

BILL ANALYSIS

Senate Research Center
84R11004 ATP-F

S.B. 1862
By: Burton
State Affairs
4/24/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many political subdivisions around Texas, including cities, counties, regional mobility authorities, and water districts, are spending taxpayer dollars to lobby for their interests in Austin. According to the Senate Research Center, the Texas Ethics Commission reports that taxpayer-funded entities will spend about \$29 million on lobbyists in 2015. The use of taxpayer-paid lobbyists by political subdivisions has many problems, including:

- Probable conflicts of interest between the subdivision and taxpayer.
- Lack of need for these lobbyists when the political subdivisions have elected officials, officers and employees who can provide the same information that a lobbyist can.
- Lack of ability for the taxpayer to know what specifically the lobbyists are paid
- Lack of ability for the taxpayer to measure the effectiveness of the lobbyist
- Lack of ability for the taxpayer to financially compete with the political subdivision's resources when the interests of the taxpayer and political subdivision are at odds with each other.
- Lack of transparency on behalf of the political subdivisions in that many of these subdivisions do not easily reveal to taxpayers specific details of the agendas that subdivisions provide to these lobbyists.
- Lack of governmental fiscal responsibility in that at times when governmental bodies are urged to curtail spending, much needed resources are spent on lobbyists rather on other priorities.

S.B. 1862 applies to those political subdivisions that impose a tax, including cities and counties. It also applies to regional mobile authorities, toll road authorities, and transit authorities.

S.B. 1862 prohibits those aforementioned governing bodies from spending public money to influence or attempt to influence the outcome of any legislation pending before the legislature. The prohibition does not apply to any officer or employee of the political subdivision who is requested to provide information by a member of the legislature or a committee of the legislature. The prohibition also does not apply to an elected officer of a political subdivision or an employee of that subdivision if their actions would not otherwise require them to register as a lobbyist.

S.B. 1862 permits, under certain conditions, a political subdivision to spend taxpayer money for membership fees and dues in a nonprofit state association or organization of similar political subdivisions.

Enforcement:

1. Civil - Anyone can bring a cause of action to stop, prevent or reverse a violation or threatened violation of the prohibited activity. Financial recoupment is also possible.
2. Criminal - It will be a class B misdemeanor for a lobbyist or a member or group of members of a governing body to conspire to circumvent this section.

As proposed, S.B. 1862 amends current law relating to the use by a political subdivision of public money for lobbying activities or lobbyists and creates a criminal offense.

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. Transfers Section 89.002, Local Government Code, to Chapter 556, Government Code, redesignates it as Section 556.0056, Government Code, and amends it, as follows:

Sec. 556.0056. New heading: LOBBYING ACTIVITIES; ASSOCIATIONS AND ORGANIZATIONS. Redesignates Section 89.002, Local Government Code, as Section 556.0056, Government Code. (a) Provides that this section applies to:

- (1) a political subdivision that imposes a tax; or
- (2) a regional mobility authority, toll road authority, or transit authority.

(b) Prohibits that the governing body of a political subdivision from spending public money to directly or indirectly influence or attempt to influence the outcome of any legislation pending before the legislature. Provides that this subsection does not prevent:

- (1) an officer or employee of a political subdivision from providing information for a member of the legislature or appearing before a legislative committee at the request of the committee or the member of the legislature;
- (2) an elected officer of a political subdivision from advocating for or against or otherwise influencing or attempting to influence the outcome of legislation pending before the legislature while acting as an officer of the political subdivision; or
- (3) an employee of a political subdivision from advocating for or against or otherwise influencing or attempting to influence the outcome of legislation pending before the legislature if those actions would not require a person to register as a lobbyist under Chapter 305 (Registration of Lobbyists).

