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**Local Gov't Code Chapter 176
Vendor and Officer Conflict of Interest Disclosures
Changes in the 2015 Legislative Session**

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Texas Local Government Code chapter 176 requires vendors of a local government to file a disclosure with the local government whenever the vendor is entering into a contract, or is *seeking to enter* into a contract with a local government. The Texas Ethics Commission has promulgated Form CIQ for this purpose (available on the TEC website). The chapter also imposes parallel reporting requirements on “local government officers” if they or their families have certain business, personal or family relationships with vendors (or their principals or agents) doing business, or seeking to do business, with the local government. Failure to disclose now can mean criminal penalties; and now could permit the local government to void the contract.

In 2015, the Legislature modified the statute. Among the changes were: reducing the monetary interest reporting threshold for “gifts” to certain “local government officers”; removing the exemption from reporting for certain gifts of hosted entertainment, travel and lodging; adding a new trigger for reporting based on the local government officer’s family relationships well beyond the officer’s immediate family; and adding criminal penalties and the ability of the local government to void a contract for nonreporting. This paper summarizes the updated requirements of the statute. A copy of the amended statute is attached.

DEFINITIONS

Local governmental entities covered by the statute include counties, municipalities, school districts, charter schools, junior college districts, *water districts created under Subchapter B, Chapter 49 of the Water Code* [THIS IS NEW²], or other political subdivisions of the state or a local government corporation, board, commission, district, or authority to which a member is appointed by a commissioners court, or mayor or governing body of a municipality.

“**Vendor**” includes not only the vendor entity or person who “enters or seeks to enter into a contract” with the local government, but now also includes “*an agent* of a vendor,” which now can include an *employee*. It also includes a local government officer or employee of a state agency when that person is acting in a private capacity to enter into a contract. {NEW]

A “**local government officer**” is

a member of the governing body of the local government;

a director, superintendent, administrator, president, or other person designated as the executive officer of the local government; or

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² But may not change anything, as subchapter B districts likely always were included as an “other political subdivision of the state.”

an *agent* of a local government who exercises discretion in the planning for, recommending of, selecting of, or contracting with a vendor.

“**Agent**” now includes an *employee*. See Tex. Loc. Gov’t Code §176.001(1).³ This change seems clearly to reach employees of a third party agent of the local government (e.g., a hired consultant or engineer), because the definition of “local government officer” includes agents of the local government. Tex. Loc. Gov’t Code §176.001(4)(c). *It is not clear whether this enlargement of the definition of “agent” includes employees of the local government itself who satisfy the discretion criterion; if it does, this is a significantly more inclusive standard.*⁴

The definition of “**family member**” is “a person related to another person within the first degree of consanguinity or affinity. This is essentially unchanged. This includes the officer’s spouse, parents, and children, and the spouse’s parents and children.

But a new definition is included and there is an associated new filing trigger: “**Family relationship**” refers to a relationship between two people – the local government officer and the vendor (or principals and perhaps agents) – within the *third degree by consanguinity or the second degree by affinity*.

The third degree by consanguinity includes the person’s

- [first degree] parents, children
- [second degree] siblings, grandparents, grandchildren
- [third degree] Great-grandparents, great-grandchildren,
 parents’ siblings (blood uncles/aunts)
 siblings’ children (blood nieces/nephews)

A degree of affinity is determined similarly to the degree of consanguinity, but includes the person’s spouse’s relatives by that degree of consanguinity:

- [first degree] spouse
 spouse of parent, spouses of children
 spouse’s parents, spouse’s children (i.e., some in-laws)
- [second degree] spouses of siblings, grandparents, grandchildren
 spouse’s siblings, grandparents, grandchildren (other in-laws)

³ “‘Agent’ means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. *The term includes an employee.*” Tex. Loc. Gov’t Code §176.001(1) (emphasis added).

⁴ This could be a material increase in scope. It could be construed implicitly to require a vendor to inquire in detail about which governmental employees will be or were involved in the acquisition processes, including for example RFB/RFP/RFQ preparation, and the evaluation and selection processes, to identify such persons, although the criminal penalty provisions are (contrarily) phrased in terms of the vendor passively “becoming aware” of such facts. This revised standard will trigger the duty to file an amended disclosure, e.g., if a Form CIQ had been filed with the vendor’s proposal but the vendor become aware later that previously unidentified government staff were involved and exercised discretion in the acquisition processes.

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