

- SUBJECT:** Conflicts of interest involving local government officers and vendors
- COMMITTEE:** General Investigating and Ethics — committee substitute recommended
- VOTE:** 4 ayes — Kuempel, Collier, S. Davis, C. Turner
- 0 nays
- 3 absent — Hunter, Larson, Moody
- WITNESSES:** For — Ross Fischer; (*Registered, but did not testify:* Peggy Venable, Americans for Prosperity-Texas; Joanne Richards, Anti-Corruption Campaign; Liz Wally, Clean Elections Texas; Jesse Romero, Common Cause Texas; Jack Gullahorn, Professional Advocacy Association of Texas; Tom “Smitty” Smith, Public Citizen, Inc.; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett and Alicia Calzada, Texas Press Association; Perry Fowler, Texas Water Infrastructure Network (TxWIN); Karen Hadden)
- Against — None
- On — Dominic Giarratani, Texas Association of School Boards
- BACKGROUND:** Local Government Code, ch. 176 requires local government officers and vendors to file conflicts disclosure statements and questionnaires with the records administrator of the local governmental entity. Failing to file required statements can be a class C misdemeanor (maximum fine of \$500).
- The 83rd Legislature in 2013 enacted SB 1773 by Huffman, which created a select interim committee to study and review statutes and regulations related to ethics. In its report to the 84th Legislature, the committee recommended amending Local Government Code, ch. 176 to establish consistency in state and local procurement laws.
- DIGEST:** CSHB 23 would change provisions in Local Government Code, ch. 176

requiring disclosure of certain relationships and gifts involving vendors and local government officers. The bill also would impose greater penalties for violations involving higher-value contracts.

Definitions. The bill would make changes to the definition of “local government officer” to include an agent of a local government entity who exercised discretion in the planning, recommending, selecting, or contracting of a vendor. The term “agent” would include an employee. Water districts would be added to the definition of a local governmental entity.

The bill would add a new definition for “vendor” as a person who entered or sought to enter into a contract with a local governmental entity. This would include a person who sought to influence, on behalf of a vendor, a contract award made by a local governmental entity, or who was an agent of a vendor. The term also would include an officer or employee of a state agency when that individual was acting in a private capacity to enter into a contract. The bill would specify that state agencies would not be considered vendors except for Texas Correctional Industries, a department within the Texas Department of Criminal Justice that works with prisoners to produce license plates, furniture, and other goods.

“Family relationship” would be defined as a relationship between two persons within the third degree by consanguinity or the second degree by affinity.

The bill would define “gift” as a benefit offered by a person, including food, lodging, transportation, and entertainment. The term would exclude from the definition those type of benefits when offered on account of kinship or a personal, professional, or business relationship independent of the recipient’s official status by:

- a local government officer or officer’s family member to another officer or family member of the same entity; or
- a vendor or vendor’s family member to another vendor of the same local government entity or that vendor’s family member.

Disclosure requirements. CSHB 23 would make changes to local government officer conflicts disclosure statements and vendor conflict-of-interest questionnaires that are filed with the records administrator of the local governmental entity. The bill would extend disclosure requirements to certain employees involved in the procurement process and would require disclosure of familial relationships between vendors and government officers.

Local government officers. CSHB 23 would lower the monetary threshold for reporting gifts from a vendor. A local government officer would have to report gifts of more than \$100 in aggregate value (previously \$250) received in the 12-month period preceding the date the officer becomes aware that:

- a contract had been executed;
- the local entity was considering entering into a contract; or
- the vendor had a family relationship with the local government officer.

A local government officer would not be required to disclose gifts of food accepted by the officer or family member as a guest of a vendor. A local government officer would be required to disclose lodging, transportation, or entertainment accepted by the officer or a family member as a guest of a vendor.

A local government officer would not be required to file a statement if the local entity or vendor was an administrative agency created to supervise performance of an interlocal contract.

Vendors. The bill would add to disclosure requirements for vendors who had a business relationship with a local governmental entity. Such vendors would be required to file a completed conflict of interest questionnaire if the vendor had a family relationship with a local government officer or if the amount of a contract executed or under consideration between the vendor and local governmental entity exceeded \$1 million.

