

SUBJECT: Political expenditures by a corporation to finance a political committee

COMMITTEE: Elections — committee substitute recommended

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

WITNESSES: For — Jack Gullahorn, Professional Advocacy Association of Texas
(*Registered, but did not testify*: Trey Blocker, Texas and Southwestern
Cattle Raisers Association; Bob Turner, Texas Poultry Federation)

Against — None

On — Natalia Luna Ashley, Texas Ethics Commission; Ken Bailey, Texas
Democratic Party

BACKGROUND: Election Code, sec. 251.001 defines a “general purpose committee” as a
political committee that has among its principal purposes:

- supporting or opposing two or more candidates who are unidentified or are seeking offices that are unknown; or
- supporting or opposing one or more measures that are unidentified; or
- assisting two or more officeholders who are unidentified.

Sec. 253.100(a) states that a corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee.

Sec. 253.101 maintains that a political committee assisted by a corporation or labor organization may not make a political contribution or political expenditure in whole or part from money that is known by a member or officer of the political committee to be dues, fees, or other money required as a condition of employment or membership in a labor organization. A person who violates this provision commits a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

DIGEST:

CSHB 2491 would amend Election Code, sec. 253.100(a) to outline permissible expenditures, in addition to any other expenditure that was considered permissible, for the maintenance and operation of a general-purpose committee including:

- office space;
- telephones;
- office equipment;
- utilities;
- general office and meeting supplies;
- salaries for clerical or administrative assistance necessary for the proper administrative operation of the committee;
- legal and accounting fees for the committee's compliance with laws regulating political funds and campaigns;
- routine administrative expenses incurred in establishing and administering a separate segregated fund as described in the Federal Election Campaign Act;
- meetings of the committee's governing body to interview candidates and make endorsements relating to the committee's support;
- political consulting for determining endorsements;
- the recording of committee decisions;
- the communication of committee decisions to contributors to the committee; or
- the preparation and delivery of committee contributions.

The bill would prohibit a corporation or labor organization from making the following expenditures:

- political consulting to support or oppose a candidate;
- telephone banks to communicate with voters to support or oppose a candidate;
- electioneering brochures and direct mail;
- partisan voter registration and get-out-the-vote drives;
- political fund-raising; and
- voter identification, lists, or databases.

The bill would authorize the Texas Ethics Commission to consider relevant federal election laws and opinions for guidance in issuing an

advisory opinion on the question of whether a political expenditure was for the establishment or administration of a general-purpose committee.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 2491 would amend Election Code, sec. 253.100 to specify 13 acceptable administrative expenditures in addition to any other expenditure considered permissible for a general-purpose committee. The bill would implement a clarifying change recommended by the Texas Ethics Commission.

Under current law, a corporation is prohibited from making a political contribution or expenditure that is not specifically authorized. A violation is a third-degree felony. The question of whether a corporate expenditure constitutes an administrative expense, which is permissible, has arisen — particularly in the last few years — before the Legislature, the courts, and the Texas Ethics Commission (TEC).

By establishing a list of clearly acceptable administrative expenses, CSHB 2491 would clarify campaign finance laws and bring light to what permissible expenses of a political action committee (PAC) that a corporation or labor union could pay. This bill would create a safe-harbor for expenses incurred in the normal course of business by any active organization, regardless of whether it engaged in political activity.

CSHB 2491 would outline six specifically prohibited expenditures for corporations or labor unions. Although the bill specifies forbidden expenditures, it should not be viewed as a comprehensive list. In addition, the bill would direct TEC to consider relevant federal election laws and opinions for guidance on questions of whether a political expenditure was for the establishment or administration of a PAC.

**OPPONENTS
SAY:**

CSHB 2491 would not include issue advertising among the list of prohibited expenditures by a PAC of a corporation or labor union. Because issue advertising that could promote or defeat a political candidate would not be on the prohibited list, the bill would raise questions about whether such ads might be interpreted as permissible and thus be paid for by undisclosed corporate and union sources.

NOTES:

The committee substitute differs from the introduced bill by listing 13 acceptable administrative expenditures that could be made by a general-purpose committee. It also specified six types of expenditures that a corporation or labor organization could not make in connection with a general-purpose committee. The substitute changed the effective date from September 1, 2007, to immediate effect following a two-thirds vote in each house.