

## **BILL ANALYSIS**

C.S.H.B. 2473  
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General Investigating & Ethics  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to interested parties, certain elements of the law relating to disclosure by vendors of gifts to certain local government officers can be confusing. C.S.H.B. 2473 seeks to remove confusion for a person or entity attempting to comply with that law.

### **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. 2473 amends the Local Government Code to remove and repeal provisions relating to the filing of a conflicts disclosure statement and a conflict of interest questionnaire in relation to a gift given by a vendor to a local government officer, including the definition of gift as a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The bill instead sets out provisions relating to the disclosure of gifts to certain local government officers. The bill defines "gift" in those provisions as a benefit, including entertainment, offered by a vendor and accepted by a local government officer, but not food or beverages accepted by a local government officer as the guest of a vendor, a political contribution, or a benefit offered based on kinship or a personal, professional, or business relationship independent of the official status of the local government officer accepting the benefit.

C.S.H.B. 2473 requires a vendor to submit a completed disclosure form created by the Texas Ethics Commission to a local governmental entity not later than the 15th day of the first month of each calendar quarter if the vendor has a contract or is seeking to enter into a contract with the local governmental entity and if the vendor has given one or more gifts during the preceding calendar quarter with an aggregate value of more than \$100 to a local government officer of the local governmental entity or a family member of such an officer. The bill defines "local government officer" as a member of the governing body of a local governmental entity or a director, superintendent, administrator, president, or other executive officer of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. The bill sets out the required contents for the disclosure form. The bill establishes for purposes of the vendor disclosure form that the value or dollar amount of a gift for which a receipt is issued, other than an admission ticket to an event, is the price paid by the vendor for the gift and that the value or dollar amount of a gift that is an admission ticket to an

event is the price printed on the admission ticket or is the initial price paid to the first seller of the admission ticket if the price is not printed on the ticket. The bill exempts from the required disclosure a gift given by a vendor directly as part of the vendor's sponsorship of or contribution to an event that benefits a political committee or an organization that is exempted from federal income tax under certain provisions of the federal Internal Revenue Code of 1986. The bill requires the commission by rule to prescribe the disclosure form not later than January 1, 2018.

C.S.H.B. 2473 creates a Class C misdemeanor offense for a vendor who is required to submit a completed disclosure form and who knowingly fails to submit the completed form to the appropriate local governmental entity before the 15th day of the first month of the calendar quarter following the calendar quarter in which the form was required to be submitted under the bill's provisions.

C.S.H.B. 2473 authorizes the commission to prepare a written advisory opinion answering the request of a person subject to the bill's required disclosure of gifts to certain local government officials for an advisory opinion about the application of that disclosure to the person regarding a specified existing or hypothetical factual situation and sets out related procedures.

C.S.H.B. 2473 requires the commission to adopt rules necessary to implement the bill's provisions concerning the disclosure of gifts to certain local government officers not later than January 1, 2018, and limits the applicability of those provisions to an event requiring disclosure that occurs on or after that same date.

C.S.H.B. 2473 removes a local governmental entity's consideration of entering into a contract with a vendor from the conditions that can trigger the requirement that the local government officer file a conflicts disclosure statement with respect to a vendor. The bill removes the condition that a vendor has a business relationship with a local governmental entity from the conditions that can trigger the requirement that the vendor file a completed conflict of interest questionnaire.

C.S.H.B. 2473 repeals provisions exempting a local government officer from the requirement to file a conflicts disclosure statement if the local governmental entity or vendor is an administrative agency created in the context of an interlocal cooperation contract; authorizing the governing body of a local governmental entity to, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a required conflict of interest questionnaire; and establishing that the validity of a contract between a vendor and a local governmental entity is not affected solely because the vendor fails to comply with statutory requirements relating to the completion and filing of a conflict of interest questionnaire.

C.S.H.B. 2473 repeals the following provisions of the Local Government Code:

- Section 176.001(2-b)
- Sections 176.003(a-1) and (a-2)
- Section 176.006(i)
- Section 176.013(e)

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2473 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 C, Title 5, Local Government Code, is amended by adding Chapter 176A to read as follows:

CHAPTER 176A. DISCLOSURE OF GIFTS TO CERTAIN LOCAL GOVERNMENT OFFICERS

Sec. 176A.001. DEFINITIONS. In this chapter:

(1) "Agent," "commission," "family member," "goods," and "local governmental entity" have the meanings assigned by Section 176.001.

(2) "Entertainment" includes transportation to, lodging for, and attendance at a function, event, or performance that:

(A) a local government officer accepts as the guest of a vendor;

(B) is not required to be reported under law other than under this chapter; and

(C) is not prohibited by law.

