

BILL ANALYSIS

Senate Research Center
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H.B. 2586
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Administration
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been noted that, in the absence of more specific direction, the Texas Ethics Commission has relied on its rulemaking process to establish the method of operations for direct campaign expenditures following the decision handed down by the United States Supreme Court in 2010 in *Citizens United v. Federal Election Commission*. Concerns have been raised that this situation has resulted in unnecessary confusion and overly burdensome requirements imposed on political committees. H.B. 2586 seeks to address these concerns by establishing provisions relating to political contributions and political expenditures made to or by political committees or other persons.

H.B. 2586 amends current law relating to political contributions and political expenditures made to or by political committees or other persons.

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 (8) and (12) and adding Subdivisions (21), as follows:

(8) Redefines "direct campaign expenditures" to provide that a campaign expenditure does not constitute a contribution by the person making the expenditure to a candidate or officeholder if the expenditure is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure is made. Provides that a campaign expenditure made in connection with a measure does not constitute a contribution by the person making the expenditure if it is not made as a political contribution to a political committee supporting or opposing the measure.

(12) Redefines "political committee" to mean two or more persons acting in concert with a principal purpose of accepting political contributions or making political expenditures. Provides that the term does not include a group composed exclusively of two or more individual filers or political committees required to file reports under this title (Regulating Political Funds and Campaigns) who make reportable expenditures for a joint activity.

(21) Defines "in-kind contribution."

SECTION 2. Amends Subchapter A, Chapter 251, Election Code, by adding Sections 251.0015 and 251.0016, as follows:

Sec. 251.0015. COMMUNICATION WITH CANDIDATE. Provides that, for purposes of Section 251.001(8), communication between a person and a candidate, officeholder, or candidate's or officeholder's agent is not evidence that the person obtained the candidate's or officeholder's consent or approval for a campaign expenditure made after the

communication by the person on behalf of the candidate or officeholder unless the communication establishes that:

- (1) the expenditure is incurred at the request or suggestion of the candidate, officeholder, or candidate's or officeholder's agent;
- (2) the candidate, officeholder, or candidate's or officeholder's agent is materially involved in decisions regarding the creation, production, or distribution of a campaign communication related to the expenditure; or
- (3) the candidate, officeholder, or candidate's or officeholder's agent shares information about the candidate's or officeholder's plans or needs that is:
 - (A) material to the creation, production, or distribution of a campaign communication related to the expenditure; and
 - (B) not available to the public.

Sec. 251.0016. COMMON VENDOR. Provides that a person using the same vendor as a candidate, officeholder, or political committee established or controlled by a candidate or officeholder is not acting in concert with the candidate, officeholder, or committee to make a campaign expenditure unless the person makes the expenditure using information from the vendor about the campaign plans or needs of the candidate, officeholder, or committee that is:

- (1) material to the expenditure; and
- (2) not available to the public.

SECTION 3. Amends Section 252.003, Election Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a campaign treasurer appointment by a general-purpose committee, in addition to the information required by Section 252.002 (Contents of Appointment), to include:

- (1) makes no changes to this subdivision;
- (2)–(3) makes nonsubstantive changes to these subdivisions; and
- (4) before the committee is authorized to use a political contribution from a corporation or a labor organization to make a direct campaign expenditure in connection with a campaign for an elective office, an affidavit stating that:
 - (A) the committee is not established or controlled by a candidate or an officeholder; and
 - (B) the committee will not use any political contribution from a corporation or a labor organization to make a political contribution to:
 - (i) a candidate for elective office;
 - (ii) an officeholder; or
 - (iii) a political committee that has not filed an affidavit under this subdivision or Section 252.0031(a)(2).

(a-1) Provides that filing an affidavit under Subsection (a)(4) does not create any additional reporting requirements under Section 254.261 (Direct Campaign Expenditure Exceeding \$100).

SECTION 4. Amends Section 252.0031, Election Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Makes a nonsubstantive change. Requires a campaign treasurer appointment by a specific-purpose committee for supporting or opposing a candidate for an office specified by Section 252.005(1) (relating to requiring an individual to file a campaign treasurer appointment for the individual's own candidacy with the Texas Ethics Commission, if the appointment is made for candidacy for certain offices), in addition to the information required by Section 252.002, to include:

(1) creates this subdivision from existing text and makes a nonsubstantive change;
or

(2) before the committee is authorized to use a political contribution from a corporation or a labor organization to make a direct campaign expenditure in connection with a campaign for an elective office, an affidavit stating that:

(A) the committee is not established or controlled by a candidate or an officeholder;

(B) the committee will not use any political contribution from a corporation or a labor organization to make a political contribution to:

(i) a candidate for elective office;

(ii) an officeholder; or

(iii) a political committee that has not filed an affidavit under this subdivision or Section 252.003(a)(4).

(a-1) Requires the committee, if the information required to be provided under Subsection (a) changes, to immediately file an amended appointment reflecting the change, rather than requiring the committee, if that information changes, to immediately file an amended appointment reflecting the change.

(a-2) Provides that filing an affidavit under Subsection (a)(2) does not create any additional reporting requirements under Section 254.261.

SECTION 5. Amends Subchapter D, Chapter 253, Election Code, by adding Section 253.097, as follows:

Sec. 253.097. CONTRIBUTION FROM CORPORATION OR LABOR ORGANIZATION. Authorizes a corporation or labor organization to make campaign contributions from its own property to a political committee that has filed an affidavit with the committee's campaign treasurer appointment in accordance with Section 252.003(a)(4) or 252.0031(a)(2)

SECTION 6. Amends Sections 253.100(a) and (e), Election Code, as follows:

(a) Authorizes a corporation, in addition to any other expenditure that is considered permissible under this section (Expenditures For General-Purpose Committees), to make an expenditure for the maintenance and operation of a general-purpose committee, including an expenditure for:

(1)–(10) makes no changes to these subdivisions;

(11)–(12) makes nonsubstantive changes to these subdivisions; or

(13) creation and maintenance of the committee's public Internet web pages that do not contain political advertising.

(c) Provides that Subsection (d) (relating to prohibiting corporation or labor organization from making expenditures for certain efforts) does not apply to a corporation or labor organization making a campaign contribution to a political committee under Section 253.097 or an expenditure to communicate with its stockholders or members, as applicable, or with the families of its stockholders or members as provided by Section 253.098 (Communication With Stockholders or Members).

SECTION 7. Amends Section 253.101, Election Code, by adding Subsection (a-1), as follows:

(a-1) Provides that Subsection (a) (relating to prohibiting a political committee assisted by a corporation or labor organization from making a political contribution or political expenditure in whole or part from money that is known by a member or officer of the political committee to be dues, fees, or other money required as a condition of employment or condition of membership in a labor organization) does not prohibit a political committee from making a political contribution or political expenditure wholly or partly from a campaign contribution made by a corporation or labor organization to the political committee under Section 253.096 (Contribution on Measure) or Section 253.097.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2019.