

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2
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State Affairs
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Committee Report (Substituted)

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. C.S.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 (2) and (8) and adding Subdivisions (21) and (22), as follows:

- (2) Redefines “contribution.”
- (8) Redefines “direct campaign expenditure.”
- (21) Defines “coordinated general public political communication.”
- (22) Defines “express advocacy.”

SECTION 2. Amends Section 251.005, Election Code, as follows:

Sec. 251.005. New heading: ELECTRONIC FILING FOR OUT-OF-STATE COMMITTEES. (a) Provides that an out-of-state political committee that files reports with the Federal Election Commission or with the election authority of another state is not required to file such reports with the Texas Ethics Commission if all of the committee’s reports are available electronically. Requires an out-of-state political committee that elects not to file reports with the Texas Ethics commission to file a one-page notice with the commission making certain statements.

- (b) Provides that a report filed with another state is not considered to be available electronically under Subsection (a) if the Texas Ethics Commission determines that the disclosure requirements of the other state are less than the disclosure requirements of this state. Deletes text regarding an out of state committee deciding to file a campaign treasurer appointment.

Deletes existing Subsection (c).

SECTION 3. Amends Chapter 251A, Election Code by adding Section 251.010, as follows:

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

(b) Provides that the use of information that is copied or otherwise obtained from reports filed under this title in newspapers, magazines, books, or other similar communications is permissible if the principal purpose of the communication is to educate the public and not to communicate any contributor information listed on the reports for the purpose of soliciting contributions or for other commercial purposes.

(c) Authorizes a person required to report contributions under Chapter 254 to submit up to 10 pseudonyms on each report filed in order to protect against illegal use of names and addresses of contributors provided that the total amount of fictitious contributions does not exceed the greater of five percent of contributions reported or \$2,500. Requires the filer, if a filer uses pseudonyms, to subtract the total dollar amount of the fictitious contributions from the total of unitemized contributions required to be reported under Section 254.031 (a)(6). Requires any filer who uses pseudonyms to submit a list of the pseudonyms and amounts contributed separately to the commission on or before the date on which the report containing the fictitious names is filed. Requires the commission to exclude the list of pseudonyms from the public records, and requires the list to be kept confidential by the commission and prohibits it from being disclosed to the public for any reason without the express written consent of the filer.

(d) Requires any person found to have violated Subsection (a) or (c) in addition to any penalties imposed by the commission, to be liable in damages to the person filing the report. Defines “damages” in this subsection. Requires the person filing the report to in addition to damages, 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.

(e) Prohibits a filer from using this section for the purpose of circumventing the reporting requirements of this title by materially inflating the amount of contributions reported by the filer.

SECTION 4. Amends Section 252.003(a), Election Code, to require a campaign treasurer appointment by a general-purpose committee, in addition to the information required by Section 252.002, to include certain items.

SECTION 5. 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 felony of the third degree.

SECTION 6. Amends Section 253.031, Election Code, to prohibit a political committee that files its appointment of treasurer within 30 days before an election from knowingly making or authorizing a campaign contribution or campaign expenditure supporting or opposing a candidate for an office specified by Section 252.005(1) in a primary or general election unless the committee files within 48 hours after such appointment of treasurer a report that contains the information required by Chapter 254 covering the period through the date the committee's appointment of treasurer was filed. Provides that this section does not apply to an out-of-state political committee unless the committee meets the requirements of Section 251.005.

SECTION 7. Amends Section 253.033, Election Code, as follows:

Sec. 253.033. New heading: CASH CONTRIBUTIONS EXCEEDING \$100 PROHIBITED; ANONYMOUS CONTRIBUTIONS. Requires a candidate, officeholder, or political committee that receives an anonymous cash contribution in excess of \$50 to promptly disburse the amount over \$50 to one or more of the entities listed in Section 254.204(a)(1), (3), (5), or (6). Authorizes anonymous cash contributions of \$50 or less to be used by the candidate, officeholder, or political committee for any lawful purpose. Makes a nonsubstantive change.

SECTION 8. Amends Sections 253.042(b), and (e), Election Code, as follows:

(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 or is obligated or that the candidate or officeholder guarantees.

(e) Provides that this section does not prohibit the payment of interest at a commercially reasonable rate on loans covered by this section from a financial institution. Prohibits a candidate or officeholder from using political contributions to pay interest on loans from a candidate's or officeholder's personal funds or on loans from the personal funds of any person related to the candidate or officeholder within the second degree by affinity or consanguinity. Deletes text regarding the amount prescribed by Subsection (a), (b), or (c).

SECTION 9. Amends Section 253.063, Election Code, to prohibit unreimbursed travel expenses incurred by an individual from being considered a contribution or a direct campaign expenditure and prohibits such expenses from being reportable under this subchapter or Chapter 254. Deletes text authorizing direct campaign expenditures consisting of personal travel expenses incurred by an individual to be made without complying with Section 253.062(a)(1).

