

What is Chapter 176 of the Texas Local Government Code?

House Bill 914, passed during the 2005 Texas legislative session, becomes effective January 1, 2006. The bill added a new Chapter 176 to the Texas Local Government Code. Chapter 176 requires certain local government officers and those doing business or seeking to do business with local governmental entities to publicly disclose specified relationships. The new disclosure requirements apply to Bryan Texas Utilities, municipalities, counties, school districts and certain other local governmental entities. A complete text of Chapter 176 is provided at the end of this discussion.

What persons or businesses doing business with Bryan Texas Utilities are subject to Chapter 176?

- Any person who contracts or seeks to contract for the sale or purchase of property, goods, or services with Bryan Texas Utilities.
- An agent of a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with Bryan Texas Utilities.

Does this include a person who buys city property?

The new law appears to apply to all persons or businesses who conduct business with Bryan Texas Utilities, including those who submit bids for the purchase of surplus BTU property, or participate in any negotiations, offers, solicitations or other purchase or sales transactions with BTU.

To what type of contracts does Chapter 176 apply?

The new law applies to all contracts for the sale or purchase of property, goods or services without qualification as to whether the contract is written, verbal or implied. Generally, any exchange of property, goods or services for any other property, goods, services or money, between Bryan Texas Utilities and a person or business, regardless of whether evidenced by a written contract, invoice or a receipt, shall be considered a contract for purposes of Chapter 176.

What information must a person doing business or seeking to do business with Bryan Texas Utilities disclose?

Chapter 176 requires persons to whom it applies to disclose specified affiliations, business and financial relationships that such persons may have with covered Bryan Texas Utilities officers.

How must a person disclose the information required by Chapter 176?

A person doing business or seeking to do business with Bryan Texas Utilities must file Texas Ethics Commission Form CIQ, Conflict of Interest Questionnaire, with BTU no later than seven days after the date the person begins contract discussions or negotiations with BTU, or submits an application or response to a request for proposals or bids, correspondence, or another writing

related to a potential agreement with BTU. The questionnaire may be viewed, completed and submitted online by visiting the following link: <http://www.btutilities.com/news/disclosure.html>. For those unable to submit the questionnaire online, a paper copy of the form is available at 205 E 28th Street, Bryan, TX 77803.

A person subject to the requirements of Chapter 176 must file an updated questionnaire not later than September 1 of each year in which any of the activities required to be disclosed is pending and the seventh business day after the date anything occurs that would make the questionnaire on file incomplete or inaccurate.

With whom should the questionnaire be filed?

The questionnaires will be filed with and maintained by the BTU Purchasing Agent. The questionnaire forms can be downloaded online but will have to be mailed to BTU Purchasing, 205 E 28th Street, Bryan, TX 77803. Individual transactions with BTU, however, may carry different instructions for submitting the questionnaire.

What are the consequences of violating Chapter 176?

A person who violates the requirements of Chapter 176 commits a class C misdemeanor. A class C misdemeanor is punishable by a fine of up to \$500.

Is there a defense to prosecution?

It is a defense to prosecution if the person required to file the questionnaire files it no later than the seventh business day after the date the person receives notice of a violation.

What other information must be disclosed about a person doing business or seeking to do business with Bryan Texas Utilities under Chapter 176?

In addition to the information provided by a person doing business or seeking to do business with BTU, BTU officers to whom the new law applies are required to file Texas Ethics Commission Form CIS, Local Government Officer Conflicts Disclosure Statement, with the BTU Purchasing Agent for public viewing:

- When an officer or the officer's family member has an employment or business relationship that results in taxable income with a person who has contracted with the Bryan Texas Utilities or with whom Bryan Texas Utilities is considering doing business.
- When an officer or the officer's family member receives and accepts one or more gifts with an aggregate value of \$250 in the preceding 12 months from a person who conducts business or is being considered for doing business with Bryan Texas Utilities.
 - A family member is defined as a person related to another person within the first degree by consanguinity (blood) or affinity (marriage) (e.g., spouse, father, mother, son, daughter, father-in-law, mother-in-law, son-in-law, etc).

- Generally, gifts of food, lodging, transportation, or entertainment accepted as a guest, regardless of amount, do not have to be disclosed.

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COMPLETE TEXT OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE

Chapter 176. Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information

§ 176.001. Definitions

In this chapter:

- (1) "Commission" means the Texas Ethics Commission.
- (2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.
- (3) "Local governmental entity" means a county, municipality, school district, junior college district, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.
- (4) "Local government officer" means:
 - (A) a member of the governing body of a local governmental entity; or
 - (B) a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity.
- (5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity.

