

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Davis of Harris, Fallon

H.B. No. 3736

A BILL TO BE ENTITLED

AN ACT

relating to conflicts of interest by members of state agency governing boards and governing officers; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Government Code, is amended by adding Chapter 576 to read as follows:

CHAPTER 576. CONFLICT OF INTEREST BY STATE AGENCY GOVERNING BOARD  
MEMBER OR OFFICER

Sec. 576.001. DEFINITIONS. In this chapter:

(1) "Conflict of interest" means the conflict between an official decision made by a state agency governing board member or governing officer in the individual's official capacity and the individual's private financial interest in which the individual realizes any pecuniary gain.

(2) "Financial interest" means ownership or control, directly or indirectly, of an ownership interest of at least five percent in a person, including the right to share in profits, proceeds, or capital gains, or an ownership interest that an individual could reasonably foresee could result in any financial benefit to the individual. The term does not include an interest in a retirement plan, a blind trust, insurance coverage, or capital gains.

(3) "State agency" means a board, commission, council,

1 committee, department, office, agency, or other governmental  
2 entity in the executive branch of state government.

3 Sec. 576.002. DUTY TO DISCLOSE AND REFRAIN FROM  
4 PARTICIPATION. (a) Except as provided by Subsection (b) or (c), in  
5 each matter before the governing board of a state agency or, if the  
6 agency is not governed by a multimember governing board, the  
7 officer who governs the agency, for which a member of the board or  
8 officer, as applicable, has a conflict of interest, the individual:

9 (1) shall disclose in writing the conflict of interest  
10 to the agency; and

11 (2) may not participate in the decision on the matter.

12 (b) If a majority of the members of the governing board of a  
13 state agency has a conflict of interest related to a matter before  
14 the board or, if the agency is not governed by a multimember  
15 governing board, the officer who governs the agency has a conflict  
16 of interest on the matter, the board or officer may decide the  
17 matter only if:

18 (1) each member, or the officer, as applicable, who  
19 has a conflict of interest discloses in writing the conflict of  
20 interest to the agency; and

21 (2) the board, or officer, as applicable, makes a  
22 finding that an emergency exists that requires a decision on the  
23 matter despite the conflict of interest.

24 (c) The duty to disclose a conflict of interest and refrain  
25 from participation in the decision on a matter for a member of the  
26 governing board of an institution of higher education, as those  
27 terms are defined by Section 61.003, Education Code, is governed by

1 Section 51.923, Education Code.

2 Sec. 576.003. PUBLIC INFORMATION. A written disclosure  
3 made under Section 576.002 is public information.

4 Sec. 576.004. REPORT TO TEXAS ETHICS COMMISSION; RULES.

5 (a) A state agency that receives a written disclosure under Section  
6 576.002 shall file a copy of the disclosure with the Texas Ethics  
7 Commission.

8 (b) The Texas Ethics Commission may adopt the rules  
9 necessary to implement this chapter, including rules on the  
10 disclosure to be filed with the commission under Subsection (a).

11 Sec. 576.005. CRIMINAL PENALTY. (a) An individual commits  
12 an offense if the individual knowingly fails to comply with Section  
13 576.002.

14 (b) An offense under this section is a class B misdemeanor.

15 SECTION 2. Section 571.061(a), Government Code, is amended  
16 to read as follows:

17 (a) The commission shall administer and enforce:

18 (1) Chapters 302, 303, 305, 572, 576, and 2004;

19 (2) Subchapter C, Chapter 159, Local Government Code,  
20 in connection with a county judicial officer, as defined by Section  
21 159.051, Local Government Code, who elects to file a financial  
22 statement with the commission;

23 (3) Title 15, Election Code; and

24 (4) Sections 2152.064 and 2155.003.

25 SECTION 3. This Act takes effect September 1, 2015.

# ADOPTED

MAY 26 2015

*Atary Drew*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Joan Huffman*

1 Amend H.B. No. 3736 (senate committee printing) as follows:

2 (1) In SECTION 1 of the bill, in added Subdivision (1),  
3 Section 576.001, Government Code (page 1, line 33), strike "gain."  
4 and substitute "gain, if the pecuniary gain accrued to the  
5 individual as a member of a class of persons, including an  
6 occupation, profession, or industry, to a greater extent than any  
7 other member of the class."

8 (2) In SECTION 1 of the bill, in added Section 576.001,  
9 Government Code (page 1, between lines 41 and 42), insert the  
10 following:

11 (3) "Rule" means all or part of a statement of a state  
12 agency that is of general or particular applicability and of future  
13 effect designed to implement, interpret, or prescribe law or policy  
14 for the state agency or to describe the organization, procedure, or  
15 practice requirements of the state agency.

