

1-1 By: Ellis, et al. S.B. No. 1059
1-2 (In the Senate - Filed March 10, 2003; March 17, 2003, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 7, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 7, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1059 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to corporate ethics and integrity; providing penalties.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subchapter B, Chapter 402, Government Code, is
1-13 amended by adding Section 402.0231 to read as follows:
1-14 Sec. 402.0231. CORPORATE INTEGRITY UNIT. (a) In this
1-15 section, "corporate fraud" means a violation of state or federal
1-16 law or rules relating to fraud committed by a corporation, limited
1-17 liability company, or registered limited liability partnership or
1-18 an officer, director, or partner of those entities while acting in a
1-19 representative capacity.
1-20 (b) A corporate integrity unit is created within the office
1-21 of the attorney general to assist in the enforcement of the laws
1-22 relating to corporate fraud or other similar illegal activities.
1-23 The unit shall:
1-24 (1) assist district attorneys and county attorneys in
1-25 the investigation and prosecution of corporate fraud or other
1-26 similar illegal activities allegedly committed by corporations,
1-27 limited liability companies, and registered limited liability
1-28 partnerships;
1-29 (2) assist state agencies with investigation of
1-30 complaints and administrative enforcement actions for corporate
1-31 fraud violations, including the assessment of an administrative
1-32 penalty or other administrative sanction; and
1-33 (3) serve as a clearinghouse for information relating
1-34 to the investigation and prosecution of corporate fraud and other
1-35 similar illegal activities in this state.
1-36 (c) To the extent allowed by law, a state agency or local law
1-37 enforcement agency shall cooperate with the corporate integrity
1-38 unit by providing information requested by the unit as necessary to
1-39 carry out the purposes of this section. Information disclosed
1-40 under this subsection is confidential and not subject to disclosure
1-41 under Chapter 552.
1-42 SECTION 2. Subchapter Z, Chapter 2252, Government Code, is
1-43 amended by adding Section 2252.904 to read as follows:
1-44 Sec. 2252.904. CONTRACTS WITH COMPANIES; FINANCIAL
1-45 DISCLOSURES. (a) In this section:
1-46 (1) "Certified audit" means an audit of the company's
1-47 books, records, and accounts and the company's systems of internal
1-48 control performed by an independent certified public accountant in
1-49 accordance with generally accepted auditing standards.
1-50 (2) "Company" means a corporation, partnership,
1-51 limited partnership, registered limited liability partnership,
1-52 trust, association, joint stock company, joint venture, limited
1-53 liability company, or other form of business organization. The
1-54 term does not include a sole proprietorship or individual.
1-55 (3) "Financial irregularity" means an intentional
1-56 misstatement or omission of information relating to a financial
1-57 transaction or matter. The term includes embezzlement, fraud, and
1-58 the falsification of records to misappropriate assets.
1-59 (4) "Independent certified public accountant" means a
1-60 certified public accountant who:
1-61 (A) is not affiliated with, is not an employee,
1-62 principal, or direct or indirect owner of, and is not in any way
1-63 controlled by the audited company; and

2-1 (B) meets independence standards adopted by
2-2 appropriate standard-setting or regulatory entities.

2-3 (5) "State governmental entity" means:

2-4 (A) a board, commission, department, office, or
2-5 other agency in the executive branch of state government created
2-6 under the constitution or a statute of the state, including an
2-7 institution of higher education as defined by Section 61.003,
2-8 Education Code;

2-9 (B) the legislature or a legislative agency; or

2-10 (C) the Texas Supreme Court, the Texas Court of
2-11 Criminal Appeals, a court of appeals, a state judicial agency, or
2-12 the State Bar of Texas.

2-13 (b) A company that enters into a contract with a state
2-14 governmental entity that involves the expenditure of more than
2-15 \$25,000 shall:

2-16 (1) immediately report to the entity any financial
2-17 irregularity relating to the contract or the company's financial
2-18 position that is detrimental to the interest of the entity; and

2-19 (2) annually during the contract period submit to the
2-20 entity a certified audit of the company's operations, except as
2-21 provided by Subsection (g).

2-22 (c) The auditor's opinion in an audit required by Subsection
2-23 (b)(2) must state whether the financial statements of the audited
2-24 company present fairly, in all material respects and in accordance
2-25 with accounting principles generally accepted in the United States,
2-26 its financial position and results of operations relating to the
2-27 obligation, receipt, expenditure, and use of state funds.

2-28 (d) A company that violates Subsection (b)(1) commits an
2-29 offense. An offense under this subsection is a Class A misdemeanor.

