

1-1 By: Woolley (Senate Sponsor - Williams) H.B. No. 1491
1-2 (In the Senate - Received from the House March 19, 2007;
1-3 April 3, 2007, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 3, 2007, reported favorably by
1-5 the following vote: Yeas 4, Nays 0; May 3, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to disclosure of certain relationships with local
1-9 government officers.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 176.001, Local Government Code, is
1-12 amended by amending Subdivisions (1), (2), (3), (4), and (5) and
1-13 adding Subdivisions (1-a), (1-b), (1-c), (1-d), (2-a), (2-b), and
1-14 (6) to read as follows:

1-15 (1) "Agent" means a third party who undertakes to
1-16 transact some business or manage some affair for another person by
1-17 the authority or on account of the other person.

1-18 (1-a) "Business relationship" means a connection
1-19 between two or more parties based on commercial activity of one of
1-20 the parties. The term does not include a connection based on:

1-21 (A) a transaction that is subject to rate or fee
1-22 regulation by a federal, state, or local governmental entity or an
1-23 agency of a federal, state, or local governmental entity;

1-24 (B) a transaction conducted at a price and
1-25 subject to terms available to the public; or

1-26 (C) a purchase or lease of goods or services from
1-27 a person that is chartered by a state or federal agency and that is
1-28 subject to regular examination by, and reporting to, that agency.

1-29 (1-b) "Charter school" means an open-enrollment
1-30 charter school operating under Subchapter D, Chapter 12, Education
1-31 Code.

1-32 (1-c) "Commission" means the Texas Ethics Commission.

1-33 (1-d) "Contract" means a written agreement for the
1-34 sale or purchase of real property, goods, or services.

1-35 (2) "Family member" means a person related to another
1-36 person within the first degree by consanguinity or affinity, as
1-37 described by Subchapter B, Chapter 573, Government Code, except
1-38 that the term does not include a person who is considered to be
1-39 related to another person by affinity only as described by Section
1-40 573.024(b), Government Code.

1-41 (2-a) "Goods" means personal property.

1-42 (2-b) "Investment income" means dividends, capital
1-43 gains, or interest income generated from:

1-44 (A) a personal or business:

1-45 (i) checking or savings account;

1-46 (ii) share draft or share account; or

1-47 (iii) other similar account;

1-48 (B) a personal or business investment; or

1-49 (C) a personal or business loan.

1-50 (3) "Local governmental entity" means a county,
1-51 municipality, school district, charter school, junior college
1-52 district, or other political subdivision of this state or a local
1-53 government corporation, board, commission, district, or authority
1-54 to which a member is appointed by the commissioners court of a
1-55 county, the mayor of a municipality, or the governing body of a
1-56 municipality. The term does not include an association,
1-57 corporation, or organization of governmental entities organized to
1-58 provide to its members education, assistance, products, or services
1-59 or to represent its members before the legislative, administrative,
1-60 or judicial branches of the state or federal government.

1-61 (4) "Local government officer" means:

1-62 (A) a member of the governing body of a local
1-63 governmental entity; ~~or~~

1-64 (B) a director, superintendent, administrator,

2-1 president, or other person designated as the executive officer of
 2-2 the local governmental entity; or

2-3 (C) an employee of a local governmental entity
 2-4 with respect to whom the local governmental entity has, in
 2-5 accordance with Section 176.005, extended the requirements of
 2-6 Sections 176.003 and 176.004.

2-7 (5) "Records administrator" means the director,
 2-8 county clerk, municipal secretary, superintendent, or other person
 2-9 responsible for maintaining the records of the local governmental
 2-10 entity or another person designated by the local governmental
 2-11 entity to maintain statements and questionnaires filed under this
 2-12 chapter and perform related functions.

2-13 (6) "Services" means skilled or unskilled labor or
 2-14 professional services, as defined by Section 2254.002, Government
 2-15 Code.

2-16 SECTION 2. Section 176.002(a), Local Government Code, is
 2-17 amended to read as follows:

2-18 (a) This chapter applies to a person who:

2-19 (1) enters [contracts] or seeks to enter into a
 2-20 contract [for the sale or purchase of property, goods, or services]
 2-21 with a local governmental entity; or

2-22 (2) is an agent of a person described by Subdivision
 2-23 (1) in the person's business with a local governmental entity.