16 (3) In SECTION 1 of the bill, in added Section 576.001,  
17 Government Code, strike "(3)" (page 1, line 42) and substitute  
18 "(4)".

19 (4) In SECTION 1 of the bill, following added Section  
20 576.005, Government Code (page 2, between lines 22 and 23), insert  
21 the following:

22 Sec. 576.006. EXEMPTION. This chapter does not apply to:

23 (1) the consideration of a proposed rule; or

24 (2) a vote to adopt a proposed rule.

# ADOPTED

FLOOR AMENDMENT NO. 2

MAY 26 2015 BY:

Van Taylor

Atty. Gen. Paul  
Secretary of the Senate

1 Amend H.B. 3736 (senate committee printing) by adding the  
2 following appropriately numbered SECTIONS to read as follows and  
3 renumbering the subsequent SECTIONS accordingly:

4 SECTION \_\_\_\_ . Section 572.023, Government Code, is amended  
5 by amending Subsections (a) and (b) and adding Subsection (e) to  
6 read as follows:

7 (a) A financial statement must include an account of the  
8 financial activity for the preceding calendar year of:

9 (1) any property characterized as separate property under  
10 Section 3.001, Family Code, of the individual required by this  
11 subchapter to file a financial statement;

12 (2) any community property of which the individual  
13 required by this subchapter to file a financial statement has  
14 sole management, control, and disposition as provided by Section  
15 3.102(a), Family Code;

16 (3) any community property of the individual required by  
17 this subchapter to file a financial statement, if the individual  
18 exercised both factual and legal control over the activity; and

19 (4) [an account of the financial activity of] the  
20 individual's [spouse and] dependent children if the individual  
21 exercised or held the right to exercise any degree of legal or  
22 factual [had actual] control over that activity [for the  
23 preceding calendar year].

24 (b) The account of financial activity consists of:

25 (1) a list of all sources of occupational income,  
26 identified by employer, or if self-employed, by the nature of  
27 the occupation, including identification of a person or other  
28 organization from which the individual or a business in which  
29 the individual has a substantial interest received a fee as a

1     retainer for a claim on future services in case of need, as  
2     distinguished from a fee for services on a matter specified at  
3     the time of contracting for or receiving the fee, if  
4     professional or occupational services are not actually performed  
5     during the reporting period equal to or in excess of the amount  
6     of the retainer, and the category of the amount of the fee;

7             (2) identification by name and the category of the number  
8     of shares of stock of any business entity held or acquired, and  
9     if sold, the category of the amount of net gain or loss realized  
10    from the sale;

11            (3) a list of all bonds, notes, and other commercial paper  
12    held or acquired, and if sold, the category of the amount of net  
13    gain or loss realized from the sale;

14            (4) identification of each source and the category of the  
15    amount of income in excess of \$500 derived from each source from  
16    interest, dividends, royalties, and rents;

17            (5) identification of each guarantor of a loan and  
18    identification of each person or financial institution to whom a  
19    personal note or notes or lease agreement for a total financial  
20    liability in excess of \$1,000 existed at any time during the  
21    year and the category of the amount of the liability;

22            (6) identification by description of all beneficial  
23    interests in real property and business entities held or  
24    acquired, and if sold, the category of the amount of the net  
25    gain or loss realized from the sale;

26            (7) identification of a person or other organization from  
27    which the individual or the individual's spouse or dependent  
28    children received a gift of anything of value in excess of \$250  
29    and a description of each gift, except:

30            (A) a gift received from an individual related to the  
31    individual at any time within the second degree by consanguinity

1 or affinity, as determined under Subchapter B, Chapter 573;

2 (B) a political contribution that was reported as required  
3 by Chapter 254, Election Code; and

4 (C) an expenditure required to be reported by a person  
5 required to be registered under Chapter 305;

6 (8) identification of the source and the category of the  
7 amount of all income received as beneficiary of a trust, other  
8 than a blind trust that complies with Subsection (c), and  
9 identification of each trust asset, if known to the beneficiary,  
10 from which income was received by the beneficiary in excess of  
11 \$500;

12 (9) identification by description and the category of the  
13 amount of all assets and liabilities of a corporation, firm,  
14 partnership, limited partnership, limited liability partnership,  
15 professional corporation, professional association, joint  
16 venture, or other business association in which 50 percent or  
17 more of the outstanding ownership was held, acquired, or sold;

18 (10) a list of all boards of directors of which the  
19 individual is a member and executive positions that the  
20 individual holds in corporations, firms, partnerships, limited  
21 partnerships, limited liability partnerships, professional  
22 corporations, professional associations, joint ventures, or  
23 other business associations or proprietorships, stating the name  
24 of each corporation, firm, partnership, limited partnership,  
25 limited liability partnership, professional corporation,  
26 professional association, joint venture, or other business  
27 association or proprietorship and the position held;

