

BILL ANALYSIS

Senate Research Center
2001S0688/1

C.S.S.B. 6
By: Shapiro
State Affairs
3/6/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, campaign financing is a weighty issue and will continue to be one in the years to come. Dealing with campaign finance laws means walking the tightrope between providing public disclosure of the financial interests involved and keeping the campaign finance laws simple enough so that citizens are not reluctant to get involved with campaigns or run for political office. As proposed, C.S.S.B. 6 provides for reasonable campaign finance disclosure in Texas by: requiring the reporting of more and better detailed information regarding campaign finances and cash-on-hand reserves; raising the minimum level of contributions and expenditures required to be reported; changing time limits on reports; changing some penalties regarding reports; exempting certain non-reportable contributions and travel expenses from being considered reportable contributions; removing certain unconstitutional waiting period requirements; requiring out-of-state political committees to file certain notices under certain conditions; allowing special partnerships to contribute to campaigns under certain conditions; codifying the transfer of administrative funds between state and federal accounts by political parties; providing protection from the misappropriation of contributor lists from reports; and clarifying when certain expenditures fall under Texas disclosure laws.

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 (2) and (8) and adding Subdivisions (21) and (22), as follows:

- (2) Redefines “contribution.”
- (8) Redefines “direct campaign expenditure.”
- (21) Defines “coordinated general public political communication.”
- (22) Defines “express advocacy.”

SECTION 2. Amends Section 251.005, Election Code, as follows:

Sec. 251.005. New heading: ELECTRONIC FILING FOR OUT-OF-STATE COMMITTEES. (a) Provides that an out-of-state political committee that files reports with the Federal Election Commission or with the election authority of another state is not required to file such reports with the Texas Ethics Commission (commission) if all of the committee’s reports are available electronically. Requires an out-of-state political committee that elects not to file reports with the commission to file a one-page notice with the commission stating that the committee files reports with the Federal Election Commission (FEC) or with the election authority of another state and those reports include contributions or expenditures made by the

committee in connection with elections in Texas. Deletes text regarding Chapter 252 (Campaign Treasurer) and 254 (Political Reporting).

(b) Provides that a report filed with another state is not considered to be available electronically under Subsection (a) if the commission determines that the disclosure requirements of the other state are less than the disclosure requirements of this state. Deletes text regarding out-of-state committees filing a campaign treasurer appointment.

Deletes existing Subsection (c).

SECTION 3. Amends Chapter 251A, Election Code, by adding Section 251.010, as follows:

Sec. 251.010. PROTECTION OF INFORMATION. (a) Prohibits information obtained from any reports required to be maintained or filed under Chapter 254 from being sold or used by any person other than the filer for certain stated purposes without the express written consent of the filer.

(b) Provides that the use of information from reports filed under Chapter 254 that is copied or obtained from certain stated sources is permissible under certain circumstances.

(c) Authorizes a person required to report contributions under Chapter 254 to use up to 10 pseudonyms on each report filed for certain purposes and under certain conditions. Sets forth guidelines concerning the list of pseudonyms.

(d) Requires that, in addition to any penalties imposed by the commission, any person found to have violated Subsection (a) or (c) be liable in damages to the person filing the report. Defines the term "damages." Requires the person filing the report to be entitled to, in addition to damages, certain stated injunctions and orders.

(e) Prohibits a filer from using this section for the purpose of circumventing the reporting requirements of this title by materially inflating the amount of contributions reported by the filer.

SECTION 4. Amends Section 252.003(a), Election Code, to delete text regarding a campaign treasurer appointment by a general-purpose committee being required to include the full name and address of each general purpose committee to whom the committee intends to make political contributions.

