

SUBJECT: Aggregating values when classifying an abuse of official capacity

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

2 absent — Christian, Hodge

WITNESSES: (*On original version:*)
For — (*Registered, but did not testify:* James Jones, Houston Police Department)

Against — None

On — Eric Nichols, Office of the Attorney General

BACKGROUND: Under Penal Code, sec. 39.02(a)(2), public servants abuse their official capacity if, with the intent to obtain a benefit, or harm or defraud another, they misuse government property, services, personnel, or anything else of value that they possesses due to their office or employment.

An offense is classified based on the value of the thing misused and ranges from a class C misdemeanor (maximum fine of \$500) to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

DIGEST: CSHB 1869 would allow the value of the use of the things misused to be aggregated when determining the penalty classification for the offense of abuse of official capacity. To aggregate the value, the separate transactions involved would have to be part of one scheme or continuing course of conduct.

The value could not exceed the thing's fair market value at the time of the offense, or the cost of replacing the thing within a reasonable time after the offense, if the thing's value could not be determined.

The bill would take effect September 1, 2009, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

By permitting aggregation of the value of things misused in a series of offenses constituting abuse of official capacity, CSHB 1869 would allow prosecutors to demonstrate the magnitude of the crime and allow offenders to be punished accordingly. Currently, an offender may repeatedly violate the statute in a single pursuit but can only be charged with individual offenses with a lesser penalty.

CSHB 1869 would provide uniformity in the way similar crimes are treated, as aggregation already is allowed for theft offenses.

The bill would provide needed guidance to the courts in determining the value of things misused during a continuing course of conduct.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute differs from the bill as filed by allowing the aggregation of the value of the things misused in separate transactions, rather than the value of the funds involved in the separate transactions, when determining the classification of the offense.

The companion bill, SB 828 by Whitmire, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 9 and was reported favorably, as substituted, by the House Criminal Jurisprudence Committee on April 30, making it eligible to be considered in lieu of HB 1869.