

- SUBJECT:** Disclosure of financial relationships of local government officials
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 5 ayes — Talton, Wong, Blake, Menendez, Rodriguez
0 nays
2 absent — A. Allen, Bailey
- WITNESSES:** For — Robert Eckels
Against — Susan Horton, Texas Municipal League
On — David A. Reisman, Texas Ethics Commission
- BACKGROUND:** Local Government Code, ch. 171 regulates conflicts of interest for officials of cities, counties, and certain other local governmental entities. It requires that an official with a substantial interest in an entity about which the official is asked to make a decision file an affidavit stating the nature of the interest and abstain from participation in the decision, under certain conditions. The term substantial interest is defined in Government Code, sec. 171.002, and includes interests in first degree relation by consanguinity or affinity, such as a parent, child, or spouse. A violation of this chapter is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).
- DIGEST:** CSHB 914 would require public disclosure by local government officials and persons holding or seeking a contract with the governmental entity of their business and financial relationships with each other. The bill would create a class C misdemeanor (maximum fine of \$500) for a person who knowingly violated the public disclosure requirements of the bill. Filing the required disclosure within seven business days of receiving a notice of violation would be a defense to prosecution.
- CSHB 914 would require local government officials to file a conflicts disclosure statement with the local governmental entity's records administrator if, during the 12 months prior to the official becoming aware of a current or possible contract between the governmental body and a

person, the official or a family member related in the first degree to the official:

- had a business relationship with that person that resulted in taxable income, or
- received gifts from the person totaling more than \$250.

The governmental entity would have the option of extending this disclosure requirement to some or all of its employees and could reprimand, suspend, or terminate an employee who failed to comply with the required disclosure.

Persons holding or requesting a contract with a local government body would be required to file a conflict of interest questionnaire with the local governmental entity's records administrator within seven business days of submitting a bid, proposal, or request for an agreement with the entity or beginning contract discussions or negotiations. This disclosure would have to include every affiliation or business relationship with:

- each local government official of the entity;
- other businesses in which an official of the local governmental entity served as an officer or held at least 10 percent ownership;
- employees or contractors of the body who make recommendations on expenditures to that body;
- local government officials who appoint the entity's officials; and
- any other relationship that might cause a conflict of interest.

This disclosure would have to be updated by September 1 of each year in which a contract was pending before the local governmental entity, as well as within seven business days of any events that would make the questionnaire incomplete or inaccurate.

Local governmental entities would be required to maintain and make public a list of their officers. Disclosure forms filed under the bill's provisions would have to be available on the entity's Web site. Notices of meetings of the governmental body for the consideration of any contract or agreement would have to include a list of any conflicts disclosure statements filed by officials or employees of the entity and copies of any questionnaires filed by persons holding or seeking contracts or agreements.

The Texas Ethics Commission would have to adopt the required disclosure forms by December 1, 2005. The commission could accept these documents electronically. Officials, employees, and other persons would not be required to file disclosure statements or questionnaires prior to January 1, 2006.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 914 would increase the transparency and accountability of local government by requiring public disclosure of business and financial relationships that officials have with persons doing business with local governments. By requiring disclosure only when a potential conflict of interest exists and allowing persons who violate the disclosure requirements time to comply, the bill would promote openness in the least burdensome way possible.

Openness and transparency are essential to maintain the confidence of citizens in their government, as well as to ensure the ethical use of taxpayer funds. Reports of government contracts being awarded to vendors who gave gifts or provided income to an official create an impression of impropriety and reduce citizen trust in government. While these relationships may not be improper, citizens have a right to know in advance about relationships between local government officials and potential vendors that could influence to whom public contracts are awarded.

Although local officials now are required to disclose conflicts of interest, the law does not go far enough. Currently, officials are required to disclose income received from a business relationship only if that income exceeds 10 percent of the official's gross annual income. However, income and gifts less than that amount may improperly sway an official. Moreover, current law does not require an official to provide details of the relationship with the business entity, even though that information may be useful to the government body in determining whether to award a contract. CSHB 914 would require that these relationships be fully disclosed in order to increase transparency and better monitor how government contracts are awarded. The bill also would require persons with business before a local government entity to disclose their relationships with officials of that entity to ensure that all relationships, including indirect

ones, were clear.