SECTION 5. Amends Amends Chapter 253A, Election Code, by adding Section 253.006, as follows:

Sec. 253.006. COERCION PROHIBITED. Provides that a person, including a candidate, officeholder, or political committee, commits an offense if the person uses or threatens to use physical force, job discrimination, or financial reprisal to obtain a contribution or other thing of value to be used to influence the result of an election or to assist an officeholder. Provides that such a person commits an offense if the person accepts or uses money or any other thing of value that is known by the candidate or officeholder or by an officer of the political committee or an individual who causes the political committee to accept or use the money or other thing of value to have been obtained in violation of this section. Provides that an offense under this section is a third-degree felony.

SECTION 6. Amends Section 253.031, Election Code, by prohibiting a political committee that files its appointment of treasurer within 30 days before an election from knowingly making or authorizing certain campaign contributions or expenditures except under certain conditions. Provides that this

section does not apply to an out-of-state political committee unless the committee meets the requirements of Section 251.005. Deletes text regarding Chapter 252.

SECTION 7. Amends Section 253.033, Election Code, as follows:

Sec. 253.033. New heading: CASH CONTRIBUTIONS EXCEEDING \$100 PROHIBITED; ANONYMOUS CONTRIBUTIONS. Requires a candidate, officeholder, or political committee that receives an anonymous cash contribution in excess of \$50 to promptly disburse the amount over \$50 to one or more of the entities listed in Section 254.204(a)(1), (3), (5), or (6). Authorizes anonymous cash contributions of \$50 or less to be used by the candidate, officeholder, or political committee for any lawful purpose.

SECTION 8. Amends Sections 253.042(b) and (e), Election Code, as follows:

(b) Prohibits a candidate or officeholder who accepts one or more political contributions in the form of loans, including an extension of credit or a guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree by affinity or consanguinity as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, from using political contributions to repay certain loans. Prohibits a candidate or officeholder from using political contributions, in certain amounts, to repay any other loan or extension of credit for which the candidate or officeholder is personally liable or is obligated or guarantees.

(e) Provides that this section does not prohibit the payment of interest at a commercially reasonable rate on loans covered by this section from a financial institution. Prohibits a candidate or officeholder from using political contributions to pay interest on certain types of loans.

SECTION 9. Amends Section 253.063, Election Code, to prohibit unreimbursed travel expenses incurred by an individual from being considered a contribution or a direct campaign expenditure and prohibits such expenses from being reportable under this subchapter or Chapter 254. Deletes text regarding a direct campaign expenditure consisting of personal travel expenses incurred by an individual being authorized to be made without complying with Section 253.062(a)(1).

SECTION 10. Amends Chapter 253D, Election Code, by adding Section 253.105, as follows:

Sec. 253.105. CONTRIBUTION BY PARTNERSHIP OR LIMITED LIABILITY COMPANY. Provides that this subchapter does not prohibit a political contribution made by a partnership or limited liability company if the contribution is not charged to the profits, interest, or capital account of a partner or member that is a corporation covered by Section 253.091.

SECTION 11. Amends Section 253.162, Election Code, by amending Subsections (b), (c), and (d) and adding Subsection (e), as follows:

(b) Prohibits a judicial candidate or office holder from using political contributions to repay certain loans.

(c) Prohibits the total amount of both reimbursements under Subsection (a) and repayments under Subsection (b)(2) made by a judicial candidate or officeholder from exceeding the amount prescribed by Subsection (a).

(d) Authorizes a person who is both a candidate and an officeholder to reimburse the person's personal funds or repay loans from political contributions only in one capacity.

(e) Provides that this section does not prohibit the payment of interest at a commercially reasonable rate on certain loans but does prohibit a judicial candidate or officeholder from using political contributions to pay interest on certain loans.

SECTION 12. Amends Section 254.031(a), Election Code, to require, except as otherwise provided by this chapter, each report filed under this chapter to include certain stated factors including information regarding political contributions and persons making such contributions, loans, political expenditures, candidates or officeholders benefitting from direct campaign expenditures, and the funds maintained in accounts in which political contributions are deposited.

