

BILL ANALYSIS

C.S.H.B. 3736
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General Investigating & Ethics
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the Texas Constitution requires a member of the legislature who has a personal or private interest in a proposed or pending measure or bill to disclose the interest and prohibits the member from voting on the measure or bill. The parties contend that the application of these provisions has been limited to measures and bills that affect a member directly and not as a member of a class. Furthermore, a state officer or state employee is prohibited from having a direct or indirect interest that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest. However, these parties contend that there is no requirement that a member of a governing board or the governing officer of a state agency in the executive branch identify and disclose conflicts of interest and abstain from participating in related board decisions. C.S.H.B. 3736 seeks to address this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Ethics Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3736 amends the Government Code to require an individual, in each matter before the governing body of a state agency or, if the agency is not governed by a multimember governing board, the officer who governs the agency, for which a member of the board or officer, as applicable, has a conflict of interest to disclose the conflict of interest in writing to the agency and to prohibit the individual from participating in the decision on the matter. The bill defines "conflict of interest" to mean the conflict between an official decision made by a state agency governing board member or governing officer in the individual's official capacity and the individual's private financial interest in which the individual realizes any pecuniary gain and defines "financial interest" to mean ownership or control, directly or indirectly, of an ownership interest of at least five percent in a person, including the right to share in profits, proceeds, or capital gains, or an ownership interest that an individual could reasonably foresee could result in any financial benefit to the individual, excluding an interest in a retirement plan, a blind trust, insurance coverage, or capital gains.

C.S.H.B. 3736 authorizes a board, if a majority of the members of a governing board of a state agency have a conflict of interest related to a matter before the board, or an officer, if the agency is not governed by a multimember governing board and the officer who governs the agency has a conflict of interest on the matter, to decide the matter only if each member, or the officer, as

applicable, who has a conflict of interest discloses in writing the conflict of interest to the agency and the board or officer, as applicable, makes a finding that an emergency exists that requires a decision on the matter despite the conflict of interest.

C.S.H.B. 3736 specifies that a written disclosure of a conflict of interest is public information and requires a state agency that receives a written disclosure to file a copy of the disclosure with the Texas Ethics Commission. The bill authorizes the commission to adopt rules as necessary to implement the bill's provisions, including rules on the disclosure to be filed with the commission. The bill makes it a Class B misdemeanor offense for an individual to knowingly fail to comply with the bill's conflict of interest disclosure requirements. The bill includes its provisions regarding conflict of interest by a state governing board member or officer among the provisions the commission is required to administer and enforce.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3736 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle B, Title 5, Government Code is amended by adding Chapter 576 to read as follows:

CHAPTER 576. CONFLICT OF INTEREST BY MEMBER OF STATE AGENCY GOVERNING BOARD

Sec. 576.001. DEFINITIONS. In this chapter:

(1) "Conflict of interest" means a circumstance in which an individual who is a member of a governing board is in a position to receive a pecuniary gain, other than a gain that is de minimis or a gain that is common to a broad class of individuals, from a decision of the governing board.

No equivalent provision.

(2) "State agency" means a board,

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle B, Title 5, Government Code, is amended by adding Chapter 576 to read as follows:

CHAPTER 576. CONFLICT OF INTEREST BY STATE AGENCY GOVERNING BOARD MEMBER OR OFFICER

Sec. 576.001. DEFINITIONS. In this chapter:

(1) "Conflict of interest" means the conflict between an official decision made by a state agency governing board member or governing officer in the individual's official capacity and the individual's private financial interest in which the individual realizes any pecuniary gain.

(2) "Financial interest" means ownership or control, directly or indirectly, of an ownership interest of at least five percent in a person, including the right to share in profits, proceeds, or capital gains, or an ownership interest that an individual could reasonably foresee could result in any financial benefit to the individual. The term does not include an interest in a retirement plan, a blind trust, insurance coverage, or capital gains.

(3) "State agency" means a board,

commission, council, committee, department, office, agency, or other governmental entity in the executive branch of state government.

Sec. 576.002. DUTY TO DISCLOSE AND REFRAIN FROM PARTICIPATING. In all cases in which an individual who is a member of the governing board of a state agency has a conflict of interest, the individual:

- (1) shall disclose the conflict of interest in writing to the state agency; and
- (2) may not participate in the decision of the governing board.

No equivalent provision.

Sec. 576.003. PUBLIC INFORMATION.

Sec. 576.004. REPORT TO THE TEXAS ETHICS COMMISSION. (a) A state agency that receives a written disclosure under Section 576.002 shall file a copy of the disclosure with the Texas Ethics Commission.

(b) The commission may adopt rules as necessary regarding the disclosure to be filed with the commission.

Sec. 576.005. CRIMINAL PENALTY. (a) An individual commits an offense if the individual knowingly fails to comply with the requirements of Sec. 576.002.

commission, council, committee, department, office, agency, or other governmental entity in the executive branch of state government.

Sec. 576.002. DUTY TO DISCLOSE AND REFRAIN FROM PARTICIPATION. (a) Except as provided by Subsection (b), in each matter before the governing board of a state agency or, if the agency is not governed by a multimember governing board, the officer who governs the agency, for which a member of the board or officer, as applicable, has a conflict of interest, the individual:

- (1) shall disclose in writing the conflict of interest to the agency; and
- (2) may not participate in the decision on the matter.

(b) If a majority of the members of the governing board of a state agency has a conflict of interest related to a matter before the board or, if the agency is not governed by a multimember governing board, the officer who governs the agency has a conflict of interest on the matter, the board or officer may decide the matter only if:

- (1) each member, or the officer, as applicable, who has a conflict of interest discloses in writing the conflict of interest to the agency; and
- (2) the board, or officer, as applicable, makes a finding that an emergency exists that requires a decision on the matter despite the conflict of interest.

Sec. 576.003. PUBLIC INFORMATION.

Sec. 576.004. REPORT TO TEXAS ETHICS COMMISSION; RULES. (a) A state agency that receives a written disclosure under Section 576.002 shall file a copy of the disclosure with the Texas Ethics Commission.

(b) The Texas Ethics Commission may adopt the rules necessary to implement this chapter, including rules on the disclosure to be filed with the commission under Subsection (a).

Sec. 576.005. CRIMINAL PENALTY. (a) An individual commits an offense if the individual knowingly fails to comply with Section 576.002.

(b) An offense under this section is a Class B misdemeanor.

No equivalent provision.

SECTION 2. This act takes effect September 1, 2015.

(b) An offense under this section is a class B misdemeanor.

SECTION 2. Section 571.061(a), Government Code, is amended to read as follows:

(a) The commission shall administer and enforce:

(1) Chapters 302, 303, 305, 572, 576, and 2004;

(2) Subchapter C, Chapter 159, Local Government Code, in connection with a county judicial officer, as defined by Section 159.051, Local Government Code, who elects to file a financial statement with the commission;

(3) Title 15, Election Code; and

(4) Sections 2152.064 and 2155.003.

SECTION 3. This Act takes effect September 1, 2015.