2-30 (e) A company that violates Subsection (b)(2) is liable to
2-31 the state for a civil penalty in an amount not to exceed \$10,000.
2-32 The attorney general may bring suit to recover the civil penalty
2-33 imposed under this subsection.

2-34 (f) If the attorney general prevails in an action for
2-35 recovery of a civil penalty under Subsection (e), the attorney
2-36 general is entitled to recover reasonable attorney's fees incurred
2-37 in obtaining the penalty.

2-38 (g) A federally insured financial institution that has less
2-39 than \$500 million in assets may, in lieu of a certified audit
2-40 required by Subsection (b)(2), submit a directors examination
2-41 conducted by an independent certified public accountant in
2-42 accordance with the Statement of Standards for Attestation
2-43 Engagements.

2-44 SECTION 3. Subtitle F, Title 10, Government Code, is
2-45 amended by adding Chapter 2263 to read as follows:

2-46 CHAPTER 2263. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE
2-47 FINANCIAL ADVISORS AND SERVICE PROVIDERS

2-48 Sec. 2263.001. APPLICABILITY. (a) This chapter applies in
2-49 connection with the management or investment of any state funds
2-50 managed or invested:

2-51 (1) under the Texas Constitution or other law,
2-52 including Chapters 404 and 2256; and

2-53 (2) by or for:

2-54 (A) a public retirement system as defined by
2-55 Section 802.001 that provides service retirement, disability
2-56 retirement, or death benefits for officers or employees of the
2-57 state;

2-58 (B) an institution of higher education as defined
2-59 by Section 61.003, Education Code; or

2-60 (C) another entity that is part of state
2-61 government and that manages or invests state funds or for which
2-62 state funds are managed or invested.

2-63 (b) This chapter applies in connection with the management
2-64 or investment of state funds without regard to whether the funds are
2-65 held in the state treasury.

2-66 (c) This chapter does not apply to or in connection with a
2-67 state governmental entity that does not manage or invest state
2-68 funds and for which state funds are managed or invested only by the
2-69 comptroller.

3-1 Sec. 2263.002. DEFINITION. In this chapter, "financial
3-2 advisor or service provider" includes a person or business entity
3-3 who acts as a financial advisor, financial consultant, money or
3-4 investment manager, or broker.

3-5 Sec. 2263.003. CONSTRUCTION WITH OTHER LAW. To the extent
3-6 of a conflict between this chapter and another law, the law that
3-7 imposes a stricter ethics or disclosure requirement controls.

3-8 Sec. 2263.004. ETHICS REQUIREMENTS FOR OUTSIDE FINANCIAL
3-9 ADVISORS OR SERVICE PROVIDERS. (a) The governing body of a state
3-10 governmental entity by rule shall adopt standards of conduct
3-11 applicable to financial advisors or service providers who are not
3-12 employees of the state governmental entity, who provide financial
3-13 services to the state governmental entity or advise the state
3-14 governmental entity or a member of the governing body of the state
3-15 governmental entity in connection with the management or investment
3-16 of state funds, and who:

3-17 (1) may reasonably be expected to receive, directly or
3-18 indirectly, more than \$10,000 in compensation from the entity
3-19 during a fiscal year; or

3-20 (2) render important investment or funds management
3-21 advice to the entity or a member of the governing body of the
3-22 entity, as determined by the governing body.

3-23 (b) A contract under which a financial advisor or service
3-24 provider renders financial services or advice to a state
3-25 governmental entity or other person as described by Subsection (a)
3-26 is voidable by the state governmental entity if the financial
3-27 advisor or service provider violates a standard of conduct adopted
3-28 under this section.

3-29 Sec. 2263.005. DISCLOSURE REQUIREMENTS FOR OUTSIDE
3-30 FINANCIAL ADVISOR OR SERVICE PROVIDER. (a) A financial advisor or
3-31 service provider described by Section 2263.004 shall disclose in
3-32 writing to the administrative head of the applicable state
3-33 governmental entity and to the state auditor:

3-34 (1) any relationship the financial advisor or service
3-35 provider has with any party to a transaction with the state
3-36 governmental entity, other than a relationship necessary to the
3-37 investment or funds management services that the financial advisor
3-38 or service provider performs for the state governmental entity, if
3-39 a reasonable person could expect the relationship to diminish the
3-40 financial advisor's or service provider's independence of judgment
3-41 in the performance of the person's responsibilities to the state
3-42 governmental entity; and

3-43 (2) all direct or indirect pecuniary interests the
3-44 financial advisor or service provider has in any party to a
3-45 transaction with the state governmental entity, if the transaction
3-46 is connected with any financial advice or service the financial
3-47 advisor or service provider provides to the state governmental
3-48 entity or to a member of the governing body in connection with the
3-49 management or investment of state funds.

