

By: Zaffirini

S.B. No. 1682

A BILL TO BE ENTITLED

AN ACT

relating to certain ethics requirements applicable to state agencies, including required disclosures by state contractors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 2263, Government Code, is amended to read as follows:

CHAPTER 2263. ETHICS AND DISCLOSURE REQUIREMENTS FOR STATE AGENCIES AND CONTRACTORS WITH STATE AGENCEIES [~~OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS~~]

SECTION 2. Chapter 2263, Government Code, is amended by designating Sections 2263.001 through 2263.006 as Subchapter A and adding a heading to Subchapter A to read as follows:

SUBCHAPTER A. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS

SECTION 3. Sections 2263.001, 2263.002, 2263.003, and 2263.006, Government Code, are amended to read as follows:

Sec. 2263.001. APPLICABILITY. (a) This subchapter [~~chapter~~] applies in connection with the management or investment of any state funds managed or invested:

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

(2) by or for:

(A) a public retirement system as defined by Section 802.001 that provides service retirement, disability

1 retirement, or death benefits for officers or employees of the
2 state;

3 (B) an institution of higher education as defined
4 by Section 61.003, Education Code; or

5 (C) another entity that is part of state
6 government and that manages or invests state funds or for which
7 state funds are managed or invested.

8 (b) This subchapter [~~chapter~~] applies in connection with
9 the management or investment of state funds without regard to
10 whether the funds are held in the state treasury.

11 (c) This subchapter [~~chapter~~] does not apply to or in
12 connection with a state governmental entity that does not manage or
13 invest state funds and for which state funds are managed or invested
14 only by the comptroller.

15 Sec. 2263.002. DEFINITION. In this subchapter [~~chapter~~],
16 "financial advisor or service provider" includes a person or
17 business entity who acts as a financial advisor, financial
18 consultant, money or investment manager, or broker.

19 Sec. 2263.003. CONSTRUCTION WITH OTHER LAW. To the extent
20 of a conflict between this subchapter [~~chapter~~] and another law,
21 the law that imposes a stricter ethics or disclosure requirement
22 controls.

23 Sec. 2263.006. PUBLIC INFORMATION. Chapter 552 controls
24 the extent to which information contained in a statement filed
25 under this subchapter [~~chapter~~] is subject to required public
26 disclosure or excepted from required public disclosure.

27 SECTION 4. Chapter 2263, Government Code, is amended by

1 adding Subchapters B and C to read as follows:

2 SUBCHAPTER B. MODEL ETHICS POLICY FOR STATE AGENCIES

3 Sec. 2263.051. MODEL ETHICS POLICY FOR STATE AGENCIES. A
4 state agency shall use the following model policy in adopting an
5 agency ethics policy under Section 572.051(c):

6 I. OVERVIEW.

7 Under Section 572.051(c), Government Code, the (agency)
8 adopts the following ethics policy:

9 This ethics policy prescribes standards of conduct for all
10 (agency) employees.

11 This ethics policy does not supersede any applicable federal
12 or Texas law or administrative rule.

13 All (agency) employees must familiarize themselves with this
14 ethics policy.

15 All (agency) employees must abide by all applicable federal
16 and Texas laws, administrative rules, and (agency) conduct
17 policies, including this ethics policy. An (agency) employee who
18 violates any provision of the (agency's) conduct policies is
19 subject to termination of the employee's state employment or
20 another employment-related sanction. An (agency) employee who
21 violates any applicable federal or Texas law or rule may be subject
22 to civil or criminal penalties in addition to any
23 employment-related sanction.

24 II. STANDARDS OF CONDUCT.

25 A. An (agency) employee may not:

26 (1) accept or solicit any gift, favor, or service
27 that might reasonably tend to influence the employee in the

1 discharge of official duties, or that the employee knows or should
2 know is being offered with the intent to influence the employee's
3 official conduct;

4 (2) intentionally or knowingly solicit, accept,
5 or agree to accept any benefit for having exercised the employee's
6 official powers or performed the employee's official duties in
7 favor of another;

8 (3) disclose confidential information,
9 information that is excepted from public disclosure under the Texas
10 Public Information Law, or information that has been ordered sealed
11 by a court that was acquired by the employee through the employee's
12 official position;

13 (4) accept other employment, including
14 self-employment, or engage in a business, charity, nonprofit
15 organization, or professional activity that the employee might
16 reasonably expect would require or induce the employee to disclose
17 confidential information, information that is excepted from public
18 disclosure under the Texas Public Information Law, or information
19 that has been ordered sealed by a court that was acquired by the
20 employee through the employee's official position;

21 (5) accept other employment, including
22 self-employment, or compensation or engage in a business, charity,
23 nonprofit organization, or professional activity that could
24 reasonably be expected to impair the employee's independence of
25 judgment in the performance of the employee's official duties;

26 (6) make personal investments, or have a personal
27 or financial interest, that could reasonably be expected to create

1 a substantial conflict between the employee's private interest and
2 the public interest;

3 (7) use state, time, property, facilities, or
4 equipment for any purpose other than official state business,
5 unless the use is reasonable and incidental and does not result in
6 any direct cost to the state or (agency), interfere with the
7 employee's official duties, or interfere with (agency) functions;

8 (8) use the employee's official position or
9 state-issued items, including a badge, indicating the employee's
10 position for financial gain, to obtain privileges, or to avoid
11 consequences of illegal acts;

12 (9) knowingly make misleading statements, either
13 oral or written, or provide false information in the course of
14 official state business; or

15 (10) engage in any political activity while on
16 state time or use state resources for any political activity.

17 B. An (agency) employee shall:

18 (1) perform the employee's official duties in a
19 lawful, professional, and ethical manner befitting the state and
20 (agency); and

21 (2) report any conduct or activity that the
22 employee believes to be in violation of this ethics policy to
23 (agency designee).

