

SUBJECT: Restricting the use of Texas Supreme Court audio or video material

COMMITTEE: Elections — favorable, without amendment

VOTE: 7 ayes — Berman, Bohac, England, Anchia, Burnam, Farias, C. Howard
0 nays

SENATE VOTE: On final passage, April 26 — 30-0

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 306.005 prohibits the use in political advertising of audio or visual materials produced by or under the direction of the Legislature or of a house, committee, or agency of the Legislature. After a formal hearing, the Texas Ethics Commission (TEC) may impose a civil penalty not to exceed \$5,000 per violation. Describing or quoting the verbal content of the audio or visual materials in political advertising is not prohibited.

Sec. 306.006 restricts the commercial use of legislatively produced audio or visual materials unless the legislative entity that produced the materials or under whose direction the materials were produced gives its permission for the commercial use. In addition, such materials may be used only for educational or public affairs programming, including news programming, or transmitted to paid subscribers in an unedited feed of the audio or visual materials. A violation is a class C misdemeanor (maximum fine of \$500).

DIGEST: SB 1385 would prohibit the use of appellate court-produced audio or video materials in political advertising. TEC would administer the provision and could impose a civil penalty against a violator of up to \$5,000 per violation. The bill would not prohibit describing or quoting the verbal content of the audio or video materials in political advertising.

The bill also would prohibit a person from using audio or video materials produced by or under the direction of an appellate court for a commercial purpose unless the court that produced the materials or the person who directed the materials to be produced gave written permission for the

commercial use of the material. The material could be used only for educational or public affairs programming, including news programming that did not constitute political advertising. In addition, the material could be transmitted to paid subscribers in an unedited feed. Compiling, describing, quoting from, analyzing, or researching the verbal content of the materials for a commercial purpose would not be prohibited.

A violation of the restrictions on commercial use would be a class C misdemeanor. In addition to this criminal penalty, the attorney general would enforce this provision at the request of an appellate court by bringing a civil action to enjoin a violation of commercial use of the materials.

An appellate court would not be required to give permission to someone to transmit the materials to paid subscribers. The court could limit the number of persons to whom it granted permission to transmit the materials to paid subscribers.

The bill would take effect September 1, 2007, and would apply only to conduct occurring on or after that date, regardless of when the materials were produced.

**SUPPORTERS
SAY:**

SB 1385 would allow for the continued Internet broadcasting of Texas Supreme Court proceedings while protecting against potential abuse of these materials. St. Mary's University School of Law and the Supreme Court of Texas maintain a web site to provide the public with access to live webcasts of the court's oral arguments from Austin. The arguments also may be viewed at a later time through the law school's archives, providing ready access to these important materials to the public and lawyers across the state.

The bill would mirror the statute that protects the use of legislatively produced audio or video materials. The Texas Legislature has been broadcasting legislative sessions and committee hearings over the Internet since the mid-1990s, which provides increased access to open government. However, the Legislature has enacted certain prohibitions and restrictions on political or commercial use of the materials produced by the Legislature to prevent their misuse. The Texas Supreme Court should have the same protection to prevent abuse of its Internet broadcasts.

OPPONENTS

No apparent opposition.

SAY: