

BILL ANALYSIS

Senate Research Center
82R8814 ATP-F

H.B. 2359
By: Hopson (Williams)
State Affairs
5/13/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties have argued that the Texas prohibition of corporate direct campaign expenditures is unconstitutional in light of the Supreme Court's decision in *Citizens United v. Federal Election Commission*. A corporate direct campaign expenditure includes a campaign expenditure made by for-profit or nonprofit corporations that do not constitute a campaign contribution by the person making the expenditure.

Based on interpretations of a court order by the United States District Court for the Western District of Texas, the Texas Ethics Commission's Ethics Advisory Opinion No. 489, and the Texas Ethics Commission's recommendations for statutory changes to the 82nd Legislature, interested parties also argue that the state's prohibition of direct campaign expenditures is unenforceable and could lead to costly litigation.

H.B. 2359 seeks to address the prohibition on direct campaign expenditures by removing certain references to political expenditures in the Texas Election Code and by adding and clarifying reporting requirements for certain direct campaign expenditures.

H.B. 2359 amends current law relating to direct campaign expenditures.

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 the heading to Section 253.094, Election Code, to read as follows:

Sec. 253.094. CONTRIBUTIONS PROHIBITED.

SECTION 2. Amends Sections 253.094(a) and (b), Election Code, as follows:

(a) Prohibits a corporation or labor organization from making a political contribution, rather than a political contribution or political expenditure, that is not authorized by this subchapter.

(b) Prohibits corporation or labor organization from making a political contribution, rather than a political contribution or political expenditure, in connection with a recall election, including the circulation and submission of a petition to call an election.

SECTION 3. Amends Section 254.036(b), Election Code, to require that each report filed under this chapter with the Texas Ethics Commission (TEC), except as provided by Subsection (c) (relating to authorizing a candidate, officeholder, or political committee that is required to file reports with the commission to file certain reports under certain conditions) or (e) (relating to authorizing a candidate to file certain reports for certain purposes), rather than except as provided by Subsections (c), (e), and (f) (relating to authorizing an individual required to file a report with TEC in connection with a direct campaign expenditure to file a certain report), be filed by

computer diskette, modem, or other means of electronic transfer, using computer software provided by TEC or computer software that meets TEC specifications for a standard file format.

SECTION 4. Amends Section 254.061, Election Code, to delete existing text requiring that each report by a candidate include, in addition to the contents required by Section 254.031 (General Contents of Reports), the full name and address of each individual acting as a campaign treasurer of a political committee under Section 253.062 (Direct Expenditure Exceeding \$100) from whom the candidate received notice under Section 254.128 (Notice to Candidate and Officeholder of Contributions and Expenditures) or 254.161 (Notice to Candidate and Officeholder of Contributions and Expenditures).

SECTION 5. Amends Chapter 254, Election Code, by adding Subchapter J, as follows:

SUBCHAPTER J. REPORTING BY CERTAIN PERSONS MAKING DIRECT
CAMPAIGN EXPENDITURES

Sec. 254.261. DIRECT CAMPAIGN EXPENDITURE EXCEEDING \$100. (a) Requires a person not acting in concert with another person who makes one or more direct campaign expenditures in an election from the person's own property to comply with this chapter as if the person were the campaign treasurer of a general-purpose committee that does not file monthly reports under Section 254.155 (Option to File Monthly; Notice).

(b) Provides that a person is not required to file a report under this section if the person is required to disclose the expenditure in another report required under this title within the time applicable under this section for reporting the expenditure.

(c) Provides that this section does not require a general-purpose committee that files under the monthly reporting schedule to file reports under Section 254.154.

(d) Provides that a person is not required to file a campaign treasurer appointment for making expenditures for which reporting is required under this section, unless the person is otherwise required to file a campaign treasurer appointment under this title.

Sec. 254.262. TRAVEL EXPENSE. Authorizes a direct campaign expenditure consisting of personal travel expenses incurred by a person to be made without complying with Section 254.261.

SECTION 6. Repealers: (1) Sections 253.002 (Unlawful Direct Campaign Expenditure) and 253.097 (Direct Expenditure on Measure), Election Code;

(2) Subchapter C (Individuals), Chapter 253 (Restrictions on Contributions and Expenditures), Election Code; and

(3) Section 254.036(f) (relating to authorizing an individual required to file a report with TEC in connection with a direct campaign expenditure to file a certain report), Election Code.

SECTION 7. Effective date: upon passage or September 1, 2011.