

By: Davis of Harris, Márquez, et al.

H.B. No. 23

A BILL TO BE ENTITLED

AN ACT

relating to disclosure of certain relationships with local government officers and vendors; creating criminal offenses.

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

SECTION 1. Section 176.001, Local Government Code, is amended by amending Subdivisions (1), (2), (2-a), (2-b), (3), and (4) and adding Subdivisions (2-c), (2-d), and (7) to read as follows:

(1) "Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.

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

(2-a) "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

(2-b) "Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment

1 accepted as a guest. The term does not include a benefit offered on
2 account of kinship or a personal, professional, or business
3 relationship independent of the official status of the recipient.

4 (2-c) "Goods" means personal property.

5 (2-d) [~~(2-b)~~] "Investment income" means dividends,
6 capital gains, or interest income generated from:

7 (A) a personal or business:

8 (i) checking or savings account;

9 (ii) share draft or share account; or

10 (iii) other similar account;

11 (B) a personal or business investment; or

12 (C) a personal or business loan.

13 (3) "Local governmental entity" means a county,
14 municipality, school district, charter school, junior college
15 district, water district created under Subchapter B, Chapter 49,
16 Water Code, or other political subdivision of this state or a local
17 government corporation, board, commission, district, or authority
18 to which a member is appointed by the commissioners court of a
19 county, the mayor of a municipality, or the governing body of a
20 municipality. The term does not include an association,
21 corporation, or organization of governmental entities organized to
22 provide to its members education, assistance, products, or services
23 or to represent its members before the legislative, administrative,
24 or judicial branches of the state or federal government.

25 (4) "Local government officer" means:

26 (A) a member of the governing body of a local
27 governmental entity;

1 (B) a director, superintendent, administrator,
2 president, or other person designated as the executive officer of a
3 ~~[the]~~ local governmental entity; or

4 (C) an agent ~~[employee]~~ of a local governmental
5 entity who exercises discretion in the planning, recommending,
6 selecting, or contracting of a vendor ~~[with respect to whom the~~
7 ~~local governmental entity has, in accordance with Section 176.005,~~
8 ~~extended the requirements of Sections 176.003 and 176.004]~~.

9 (7) "Vendor" means a person who enters or seeks to
10 enter into a contract with a local governmental entity. The term
11 includes an agent of a vendor. The term includes an officer or
12 employee of a state agency when that individual is acting in a
13 private capacity to enter into a contract. The term does not
14 include a state agency except for Texas Correctional Industries.

15 SECTION 2. The heading to Section 176.002, Local Government
16 Code, is amended to read as follows:

17 Sec. 176.002. APPLICABILITY TO ~~[CERTAIN]~~ VENDORS AND OTHER
18 PERSONS.

19 SECTION 3. Sections 176.002(a) and (b), Local Government
20 Code, are amended to read as follows:

21 (a) This chapter applies to a person who is:

22 (1) a vendor ~~[enters or seeks to enter into a contract~~
23 ~~with a local governmental entity]~~; or

24 (2) a local government officer ~~[is an agent]~~ of ~~[a~~
25 ~~person described by Subdivision (1) in the person's business with]~~
26 a local governmental entity.

27 (b) A person is not subject to the disclosure requirements

of this chapter if the person is:

(1) a state, a political subdivision of a state, the federal government, or a foreign government; or

(2) an employee or agent of an entity described by Subdivision (1), acting in the employee's or agent's official capacity.

SECTION 4. Section 176.003, Local Government Code, is amended by amending Subsections (a) and (a-1) and adding Subsection (a-2) to read as follows:

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor ~~[person described by Section 176.002(a)]~~ if:

(1) the vendor ~~[person]~~ enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor ~~[person]~~; and

(2) the vendor ~~[person]~~:

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

(i) a contract between the local governmental entity and vendor ~~[described by Subdivision (1)]~~ has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor ~~[person]~~; ~~[or]~~

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 [~~\$250~~] in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor [~~described by Subdivision (1)~~] has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor; or

(C) has a family relationship with the local government officer [~~person~~].

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

(1) [~~given by a family member of the person accepting the gift,~~

~~(2)]~~ a political contribution as defined by Title 15, Election Code; or

(2) [~~(3)]~~ food[, ~~lodging,~~ ~~transportation,~~ or ~~entertainment~~] accepted as a guest.

(a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.

SECTION 5. Section 176.004, Local Government Code, is transferred to Section 176.003, Local Government Code,

redesignated as Section 176.003(e), Local Government Code, and amended to read as follows:

(e) ~~[Sec. 176.004. CONTENTS OF DISCLOSURE STATEMENT.]~~ The commission shall adopt the conflicts disclosure statement for local government officers for use under this section. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Subsection (a)(2)(A) ~~[Section 176.003(a)]~~, including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a vendor ~~[person described by Section 176.002(a)]~~ during the 12-month period described by Subsection (a)(2)(B) ~~[Section 176.003(a)(2)(B)]~~ if the aggregate value of the gifts~~[, excluding gifts described by Section 176.003(a-1),]~~ accepted by the officer or a family member from that vendor exceeds \$100 ~~[person exceed \$250]~~;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

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

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

SECTION 6. Section 176.006, Local Government Code, is amended by amending Subsections (a), (a-1), (b), (c), (d), and (i) and adding Subsection (e) to read as follows:

(a) A vendor [~~person described by Section 176.002(a)~~] shall file a completed conflict of interest questionnaire if the vendor [~~person~~] has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government [~~an~~] officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A); [~~or~~]

(2) has given a local government [~~an~~] officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

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

(1) the date that the vendor [~~person~~]:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract

1 with the local governmental entity; or

2 (2) the date the vendor [~~person~~] becomes aware:

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

6 (B) that the vendor [~~person~~] has given one or
7 more gifts described by Subsection (a); or

8 (C) of a family relationship with a local
9 government officer.

