

By: Capriglione

H.B. No. 1295

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of interested parties by business entities contracting with governmental entities and state agencies; authorizing a civil penalty.

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

SECTION 1. The heading to Section 2252.908, Government Code, is amended to read as follows:

Sec. 2252.908. DISCLOSURE OF INTERESTED PARTIES; CIVIL PENALTY.

SECTION 2. Section 2252.908(a), Government Code, is amended by amending Subdivisions (1), (2), and (3) and adding Subdivisions (1-a), (1-b), (3-a), (3-b), (3-c), and (5) to read as follows:

(1) "Business entity" means any entity recognized by law through which business is conducted with a governmental entity or state agency. The term includes [~~including~~] a sole proprietorship, partnership, or corporation. The term does not include the United States, a federal agency, a state agency, or another governmental entity.

(1-a) "Contract" means a binding agreement between a governmental entity or state agency and a business entity effective on the earlier of the date the governing body of the governmental entity or state agency votes to approve the contract or the date the governmental entity or state agency becomes bound under the contract. The term includes an amendment to or an extension or

1 renewal of the contract.

2 (1-b) "Controlling interest" means:

3 (A) an ownership or participating interest in a
4 business entity represented by a unit, percentage, share, stock, or
5 other acknowledgment of ownership or participating interest in an
6 amount that exceeds five percent of the total ownership or
7 participating interest in the business entity;

8 (B) membership on the board of directors or other
9 governing body of a business entity, provided the composition of
10 the board or governing body does not exceed 10 members; or

11 (C) service as an officer of a business entity
12 that has not more than four officers or service as one of the four
13 highest ranking officers of a business entity with more than four
14 officers, excluding an officer of a publicly held business entity
15 or its wholly owned subsidiary.

16 (2) "Governmental entity" means a municipality,
17 county, public school district, open-enrollment charter school, or
18 special-purpose district or authority.

19 (3) "Interested party" means a person who has a
20 controlling interest in a business entity with whom a governmental
21 entity or state agency contracts or who is an [~~actively~~
22 ~~participates in facilitating the contract or negotiating the terms~~
23 ~~of the contract, including a broker,~~] intermediary[, ~~adviser, or~~
24 ~~attorney~~] for the business entity.

25 (3-a) "Intermediary" means a person who actively
26 participates in facilitating or negotiating a contract, including a
27 broker, adviser, attorney, or agent for or representative of a

1 business entity, and who:

2 (A) receives compensation from the business
3 entity for the person's participation;

4 (B) communicates directly regarding the contract
5 with the governmental entity or state agency for the business
6 entity; and

7 (C) is not:

8 (i) an employee of the business entity or of
9 a person with a controlling interest in the business entity; or

10 (ii) an interested party with a controlling
11 interest in the business entity.

12 (3-b) "Person" has the meaning assigned by Section
13 311.005.

14 (3-c) "Signed" includes the use of any symbol executed
15 or adopted by a person that is evidence of present intent to
16 authenticate a writing, including an electronic signature.

17 (5) "Value" means, with respect to a contract, the
18 amount of consideration received or to be received by a business
19 entity from a governmental entity or state agency under the
20 contract.

21 SECTION 3. Section 2252.908, Government Code, is amended by
22 amending Subsections (b), (c), (e), and (f) and adding Subsections
23 (d-1), (e-1), (h), and (i) to read as follows:

24 (b) This section applies only to a contract of a
25 governmental entity or state agency that requires the expenditure
26 of the governmental entity's or state agency's money and that:

27 (1) requires an action or vote by the governing body of

1 the entity or agency before the contract may be signed; or

2 (2) has a value of at least \$1 million.

3 (c) Notwithstanding Subsection (b), this section does not
4 apply to:

5 (1) a sponsored research contract of an institution of
6 higher education;

7 (2) an interagency contract of a state agency or an
8 institution of higher education; ~~or~~

9 (3) a contract related to health and human services
10 if:

11 (A) the value of the contract cannot be
12 determined at the time the contract is executed; and

13 (B) any qualified vendor is eligible for the
14 contract;

15 (4) a contract with a publicly traded business entity,
16 including a wholly owned subsidiary of the business entity;

17 (5) a contract related to a state of disaster declared
18 by the governor under Section 418.014 that requires an immediate
19 disbursement of state money to preserve or protect the public
20 health or safety, to preserve property, or for public necessity;

21 (6) a contract that is necessary to prevent
22 unforeseen, imminent damage to public machinery, equipment, or
23 other property;

24 (7) a contract related to a subsequent sale of a
25 municipal bond after the initial bond sale;

26 (8) a contract with a federally insured financial
27 institution;

1 (9) a contract with an electric utility as that term is
2 defined by Section 31.002, Utilities Code;

3 (10) a contract with a gas utility engaged in the
4 wholesale business of transporting or distributing gas for public
5 consumption;

6 (11) a contract for an insurance policy regulated by
7 the Texas Department of Insurance that is purchased by a
8 governmental entity or state agency;

9 (12) an interlocal contract of a local governmental
10 entity; or

11 (13) a contract related to a public security, as that
12 term is defined by Section 1201.002, that is not a debt.

13 (d-1) A business entity that submits a disclosure of
14 interested parties under Subsection (d) shall submit a modified
15 disclosure of interested parties for the contract if there is any
16 change from the interested parties previously disclosed. The
17 modified disclosure must be submitted on or before the next
18 anniversary of the date the signed contract was submitted to the
19 governmental entity or state agency under Subsection (d) that
20 occurs after the change in interested parties.

21 (e) The disclosure of interested parties or modified
22 disclosure of interested parties must be submitted on a form
23 prescribed by the Texas Ethics Commission that includes:

24 (1) a list of each interested party for the contract of
25 which the contracting business entity is aware; and

26 (2) a written, unsworn declaration subscribed by [the
27 signature of] the authorized agent of the contracting business

1 (h) A business entity that fails to submit to a governmental
2 entity or state agency a disclosure of interested parties or
3 modified disclosure of interested parties required by this section
4 is liable for a civil penalty of \$500 for the first day the
5 violation occurs and \$100 for each additional day the violation
6 occurs, not to exceed the lesser of the total amount prescribed by
7 rule or \$10,000. The governmental entity or state agency shall
8 immediately notify the Texas Ethics Commission if a business entity
9 fails to submit a disclosure or modified disclosure on or before the
10 30th day after the date the disclosure is due. The commission shall
11 immediately provide to the business entity written notice of the
12 violation and civil penalty. If the business entity fails to submit
13 the disclosure or modified disclosure on or before the 10th day
14 after the date the notice is provided, the business entity is liable
15 to this state for the civil penalty.

16 (i) The attorney general, at the request of the Texas Ethics
17 Commission, may sue to collect a civil penalty imposed under
18 Subsection (h). The attorney general and the commission may
19 recover reasonable expenses incurred in obtaining a civil penalty
20 under that subsection, including investigation and court costs,
21 reasonable attorney's fees, witness fees, and other expenses.

22 SECTION 4. Not later than December 1, 2017, the Texas Ethics
23 Commission shall adopt rules and modify the disclosure of
24 interested parties form as necessary to comply with the changes in
25 law made by this Act.

26 SECTION 5. The changes in law made by this Act apply only to
27 a contract entered into or amended on or after January 1, 2018.

1 SECTION 6. This Act takes effect September 1, 2017.