3-50 (b) The financial advisor or service provider shall
3-51 disclose a relationship described by Subsection (a) without regard
3-52 to whether the relationship is a direct, indirect, personal,
3-53 private, commercial, or business relationship.

3-54 (c) A financial advisor or service provider described by
3-55 Section 2263.004 shall file annually a statement with the
3-56 administrative head of the applicable state governmental entity and
3-57 with the state auditor. The statement must disclose each
3-58 relationship and pecuniary interest described by Subsection (a) or,
3-59 if no relationship or pecuniary interest described by that
3-60 subsection existed during the disclosure period, the statement must
3-61 affirmatively state that fact.

3-62 (d) The annual statement must be filed not later than
3-63 February 1 on a form prescribed by the governmental entity, other
3-64 than the state auditor, receiving the form. The statement must
3-65 cover the reporting period of the previous calendar year. The state
3-66 auditor shall develop and recommend a uniform form that other
3-67 governmental entities receiving the form may prescribe.

3-68 (e) The financial advisor or service provider shall
3-69 promptly file a new or amended statement with the administrative

4-1 head of the applicable state governmental entity and with the state
4-2 auditor whenever there is new information to report under
4-3 Subsection (a).

4-4 Sec. 2263.006. PUBLIC INFORMATION. Chapter 552 controls
4-5 the extent to which information contained in a statement filed
4-6 under this chapter is subject to required public disclosure or
4-7 excepted from required public disclosure.

4-8 SECTION 4. Section B, Article 1.03, Texas Miscellaneous
4-9 Corporation Laws Act (Article 1302-1.03, Vernon's Texas Civil
4-10 Statutes), is amended to read as follows:

4-11 B. Except to the extent that any provisions of this Act are
4-12 expressly made inapplicable by any provision of the Texas Business
4-13 Corporation Act, the Texas Non-Profit Corporation Act, or any
4-14 special Statute of this State pertaining to a particular type of
4-15 corporation and except as otherwise provided by Article 5.20 of
4-16 this Act, this Act shall govern (1) all domestic corporations,
4-17 including without limitation those corporations heretofore or
4-18 hereafter organized under any Statute of the State, and (2) only to
4-19 the extent expressly provided in this Act, all foreign
4-20 corporations, including without limitation those corporations
4-21 heretofore or hereafter granted a permit to do business under any
4-22 Statute of the State.

4-23 SECTION 5. Part Five, Texas Miscellaneous Corporation Laws
4-24 Act (Article 1302-5.01 et seq., Vernon's Texas Civil Statutes), is
4-25 amended by adding Article 5.20 to read as follows:

4-26 Art. 5.20. CERTIFICATION OF FALSE OR MISLEADING FINANCIAL
4-27 REPORT; CRIMINAL PENALTY. (a) In this section:

4-28 (1) "Corporate official" means the president or other
4-29 chief executive officer, the chief financial officer, or any other
4-30 officer of or person performing a similar function for a
4-31 corporation or other company that is required to file a periodic
4-32 report under Section 13(a) or 15(d), Securities Exchange Act of
4-33 1934 (15 U.S.C. Sections 78m(a), 78o(d)).

4-34 (2) "Financial report" means a balance sheet, an
4-35 income or loss statement, a cash flow statement, or any other
4-36 presentation of financial information, however denominated,
4-37 concerning a corporation or other company that is intended to
4-38 portray a significant portion of the company's financial position.

4-39 (b) A corporate official who signs a sworn statement
4-40 certifying that information contained in a financial report fairly
4-41 represents, as of the period presented in the report, the financial
4-42 condition or results of operation of the company issuing the report
4-43 commits an offense if the corporate official makes the
4-44 certification knowing that the report contains false or misleading
4-45 information that affects or may affect the finances or operations
4-46 of the issuing company, as appropriate, in any material respect.

4-47 (c) An offense under this section is a state jail felony.

4-48 SECTION 6. The office of the attorney general is not
4-49 required to implement Section 402.0231, Government Code, as added
4-50 by this Act, unless a specific appropriation for the implementation
4-51 is provided in the General Appropriations Act, Acts of the 78th
4-52 Legislature, Regular Session, 2003.

4-53 SECTION 7. Each state governmental entity required to adopt
4-54 rules under Chapter 2263, Government Code, as added by this Act,
4-55 shall adopt its initial rules in time for the rules to take effect
4-56 not later than January 1, 2004.

4-57 SECTION 8. This Act takes effect September 1, 2003.

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