Code, by amending Subsections (a) and (c) and adding Subsections (d)-(f), as follows:

(a) Prohibits a person from knowingly entering into a contract or other agreement to

print, copy, publish, or broadcast political advertising that does not indicate certain information in the advertising.

(c) Provides that a person is not required to state the address of a campaign treasurer, candidate, officeholder, or political committee in political advertising broadcast on radio.

(d) Provides that certain political advertising is not required to indicate the full name and address of each candidate under certain conditions.

(e) Provides that certain political advertising is not required to state certain information. Provides that, for purposes of this subsection, only a recipient to whom the candidate, officeholder, or political committee or that person's agent directly distributes the electronic mail is considered to be an original recipient.

(f) Makes a nonsubstantive change.

SECTION 27. Amends Section 7.108, Education Code, as follows:

Sec. 7.108. Deletes text regarding a person interested in selling bonds of any type or a person engaged in manufacturing, shipping, selling, or advertising textbooks or otherwise connected with the textbook business. Provides that a person commits an offense if the person performs certain actions. Provides that a person seeking election to or serving on the State Board of Education (board) commits an offense if the person knowingly accepts a political contribution from a person described by this section. Makes conforming and nonsubstantive changes. Deletes text defining "textbook."

SECTION 28. Repealers in the Election Code:

Section 251.005 (Out-of-State Committees Excluded);

Section 253.032 (Limitation on Contribution by Out-of-State Committee);

Section 253.042(g) (regarding Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans); and

Section 253.100(d) (regarding Expenditures for General-Purpose Committee).

SECTION 29. (a) Makes application of Section 253.031, Election Code, as amended by this Act, prospective regarding a political contribution accepted or political expenditure made by an out-of-state political committee, as that term is defined by Section 251.001, Election Code.

(b) Makes application of Sections 253.042 and 253.162, Election Code, as amended by this Act, prospective regarding the repayment of a loan or extension of credit.

(c) Makes application of Section 253.098, Election Code, as amended by this Act, prospective regarding the appearance of a candidate at a meeting of the stockholders or members of a corporation or labor organization or of the families of stockholders or members of a corporation or labor organization.

(d) Makes application of Section 254.0392, Election Code, as added by this Act, prospective regarding the reporting of an expenditure for targeted, candidate-specific advertising in a covered preelection period.

(e) Makes application of Chapter 254, Election Code, as amended by this Act,

prospective regarding the reporting of a political contribution accepted or political expenditure.

(f) Makes application of Chapter 254H, Election Code, as amended by this Act, prospective regarding a person who is a candidate, as that term is defined by Section 251.001, Election Code, or an officeholder subject to Title 15, Election Code.

(g) Requires a person who ceased to be an officeholder or who was last a candidate in an election before September 1, 1995, notwithstanding Section 254.203, Election Code, as that section existed before amendment by this Act, to, not later than January 1, 2002, dispose of unexpended political contributions, assets purchased with political contributions, and interest or other income earned on political contributions in compliance with Section 254.203, Election Code, as amended by this Act. Requires a person who ceased to be an officeholder or candidate on or after September 1, 1995, to dispose of unexpended political contributions, assets purchased with political contributions, and interest or other income earned on political contributions in compliance with Section 254.203, Election Code, as amended by this Act, regardless of whether the person has filed a final report under Chapter 254, Election Code.

(h) Provides that the changes in law made to Section 255.001, Election Code, by this Act apply only to an offense committed on or after September 1, 2001. Provides that, for the purposes of this section, an offense is committed before September 1, 2001, if any element of the offense occurs before that date.

(i) Provides that an offense under Section 255.001, Election Code, that is committed before September 1, 2001, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(j) Provides that the change in law made to Section 7.108, Education Code, by this Act applies only to an offense committed on or after September 1, 2001. Provides that, for the purposes of this section, an offense is committed before September 1, 2001, if any element of the offense occurs before that date.

(k) Provides that an offense under Section 7.108, Education Code, committed before September 1, 2001, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 30. Effective date: September 1, 2001.