A vendor would be required to describe each employment or business relationship with a corporation in which a local government officer held ownership interest of 1 percent or more, a reduction from 10 percent or more in current law.

A person who was both a local government officer and a vendor would be required to file the questionnaire only if the person entered or sought to enter into a contract with the local governmental entity or was an agent of a person who entered or sought to enter into a contract with the local governmental entity.

Records. A records administrator would be required to maintain a list of local government officers of the local entity and make the list available to the public and any vendor who could be required to file a conflict of interest questionnaire.

Enforcement. The bill would make it an offense for a local government officer to knowingly fail to file a required conflict disclosure statement by 5 p.m. on the seventh business day after the date on which the officer became aware of facts that required the filing.

A vendor would commit an offense for knowingly failing to file the required questionnaire or to file an updated questionnaire by 5 p.m. on the seventh business day after the date on which the vendor became aware of facts that required the filing or an event that would make a previously filed questionnaire incomplete or inaccurate.

An offense would be:

- a class C misdemeanor (maximum fine of \$500) if the contract amount was less than \$1 million or if there was no contract amount;
- a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the contract was at least \$1 million but less than \$5 million; or

- a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the contract amount was at least \$5 million.

A local governmental entity could reprimand, suspend, or terminate an employee who knowingly failed to comply with a disclosure requirement. The governing body could, at its discretion, declare a contract void if the governing body determined that a violation of ch. 176 had occurred.

The Texas Ethics Commission would be required to revise conflict disclosure statements to conform to the bill as soon as practicable after the effective date.

The bill would take effect September 1, 2015, and would apply only to an event requiring disclosure that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 23 would expand and clarify requirements for disclosing possible conflicts of interest involving vendors and local government officials and employees. Such disclosure could deter self-dealing and help ensure a fair playing field among vendors seeking to do business with local entities.

Decisions by the Legislature and voters in recent years have set the stage for increased public spending on local infrastructure improvements, such as water projects. As more state funds are used by local officials to procure services, safeguards need to be in place to ensure that local procurement processes are ethical and that public funds are spent responsibly.

Current disclosure laws are confusing and can make it difficult for affected parties to find the information that applies to them. The bill would include clearer definitions that could make it easier for both government officers and vendors to know what to disclose. By expanding the definition of local government officer to include employees, the bill would apply disclosure requirements to individuals with significant procurement process responsibilities who were not covered under current law. The bill also would define the type of private sector actor who would constitute a vendor subject to disclosure requirements.

The bill would require the disclosure of familial relationships — as opposed to just business relationships — between vendors and decision-makers. It would close a loophole that allowed parties to avoid disclosing trips and entertainment and would lower the threshold for disclosure of gifts.

The public would be able to learn the identities of certain vendors who were proposing or had contracts exceeding \$1 million. The bill also would shine additional light on officials who had even a small ownership interest in a corporation doing business with the local entity.

The bill would not make currently lawful conduct unlawful. It simply would provide more disclosure of relationships between vendors and public employees. Disclosure of potential conflicts of interest would help create a fair process for all vendors by ensuring that local decision makers were not influenced by gifts and relationships.

It would be appropriate to tie penalties to the size of the contract at issue. The proposed tiered penalties would recognize that larger contracts are more likely to be subject to improper influence.

OPPONENTS
SAY:

CSHB 23 would establish new regulations and increased penalties that could be unnecessarily onerous for both local government employees and vendors. The ability of a local governing board to void a contract would create uncertainty for vendors.

The inclusion of local government employees who are involved in planning a procurement is overly broad and could result in employees who had no real involvement in selecting a vendor being subject to criminal penalties for failing to file a disclosure form. It would be better to limit disclosure requirements to those employees who were involved in recommending and selecting a vendor.

The requirement for certain vendors to file conflict-of-interest questionnaires for any contract under consideration that would exceed \$1

million could create different standards for disclosure between vendors with existing business relationships with the local entity and new vendors proposing large contracts. One way to treat vendors equally could be to require any vendor of an executed contract exceeding \$1 million to file a questionnaire.

It is unclear whether the bill would impact certain membership organizations that have contracts with local governments. These organizations may provide services to local government officials but are not vendors in the traditional sense.