

SUBJECT: Increasing penalties for misuse of official information in certain instances

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland,  
Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

WITNESSES: For — (*Registered, but did not testify*: Adrian Shelley, Public Citizen;  
Cyrus Reed, Sierra Club Lone Star Chapter; Bay Scoggin, Texas Public  
Interest Research Group)

Against — None

BACKGROUND: Penal Code sec. 39.06 makes it a crime to misuse official information.  
Public servants commit an offense if they use non-public information to  
which they have access because of their office or employment to:

- acquire or help another acquire a monetary interest in any property, transaction, or enterprise that may be affected by the information;
- speculate or help another to speculate on the basis of the information; or
- as a public servant, coerce another into suppressing or failing to report that information to a law enforcement agency.

It also is an offense for a public servant to disclose or use official information for a nongovernmental purpose if it was done with the intent to obtain a benefit or to harm or defraud another. A person commits an offense by soliciting or receiving such information from a public servant if done with intent to obtain a benefit or to harm or defraud another.

The above offenses are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000), with the exception of coercing another into suppressing or failing to report information to a law enforcement agency, which is a class C misdemeanor (maximum fine of

\$500).

DIGEST:

CSHB 444 would impose graduated penalties for the crime of misuse of official information if the offense resulted in a net pecuniary gain to the person committing the offense. The offense would be:

- a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the gain was less than \$150,000;
- a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the gain was at least \$150,000 but less than \$300,000; or
- a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the gain was \$300,000 or more.

The bill would make it a third-degree felony for a public servant to coerce someone into suppressing or failing to report information to a law enforcement agency.

The bill would take effect September 1, 2019, and would apply only to an offense committed on or after that date.

SUPPORTERS  
SAY:

CSHB 444 would strengthen laws on the misuse of information by a public servant by linking the severity of the penalty to the amount of monetary gain derived from the crime. It is a violation of the public trust for public officials to use information gained in the course of their office or job for their own financial benefit, and these offenses need to be taken seriously by imposing appropriate penalties.

Strengthening the penalty could further discourage public servants from misusing their position for personal gain. The highest penalty for the offense available under current law is a third-degree felony. The bill would establish graduated penalties to make potential punishments proportional to the crime by scaling up punishments as the amount of gain increased. This would serve as a deterrent to public servants who might use their positions of public trust for financial gain and would punish

appropriately those who did. The graduated penalties established by the bill would impose punishments similar to those for other financial crimes and would track the standard value ladder used to determine punishments for numerous other crimes.

Prosecutors and courts would retain discretion to handle these cases appropriately and to impose fitting penalties, including a range of prison terms within each felony level, probation, and restitution. The bill would not change the base-level punishment for the crime, but the crime's egregious nature makes it appropriate that a range of penalties be available when the crime results in financial gain.

CSHB 444 would not significantly impact the demand for state correctional resources. In fiscal 2018, 10 people were arrested for misuse of official information punishable as a third-degree felony, with fewer than 10 people admitted into state correctional institutions and fewer than 10 placed on felony probation, according to the Legislative Budget Board's criminal justice impact statement.

OPPONENTS  
SAY:

While misusing official information by public servants and others is a serious crime, current law appropriately sets the punishment at a third-degree felony, which can result in two to 10 years in prison. Enhancing certain offenses to a first- or second-degree felony could go too far in allowing potentially lengthy sentences of up to 99 years. Long prison terms can make it difficult to recover restitution from offenders, something victims often request. Under current law, offenders may be punished appropriately, including with probation or a shorter incarceration term, which can allow the offender to return to work and pay restitution.