



TEXAS ETHICS COMMISSION
RECOMMENDATIONS FOR STATUTORY CHANGES



TEXAS ETHICS COMMISSION
CHASE UNTERMAYER, CHAIR

DECEMBER 2016

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85TH TEXAS LEGISLATURE

PURSUANT TO GOVERNMENT CODE § 571.073

TEXAS ETHICS COMMISSION

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DECEMBER 2016

RECOMMENDATIONS

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RECOMMENDATIONS

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**Texas Ethics Commission
Recommendations for Statutory Changes
85th Legislative Session
Adopted December 8, 2016**

Recommendations are made pursuant to Section 571.073(3) of the Government Code. The relevant statutes are attached and listed as an exhibit where applicable.

NEW RECOMMENDATIONS

Recommendation No. 1: PFS - Reporting Sale and Net Gain or Net Loss

The Commission recommends simplifying the reporting requirements by eliminating the requirement to report the sale and the net gain or net loss through sale of shares of publicly traded corporations. Continue to require that information related to sale of shares of non-publicly traded corporations. Possible amendments to Chapter 572 of the Government Code are found in Exhibit A, page #6.

Recommendation No. 2: PFS - Disclosure of Investments in Publicly Traded Corporations

The Commission recommends simplifying the reporting requirements by requiring that the holding of shares in a publicly traded corporation be disclosed by listing the stock symbol used for the stock without the number of shares. Possible amendments to Chapter 572 of the Government Code are found in Exhibit B, page #7.

Recommendation No. 3: PFS - Retention of Records

The Commission recommends requiring records related to the information disclosed in a PFS to be maintained for three years from the due date of the report. Possible amendments to Chapter 572 of the Government Code are found in Exhibit C, page #8.

Recommendation No. 4: Section 2252.908 of the Government Code

The 84th Legislature charged the Commission with the implementation of Section 2252.908 of the Government Code, which was added to the law by House Bill 1295, a transparency bill that prohibits a governmental entity or state agency from entering into certain contracts unless the business entity submits a disclosure of interested parties form (Form 1295) at the time the business entity submits the contract to the governmental entity. As required by the Legislature, the Commission adopted a form and rules, which are available at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

The Commission recommends the following amendments to Section 2252.908 of the Government Code:

- a. Amend the disclosure requirement to apply to a binding contract.
- b. Amend the law to require the disclosure to be filed after the contract is binding.
- c. Amend the law to apply to a contract with a value of at least \$1 million, and a contract that requires an action or vote by the governing body of the governmental entity or state agency before the contract may be signed if the value of the contract is over a certain amount.

Possible amendments to Section 2252.908 of the Government Code are found in Exhibit D, page #9.

Recommendation No. 5: Unlawful Use of Public Funds for Political Purposes

Current law prohibits an officer or employee of a political subdivision from knowingly spending or authorizing the spending of public funds for political advertising. *See* Elec. Code § 255.003. The Commission recommends that the prohibition be extended to prohibit the use of public funds to make political expenditures. Possible amendments to Title 15 of the Election Code are found in Exhibit E, page #10.

Recommendation No. 6: Purchase Meals/Beverages for Seminars

Authorize the Commission to use appropriated funds to purchase meals and non-alcoholic beverages at seminars conducted by the Commission regarding the laws under its jurisdiction. Alternatively, authorize the Commission to charge a fee for attending such a seminar and use those funds to purchase meals and non-alcoholic beverages. Possible amendments to Section 571.0711 of the Government Code are found in Exhibit F, page #11.

Recommendation No. 7: Statewide Electronic Filing of Campaign Finance Reports

To further public disclosure and to increase coordinated disclosure among all levels of Texas government, the Commission recommends requiring local filers to file campaign finance reports electronically with the Commission. Filers who qualify for an exemption from the electronic filing requirement would continue to file on paper with the local filing authority. The filing requirements for local filers would be enforced through the Commission's sworn complaint process, not the administrative late process that applies to current Commission filers. The Commission recommends transitioning to the statewide electronic filing initiative by implementing it in stages beginning with county filers the first year, school district filers the second year, and all other filers the third year. This recommendation has a fiscal impact consisting of two FTE's and approximately \$500,000 for the first biennium. Without the additional resources, the Commission would not be able to implement a statewide electronic filing system. Possible amendments to Title 15 of the Election Code to add county filers are found in Exhibit G, page #12. Similar language would be necessary to add school district and other filers.

CARRIED OVER FROM PREVIOUSLY MADE RECOMMENDATIONS

Recommendation No. 8: Standards of Judicial Review

Unlike many state agencies with enforcement authority, a respondent to a complaint filed with the Commission may appeal to court under a trial *de novo* standard after the Commission issues a final order or after choosing to bypass the Commission's hearings process on the complaint. This approach essentially throws out the Commission's work and record, which often represents significant skilled legal work by Commission staff as well as meaningful insight and sustained effort by Commissioners. The Commission recommends providing for judicial review of Commission decisions in a manner that respects the Commission's decisions.