SECTION 13. Amends Chapter 254B, Election Code, by adding Sections 254.0312 and 254.0313, as follows:

Sec. 254.0312. BEST EFFORTS. (a) Provides that a person required to file a report under this chapter is considered to have used best efforts to obtain, maintain, and report the information required by Section 254.031(a)(2) if the person or the person's campaign treasurer complies with this section.

(b) Sets forth guidelines concerning information required in each written solicitation for political contributions from an individual.

(c) Requires the person, for each political contribution received from an individual which, when aggregated with all other political contributions received from the individual during the reporting period, exceeds \$500 and for which the information required by Section 254.031(a)(2) is not provided, to make at least one oral or written request for the missing information. Sets forth guidelines regarding requirements for and prohibitions on such requests.

(d) Requires a request under Subsection (c) that is made in writing to include a clear and conspicuous statement that complies with Subsection(b)(2) and a preaddressed envelope or postcard for responding to the request. Requires a request that is made orally to be documented in writing.

(e) Requires a person to report any information required by Section 254.031(a)(2) that is not provided by the individual making the political contribution and that the person has in the person's records of political contributions or previous reports under this chapter.

(f) Authorizes a person, instead of the request and statement required by Subsection (b), to use any disclosure containing a similar request and statement that has been approved by the Federal Election Commission.

Sec. 254.0313. REPORTING BY OUT-OF-STATE POLITICAL COMMITTEE.

Requires each report filed under this chapter by an out-of-state political committee to include certain stated information instead of the information required by Sections 254.031(a)(4), (6), and (7).

SECTION 14. Amends Section 254.038(a), Election Code, to require certain candidates and specific-purpose committees to file additional reports (in addition to other reports required by this chapter) during the period beginning the ninth day before election day and ending at 12 noon on the second day before election day.

SECTION 15. Amends Chapter 254B, Election Code, by adding Section 254.0381, as follows:

Sec. 254.0381. TELEGRAM REPORT OF CERTAIN DIRECT CAMPAIGN

EXPENDITURES. Requires a person or general purpose committee that makes direct campaign expenditures that in the aggregate exceed \$5,000 during the period beginning the ninth day before election day and ending at 12 noon on the second day before election day to file a report (in addition to other reports required by this chapter) not later than 48 hours after the expenditure is made. Requires each report required by this section to include the amount of the expenditures, the full name and address and principal occupation of the persons to whom the expenditures are made, and the dates of the expenditures. Requires a report under this section to be filed by telegram or telephonic facsimile machine or by hand. Provides that this section does not apply to a direct campaign expenditure made by the principal political committee of a political party. Provides that Section 254.036 does not apply to a report required by this section.

SECTION 16. Amends Section 254.041(c), Election Code, to provide that a violation of Subsection (a)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the person intentionally failed to file the report on time with knowledge of the legal obligation to file the report. Deletes text referencing Section 254.061(3) and Section 254.091(2).

SECTION 17. Amends Section 254.042(a), Election Code, to make a conforming change by deleting text regarding Section 254.039.

SECTION 18. Amends Section 254.061, Election Code, to delete text regarding additional information to be included in reports by candidates.

SECTION 19. Amends Section 254.091, Election Code, to delete text regarding additional information to be included in reports by officeholders.

SECTION 20. Amends Section 254.128, Election Code, as follows:

Sec. 254.128. New heading: NOTICE TO CANDIDATE AND OFFICEHOLDER OF IN-KIND CONTRIBUTIONS. Requires that, if a specific-purpose committee, other than a special-purpose committee established, controlled, or authorized by the candidate or officeholder, makes political expenditures for a candidate or officeholder that constitute an in-kind contribution, the committee's campaign treasurer deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs. Sets forth guidelines for information to be included in the notice.

