

By: Davis of Harris

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.

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

3 (2-d) [~~(2-b)~~] "Investment income" means dividends,
4 capital gains, or interest income generated from:

5 (A) a personal or business:

6 (i) checking or savings account;

7 (ii) share draft or share account; or

8 (iii) other similar account;

9 (B) a personal or business investment; or

10 (C) a personal or business loan.

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

23 (4) "Local government officer" means:

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

26 (B) a director, superintendent, administrator,
27 president, or other person designated as the executive officer of a

1 ~~[the]~~ local governmental entity; or

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

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

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

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

18 SECTION 3. Section 176.002(a), Local Government Code, is
19 amended to read as follows:

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

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

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

26 SECTION 4. Sections 176.003(a) and (a-1), Local Government
27 Code, are amended 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

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

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

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

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

10 (2) ~~[(3)]~~ food~~[,~~ ~~lodging,~~ ~~transportation,~~ ~~or~~
11 ~~entertainment]~~ accepted as a guest.

12 SECTION 5. Section 176.004, Local Government Code, is
13 transferred to Section 176.003, Local Government Code,
14 redesignated as Section 176.003(e), Local Government Code, and
15 amended to read as follows:

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

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

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

25 (B) gifts accepted by the local government
26 officer and any family member of the officer from a vendor ~~[person~~
27 ~~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, including lodging, transportation, or entertainment [~~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. Sections 176.006(a), (a-1), (b), (c), (d), and (i), Local Government Code, are amended 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

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

(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 with the local governmental entity; or

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

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

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

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

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure

1 of a vendor's [~~person's~~] business and family relationships with a
2 local governmental entity.

3 (c) The questionnaire adopted under Subsection (b) must
4 require, for the local governmental entity with respect to which
5 the questionnaire is filed, that the vendor [~~person~~] filing the
6 questionnaire:

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

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

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

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

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

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

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

27 (B) holds an ownership interest of one [~~10~~]

1 percent or more.

2 (d) A vendor [~~person described by Subsection (a)~~] shall file
3 an updated completed questionnaire with the appropriate records
4 administrator not later than the seventh business day after the
5 date of an event that would make a statement in the questionnaire
6 incomplete or inaccurate.

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

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

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

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

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

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

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

27 (1) is required to file a conflicts disclosure

1 statement under Section 176.003; and

2 (2) fails to file the required conflicts disclosure
3 statement with the appropriate records administrator not later than
4 5 p.m. on the seventh business day after the date on which the
5 officer becomes aware of the facts that require the filing of the
6 statement.

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

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

11 (2) either:

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

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

21 (c) An offense under this chapter is:

22 (1) a Class C misdemeanor if the contract amount is
23 less than \$1 million;

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

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

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

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

7 SECTION 9. The following provisions of the Local Government
8 Code are repealed:

- 9 (1) Sections 176.003(c) and (d);
10 (2) Section 176.005;
11 (3) Sections 176.006(f), (g), and (h); and
12 (4) Section 176.007.

13 SECTION 10. As soon as practicable after the effective date
14 of this Act, the Texas Ethics Commission shall adopt forms to
15 implement this Act.

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

23 (b) The repeal by this Act of Sections 176.003(c),
24 176.005(c), and 176.006(f), Local Government Code, does not apply
25 to an offense committed under those sections before the effective
26 date of the repeal. An offense committed before the effective date
27 of the repeal is governed by those sections as they existed on the

1 date the offense was committed, and the former law is continued in
2 effect for that purpose. For purposes of this subsection, an
3 offense was committed before the effective date of the repeal if any
4 element of the offense occurred before that date.

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