Under this recommendation, an appeal of a final order by the Commission would still proceed as a trial *de novo* and without the substantial evidence rule, which would not change from current law. However, the record of a Commission hearing would be admissible in the trial in district court consistent with the court's discretion under the Texas Rules of Evidence. In addition, the trial would be limited to the issues decided by the Commission in its enforcement proceedings and on which judicial review is sought. In a trial without a jury, the district court would be permitted, when rendering judgment on an issue under appeal, to consider the decisions made by the Commission in its enforcement proceedings and the evidence upon which the decisions were based.

Possible amendments to Chapter 571 of the Government Code are found in Exhibit H, page #19.

Recommendation No. 9: Enforcement of Discovery

Authorize the Commission to enforce legitimate discovery in enforcement proceedings through civil fines or other civil sanctions for the failure to comply. Possible amendments to Chapter 571 of the Government Code are found in Exhibit I, page #21.

Recommendation No. 10: Confidentiality of Sworn Complaints

Amend Section 571.140 of the Government Code to clearly allow a respondent or a respondent's counsel to waive confidentiality regarding a sworn complaint filed against the respondent. This would clearly allow a respondent or respondent's counsel to publicly discuss the sworn complaint, including the substance and allegations made in the complaint and the processing and resolution of the complaint. A possible amendment to Chapter 571 of the Government Code is found in Exhibit J, page #23.

Recommendation No. 11: Confidential Information

To protect the interest of the public and to promote efficient and economical administration of governmental duties, authorize the Commission to disclose to law enforcement agencies information relating to a sworn complaint. Possible amendments to Chapter 571 of the Government Code are found in Exhibit K, page #25.

Recommendation No. 12: Slate Mailers

To ensure that voters are fully informed, slate mailers should be required to include a disclosure statement. Slate mailers that meet the definition of political advertising are already required to include a disclosure statement as required by Section 255.001 of the Election Code. Some slate mailer organizations sell advertising space to candidates and include a political advertising disclosure statement as required by Section 255.001 of the Election Code on each of the spaces. These slate mailers should also include an additional disclosure identifying the name of the person(s) with final decision making authority as to which candidates are supported or opposed in the slate mailer. A possible amendment to Title 15 of the Election Code is found in Exhibit L, page #27.

Recommendation No. 13: Direct Campaign Expenditure Reports by Out-of-State Political Committees

Amend Sections 251.005 and 254.261 of the Election Code to require an out-of-state political committee that makes one or more direct campaign expenditures that exceed \$500 in an election to file a campaign finance report to disclose the expenditures. Relevant statutory provisions and possible amendments to Title 15 of the Election Code are found in Exhibit M, page #28.

Recommendation No. 14: Notices to Filers

Authorize the Commission to adopt rules prescribing how the Commission will notify any person or provide any notice of filing requirements, not including notices of referral to the Office of the Attorney General or sworn complaint notices. Possible amendments to Chapter 571 of the Government Code are found in Exhibit N, page #30.

Recommendation No. 15: Direct Campaign Expenditure Only Committees

In light of the October 2013 United States Court of Appeals for the Fifth Circuit opinion in the case of *Texans for Free Enterprise v. Texas Ethics Commission*, amend Chapter 253 of the Election Code to permit a corporation or labor organization to make a political contribution to a political committee that intends to act exclusively as a “direct campaign expenditure only committee”, also known as a SuperPac. Possible amendments to Title 15 of the Election Code are found in Exhibit O, page #32.

Recommendation No. 16: 60-Day Waiting Period and 10-Contributor Requirements for General-Purpose Committees

In light of the August 2014 United States Court of Appeals for the Fifth Circuit opinion in the case of *Catholic Leadership Coalition of Texas v. Reisman*, repeal Section 253.037(a) of the Election Code, relating to the 60-day and 10-contributor requirements applicable to general-purpose committees. In addition, repeal Section 253.037(c) of the Election Code, which merely provides an exception to Section 253.037(a). A possible amendment to Title 15 of the Election Code is found in Exhibit P, page #33.

Recommendation No. 17: Speaker Election Restrictions

In light of the October 2008 order issued by the United States District Court in the Western District of Texas, Austin Division, in the case of *Free Market Foundation v. Reisman*, repeal Sections 302.017 and 302.019 of the Government Code, relating to contribution and expenditure restrictions for speaker elections. Possible amendments to Chapter 302 of the Government Code are found in Exhibit Q, page #34.

EXHIBIT A

Repealed text is indicated by ~~strickethrough~~ text.
Proposed language is indicated by underlined text.

CHAPTER 572 OF THE GOVERNMENT CODE

Section 572.023. Contents of Financial Statement in General

(a) A financial statement must include an account of the financial activity of the individual required by this subchapter to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year.

