

SENATE AMENDMENTS

2nd Printing

By: Bohac

H.B. No. 1720

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the use of public funds by a political subdivision for
3 communications that contain false information relating to a ballot
4 measure; providing a criminal penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 255.003, Election Code, is amended by
7 amending Subsections (b) and (c) and adding Subsection (b-1) to
8 read as follows:

9 (b) Subsection (a) [~~This section~~] does not apply to a
10 communication that factually describes the purposes of a measure if
11 the communication does not advocate passage or defeat of the
12 measure.

13 (b-1) An officer or employee of a political subdivision may
14 not spend or authorize the spending of public funds for a
15 communication describing a measure if the communication contains
16 material information that the officer or employee knows is false.

17 (c) A person who violates Subsection (a) or (b-1) [~~this~~
18 ~~section~~] commits an offense. An offense under this section is a
19 Class A misdemeanor.

20 SECTION 2. Section 255.003, Election Code, as amended by
21 this Act, applies only to an expenditure of public funds that is
22 made on or after September 1, 2009. An expenditure of public funds
23 that is made before September 1, 2009, is governed by the law in
24 effect on the date the expenditure is made, and the former law is

1 continued in effect for that purpose.

2 SECTION 3. This Act takes effect September 1, 2009.

ADOPTED

MAY 25 2009

Atty Gen
Secretary of the Senate

By: *Denell*

H.B. No. 1720

Substitute the following for H.B. No. 1720:

By: *Denell*

C.S. H.B. No. 1720

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3 communications that contain false information relating to a ballot
4 measure; providing a criminal penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 255.003, Election Code, is amended by
7 amending Subsections (b) and (c) and adding Subsection (b-1) to
8 read as follows:

9 (b) Subsection (a) [~~This section~~] does not apply to a
10 communication that factually describes the purposes of a measure if
11 the communication does not advocate passage or defeat of the
12 measure.

13 (b-1) An officer or employee of a political subdivision may
14 not spend or authorize the spending of public funds for a
15 communication describing a measure if the communication contains
16 information that:

17 (1) the officer or employee knows is false; and

18 (2) is sufficiently substantial and important as to be
19 reasonably likely to influence a voter to vote for or against the
20 measure.

21 (c) A person who violates Subsection (a) or (b-1) [~~this~~
22 ~~section~~] commits an offense. An offense under this section is a
23 Class A misdemeanor.

24 SECTION 2. Section 255.003, Election Code, as amended by

1 this Act, applies only to an expenditure of public funds that is
2 made on or after September 1, 2009. An expenditure of public funds
3 that is made before September 1, 2009, is governed by the law in
4 effect on the date the expenditure is made, and the former law is
5 continued in effect for that purpose.

6 SECTION 3. This Act takes effect September 1, 2009.

ADOPTED

MAY 25 2009

Atty Gen
Secretary of the Senate

BY: Wendy R DAVIS

FLOOR AMENDMENT NO. 1
THIRD READING

1 Amend C.S.H.B. No. 1720 (senate committee report) as follows:

2 (1) In SECTION 1 of the bill, strike the recital (page 1,
3 lines 14-16) and substitute the following:

4 Section 255.003, Election Code, is amended to read as
5 follows:

6 (2) In SECTION 1 of the bill, immediately before amended
7 Section 255.003(b), Election Code (page 1, between lines 16 and
8 17), insert the following:

9 Sec. 255.003. UNLAWFUL USE OF PUBLIC FUNDS FOR POLITICAL
10 ADVERTISING. (a) An officer or employee of a political
11 subdivision may not knowingly spend or authorize the spending of
12 public funds for political advertising.

13 (3) In SECTION 1 of the bill, following amended Section
14 255.003(c), Election Code (page 1, between lines 31 and 32), insert
15 the following:

16 (d) It is an affirmative defense to prosecution for an
17 offense under this section or the imposition of a civil penalty for
18 conduct under this section that an officer or employee of a
19 political subdivision reasonably relied on a court order or an
20 interpretation of this section in a written opinion issued by:

21 (1) a court of record;

22 (2) the attorney general; or

23 (3) the commission.

24 (e) On written request of the governing body of a political
25 subdivision that has ordered an election on a measure, the
26 commission shall prepare an advance written advisory opinion as to
27 whether a particular communication relating to the measure does or
28 does not comply with this section.