§ 176.002. Applicability to Certain Vendors and Other Persons

(a) This chapter applies to a person who:

(1) contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity; or

(2) is an agent of a person described by Subdivision (1) in the person's business with a local governmental entity.

(b) A person is not subject to the disclosure requirements of this chapter if the person is:

(1) a state, a political subdivision of a state, the federal government, or a foreign government; or

(2) an employee of an entity described by Subdivision (1), acting in the employee's official capacity.

§ 176.003. Conflicts Disclosure Statement Required

(a) A local government officer shall file a conflicts disclosure statement with respect to a person described by Section 176.002(a) if:

(1) the person has contracted with the local governmental entity or the local governmental entity is considering doing business with the person; and

(2) the person:

(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; or

(B) has given to the local government officer or a family member of the officer one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract described by Subdivision (1) has been executed; or

(ii) the local governmental entity is considering doing business with the person.

(b) A local government officer shall file the conflicts disclosure statement 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 the statement under Subsection (a).

(c) A local government officer commits an offense if the officer knowingly violates this section. An offense under this subsection is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (c) that the person filed the required conflicts disclosure statement not later than the seventh business day after the date the person received notice of the violation.

§ 176.004. Contents of Disclosure Statement

The commission shall adopt the conflicts disclosure statement for local government officers. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Section 176.003(a), including the nature and extent of the relationship; and

(B) gifts received by the local government officer and any family member of the officer from a person described by Section 176.002(a) during the 12-month period described by Section 176.003(a)(2)(B) if the aggregate value of the gifts from that person exceed \$250;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

(B) the statement covers the 12-month period described by Section 176.003(a)(2)(B); and

(3) the signature of the local government officer acknowledging that the statement is made under oath under penalty of perjury.

§ 176.005. Application to Certain Employees

(a) The local governmental entity may extend the requirements of Sections 176.003 and 176.004 to all or a group of the employees of the local governmental entity.

(b) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who fails to comply with a requirement adopted under this section.

(c) An employee of a local governmental entity commits an offense if the employee knowingly violates requirements imposed under this section. An offense under this subsection is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (c) that the person filed the required conflicts disclosure statement not later than the seventh business day after the date the person received notice of the violation.

§ 176.006. Disclosure Requirements for Vendors and Other Persons; Questionnaire

(a) A person described by Section 176.002(a) shall file a completed conflict of interest questionnaire with the appropriate records administrator not later than the seventh business day after the date that the person:

(1) begins contract discussions or negotiations with the local governmental entity; or

(2) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the local governmental entity.

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires

disclosure of a person's affiliations or business relationships that might cause a conflict of interest with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the person filing the questionnaire:

(1) describe each affiliation or business relationship the person has with each local government officer of the local governmental entity;

(2) identify each affiliation or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income from the person filing the questionnaire;

(3) identify each affiliation or business relationship described by Subdivision (1) with respect to which the person filing the questionnaire receives, or is likely to receive, taxable income that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity;

(4) describe each affiliation or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of 10 percent or more;

(5) describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to the expenditure of money;

(6) describe each affiliation or business relationship with a person who:

(A) is a local government officer; and

(B) appoints or employs a local government officer of the local governmental entity that is the subject of the questionnaire; and

(7) describe any other affiliation or business relationship that might cause a conflict of interest.

(d) A person described by Subsection (a) shall file an updated completed questionnaire with the appropriate records administrator not later than:

(1) September 1 of each year in which an activity described by Subsection (a) is pending; and

(2) the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) A person is not required to file an updated completed questionnaire under Subsection (d)(1) in a year if the person has filed a questionnaire under Subsection (c) or (d)(2) on or after June 1, but before

September 1, of that year.

(f) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

(g) It is a defense to prosecution under Subsection (f) that the person filed the required questionnaire not later than the seventh business day after the date the person received notice of the violation.

§ 176.007. List of Government Officers

The records administrator for a local governmental entity shall maintain a list of local government officers of the entity and shall make that list available to the public and any person who may be required to file a questionnaire under Section 176.006.

§ 176.008. Electronic Filing

The requirements of this chapter, including signature requirements, may be satisfied by electronic filing in a form approved by the commission.

§ 176.009. Posting on Internet

(a) A local governmental entity shall provide access to the statements and questionnaires filed under this chapter on the Internet website maintained by the local governmental entity.

(b) This subsection applies only to a county with a population of 800,000 or more or a municipality with a population of 500,000 or more. A county or municipality shall provide, on the Internet website maintained by the county or municipality, access to each report of political contributions and expenditures filed under Chapter 254, Election Code, by a member of the commissioners court of the county or the governing body of the municipality in relation to that office as soon as practicable after the officer files the report.

§ 176.010. Requirements Cumulative

The requirements of this chapter are in addition to any other disclosure required by law.