(b) The account of financial activity consists of:

...

(2) identification by name and the category of the greatest number of shares of stock of a non-publicly traded ~~any~~ business entity held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale;

...

EXHIBIT B

Repealed text is indicated by ~~text~~ text.
Proposed language is indicated by text text.

CHAPTER 572 OF THE GOVERNMENT CODE

Section 572.023. Contents of Financial Statement in General

(a) A financial statement must include an account of the financial activity of the individual required by this subchapter to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year.

(b) The account of financial activity consists of:

...

(2a) identification by stock symbol the holding of shares in a publicly traded corporation;

...

EXHIBIT C

Proposed language is indicated by underlined text.

CHAPTER 572 OF THE GOVERNMENT CODE

Section 572.0292. Retention of Records

(a) An individual required to file a personal financial statement shall maintain a record of the information that is necessary for filing the personal financial statement for at least three years beginning on the filing deadline for the personal financial statement containing the information.

EXHIBIT D

Repealed text is indicated by ~~strikethrough~~ text.
Proposed language is indicated by underlined text.

SECTION 2252.908 OF THE GOVERNMENT CODE

Section 2252.908. Disclosure of Interested Parties.

...

(b) This section applies only to a binding contract of a governmental entity or state agency that:

(1) has a value of at least \$50,000 and requires an action or vote by the governing body of the entity or agency before the contract may be signed; or

(2) has a value of at least \$1 million.

...

(f) A governmental entity or state agency that receives a completed disclosure of interested parties form shall notify the commission, in an electronic format prescribed by the commission, of the receipt of those documents not later than the 30th day after the date the contract for which the disclosure was filed binds all parties to the contract. ~~[Not later than the 30th day after the date the governmental entity or state agency receives a disclosure of interested parties required under this section, the governmental entity or state agency shall submit a copy of the disclosure to the Texas Ethics Commission.]~~

...

EXHIBIT E

Proposed language is indicated by underlined text.

TITLE 15 OF THE ELECTION CODE

Section 255.0032. Unlawful Use of Public Funds for Political Advertising

- (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds to make a political contribution or make a political expenditure.
- (b) This prohibition extends to the direct or indirect employment of a person to perform an action described by this subsection.

EXHIBIT F

Proposed language is indicated by underlined text.

SECTION 571.0711 OF THE GOVERNMENT CODE

Sec. 571.0711. SEMINARS.

The commission may conduct a seminar concerning the laws under the commission's jurisdiction and other laws as determined by the commission and may use appropriated funds for necessary expenses incurred in conducting the seminar, including expenses for food and non-alcoholic beverages for persons who attend the seminar.

OR

The commission may conduct a seminar concerning the laws under the commission's jurisdiction and other laws as determined by the commission and may charge a fee for attending the seminar in an amount necessary to cover the costs associated with the seminar, including costs associated with food and non-alcoholic beverages for persons who attend the seminar.

OR

The commission may conduct a seminar concerning the laws under the commission's jurisdiction and other laws as determined by the commission. The commission may use appropriated funds for necessary expenses incurred in conducting the seminar, including expenses for food and non-alcoholic beverages for persons who attend the seminar, or may charge a fee for attending the seminar in an amount necessary to cover the costs associated with the seminar, including costs associated with food and non-alcoholic beverages for persons who attend the seminar.

EXHIBIT G

Repealed text is indicated by ~~strikethrough~~ text.
Proposed language is indicated by underlined text.

TITLE 15 OF THE ELECTION CODE

§ 251.033. Notification of Deadline for Filing Reports

(a) The commission shall notify each person responsible for filing a report with the commission under Subchapters C through F, Chapter 254, of the deadline for filing a report, except that notice of the deadline is not required for a political committee involved in an election other than a primary election or the general election for state and county officers or for a report required to be filed with the commission by Section 254.0395. Notification under this subsection may be sent by electronic mail.

(b) If the commission is unable to notify a person of a deadline after two attempts, the commission is not required to make any further attempts to notify the person of that deadline or any future deadlines until the person has notified the commission of the person's current address or electronic mail address.

(c) Chapter 552, Government Code, does not apply to a notification under this section sent by electronic mail.

§ 254.036. Form of Report; Affidavit; Mailing of Forms

(a) Each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission. A report filed with the commission that is not required to be filed electronically ~~[by computer diskette, modem, or other means of electronic transfer]~~ must be on a form prescribed by the commission and written in black ink or typed with black typewriter ribbon or, if the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission.

(b) Except as provided by Subsection (c) or (e), each report filed under this chapter with the commission must be filed electronically ~~[by computer diskette, modem, or other means of electronic transfer,]~~ using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

(c) Except as otherwise provided by this title, ~~[A]~~ a candidate, officeholder, or political committee that is required to file reports with the commission may file reports that comply with Subsection (a) if:

- (1) the candidate, officeholder, or campaign treasurer of the committee files ~~[with the commission]~~ an affidavit stating that the candidate, officeholder, or committee, an agent of the candidate, officeholder, or committee, or a person with whom the candidate,

officeholder, or committee contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee; and

(2) the candidate, officeholder, or committee does not, in a calendar year, accept political contributions that in the aggregate exceed \$20,000 or make political expenditures that in the aggregate exceed \$20,000.