SECTION 21. Amends Section 254.151, Election Code, to require, in addition to the contents required by Section 254.031, each report by a campaign treasurer of a general-purpose committee to include on a separate page or pages of the report, the identification of any contribution made to the committee that is intended by the donor to be used by the committee for certain purposes, unless the contribution is otherwise disclosed elsewhere in the report.

SECTION 22. Amends Section 254.161, Election Code, to require that, if a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee makes direct political expenditures for a candidate or officeholder that constitute a contribution, notice of that fact be given to the affected candidate or officeholder as provided by Section 254.128 for a specific-purpose committee. Deletes reference to a committee accepting political contributions.

SECTION 23. Amends Section 257.002, Election Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Makes a conforming change.

(c) Requires that nothing in this title prohibit a political party from transferring funds held in the account required to be maintained under Subsection (b) to another account maintained by the political party under the requirements of federal law for the disbursing of the political party's funds generally if the political party can reasonably demonstrate that the funds are being disbursed from the other account in compliance with applicable federal law and for permitted uses and purposes.

SECTION 24. Repealers: Sections 253.032 (Limitation on Contribution by Out-of-State Committee) and 253.037 (Restrictions on Contribution or Expenditure by General-Purpose Committee), Election Code;

Section 253.100(d) (regarding expenditures for a general-purpose committee), Election Code;

Sections 254.032 (Nonreportable Personal Travel Expense) and 254.033 (Nonreportable Personal Service), Election Code; and

Section 254.039 (Telegram Report by Certain General-Purpose Committees), Election Code.

SECTION 25. Makes application of this Act prospective regarding offenses or elements of offenses committed before the effective date of this act.

SECTION 26. Provides that Sections 253.042 and 253.162, Election Code, as amended by this Act, apply only to repayment of a loan or extension of credit made on or after September 1, 2001. Provides that the repayment of such a loan or extension made before that date is governed by the law in effect on the date the loan or extension of credit was made, and the former law is continued in effect for that purpose.

SECTION 27. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Amends As Filed S.B. 6 by omitting text in original SECTIONS 1 - 36 regarding election and recounting procedures.

SECTION 1. Designated in original As Filed S.B. 6 as SECTION 37. Amends As Filed S.B. 6, Section 251.001, Election Code, to amend Subdivision (8) and add Subdivisions (21) and (22).

SECTION 2. Designated in original As Filed S.B. 6 as SECTION 38. Amends As Filed S.B. 6, Section 251.005, Election Code, to delete text in existing Subsection (a) regarding Chapter 252 (Campaign Treasurer) or 254 (Political Reporting) and redesignate new text formerly in Subsection (d) under Subsection (a). Deletes text in existing Subsection (b) and provides in new text under Subsection (b) that a report filed with another state is not considered to be available electronically under Subsection (a) if the commission determines that the disclosure requirements of the other state are less than the disclosure requirements of this state. Deletes existing Subsection (c).

SECTION 3. Amends As Filed S.B. 6 to amend Chapter 251A, Election Code, by adding Section 251.010, as follows:

Sec. 251.010. PROTECTION OF INFORMATION. (a) Prohibits information obtained from any reports required to be maintained or filed under Chapter 254 from being sold or used by any person other than the filer for certain stated purposes without the express written consent of the filer.

(b) Provides that the use of information from reports filed under Chapter 254 that is copied or obtained from certain stated sources is permissible under certain circumstances.

(c) Authorizes a person required to report contributions under Chapter 254 to use up to 10 pseudonyms on each report filed for certain purposes and under certain conditions. Sets forth guidelines concerning the list of pseudonyms.

(d) Requires that, in addition to any penalties imposed by the commission, any person found to have violated Subsection (a) or (c) be liable in damages to the person filing the report. Defines the term “damages.” Requires the person filing the report to be entitled to, in addition to damages, certain stated injunctions and orders.

(e) Prohibits a filer from using this section for the purpose of circumventing the reporting requirements of this title by materially inflating the amount of contributions reported by the filer.

