

BILL ANALYSIS

S.B. 2035
By: Hughes
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that concerns have grown in recent years over the role of foreign influence in U.S. political processes, particularly through indirect channels such as contributions to ballot measure campaigns, and that while federal law prohibits direct contributions by foreign nationals to candidates, Texas election law lacks clear prohibitions addressing foreign involvement in local and state ballot initiatives. The bill sponsor has also informed the committee that reports and investigations across the country have raised alarms about foreign-backed entities indirectly influencing ballot outcomes through donations, polling, or advocacy efforts, often by routing funds through intermediaries or nonprofit organizations. S.B. 2035 seeks to close this gap in state election law by prohibiting political committees that support or oppose ballot measures from knowingly soliciting a foreign national to make an expenditure on the committee's behalf or from knowingly soliciting or accepting contributions from a foreign national or an entity that has received significant foreign funding.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Restrictions on Contributions, Expenditures, and Related Activities Involving Political Committees That Support or Oppose a Ballot Measure

S.B. 2035 amends the Election Code to prohibit a political committee that supports or opposes a ballot measure from knowingly and directly or indirectly doing the following:

- soliciting or accepting a contribution from a foreign national;
- soliciting or accepting a contribution from a person that in the four years preceding the date on which the contribution is made knowingly accepted money, directly or indirectly and other than revenue, from one or more foreign nationals that in the aggregate exceeds \$100,000; or
- soliciting a foreign national to make an expenditure on the committee's behalf.

The bill requires the committee, on receipt of a contribution by a political committee, to obtain from the person making the contribution a written affirmation that the person is not a foreign national and has not in the four years preceding the date on which the contribution is made knowingly accepted money other than revenue from one or more foreign nationals that in the aggregate exceeds \$100,000. The bill establishes that, for these purposes, a political committee

that solicits or accepts a contribution from a foreign national and has accepted contributions from one or more foreign nationals that in the aggregate exceed \$100,000 during the preceding four-year period is presumed to have knowingly solicited or accepted the contribution in violation of these provisions.

S.B. 2035 defines the following terms:

- "directly or indirectly" as, with respect to an act by a person, the person acting alone or jointly with, through, or on behalf of another person;
- "foreign national" as the following:
 - an individual who is not a U.S. citizen or national;
 - a government of a foreign country or of a political subdivision of a foreign country;
 - a foreign political party;
 - a person that is organized under the law of or has the person's principal place of business in a foreign country; and
 - a person organized under the laws of the United States, including the laws of each state of the United States, that is wholly or mostly owned by a person that meets any of the former criteria; and
- "revenue" as the following:
 - employment income, including any salary, wages, allowances, overtime pay, pension, annuity, bonuses, or any other monetary income a person receives as compensation for employment or the provision of services;
 - a gift; and
 - an inheritance.

S.B. 2035 establishes that a reference to a political committee under these provisions means a political committee that supports or opposes a ballot measure. The bill also establishes that a prohibition under these provisions related to contributions from and expenditures by a foreign national that is a person described by a certain provision of the bill does not apply under the following conditions:

- the contribution or expenditure is derived entirely from money generated by the person's operations in the United States; and
- all decisions related to the contribution or expenditure are made by individuals who are United States citizens or nationals, except for decisions on setting overall budget amounts.

S.B. 2035 prohibits a foreign national from directing, dictating, controlling, or directly or indirectly participating in a person's decision-making process with regard to influencing a ballot measure, including the person's decision to make a contribution or expenditure to influence a ballot measure, and from directly or indirectly soliciting the making by a person of a donation, contribution, or expenditure to influence a ballot measure.

S.B. 2035 requires a political committee or a person that has made a direct campaign expenditure to support or oppose a ballot measure, on the filing of an applicable campaign finance report, to certify to the Texas Ethics Commission (TEC), in the form and manner the TEC requires, that the committee or person:

- has not in the four years preceding the date on which the expenditure was made knowingly accepted money other than revenue from one or more foreign nationals that in the aggregate exceeds \$100,000; and
- will not for the remainder of the year during which the ballot measure will appear on the ballot knowingly accept money other than revenue from one or more foreign nationals that in the aggregate exceeds \$100,000.

The bill creates a Class B misdemeanor offense for a person who violates this requirement and, in addition to that penalty, makes a person who violates the requirement liable for a civil penalty in an amount not to exceed twice the amount of the contribution or expenditure for which the person failed to make such a certification.

S.B. 2035 authorizes the attorney general to bring a civil action to enforce these provisions and establishes that, in such an action, the burden of proof is on the state. The bill requires the court, before discovery in such an action, to hold a hearing to determine whether there is probable cause to believe that a person has violated these provisions. The bill requires the court, if after that hearing the court determines that probable cause does not exist to believe that a violation of those bill provisions occurred, to dismiss the action with prejudice, or, if the court determines that probable cause exists to believe that such a violation occurred, requires the court to take the following actions:

- enter an order stating the court's findings;
- resume the action; and
- cause the action to be expedited.