(c-1) An affidavit under Subsection (c) must be filed with each report filed under Subsection (a). The affidavit must include a statement that the candidate, officeholder, or political committee understands that the candidate, officeholder, or committee shall file reports as required by Subsection (b) if:

(1) the candidate, officeholder, or committee, a consultant of the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts uses computer equipment for a purpose described by Subsection (c); or

(2) the candidate, officeholder, or committee exceeds \$20,000 in political contributions or political expenditures in a calendar year.

(d) Repealed by Acts 2003, 78th Leg., ch. 249, Sec. 2.26.

(e) A candidate for an office described by Section 252.005(5) or a specific-purpose committee for supporting or opposing only candidates for an office described by Section 252.005(5) or a measure described by Section 252.007(5) may file reports that comply with Subsection (a).

(f) In prescribing the format of a report filed under this chapter with an authority other than the commission, the commission shall ensure that:

(1) a report may be filed:

(A) by first class United States mail or common or contract carrier;

(B) by personal delivery; or

(C) by electronic filing, if the authority with whom the report is required to be filed has adopted rules and procedures to provide for the electronic filing of the report and the report is filed in accordance with those rules and procedures; and

(2) an authority with whom a report is electronically filed issues an electronic receipt for the report to the person filing the report.

(g) Repealed by Acts 2003, 78th Leg., ch. 249, Sec. 2.26.

(h) Each report filed under this chapter that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code." Each report filed under this chapter by electronic transfer must be under

oath by the person required to file the report and must contain, in compliance with commission specifications, the digitized signature of the person required to file the report. A report filed under this chapter is considered to be under oath by the person required to file the report, and the person is subject to prosecution under Chapter 37, Penal Code, regardless of the absence of or a defect in the affidavit.

(i) Each person required to file reports with the commission that comply with Subsection (b) shall file with the commission a verified form to request a password to be used for filing the reports. ~~[written statement providing the manner of electronic transfer that the person will use to file the report. A statement under this subsection must be filed not later than the 30th day before the filing deadline for the first report a person is required to file under Subsection (b). A person who intends to change the manner of filing described by the person's most recent statement shall notify the commission of the change not later than the 30th day before the filing deadline for the report to which the change applies. If a person does not file a statement under this subsection, the commission may accept as authentic a report filed in any manner that complies with Subsection (b). If the commission receives a report that is not filed in the manner described by the person's most recent statement under this subsection, the commission shall promptly notify the person in writing that the commission has received a report filed in a different manner than expected.]~~

(j) As part of the notification required by Section 251.033, the commission shall mail the appropriate forms to each person required to file a report with the commission during that reporting period.

(k) The commission shall prescribe forms for purposes of legislative caucus reports under Section 254.0311 that are separate and distinct from forms for other reports under this chapter.

(l) This section applies to a report that is filed electronically or otherwise.

§ 254.0395. Certain Reports Filed with Commission

(a) Notwithstanding any other section in this title, the following reports required by this title must be filed electronically with the commission in accordance with Section 254.036(b):

(1) a report by a candidate for a county office, a precinct office, or a district office included in Section 252.005(1);

(2) a report by a holder of a county office, a precinct office, or a district office included in Section 252.005(1);

(3) a campaign treasurer of a specific-purpose committee for supporting or opposing a candidate for, or assisting a holder of, a county office, a precinct office, or a district office included in Section 252.005(1);

(4) a report required under Subchapter H by a former candidate for or former holder of a county office, a precinct office, or a district office included in Section 252.005(1).

(b) If Section 254.036(c) applies to the filer and the report is accompanied by the affidavit described by Section 254.036 (c-1), the report may instead be filed with the authority with whom the report would otherwise be required to be filed.

§ 254.042. Civil Penalty for Late Report

(a) The commission shall determine from any available evidence whether a report required to be filed with the commission under this chapter is late. On making that determination, the commission shall immediately mail a notice of the determination to the person required to file the report.

(b) If a report other than a report under Section 254.064(c), 254.124(c), or 254.154(c) or the first report under Section 254.063 or 254.123 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is liable to the state for a civil penalty of \$500. If a report under Section 254.064(c), 254.124(c), or 254.154(c) or the first report under Section 254.063 or 254.153 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is liable to the state for a civil penalty of \$500 for the first day the report is late and \$100 for each day thereafter that the report is late. If a report is more than 30 days late, the commission shall issue a warning of liability by registered mail to the person required to file the report. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a civil penalty in an amount determined by commission rule, but not to exceed \$10,000.

