

SUBJECT: Reporting the value of gifts of cash or cash equivalent to public officials

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Berman, Bohac, England, Anchia, Farias
1 present not voting — Burnam
0 nays
1 absent — C. Howard

SENATE VOTE: On final passage, March 27 — 30-0

WITNESSES: For — None
Against — None
On — David A. Reisman, Texas Ethics Commission

BACKGROUND: Government Code, subch. B governs personal financial statements to be filed with the Texas Ethics Commission (TEC). Under sec. 572.021, state officers, partisan or independent candidates for an elected office, and state party chairs must file a verified financial statement with TEC. Sec. 572.022 specifies reporting categories for personal financial statements, and sec. 572.023 describes required general categories of content.

Sec. 572.023(b)(7) specifies that the financial statements identify a person or other organization from which an individual or individual's spouse or dependent children received a gift of anything of value in excess of \$250 and a description of each gift, except:

- a gift received from an individual related to the individual at any time within the second degree by consanguinity or affinity;
- a political contribution that was reported as required by the Election Code, ch. 254; and
- an expenditure required to be reported by a registered lobbyist under Government Code, ch. 305.

Penal Code, sec. 36.08 applies to gifts to public servants, making an offense a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Sec. 36.08(a) states that a public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if that person solicits, accepts, or agrees to accept any benefit from a person that the public servant knows to be subject to regulation, inspection, or investigation by the public servant or the public servant's agency. Sec. 36.08(f) holds that a member of the Legislature, the governor, the lieutenant governor, or one of their employees commits an offense if that person solicits, accepts, or agrees to accept any benefit from any person.

Penal Code, sec. 36.10 lists exceptions to the above provision, among them a gift or other benefit conferred because of kinship or a personal, professional, or business relationship independent of the official status of the recipient, a political contribution, or a gift, award, or memento to a member of the legislative or executive branch that is required to be reported by a lobbyist.

DIGEST:

SB 129 would amend Government Code, sec. 572.022 to specify that a gift of cash or cash equivalent, such as a negotiable instrument or gift certificate, that was reported under sec. 572.023(b)(7), would have to include in the description of the gift a statement of the gift's value.

The bill would take effect September 1, 2007 and would apply only to a required financial statement filed on or after January 1, 2008.

**SUPPORTERS
SAY:**

SB 129 would require that a gift of cash or cash equivalent reported on a personal financial disclosure filed with TEC include in the description of the gift a statement of the gift's value. Ethics Advisory Opinion No. 473 issued in November 2006 held that a state official need not report the value of a gift of cash or cash equivalent on a personal financial disclosure statement. Practically speaking, a person subject to personal financial disclosure has to report a gift only as a "check" or "money order" without disclosing the face value. SB 129 would close this loophole in current law and help further public trust in the financial disclosure system.

Current law requires that most financial activity on personal financial statements include a specific value or a dollar category. In 1999, however, TEC in Ethics Advisory Opinion No. 415 stated that the description of a gift did not have to include its specific value. As a result of Ethics

Advisory Opinion No. 473, a state representative petitioned TEC for a rulemaking regarding the description of a gift and subsequently sued the commission when it did not vote to propose a rule. The lawsuit was dismissed, and TEC received a request for an advisory on the issue.

In January, TEC's Recommendations for Statutory Changes included at least two options regarding this issue — requiring a gift to include the value of the gift and addressing whether it should be actual value or fair market value at the time the gift was received. SB 129 would follow TEC's recommendation for a statutory change in this area and would incorporate the suggestion of including a statement of actual cash value. By adding a common sense requirement that personal financial statements disclose the actual value of cash gifts or cash equivalents, SB 129 would generate more confidence in state government accountability and the state agency responsible for personal financial statements and their disclosure.

**OPPONENTS
SAY:**

SB 129 is not needed. Since 1973, Texas has had strict prohibitions involving gifts to public servants and elected officials and their employees in all three branches of government. Current law does not require officials to declare the value of gifts because the exceptions for gift-giving are so narrow. If your father-in-law gives you a pair of cowboy boots, you do not have to come up with a fair market value for them.

Ethics Advisory Opinion No. 473 was an appropriate ruling given the facts and current law. The opinion does not address the permissibility of accepting the gift but only the reporting requirements. The Penal Code, campaign finance laws, and laws affecting lobbyists address the legalities of accepting gifts.

The gift in question in the TEC opinion was to an Employee Retirement System (ERS) trustee who was not subject to reporting because ERS did not regulate or have jurisdiction over the giver, a Houston homebuilder. Also, the giver had a relationship with the recipient independent of his official role at ERS. If the recipient had been an elected official, the giver could have made the gift in the form of a political contribution, which unquestionably would have to be reported.

**OTHER
OPPONENTS
SAY:**

A better approach for the Legislature to enhance financial disclosure would be to clarify that TEC has the authority to interpret statutes that are consistent with its mission, including being able to define certain terms and adopt applicable rules.

NOTES:

A related bill, HB 158 by Naishtat, which would require that an individual include in the description of a gift in a personal financial disclosure statement the fair market value of the gift at the time it was received, passed the House by 143-2 on April 12 and has been referred to the Senate State Affairs Committee.

HB 2451 by Burnam, which would authorize the Ethics Commission to implement or interpret laws governing TEC and to adopt rules consistent with its purpose and objectives, passed the House by 129-12-2 on April 12 and has been referred to the Senate State Affairs Committee.