SECTION 4. Designated in original As Filed S.B. 6 as SECTION 39. No changes in text.

SECTION 5. Designated in original As Filed S.B. 6 as SECTION 40. Amends As Filed S.B. 6, Section 253.006, Election Code, to provide that a person, including a candidate, officeholder, or political committee, commits an offense if the person accepts or uses money or any other thing of value that is known by the candidate or officeholder or by an officer of the political committee or an individual who causes the political committee to accept or use the money or other thing of value to have been obtained in violation of this section.

SECTION 6. Designated in original As Filed S.B. 6 as SECTION 41. Amends As Filed S.B. 6, Section 253.031, Election Code, to prohibit a political committee that files its appointment of treasurer within 30 days before an election from knowingly making or authorizing certain campaign contributions or expenditures except under certain conditions. Provides that this section does not apply to an out-of-state political committee unless the committee meets the requirements of Section 251.005. Deletes text regarding Chapter 252.

SECTION 7. Designated in original As Filed S.B. 6 as SECTION 42. No changes in text.

SECTION 8. Amends As Filed S.B. 6 to amend Sections 253.042(b) and (e), Election Code, as follows:

(b) Prohibits a candidate or officeholder who accepts one or more political contributions in the form of loans, including an extension of credit or a guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree by affinity or consanguinity as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, from using political contributions to repay certain loans. Prohibits a candidate or officeholder from using political contributions, in certain amounts, to repay any other loan or extension of credit for which the candidate or officeholder is personally liable or is obligated or guarantees.

(e) Provides that this section does not prohibit the payment of interest at a commercially reasonable rate on loans covered by this section from a financial institution. Prohibits a candidate or officeholder from using political contributions to pay interest on certain types of loans.

SECTION 9. Designated in original As Filed S.B. 6 as SECTION 43. No changes in text.

SECTION 10. Amends As Filed S.B. 6 to amend Chapter 253D, Election Code, by adding Section 253.105, as follows:

Sec. 253.105. CONTRIBUTION BY PARTNERSHIP OR LIMITED LIABILITY COMPANY. Provides that this subchapter does not prohibit a political contribution made by a partnership or limited liability company if the contribution is not charged to the profits, interest, or capital account of a partner or member that is a corporation covered by Section 253.091.

SECTION 11. Amends As Filed S.B. 6 to amend Section 253.162, Election Code, by amending Subsections (b), (c), and (d) and adding Subsection (e), as follows:

(b) Prohibits a judicial candidate or office holder from using political contributions to repay certain loans.

(c) Prohibits the total amount of both reimbursements under Subsection (a) and repayments under Subsection (b)(2) made by a judicial candidate or officeholder from exceeding the amount prescribed by Subsection (a).

(d) Authorizes a person who is both a candidate and an officeholder to reimburse the person's personal funds or repay loans from political contributions only in one capacity.

(e) Provides that this section does not prohibit the payment of interest at a commercially reasonable rate on certain loans but does prohibit a judicial candidate or officeholder from using political contributions to pay interest on certain loans.

SECTION 12. Designated in original As Filed S.B. 6 as SECTION 45. Amends As Filed S.B. 6, Section 245.031(a), Election Code, to require, except as otherwise provided by this chapter, each report filed under this chapter to include certain stated factors including information regarding political contributions and persons making such contributions, loans, political expenditures, candidates or officeholders benefitting from direct campaign expenditures, and the funds maintained in accounts in which political contributions are deposited. Omits text in original referring to certain loans and cash on hand.

SECTION 13. Designated in original As Filed S.B. 6 as SECTION 46. Amends As Filed S.B. 6, Chapter 254B, Election Code, by amending Section 254.0312, which is a new section proposed in the As Filed version, to authorize a person, instead of the request and statement required by Subsection (b), to use any disclosure containing a similar request and statement that has been approved by the Federal Election Commission. Amends As Filed S.B. 6, Chapter 254B, Election Code, by adding Section 254.0313, as follows:

Sec. 254.0313. REPORTING BY OUT-OF-STATE POLITICAL COMMITTEE. Requires each report filed under this chapter by an out-of-state political committee to include certain stated information instead of the information required by Sections 254.031(a)(4), (6), and (7).

