SUBJECT: Revised disclosure of business relationships with local officials

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Bailey, Murphy, Latham, Mallory Caraway, Martinez Fischer

0 nays

2 absent — Cohen, Menendez

WITNESSES: For — Steve Scurlock, Independent Bankers Association of Texas; (*Registered, but did not testify:* Walt Baum, Association of Electrical Companies of Texas; Catarina Cron, for Harris County Judge Robert Eckels; Rina Hartline, CenterPoint Energy; Michael Johnson, Melodie Stegall, Credit Union Legislative Coalition; Peyton McKnight, Texas Council of Engineering Companies; Monte J. Robinson, Texas Credit Union League; Bennett Sandlin, Texas Municipal League; Brian Yarbrough, JP Morgan Chase)

Against — None

BACKGROUND: In 2005, the 79th Legislature enacted HB 914 by Woolley, which added Local Government Code, ch. 176, requiring local public officers to disclose business relationships with any existing and potential partners of the local government where they are employed.

Sec. 176.003 requires local officials to file a conflicts disclosure statement with the local governmental entity's records administrator if, during the 12 months prior to the official's becoming aware of a current or possible contract between a person and the governmental body, the official or a family member related in the first degree to the official:

- had a business relationship with that person that resulted in taxable income; or
- received gifts from the person totaling more than $250.

Knowingly violating the provisions of sec. 176.003 is punishable as a class C misdemeanor (maximum fine of $500) and disciplinary action, including termination, from the local governmental employer.

Sec. 176.006 requires an individual or business contracting with a local governmental entity to file a conflict of interest questionnaire. The questionnaire must be filed within seven days of when a contractor begins negotiation or submits an application for a contract with a local government. It must include a description of any business relationship or affiliation the applicant has with:

- any local government official of the entity;
- other businesses in which an official of the local governmental entity served as an officer or held at least 10 percent ownership;
- employees or contractors of the body who make recommendations on expenditures to that body;
- local government officials who appoint the entity's officials; and
- any other relationship that might represent a conflict of interest.

Violating the provisions of 176.006 is punishable as a class C misdemeanor (maximum fine of $500).

Local governments are required to maintain and provide upon request lists of vendors who filed conflict of interest questionnaires. Disclosure forms filed in compliance with law must be made available on a local government's web site if the entity is a county with more than 800,000 residents or a municipality with more than 500,000 residents.

In August 2006, in response to a request submitted by Rep. Woolley and other state officials, Atty. Gen. Greg Abbott issued an opinion (GA-0446) regarding the interpretation and applicability of certain language and provisos in Local Government Code, ch. 176. The attorney general ruled that with respect to the statutory language:

- even contracts involving small and routine purchase are subject to disclosure;
- the question of what constitutes an "affiliation" is a question of fact that cannot be determined in an attorney general's opinion;
- the holding of a savings account by the financial institution for a governmental officer qualifies as a business relationship under the law;
- a savings account that generates taxable income to a governmental officer would trigger the law's reporting requirements;
- vendors who do not "identify" and "describe" each relationship or affiliation are out of compliance with the law; and

- a family member can be deemed a vendor, and the reporting requirement applies to any in-family gift worth more than $250.

DIGEST:

HB 1491 would change the disclosure provisions of Local Government Code, ch. 176. The bill would reduce both the number of persons and the types of business relationships subject to the disclosure provision. Business relationships would be defined to exclude transactions that are:

- subject to rate or fee regulation by local, state, or federal governments;
- conducted at a price and subject to terms available publicly; or
- related to the purchase or lease of goods from a person chartered by, and reporting to, a state or federal agency.

The bill would limit the contracts disclosure statement and questionnaire filing requirement to those public officials who have the authority to approve contracts on behalf of the local governmental entity.

The minimum taxable income from business transactions that would trigger the conflicts disclosure statement or conflict of interest questionnaire requirement would be set at $2,500. The bill would remove the requirement to report gifts among family members and political contributions made to candidates. Investment income specifically would be excluded from the reporting requirements.

HB 1491 would remove from the conflict of interest questionnaire reporting requirements that include the acknowledgement of:

- business relationships with those who make recommendations to a local governmental entity on matters respecting the expenditure of money;
- business relationships with local officers and those who appoint local officers; and
- "any other relationship" that might cause a conflict of interest.

The strict liability punishment for persons filing the questionnaires would be changed to those who knowingly violated the clause, and the governmental entity would not be responsible for ensuring that questionnaires be completed and filed.

The bill would remove the requirement that local governments maintain an Internet site providing access to the disclosure data, and it would allow entities to withhold information deemed confidential under the Public Information Act.

HB 1491 would add charter schools to the local governmental entities governed by ch. 176.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. HB 1491 would apply to any offense that occurred on or after the bill's effective date.

SUPPORTERS SAY:

HB 1491 would balance the value of public disclosure law for local government with the administrative burdens of complying with its provisions. The bill is the result of extended stakeholder negotiations and represents an attempt to mitigate some of the unintended consequences of the public disclosure law enacted in 2005 while preserving its core intent. It would address all the major points put forth in the attorney general's recent opinion regarding the applicability and interpretation of certain provisions in the statute and in so doing would clarify important concepts and procedures.

By setting a $2,500 threshold for reporting business relationships in disclosure forms and questionnaires and by exempting investment income from this total, the bill would remove undue reporting burdens that have no discernible impact on governmental decisions. For instance, current law has been construed to require reporting of earnings received from an investment account held by an official if the investor partners with the governmental entity that employs the official. HB 1491 would remove this requirement.

The bill would take the very important step of exempting organizations that are subject to additional, stricter state or federal guidelines from filing conflict of interest questionnaires. It would exempt financial institutions and regulated utilities from filing conflict of interest questionnaires. Financial institutions are covered by strict federal standards such as the Bank Bribery Act, which was amended in 1985 to prohibit the receipt of valuable goods in connection with a bank transaction.

HB 1491 would increase the value of publicly disclosed documents. Restricting the scope of ch. 176 would eliminate the need to maintain records of frivolous business relationships that have no bearing on public decisions. The multitude of documents required under current law makes the task of identifying undue influence onerous. Trimming the statute to apply only to important business relationships that could impact public processes would help watchdog groups identify and publicize dubious disclosures.

Vague language found in the current statute hampers good faith attempts to comply with the provisions of ch. 176. Businesses and individuals that contract with local governmental entities often are unsure what to report and in what level of detail. Clarifying key provisions of the bill would make it easier for business entities to comply. HB 1491 would accomplish this by striking certain ill-defined disclosure requirements and by further specifying who would fall under the statute and under what circumstances.

HB 1491 would make implementing ch. 176 manageable by granting greater flexibility to local governments regarding posting requirements. Local governments could post disclosure information online, but they no longer would be required to do so by law. The bill also would grant a much needed exception for confidential information, which has little public value but represents a serious concern for individual privacy.

OPPONENTS SAY:

No apparent opposition.