24 Sec. 2263.052. MODEL ETHICS POLICY PROVISIONS FOR
25 REGULATORY AGENCIES. Except as otherwise provided by law, a
26 regulatory agency shall use the following model policy provisions
27 in adopting an agency ethics policy that meets the standards of

1 Section 572.054(b):

2 REGULATORY AGENCIES.

3 (1) In this ethics policy:

4 (a) "Business entity" means any entity
5 recognized by law through which business for profit is conducted,
6 including a sole proprietorship, partnership, firm, corporation,
7 holding company, joint stock company, receivership, or trust.

8 (b) "Participated" means to have taken action
9 through decision, approval, disapproval, recommendation, giving of
10 advice, investigation, or similar action.

11 (c) "Particular matter" means a specific
12 investigation, application, request for a ruling or determination,
13 rulemaking proceeding, contract, claim, accusation, charge,
14 arrest, or judicial or other proceeding.

15 (d) "Regulatory agency" means a department,
16 commission, board, or other agency, other than the secretary of
17 state or the comptroller of public accounts, that:

18 (i) is in the executive branch of state
19 government;

20 (ii) has authority that is not limited to a
21 geographical portion of this state;

22 (iii) was created by the Texas Constitution
23 or a statute of this state; and

24 (iv) has constitutional or statutory
25 authority to engage in regulation.

26 (2) A former employee of the (agency) who was
27 compensated, as of the last date of state employment, at or above

1 the amount prescribed by the General Appropriations Act for step 1,
2 salary group A17, of the position classification salary schedule
3 may not represent any person or entity, or receive compensation for
4 services rendered on behalf of any person or entity, regarding a
5 particular matter in which the former employee participated during
6 the period of state service or employment, either through personal
7 involvement or because the case or proceeding was a matter within
8 the employee's official responsibility.

9 (3) Subsection (2) of this policy does not apply to a
10 rulemaking proceeding that was conducted before the date the
11 employee's service or employment ceased.

12 (4) Notwithstanding Subsection (1)(d) of this policy,
13 Subsection (2) of this policy applies to employees of the secretary
14 of state and the comptroller of public accounts.

15 (5) An association or organization of employees of the
16 (agency) may not solicit, accept, or agree to accept anything of
17 value from:

18 (a) a business entity regulated by the (agency)
19 and from which the business entity must obtain a permit to operate
20 the entity's business in this state; or

21 (b) an individual directly or indirectly
22 connected with a business entity regulated by the (agency) and from
23 which the business entity must obtain a permit to operate the
24 entity's business in this state.

25 SUBCHAPTER C. ETHICS AND DISCLOSURE REQUIREMENTS

26 FOR CONTRACTORS

27 Sec. 2263.101. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;

1 STATE AGENCY EMPLOYEES. Before entering into a contract with the
2 state, a contractor and subcontractor and must disclose each
3 employee:

4 (1) who was employed by:

5 (A) the state at any time during the two years
6 preceding the date of the disclosure and is now employed by the
7 contractor or subcontractor; or

8 (B) the contractor or subcontractor at any time
9 during the year preceding the date of the disclosure and is now
10 employed by the state; and

11 (2) who is materially involved in the development of
12 the contract terms or the management of the contract.

13 Sec. 2263.102. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
14 OUTSOURCING. (a) Each contract entered into by a state agency must
15 include a provision requiring disclosure of any services materially
16 necessary to fulfill the contract, including services performed by
17 a subcontractor, that will be or are performed in a country other
18 than the United States. This section does not apply to services
19 that are occasional, minor, or incidental to fulfilling the
20 contract.

21 (b) The contract must include a provision allowing the state
22 agency to terminate the contract and solicit a new contract, except
23 as provided by Subsection (d), if:

24 (1) the contractor or a subcontractor of the
25 contractor performs a service materially necessary to fulfill the
26 contract in a country other than the United States; and

27 (2) the contractor does not disclose in the contract

1 that the service will be performed in a country other than the
2 United States.

3 (c) A state agency that decides not to solicit a new
4 contract under circumstances in which the agency is authorized to
5 do so under a contract provision required by Subsection (b) shall
6 report this decision to:

7 (1) the governor;

8 (2) the lieutenant governor;

9 (3) the speaker of the house of representatives;

10 (4) the Contract Advisory Team.

11 (d) A contractor may replace a subcontractor without
12 termination of a contract under this section if the contractor
13 determines that the subcontractor is performing a service
14 materially necessary to fulfill the contract in a country other
15 than the United States and did not disclose that fact to the
16 contractor.

17 Sec. 2263.103. CONTRACTOR CONFLICTS OF INTEREST. (a) Each
18 contractor who responds to a state agency's contract solicitation
19 shall disclose in its response all potential conflicts of interest
20 to the agency.

21 (b) The Contract Advisory Team shall develop guidelines to
22 aid contractors and state agencies in identifying potential
23 conflicts of interest.

24 SECTION 5. (a) Section 2263.101, Government Code, as added
25 by this Act, applies only to a contract for which a state agency
26 first advertises or otherwise solicits bids, proposals, offers, or
27 qualifications on or after the effective date of this Act.

1 (b) Section 2263.103(a), Government Code, as added by this
2 Act, applies only in relation to a contract for which a state agency
3 first solicits bids, proposals, offers, or qualifications on or
4 after the date that the Contract Advisory Team's guidelines
5 regarding potential conflicts of interest take effect.

6 (c) A state agency is not required to comply with Section
7 2263.102, Government Code, as added by this Act, before September
8 1, 2015.

9 SECTION 6. This Act takes effect November 1, 2013.