

- SUBJECT:** Restricting expenditures by a political subdivision for a referendum
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 6 ayes — Talton, Wong, Menendez, Bailey, Blake, Rodriguez
0 nays
1 absent — A. Allen
- WITNESSES:** For — Peggy Venable, Americans for Prosperity - Texas; Sheri Brummett; Maria Martinez; Steve Ravet
Against — Mark Mendez, Tarrant County Commissioners Court
On — Susan Horton, Texas Municipal League; Donald Lee, Texas Conference of Urban Counties; Leilah Powell, Bexar County
- BACKGROUND:** Officers and employees of political subdivisions are prohibited from spending or authorizing the spending of public funds on political advertising under sec. 255.003 of the Election Code. The limitation does not apply to a communication that factually describes the purposes of a measure provided that it does not advocate passage or defeat of the measure. A violation of the section is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).
Election Code, sec. 1.005 defines “measure” as a question or proposal submitted in an election for an expression of the voters’ will.
- DIGEST:** CSHB 159 would prohibit a political subdivision from spending funds on advertising, promotional materials, or educational materials related to an election or measure for the 60 days prior to an election. The bill would not apply to funds expended for notice or publications required by statute or a municipal charter or in response to an open records request.
The bill would take effect September 1, 2005, and would apply only to an election for which the election order was adopted on or after that date.

SUPPORTERS
SAY:

CSHB 159 would ensure that political subdivisions did not spend taxpayer money to influence voters. Despite the current prohibition on political advertising, some school districts and other political subdivisions have abused the exception for educational materials to produce materials advocating for or against a measure. CSHB 159 would address this problem by drawing a bright line around an election and prohibiting the spending of political subdivision funds on any materials during the 60 days before an election.

Current law is not effective at preventing political subdivisions from spending funds for advocacy purposes. Some political subdivisions not only have violated the prohibition on political advertising outright, but many others have biased an issue by leaving out critical information about its true cost in supposedly “educational” materials. Political subdivisions are not deterred from this advocacy because the penalties that have been imposed by the Ethics Commission for violating the prohibition often have been small - in one case, the commission imposed a fine of \$100 on each person involved, which could have been waived if they made a presentation on the requirements of the Election Code prohibition on political advertising. This kind of slap on the hand only demonstrates to other political subdivisions that they can continue to exploit the educational materials exception with impunity.

The bill would not impair citizens’ ability to get information about election measures. Political subdivisions still would be able to produce educational materials on the measure, as long as they were created more than 60 days before the election, and would be able to respond to open records requests at any time. Citizens thus could specify the information they wanted about a ballot measure - such as which streets would be repaired or which building would be improved - without having to wade through the promotional materials many political subdivisions currently are producing.

OPPONENTS
SAY:

CSHB 159 would prevent voters from getting the critical information they need to make informed decisions in elections. The broad prohibition against *all* materials, including educational materials, would prevent a political subdivision from providing voters with basic information about what a measure would do. Typically, it is in the days and weeks just prior to an election that voters begin to educate themselves on these issues and begin to seek information from local organizations and local government. This bill would render political subdivisions unable to distribute

information during this critical period about the specific details of the measure - which streets would be repaired or which libraries or parks would be built, for example. Citizens should not have to submit a written open records request to receive this kind of information.

Current law already prohibits political subdivisions from promoting a position on a measure. If some political subdivisions have exploited the educational exception to conduct advocacy, then the state should focus on greater enforcement of existing laws rather than passing new laws that would make it harder for citizens to get information about ballot measures.

OTHER
OPPONENTS
SAY:

Rather than prohibiting educational materials, the bill should specify the kind of information that these materials must contain to ensure that they were balanced and unbiased. For example, if political subdivisions have been loath to include the true costs of a measure, the bill could specify the kinds of information about costs - such as the payback length of the bonds, projected interest rate, or projected tax rate - that would have to be included in any educational materials. Placing these kinds of guidelines in statute would help voters become well educated about ballot issues, rather than removing an important source of information.

It is not clear that this bill would prohibit political subdivisions from distributing “educational” materials during the 60 days prior to an election if it had produced these materials more than 60 days in advance. As a result, some political subdivisions could attempt to circumvent the intent of the bill by producing materials early and then blanketing the area in the weeks before an election. The bill explicitly should prohibit this practice.

NOTES:

The committee substitute added that the bill’s provisions would not apply to an open records request under Government Code, ch. 552. It also added a definition of “political subdivision.”