28 (11) identification of any person providing  
29 transportation, meals, or lodging expenses permitted under  
30 Section 36.07(b), Penal Code, and the amount of those expenses,  
31 other than expenditures required to be reported under Chapter

1 305;

2 (12) any corporation, firm, partnership, limited  
3 partnership, limited liability partnership, professional  
4 corporation, professional association, joint venture, or other  
5 business association, excluding a publicly held corporation, in  
6 which both the individual and a person registered under Chapter  
7 305 have an interest;

8 (13) identification by name and the category of the number  
9 of shares of any mutual fund held or acquired, and if sold, the  
10 category of the amount of net gain or loss realized from the  
11 sale; [and]

12 (14) identification of each blind trust that complies with  
13 Subsection (c), including:

14 (A) the category of the fair market value of the trust;

15 (B) the date the trust was created;

16 (C) the name and address of the trustee; and

17 (D) a statement signed by the trustee, under penalty of  
18 perjury, stating that:

19 (i) the trustee has not revealed any information to the  
20 individual, except information that may be disclosed under  
21 Subdivision (8); and

22 (ii) to the best of the trustee's knowledge, the trust  
23 complies with this section;

24 (15) if the aggregate cost of goods or services sold under  
25 one or more written contracts described by this subdivision  
26 exceeds \$10,000 in the year covered by the report,  
27 identification of each written contract, including the name of  
28 each party to the contract:

29 (A) for the sale of:

30 (i) goods in the amount of \$2,500 or more; or

31 (ii) services, including professional services as defined



1 by Section 2254.002, consulting services as defined by Section  
2 2254.021, or legal counsel, in the amount of \$5,000 or more;

3 (B) to which the individual or any business entity of  
4 which the individual has at least a 50 percent ownership  
5 interest is a party; and

6 (C) with:

7 (i) a governmental entity; or

8 (ii) a person who contracts with a governmental entity, to  
9 fulfill one or more of the person's obligations to the  
10 governmental entity under that contract;

11 (16) if the individual is a member of the legislature and  
12 provides bond counsel services to an issuer, as defined by  
13 Section 1201.002(1), identification of the following for each  
14 issuance for which the individual served as bond counsel:

15 (A) the amount of the issuance;

16 (B) the name of the issuer;

17 (C) the date of the issuance;

18 (D) the amount of fees paid to the individual, and whether  
19 the amount is:

20 (i) less than \$5,000;

21 (ii) at least \$5,000 but less than \$10,000;

22 (iii) at least \$10,000 but less than \$25,000; or

23 (iv) \$25,000 or more; and

24 (E) the amount of fees paid to the individual's firm, if  
25 applicable, and whether the amount is:

26 (i) less than \$5,000;

27 (ii) at least \$5,000 but less than \$10,000;

28 (iii) at least \$10,000 but less than \$25,000; or

29 (iv) \$25,000 or more; and

30 (17) identification of any other source of earned or  
31 unearned income not reported under another provision of this

1 subsection, including public benefits or a pension, individual  
2 retirement account, or other retirement plan, and the category  
3 of the amount of income derived from each source.

4 (e) In this section, "governmental entity" means the  
5 state, a political subdivision of the state, or an agency or  
6 department of the state or a political subdivision of the state.

7 SECTION \_\_\_\_ . Section 572.0252, Government Code, is amended  
8 to read as follows:

9 Sec. 572.0252. INFORMATION ABOUT LEGAL REFERRALS. A state  
10 officer who is an attorney shall report on the financial  
11 statement:

12 (1) making or receiving any referral for compensation for  
13 legal services; ~~and~~

14 (2) the date the referral is made or received;

15 (3) the style of the case referred, if applicable; and

16 (4) the percentage of the legal fee paid or received that  
17 was agreed to between the parties to the referral, or, if the  
18 fee is not a percentage, the agreed amount of the fee paid or  
19 received [~~the category of the amount of any fee accepted for~~  
20 ~~making a referral for legal services)].~~

21 SECTION \_\_\_\_ . Subchapter B, Chapter 572, Government Code,  
22 is amended by adding Section 572.0295 to read as follows:

23 Sec. 572.0295. PERSONAL FINANCIAL STATEMENT. (a) A  
24 person who files a report under this chapter may amend the  
25 report.

26 (b) A report that is amended before the eighth day after  
27 the date the original report was filed is considered to have  
28 been filed on the date on which the original report was filed.

29 (c) A report that is amended on or after the eighth day  
30 after the original report was filed is considered to have been  
31 filed on the date on which the original report was filed if:

1        (1) the amendment is made before any complaint is filed  
2 with regard to the subject of the amendment; and

3        (2) the original report was made in good faith and without  
4 an intent to mislead or to misrepresent the information  
5 contained in the report.

