

- SUBJECT:** Mandatory ethics standards for state officers and employees
- COMMITTEE:** Government Reform — favorable, without amendment
- VOTE:** 5 ayes — Callegari, Pitts, Leibowitz, Miles, W.Smith
0 nays
2 absent — Berman, Rodriguez
- WITNESSES:** For — Tom Smith, Public Citizen; Lee Spiller, Citizen’s Commission on Human Rights. (*Registered, but did not testify:* Andrew Homer, Texas Public Employees Association)

Against — None

On — David Reisman, Texas Ethics Commission
- BACKGROUND:** Government Code, subch. C, sec. 572 establishes standards of conduct and conflicts of interest for state officers and employees. Sec. 572.051 instructs that state personnel *should* avoid:
- accepting gifts, favors, or services that might influence the official or employee in the discharge of duties;
 - external employment or other activities that might involve the disclosure of confidential information acquired through primary employment with the state;
 - accepting external employment or compensation that could impair the officer’s or employee’s independence of judgment in exercising official duties;
 - making personal investments that could create a substantial conflict between an officer or employee’s private interest and the public interest; and
 - intentionally or knowingly soliciting or accepting any benefit for having exercised official powers or performed official duties in favor of another interest.

DIGEST: HB 590 would amend Government Code, sec. 572.051(a) to replace the word “should” with the word “shall” in enumerating behavior for state officers and employees to avoid.

The bill also would direct each state agency to adopt a written ethics policy consistent with the standards laid out in sec. 572.051(a) and distribute copies of this policy to new employees. It would require the attorney general to work with the Ethics Commission to develop a model policy that agencies could use to meet these requirements. The Attorney General’s Office would be instructed to distribute this model policy by November 1, 2007.

State agencies would be required to adopt a written ethics policy no later than January 1, 2008, and would have to distribute a copy of the policy to each new employee within the first three days of the person’s employment. HB 590 would not apply to complaint procedures, hearings, or enforcement activities of the Texas Ethics Commission.

The bill would take effect on September 1, 2007, and would apply to official conduct that occurred on or after that date.

**SUPPORTERS
SAY:**

HB 590 would clarify and strengthen ethical standards that apply to state officials and employees. The bill would promote consistent, common-knowledge ethical policies among state agencies and thereby would help safeguard against common abuses. It would help restore and preserve both the actual and perceived ethical integrity of state personnel.

Current statutes governing ethical behavior are prefaced by language that admonishes that state workers *should* not engage in a number of practices that could compromise their professional integrity. HB 590 would clarify that state workers *shall* not engage in these practices. Replacing this vague and suggestive language with a strong injunction would resolve any questions as to what constitutes an abuse of office.

HB 590 would provide much needed universality and consistency of ethics policies among the numerous state agencies. Some agencies have not formally adopted policies, and there currently is much substantive variation in the content of existing policies. By instructing the Attorney General’s Office to create and distribute a model policy, the bill would help guarantee consistency and clarity and would provide an important

resource to smaller agencies less capable of drafting in-house ethical standards with existing resources.

HB 590 would improve the actual and perceived ethical integrity of state personnel by addressing common problems where they originate — at the agency level. The bill would avoid establishing unwieldy regulatory enforcement mechanisms and would help minimize expensive public trials. It would address the most common types of ethical infractions that stem from ignorance and uncertainty. The bill would be an efficient and effective means of improving institutional ethics with little additional cost to state taxpayers.

**OPPONENTS
SAY:**

HB 590 should provide enforcement authority for ethical standards governing state personnel. The bill does not specify a statutory penalty for violating its provisions and would leave enforcement to individual agency policies and Penal Code provisions regulating public employees. Agency-level enforcement actions likely would be inconsistent. Some agencies might not have the means and resources to enforce ethical infractions consistently. While violations could be enforced under chapters 36 and 39 of the Penal Code, this process can be arduous and expensive.

NOTES:

During the 2005 regular session, a similar bill, HB 2933 by Delisi, passed the House, but died in the Senate State Affairs Committee.