(c) A penalty paid voluntarily under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(d) This section does not apply to a report required to be filed with the commission by Section 254.0395.

~~[(d) Repealed by Acts 1991, 72nd Leg., ch. 304, Sec. 5.20, eff. Jan. 1, 1992.]~~

§ 254.066. Authority with Whom Reports Filed

Except as provided by Section 254.0395, reports [Reports] under this subchapter shall be filed with the authority with whom the candidate's campaign treasurer appointment is required to be filed.

SUBCHAPTER D. REPORTING BY OFFICEHOLDER

§ 254.095. Report Not Required

If at the end of any reporting period prescribed by this subchapter an officeholder who is required to file a report with an authority other than the commission, or an officeholder who is required to file a report with the commission by section 254.0395, has not accepted political contributions that in the aggregate exceed \$500 or made political expenditures that in the aggregate exceed \$500, the officeholder is not required to file a report covering that period.

§ 254.097. Authority with Whom Reports Filed

Except as provided by Section 254.0395, reports [Reports] under this subchapter shall be filed with the authority with whom a campaign treasurer appointment by a candidate for the office held by the officeholder is required to be filed.

§ 254.130. Authority with Whom Reports Filed

(a) Except as provided by Subsection (b) or Section 254.0395, reports filed under this subchapter shall be filed with the authority with whom the political committee's campaign treasurer appointment is required to be filed.

(b) A specific-purpose committee created to support or oppose a measure on the issuance of bonds by a school district shall file reports under this subchapter with the commission.

§ 254.202. Filing of Report; Contents

(a) A person shall file the report required by Section 254.201 not earlier than January 1 or later than January 15 of each year following the year in which the person files a final report under this chapter.

(b) Except as provided by Section 254.0395, [~~The~~] the report shall be filed with the authority with whom the person's campaign treasurer appointment was required to be filed.

(c) The report must include:

- (1) the person's full name and address;
- (2) the full name and address of each person to whom a payment from unexpended political contributions was made during the previous year;
- (3) the date, amount, and purpose of each payment made under Subdivision (2);
- (4) the total amount of unexpended political contributions as of December 31 of the previous year; and
- (5) the total amount of interest and other income earned on unexpended political contributions during the previous year.

§ 254.205. Report of Disposition of Unexpended Contributions

(a) Not later than the 30th day after the date the six-year period prescribed by Section 254.203 ends, the person required to dispose of unexpended political contributions shall file a report of the disposition.

(b) Except as provided by Section 254.0395, [~~The~~] the report shall be filed with the authority with whom the person's campaign treasurer appointment was required to be filed.

(c) The report must include:

- (1) the person's full name and address;
- (2) the full name and address of each person to whom a payment from unexpended political contributions is made; and
- (3) the date and amount of each payment reported under Subdivision (2).

CHAPTER 571 OF THE GOVERNMENT CODE

§ 571.069. Review of Statements and Reports; Audits

(a) The commission shall review for facial compliance randomly selected statements and reports filed with the commission and may review any available documents. The commission shall return for resubmission with corrections or additional documentation a statement or report that does not, in the opinion of the commission, comply with the law requiring the statement or report. A statement or report returned for resubmission is considered to have been filed on the date the statement or report was originally filed if:

(1) the statement or report is resubmitted to the commission not later than the seventh business day after the date the person filing the statement or report receives the returned statement or report; and

(2) the resubmitted statement or report complies with law.

(b) The commission may by a vote of at least six commission members initiate a preliminary review as provided by Section 571.124 or perform a complete audit of a statement or report:

(1) if, before the 31st day after the date the statement or report was originally due, the executive director does not obtain from the person information that permits the executive director to determine that the statement or report complies with law;

(2) if a statement or report returned for resubmission is not resubmitted within the time prescribed by Subsection (a); or

(3) on an affirmative vote of at least six commission members that a statement or report resubmitted under Subsection (a), together with any corrections or additional documentation, does not, in the opinion of the commission, comply with the law requiring the statement or report.

(c) Any audited statement, report, document, or other material is confidential and may not be disclosed unless the statement, report, document, or other material:

(1) was previously public information; or

(2) is entered into the record of a formal hearing or a judicial proceeding.

(d) The party who is the subject of the audit may waive confidentiality by sending written notice to the commission.

(e) The commission may not audit a statement or report filed before January 1, 1992, under a law administered and enforced before that date by the secretary of state.

(f) This section may not be construed as limiting or affecting the commission's authority to, on the filing of a motion or receipt of a sworn complaint, review or investigate the sufficiency of a statement or report.

(g) This section does not apply to a report required to be filed with the commission by Section 254.0395.

EXHIBIT H

Repealed text is indicated by ~~text~~ text.
Proposed language is indicated by text text.

CHAPTER 571 OF THE GOVERNMENT CODE

§ 571.133. Appeal of Final Decision

(a) To appeal a final decision of the commission, the respondent or the respondent's agent may file a petition in a district court in Travis County or in the county in which the respondent resides.

