

BILL ANALYSIS

Senate Research Center
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H.B. 3233
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3233 updates outdated provisions of the Judicial Campaign Fairness Act. The changes include (but are not limited to):

- the current Judicial Campaign Fairness Act limits the amount a judicial candidate can take in contributions from a law firm. To keep the spirit of this limit, the bill includes in this limit not only the law firm itself, but any PAC the firm creates and members of the firm and their spouses;
- changes from "officeholder" contributions to "political" contributions the type of contribution that may be accepted by a person appointed to fill a vacancy in an office covered by that act who, at the time of appointment, does not hold another such office;
- repeals the provision that establishes, for purposes of those contribution limits, that a contribution by a law firm whose members are each members of a second law firm is considered to be a contribution by the law firm that has members other than the members the firms have in common;
- revises the aggregate limits on contributions for judges and candidates (and direct campaign expenditures by a general-purpose committee) by repealing the provision setting those aggregate limits as a percentage of certain candidate expenditure limits and replacing them with specific aggregate limits on contributions by law firm groups and general-purpose committees—\$25,000 for a statewide judicial office or \$5,000 for any other judicial office;
- sets out additional limits on a political contribution in excess of \$50 to a judge or candidate by a general-purpose committee that, when aggregated with all political contributions from all general-purpose committees in one election would exceed \$300,000 for a statewide judicial office; amounts ranging from \$52,500 to \$75,000 for judicial district, for the office of chief justice or justice, court of appeals; and certain specified amounts ranging from \$15,000 to \$52,500, depending on the population of the applicable judicial district, for an office other than the foregoing offices;
- a contribution to a judge or judicial candidate by an individual's spouse would no longer be considered a contribution by the individual;
- allows judicial candidates to conduct joint campaign activities; and
- the primary and general election will be considered separate elections for the purposes of contribution limits. A runoff election would also be considered a separate election.

H.B. 3233 amends current law relating to the Judicial Campaign Fairness Act.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Ethics Commission is rescinded in SECTION 17 (Section 253.175, Election Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 253.152, Election Code, as follows:

Sec. 253.152. DEFINITIONS. Defines "child," "law firm," and "law firm group" and redefines "in connection with an election," "judicial district," and "statewide judicial office" for purposes of this subchapter (Judicial Campaign Fairness Act). Deletes existing text defining "noncomplying candidate."

SECTION 2. Amends the heading to Section 253.1541, Election Code, to read as follows:

Sec. 253.1541. ACCEPTANCE OF POLITICAL CONTRIBUTIONS BY PERSON APPOINTED TO FILL VACANCY.

SECTION 3. Amends Section 253.1541(b), Election Code, to authorize a person to whom this section applies, notwithstanding Section 253.153 (Contribution Prohibited Except During Election Period), to accept political contributions, rather than officeholder contributions, beginning on the date the person assumes the duties of office and ending on the 60th day after that date.

SECTION 4. Amends Section 253.155, Election Code, by amending Subsections (a), (b), and (e) and adding Subsection (d-1), as follows:

(a) Prohibits a judicial candidate or officeholder from knowingly accepting political contributions from a person that, in the aggregate, exceed the contribution limits prescribed by Subsection (b) in connection with each election in which the judicial candidate's name appears on the ballot, rather than prohibiting a judicial candidate or officeholder, subject to Section 253.1621 (Application of Contribution and Reimbursement Limits to Certain Candidates), from, except as provided by Subsection (c) (relating to providing that this section (Contribution Limits) does not apply to a political contribution made by a general-purpose committee), knowingly accepting political contributions from a person that in the aggregate exceed the limits prescribed by Subsection (b) in connection with each election in which person is involved.

(b) Provides that the contribution limits under this section are certain sums for statewide and other judicial elections based on population of the judicial district.

(d-1) Prohibits a judicial candidate or officeholder, in addition to the contribution limits imposed on each contributor under this section, from accepting a political contribution in excess of \$50 from a person if:

(1) the person is part of a law firm group; and

(2) the contribution, when aggregated with all political contributions accepted by the candidate or officeholder from the same law firm group in connection with the election, would exceed six times the applicable contribution limit under this section.

