

BILL ANALYSIS

Senate Research Center

S.B. 2035
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas and federal law prohibit foreign nationals from contributing to political candidates. However, these prohibitions do not apply to campaigns supporting or opposing ballot measures, including both local measures and those referred to the ballot by the Texas Legislature. It is currently legal for foreign nationals to influence these measures directly through campaign contributions or indirectly by funding third-party groups that then contribute to a campaign. It is also possible for foreign nationals and foreign-funded entities to finance direct campaign expenditures supporting or opposing these measures.

This foreign funding "loophole" is being actively exploited. For example, recent reporting demonstrates that a nonprofit organization known as the Sixteen Thirty Fund has accepted approximately \$280 million in known contributions from a Swiss billionaire named Hansjorg Wyss, while simultaneously spending \$130 million to influence ballot measure campaigns in 25 states, including Texas. Other reporting demonstrates that funding linked to China has been directed at U.S. environmental nonprofits.

S.B. 2035 closes this loophole and ensures that foreign influence in ballot measures is barred by state law. The bill bans contributions to specific- or general-purpose committees that support or oppose ballot measures from foreign nationals or persons that have accepted more than \$100,000 from foreign nationals within the prior four years. S.B. 2035 also applies these same safeguards to direct campaign expenditures.

S.B. 2035 amends the Election Code to do the following:

1. Prohibit foreign nationals from directly or indirectly contributing to or influencing a ballot measure;
2. Prohibit specific- and general-purpose committees supporting or opposing ballot measures from soliciting, accepting, or using funds contributed directly or indirectly from a foreign national or any person who has accepted more than \$100,000 from foreign nationals within the prior four years;
3. Require specific- and general-purpose committees to obtain affirmation from donors that they are not a foreign national and have not knowingly accepted over \$100,000 from foreign nationals in the prior four years;
4. Require persons making direct campaign expenditures to certify they have not knowingly accepted over \$100,000 from foreign nationals in the prior four years;
5. Establish procedures for civil enforcement and penalties for knowing violations including disgorgement of funds, joint and several liability for directors and officers, injunctive relief, statutory damages up to twice the amount of the prohibited expenditure, and a possible prohibition on lobbying activities; and
6. Establish a Class A misdemeanor for any public servant who knowingly discloses or reveals the donors of any group until a final determination has been made.

S.B. 2035 also amends the Civil Practice and Remedies Code to provide a right of interlocutory appeal if a court makes a finding of probable cause for violating the ban on foreign funding in ballot measures.

As proposed, S.B. 2035 amends current law relating to contributions, expenditures, and related activities for supporting or opposing a ballot measure, creates criminal offenses, and provides a civil penalty.

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 51.014(a), Civil Practice and Remedies Code, as follows:

(a) Authorizes a person to appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that performs certain actions, including making a determination of probable cause under Section 253.206(b), Election Code. Makes nonsubstantive changes.

SECTION 2. Amends Chapter 252, Election Code, by adding Sections 252.0012, 252.0033, and 252.0034, as follows:

Sec. 252.0012. DEFINITIONS. Defines "direct or indirect" and "preliminary activity."

Sec. 252.0033. CONTENTS OF APPOINTMENT BY SPECIFIC-PURPOSE COMMITTEE FOR SUPPORTING OR OPPOSING BALLOT MEASURE. Requires that a campaign treasurer appointment by a specific-purpose committee for supporting or opposing a ballot measure, in addition to the information required by Section 252.002 (Contents of Appointment), include an affidavit certifying that the committee did not receive direct or indirect funding from a foreign national, as defined by Section 253.201, for preliminary activity regarding the ballot measure.

Sec. 252.0034. CONTENTS OF APPOINTMENT BY GENERAL-PURPOSE COMMITTEE THAT SUPPORTS OR OPPOSES BALLOT MEASURE. Requires that a campaign treasurer appointment by a general-purpose committee that supports or opposes a ballot measure, in addition to the information required by Section 252.002, include an affidavit certifying that the committee did not receive direct or indirect funding from a foreign national, as defined by Section 253.201, for preliminary activity regarding the ballot measure.

