

## **BILL ANALYSIS**

Senate Research Center

H.B. 23  
By: Davis, Sarah et al. (Huffman)  
State Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law requires disclosure of information concerning certain local government officers and vendors when engaged in procurement activities. During the 83rd Session, legislation established a select interim committee to study and review statutes and regulations related to ethics, including campaign finance laws, lobby laws, and personal financial disclosure laws.

Disclosure laws for local government officers were part of this general charge. Designed to disclose business and financial relationships between local public officials and potential vendors, current law addresses lobby efforts at the local level, the disclosure by public officials of certain business interests, and whether campaign contributions trigger disclosure, as some would suggest, insufficiently. H.B. 23 seeks to build on this framework for ethics in the local contracting process to better mirror the system in place at the state level.

H.B. 23 amends current law relating to disclosure of certain relationships with local government officers and vendors and creates criminal offenses.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 176.001, Local Government Code, by amending Subdivisions (1), (2), (2-a), (2-b), (3), and (4) and adding Subdivisions (2-c), (2-d), and (7), to redefine "agent," "family member" "local governmental entity," and "local governmental officer" and to define "family relationship," "gift," "goods," "investment income," and "vendor."

SECTION 2. Amends the heading to Section 176.002, Local Government Code, to read as follows:

Sec. 176.002. APPLICABILITY TO VENDORS AND OTHER PERSONS.

SECTION 3. Amends Sections 176.002(a) and (b), Local Government Code, as follows:

(a) Provides that this chapter applies to a person who is:

- (1) a vendor, rather than a person who enters or seeks to enter into a contract with local governmental entity; or
- (2) a local government officer of a local governmental entity, rather than a person who is an agent of a person described by Subdivision (1) in the person's business with a local governmental entity.

(b) Provides that a person is not subject to the disclosure requirements of this chapter if the person is:

(1) a state, a political subdivision of a state, the federal government, or a foreign government; or

(2) an employee or agent of an entity described by Subdivision (1), acting in the employee's or agent's official capacity.

SECTION 4. Amends Section 176.003, Local Government Code, by amending Subsections (a) and (a-1) and adding Subsection (a-2), as follows:

(a) Requires a local government officer to file a conflicts disclosure statement with respect to a vendor, rather than a person described by Section 176.002(a), if:

(1) Changes a reference to person to vendor.

(2) the vendor, rather than person:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed, rather than a contract described by Subdivision (1) has been executed; or

(ii) Changes a reference to person to vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100, rather than more than \$250, in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed, rather than a contract described by Subdivision (1) has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor, rather than person; or

(C) has a family relationship with the local governmental officer.

Makes nonsubstantive changes.

(a-1) Provides that local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

(1) a political contribution as defined by Title 15 (Regulation Political Funds and Campaigns), Election Code; or

(2) food accepted as a guest.

Deletes existing text providing that a local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is given by a family member of the person accepting the gift or food, lodging, transportation, or entertainment accepted as a guest.

(a-2) Provides that a local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013 (Contract Supervision and Administration), Government Code.

SECTION 5. Transfers Section 176.004, Local Government Code, to Section 176.003, Local Government Code, redesignates it as Section 176.003(e), Local Government Code, and amends it, as follows:

(e) Deletes designation of Sec. 176.004. CONTENTS OF DISCLOSURE STATEMENT. Creates this subsection from existing text. Requires the Texas Ethics Commission (TEC) to adopt the conflicts disclosure statement for local government officers for use under this section. Requires that the conflicts disclosure statement include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Subsection (a)(2)(A), rather than Section 176.003(a), including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a vendor during the 12-month period described by Subsection (a)(2)(B) if the aggregate value of the gifts accepted by the officer or family member from that vendor exceeds \$100, rather than gifts accepted by the local government officer and any family member of the officer from a person described by Section 176.002(a) during the 12-month period described by Section 176.003(a)(2)(B) if the aggregate value of the gifts, excluding gifts described by Section 176.003(a-1), accepted by the officer or a family member from that person exceed \$250;

(2) an acknowledgment from the local government officer that:

(A) Makes no change to this paragraph;

(B) Changes a reference to Section 176.003(a) to Subsection (a)(2)(B); and

(3) Makes no change to this subdivision.

SECTION 6. Amends Section 176.006, Local Government Code, by amending Subsections (a), (a-1), (b), (c), (d), and (i) and adding Subsection (e), as follows:

(a) Requires a vender, rather than a person described by Section 176.002(a), to file a completed conflict of interest questionnaire if the vendor, rather than person, has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

Makes nonsubstantive changes.

