

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1980
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2010, the United States Supreme Court ruled in *Citizens United v. Federal Elections Commission* that the free speech clause of the First Amendment prohibits the government from restricting independent expenditures for communications by non-profit corporations, for-profit corporations, labor unions, and other associations. To conform with that ruling, the Texas Legislature passed H.B. 2359 in 2011, eliminating the state's prohibition on those types of expenditures from the Elections Code.

However, beyond the addition of one brief subchapter describing reporting requirements should those direct (independent) expenditures be made, the legislature has not had any further debate on the parameters of direct campaign expenditures. Therefore, the Texas Ethics Commission has relied on its rulemaking process to establish the method of operations for direct campaign expenditure committees. This has resulted in confusion and over burdensome requirements imposed on political committees seeking to exercise their First Amendment rights in Texas.

S.B. 1980 creates legislatively-determined definitions and processes for direct, independent campaign expenditures, and creates streamlined reporting requirements for those entities that engage in that activity. Also created in the bill is a clear statement on what constitutes political coordination, which was previously undefined in statute. S.B. 1980 encourages efficiency by allowing affiliated entities to file one easy-to-find campaign finance report that includes all contributions and expenditures. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1980 amends current law relating to political contributions and political expenditures made to or by political committees or other persons.

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 251.001, Election Code, by amending Subdivisions (8) and (12) and adding Subdivisions (21), as follows:

(8) Defines "direct campaign expenditure." Provides that a campaign expenditure does not constitute a contribution by the person making the expenditure to a candidate or officeholder if the expenditure is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure is made. Provides that a campaign expenditure made in connection with a measure does not constitute a contribution by the person making the expenditure if it is not made as a political contribution to a political committee supporting or opposing the measure.

(12) Redefines "political committee" to mean two or more persons acting in concert with a principal purpose of accepting political contributions or making political expenditures. Provides that the term does not include a group composed

exclusively of two or more individual filers or political committees required to file reports under this title who make reportable expenditures for a joint activity.

(21) Defines "in-kind contribution."

SECTION 2. Amends Subchapter A, Chapter 251, Election Code, by adding Sections 251.0015 and 251.0016, as follows:

Sec. 251.0015. COMMUNICATION WITH CANDIDATE. Provides that, for purposes of Section 251.001(8), communication between a person and a candidate, officeholder, or candidate's or officeholder's agent is not evidence that the person obtained the candidate's or officeholder's consent or approval for a campaign expenditure made after the communication by the person on behalf of the candidate or officeholder unless the communication establishes that:

(1) the expenditure is incurred at the request or suggestion of the candidate, officeholder, or candidate's or officeholder's agent;

(2) the candidate, officeholder, or candidate's or officeholder's agent is materially involved in decisions regarding the creation, production, or distribution of a campaign communication related to the expenditure; or

(3) the candidate, officeholder, or candidate's or officeholder's agent shares information about the candidate's or officeholder's plans or needs that is:

(A) material to the creation, production, or distribution of a campaign communication related to the expenditure; and

(B) not available to the public.

Sec. 251.0016. COMMON VENDOR. Provides that a person using the same vendor as a candidate, officeholder, or political committee established or controlled by a candidate or officeholder is not acting in concert with the candidate, officeholder, or committee to make a campaign expenditure unless the person makes the expenditure using information from the vendor about the campaign plans or needs of the candidate, officeholder, or committee that is material to the expenditure and not available to the public.

SECTION 3. Amends Section 252.003, Election Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a campaign treasurer appointment by a general-purpose committee, in addition to the information required by Section 252.002 (Contents of Appointment), to include:

(1) makes no changes to this subdivision;

(2) and (3) makes nonsubstantive changes to these subdivisions; and

(4) before the committee may use a political contribution from a corporation or a labor organization to make a direct campaign expenditure in connection with a campaign for an elective office, an affidavit stating that:

(A) the committee is not established or controlled by a candidate or an officeholder; and

(B) the committee will not use any political contribution from a corporation or a labor organization to make a political contribution to:

(i) a candidate for elective office;

(ii) an officeholder; or

(iii) a political committee that has not filed an affidavit under this subdivision or Section 252.0031(a)(2).

(a-1) Provides that filing an affidavit under Subsection (a)(4) does not create any additional reporting requirements under Section 254.261 (Direct Campaign Expenditure Exceeding \$100).

SECTION 4. Amends Section 252.0031, Election Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Makes a nonsubstantive change. Requires a campaign treasurer appointment by a specific-purpose committee for supporting or opposing a candidate for an office specified by Section 252.005(1) (relating to requiring an individual to file a campaign treasurer appointment for the individual's own candidacy with the Texas Ethics Commission (TEC) under certain conditions), in addition to the information required by Section 252.002, to include:

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) before the committee may use a political contribution from a corporation or a labor organization to make a direct campaign expenditure in connection with a campaign for an elective office, an affidavit stating that:

(A) the committee is not established or controlled by a candidate or an officeholder; and

(B) the committee will not use any political contribution from a corporation or a labor organization to make a political contribution to:

(i) a candidate for elective office;

(ii) an officeholder; or

(iii) a political committee that has not filed an affidavit under this subdivision or Section 252.0031(a)(2).

(a-2) Provides that filing an affidavit under Subsection (a)(2) does not create any additional reporting requirements under Section 254.261.

SECTION 5. Amends Subchapter D, Chapter 253, Election Code, by adding Section 253.097, as follows:

Sec. 253.097. CONTRIBUTION FROM CORPORATION OR LABOR ORGANIZATION. Authorizes a corporation or labor organization to make campaign contributions from its own property to a political committee that has filed an affidavit with the committee's campaign treasurer appointment in accordance with Section 252.003(a)(4) or 252.0031(a)(2).

SECTION 6. Amends Sections 253.100(a) and (e), Election Code, as follows:

(a) Authorizes a corporation, in addition to any other expenditure that is considered permissible under this section (Expenditures For General-Purpose Committee), to make certain expenditures for the maintenance and operation of a general-purpose committee, including creation and maintenance of the committee's public Internet webpages that do not contain political advertising. Makes nonsubstantive changes.

(e) Provides that Subsection (d) (relating to prohibiting a corporation or labor organization from making certain expenditures) does not apply to a corporation or labor organization making a campaign contribution to a political committee under Section 253.097 or an expenditure to communicate with its stockholders or members, as applicable, or with the families of its stockholders or members as provided by Section 253.098 (Communication With Stockholders), rather than providing that Subsection (d) does not apply to a corporation or labor organization making an expenditure to communicate with its stockholders or members, as applicable, or with the families of its stockholders or members as provided by Section 253.098.

SECTION 7. Amends Section 253.101, Election Code, by adding Subsection (a-1), as follows:

(a-1) Provides that Subsection (a) does not prohibit a political committee from making a political contribution or political expenditure wholly or partly from a campaign contribution made by a corporation or labor organization to the political committee under Section 253.096 (Contribution on Measure) or 253.097.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2019.