SECTION 3. Amends Chapter 253, Election Code, by adding Subchapter G, as follows:

SUBCHAPTER G. RESTRICTIONS ON CONTRIBUTIONS, EXPENDITURES, AND RELATED ACTIVITIES INVOLVING GENERAL-PURPOSE OR SPECIFIC-PURPOSE COMMITTEE SUPPORTING OR OPPOSING BALLOT MEASURE

Sec. 253.201. DEFINITIONS. Defines "directly or indirectly" and "foreign national."

Sec. 253.202. APPLICABILITY. (a) Provides that this subchapter applies only to a general-purpose committee or specific-purpose committee that supports or opposes a ballot measure.

(b) Provides that, for purposes of this subchapter, a prohibition under this chapter related to contributions and expenditures by a foreign national that is a person wholly or primarily owned by a person described by certain provisions of Section 253.201 does not apply if the contribution or expenditure is derived entirely from money generated in the United States and each decision related to the contribution

or expenditure, other than a decision on setting overall contribution or expenditure budget amounts, is made by an individual who is a United States citizen or national.

Sec. 253.203. PROHIBITED CONTRIBUTIONS AND EXPENDITURES; AFFIRMATION REQUIRED. (a) Prohibits a general-purpose committee or specific-purpose committee from knowingly and directly or indirectly 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, directly or indirectly, money 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.

(b) Requires a general-purpose or specific-purpose committee, on receipt of a contribution by the 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 from one or more foreign nationals that in the aggregate exceeds \$100,000.

Sec. 253.204. PROHIBITED CONDUCT BY FOREIGN NATIONALS RELATED TO CONTRIBUTIONS AND EXPENDITURES. (a) 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.

(b) Prohibits a foreign national from directly or indirectly soliciting the making by a person of a donation, contribution, or expenditure to influence a ballot measure.

Sec. 253.205. RECORDKEEPING AND CERTIFICATION REQUIREMENTS RELATED TO CERTAIN CONTRIBUTIONS AND EXPENDITURES; PRESUMPTION OF VIOLATION; CRIMINAL OFFENSE. (a) Requires a general-purpose committee or specific-purpose committee that makes a contribution or an expenditure to support or oppose a ballot measure, or a person who makes a direct campaign expenditure to support or oppose a ballot measure, to maintain a record of the contribution, expenditure, or direct campaign expenditure until the second anniversary of the date the contribution, expenditure, or direct campaign expenditure is made.

(b) Requires a person, not later than 48 hours after the person makes a direct campaign expenditure to support or oppose a ballot measure, to certify to the Texas Ethics Commission (TEC), in the form and manner TEC requires, that the person has not in the four years preceding the date on which the expenditure is made knowingly accepted money from 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 from foreign nationals that in the aggregate exceeds \$100,000.

(c) Provides that an individual commits an offense if the individual knowingly fails to maintain a record described by Subsection (a) or fails to submit the certification required by Subsection (b).

(d) Provides that an offense under this section is a Class B misdemeanor.

(e) Requires that any determination that a general-purpose committee, specific-purpose committee, or person who made a contribution or direct campaign expenditure to support or oppose a ballot measure has accepted funds in the aggregate that exceed \$100,000 from one or more foreign nationals in the four years preceding the contribution or direct campaign expenditure at issue create a presumption that the committee or person has violated this section.

Sec. 253.206. ENFORCEMENT. (a) Requires TEC to bring a civil action to enforce this subchapter. Requires that, in all actions brought pursuant to this section, the burden of proof be on TEC.

(b) Requires the court, before discovery in an action brought under this section, to hold a hearing to determine whether there is probable cause to believe that a person has violated this subchapter.

