

Texas Association of School Administrators

Question & Answers related to Chapter 176 of the Local Government Code

***Disclaimer:** This document is for informational purposes only and is intended to provide superintendents with insight as to selected provisions of Chapter 176 of the Local Government Code, which was added by HB 914 (79th Regular Session) and modified by HB 1491 (80th Regular Session), that impact issues routinely faced in the regular course of business. This document is not intended to be a comprehensive overview of Chapter 176 or a substitute for legal advice. Specific questions and circumstances regarding a local government officer's activities and the content and filing of the forms should be individually discussed with the school district's attorney. There are criminal penalties associated with not fully complying with this statute; therefore, superintendents and board members should contact the school district's attorney if any questions arise related to interpreting the new requirements and completing the applicable forms.*

What does Chapter 176 require?

Effective September 1, 2005, the records administrator of a school district is required to maintain and make available to the public a list of local government officers (superintendent and school board members). Under HB 1491, the list must also include any school district employee who has authority to approve contracts on behalf of the school district and to whom the school district has extended the disclosure requirements in Chapter 176.

Effective January 1, 2006, local government officers (superintendent and school board members) and vendors are required to file a conflicts disclosure statement and questionnaire, respectively, with the records administrator of the school district. Under HB 1491, a conflicts disclosure statement must also be filed by any school district employee who has authority to approve contracts on behalf of the school district and to whom the school district has extended the disclosure requirements in Chapter 176. If a school district maintains a website, the statements and questionnaires (forms) must be posted on the district's website and maintained according to the school district's local retention schedule. A school district is not required to maintain a website. The Public Information Act and its exceptions apply to the information that will be posted.

HB 1491 also made changes to the current law that will require the filing of new forms beginning October 9, 2007 or the seventh day after the date that a person subject to the disclosure requirements in Chapter 176 received notice from the school district that the conflicts disclosure statement or vendor questionnaire was required to be filed.

Who is the "records administrator"?

Section 176.001(5) of the Local Government Code defines a "records administrator" as the "director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under this chapter and perform related functions."

Does Chapter 176 only apply to school districts, superintendents and school board members?

No. Section 176.001(3) of the Local Government Code defines a "local governmental entity" as "a county, municipality, school district, charter school, 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."

Section 176.001(4) defines a "local government officer" as "a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity; or an employee of a local governmental entity with respect to whom the

local governmental entity has, in accordance with Section 176.005, extended the requirements of Section 176.003 and 176.004."

Can Chapter 176 apply to other employees?

Yes. Chapter 176 requires school board members and the superintendent to file the conflicts disclosure statement, but a school district may also extend the filing requirements to "any employee of the local governmental entity who has the authority to approve contracts on behalf of the local governmental entity, including a person designated as the representative of the local governmental entity for purposes of Chapter 271." The local governmental entity shall identify the employees subject to the filing requirements and provide a list of the identified employees on request to any person. Failure to comply with the filing requirements may result in the employee being reprimanded, suspended, or terminated. It is a Class C misdemeanor if an employee knowingly fails to comply with the filing requirements.

Are certain entities excluded from the definition of "local governmental entity"?

Yes. According to Section 176.001(3) of the Local Government Code, the term "local governmental entity" 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."

What is a "person" under Chapter 176?

Chapter 176 does not define "person". However, the Code Construction Act, which applies to the Local Government Code, provides a definition of a "person" when a statute does not specifically define the term. Under the Code Construction Act, a "person" includes not only an individual but a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity."

Are all "persons" subject to the disclosure requirements in Chapter 176?

No. According to Section 176.002(b), a state, a political subdivision of a state, the federal government, or a foreign government, or an employee of the aforementioned entities acting in the employee's official capacity, are not subject to the disclosure requirements.

Does Chapter 176 apply to charter schools?

Yes.

When is a local government officer (superintendent or board member) required to file a conflicts disclosure statement?

Pursuant to Section 176.003, superintendents, school board members, and other designated employees are required to file a conflicts disclosure statement if the school district enters into a contract with a vendor or is considering entering into a contract with a vendor *and* the superintendent, school board member, or a family member of the superintendent or school board member within the first degree of consanguinity or affinity, except in limited cases of divorce or death, has an employment or other business relationship with the vendor and receives taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the superintendent or school board member becomes aware that a contract has been executed or the school district is considering entering into a contract with the vendor. The disclosure requirement also applies if a vendor has given a superintendent, school board member, or family member of the superintendent or school board member one or more gifts [other than political contributions, food, lodging, transportation, or entertainment accepted as a guest]

that have an aggregate value of more than \$250 in a 12-month period preceding the date the superintendent or school board member became aware of the facts that require the filing of a conflicts disclosure statement.

The conflicts disclosure statement must be filed with the records administrator no later than 5 p.m. on the 7th day after the date the superintendent, school board member, or employee, if applicable, becomes aware of the facts that require the filing of a statement.

What is "investment income"?

Section 176.001 (1-b) defines "investment income" as "dividends, capital gains, or interest income generated from:

- (1) a personal or business checking, savings, share draft, share, or other similar account;
- (2) a personal or business investment; or,
- (3) a personal or business loan."