29 (f) Subsections (d) and (e) do not apply to a port authority

1 or navigation district.

2 (4) In SECTION 2 of the bill (page 1, line 32), strike
3 "Section 255.003, Election Code, as amended" and substitute "(a)
4 Section 255.003(b-1), Election Code, as added".

5 (5) Between SECTIONS 2 and 3 of the bill (page 1, between
6 lines 37 and 38), insert the following:

7 (b) Section 255.003(d), Election Code, as added by this Act,
8 applies to the prosecution of conduct committed before, on, or
9 after September 1, 2009, as to which:

10 (1) judgment has not been entered or a sentence has not
11 been imposed; or

12 (2) if judgment has been entered and a sentence
13 imposed, an appeal is pending or the time for appeal has not
14 expired.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1720 by Bohac (Relating to the use of public funds by a political subdivision for communications that contain false information relating to a ballot measure; providing a criminal penalty.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would amend Section 255.003 of the Election Code to prohibit an officer or employee of a political subdivision from spending or authorizing spending of public funds for a communication describing a measure if the communication contains material, substantial, important, and influential information that the officer or employee knows is false. A violation would be a Class A misdemeanor. Provisions of the bill would apply only to an expenditure of public funds that is made on or after September 1, 2009.

The bill would further amend Section 255.003 of the Election Code to clarify a definition used for a finding of unlawful use of public funds for political advertising. The bill would provide for an affirmative defense to prosecution if an officer or employee of a political subdivision relied on information from court records, attorneys, or the Ethics Commission (Commission) to make a decision about expending funds. On written request of the governing body of a political subdivision that has ordered an election on a measure, the Commission shall prepare an advance written advisory opinion as to whether a particular communication relating to the measure complies with the section. The proposed new subsections of Section 255.003 would not apply to a port authority or navigation district. The provisions of the bill would apply to a prosecution of conduct committed before, on, or after September 1, 2009 to which judgment has not been entered, a sentence has not been imposed, an appeal is pending, or the time for appeal has not expired.

Local Government Impact

No significant fiscal implication to units of local government is anticipated as a result of enforcement actions, prosecution, or imposition of punishment for an offense committed.

Source Agencies:

LBB Staff: JOB, KJG, TP, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 22, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1720 by Bohac (Relating to the use of public funds by a political subdivision for communications that contain false information relating to a ballot measure; providing a criminal penalty.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Election Code to prohibit an officer or employee of a political subdivision from spending or authorizing spending of public funds for a communication describing a measure if the communication contains material, substantial, important, and influential information that the officer or employee knows is false. A violation would be a Class A misdemeanor.

Provisions of the bill would apply only to an expenditure of public funds that is made on or after September 1, 2009.

Local Government Impact

No significant fiscal implication to units of local government is anticipated as a result of enforcement actions, prosecution, or imposition of punishment for an offense committed.

Source Agencies:

LBB Staff: JOB, KJG, TP, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1720 by Bohac (Relating to the use of public funds by a political subdivision for communications that contain false information relating to a ballot measure; providing a criminal penalty.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would amend the Election Code to prohibit an officer or employee of a political subdivision from spending or authorizing spending of public funds for a communication describing a measure if the communication contains material information that the officer or employee knows is false. A violation would be a Class A misdemeanor.

Provisions of the bill would apply only to an expenditure of public funds that is made on or after September 1, 2009.

Local Government Impact

No significant fiscal implication to units of local government is anticipated as a result of enforcement actions, prosecution, or imposition of punishment for an offense committed.

Source Agencies:

LBB Staff: JOB, KJG, TP, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 17, 2009

TO: Honorable Todd Smith, Chair, House Committee on Elections

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1720 by Bohac (Relating to the use of public funds by a political subdivision for communications that contain false information relating to a ballot measure; providing a criminal penalty.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would amend the Election Code to prohibit an officer or employee of a political subdivision from spending or authorizing spending of public funds for a communication describing a measure if the communication contains material information that the officer or employee knows is false. A violation would be a Class A misdemeanor.

Provisions of the bill would apply only to an expenditure of public funds that is made on or after September 1, 2009.

Local Government Impact

No significant fiscal implication to units of local government is anticipated as a result of enforcement actions, prosecution, or imposition of punishment for an offense committed.

Source Agencies:

LBB Staff: JOB, TP, DB