(a-1) Requires that the completed conflict of interest questionnaire be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) Changes a reference to vendor to person:

(2) the date the vendor, rather than person, becomes aware:

(A) Makes a nonsubstantive change;

(B) Changes a reference to person to vendor; or

(C) of a family relationship with a local government officer.

(b) Requires TEC to adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business, rather than person's business, and family relationships with a local governmental entity.

(c) Requires that the questionnaire adopted under Subsection (b) require, for the local governmental entity with respect to which the questionnaire is filed, that the vendor, rather than person, filing the questionnaire:

(1) describe each employment or business and family relationship the vendor, rather than person, has with each local government officer of the local governmental entity;

(2) and (3) Changes a reference to the person filing out the questionnaire to the vendor.

(4) Makes a conforming change.

(d) Requires a vendor, rather than a person described by Subsection (a), to file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) Provides that a person who is both a local government officer and a vendor of a local governmental entity is required to file the questionnaire required by Subsection (a)(1) only if the person:

(1) enters or seeks to enter into a contract with the local governmental entity; or

(2) is an agent of a person who enters or seeks to enter into a contract with the local governmental entity.

(i) Changes a reference to a person described by Section 176.002 to a vendor and changes a reference to person to vendor.

SECTION 7. Redesignates Section 176.011, Local Government Code, as 176.0065, Local Government Code, and amends it, as follows:

Sec. 176.0065. MAINTENANCE OF RECORDS. Redesignates Section 176.001, Local Government Code, to Section 176.0065, Local Government Code. Requires a records administrator to:

(1) maintain a list of local government officers of the local governmental entity and make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Section 176.006 (Disclosure Requirements for Vendors and Other Persons; Questionnaire); and

(2) Creates this subdivision from existing text and makes no further change.

SECTION 8. Amends Chapter 176, Local Government Code, by adding Section 176.013, as follows:

Sec. 176.013. ENFORCEMENT. (a) Provides that a local government officer commits an offense under this chapter if the officer:

(1) is required to file a conflicts disclosure statement under Section 176.003 (Conflicts Disclosure Statement Required); and

(2) knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

(b) Provides that a vendor commits an offense under this chapter if the vendor:

(1) is required to file a conflict of interest questionnaire under Section 176.006; and

(2) either:

(A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or

(B) knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.

(c) Provides that an offense under this chapter is:

(1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;

(2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or

(3) a Class A misdemeanor if the contract amount is at least \$5 million.

(d) Authorizes a local governmental entity to reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this chapter.

(e) Authorizes the governing body of a local governmental entity to, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a conflict of interest questionnaire required by Section 176.006.

(f) Provides that it is an exception to the application of Subsection (a) that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation.

(g) Provides that it is an exception to the application of Subsection (b) that the vendor filed the required questionnaire not later than the seventh business day after the date the vendor received notice from the local governmental entity of the alleged violation.

SECTION 9. Repealers: Sections 176.003(c) (providing that a local government officer commits an offense if the officer knowingly violates this section and that the offense is a Class C misdemeanor) and (d) (providing that it is an exception to the application under this section that the person filed the required conflicts disclosure statement not later than the seventh business day after the date the person received notice from the local governmental entity of the alleged violation), Local Government Code.

Repealer: Section 176.005 (Application to Certain Employees), Local Government Code.

Repealers: Sections 176.006(f) (providing that a person commits an offense if the person knowingly violates this section and that the offense is a Class C misdemeanor), (g) (providing that it is an exception to the application of Subsection (f) that the person filed the required questionnaire not later than the seventh business day after the date the person received notice from the local governmental entity of the alleged violation), and (h) (providing that a local governmental entity does not have a duty to ensure that a certain person files a conflict of interest questionnaire), Local Government Code.

Repealer: Section 176.007 (List of Government Officers), Local Government Code.

SECTION 10. Requires TEC, as soon as practicable after the effective date of this Act, to adopt forms to implement this Act.

SECTION 11. (a) Provides that Chapter 176 (Disclosure of Certain Relationships With Local Government Officers; Providing Public Access to Certain Information), Local Government Code, as amended by this Act, applies only to an event requiring disclosure that occurs on or after the effective date of this Act. Makes application of this Act prospective.

(b) Provides that the repeal by this Act of Sections 176.003(c), 176.005(c), and 176.006(f), Local Government Code, does not apply to an offense committed under those sections before the effective date of the repeal. Provides that an offense committed before the effective date of the repeal is governed by those sections as they existed on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this subsection, an offense was committed before the effective date of the repeal if any element of the offense occurred before that date.

SECTION 12. Effective date: September 1, 2015.