10 (b) The commission shall adopt a conflict of interest
11 questionnaire for use under this section that requires disclosure
12 of a vendor's [~~person's~~] business and family relationships with a
13 local governmental entity.

14 (c) The questionnaire adopted under Subsection (b) must
15 require, for the local governmental entity with respect to which
16 the questionnaire is filed, that the vendor [~~person~~] filing the
17 questionnaire:

18 (1) describe each employment or business and family
19 relationship the vendor [~~person~~] has with each local government
20 officer of the local governmental entity;

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

26 (3) identify each employment or business relationship
27 described by Subdivision (1) with respect to which the vendor

1 ~~[person filing the questionnaire]~~ receives, or is likely to
2 receive, taxable income, other than investment income, that:

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

5 (B) is not received from the local governmental
6 entity; and

7 (4) describe each employment or business relationship
8 with a corporation or other business entity with respect to which a
9 local government officer of the local governmental entity:

10 (A) serves as an officer or director; or

11 (B) holds an ownership interest of one ~~[10]~~
12 percent or more.

13 (d) A vendor ~~[person described by Subsection (a)]~~ shall file
14 an updated completed questionnaire with the appropriate records
15 administrator not later than the seventh business day after the
16 date on which the vendor becomes aware of an event that would make a
17 statement in the questionnaire incomplete or inaccurate.

18 (e) A person who is both a local government officer and a
19 vendor of a local governmental entity is required to file the
20 questionnaire required by Subsection (a)(1) only if the person:

21 (1) enters or seeks to enter into a contract with the
22 local governmental entity; or

23 (2) is an agent of a person who enters or seeks to
24 enter into a contract with the local governmental entity.

25 (i) The validity of a contract between a vendor ~~[person~~
26 ~~described by Section 176.002]~~ and a local governmental entity is
27 not affected solely because the vendor ~~[person]~~ fails to comply

with this section.

SECTION 7. Section 176.011, Local Government Code, is redesignated as 176.0065, Local Government Code, and amended to read as follows:

Sec. 176.0065 [176.011]. MAINTENANCE OF RECORDS. A records administrator shall:

(1) maintain a list of local government officers of the local governmental entity and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Section 176.006; and

(2) maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

SECTION 8. Chapter 176, Local Government Code, is amended by adding Section 176.013 to read as follows:

Sec. 176.013. ENFORCEMENT. (a) A local government officer commits an offense under this chapter if the officer:

(1) is required to file a conflicts disclosure statement under Section 176.003; and

(2) knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

(b) A vendor commits an offense under this chapter if the vendor:

(1) is required to file a conflict of interest

questionnaire under Section 176.006; and

(2) either:

(A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or

(B) knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.

(c) An offense under this chapter is:

(1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;

(2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or

(3) a Class A misdemeanor if the contract amount is at least \$5 million.

(d) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this chapter.

(e) The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a conflict of interest

1 questionnaire required by Section 176.006.

2 (f) It is an exception to the application of Subsection (a)
3 that the local government officer filed the required conflicts
4 disclosure statement not later than the seventh business day after
5 the date the officer received notice from the local governmental
6 entity of the alleged violation.

7 (g) It is an exception to the application of Subsection (b)
8 that the vendor filed the required questionnaire not later than the
9 seventh business day after the date the vendor received notice from
10 the local governmental entity of the alleged violation.

11 SECTION 9. The following provisions of the Local Government
12 Code are repealed:

- 13 (1) Sections 176.003(c) and (d);
14 (2) Section 176.005;
15 (3) Sections 176.006(f), (g), and (h); and
16 (4) Section 176.007.

17 SECTION 10. As soon as practicable after the effective date
18 of this Act, the Texas Ethics Commission shall adopt forms to
19 implement this Act.

20 SECTION 11. (a) Chapter 176, Local Government Code, as
21 amended by this Act, applies only to an event requiring disclosure
22 that occurs on or after the effective date of this Act. An event
23 requiring disclosure that occurs before the effective date of this
24 Act is governed by the law applicable to the event immediately
25 before the effective date of this Act, and the former law is
26 continued in effect for that purpose.

27 (b) The repeal by this Act of Sections 176.003(c),

1 176.005(c), and 176.006(f), Local Government Code, does not apply
2 to an offense committed under those sections before the effective
3 date of the repeal. An offense committed before the effective date
4 of the repeal is governed by those sections as they existed on the
5 date the offense was committed, and the former law is continued in
6 effect for that purpose. For purposes of this subsection, an
7 offense was committed before the effective date of the repeal if any
8 element of the offense occurred before that date.

9 SECTION 12. This Act takes effect September 1, 2015.