

SUBJECT: Financial relationships disclosure for port authority or navigation district

COMMITTEE: Transportation — favorable, without amendment

VOTE: 6 ayes — Krusee, Phillips, Hamric, Callegari, Deshotel, Hill

0 nays

3 absent — Casteel, Flores, West

SENATE VOTE: On final passage, April 7 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 2334 by Morrison:)*
For — Munson Smith, Victoria County Navigation District, West Side
Calhoun County Navigation District

Against — None

BACKGROUND: HB 1606 by Wolens, enacted by the 78th Legislature in 2001, required a member of the governing body of a port authority or navigation district to file the same financial statement required of state officers under subch. B of ch. 572 of the Government Code. Failure to file the statement is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Government Code, ch. 572, subch. B, requires state officers, candidates for office, and party chairmen to file financial statements with the Texas Ethics Commission. This statement must include all sources of occupational income, all stocks and bonds held, interest and rent income, loans over \$1,000, gifts over \$250, assets and liabilities of companies owned, and all board memberships, among other things.

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:

SB 945 would require public disclosure by members of the governing body of a port authority or navigation district – and those holding or seeking a contract with the authority or district – of their business and financial relationships with each other. If the Texas Ethics Commission, after notice and hearing, found that a member of the governing body had violated the reporting requirements, it would have to notify the authority or district of the finding and could impose a civil penalty of up to \$2,000.

SB 945 would require members of the governing body of a port authority or navigation district to file a conflicts disclosure statement with the secretary of the governing body and the Texas Ethics Commission if, during the 12 months before the member became aware of a current or possible contract between the authority or district and a vendor, the member or a family member related in the first degree to the member:

- had a business relationship with a current or potential vendor that resulted in taxable income, or
- received or was offered gifts from a current or potential vendor totaling more than \$250.

The conflicts disclosure statement would be designed by the governing body and would have to include the information already listed, as well as a signature by the member acknowledging execution of the statement under penalty of perjury. A member could request in writing that the general counsel of the entity advise the member regarding a potential violation.

A vendor would have to file a conflict of interest questionnaire with the port authority or navigation district's secretary within seven business days of beginning contract discussions or negotiations or communicating regarding an agreement or potential agreement. This disclosure statement would be designed by the governing body of the authority or district and would include disclosure of a vendor's affiliations or business relationships that might cause a conflict of interest. This disclosure would be updated by September 1 of each year in which the vendor communicated with the authority or district regarding a potential agreement, as well as after each event that would make the questionnaire

incomplete or inaccurate. A contract between an authority or district and a vendor would be voidable if the vendor violated these provisions.

The bill would repeal the financial disclosure statement required under chapter 60 of the Water Code.

The bill's disclosure requirements would apply to a vendor that communicated with the authority or district regarding a potential agreement on or after the bill's effective date. The disclosure requirements would apply to a member of the governing board of a navigation district or port authority if the authority or district contracted with or was considering conducting business with a vendor, or the member received or was offered gifts totaling more than \$250, on or after the bill's effective date. The civil penalty included in the bill would apply to a contract entered into, renewed, or extended on or after September 1, 2005.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

SB 945 would balance appropriately two equally important considerations: the need for transparency and accountability and the need to keep disclosure requirements reasonable. Although the reporting provisions enacted last session were well intentioned, they were inappropriate for navigation districts and port authorities. Most local officials and commissioners are covered by ch. 171 of the Local Government Code, which requires disclosure only when a potential conflict of interest exists and then only of financial information directly related to that potential conflict. By contrast, governing bodies of port authorities and navigation districts were required to submit the same exhaustive annual report as state legislators and other state officials. These reporting requirements are burdensome, and while they may be appropriate for state officials, they are onerous for the volunteer boards of these entities. Since this provision was enacted, many entities have had trouble filling vacant board positions. By requiring disclosure only when a potential conflict of interest existed, SB 945 would bring the reporting requirements of these entities into line with similar governmental bodies and would promote openness in the least burdensome way possible.

Transparency is essential to the confidence of citizens in their government and to ensuring the ethical use of taxpayer funds. Reports of government contracts being awarded to vendors who gave gifts or provided income to officials 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 that could influence to whom public contracts are awarded. The bill would include offered gifts in the reporting requirements in order to discourage vendors from offering them. Members would not use the form to accuse vendors of offering gifts in order to direct a contract award to another vendor because members would have to sign a statement under penalty of perjury that the disclosure was correct and they could be penalized by the Ethics Commission for a violation.

By vesting the Ethics Commission with the authority to investigate violations, the bill would ensure accountability. The commission may look at mitigating factors, such as whether the violation was intentional and whether the member filed a report once the violation was discovered, in deciding whether to impose a civil penalty. Members of the governing body could request an opinion from the entity's general counsel in order to determine whether a filing would be necessary.

Because port authorities and navigation districts vary in size and function, the bill would allow each entity to design disclosure forms that included information appropriate for that entity. The disclosure requirement 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 protect against undue influence of officials and the recognition that officials often are not responsible for the business transactions of their family members.

**OPPONENTS
SAY:**

Under SB 945, a person could be found guilty of violating the bill's reporting requirements and subjected to a fine of up to \$2,000 even if the person never intended to violate the law. Most ethics laws require a person to have knowingly violated the statute in order to be penalized. This ensures that the law does not punish those who may not have been aware of the requirements or may not have realized they had a relationship with a particular vendor. By contrast, SB 945 could allow a person to be fined who might have failed to submit the required report because the person was unaware of a relationship with a particular vendor, perhaps through a family member. Moreover, the bill does not specify the kind of notice and hearing required by the Ethics Commission. The bill should impose a penalty only for a knowing violation and clarify the notice and hearing requirements.

Requiring governing body members to report gifts offered in excess of \$250, even if the member refused the gift, would unfairly create an impression of impropriety on the member's part. This provision also could be difficult to implement because members would be unlikely to track the amount of gifts offered if they did not accept them and often might not know the value of an offered gift. Also, because there would be almost no way to verify whether a vendor had offered a gift, a member could falsely accuse a vendor offering a gift in order to cast a cloud over that vendor's proposal and ensure the selection of the member's preferred vendor.

The broad language of the bill could require a potential vendor to submit a disclosure statement even if that vendor was only seeking clarification of a request for bids in order to determine whether to submit a bid. This would be a burden for businesses and discourage them, especially small businesses, from working with these entities.

It would be unreasonable to require members of the governing bodies of port authorities and navigation districts to disclose the business relationships of adult family members. It would presume that these officials 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, unfairly invade the privacy of family members, and could result in a member being fined for a relationship of which the member was unaware.

NOTES:

The companion bill, HB 2334 by Morrison, was left pending in the House Transportation Committee.