

- SUBJECT:** Rulemaking authority of the Texas Ethics Commission
- COMMITTEE:** Elections — favorable, without amendment
- VOTE:** 6 ayes — Berman, Bohac, England, Anchia, Burnam, Farias
1 nay — C. Howard
- WITNESSES:** For — Craig McDonald, Texans for Public Justice; (*Registered, but did not testify*: Ken Bailey, Texas Democratic Party; Mary Finch, League of Women Voters of Texas; Teri Sperry, True Courage Action Network)
Against — None
On — (*Registered, but did not testify*: David Reisman, Texas Ethics Commission)
- BACKGROUND:** Government Code, ch. 571 governs the Texas Ethics Commission (TEC). Sec. 571.062(a) authorizes the TEC, on the affirmative vote of at least six members of the commission, to adopt rules to administer laws that are administered and enforced by the commission.
- DIGEST:** HB 2451 would amend sec. 571.062(a) to authorize the TEC to implement or interpret laws governing the commission and to adopt rules consistent with the purpose and objectives of the TEC stated in Government Code, sec. 571.001, including:
- to control and reduce the cost of elections;
 - to eliminate opportunities for undue influence over elections and governmental actions;
 - to disclose fully information related to expenditures and contributions for elections and for petitioning government;
 - to enhance the potential for individual participation in electoral and governmental processes; and
 - to ensure the public's confidence and trust in its government.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

HB 2451 would enhance financial disclosure by clarifying that the TEC had the authority to interpret statutes that are consistent with the agency's mission, including being able to define certain terms not explicitly defined in current law.

The TEC was asked in 2006 to consider whether the description of a cash gift of more than \$250 that is reportable under the financial disclosure laws is required to include the *value* of the gift. According to Ethics Advisory Opinion No. 473, which was not unanimously supported by the commissioners, the *description* of a gift or cash equivalent that is reportable on personal financial disclosures of state officials is not required to include the *value* of the gift. It further stated that the TEC cannot define what the description of a gift should include because the term "description" is not defined in statute. The inability of the TEC to define this particular term has created a loophole that allows some public officials to list monetary gifts merely as "checks" without having to report the amount of the checks.

Simply requiring the value of a gift to be reportable would not permanently address the issue because the term "value" also is not defined anywhere in statute. According to the Ethics Advisory opinion, if the TEC cannot define or interpret terms not already defined in current law, there will be a perpetual loophole requiring constant revision by the Legislature. HB 2451 is designed to clear up the controversy over the authority of the TEC to carry out fully the will of the Legislature by empowering the TEC to deal with these issues in accordance with its purpose and objectives.

OPPONENTS
SAY:

HB 2451 would take the wrong approach to clarifying issues regarding financial disclosure. Current law already gives the TEC the authority to adopt the necessary rules to administer its statutory authority, including the ability to adopt rules that implement, interpret or prescribe law or policy or to describe the procedure or practice requirements of a state agency. However, the TEC may not adopt a rule that is contrary to current law or propose to add words to statutes no matter how desirable it might be because only the Legislature has that authority.

According to Ethics Advisory Opinion No. 473, personal financial disclosure statements must include gifts of anything of value in excess of \$250 and a description of each gift. The important question is whether the description of such a cash gift must include the value of the gift because the term “description” is not defined in statute. Of the 14 types of financial activity required on personal financial statements, 10 require that a value be disclosed, either as a specific amount or as a range or category. The requirement for “gifts” does not specify such a requirement.

A better approach to increasing disclosure requirements for gifts, including cash and tangible gifts, would be to require by statute that their value be reported.

NOTES:

HB 158 by Naishtat, which would require the fair market value of a gift to be reported, was reported favorably, as substituted, the Elections Committee on March 14 and is on today’s General State Calendar. SB 129 by West, which would require reporting of a gift of cash or cash equivalent such as a negotiable instrument or gift certificate, passed the Senate by 30-0 on March 27 and has been referred to the House Elections Committee.