

SUBJECT: Increasing penalties for late filing of campaign finance reports

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Denny, Howard, Bohac, Coleman, Harper-Brown, Uresti

0 nays

1 absent — Deshotel

WITNESSES: For — Pat Carlson, Tarrant County Republican Party; Fred Lewis, Show Us the Money Coalition; *(Registered, but did not testify:)* Merry Lynn Gerstenschlager, Texas Eagle Forum; Raymond McNeel, Texas Democratic County Chairs Association; Suzy Woodford, Common Cause of Texas

Against — None

On — Elizabeth Hanshaw Winn, Secretary of State; Karen Lundquist, Texas Ethics Commission; *(Registered, but did not testify:)* Jesse Lewis, Republican Party of Texas

BACKGROUND: Election Code, sec. 254.042 deals with late reports of political contributions and expenditures. The law requires the Texas Ethics Commission (TEC) to determine whether reports are late “from any available evidence” and to mail notices to filers. The TEC by rule may set a civil fine of not more than \$100 per day for reports filed late. Filers whose reports are more than 30 days late receive liability warnings by registered mail. Filers who do not pay penalties within 10 days of receipt of warnings are liable for additional penalties not to exceed \$10,000, as determined by TEC rules.

TEC rules (Texas Administrative Code, Title 1, Part 2, sec. 18.13) set \$100 fines for late filing of candidates’ and officeholders’ campaign expenditure and contribution reports, other than those required to be filed eight days prior to election days. The fine for filing eight-day reports late is \$100 per day the reports are late, up to the \$10,000 maximum. The TEC may impose fines of more than \$100 against late filers who did not file two or more previous reports by the applicable deadlines, up to \$10,000. Also, under sec. 18.15, the

TEC may vote to assess a fine of up to \$10,000 against a filer whose report is more than 30 days late or who has not paid an assessed fine within 10 days after receipt of notice.

DIGEST:

HB 3096 would set a flat \$100 penalty for late filing of campaign finance reports, up to seven days after the deadline. Reports filed more than seven days late would incur penalties of \$100 per day for each day after the seventh day they were late. Additional late penalties could not exceed \$50,000 per report, nor could they be increased after the filing of appeals or actions to dispute penalties.

The bill would remove the TEC's discretion in setting the late penalty as well as the daily penalty accrued through the 30th day a report was late. It would delete the requirement for the TEC to issue a warning by registered mail, along with the additional penalty of up to \$10,000 for failure to pay within 10 days of the 30-day late notice.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

The effectiveness of campaign finance disclosure laws depends on prompt compliance. If candidates do not file contribution and expenditure reports on time, especially during elections, the public's right to know the sources and objects of campaign spending is nullified. Despite the advent of electronic filing, late reports continue to plague the TEC and thwart the public's ability to evaluate the electoral process.

HB 3096 would strengthen the enforcement of report filing deadlines by stiffening the penalty for late filing. It would set an initial \$100 late fine on all campaign reports and add a \$100-per-day fine on reports more than seven days late. The maximum aggregate penalty would increase to \$50,000 per report, but late filers could halt fine accrual by appealing or disputing the TEC's findings.

The bill would abolish the TEC's current lengthy notification process (preliminary and warning letters, notice of referral to the attorney general) and the associated penalty, which actually serve to blunt the impact of reporting deadlines.

Candidates seeking public office must be held accountable for how they spend money to gain that office. Doing so by taking more money from their campaigns is the most logical deterrent available. HB 3096 would strengthen the TEC's ability to hold candidates accountable and would help streamline the enforcement of filing deadlines.

OPPONENTS
SAY:

HB 3096 is unnecessary. Late filings continue to average about 10 percent annually and are not increasing proportionately, only nominally during election cycles when there is more candidate activity and more reports are filed. As electronic filing proliferates and filers become more familiar with the process, tardiness could decline.

Fine levels and structures already are adequate, but the TEC could increase fines and tighten procedures under existing law. The proposed \$50,000 maximum fine is much too high, especially for candidates who do not raise large sums of money.

OTHER
OPPONENTS
SAY:

HB 3096 would invalidate TEC rules setting the amounts of automatic penalties by removing its discretion in penalizing late filers, which it now uses to assess higher fines on late eight-day reports. Consequently, the TEC no longer could assess different fines for late filing of different type of reports. The bill should preserve this authority and flexibility along with the notice provisions, which help identify inadvertent tardiness or oversight.

The bill should go a step further and send a stronger message to late filers of all reports by requiring the full penalty of a \$100 fine assessed for each day a report is late, up to the statutory maximum.

NOTES:

According to the fiscal note, HB 3096 would generate about \$1.5 million per year in general revenue over the next five years.

According to the Sunset Advisory Commission Staff Report on TEC (March 2002), 8 percent of the more than 28,000 reports required to be filed in fiscal 2000 either were late or were not filed. The TEC collected more than \$70,000 in late fines that year.

CSHB 1606 by Wolens, debated on the House floor on May 7, would raise the filing penalty to \$500 for late reports. Also, late filers of eight-day reports

would incur \$100 penalties for each subsequent day they were filed past the deadline. The bill also would set forth criteria by which the TEC could waive, reduce, or affirm penalties. It would leave intact the current three-step, 30-day notice process.