What is the first degree of consanguinity & affinity?

The degree of relationship by *consanguinity* between an individual and the individual's descendant is determined by the number of generations that separate them. According to Section 573.023(a) of the Government Code, a parent and child are related to each other in the first degree of *consanguinity* (blood). According to Section 573.025(a) of the Government Code, a husband and wife are related to each other in the first degree of *affinity* (marriage). For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

For purposes of Chapter 176, a "family member" does not include a person who is considered to be related to another person by affinity only as described by Section 573.024(b) of the Government Code.

What is a "gift"?

Chapter 176 does not define the term "gift".

Are all gifts included in the \$250 aggregated total?

No. According to Section 176.003(a-1), gifts given by a family member, a political contribution, or gifts of food, lodging, transportation, or entertainment accepted as a guest are not included in the \$250 calculation. The \$250 total is calculated on a per vendor basis.

Are gifts to the local governmental entity included in the conflicts disclosure statement?

No. The only gifts that must be reported are gifts accepted by the local government officer or family member.

If I received a gift but didn't accept the gift, do I need to report it?

No. Only gifts that have been accepted need to be reported.

Who determines the value of the gift?

Section 176 of the Local Government Code is silent on this issue. A person that provides a gift to the local government officer can provide a statement or letter indicating the value of the gift to facilitate the accounting and reporting of the gift.

Is there a penalty for not filing the conflicts disclosure statement?

Yes. According to Section 176.003(c), it is a Class C misdemeanor punishable by a \$500 fine if the local government officer knowingly violates the requirement.

Is there an exception to the application of the criminal penalty?

Yes. Section 176.003(d) provides that it is “an exception” to the criminal penalty if a local government officer files the conflicts disclosure statement no later than the seventh day after the date the person received notice of the violation from the local governmental entity of the alleged violation.

Is the conflicts disclosure statement a sworn document?

Yes. According to Section 176.004, the local government officer must sign an affidavit attesting to the truthfulness of the document. The sworn document is signed under penalty of perjury.

Are vendors required to file a questionnaire?

Yes.

Does Chapter 176 define the word “vendor”?

No. However, according to Section 176.002(a), the disclosure requirements apply to a person who “contracts or seeks to enter into a contract with a local governmental entity” or is an agent of the aforementioned person, which would include vendors. Section 176.001(1-d) defines a “contract” as a “written agreement for the purchase of real property, goods, or services.”

When is a vendor required to file a questionnaire?

Pursuant to Section 176.006, a vendor must file a questionnaire if the vendor has a business relationship with a school district *and* has an employment or other business relationship with the superintendent, board member, or a family member of the superintendent or board member; *or* has given the superintendent or family member of the superintendent or school board member one or more gifts [other than political contributions, food, lodging, transportation, or entertainment accepted as a guest] that have an aggregate value of \$250. The completed questionnaire must be filed with the records administrator of the school district not later than the seventh business day after the later of the date the vendor begins discussions or negotiations to enter into a contract with the school district or submits to the school an application, bid, an RFP, or other written material related to a potential contract with the school district *or* the date the vendor becomes aware of an employment or other business relationship with the superintendent, board member, or family member of the superintendent or school board member *or* that the vendor has given one or more gifts to the superintendent, board member, or family member of the superintendent or school board member that have an aggregate value of \$250.

Is a person required to file an updated questionnaire?

Yes. Section 176.006(d) requires a person to file an updated questionnaire no later than the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate. An updated questionnaire is not required if the person has filed an updated questionnaire on or after June 1, but before September 1, of that year.

Is there a penalty for not filing the vendor questionnaire?

Yes. According to Section 176.006(f), it is a Class C misdemeanor punishable by a \$500 fine if the vendor knowingly violates the requirement.

Is there an exception to the application of the criminal penalty?

Yes. Section 176.006(g) provides that it is “an exception” to the criminal penalty if a vendor files the questionnaire no later than the seventh day after the date the vendor received notice of the violation from the school district of the alleged violation.

Does a school district have a duty to ensure that vendors file a questionnaire?

No. Section 176.006(h) expressly states that school districts have no such duty.

Is a contract affected if a vendor fails to file a questionnaire?

No. According to Section 176.006(i), the validity of a contract is not affected solely because a vendor fails to file a questionnaire.

Where are the disclosure forms located?

In order to conform to the changes made by HB 1491, new forms were recently adopted by the Texas Ethics Commission. The forms are now available on the homepage of the Texas Ethics Commission website. To access the forms, go to <http://www.ethics.state.tx.us>

Does the Texas Ethics Commission have jurisdiction to interpret or enforce Chapter 176?

No.

Can the forms be filed with the Texas Ethics Commission?

No. The conflicts disclosure statement and the vendor questionnaire must be filed with the records administrator of the school district.

Can the forms be electronically filed with the records administrator?

Yes. Section 176.008 allows the conflicts disclosure statement and the vendor questionnaire to be filed electronically.

Are the forms posted on the Internet?

Yes. If a school district maintains a website, Section 176.009 requires that the conflicts disclosure statement and vendor questionnaire be posted on the district’s website.