2-24 SECTION 3. Section 176.003, Local Government Code, is
 2-25 amended by amending Subsections (a) and (d) and adding Subsection
 2-26 (a-1) to read as follows:

2-27 (a) A local government officer shall file a conflicts
 2-28 disclosure statement with respect to a person described by Section
 2-29 176.002(a) if:

2-30 (1) the person enters into a contract [has contracted]
 2-31 with the local governmental entity or the local governmental entity
 2-32 is considering entering into a contract [doing business] with the
 2-33 person; and

2-34 (2) the person:

2-35 (A) has an employment or other business
 2-36 relationship with the local government officer or a family member
 2-37 of the officer that results in the officer or family member
 2-38 receiving taxable income, other than investment income, that
 2-39 exceeds \$2,500 during the 12-month period preceding the date that
 2-40 the officer becomes aware that:

2-41 (i) a contract described by Subdivision (1)
 2-42 has been executed; or

2-43 (ii) the local governmental entity is
 2-44 considering entering into a contract with the person; or

2-45 (B) has given to the local government officer or
 2-46 a family member of the officer one or more gifts [, other than gifts
 2-47 of food, lodging, transportation, or entertainment accepted as a
 2-48 guest,] that have an aggregate value of more than \$250 in the
 2-49 12-month period preceding the date the officer becomes aware that:

2-50 (i) a contract described by Subdivision (1)
 2-51 has been executed; or

2-52 (ii) the local governmental entity is
 2-53 considering entering into a contract [doing business] with the
 2-54 person.

2-55 (a-1) A local government officer is not required to file a
 2-56 conflicts disclosure statement in relation to a gift accepted by
 2-57 the officer or a family member of the officer if the gift is:

2-58 (1) given by a family member of the person accepting
 2-59 the gift;

2-60 (2) a political contribution as defined by Title 15,
 2-61 Election Code; or

2-62 (3) food, lodging, transportation, or entertainment
 2-63 accepted as a guest.

2-64 (d) It is an exception to the application of [a defense to
 2-65 prosecution under] Subsection (c) that the person filed the
 2-66 required conflicts disclosure statement not later than the seventh
 2-67 business day after the date the person received notice from the
 2-68 local governmental entity of the alleged violation.

2-69 SECTION 4. Section 176.004, Local Government Code, is

3-1 amended to read as follows:

3-2 Sec. 176.004. CONTENTS OF DISCLOSURE STATEMENT. The
 3-3 commission shall adopt the conflicts disclosure statement for local
 3-4 government officers. The conflicts disclosure statement must
 3-5 include:

3-6 (1) a requirement that each local government officer
 3-7 disclose:

3-8 (A) an employment or other business relationship
 3-9 described by Section 176.003(a), including the nature and extent of
 3-10 the relationship; and

3-11 (B) gifts accepted [~~received~~] by the local
 3-12 government officer and any family member of the officer from a
 3-13 person described by Section 176.002(a) during the 12-month period
 3-14 described by Section 176.003(a)(2)(B) if the aggregate value of the
 3-15 gifts, excluding gifts described by Section 176.003(a-1), accepted
 3-16 by the officer or a family member from that person exceed \$250;

3-17 (2) an acknowledgment from the local government
 3-18 officer that:

3-19 (A) the disclosure applies to each family member
 3-20 of the officer; and

3-21 (B) the statement covers the 12-month period
 3-22 described by Section 176.003(a) [~~176.003(a)(2)(B)~~]; and

3-23 (3) the signature of the local government officer
 3-24 acknowledging that the statement is made under oath under penalty
 3-25 of perjury.

3-26 SECTION 5. Sections 176.005(a), (b), and (d), Local
 3-27 Government Code, are amended to read as follows:

3-28 (a) The local governmental entity may extend the
 3-29 requirements of Sections 176.003 and 176.004 to any employee [~~all~~
 3-30 ~~or a group of the employees~~] of the local governmental entity who
 3-31 has the authority to approve contracts on behalf of the local
 3-32 governmental entity, including a person designated as the
 3-33 representative of the local governmental entity for purposes of
 3-34 Chapter 271. The local governmental entity shall identify each
 3-35 employee made subject to Sections 176.003 and 176.004 under this
 3-36 subsection and shall provide a list of the identified employees on
 3-37 request to any person.

3-38 (b) A local governmental entity may reprimand, suspend, or
 3-39 terminate the employment of an employee who knowingly fails to
 3-40 comply with a requirement adopted under this section.

