

Legislative Update: Conflicts of Interests and HB 1295



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What will we discuss

- Changes to Texas law conflicts of interest rules and disclosure requirements
 - Income from vendors
 - Family relationships with vendors
 - Gifts from vendors
- Changes to federal law conflicts of interest rules
- Disclosure of Interested Parties (Form 1295)

Conflicts of Interest:

Tex. Loc. Gov't Code Chapter 176

- Requires local government officers (LGOs) and vendors to disclose income, family relationships and gifts
 - Form CIS (Conflict of Interest Statement) for LGO; must be notarized
 - Form CIQ (Conflict of Interest Questionnaire) for Vendor
 - District must post the LGO's CIS forms on District website
- HB 23 significantly changed definitions
- Effective 9/1/15



Who is a Local Government Officer?

- Board trustee
- Superintendent or other person designated as an executive officer of a district
- *Employees or agents who exercise discretion in the planning, recommending, selecting, or contracting of a vendor*



When is Disclosure Required?



- **When Vendor:**

- Has entered into a contract with the district or the district is considering entering into a contract with the vendor;
 - AND
- Provides certain income or gifts to the LGO or first degree relatives of the LGO
 - OR
- a family relationship exists between the LGO and the vendor's employees or agents

Required Disclosures: Income

- From a vendor to LGO or LGO's *family member* (1st degree)
- In excess of \$2500
- In the 12-month period preceding the date the LGO becomes aware:
 - of a contract being executed
 - the LGO's consideration of a contract between the District and the vendor



Family Member Defined

- Family Member: Person related to another within the first degree by consanguinity (blood) or affinity (marriage)
- First degree by consanguinity: Parents; children
- First degree by affinity: Spouse; spouse of first degree relative by blood; first degree blood relatives of spouse

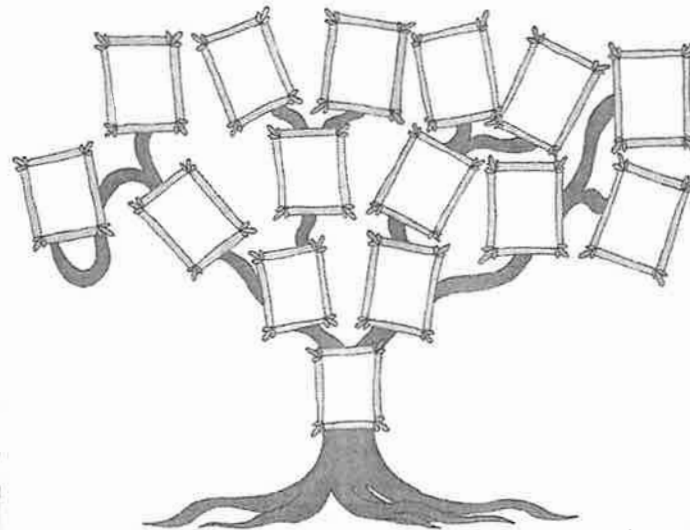


- **NOTE:** Family Member is different from Family Relationship in Chapter 176

Required Disclosures: Family Relationship

- Existence of family relationship
- Vendor or vendor's employees or agents have relationship with LGO regardless of any monetary amount

My Family Tree



Family Relationship Defined

- **Family Relationship:** Person related to another person within the third degree of consanguinity (blood) or the second degree by affinity (marriage)
 - Spouse
 - Parents and children (by blood or marriage/in-law)
 - Siblings (by blood or by marriage/in-law)
 - Grandparents and grandchildren (by blood or marriage/in-law)
 - Aunts, uncles, nieces, nephews
 - Great-grandparents and great-grandchildren

Required Disclosures: Gifts

- From a vendor to an LGO or LGO's family member
- Aggregate value of more than \$100
- In 12-month period preceding the date the LGO becomes aware of a contract or entering into a contract between District and vendor

- *Amount changed by HB 23*



Exceptions to Gift Disclosure

- Gifts do not need to be disclosed if:
 - Offered on account of kinship or a personal, professional, or business relationship independent of the officer's official status;
 - Political contribution; or
 - Food accepted by LGO or family member as guest
- *NOTE: HB 23 – Lodging, transportation, and entertainment are **NO LONGER** exceptions to gift disclosure requirement*