(e) Requires a person who receives a political contribution that violates this section, rather than Subsection (a), to return the contribution to the contributor by a certain deadline.

SECTION 5. Amends the heading to Section 253.157, Election Code, to read as follows:

Sec. 253.157. LIMIT ON CONTRIBUTION BY GENERAL-PURPOSE COMMITTEES.

SECTION 6. Amends Section 253.157, Election Code, by adding Subsections (a-1) and (a-2) and amending Subsections (b) and (c), as follows:

(a-1) Prohibits a judicial candidate or officeholder from knowingly accepting political contributions from a general-purpose committee that, in the aggregate, exceed the contribution limits prescribed by this subsection in connection with an election in which the judicial candidate's name appears on the ballot. Provides that the contribution limits under this subsection are:

(1) for a statewide judicial office, \$25,000; or

(2) for any other judicial office, \$5,000.

(a-2) Prohibits a judicial candidate or officeholder, in addition to the contribution limits imposed on each contribution in Subsection (a-1), from accepting a political contribution in excess of \$50 from a general-purpose committee if the contribution, when aggregated with all political contributions from all general-purpose committees in connection with an election, would exceed:

(1) for a statewide judicial office, \$300,000;

(2) for the office of chief justice or justice, court of appeals:

(A) \$75,000, if the population of the judicial district is more than one million; or

(B) \$52,500, if the population of the judicial district is one million or less; or

(3) for an office other than an office included under Subdivision (1) or (2):

(A) \$52,500, if the population of the judicial district is more than one million;

(B) \$30,000, if the population of the judicial district is 250,000 to one million; or

(C) \$15,000, if the population of the judicial district is less than 250,000.

(b) Requires a person who receives a political contribution that violates this section, rather than that violates Subsection (a), to return the contribution to the contributor by a certain date.

(c) Provides that a person who violates this section is liable for a civil penalty not to exceed three times the amount of the political contributions accepted in violation of this section, rather than providing that a person who fails to return a political contribution as required by Subsection (b) is liable for a civil penalty not to exceed three times the total amount of political contributions accepted from the law firm, members of the law firm, or general-purpose committees established or controlled by the law firm in connection with the election.

SECTION 7. Amends Sections 253.158, 253.159, and 253.1601, Election Code, as follows:

Sec. 253.158. New heading: CONTRIBUTION BY SPOUSE OR CHILD. (a) Provides that, for purposes of this subchapter, a contribution by the spouse of an individual is not considered to be a contribution by the individual, rather than providing that for purposes of Sections 253.155 (Contribution Limits) and 253.157 (Limit on Contribution by Law Firm or Member or General-Purpose Committee of Law Firm), a contribution by the spouse or child of an individual is considered to be a contribution by the individual.

(b) Provides that for purposes of this subchapter, a contribution by a child of an individual is considered to be a contribution by the individual. Deletes existing text defining "child" for purposes of this section.

Sec. 253.159. EXCEPTION TO CONTRIBUTION LIMITS. Provides that Section 253.155 does not apply to an individual who is related to the candidate or officeholder within the second degree by consanguinity, as determined under Subchapter B (Relationships by Consanguinity or by Affinity), Chapter 573, Government Code, rather than providing that Sections 253.155 and 253.157 do not apply to an individual who is related to the candidate or officeholder within the second degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code.

Sec. 253.1601. New heading: CONTRIBUTION TO CERTAIN COMMITTEES CONSIDERED CONTRIBUTION TO CANDIDATE OR OFFICEHOLDER. Provides that, for purposes of Sections 253.155 and 253.157, a contribution to a specific-purpose committee for the purpose of supporting a judicial candidate, opposing the candidate's opponent, or assisting a judicial officeholder is considered to be a contribution to the candidate or officeholder, rather than providing that, for purposes of Sections 253.155, 253.157, and 253.160 (Aggregate Limit on Contributions From and Direct Campaign Expenditures by General-Purpose Committee), a contribution to a specific-purpose committee for the purpose of supporting a judicial candidate, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