6        SECTION \_\_\_\_ . The change in law made by this Act applies  
7 only to a financial statement filed under Subchapter B, Chapter  
8 572, Government Code, as amended by this Act, on or after  
9 September 1, 2015. A financial statement filed before September  
10 1, 2015, is governed by the law in effect on the date of filing,  
11 and the former law is continued in effect for that purpose.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 27, 2015

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3736** by Davis, Sarah (Relating to conflicts of interest by members of state agency governing boards and governing officers; creating a criminal offense.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to require individuals serving as a member of a state agency governing board or a state agency officer that governs an agency without a multimember governing board and that are in a position to receive a pecuniary gain from a governing board or agency decision to disclose the conflict of interest in writing to the state agency if the gain accrued to the individual as a member of a class of persons, occupations, profession, or industry is to a greater extent than any other member of the class. The bill requires that these individuals may not participate in the decision on the matter. In situations where a majority of the members of a governing board have a conflict of interest related to the matter before the board, the bill would require each member to make the required written disclosure. The bill would permit the board to make decisions despite the conflict of interest when a finding is made that an emergency exists that requires a decision on the matter. The bill would increase disclosure requirements for filers of personal financial statements and would allow filers to amend personal financial statements without penalty if the original report was made in good faith.

The bill would create an offense if an individual knowingly fails to comply with this requirement. In addition, the bill would require state agencies receiving a written disclosure of a conflict of interest to file a copy of the disclosure with the Texas Ethics Commission. Based on the analysis of the Office of Court Administration and the Texas Ethics Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 356 Texas Ethics Commission

**LBB Staff:** UP, EMO, AG, GDz, FR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 15, 2015**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3736** by Davis, Sarah (Relating to conflicts of interest by members of state agency governing boards and governing officers; creating a criminal offense.), **As Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Government Code to require individuals serving as a member of a state agency governing board or a state agency officer that governs an agency without a multimember governing board and that are in a position to receive a pecuniary gain from a governing board or agency decision to disclose the conflict of interest in writing to the state agency. The bill requires that these individuals may not participate in the decision on the matter. In situations where a majority of the members of a governing board have a conflict of interest related to the matter before the board, the bill would require each member to make the required written disclosure. The bill would permit the board to make decisions despite the conflict of interest when a finding is made that an emergency exists that requires a decision on the matter.

The bill would create an offense if an individual knowingly fails to comply with this requirement. In addition, the bill would require state agencies receiving a written disclosure of a conflict of interest to file a copy of the disclosure with the Texas Ethics Commission. Based on the analysis of the Office of Court Administration and the Texas Ethics Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 356 Texas Ethics Commission

**LBB Staff:** UP, AG, GDz, FR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 20, 2015**

**TO:** Honorable John Kuempel, Chair, House Committee on General Investigating & Ethics

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **HB3736** by Davis, Sarah (Relating to conflicts of interest by members of state agency governing boards and governing officers; creating a criminal offense.), **Committee Report 1st House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Government Code to require individuals serving as a member of a state agency governing board or a state agency officer that governs an agency without a multimember governing board and that are in a position to receive a pecuniary gain from a governing board or agency decision to disclose the conflict of interest in writing to the state agency. The bill requires that these individuals may not participate in the decision on the matter. In situations where a majority of the members of a governing board have a conflict of interest related to the matter before the board, the bill would require each member to make the required written disclosure. The bill would permit the board to make decisions despite the conflict of interest when a finding is made that an emergency exists that requires a decision on the matter.

The bill would create an offense if an individual knowingly fails to comply with this requirement. In addition, the bill would require state agencies receiving a written disclosure of a conflict of interest to file a copy of the disclosure with the Texas Ethics Commission. Based on the analysis of the Office of Court Administration and the Texas Ethics Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 356 Texas Ethics Commission

**LBB Staff:** UP, FR, GDz

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 8, 2015**

**TO:** Honorable John Kuempel, Chair, House Committee on General Investigating & Ethics

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **HB3736** by Davis, Sarah (Relating to conflicts of interest by members of state agency governing boards; creating a criminal offense.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to require individuals serving as a member of a state agency governing board and who are in a position to receive a pecuniary gain from a governing board decision to disclose the conflict of interest in writing to the state agency and these individuals may not participate in the decision of the governing board. The bill would create an offense if an individual knowingly fails to comply with this requirement. In addition, the bill would require state agencies receiving a written disclosure of a conflict of interest to file a copy of the disclosure with the Texas Ethics Commission. Based on the analysis of the Office of Court Administration and the Texas Ethics Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 356 Texas Ethics Commission

**LBB Staff:** UP, FR, GDz