(3) "Gift" means a benefit, including entertainment, offered by a vendor and accepted by a local government officer. The term does not include:

(A) a benefit offered based on kinship or a personal, professional, or business relationship independent of the official status of the local government officer accepting the benefit; or

(B) food or beverages accepted by a local government officer as the guest of a vendor.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity; or

(B) a director, superintendent, administrator, president, or other executive officer of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

(5) "Vendor" means a person or agent of the person who enters or seeks to enter into a contract with a local governmental entity for the provision of goods or services.

Sec. 176A.002. VENDOR DISCLOSURE FORM REQUIRED. (a) Not later than the 15th day of the first month of each calendar quarter, a vendor shall submit a completed

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle C, Title 5, Local Government Code, is amended by adding Chapter 176A to read as follows:

CHAPTER 176A. DISCLOSURE OF GIFTS TO CERTAIN LOCAL GOVERNMENT OFFICERS

Sec. 176A.001. DEFINITIONS. In this chapter:

(1) "Agent," "commission," "contract," "family member," "goods," "local governmental entity," and "services" have the meanings assigned by Section 176.001.

(2) "Entertainment" includes transportation to, lodging for, and attendance at a function, event, or performance that:

(A) a local government officer accepts as the guest of a vendor; and

(B) is not required to be reported by a vendor under law other than under this chapter.

(3) "Gift" means a benefit, including entertainment, offered by a vendor and accepted by a local government officer. The term does not include:

(A) a benefit offered based on kinship or a personal, professional, or business relationship independent of the official status of the local government officer accepting the benefit;

(B) food or beverages accepted by a local government officer as the guest of a vendor; or

(C) a political contribution as defined by Section 251.001, Election Code.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity; or

(B) a director, superintendent, administrator, president, or other executive officer of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

(5) "Vendor" means a person or agent of the person who enters or seeks to enter into a contract with a local governmental entity for the provision of goods or services.

Sec. 176A.002. VENDOR DISCLOSURE FORM REQUIRED. (a) Not later than the 15th day of the first month of each calendar quarter, a vendor shall submit a completed

disclosure form created by the commission to a local governmental entity if the vendor:  
(1) has a contract or is seeking to enter into a contract with the local governmental entity; and  
(2) has given one or more gifts during the preceding calendar quarter with an aggregate value of more than \$100 to a local government officer of the local governmental entity.

(b) A disclosure form submitted by a vendor under this section must include:  
(1) a statement that the vendor:  
(A) has a contract or is seeking to enter into a contract with the local governmental entity; and  
(B) has given one or more gifts during the preceding calendar quarter with an aggregate value of more than \$100 to a local government officer of the local governmental entity; and

(2) the dollar amount of the gift or gifts described by Subdivision (1)(B) given to a local government officer, stated as a total amount for each officer that accepted a gift from the vendor.

(c) This section does not apply to a gift given by a vendor directly as part of the vendor's sponsorship of or contribution to an event that benefits a nonprofit organization, if the nonprofit organization is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code.

disclosure form created by the commission to a local governmental entity if the vendor:  
(1) has a contract or is seeking to enter into a contract with the local governmental entity; and  
(2) has given one or more gifts during the preceding calendar quarter with an aggregate value of more than \$100 to:  
(A) a local government officer of the local governmental entity; or  
(B) a family member of a local government officer of the local governmental entity.

(b) A disclosure form submitted by a vendor under this section must include:  
(1) a statement that the vendor:  
(A) has a contract or is seeking to enter into a contract with the local governmental entity; and  
(B) has given one or more gifts during the preceding calendar quarter with an aggregate value of more than \$100 to:  
(i) a local government officer of the local governmental entity; or  
(ii) a family member of a local government officer of the local governmental entity; and  
(2) the dollar amount of the gift or gifts described by Subdivision (1)(B) given to a local government officer or a family member of a local government officer, stated as a total amount for each officer and family member that accepted a gift from the vendor.

(c) For purposes of this section:  
(1) the value or dollar amount of a gift for which a receipt is issued, other than an admission ticket to an event, is the price paid by the vendor for the gift; and  
(2) the value or dollar amount of a gift that is an admission ticket to an event is:  
(A) the price printed on the admission ticket; or  
(B) the initial price paid to the first seller of the admission ticket if the price is not printed on the ticket.

(d) This section does not apply to a gift given by a vendor directly as part of the vendor's sponsorship of or contribution to an event that benefits:  
(1) an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c) of that code; or  
(2) a political committee as defined by Section 251.001, Election Code.

Sec. 176A.003. EXTENSION OF DEADLINE TO SUBMIT VENDOR DISCLOSURE FORM. (a) A local governmental entity shall mail written notice to a vendor if the vendor has not submitted a disclosure form as required to be submitted under this chapter as soon as practicable after the local governmental entity discovers the omission.