(b) The petition must be filed not later than the 30th business day after the date the respondent received the decision.

(c) Not later than the 30th day after the date on which the petition is filed, the respondent may request that the appeal be transferred to a district court in Travis County or in the county in which the respondent resides, as appropriate. The court in which the appeal is originally filed shall transfer the appeal to a district court in the other county on receipt of the request.

(d) In an appeal brought under this section, judicial review of a final decision of the commission shall be conducted as follows:

(1) The substantial evidence rule does not apply and the action shall be determined by trial de novo.

(2) The records of a contested case hearing under this chapter are admissible in a trial under this section in accordance with the Texas Rules of Evidence.

(3) A trial under this subchapter is limited to issues decided by the commission and on which judicial review is sought.

(5) In a trial to the court without a jury, the court in rendering its judgment may consider the decision of the commission.

(6) In a jury trial, the court, before submitting the case to the jury, may inform the jury of the decision of the commission in the court's instructions, charge, or questions to the jury.

(6) Evidence shall be adduced as in other civil trials.

(7) A respondent is entitled, on demand, to a jury determination of any issue of fact on which a jury determination is available in other civil suits in this state.

~~[An appeal brought under this section is not limited to questions of law, and the substantial evidence rule does not apply. The action shall be determined by trial de novo. The reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior action by the commission or the nature of that action, except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court. A party is entitled, on demand, to a jury determination of any issue of fact on which a jury determination is available in other civil suits in this state.]~~

(e) To the extent that this subchapter conflicts with the Texas Rules of Civil Procedure or any other rules adopted by the supreme court, this subchapter controls. Notwithstanding Section 22.004, Government Code, or any other law, the supreme court may not adopt rules in conflict with or inconsistent with this subchapter.

EXHIBIT I

Repealed text is indicated by ~~text~~ text.
Proposed language is indicated by text text.

CHAPTER 571 OF THE GOVERNMENT CODE

§ 571.1243. Preliminary Review: Written Questions

(a) During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. The complainant or respondent must timely submit to the commission a complete, verified, and written response to the written questions.

(b) If a complainant or respondent fails to submit a timely or complete, verified, and written response to written questions, the commission may impose a civil penalty in an amount not to exceed \$10,000.

§ 571.137. Subpoena

(a) In connection with a formal hearing, the commission, as authorized by this chapter, may subpoena and examine witnesses and documents that directly relate to a sworn complaint.

(a-1) In connection with a preliminary review, the commission, for good cause and as authorized by this chapter, may subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least six members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information:

(1) is likely to be determinative as to whether the subject of an investigation has violated a law within the jurisdiction of the commission;

(2) can be determined from the documents or is known by the witnesses; and

(3) is not reasonably available through a less intrusive means.

(a-2) The commission shall adopt procedures for the issuance of subpoenas under this section.

(a-3) A copy of a subpoena issued under this section must be delivered to the respondent.

(b) At the written request of at least six members of the commission, a peace officer shall serve a subpoena of the commission in the manner prescribed for service of a district court subpoena.

(c) If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, the commission may impose a civil penalty in an amount

not to exceed \$10,000 and may [shall] report that fact to a district court in Travis County. If the commission reports that fact to a district court in Travis County, the [The] district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

(d) A respondent has the right to quash a subpoena as provided by law.

(e) A subpoenaed witness who attends a commission hearing is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides subpoenaed documents to the commission is entitled to reimbursement from the commission for the person's reasonable cost of producing the documents.

EXHIBIT J

Repealed text is indicated by ~~text~~ text.
Proposed language is indicated by text text.

CHAPTER 571 OF THE GOVERNMENT CODE

§ 571.140. Confidentiality; Offense

(a) Except as provided by Subsection (b), ~~(b-1), (b-2), or (b-3)~~ or by Section 571.171, proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(b-1) A commission employee may, for the purpose of investigating a sworn complaint or motion, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

- (1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;
- (2) the employee's determination under Subdivision (1) is objectively reasonable;
- (3) the executive director authorizes the disclosure; and
- (4) the employee discloses only the information necessary to conduct the investigation.

(b-2) A respondent named in a sworn complaint or motion waives confidentiality regarding any and all proceedings and information related to the sworn complaint or motion under this section by publicly disclosing confidential information relating to the sworn complaint or motion or by providing a verified, written waiver of confidentiality to the executive director. The proceedings and information related to a sworn complaint or motion for which the respondent has waived confidentiality are not confidential under this section.

(b-3) This section does not prohibit a respondent named in a sworn complaint or motion from publicly disclosing information related to the sworn complaint or motion, including the processing and resolution of, and the substance and allegations made in, the sworn complaint or motion.

(c) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class C misdemeanor.

