

WHAT IS A “CONFLICTS DISCLOSURE STATEMENT” AND DO I HAVE TO FILE ONE?

H.B. 914, passed during the 2005 legislative session, becomes effective on January 1, 2006. The bill enacts Local Government Code Chapter 176. It requires that mayors, councilmembers, city managers or administrators, and certain other city officials (all referred to as “city officers” throughout this article) must file a “conflicts disclosure statement” with a city’s records administrator (usually the city secretary) within seven days of becoming aware of either of the following situations:

- A city 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 city or with whom the city is considering doing business.
- A city 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 business with the officer’s city.

The bill also requires a vendor that wishes to conduct business or be considered for business with a city to file a “conflict of interest questionnaire.” The conflicts disclosure statement (**FORM CIS**) and the conflict of interest questionnaire (**FORM CIQ**) were created by the Texas Ethics Commission (TEC) and are available online at www.ethics.state.tx.us.

Although the TEC created and adopted the forms, it does not have enforcement or interpretative authority. In fact, the TEC did not provide adequate instruction to fill out FORM CIS. Therefore, TML has prepared the following Q&A to assist city officials in complying with the bill.

What is H.B. 914?

Effective January 1, 2006, H.B. 914 requires that certain city officials file a “conflicts disclosure statement” if they receive taxable income or certain gifts from any person or business that contracts with a city or is considering doing business with the city. The bill also requires any person or business that contracts with a city or is considering doing business with a city to file a “conflicts of interest questionnaire.” The bill provides that failure to file the statement or questionnaire is punishable as a class C misdemeanor.

What local governmental entities are subject to H.B. 914?

- Cities;
- Local government corporations (e.g., economic development corporations);
- City boards and commissions (e.g., boards of adjustment and planning and zoning commissions);
- City authorities (e.g., housing authorities); and
- Almost every other type of political subdivision in Texas.

What vendors are subject to H.B. 914?

- Any person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity; and
- An agent of a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity.

Does this include a person who buys city property?

The bill appears to apply to all persons or businesses who conduct business with a city, including those who submit bids on city contracts, make purchases of surplus city property, or participate in any other purchase or sales transactions with a city.

What local government officials are subject to H.B. 914?

For most cities, the following officers are subject to H.B. 914:

- Mayors and city councilmembers;
- A city manager or administrator;
- City board, commission, and authority members;
- Economic development corporation board members;
- An executive director of an economic development corporation; and
- Any other person who is designated as an executive officer of a city.

What triggers the requirement that a city official file a conflicts disclosure statement?

An officer who is subject to the bill, as outlined above, must file a conflicts disclosure statement within seven days of becoming aware of either of the following situations:

- A city 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 city or with whom the city is considering doing business.
- A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of \$250 in the preceding twelve months from a person who conducts business or is being considered for business with the city.

What is a family member for purposes of the bill?

A family member is defined as a person related to another person within the first degree by consanguinity (blood) or affinity (marriage). This definition includes a spouse, father, mother, son, daughter, father-in-law, mother-in-law, son-in-law, and so on.

Does receiving gifts such as food, lodging, transportation, or entertainment make a city officer subject to the bill?

No, such gifts, regardless of amount, do not trigger the conflicts disclosure statement requirement.

With whom should the statement be filed?

The statement should be filed with the city's records administrator, which is usually the city secretary.

What happens if a statement is not filed?

An officer who knowingly fails to file the statement commits a class C misdemeanor. A class C misdemeanor is punishable by a fine of up to \$500.

Is there a defense to prosecution?

Yes. It is a defense to prosecution if the officer files the statement no later than seven business days after the officer receives notice of a violation.

Who must file a "conflict of interest questionnaire"?

Any person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a city (including submitting a bid on a city contract) must file a questionnaire.

To what type of contracts does the bill apply?

Any written contract and any implied contract, such as purchase orders, procurement card purchases, utility purchases, and more. As written, the bill appears to apply to any purchase made by a city. Of course, that interpretation will be extremely burdensome to many cities. A more reasonable interpretation is that the bill only applies to large, written contracts. But the plain language of the bill does not unambiguously support that view. Thus, city officials should consult with local legal counsel to determine how strictly they wish to interpret the bill.

When must a vendor file the conflict of interest questionnaire?

A person who wishes to conduct business with a city must file a questionnaire no later than seven days after the date the person begins contract discussions or negotiations with the city, or submits an application or response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with a city.

With whom should the questionnaire be filed?

The questionnaire should be filed with the city's records administrator, which is usually the city secretary.

What other requirements are listed in the bill?

- A city is required to maintain a list of city officers who are subject to the bill and make the list available to the public.
- A city is required to provide access to the statements and questionnaires on the city's Internet Web site.

How do I go about filling out the conflicts disclosure statement form?

The following are supplemental instructions to completing "FORM CIS: Local Government Officer Conflicts Disclosure Statement", which is available online at www.ethics.state.tx.us. Each number below corresponds with the number on FORM CIS:

1. Fill in the full name of the city officer who must file the statement.
2. Fill in the office held by the officer who is filing the statement.
3. In the space provided, list the name of the person or entity who has contracted or is seeking to contract with the city and with whom the officer or the officer's family member has either an employment or a business relationship with the person that results in taxable income, or from whom the city officer or the officer's family member has received gifts.
4. Insert one of the following paragraphs as a possible descriptive answer to this question:
 - a. I or my family member has an employment or other business relationship that results in taxable income with a person who has contracted with the city or the city is considering doing business with the person or entity listed in number 3.
 - b. I or my family member has been given 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 that I or my family member became aware that the city executed a contract with the person or is considering doing business with the person or entity listed in number 3.
5. Provide a list of gifts, if any, received from the person who is doing business with the city or being considered for business with the city. Write in "Not Applicable" if this does not apply to you.
6. Review the statement to ensure that all information provided is accurate. Read the affidavit and sign in the presence of a notary public.

The bottom line is this: passage of H.B. 914 was unnecessary because Chapter 171 of the Local Government Code already addresses true conflicts of interest. The bill is poorly drafted and subject to differing interpretations. As such, cities are struggling with its implementation. TML will continue to monitor the bill and work with our city attorneys and member city officials over the coming weeks to share information on implementation strategies.