

## **BILL ANALYSIS**

C.S.H.B. 3445  
By: Anchia  
Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Because of advisory opinions and rules adopted by the Texas Ethics Commission 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, rules and opinions of the commission 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. The commission 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 the commission with some modification to the exception for purchasing decisions.

C.S.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 commission rules.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

## ANALYSIS

C.S.H.B. 3445 amends the Government Code to add provisions relating to the requirement for a person to register with the Texas Ethics Commission if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than an amount determined by commission rule but not less than \$200 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. The bill establishes that such a person is not required to register with the commission 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; to 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 to communicate as a member of a board, task force, or advisory committee on which a member of the legislature or executive branch also serves. The bill establishes that a registrant who performs any of these activities is not required to provide information concerning the activity in the registrant's registration statement relating to the subject matter of the legislation or administrative action that is the subject of the registrant's direct communication with a member of the legislative or executive branch; provide information concerning the person who reimburses, retains, or employs the registrant to perform that activity unless the registrant performs, on behalf of that person, other activities that require registration with the commission; or provide information concerning a person employed or retained by the registrant for the purpose of assisting in that activity unless the person is also employed or retained by the registrant to assist with other activities that require registration.

C.S.H.B. 3445 establishes that a sales commission payable to an employee of a vendor of a product is not considered compensation contingent on the outcome of administrative action for purposes of the law governing registration of lobbyists, rather than the law governing contingent fees. The bill provides 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 commission rule. The bill requires such a registrant to disclose a reasonable estimate of the amount of the contingent compensation and the method under which the compensation will be computed if the amount of contingent compensation is not known at the time the registrant is required to report the amount as required by commission rule. The bill defines "product" for purposes of the law governing registration of lobbyists.

C.S.H.B. 3445 provides that a registrant is not ineligible to receive money or participate either directly or indirectly in certain contracts, funds, or grants administered by the comptroller of public accounts if the person is required to register with the commission 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.

C.S.H.B. 3445 amends the Health and Safety Code to provide that a registrant with the Texas Ethics Commission is not ineligible for a contract relating to prevention of tobacco use by minors if the person is required to register with the commission 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.

C.S.H.B. 3445 provides that a person required to register with the commission solely as a result of the change in law made by the bill is not required to register before January 1, 2010.

## **EFFECTIVE DATE**

September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3445 removes provisions in the original creating an exemption from the law governing registration of lobbyists for a person who spends not more than five percent of the time for which the person is compensated, reimbursed, or entitled to be compensated or reimbursed during the calendar quarter engaging in activity to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; for a corporation, association, firm, partnership, committee, club, organization, or other group of persons if the expenditures made on behalf of the entity and compensation paid to or promised to the entity to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action are reported by an individual who is registered as a lobbyist in accordance with the law and the rules of the Texas Ethics Commission; and for an expenditure made by a member of the judicial, legislative, or executive branch acting in the member's official capacity. The substitute retains the current law by removing a provision in the original striking an exception to the law governing registration of lobbyists for a person whose only direct communication with a member of the legislative or executive branch is an appearance at a hearing conducted by or on behalf of either the legislative or the executive branch and who does not receive special or extra compensation for the appearance. The substitute removes provisions in the original describing certain activities for which a person receives or is entitled to receive compensation or reimbursement that do not require the person to register with the commission.

C.S.H.B. 3445 adds provisions not in the original to exempt a person otherwise required to register with the commission from that requirement if the person is required to register solely because the person receives or is entitled to receive compensation or reimbursement to 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 to communicate as a member of a board, task force, or advisory committee on which a member of the legislature or executive branch also serves. The substitute adds provisions not in the original to require an independent contractor who is registered with the commission as a vendor of a product and receives sales commission contingent on the outcome of an administrative action to disclose a reasonable estimate of the amount of such compensation and the method under which the compensation will be computed if the amount of contingent compensation is not known at the time the registrant is required by commission rule to report the amount. The substitute adds a provision not in the original to define the term "product" for purposes of the law governing registration of lobbyists.