

SUBJECT: Costs of defending a complaint before the Texas Ethics Commission

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hunter, Alonzo, Hartnett, Jackson, Lewis, Martinez
0 nays
5 absent — Hughes, Branch, Leibowitz, Madden, Woolley

WITNESSES: For — Bennett Sandlin, Texas Municipal League
Against — None

BACKGROUND: Government Code, ch. 571 charges the Texas Ethics Commission (TEC) with regulating the contributions, expenditures, and advertising related to an election for political office in Texas. By law, TEC is required to investigate all sworn complaints filed with TEC alleging a violation of a rule or law enforced by TEC. Upon receiving a complaint, TEC must make the complaint form available on the Internet. While TEC generally may not disclose publicly the allegations or factual contents of a complaint until the complaint's resolution, the complainant may comment publicly on the complaint's allegations.

DIGEST: HB 677 would make an individual who filed a sworn complaint with TEC liable for a respondent's reasonable and necessary attorney's fees incurred in defending against the complaint if TEC determined that a violation within its jurisdiction had not occurred. A complainant in these circumstances also would be made liable for a respondent's reasonable and necessary attorney's fees incurred in recovering the amounts incurred in defending against the complaint.

The bill would apply only to a sworn complaint filed less than 60 days before an election and against a respondent who was:

- a candidate in the election;
- a specific-purpose committee, as defined by Election Code, sec. 251.001, that supports only a candidate in the election; or
- the campaign treasurer of a specific-purpose committee.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 677 would help deter the common practice of filing frivolous, politically motivated complaints. The filing of groundless complaints abuses the ethics complaint process, weakens public confidence in the electoral system, and wastes TEC's resources. Since even a frivolous complaint can damage a respondent's credibility in the short term, the respondent has little choice but to defend against the complaint, an often expensive and time-consuming process. The bill merely would give a respondent the same ability to recover the costs of defending against frivolous complaints that a party has against frivolous lawsuits.

Since HB 677 would apply only to complaints dismissed without a violation, this bill would not discourage the filing of meritorious complaints. In addition, an individual still could file a complaint at any time 60 days or more before an election without facing any penalty.

**OPPONENTS
SAY:**

HB 677 would go too far by discouraging the filing of meritorious claims, and would unfairly punish an individual who filed a reasonable complaint in good faith and received an adverse adjudication. The ethics complaint process should be open and accessible to all, not just to those who can afford the potential costs of pursuing a complaint. This bill at least should include a provision waiving the liability of a complainant who filed a reasonable complaint in good faith, regardless of the outcome.