(b) Notwithstanding Section 176A.002(a), on notification by the local governmental entity under this section, the deadline for the vendor to submit the disclosure form is extended to the 30th day after the date the notice is mailed.

Sec. 176A.004. LIST OF GOVERNMENT OFFICERS. A local governmental entity shall:

(1) create a complete list of all local government officers of the local governmental entity;

(2) update the list as needed to ensure the accuracy of the list;

(3) provide the most recently updated list to each vendor that enters or seeks to enter into a contract with the local governmental entity; and

(4) post and maintain the most recently updated list on the local governmental entity's Internet website, if the local governmental entity maintains a website.

Sec. 176A.005. PROHIBITION. (a) This section does not apply to a solicitation for contributions authorized by the Election Code.

(b) A local government officer may not solicit from a vendor a gift on behalf of the local government officer, a family member of the local government officer, or another person, including a local governmental entity or nonprofit charitable organization.

Sec. 176A.006. OFFENSE. (a) A vendor commits an offense if the vendor:

(1) is required to submit a disclosure form under Section 176A.002; and

(2) knowingly fails to submit the disclosure form with the appropriate local governmental entity before the 31st day after the date the local governmental entity mails notice to the vendor as required by Section 176A.003, if that notice is mailed.

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

Sec. 176A.003. OFFENSE. (a) A vendor commits an offense if the vendor:

(1) is required to submit a completed disclosure form under Section 176A.002; and

(2) knowingly fails to submit the completed disclosure form to the appropriate local governmental entity before the 15th day of the first month of the calendar quarter following the calendar quarter in which the form was required to be submitted under Section 176A.002.

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

(c) It is a defense to prosecution under this section that the local governmental entity to which the vendor is required to submit the disclosure form failed to create or update a complete list of all local government officers of the local governmental entity required by Section 176A.004.

Sec. 176A.007. COMMISSION ADVISORY OPINION.

Sec. 176A.008. COMMISSION RULES.

SECTION 2. Sections 176.003(a) and (e), Local Government Code, are amended.

SECTION 3. Sections 176.006(a) and (a-1), Local Government Code, are amended.

SECTION 4. Section 176.009, Local Government Code, is amended to read as follows:

Sec. 176.009. POSTING ON INTERNET.

~~[(a)]~~ A local governmental entity that maintains an Internet website shall post each statement and questionnaire ~~[provide access to the statements and to questionnaires required to be]~~ filed under this chapter on the [that] website not later than the 30th day after the date the statement or questionnaire is filed. The local governmental entity shall maintain the posting at least until the date the entity is no longer required to maintain the statement or questionnaire under Section 176.0065(2). ~~[This subsection does not require a local governmental entity to maintain an Internet website.]~~

SECTION 5. The following provisions of the Local Government Code are repealed:

- (1) Section 176.001(2-b);
- (2) Sections 176.003(a-1) and (a-2); and
- (3) Section 176.013(e).

SECTION 6. A local governmental entity, as defined by Chapter 176A, Local Government Code, as added by this Act, shall create and make available the complete list of all local government officers required by Section 176A.004 of that chapter as soon as practicable after the effective date of this Act, but not later than January 1, 2018.

SECTION 7. The Texas Ethics Commission shall adopt rules necessary to implement Chapter 176A, Local

Sec. 176A.004. COMMISSION ADVISORY OPINION.

Sec. 176A.005. COMMISSION RULES.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

No equivalent provision.

SECTION 4. The following provisions of the Local Government Code are repealed:

- (1) Section 176.001(2-b);
- (2) Sections 176.003(a-1) and (a-2);
- (3) Section 176.006(i); and
- (4) Section 176.013(e).

No equivalent provision.

SECTION 5. Same as introduced version.

Government Code, as added by this Act, and shall prescribe the disclosure form required to be submitted under that chapter as soon as practicable after the effective date of this Act, but not later than January 1, 2018.

SECTION 8.

The changes in law made by Chapter 176, Local Government Code, as amended by this Act, apply only to an event requiring disclosure that occurs on or after the effective date of this Act. An event requiring disclosure that occurs before the effective date of this Act is governed by the law applicable to the event immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 9. The changes in law made by Chapter 176A, Local Government Code, as added by this Act, apply only to an event requiring disclosure that occurs on or after January 1, 2018.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 6. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Chapter 176, Local Government Code, as amended by this Act, apply only to an event requiring disclosure that occurs on or after the effective date of this Act. An event requiring disclosure that occurs before the effective date of this Act is governed by the law applicable to the event immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act by the repeal of Section 176.006(i), Local Government Code, applies only to a contract that is entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7. Substantially the same as introduced version.

SECTION 8. Same as introduced version.