The bill authorizes a defendant, after such an affirmative finding and at a time determined by the court and before the scheduling of a trial date, to present evidence sufficient to rebut the probable cause finding by making an ex parte presentation of records to the court for in camera review.

S.B. 2035 requires a political committee, if the court determines that the committee has accepted a contribution in violation of the bill's restrictions, not later than the 30th day after the date of the court's determination, to return to the person who made the contribution the contribution accepted in violation of those restrictions. The bill requires the court, if either party appeals the court's determination, to order the contribution at issue to be placed in escrow pending the outcome of the appeal.

S.B. 2035 makes a person who violates the bill's restrictions liable for a civil penalty in an amount not to exceed twice the amount of the contribution accepted or expenditure made in violation of those restrictions. The bill establishes that, if a political committee that was determined to have accepted a contribution in violation of those restrictions is financially unable to return all or part of the required contribution or pay an imposed civil penalty, the committee's directors, officers, and executive members are jointly and severally liable for returning the remaining part of the contribution or paying the civil penalty.

S.B. 2035 requires the court, in addition to the former penalty, to issue injunctive relief to prevent a person that violates the bill's restrictions from committing further violations or from aiding and abetting a violation. The bill authorizes the attorney general to bring an action to enjoin a person who violates those restrictions from engaging in activities that would require registration as a lobbyist under applicable Government Code provisions for a period to be determined by the court. The bill requires the court, in determining the period to prohibit a person from engaging in those activities, to consider the following criteria:

- the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- whether the person acted in bad faith when engaging in conduct constituting a violation of those bill provisions;
- whether the person has previously violated those bill provisions; and
- the duration of an injunction necessary to deter future violations.

S.B. 2035 requires an investigation of an alleged violation of the bill's restrictions to be conducted in a manner to ensure that the identity of a person who makes a lawful donation to a nonprofit organization is kept confidential. The bill sets out the following provisions with respect to such an investigation:

- a prohibition against the attorney general or a court compelling the disclosure of the identity of a person who makes a lawful donation to a nonprofit organization unless the disclosure is directly related to an alleged violation of those bill provisions; and
- a prohibition against a public servant disclosing to the public the identity of a person who makes a lawful donation to a nonprofit organization unless the person is determined to have violated those bill provisions.

The bill creates a Class A misdemeanor offense for a person who is a public servant and violates these provisions. The bill establishes that, for those purposes, a person is determined to have violated the bill's restrictions if a court has entered an order finding that the person has done so.

These provisions apply only to a contribution or expenditure made or an activity related to the making of a contribution or expenditure that occurs on or after the bill's effective date. A contribution or expenditure made or a related activity that occurs before that date is governed by the law in effect at the time the contribution or expenditure was made or the activity occurred, and the former law is continued in effect for that purpose.

Contents of Appointment by Political Committees That Support or Oppose a Ballot Measure

S.B. 2035 requires a campaign treasurer appointment by a political committee that supports or opposes a ballot measure, in addition to the information required by statutory provisions governing the contents of such an appointment, to include an affidavit certifying that the committee, acting alone or jointly with, through, or on behalf of another person, did not receive direct or indirect funding from a foreign national for a preliminary activity in connection with the ballot measure. The bill establishes that, for those purposes, a preliminary activity in connection with a ballot measure includes the following:

- conducting a poll or focus group on the ballot measure;
- drafting sample ballot measure language;
- making telephone calls in relation to the ballot measure; or
- incurring travel expenses in relation to the ballot measure.

These provisions apply only to a campaign treasurer appointment required to be filed under applicable state law on or after the bill's effective date. A campaign treasurer appointment required to be filed before the bill's effective date is governed by the law in effect at the time the appointment was filed, and the former law is continued in effect for that purpose.

Additional Contents of Reports of Political Committees That Support or Oppose a Ballot Measure

S.B. 2035 requires the campaign treasurer of a political committee that supports or opposes a ballot measure, in addition to the contents required by statutory provisions governing the general contents of campaign finance reports, to include an affirmation of the following:

- that the committee did not knowingly and directly or indirectly do either of the following:
 - solicit or accept a contribution from a foreign national; or
 - solicit a foreign national to make an expenditure on the committee's behalf; and
- that no contribution included in the report was made by either of the following entities:
 - a foreign national; or
 - a person that in the four years preceding the date on which the contribution is made knowingly accepted money, directly or indirectly and other than revenue, from one or more foreign nationals that in the aggregate exceeds \$100,000.

These provisions apply only to a report required to be filed under applicable state law on or after the bill's effective date. A report required to be filed before the bill's effective date is governed by the law in effect at the time the report was filed, and the former law is continued in effect for that purpose.

Appeal From Interlocutory Order

S.B. 2035 amends the Civil Practice and Remedies Code to authorize a person to appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that makes a determination of probable cause under the bill's provisions relating to enforcement by the attorney general of the bill's provisions relating to restrictions on

contributions, expenditures, and related activities involving political committees that support or oppose a ballot measure.

EFFECTIVE DATE

September 1, 2025.