

Is There a Conflict? Texas Legislature Passes New Disclosure Requirements

by Carolyn Counce

Beginning January 1, 2006, new conflict-of-interest disclosure requirements passed by the 79th Texas Legislature in House Bill 914 (HB 914) become effective.¹ HB 914 adds significant new disclosure requirements that affect school district trustees, superintendents, and actual or potential vendors to Texas school districts.

The new law applies to “local government officers” at school districts, junior colleges, and other political subdivisions and requires an officer to file a conflicts disclosure statement revealing certain relationships with vendors and gifts received from vendors.²

Who is a local government officer in a school district?

For school districts, “local government officers” who are subject to the new law include board members and superintendents.³ By local policy, a district may extend the disclosure requirements to other district employees.⁴

The district’s records administrator, who is the superintendent or other person responsible for maintaining the records of the district, must maintain a list of the district’s officers for this purpose and make that list available to the public.⁵

What triggers the duty to file a conflicts disclosure statement?

The circumstances that trigger the duty to file a conflicts disclosure statement are quite broad. A district officer must file a conflicts disclosure statement regarding a specific vendor if the vendor has contracted with the district or the district is considering doing business with the vendor and:

- (1) the vendor has an employment or other business relationship that results in taxable income to the officer or a family member of the officer within the first degree; or
- (2) the vendor has given to the officer or a family member of the officer in the first degree certain gifts that have an aggregate value of more than \$250 in the 12-month period preceding the date the officer becomes aware that (a) the district entered into a contract with the vendor or (b) the district is considering doing business with the vendor.⁶

Officers do not have to disclose gifts of food, lodging, transportation, or entertainment they have accepted as a guest.⁷ Although the statute does not require that the taxable income to an officer or officer’s family member be received within a certain time period, the statutory language indicates

that the vendor must have a current or ongoing business relationship with the officer or officer’s family member to trigger the disclosure filing statement.⁸ Any amount of taxable income will trigger the filing requirement.

Who or what is a vendor?

A vendor is not limited to an individual and could include a corporation, partnership, or other business entity. A vendor is defined as a “person” who (1) contracts or seeks to contract for the sale or purchase of property, goods, or services with the district, or (2) is an agent of such a person in the person’s business with the district.⁹

When will the conflicts disclosure statement be available?

The Texas Ethics Commission will be developing the conflicts disclosure statement by December 1, 2005.¹⁰

Where and when does the officer file the conflicts disclosure statement?

The officer must file the disclosure statement with the district’s records administrator.¹¹ The officer must file the statement by 5 p.m. on the seventh business day after the officer becomes aware of the facts that require the statement to be filed.¹² The district must post the completed conflicts disclosure statements on the district’s web site.¹³

Is there a penalty for failing to file the conflicts disclosure statement?

If an officer knowingly fails to file the conflicts disclosure statement, the officer commits a Class C misdemeanor.¹⁴ It is a defense to prosecution, however, if the officer files the statement not later than the seventh business day after the date the officer receives notice of the violation.¹⁵

Does an officer who is required to file a conflicts disclosure statement have to abstain from voting or participating?

The new conflict-of-interest disclosure law does not expressly require a trustee to abstain from voting or participating in a meeting. Nor does the new statute prohibit the district from contracting with a vendor about whom an officer must file a conflicts disclosure statement.

The new filing requirement, however, is in addition to other conflict disclosure filing requirements that may require a board member to abstain from participation, such as for a conflict of interest created by a “substantial interest” in a business or real property.¹⁶

Must vendors also disclose conflicts of interest?

As of January 1, 2006, potential vendors will have to complete a conflict-of-interest questionnaire to disclose

certain relationships between the vendor and district officers, including "affiliations or business relationships that might cause a conflict of interest."¹⁷

Many of the same provisions that apply to the conflicts disclosure statements apply to the vendor questionnaires. The statute does not state a penalty to the district if the vendor fails to file a required conflict-of-interest questionnaire.

What should board members and superintendents do to keep up with their conflicts disclosure statement obligations?

Each board member and district employee who is subject to the disclosure statements should review his or her financial interests to determine if there is a conflict of interest that must be disclosed. This review should be done regularly to catch recent changes in jobs or investments by board members, employees, and their close relatives. 

¹ Act of May 23, 2005, 79th Leg., R.S., H.B. 914 (to be codified at Tex. Loc. Gov't Code ch. 176).

² To be codified at Tex. Loc. Gov't Code §§ 176.001-176.003.

³ To be codified at Tex. Loc. Gov't Code § 176.001(4).

⁴ To be codified at Tex. Loc. Gov't Code § 176.005.

⁵ To be codified at Tex. Loc. Gov't Code § 176.007.

⁶ To be codified at Tex. Loc. Gov't Code § 176.003(a).

⁷ *Id.*

⁸ To be codified at Tex. Loc. Gov't Code § 176.003(a)(2)(A).

⁹ To be codified at Tex. Loc. Gov't Code § 176.002(a).

¹⁰ To be codified at Tex. Loc. Gov't Code § 176.004; Act of May 23, 2005, 79th Leg., R.S., H.B. 914 Section 2.

¹¹ To be codified at Tex. Loc. Gov't Code § 176.003(b).

¹² *Id.*

¹³ To be codified at Tex. Loc. Gov't Code § 176.009.

¹⁴ To be codified at Tex. Loc. Gov't Code § 176.003(c).

¹⁵ To be codified at Tex. Loc. Gov't Code § 176.003(d).

¹⁶ To be codified at Tex. Loc. Gov't Code § 176.010; Tex. Loc. Gov't Code ch. 171; BBFA (LEGAL).

¹⁷ To be codified at Tex. Loc. Gov't Code § 176.006(b); Act of May 23, 2005, 79th Leg., R.S., H.B. 914 Section 3.

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