3-41 (d) It is an exception to the application of [~~a defense to~~
 3-42 ~~prosecution under~~] Subsection (c) that the person filed the
 3-43 required conflicts disclosure statement not later than the seventh
 3-44 business day after the date the person received notice from the
 3-45 local governmental entity of the alleged violation.

3-46 SECTION 6. Section 176.006, Local Government Code, is
 3-47 amended to read as follows:

3-48 Sec. 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER
 3-49 PERSONS; QUESTIONNAIRE. (a) A person described by Section
 3-50 176.002(a) shall file a completed conflict of interest
 3-51 questionnaire if the person has a business relationship with a
 3-52 local governmental entity and:

3-53 (1) has an employment or other business relationship
 3-54 with an officer of that local governmental entity, or a family
 3-55 member of the officer, described by Section 176.003(a)(2)(A); or

3-56 (2) has given an officer of that local governmental
 3-57 entity, or a family member of the officer, one or more gifts with
 3-58 the aggregate value specified by Section 176.003(a)(2)(B),
 3-59 excluding any gift described by Section 176.003(a-1).

3-60 (a-1) The completed conflict of interest questionnaire must
 3-61 be filed with the appropriate records administrator not later than
 3-62 the seventh business day after the later of:

3-63 (1) the date that the person:

3-64 (A) [~~(1)~~] begins [~~contract~~] discussions or
 3-65 negotiations to enter into a contract with the local governmental
 3-66 entity; or

3-67 (B) [~~(2)~~] submits to the local governmental
 3-68 entity an application, response to a request for proposals or bids,
 3-69 correspondence, or another writing related to a potential contract

4-1 ~~[agreement]~~ with the local governmental entity; or
 4-2 (2) the date the person becomes aware:

4-3 (A) of an employment or other business
 4-4 relationship with a local government officer, or a family member of
 4-5 the officer, described by Subsection (a); or

4-6 (B) that the person has given one or more gifts
 4-7 described by Subsection (a).

4-8 (b) The commission shall adopt a conflict of interest
 4-9 questionnaire for use under this section that requires disclosure
 4-10 of a person's ~~[affiliations or]~~ business relationships ~~[that might~~
 4-11 ~~cause a conflict of interest]~~ with a local governmental entity.

4-12 (c) The questionnaire adopted under Subsection (b) must
 4-13 require, for the local governmental entity with respect to which
 4-14 the questionnaire is filed, that the person filing the
 4-15 questionnaire:

4-16 (1) describe each employment ~~[affiliation]~~ or
 4-17 business relationship the person has with each local government
 4-18 officer of the local governmental entity;

4-19 (2) identify each employment ~~[affiliation]~~ or
 4-20 business relationship described by Subdivision (1) with respect to
 4-21 which the local government officer receives, or is likely to
 4-22 receive, taxable income, other than investment income, from the
 4-23 person filing the questionnaire;

4-24 (3) identify each employment ~~[affiliation]~~ or
 4-25 business relationship described by Subdivision (1) with respect to
 4-26 which the person filing the questionnaire receives, or is likely to
 4-27 receive, taxable income, other than investment income, that:

4-28 (A) is received from, or at the direction of, a
 4-29 local government officer of the local governmental entity; and

4-30 (B) is not received from the local governmental
 4-31 entity; and

4-32 (4) describe each employment ~~[affiliation]~~ or
 4-33 business relationship with a corporation or other business entity
 4-34 with respect to which a local government officer of the local
 4-35 governmental entity:

4-36 (A) serves as an officer or director; or

4-37 (B) holds an ownership interest of 10 percent or
 4-38 more. [+

4-39 ~~[(5) describe each affiliation or business~~
 4-40 ~~relationship with an employee or contractor of the local~~
 4-41 ~~governmental entity who makes recommendations to a local government~~
 4-42 ~~officer of the local governmental entity with respect to the~~
 4-43 ~~expenditure of money;~~

4-44 ~~[(6) describe each affiliation or business~~
 4-45 ~~relationship with a person who:~~

4-46 ~~[(A) is a local government officer; and~~

4-47 ~~[(B) appoints or employs a local government~~
 4-48 ~~officer of the local governmental entity that is the subject of the~~
 4-49 ~~questionnaire; and~~

4-50 ~~[(7) describe any other affiliation or business~~
 4-51 ~~relationship that might cause a conflict of interest.]~~

4-52 (d) A person described by Subsection (a) shall file an
 4-53 updated completed questionnaire with the appropriate records
 4-54 administrator not later than [+

4-55 ~~[(1) September 1 of each year in which an activity~~
 4-56 ~~described by Subsection (a) is pending; and~~

4-57 ~~[(2)] the seventh business day after the date of an~~
 4-58 ~~event that would make a statement in the questionnaire incomplete~~
 4-59 ~~or inaccurate.~~

4-60 (e) A person is not required to file an updated completed
 4-61 questionnaire under Subsection (d)(1) in a year if the person has
 4-62 filed a questionnaire under Subsection (c) or (d)(2) on or after
 4-63 June 1, but before September 1, of that year.

