

CHAPTER 362

H.B. No. 1948

AN ACT

relating to conflicts of interest of local public officials.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 640, Acts of the 68th Legislature, Regular Session, 1983 (Article 988b, Vernon's Texas Civil Statutes), is amended to read as follows:

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Sec. 1. DEFINITIONS. In this Act:

- (1) "Local public official" means a member of the governing body or another officer, whether elected or appointed, paid or unpaid, of any district (including a school district), county, city, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.
- (2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized in law.

Sec. 2. SUBSTANTIAL INTEREST. (a) A person has a substantial interest in a business *entity* if:

- (1) the *person owns* [~~interest is ownership of~~] 10 percent or more of the voting stock or shares *or of the fair market value* of the business entity or *owns \$5,000* [~~ownership of \$2,500~~] or more of the fair market value of the business entity; or
- (2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.
- (b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- (c) An interest of a person related in the first [~~or second~~] degree by either affinity or consanguinity to the local public official is a "substantial interest."

Sec. 3. PROHIBITED ACTS. (a) A [~~Except as provided by Section 5 of this Act, a~~] local public official commits an offense if he knowingly:

- (1) ~~violates Section 4 of this Act [participates in a vote or decision on a matter involving a business entity in which the local public official has a substantial interest if it is reasonably foreseeable that an action on the matter would confer an economic benefit to the business entity involved];~~
- (2) acts as surety for a business entity that has a contract, work, or business with the governmental entity; or
- (3) acts as surety on any official bond required of an officer of the governmental entity.
- (b) An offense under this section is a Class A misdemeanor.

Sec. 4. AFFIDAVIT AND ABSTENTION FROM VOTING. (a) If a local public official or a person related to that official in the first [~~or second~~] degree by either affinity or consanguinity has a substantial interest in a business entity *or in real property* [~~that would be peculiarly affected by any official action taken by the governing body~~], the local public official, before a vote or decision on *any* [~~the~~] matter *involving the business entity or the real property*, shall file an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter *if*:

- (1) *in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or*
- (2) *in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.*
- (b) The affidavit must be filed with the official recordkeeper of the governmental entity.
- (c) *If a local public official is required to file and does file an affidavit under Subsection (a) of this section, that official shall not be required to abstain from further participation in the matter or matters requiring such an affidavit if a majority of the members of the governmental entity of which the official is a member*

is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Sec. 5. *BUDGET [EXCEPTIONS].* ~~[(a) The governing body of a governmental entity may contract for the purchase of services or personal property with a business entity in which a member of the governing body has a substantial interest if the business entity is the only business entity that provides the needed service or product within the jurisdiction of the governmental entity and is the only business entity that bids on the contract.~~

~~[(b)]~~ The governing body of *any local governmental entity* must take a separate vote on any budget item specifically dedicated to a contract with an entity in which a member of the governing body has a substantial interest and the affected member must abstain from that separate vote. The member who has complied in abstaining in such vote under procedures set forth in Sections 3 and 4 of this Act may vote on a final budget only after the matter in which he is concerned has been resolved. *A local public official may perform an act prohibited by Section 3 of this Act if a majority of the membership of the governmental entity of which the official is a member is composed of persons who are required to file affidavits of similar interests on the official action.*

Sec. 6. *PENALTIES [REMOVAL FROM OFFICE].* (a) ~~[The penalties and remedies provided by this article do not limit common law remedies of tort, contract, or equity, including a suit for damages, injunction, or mandamus.]~~ The finding by a court of a violation under this article does not render an action of the governing body voidable unless the measure that was the subject of an action involving conflict of interest would not have passed the governing body without the vote of the person who violated this article.

(b) This Act preempts the common law of conflict of interest as applied to local public officials defined in Section 1 of this Act.

(c) This Act is cumulative of other statutes, city charter provisions, or ordinances defining and prohibiting conflict of interest.

SECTION 2. (a) The change in the law made by this Act does not affect an offense committed under the law as it existed before the effective date of this Act. Such an offense may be prosecuted and a penalty imposed under the former law as if this Act had not been enacted. The former law is continued in effect for this purpose.

(b) For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense is committed before that date.

SECTION 3. This Act takes effect September 1, 1987.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1948 on May 29, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 27, 1987, by a viva-voce vote.

Approved June 11, 1987.

Effective Sept. 1, 1987.