

By: Davis of Harris

H.B. No. 23

Substitute the following for H.B. No. 23:

By: Collier

C.S.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 by:

5 (A) a local government officer or a family member
6 of the officer to another local government officer of the same local
7 governmental entity or a family member of that officer; or

8 (B) a vendor or a family member of the vendor to
9 another vendor of the same local governmental entity or a family
10 member of that vendor.

11 (2-c) "Goods" means personal property.

12 (2-d) [~~(2-b)~~] "Investment income" means dividends,
13 capital gains, or interest income generated from:

14 (A) a personal or business:

15 (i) checking or savings account;

16 (ii) share draft or share account; or

17 (iii) other similar account;

18 (B) a personal or business investment; or

19 (C) a personal or business loan.

20 (3) "Local governmental entity" means a county,
21 municipality, school district, charter school, junior college
22 district, water district created under Subchapter B, Chapter 49,
23 Water Code, or other political subdivision of this state or a local
24 government corporation, board, commission, district, or authority
25 to which a member is appointed by the commissioners court of a
26 county, the mayor of a municipality, or the governing body of a
27 municipality. The term does not include an association,

corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

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

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

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

(7) "Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes a person who seeks to influence, on behalf of a vendor, the contract award made by a local governmental entity, or is an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries.

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

Sec. 176.002. APPLICABILITY TO ~~CERTAIN~~ VENDORS AND OTHER PERSONS.

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

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

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

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

(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

1 of the officer that results in the officer or family member
2 receiving taxable income, other than investment income, that
3 exceeds \$2,500 during the 12-month period preceding the date that
4 the officer becomes aware that:

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

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

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

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

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

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

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

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

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

1 (2) ~~[(3)]~~ food~~[, lodging, transportation, or~~
2 ~~entertainment]~~ accepted as a guest.

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

8 SECTION 5. Section 176.004, Local Government Code, is
9 transferred to Section 176.003, Local Government Code,
10 redesignated as Section 176.003(e), Local Government Code, and
11 amended to read as follows:

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

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

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

21 (B) gifts accepted by the local government
22 officer and any family member of the officer from a vendor ~~[person~~
23 ~~described by Section 176.002(a)]~~ during the 12-month period
24 described by Subsection (a)(2)(B) [Section 176.003(a)(2)(B)] if
25 the aggregate value of the gifts~~[, excluding gifts described by~~
26 ~~Section 176.003(a-1)],~~ accepted by the officer or a family member
27 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);

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

1 (4) the amount of a contract that is either executed or
2 under consideration between the vendor and that local governmental
3 entity exceeds \$1 million.

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

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

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

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

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

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

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

20 (C) of a family relationship with a local
21 government officer.

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

26 (c) The questionnaire adopted under Subsection (b) must
27 require, for the local governmental entity with respect to which

the questionnaire is filed, that the vendor [~~person~~] filing the questionnaire:

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

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

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

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

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

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

(A) serves as an officer or director; or

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

(d) A vendor [~~person described by Subsection (a)~~] shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the

1 date of an event that would make a statement in the questionnaire
2 incomplete or inaccurate.

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

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

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

10 (i) The validity of a contract between a vendor [~~person~~
11 ~~described by Section 176.002~~] and a local governmental entity is
12 not affected solely because the vendor [~~person~~] fails to comply
13 with this section.

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

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

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

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

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

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

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

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

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

12 (1) is required to file a conflict of interest
13 questionnaire under Section 176.006; and

14 (2) either:

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

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

25 (c) An offense under this chapter is:

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

1 contract;

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

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

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

9 (e) The governing body of a local governmental entity may,
10 at its discretion, declare a contract void if the governing body
11 determines that a violation of this chapter has occurred.

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

14 (1) Sections 176.003(c) and (d);

15 (2) Section 176.005;

16 (3) Sections 176.006(f), (g), and (h); and

17 (4) Section 176.007.

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

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

1 (b) The repeal by this Act of Sections 176.003(c),
2 176.005(c), and 176.006(f), Local Government Code, does not apply
3 to an offense committed under those sections before the effective
4 date of the repeal. An offense committed before the effective date
5 of the repeal is governed by those sections as they existed on the
6 date the offense was committed, and the former law is continued in
7 effect for that purpose. For purposes of this subsection, an
8 offense was committed before the effective date of the repeal if any
9 element of the offense occurred before that date.

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