Deadlines for Disclosure

- LGO: by 5:00 PM on 7th business day after LGO becomes aware of an interest to disclose
- Vendor: Not later than 7th day after vendor:
 - begins discussions or negotiations to enter into a contract with District; or
 - submits a response to a request for bids, proposals or qualifications



Penalties for Failing to Disclose Conflicts of Interest

- Criminal Offense: LGO or vendor knowingly fails to timely file or update CIS/CIQ Misdemeanor offense: Degree of offense depends on amount of contract
- LGO: Disciplinary actions including termination
- Vendor: Termination of contract



Federal Law

- Federal law conflict of interest rules are much more strict.
- While state law generally only requires disclosure, federal law prohibits certain acts.
- Federal law applies when the District uses federal funds to pay the vendor.
- State disclosure rules still apply even if federal funds are used.

EDGAR

(Education Department General Administrative Regulations)

- 2 CFR § 200.318(c)(1) – The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

Checklist

- Who are the LGOs for this purchase?
- Who is the vendor?
- Are federal funds being used?
- Did an LGO or a family member receive more than \$2500 from vendor in 12 preceding months?
- Does an LGO have a family relationship with vendor/vendor's employees?
- Did an LGO receive a gift of over \$100 from vendor?
- *These duties are continuing and not just at the time of procurement of the goods or services.*

Disclosure of Interested Parties

- Texas Gov't Code § 2252.908
- Texas Ethics Commission Rules Chapter 46
- Applies to contracts entered into on or after January 1, 2016
- Applies to sole proprietorships, partnerships and corporations



Contracts Subject to HB 1295

- Contracts that require action or vote by Board before they may be signed; OR
- Contracts that have a value of at least \$1 million
- Does not apply to Interlocal Contracts, but will apply to purchase from cooperative vendor if purchase must be approved by the Board
- Applies to an original contract, and any amendment, extension or renewal
- Not limited to vendor contracts (i.e., applies to real estate contracts, settlement agreements, etc.)

Exceptions to HB 1295

- A contract is exempt from HB 1295 if:
 - (1) The governing body has legal authority to delegate to its staff the authority to execute the contract;
 - (2) The governing body **has** delegated to its staff the authority to execute the contract; and
 - (3) The governing body **does not** participate in the selection of the business entity with which the contract is entered into.

“Interested Party”

- A person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or
- A person who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity

“Controlling Interest”

- An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
- Membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members;
- Service as an officer of a business entity that has four or fewer officers; or
- Service as one of the four officers most highly compensated by a business entity that has more than four officers.

HB 1295 Process

- District may not enter into contract until business entity submits Form 1295
- Business Entity must log into TEC website, complete Form 1295, print, sign and notarize Form 1295
- Business Entity must submit Form 1295 to District (with signed contract or proposal response)
- District must electronically verify receipt of selected vendor's Form 1295 to TEC not later than the 30th day after the date the parties are bound to the contract
- TEC will post the form on its website



**THE FOREGOING PRESENTATION WAS CREATED BY ROGERS,
MORRIS & GROVER, LLP. THIS PRESENTATION IS INTENDED
TO BE USED SOLELY FOR GENERAL INFORMATION PURPOSES
AND IS NOT TO BE REGARDED AS LEGAL ADVICE. IF SPECIFIC
LEGAL ADVICE IS SOUGHT, PLEASE CONSULT AN ATTORNEY.**

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

2 Office Held

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 AFFIDAVIT

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day
of _____, 20 _____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a misdemeanor.

Refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

INSTRUCTIONS FOR COMPLETING THIS FORM

The following numbers correspond to the numbered boxes on the other side.

- 1. Name of Local Government Officer.** Enter the name of the local government officer filing this statement.
- 2. Office Held.** Enter the name of the office held by the local government officer filing this statement.
- 3. Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code.** Enter the name of the vendor described by Section 176.001(7), Local Government Code, if the vendor: a) has an employment or other business relationship with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code; b) has given to the local government officer or a family member of the officer one or more gifts as described by Section 176.003(a)(2)(B), Local Government Code; or c) has a family relationship with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 4. Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.** Describe the nature and extent of the employment or other business relationship the vendor has with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code, and each family relationship the vendor has with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 5. List gifts accepted, if the aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100.** List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed \$100 in value.
- 6. Affidavit.** Signature of local government officer.

Local Government Code § 176.001(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.

Local Government Code § 176.003(a)(2)(A):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(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 has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.