SECTION 8. Amends Sections 253.161(a) and (b), Election Code, as follows:

(a) Prohibits a judicial candidate or officeholder, a specific-purpose committee for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder from using a political contribution to make a campaign expenditure for judicial office or to make an officeholder expenditure in connection with a judicial office if the contribution was accepted while the candidate or officeholder:

(1) makes no changes to this subdivision; or

(2) held an office other than a judicial office, unless the person had become a candidate for judicial office and the contribution was made in connection with an election for judicial office, rather than held an office other than a judicial office, unless the person had become a candidate for judicial office.

(b) Prohibits a candidate, officeholder, or specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder from using a political contribution to make a campaign expenditure for an office other than a judicial office or to make an officeholder expenditure in connection with an office other than a judicial office if the contribution was accepted while the candidate or officeholder:

(1) makes no changes to this subdivision; or

(2) held a judicial office, unless the person had become a candidate for another office and the contribution was made in connection with an election for nonjudicial office, rather than held a judicial office, unless the person had become a candidate for another office.

SECTION 9. Amends Subchapter F, Chapter 253, Election Code, by adding Section 253.1612, as follows:

Sec. 253.1612. CERTAIN CAMPAIGN ACTIVITIES AUTHORIZED. Prohibits the Code of Judicial Conduct from prohibiting, and a judicial candidate is prohibited from being penalized for, a joint campaign activity conducted by two or more judicial candidates.

SECTION 10. Amends Sections 253.162(a) and (c), Election Code, as follows:

(a) Prohibits a judicial candidate or officeholder who makes political expenditures from the person's personal funds or who accepts one or more political contributions in the form of a loan, including an extension of credit or guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree of affinity or consanguinity, as determined under Subchapter B, Chapter 573, Government Code, from reimbursing those personal funds or repaying those loans from political contributions in certain amounts, rather than prohibiting a judicial candidate of officeholder who makes political expenditures from the person's personal funds, subject to Section 253.1621, from reimbursing the person funds from political contributions in certain amounts.

(c) Makes a nonsubstantive change to this subsection.

SECTION 11. Amends Section 253.1621, Election Code, as follows:

Sec. 253.1621. APPLICATION OF CONTRIBUTION AND REIMBURSEMENT LIMITS TO CERTAIN CANDIDATES. (a) Provides that for purposes of the contribution limits prescribed by Section 253.155 or 253.157 and the limit on reimbursement of personal funds and repayment of certain loans prescribed by Section 253.162, the general and primary elections are considered separate elections for a candidate whose name appears on the ballot, rather than providing that for purposes of a contribution limit prescribed by Section 253.155, 253.157, or 253.160 and the limit on reimbursement of personal funds prescribed by Section 253.162, the general primary election and general election for state and county officers are considered to be a certain single election in which a judicial candidate is involved in certain circumstances.

(b) Provides that, for purposes of the contribution limits prescribed by Sections 253.155 and 253.157 and the limits on reimbursement of personal funds and repayment of certain loans prescribed by Section 253.162, a runoff election in which the candidate's name is on the ballot is considered a separate election. Deletes existing text providing that, for a candidate to whom Subsection (a) applies, each applicable contribution limit prescribed by Section 253.155, 253.157, or 253.160 is increased by 25 percent and text authorizing a candidate who accepts political contributions from a person that in the aggregate exceed the applicable contribution limit prescribed by Section 253.155, 253.157, or 253.160 but that do not exceed the adjusted limit as determined under this subsection to use the amount of those contributions that exceeds the limit prescribed by Section 253.155, 253.157, or 253.160 only for making an officeholder expenditure.

SECTION 12. Amends the heading to Section 253.167, Election Code, to read as follows:

Sec. 253.167. CERTIFICATION OF POPULATION; NOTICE OF CONTRIBUTION LIMITS.

