

SUBJECT: Penalties for misusing official information resulting in pecuniary gain

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 7 ayes — S. Davis, Moody, Capriglione, Nevárez, Price, Shine, Turner
0 nays

WITNESSES: None

BACKGROUND: Penal Code, sec. 39.06 makes it a crime to misuse official information. Public servants commit the offense if they use non-public information to which they have access because of their office or employment to:

- acquire or help another acquire a pecuniary interest in a property, transaction, or enterprise that may be affected by the information;
- speculate or aid another in speculation on the basis of the information; or
- as a public servant, coerce another into suppressing or failing to report information to a law enforcement agency.

It also is an offense for a public servant to disclose or use non-public information for a non-governmental purpose if the information was gained because of the public servant's office or employment and if the disclosure was done with the intent to obtain a benefit or to harm or defraud another. Persons can commit the crime by soliciting or receiving from a public servant this type of information if done with intent to obtain a benefit or intent to harm or defraud another.

An offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), except that a public servant coercing someone into suppressing or failing to report certain information to a law enforcement agency is a class C misdemeanor (maximum fine of \$500).

DIGEST: CSHB 1090 would impose graduated penalties ranging from third-degree felony to first-degree felony for certain types of misuse of official

information. The penalties would apply to offenses that resulted in a net pecuniary gain to the person committing the offense and would be based on based on the amount of the gain.

An offense would be a third-degree felony if the gain was less than \$150,000, a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the gain was at least \$150,000 but less than \$300,000, and a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the gain was \$300,000 or more.

The bill would take effect September 1, 2017, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1090 would strengthen laws on the misuse of information to more accurately make the punishment fit the crime when a public servant realizes gain from using inside information. It is a violation of the public trust for public officials to use information gained in the course of their office or job for their own financial benefit, and these offenses need to be taken seriously with penalties that increase as the amount of gain increases.

The highest penalty for the offense available under current law is a third-degree felony, no matter how much the pecuniary gain. CSHB 1090 would establish graduated penalties to make potential punishments proportional to the crime by scaling up punishments as the amount of gain increased. This would serve as a deterrent to public servants who might use their positions of public trust for financial gain and appropriately would punish those who did. The graduated penalties established by the bill would impose punishments similar to those for other financial crimes and would track the standard value ladder used to determine punishments for numerous other crimes.

Prosecutors and courts would retain discretion to handle these cases appropriately and to impose fitting penalties, including a range of prison terms within each felony level, probation, and restitution. CSHB 1090

would not change the base level of punishments for the crime, but its severity makes it appropriate that the penalty range start at a third-degree felony.

CShB 1090 would not significantly impact the demand for state correctional resources. In fiscal 2016, fewer than 10 people were arrested for misuse of official information punishable as a third-degree felony, according to the Legislative Budget Board's criminal justice impact statement.

**OPPONENTS
SAY:**

While misusing inside information by public servants and others is a serious crime, current law appropriately sets the punishment at a third-degree felony, which can result in two to 10 years in prison. Enhancing certain offenses to a first- or second-degree felony could go too far in allowing potentially lengthy sentences of up to 99 years. Long prison terms can make it difficult to recover restitution from offenders, something victims often request. Under current law, offenders may be punished appropriately, including with probation or a shorter incarceration term, which can allow the offender to return to work and pay restitution.

**OTHER
OPPONENTS
SAY:**

If a value ladder is going to be imposed on crimes involving the misuse of information for pecuniary gain, it might be best to impose a ladder on all offenses and begin with misdemeanor or state jail punishments for offenses resulting in lower amounts of pecuniary gain, rather starting at the third-degree felony level.

NOTES:

The committee substitute raised the amount of net pecuniary gain that would be associated with each penalty.

A companion bill, SB 140 by V. Taylor, was referred to the Senate Committee on State Affairs on January 25.