4-64 (f) A person commits an offense if the person knowingly
 4-65 violates this section. An offense under this subsection is a Class
 4-66 C misdemeanor.

4-67 (g) It is an exception to the application of ~~[a defense to~~
 4-68 ~~prosecution under]~~ Subsection (f) that the person filed the
 4-69 required questionnaire not later than the seventh business day

5-1 after the date the person received notice from the local
5-2 governmental entity of the alleged violation.

5-3 (h) A local governmental entity does not have a duty to
5-4 ensure that a person described by Section 176.002 files a conflict
5-5 of interest questionnaire.

5-6 (i) The validity of a contract between a person described by
5-7 Section 176.002 and a local governmental entity is not affected
5-8 solely because the person fails to comply with this section.

5-9 SECTION 7. Section 176.009(a), Local Government Code, is
5-10 amended to read as follows:

5-11 (a) A local governmental entity that maintains an Internet
5-12 website shall provide access to the statements and to
5-13 questionnaires required to be filed under this chapter on that [the
5-14 Internet] website [maintained by the local governmental entity].
5-15 This subsection does not require a local governmental entity to
5-16 maintain an Internet website.

5-17 SECTION 8. Chapter 176, Local Government Code, is amended
5-18 by adding Sections 176.011 and 176.012 to read as follows:

5-19 Sec. 176.011. MAINTENANCE OF RECORDS. A records
5-20 administrator shall maintain the statements and questionnaires
5-21 that are required to be filed under this chapter in accordance with
5-22 the local governmental entity's records retention schedule.

5-23 Sec. 176.012. APPLICATION OF PUBLIC INFORMATION LAW. This
5-24 chapter does not require a local governmental entity to disclose
5-25 any information that is excepted from disclosure by Chapter 552,
5-26 Government Code.

5-27 SECTION 9. Section 176.006(e), Local Government Code, is
5-28 repealed.

5-29 SECTION 10. Not later than October 1, 2007, the Texas Ethics
5-30 Commission shall adopt a conflicts disclosure statement consistent
5-31 with Section 176.004, Local Government Code, as amended by this
5-32 Act, and a conflict of interest questionnaire consistent with
5-33 Section 176.006, Local Government Code, as amended by this Act.

5-34 SECTION 11. (a) Notwithstanding Chapter 176, Local
5-35 Government Code, a person is not required to file a conflicts
5-36 disclosure statement or a conflict of interest questionnaire under
5-37 that chapter during the period that begins on the effective date of
5-38 this Act and ends September 30, 2007.

5-39 (b) A person who, in the absence of Subsection (a) of this
5-40 section, would have been required to file a conflicts disclosure
5-41 statement or a conflict of interest questionnaire during the period
5-42 specified by that subsection shall file the statement or
5-43 questionnaire in accordance with Chapter 176, Local Government
5-44 Code, as amended by this Act, not later than the later of:

5-45 (1) October 9, 2007; or

5-46 (2) the seventh day after the date the person received
5-47 notice from the local governmental entity that the statement or
5-48 questionnaire was required to be filed.

5-49 SECTION 12. The change in law made by this Act applies only
5-50 to an offense committed on or after the effective date of this Act.
5-51 An offense committed before the effective date of this Act is
5-52 covered by the law in effect when the offense was committed, and the
5-53 former law is continued in effect for that purpose. For purposes of
5-54 this section, an offense was committed before the effective date of
5-55 this Act if any element of the offense was committed before that
5-56 date.

5-57 SECTION 13. This Act takes effect immediately if it
5-58 receives a vote of two-thirds of all the members elected to each
5-59 house, as provided by Section 39, Article III, Texas Constitution.
5-60 If this Act does not receive the vote necessary for immediate
5-61 effect, this Act takes effect September 1, 2007.

5-62 * * * * *