The disclosure requirements of the bill would not be burdensome. Its provisions would not apply to most local officials and businesses, since disclosure would be required only in cases where an official had a financial relationship with a potential vendor. Moreover, the bill recognizes that in some cases officials or businesses may not be aware of every relationship, allowing a person to file a disclosure statement after a notice of violation was sent. Although officials and businesses would be expected to submit full and honest disclosures, the bill is not designed to trap anyone who accidentally omitted or was unaware of a particular relationship and would impose the mildest criminal penalty under Texas law even in cases where a violation did occur. Therefore, it would not discourage businesses from working with government or persons from serving in local government.

The disclosure requirement in CSHB 914 relating to family members is identical to that found in other public disclosure statutes. Limiting disclosure to family members of the first degree would strike a reasonable balance between the need to ensure that persons with business before the government entity did not influence officials by providing gifts or income to their family members and the recognition that officials often are not responsible for the business transactions of their family members.

The bill would not increase costs significantly to local governments, as evidenced by the LBB's fiscal note. It would require a government entity to post these disclosure statements on an existing Web site but would not require any government entity to create a Web site. Actions taken by a government entity that had not been in compliance with the bill's provisions would not be voided under the Open Meetings Act because the bill's provisions would not be placed in that act.

**OPPONENTS
SAY:**

CSHB 914 is unnecessary. Current law already requires local public officials to disclose potential conflicts of interest. It actually goes further than would this bill by requiring officials to abstain from votes on matters in which they have an interest and imposing stiffer penalties for violations. It would be pointless to add a disclosure statute that had fewer teeth than current law.

Moreover, because the bill's disclosure requirements would add to those already in statute, there could be many cases in which officials would have

to submit two separate disclosure forms for the same financial relationship. Creating ever more burdensome requirements for officials only would make it harder to attract quality candidates to serve in local government, particularly in small towns and rural areas where it already is difficult to fill these positions.

The bill would place an enormous burden on businesses and discourage them, especially small businesses, from working with local governments. Unlike a public official, who would have to determine and disclose only relationships with a person with business before the governmental entity, a business would have to disclose its relationships with a wide variety of individuals, including local public officials, officials who appoint or employ those officials, and certain employees and contractors of the entity.

Even the most scrupulous person likely would not be aware of every connection between the person's company and the governmental entity for which this bill would require disclosure. For example, it would be almost impossible for a person to know which employees or contractors of the governmental entity had made recommendations to an officer of that entity and therefore which relationships would have to be disclosed, because the bill would not require a list of these persons and contractors to be maintained or made available. By placing such a difficult disclosure burden on businesses, CSHB 914 would make it harder for local governments, especially in small towns and rural areas, to contract for goods and services at the best possible price. It also would be unfair to require that meeting notices include copies of each business' disclosure statements while requiring the inclusion of only a list of the statements filed by government officials.

It would be unreasonable to require local government officials to disclose the business relationships of adult family members. Such a requirement would presume that officials generally are aware of and benefit from the business relationships of their family members. In reality, except for those business partnerships between family members, most people do not know the working details of a family member's business. Requiring this disclosure would create a presumption of impropriety where there was none and unfairly would invade the privacy of those family members.

The posting and notice provisions of CSHB 914 would create an additional burden on local governments with limited resources and might

cause actions to be voided if the provisions accidentally were violated. According to the LBB, a government entity that did not already have a Web site would incur a significant cost creating one to conform with the bill's posting provisions. Requiring copies of the conflict of interest questionnaires to be included with each meeting notice would increase the cost of those notices. Moreover, because the bill references the Open Meetings Act, there is a possibility under that Act that actions taken by a government body could be voided if the body accidentally violated the bill's provisions.

OTHER
OPPONENTS
SAY:

Under the provisions of CSHB 914, the public would have no right to information about potential conflicts of interest if the income or gifts had been received more than 12 months prior to the official becoming aware of the conflict, even if the business still was before the government entity. At a minimum, the bill should require officials to disclose income or gifts that they received from individuals with business before the entity if that business still is pending.

NOTES:

The committee substitute removed language in the original bill that would have required disclosure in cases where a person was seeking a license, permit, or approval of a plat. The substitute also removed language that would have required officials to disclose relationships with persons who had offered gifts of more than \$250, even if those gifts had not been accepted.

The substitute added an affirmative defense to prosecution for officials or other persons who filed the required disclosure within seven business days. It also added the requirement that meetings notices include information on the disclosure statements.

A similar bill, HB 3021 by Woolley, passed the House during the 2003 regular session, but was left pending in the Senate Intergovernmental Relations Committee.