SECTION 14. Designated in original As Filed S.B. 6 as SECTION 47. No changes in text.

SECTION 15. Designated in original As Filed S.B. 6 as SECTION 48. Amends As Filed Chapter 254B, Election Code, in the proposed new Section 254.0381(a), Election Code, to require a person or general purpose committee that makes direct campaign expenditures that in the aggregate exceed \$5,000 during the period beginning the ninth day before election day and ending at 12 noon on the second day before election day to file a report (in addition to other reports required by this chapter) not later than 48 hours after the expenditure is made.

SECTION 16. Designated in original As Filed S.B. 6 as SECTION 49. No changes in text.

SECTION 17. Amends As Filed S.B. 6 to amend Section 254.042(a), Election Code, to make a conforming change by deleting text regarding Section 254.039.

SECTION 18. Amends As Filed S.B. 6 to amend Section 254.061, Election Code, to delete text regarding additional information to be included in reports by candidates.

SECTION 19. Amends As Filed S.B. 6 to amend Section 254.091, Election Code, to delete text regarding additional information to be included in reports by officeholders.

SECTION 20. Amends As Filed S.B. 6 to amend Section 254.128, Election Code, as follows:

Sec. 254.128. New heading: NOTICE TO CANDIDATE AND OFFICEHOLDER OF IN-KIND CONTRIBUTIONS. Requires that, if a specific-purpose committee, other than a special-purpose committee established, controlled, or authorized by the candidate or officeholder, makes political expenditures for a candidate or officeholder that constitute an in-kind contribution, the committee's campaign treasurer deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs. Sets forth guidelines for information to be included in the notice.

SECTION 21. Designated in original As Filed S.B. 6 as SECTION 50. Amends As Filed S.B. 6, Section 254.151, Election Code, to omit a reference in the original version to reporting committee expenditures.

SECTION 22. Amends As Filed S.B. 6 to amend Section 254.161, Election Code, to require that, if a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee makes direct political expenditures for a candidate or officeholder that constitute a contribution, notice of that fact be given to the affected candidate or officeholder as provided by Section 254.128 for a specific-purpose committee. Deletes reference to a committee accepting political contributions.

SECTION 23. Designated in original As Filed S.B. 6 as SECTION 51. No changes in text.

SECTION 24. Amends As Filed S.B. 6 by repealing:

Section 253.032 (Limitation on Contribution by Out-of-State Committee), Election Code;

Section 253.100(d) (regarding expenditures for a general-purpose committee), Election Code;

Sections 254.032 (Nonreportable Personal Travel Expense) and 254.033 (Nonreportable Personal Service), Election Code; and

Section 254.039 (Telegram Report by Certain General-Purpose Committees), Election Code.

Omits repealers in original As Filed S.B. 6 repealing the following sections of the Election Code: Section 124.061 (Form of Punch-Card Ballot Label); Section 127.130 (Manual Counting) (d) and (e); and Chapter 127G (Preservation of Punch-Card Voting Aids).

SECTION 25. Amends As Filed S.B. 6 by making the application of this Act prospective regarding offenses or elements of offenses committed before the effective date of this act.

SECTION 26. Amends As Filed S.B. 6 by providing that Sections 253.042 and 253.162, Election Code, as amended by this Act, apply only to repayment of a loan or extension or credit made on or after September 1, 2001. Provides that the repayment of such a loan or extension made before that date is governed by the law in effect on the date the loan or extension of credit was made, and the former law is continued in effect for that purpose.

SECTION 27. Designated in original As Filed S.B. 6 as SECTION 55. No change.