SECTION 13. Amends Section 253.167, Election Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the Texas Ethics Commission (TEC) or county clerk, as appropriate, following certification of population under Subsection (a), to make available to each candidate for an office covered by this subchapter written notice of the contribution limits, rather than written notice of the contribution and expenditure limits, applicable to the office the candidate seeks.

(c) Requires TEC to post the written certification required by this section on TEC's Internet website.

SECTION 14. Amends Section 253.171, Election Code, as follows:

Sec. 253.171. CONTRIBUTION FROM OR DIRECT CAMPAIGN EXPENDITURE BY POLITICAL PARTY. Deletes the designation of existing Subsections (a) and (b) relating to providing that certain actions are considered to be or not considered to be political expenditures in certain circumstances and creates this section from existing text of those subsections. Provides that a political expenditure that is made by the principal political committee of the state executive committee or a county executive committee of a political party for a generic get-out-the-vote campaign or to create and distribute a written list of two or more candidates is not considered a contribution to a judicial candidate who benefits from the get-out-the-vote campaign or is included in the written list and is not subject to the limits of Section 253.155 or 253.157 if the get-out-the-vote campaign or a certain written list meets certain criteria.

SECTION 15. Amends Section 253.176(a), Election Code, to authorize TEC to impose a civil penalty against a person as provided by this subchapter, rather than against a person, only after a formal hearing as provided by Subchapter E (Complaint Procedures And Hearings), Chapter 571, Government Code.

SECTION 16. Amends Section 254.0611(b), Election Code, to redefine "child," "law firm," and "member" and define "member of a law firm" for purposes of this section (Additional Contents of Report by Certain Judicial Candidates).

SECTION 17. Repealer: Section 253.155(d) (relating to providing that for purposes of this section, a contribution by a law firm whose members are each members of a second law firm is considered to be a contribution by the law firm that has members other than the members the firms have in common), Election Code.

Repealer: Section 253.157(a) (relating to prohibiting a judicial candidate or officeholder from accepting a political contribution in excess of \$50 from a person if the person maintains a certain affiliation), Election Code.

Repealer: Section 253.157(d) (relating to providing that for purposes of this section, a general-purpose committee is established or controlled by a law firm if the committee is established or controlled by members of the law firm), Election Code.

Repealer: Section 253.157(e) (relating to the definition of "law firm" and "member"), Election Code.

Repealer: Section 253.160 (Aggregate Limit on Contributions From and Direct Campaign Expenditures by General-Purpose Committee), Election Code.

Repealer: Section 253.161(c) (relating to providing that this section (Use of Contributions from Nonjudicial or Judicial Office Prohibited) does not prohibit a candidate or officeholder from making a political contribution to another candidate or officeholder), Election Code.

Repealer: Section 253.162(b) (relating to prohibiting a judicial candidate or officeholder who accepts certain political contributions in the form of loans from one or more persons related to the candidate or officeholder within the second degree by consanguinity, from using political contributions to repay the loans), Election Code.

Repealer: Section 253.163 (Notice Required For Certain Political Expenditures), Election Code.

Repealer: Section 253.164 (Voluntary Compliance), Election Code.

Repealer: Section 253.165 (Effect of Noncomplying Candidate), Election Code.

Repealer: Section 253.166 (Benefit to Complying Candidate), Election Code.

Repealer: Section 253.168 (Expenditure Limits), Election Code.

Repealer: Section 253.169 (Expenditure by Certain Committees Considered Expenditure by Candidate), Election Code.

Repealer: Section 253.170 (Effect of Certain Political Expenditures), Election Code.

Repealer: Section 253.172 (Restriction on Exceeding Expenditure Limits), Election Code.

Repealer: Section 253.173 (Agreement to Evade Limits Prohibited), Election Code.

Repealer: Section 253.174 (Misrepresentation of Opponent's Compliance With or Violation of Subchapter Prohibited), Election Code.

Repealer: Section 253.175 (Judicial Campaign Fairness Fund), Election Code.

Repealer: Section 253.176(c) (relating to requiring a penalty collected under this section to be deposited to the credit of the judicial campaign fairness fund), Election Code.

SECTION 18. Effective date: upon passage or September 1, 2019.