(d) In addition to other penalties, a person who discloses information made confidential by this section is civilly liable to the respondent in an amount equal to the greater of \$10,000 or the amount of actual damages incurred by the respondent, including court costs and attorney fees.

(e) The commission shall terminate the employment of a commission employee who violates Subsection (a).

(f) A commission employee who discloses confidential information in compliance with Subsection (b-1) is not subject to Subsections (c), (d), and (e).

EXHIBIT K

Proposed language is indicated by underlined text.

CHAPTER 571 OF THE GOVERNMENT CODE

§ 571.140. Confidentiality; Offense

(a) Except as provided by Subsection (b) or (b-1) or by Section 571.171 or 571.1401, proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(b-1) A commission employee may, for the purpose of investigating a sworn complaint or motion, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

- (1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;
- (2) the employee's determination under Subdivision (1) is objectively reasonable;
- (3) the executive director authorizes the disclosure; and
- (4) the employee discloses only the information necessary to conduct the investigation.

(c) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class C misdemeanor.

(d) In addition to other penalties, a person who discloses information made confidential by this section is civilly liable to the respondent in an amount equal to the greater of \$10,000 or the amount of actual damages incurred by the respondent, including court costs and attorney fees.

(e) The commission shall terminate the employment of a commission employee who violates Subsection (a).

(f) A commission employee who discloses confidential information in compliance with Subsection (b-1) is not subject to Subsections (c), (d), and (e).

§ 571.1401. Certain Disclosure of Information

(a) To protect the public interest, the commission may disclose to a law enforcement agency information that is confidential under Section 571.140(a).

(b) The commission may disclose information under this section only to the extent necessary for the recipient of the information to perform a duty or function that is in addition to the commission's duties and functions.

(c) Information disclosed to a law enforcement agency under this section remains confidential, and the agency must take appropriate measures to maintain that confidentiality.

(d) A person commits an offense if the person discloses confidential information obtained under this section. An offense under this subsection is a Class C misdemeanor.

EXHIBIT L

Proposed language is indicated by underlined text.

TITLE 15 OF THE ELECTION CODE

§ 255.009. Required Disclosure on Slate Mailer

(a) In this section, "slate mailer" means a mass mailing that supports or opposes four or more candidates.

(b) This section does not apply to a slate mailer produced by a general-purpose committee.

(c) In addition to the disclosure statement required by Sections 255.001 or 255.008, as applicable, the first page of a slate mailer shall indicate the full name and address of each person with final decision-making authority as to which candidates are supported or opposed in the slate mailer.

(d) A person may not knowingly cause to be published or distributed a slate mailer that does not include the disclosure required by Subsection (c).

(e) A person who violates this section is liable to this state for a civil penalty in an amount determined by the commission not to exceed \$4,000.

EXHIBIT M

Proposed language is indicated by underlined text.

TITLE 15 OF THE ELECTION CODE

§ 251.005. Out-of-State Committees Excluded

(a) An out-of-state political committee is not subject to Chapter 252 or 254, except as provided by Subsection (b), (c), or (d).

(b) If an out-of-state committee decides to file a campaign treasurer appointment under Chapter 252, at the time the appointment is filed the committee becomes subject to this title to the same extent as a political committee that is not an out-of-state committee.

(c) If an out-of-state committee performs an activity that removes the committee from out-of-state status as defined by Section 251.001(15), the committee becomes subject to this title to the same extent as a political committee that is not an out-of-state committee.

(d) An out-of-state political committee that does not file a campaign treasurer appointment shall comply with Sections 254.1581, 254.161, and 254.261.

§ 254.1581. Reporting by Out-Of-State Political Committee

For each reporting period under this subchapter in which an out-of-state political committee accepts political contributions or makes political expenditures, the committee shall file with the commission a copy of one or more reports filed with the Federal Election Commission or with the proper filing authority of at least one other state that shows the political contributions accepted, political expenditures made, and other expenditures made by the committee. A report must be filed within the same period in which it is required to be filed under federal law or the law of the other state.

§ 254.161. Notice to Candidate and Officeholder of Contributions and Expenditures

If a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee accepts political contributions or makes political expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder as provided by Section 254.128 for a specific-purpose committee.

§ 254.261. Direct Campaign Expenditure Exceeding \$100

(a) 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 shall 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.

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

(d) 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.

(e) This section applies to an out-of-state political committee that does not file a campaign treasurer appointment.

EXHIBIT N

Repealed text is indicated by ~~strickethrough~~ text.
Proposed language is indicated by underlined text.

CHAPTER 571 OF THE GOVERNMENT CODE

§ 572.030. Preparation and Mailing of Forms

(a) The commission shall design forms that may be used for filing the financial statement under this subchapter.

