

SUBJECT: Modifying lobbyist registration requirements for independent contractors

COMMITTEE: Elections — committee substitute recommended

VOTE: 8 ayes — T. Smith, Peña, Allen, Anchia, Bohac, Bonnen, B. Brown, Heflin

0 nays

1 absent — Harper-Brown

WITNESSES: For — Jack Gullahorn, Professional Advocacy Association of Texas; (*Registered, but did not testify*: Ken Bailey, Common Cause of Texas; Fred Lewis)

Against — None

On — Stan Schlueter

BACKGROUND: Government Code, ch. 305 requires a person to register as a lobbyist with the Texas Ethics Commission (TEC) if the person communicates with a member of the legislative or executive branch to influence legislation or administrative action and receives a certain amount of compensation or reimbursement for the communication or makes a certain level of expenditure in order to make the communication. The registration requirement is triggered if a person's compensation or expenditure exceeds the thresholds adopted by rule of the TEC. Compensation and expenditures related to a person's food, traveling, and lodging expenses do not count toward the thresholds.

Under Government Code, sec. 305.022, a person generally cannot receive contingent compensation based upon the outcome of any legislation or administrative action. The provision provides specifically that the contingent fee ban does not apply to a sales commission payable to an employee of a vendor of a product.

DIGEST: CSHB 3445 would amend Government Code, sec. 305.022 to provide that the current ban on contingent fees for influencing an administrative action by a state agency would not apply to a sales commission paid to an

independent contractor of a product vendor, so long as the independent contractor had registered with the Texas Ethics Commission and had reported the vendor as a client as well as the full amount of the contingent fee.

If a registrant did not know the amount of the contingent fee at the time disclosure was required, the registrant would have to disclose a reasonable estimate of the fee amount and the method under which the fee would be computed.

The bill would define “product” to mean goods acquired for direct consumption or use by a state agency in the day-to-day support of the agency’s administrative operations, such as office supplies and equipment, but would not include services or the selection of a services provider.

CSHB 3445 would not require a person to register with the TEC solely because the person received or was entitled to receive compensation or reimbursement for:

- communicating to a member of the executive branch concerning state agency purchasing decisions or negotiations involving a product, if the compensation for the communication was not totally or partially contingent upon the outcome of an administrative action;
- communicating as a member of an advisory committee or task force if the person was appointed by a member of the legislative or executive branch; or
- communicating as a member of a board, task force, or advisory committee on which a member of the legislative or executive branch also served.

A person registered with the TEC would not have to provide information related to these three types of activity in the registrant’s registration statement.

CSHB 3445 would amend provisions of the Government Code and the Health and Safety Code to provide that a person registered with the TEC would not be ineligible to participate in certain funds, grants, or contracts if the person had to register solely because the person communicated directly with a member of the executive branch to influence an administrative decision regarding a state agency’s purchase of products.

The bill would take effect on September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 3445 would address a problem concerning lobbyist registration exceptions for persons contracted by product vendors to influence purchasing decisions made by state agencies. Since the current law does not provide any guidance as to what a “purchasing decision” is, many believe that they are excepted from the ban on contingent fees for lobbying state agencies. The Texas Ethics Commission has requested clarification on whether the Legislature intended to apply the exception to the registration requirement to independent contractors. This bill would state clearly that an independent contractor who received a sales commission from a product vendor that was contingent upon the outcome of an administrative action taken by a state agency would have to register with the TEC and report the name of the independent contractor’s client as well as the full amount of the fee. It also would clarify the distinction between products and services for the purposes of the registration requirement.

Concerns that CSHB 3445 would apply the registration requirement in an overly broad manner are outweighed by the public benefit that would result from greater transparency of the lobbying process. Regardless of any potential inconvenience suffered by lobbyists, the public has the right to know who is lobbying administrative agencies and how they are being paid.

**OPPONENTS
SAY:**

CSHB 3445 would extend the lobbyist registration requirement too far by including persons contracted by product vendors to communicate with state agencies regarding purchasing decisions. This effectively would require many persons not currently registered to stop performing the work for which they were contracted until they could register.

NOTES:

The committee substitute added provisions not in the original bill related to the requirement of an independent contractor working for a vendor of a product to disclose a sales commission contingent upon the outcome of an administrative action taken by a state agency. The committee substitute added a provision not in the original bill that would define “product” for the purposes of the law governing the registration of lobbyists.