(c) Creates this subsection from existing text. Authorizes the governing body of a political subdivision to spend, in the name of the political subdivision, public money for membership fees and dues of a nonprofit state association or organization of similarly situated political subdivisions only if, rather than authorizes the commissioners court to spend, in the name of the county, money from the county's general fund for membership fees and dues of a nonprofit state association of counties if:

- (1) a majority of the governing body, rather than court, votes to approve membership in the association or organization;
- (2) the association or organization exists for the betterment of local government, rather than county government, and the benefit of all local officials, rather than county officials;
- (3) the association or organization is not affiliated with a labor organization;
- (4) neither the association or organization nor an employee of the association or organization directly or indirectly influences or attempts to influence the outcome of any legislation pending before the legislature,

rather than neither the association nor an employee of the association directly or indirectly influences or attempts to influence the outcome of any legislation pending before the legislature. Deletes existing text providing that except that this subdivision does not prevent a person from providing information for a member of the legislature or appearing before a legislative committee at the request of the committee or the member of the legislature; and

(5) the association or organization does not directly or indirectly contribute any money, services, or other valuable thing to a political campaign or endorse a candidate or group of candidates for public office, rather than neither the association nor an employee of the association directly or indirectly contributes any money, services or other valuable thing to a political campaign or endorses a candidate or group of candidates for public office.

(d) Provides that Subsection (c)(4) does not prevent a person from providing information for a member of the legislature or appearing before a legislative committee at the request of the committee or the member of the legislature.

(e) Authorizes an interested person, including a member of the news media, or the attorney general on behalf of this state, to bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this section by a member or group of members of the governing body of a political subdivision or by a lobbyist. Authorizes the court to assess costs of litigation and reasonable attorney's fees incurred by a plaintiff who substantially prevails in an action under this subsection. Requires the court, in exercising its discretion, to consider whether the action was brought in good faith and whether the conduct of the political subdivision had a reasonable basis in law.

(f) Provides that a member or group of members of the governing body of a political subdivision or a lobbyist commits an offense if the member, group of members, or lobbyist knowingly conspires to circumvent this section. Provides that an offense under this subsection is a Class B misdemeanor.

(g) Provides that it is an affirmative defense to prosecution under Subsection (f) that the person acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record, the attorney general, or the attorney for the political subdivision.

(h) Entitles a private person who first brought the action, if the state proceeds with an action under this section, except as provided by this subsection, to receive at least 15 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action. Entitles the person bringing the action, if the state does not proceed with an action under this section, except as provided by this subsection, to receive at least 25 percent but not more than 30 percent of the proceeds of the action. Provides that the entitlement of a person under this subsection is not affected by any subsequent intervention in the action by the state. Authorizes the court, if the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a Texas or federal criminal or civil hearing, in a Texas or federal legislative or administrative report, hearing, audit, or investigation, or from the news media, to award to the person the amount the court considers appropriate but not more than 10 percent of the proceeds of the action. Requires the court to consider the significance of the information and the role of the person bringing the action in advancing the case to litigation. Requires that a payment to a person under this subsection be made from the proceeds of the action. Entitles a person receiving a payment under this section also to receive from the defendant an amount for reasonable expenses,

reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. Requires that the court's determination of expenses, fees, and costs to be awarded under this subsection be made only after the defendant has been found liable in the action or the claim is settled. Provides that in this subsection, "proceeds of the action" includes proceeds of a settlement of the action.

Deletes existing Subsection (b) providing that, if any association or organization supported wholly or partly by payments of tax receipts from political subdivisions engages in an activity described by Subsection (a)(4) or (5), a taxpayer of a political subdivision that pays fees or dues to the association or organization is entitled to appropriate injunctive relief to prevent any further activity described by Subsection (a)(4) or (5) or any further payments of fees or dues.

SECTION 2. Provides that Section 556.0056, Government Code, as redesignated and amended by this Act, applies only to an expenditure or payment of public funds by a political subdivision that is made on or after September 1, 2015. Makes application of this Act prospective to September 1, 2015.

SECTION 3. Effective date: September 1, 2015.