(b) The commission shall notify ~~mail to~~ each individual required to file under this subchapter of ~~a notice that~~:

(1) the requirement ~~states~~ that the individual ~~is required to~~ file a financial statement under this subchapter;

(2) ~~identifies~~ the filing dates for the financial statement as provided by Sections 572.026 and 572.027; and

(3) ~~describes~~ the manner in which the individual may electronically file the financial statement and access instructions for filing financial statements on ~~obtain the financial statement forms and instructions from~~ the commission's Internet website[;]

~~(4) states that on request of the individual, the commission will mail to the individual a copy of the financial statement forms and instructions; and~~

~~(5) states, if applicable, the fee for mailing the forms and instructions and the manner in which the individual may pay the fee].~~

(c) Except as provided by commission rule, the notification ~~The notice~~ required by Subsection (b) must be provided ~~mailed~~:

(1) before the 30th day before the deadline for filing the financial statement under Section 572.026(a) or (c), except as otherwise provided by this subsection;

(2) not later than the 15th day after the applicable deadline for filing an application for a place on the ballot or a declaration of write-in candidacy for candidates required to file under Section 572.027(a), (b), or (c);

(3) not later than the seventh day after the date of appointment for individuals required to file under Section 572.026(b), or if the legislature is in session, sooner if possible; and

(4) not later than the fifth day after the date the certificate of nomination is filed for candidates required to file under Section 572.027(d) [~~574.027(d)~~].

(d) Except as provided by commission rule, the [The] commission shall mail a copy of the financial statement forms and instructions to an individual not later than the third business day after the date the commission receives the individual's request for the forms and instructions.

(e) The commission may charge a fee for mailing the financial statement forms and instructions to an individual. The amount of the fee may not exceed the reasonable cost of producing and mailing the forms and instructions.

§ 571.033. Notification Procedures

(a) The commission may adopt rules prescribing how the commission will notify any person or provide any notice required by this subtitle, Chapter 305, Chapter 572, or Title 15, Election Code.

(b) Subsection (a) of this section does not apply to Subchapters E and F of this subtitle and the warning of liability required to be issues if a report is more than 30 days late under Section 254.042(b) of the Election Code.

EXHIBIT O

Proposed language is indicated by underlined text.

TITLE 15 OF THE ELECTION CODE

§ 253.105. Political Contributions to Direct Campaign Expenditure Committees

(a) A corporation or labor organization may make a political contribution from its own property to a political committee that intends to act exclusively as a direct campaign expenditure only committee.

(b) For purposes of this section, a “direct campaign expenditure only committee” is a political committee that makes direct campaign expenditures and does not make or intend to make political contributions to any candidate, officeholder, or specific-purpose committee established or controlled by a candidate or officeholder.

(c) A direct campaign expenditure only committee’s acceptance of a political contribution from a corporation or labor organization does not constitute a violation of section 253.003(b) or 253.094(a) of the Election Code if, before accepting the contribution, the committee files with the commission an affidavit stating:

(1) the committee intends to act exclusively as a direct campaign expenditure only committee; and

(2) the committee will not use its political contributions to make political contributions to any candidate for elective office, officeholder, or political committee that makes a political contribution to a candidate or officeholder.

EXHIBIT P

Repealed text is indicated by ~~text~~.

TITLE 15 OF THE ELECTION CODE

§ 253.037. Restrictions on Contribution or Expenditure by General-Purpose Committee

~~[(a) A general-purpose committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has:~~

~~(1) filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made; and~~

~~(2) accepted political contributions from at least 10 persons.]~~

(b) A general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee.

~~[(c) Subsection (a) does not apply to a political party's county executive committee that is complying with Section 253.031 or to a general purpose committee that accepts contributions from a multicandidate political committee (as defined by the Federal Election Campaign Act) that is registered with the Federal Election Commission, provided that the general purpose committee is in compliance with Section 253.032.]~~

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

EXHIBIT Q

Repealed text is indicated by ~~text~~ text.

CHAPTER 302 OF THE GOVERNMENT CODE

~~§ 302.017. Contributions and Loans from Organizations~~

~~(a) Except as provided by Subsection (b), a corporation, partnership, association, firm, union, foundation, committee, club, or other organization or group of persons may not contribute or lend or promise to contribute or lend money or other things of value to a speaker candidate or to any other person, directly or indirectly, to aid or defeat the election of a speaker candidate.~~

~~(b) This section does not apply to a loan made in the due course of business to a speaker candidate for campaign purposes by a corporation that is legally engaged in the business of lending money and that has continuously conducted the business for more than one year before making the loan to the speaker candidate.]~~

~~§ 302.019. Individual Contributions; Campaign Expenditures~~

~~(a) Except as provided by Section 302.017 or 302.018, an individual other than the speaker candidate may contribute personal services and traveling expenses to aid or defeat a speaker candidate.~~

~~(b) An individual other than the speaker candidate may expend a total of not more than \$100 for the cost of correspondence to aid or defeat the election of a speaker candidate.~~

~~(c) Except as provided by Subsections (a) and (b), all campaign expenditures must be made by the speaker candidate from campaign funds.]~~