(c) Provides that, if, after the hearing required by Subsection (b), the court determines that probable cause does not exist to believe that a violation of this subchapter occurred, the court is required to dismiss the action with prejudice, or if probable cause exists to believe that a violation of this subchapter occurred, the court is required to enter an order stating the court's findings, resume the action and cause the action to be expedited.

(d) Authorizes a defendant, after an affirmative finding under Subsection (c), 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.

(e) Requires a general-purpose committee or specific-purpose committee, if the court determines that the committee has accepted a contribution in violation of this subchapter, 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 this subchapter. 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.

(f) Provides that, if a general-purpose committee or specific-purpose committee that was determined to have accepted a contribution in violation of this subchapter is unable to return all or part of the contribution as required by Subsection (e), the committee's directors, officers, and executive members are jointly and severally liable for returning the remaining part of the contribution.

(g) Requires a person who made a direct campaign expenditure to support or oppose a ballot measure, if the court determines that person has violated this subchapter, not later than the 30th day after the date of the court's determination, to disgorge to TEC funds in an amount equal to the reported cost of the direct campaign expenditure. Requires the person's directors, officers, or executive members, if a person who is not an individual is unable to disgorge the requisite funds under this subsection, to be liable in their personal capacities, jointly and severally, for the payment of the amount due. Requires the court, in the event of an appeal, to order the funds subject to disgorgement to be placed in escrow pending the outcome of the appeal.

(h) Provides that a person who violates this subchapter is liable for a civil penalty in an amount not to exceed three times the amount of the contribution accepted or expenditure made in violation of this subchapter.

(i) Requires the court, if TEC prevails in an action brought under Subsection (a), to award injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter, and statutory damages up to twice the amount of the prohibited contribution or expenditure.

(j) Authorizes TEC to bring an action to enjoin a person who violates this subchapter from engaging in activities that would require registration as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, for a period to be determined by the court. Requires the court, in determining the period to prohibit a person from engaging in those activities, to consider certain factors.

Sec. 253.207. PROHIBITED DISCLOSURE OF CERTAIN DONORS; CRIMINAL OFFENSE. (a) Defines "nonprofit organization" and "public servant."

(b) Requires that an investigation of an alleged violation of this subchapter 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. Prohibits TEC or a court from 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 this subchapter.

(c) Prohibits a public servant from 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 this subchapter.

(d) Provides that a public servant commits an offense if the individual knowingly discloses or reveals to the public the identity of a person who makes a lawful donation to a nonprofit organization, unless the person has been determined to have violated this subchapter by a court.

(e) Provides that, for purposes of this section, a person has been determined to have violated this subchapter by a court after an order has been entered by the court to that effect.

(f) Provides that an offense under this section is a Class A misdemeanor.

SECTION 4. Amends Subchapter E, Chapter 254, Election Code, by adding Section 254.131, as follows:

Sec. 254.131. ADDITIONAL CONTENTS OF REPORTS OF COMMITTEES SUPPORTING OR OPPOSING BALLOT MEASURE. (a) Defines "foreign national" and "directly or indirectly."

(b) Requires the campaign treasurer of a general-purpose committee or specific-purpose committee that supports or opposes a ballot measure, in addition to the contents required by Section 254.031 (General Contents of Reports), to include an affirmation that:

(1) the committee did not knowingly, whether directly or indirectly, solicit or accept a contribution from a foreign national or solicit a foreign national to make an expenditure on the committee's behalf; and

(2) no contribution included in the report was made by a foreign national or a person that in the four years preceding the date on which the contribution is made knowingly accepted, whether directly or indirectly, money from one or more foreign nationals that in the aggregate exceeds \$100,000.

SECTION 5. Makes application of Chapters 252 and 254, Election Code, prospective.

SECTION 6. Makes application of Subchapter G, Chapter 253, Election Code, as added by this Act, prospective.

SECTION 7. Effective date: September 1, 2025.