

## **BILL ANALYSIS**

Senate Research Center  
81R23863 ESH-F

H.B. 3445  
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State Affairs  
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Engrossed

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

Because of advisory opinions and rules adopted by the Texas Ethics Commission (TEC) over the past two decades, there is currently no requirement that a person lobbying for purchasing decisions at a state agency register or report under the compensation threshold set forth in provisions relating to lobbyists. Further, TEC rules and opinions provide that a person can be paid on a contingent fee basis if the person is lobbying for purchasing decisions, even though the statute prohibiting contingent fees for lobbying does not appear to be that broad.

Currently, registration as a lobbyist is required if a person meets either of two thresholds: the compensation and reimbursement threshold or the expenditure threshold. Current law provides a list of persons exempt from registration. Other exceptions from lobbyist registration requirements are found in the rules of the commission. Specifically, one of the exceptions to registration under the compensation and reimbursement threshold found in the rules is for communicating to a member of the executive branch concerning purchasing decisions of a state agency or negotiations regarding such decisions.

Current law also provides that it is illegal for a person to retain or employ another person or for a person to accept any employment or render any service to influence legislation or administrative action when compensation for that employment or service is totally or partially contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action. However, the statute provides that the prohibition does not apply to contingent fees payable to an employee of a vendor of a product. This law has been interpreted to allow contingent fees for purchasing decisions and for efforts to influence a state agency's selection of a product, service, or service provider. TEC has requested direction from the legislature on whether the legislature intended this provision to be interpreted in this manner. This bill seeks to clarify the intent of the prohibition on contingent fees to purchasing decisions and add exceptions to lobby registration requirements of TEC with some modification to the exception for purchasing decisions.

H.B. 3445 amends the law relating to registration of lobbyists. Among other provisions, the bill makes an exception for registration under that law for a person who receives compensation or reimbursement to communicate to a member of the executive branch concerning state agency purchasing decisions involving a product or negotiations regarding such decisions if the compensation for the communication is not totally or partially contingent on the outcome of any administrative action. The bill establishes that a sales commission payable to an independent contractor of a vendor of a product is not considered compensation contingent on the outcome of an administrative action if the independent contractor is a registrant who reports the vendor as a client and reports the full amount of the contingent fee in the manner required by state law and TEC rules.

### **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 Subchapter A, Chapter 305, Government Code, by adding Section 305.0041, as follows:

Sec. 305.0041. EXCEPTIONS FOR CERTAIN ACTIVITIES FOR WHICH COMPENSATION OR REIMBURSEMENT IS RECEIVED. (a) Provides that a person is not required to register under this chapter in accordance with Section 305.003(a)(2) (relating to requiring a person to register with the Texas Ethics Commission if the person receives certain reimbursement or compensation to communicate with a member of the legislature or executive branch) solely because the person receives or is entitled to receive compensation or reimbursement to communicate to a member of the executive branch concerning state agency purchasing decisions involving a product, or negotiations regarding such decisions, if the compensation for the communication is not totally or partially contingent on the outcome of any administrative action; communicate as a member of an advisory committee or task force if the person is appointed to serve in that capacity by a member of the legislative or executive branch; or communicate as a member of a board, task force, or advisory committee on which a member of the legislative or executive branch also serves.

(b) Provides that a registrant who performs an activity described by Subsection (a) is not required to provide information concerning that activity in the registrant's registration statement under Section 305.005(f)(4) (relating to requiring the registration to contain the subject matter of the legislation or of the administrative action that is the subject of the registrant's direct communication with a member of the legislative or executive branch and the docket number or other administrative designation of the administrative action) or (5)(B) (relating to requiring the registration to contain for each person employed or retained by the registrant the subject matter of the legislation or of the administrative action); provide information concerning the person who reimburses, retains, or employs the registrant to perform that activity under Section 305.005(f)(3) (relating to requiring the registration to contain the full name and address of certain persons) or (6) (relating to requiring the registration to contain the amount of compensation or reimbursement for communicating directly with a member of the legislative or executive branch) unless the registrant performs, on behalf of that person, other activities that require registration under this chapter; or provide information concerning a person employed or retained by the registrant for the purpose of assisting in that activity under Section 305.005(f)(5)(A) (relating to requiring the registration to be written and verified and to contain for each person employed or retained by the registrant for the purpose of assisting in direct communication with a member of the legislative or executive branch to influence legislation or administrative action certain information) unless the person is also employed or retained by the registrant to assist with other activities that require registration under this chapter.

SECTION 2. Amends Section 305.022, Government Code, by amending Subsection (c) and adding Subsections (c-1), (c-2), and (e), as follows:

(c) Provides that for purposes of this chapter, rather than section, a sales commission payable to an employee of a vendor of a product is not considered compensation contingent on the outcome of administrative action.

(c-1) Provides that for purposes of this chapter, a sales commission payable to an independent contractor of a vendor of a product is not considered compensation contingent on the outcome of an administrative action if the independent contractor is a registrant who reports the vendor as a client under this chapter and reports the full amount of the contingent fee in the manner required by Texas Ethics Commission (TEC) rule.

(c-2) Requires the registrant, if the amount of contingent compensation is not known at the time of the disclosure required under Subsection (c-1), to disclose a reasonable estimate of the amount of the contingent compensation, and the method under which the contingent compensation will be computed.

(e) Defines "product" for purposes of this chapter.

SECTION 3. Amends Section 403.1067(b), Government Code, as follows:

(b) Provides that the persons or entities described by Subsection (a) (relating to prohibiting certain entities that receive certain funds or grants from using the funds or grants to pay for certain expenses), except as provided by this subsection, are not eligible to receive the money or participate either directly or indirectly in the contracts, funds, or grants awarded in Section 403.105 (Permanent Fund for Health and Tobacco Education and Enforcement), 403.1055 (Permanent Fund for Children and Public Health), 403.106 (Permanent Fund for Emergency Medical Services and Trauma Care), 403.1065 (Permanent Fund for Rural Health Facility Capital Improvement), or 403.1066 (Permanent Hospital Fund for Capital Improvements and the Texas Center for Infectious Disease). Provides that a registrant under Chapter 305 (Registration of Lobbyists) is not ineligible under this subsection if the person is required to register under that chapter solely because the person communicates directly with a member of the executive branch to influence administrative action concerning a matter relating to the purchase of products by a state agency.

SECTION 4. Amends Section 161.301, Health and Safety Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Prohibits the commissioner of public health from awarding a contract under Subsection (b) (relating to authorizing the commissioner to contract with another person to develop and implement the public awareness campaign and requiring the contract to be awarded on the basis of competitive bids) to:

(1) a person or entity that is required to register with TEC under Chapter 305, Government Code, except as provided by Subsection (f);

(2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1) and not described by Subsection (f).

(3) Makes no changes to this subdivision.

(f) Provides that a registrant under Chapter 305, Government Code, is not ineligible under Subsections (d) and (e) (relating to providing that the persons or entities described by Subsection (d) are not eligible to receive the money or participate either directly or indirectly in the public awareness campaign) if the person is required to register under that chapter solely because the person communicates directly with a member of the executive branch to influence administrative action concerning a matter relating to the purchase of products by a state agency.

SECTION 5. Provides that a person who is required to register under Chapter 305, Government Code, solely as a result of the change in law made by this Act is not required to register under that chapter before January 1, 2010.

SECTION 6. Effective date: September 1, 2009.