

SUBJECT: Requiring nepotism disclosure statements before awarding state contracts

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Swinford, Miller, B. Cook, Farrar, J. Keffer, Martinez Fischer, Villarreal, Wong

0 nays

1 absent — Gattis

WITNESSES: None

BACKGROUND: Government Code, ch. 2262 contains provisions on state contract management. The chapter does not apply to public institutions of higher education nor to contracts of the Texas Department of Transportation (TxDOT) that relate to highway construction or highway engineering.

Government Code ch. 573 contains definitions of relationships by degree of consanguinity (related by blood) and affinity (related by marriage) for the purposes of determining prohibitions on nepotism. A relationship in the third degree by consanguinity includes great-grandparents, great-grandchildren, uncles, aunts, nieces, and nephews who are blood relatives. A relationship in the second degree by affinity includes brothers, sisters, grandparents, and grandchildren related by marriage.

DIGEST: HB 2932 would require state agency purchasing personnel to submit a written nepotism disclosure statement before the agency could award a contract. The statement would have to disclose any relationship within the third degree by consanguinity or within the second degree by affinity that the employee had with an employee, partner, major stockholder, or other owner of the business entity to whom the contract would be awarded.

The bill would define a “major stockholder” as a person who directly or indirectly owned or controlled more than a 10 percent interest or a pecuniary interest of more than \$25,000 in a business entity. The bill would define “purchasing personnel” as an employee who made decisions regarding who should be awarded a contract or contract terms or conditions.

The state auditor would be required to develop a nepotism disclosure form. The bill's provisions would apply to public institutions of higher education and to TxDOT contracts that relate to highway construction or highway engineering.

The bill would take effect September 1, 2005, and would apply only to a contract awarded or extended on or after that date.

**SUPPORTERS
SAY:**

HB 2932 would increase the transparency and accountability of state government by requiring public disclosure of the relationships that employees who make purchasing decisions have with persons doing business with the state.

Open and transparent government is essential to maintain the confidence of citizens in their government, as well as to ensure the ethical use of taxpayer funds. Reports of government contracts being awarded to vendors who are related to the employee who awarded the contract create an impression of impropriety and reduce citizen trust in government. While these business relationships may not be improper, the agency has a right to know about any conflicts of interest its purchasing employees might have that could influence the receipt of public contracts prior to their award in order to determine whether those contracts really were the best use of taxpayer money.

Agency heads would be responsible for ensuring that this report was submitted and for disciplining or sanctioning employees who refused to comply. If an agency head refused to comply, the Legislature could request an explanation.

The disclosure requirements of the bill would not be burdensome. The bill's language would limit its application to relationships of which the employee was aware, meaning that a person clearly could not be disciplined for failing to disclose a relationship of which the employee was unaware. Moreover, the author intends to offer a floor amendment that would limit the application of the bill to major state contracts, already defined in law as any contract that has a value of at least \$1 million. This amendment would ensure that state purchasing personnel would not be unduly occupied with paperwork for small contracts. The amendment also would require a disclosure statement of personnel who prepared solicitations for major bids because it is during the preparation of a solicitation that many of the terms and conditions for a contract get set. A

person who was related to a business owner could set these terms in such a way that that business would be the only eligible vendor. Agency heads need to be aware of any potential conflicts of interest at this stage in the process.

OPPONENTS
SAY:

It would be unreasonable to require government employees to disclose their relationships with relatives seeking contracts. Such a requirement would presume that officials were aware of and benefited from business and financial dealings with family members. Requiring this disclosure would create a presumption of impropriety where there was none and be an unfair invasion of the privacy of those family members.

Requiring a nepotism disclosure statement for each contract, no matter how small, could slow down the purchasing process and bury purchasing personnel in paperwork. Some entities, particularly certain institutions of higher education, have a separate purchasing contract for every item bought. The bill should be limited to large contracts.

OTHER
OPPONENTS
SAY:

HB 2932 contains no enforcement mechanism to ensure that purchasing personnel submit the required nepotism disclosure form. Without a means of enforcement, employees with conflicts of interest could choose to withhold that information without a clearly defined penalty.

NOTES:

The author plans to offer a floor amendment that would:

- limit the bill to major state contracts; and
- require nepotism disclosure statements during the preparation of a solicitation for a major contract or the evaluation of a bid or proposal.