SECTION 10. 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 11. Amends Chapter 253D, Election Code, by adding Section 253.105, as follows:

Sec. 253.105. CONTRIBUTION BY PARTNERSHIP OR LIMITED LIABILITY COMPANY. Provides that this subchapter does not prohibit a political contribution made by a partnership or limited liability company if the contribution is not charged to the profits, interest, or capital account of a partner or member that is a corporation covered by Section 253.091.

SECTION 12. Amends Section 253.162, Election Code, by amending Subsections (b), (c), and (d) and adding Subsections (e) and (f), as follows:

(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 judicial 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) Provides that this section does not prohibit the payment of interest at a commercially reasonable rate on loans covered by this section from a financial institution. Prohibits a judicial candidate or officeholder from using political contributions to pay 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.

SECTION 13. Amends Section 254.031(a), Election Code, to require each report filed under this chapter, except as otherwise provided by this chapter, to include certain information.

SECTION 14. Amends Chapter 254B, Election Code, by adding Sections 254.0312 and 254.0313, as follows:

Sec. 254.0312. **BEST EFFORTS.** Provides that a person required to file a report under this chapter is considered to have used best efforts to obtain, maintain, and report the information required by Section 254.031(a)(2) if the person or the person's campaign treasurer complies with this section. Requires each written solicitation for political contributions from an individual to include certain items. Requires, for certain political contributions received, the person to make at least one oral or written request for the missing information. Sets forth guidelines for a request under this section. Requires a person to report certain information. Authorizes a person, instead of the request and statement required by this section, to use any disclosure containing a similar request and statement that has been approved by the Federal Election Commission.

Sec. 254.0313. **REPORTING BY OUT-OF-STATE POLITICAL COMMITTEE.** Requires each report filed under this chapter by an out-of-state political committee, instead of the information required by Sections 254.031(a)(4), (6), and (7), to include certain items.

SECTION 15. Amends Section 254.038(a), Election Code, to require 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 12 noon on the second day before election day.

SECTION 16. Amends Chapter 254B, Election Code, by adding Section 254.0381, as follows:

Sec. 254.0381. **TELEGRAM REPORT OF CERTAIN DIRECT CAMPAIGN EXPENDITURES.** Sets forth guidelines and requirements regarding telegram or telephonic facsimile reports of certain direct campaign expenditures.

SECTION 17. Amends Section 254.041(c), Election Code, to provide that a violation of Subsection (a)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the person intentionally failed to file the report on time with knowledge of the legal obligation to file the report (rather than if the report fails to include information required by Section 254.061(3) or Section 254.091(2), as applicable.)

SECTION 18. Amends Section 254.042(a), Election Code, to delete a reference to Section 254.039.

SECTION 19. Amends Section 254.061, Election Code, to require each report by a candidate, in addition to the contents required by Section 254.031, to include certain items.

SECTION 20. Amends Section 254.091, Election Code, to require each report by an officeholder, in addition to the contents required by Section 254.031, to include certain items.

SECTION 21. Amends Section 254.128, Election Code, as follows:

Sec. 254.128. New heading: NOTICE TO CANDIDATE AND OFFICEHOLDER OF IN-KIND CONTRIBUTIONS. Requires, if a specific-purpose committee, other than a special-purpose committee established, controlled, or authorized by the candidate or officeholder, makes political expenditures for a candidate or officeholder that constitute an in-kind contribution, the committee's campaign treasurer to deliver written notice of that fact to the affected candidate or officeholder by a certain date. Requires the notice to include certain items.

SECTION 22. 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 23. Amends Section 254.161, Election Code, to require, if a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee makes direct political expenditures for a candidate or officeholder that constitute a contribution, that notice of that fact be given to the affected candidate or officeholder as provided by Section 254.128 for a specific-purpose committee.

SECTION 24. Amends Section 257.002, Election Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires, subject to Subsection (c), a political party that accepts contributions authorized by Section 253.104 to maintain the contributions in a separate account.

(c) Prohibits anything in this title from prohibiting a political party from transferring funds held in the account required to be maintained under Subsection (b) to another account maintained by the political party under the requirements of federal law for the purpose of disbursing the political party's funds generally if the political party can reasonably demonstrate that the funds are being disbursed from the other account in compliance with applicable federal law and for permitted uses and purposes.

SECTION 25. Repealers in the Election Code: Sections 253.032; 253.037; 253.100(d); 254.032; 254.033; and 254.039.

SECTION 26. Makes application of this Act prospective regarding an offense committed on or after the effective date of this Act. Provides that, for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 27. Makes application of Sections 253.042 and 253.162, Election Code, as amended by this Act, prospective regarding repayment of a loan or extension of credit made on or after September 1, 2001.

SECTION 28. Effective date: September 1, 2001.