

BILL ANALYSIS

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S.B. 19
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 19 is an ethics omnibus bill consisting of three articles. Article 1, centering on anti-corruption, includes provisions prohibiting former or current elected officials who are annuitants of a Texas public retirement system from receiving a pension while serving a sentence upon final conviction of a felony offense relating to public administration. Examples of these crimes include bribery, corruption, perjury, obstructing government operation, or abuse of office. The intent of these changes is to ensure that those public officials being punished for public corruption do not receive publicly funded benefits while serving their sentence.

Article II expands the transparency and disclosure requirements for state ethics reporting. The intent of this Article is to strengthen these requirements by requiring stricter disclosure standards on state officers' personal financial statements. Specifically, the Article expands the personal financial statement reporting requirements for each state officer, elected official, or candidate to include the disclosure of written contracts for good or services with governmental entities if the aggregate value of those contracts exceeds \$10,000 per reporting year. The bill requires that personal financial statements disclose each written contract with a governmental entity for goods in the amount of \$2,500 or more; or services including professional, consulting, or legal services in the amount of \$5,000 or more. Further, the bill requires the disclosure of contracts for goods or services above those threshold amounts to which the filer's immediate family, business, or business owned by an immediate family member are parties.

Article 3 includes several provisions aimed toward curing real or perceived conflicts of interest. Towards that end, the Article prohibits a person who is registered as a lobbyist from running for elective office. These provisions not preclude a person who is no longer registered as a lobbyist from running for office. Further, the provisions within Article 3 would prohibit a retired member of the legislature from lobbying before the second anniversary of the date the person ceases to be a member. This prohibition would not apply to former legislators lobbying without compensation.

Lastly, Article 3 includes certain prohibitions on the types of legal services legislators may offer. Specifically, the bill prohibits a legislator from serving as bond counsel for a public issuer. The bill also bars a legislator licensed to practice law from receiving a referral fee for legal services.

As proposed, S.B. 19 amends current law relating to the ethics of public officers and related requirements and creates criminal offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the governing body of a public retirement system in SECTION 1.03 (Section 802.004, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. ANTI-CORRUPTION

SECTION 1.01 Amends Article 42.01, Code of Criminal Procedure, by adding Section 12, as follows:

Sec. 12. Provides that, in addition to the information described by Section 1 (requiring a judgment under this chapter to reflect certain information), a judgment should reflect affirmative findings entered pursuant to Article 42.0199.

SECTION 1.02. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0199, as follows:

Art. 42.0199. FINDING REGARDING OFFENSE RELATED TO PERFORMANCE OF PUBLIC SERVICE. (a) Requires a judge, in the trial of an offense described by Section 802.004, Government Code, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the offense committed was related to the defendant's performance of public service as a member of a public retirement system.

(b) Requires a judge that makes the affirmative finding described by this article to make the determination and enter the order required by Section 802.004(k), Government Code.

SECTION 1.03. Amends Subchapter A, Chapter 802, Government Code, by adding Section 802.004, as follows:

Sec. 802.004. CERTAIN EMPLOYEES AND ANNUITANTS INELIGIBLE FOR RETIREMENT ANNUITY; RESUMPTION OR RESTORATION OF ELIGIBILITY. (a) Provides that this section applies only to a person who is a member or an annuitant of a public retirement system and holds or has held an elective office included in the coverage of that public retirement system.

(b) Provides that to the extent ordered by a court under Subsection (k), a person is not eligible to receive a full service retirement annuity from a public retirement system if the person is finally convicted of an offense that is related to the person's performance of public service arising from the person's official duties as an elected officer while a member of the retirement system and is a felony.

(c) Requires the public retirement system, to the extent ordered by a court under Subsection (k), to suspend making full annuity payments to a person who is not eligible to receive a full service retirement annuity under Subsection (b) on receipt by the retirement system of notice and terms of the person's conviction.

(d) Requires the public retirement system to resume making full annuity payments if the person made ineligible for a full annuity under Subsection (b):

(1) is subsequently found to be not guilty of the offense; or

(2) meets the requirements for innocence under Section 103.001(a)(2) (entitling a person who meets certain requirements to receive compensation), Civil Practice and Remedies Code.

(e) Requires the public retirement system as applicable to:

(1) for a person whose full annuity payments are resumed under Subsection (d), reimburse the person for any portion of the annuity payments withheld during a period of suspension; or

(2) restore the full eligibility of a person convicted of an offense described by Subsection (b) to receive a service retirement annuity, including the restoration of all service credits accrued by the person before the conviction, if the person satisfies the condition under Subsection (d)(1) or (2).

(f) Provides that, except as provided by Subsection (g), a person convicted of an offense described by Subsection (b) whose eligibility for a service retirement annuity is not fully restored under Subsection (e)(2) is eligible to accrue service credit toward a service retirement annuity from a public retirement system if the person:

(1) was placed on community supervision for the offense for which the person was convicted and successfully completed the period of community supervision and received a discharge and dismissal under Section 20 (Reduction or Termination of Community Supervision), Article 42.12, Code of Criminal Procedure; or

(2) was sentenced to serve a term of confinement in a penal institution for the offense for which the person was convicted and completely discharged the person's sentence, including any term of confinement and any period of parole or other form of conditional release.

(g) Authorizes a public retirement system, in determining a person's eligibility for retirement benefits under Subsection (f), to include only those service credits that were:

(1) accrued by the person before the person's conviction for an offense described by Subsection (b) and remaining after conviction of the offense; or

(2) earned after fulfilling the requirements under Subsection (f).

(h) Entitles a person who is eligible to receive a full service retirement annuity under Subsection (b), except as provided by Subsection (i), to request and receive a refund of the person's retirement annuity contributions, not including any interest earned on those contributions. Provides that a person who accepts a refund under this subsection terminates the person's membership in the public retirement system.

(i) Provides that benefits payable to an alternate payee under Chapter 804 (Domestic Relations Order and Spousal Consent), including a spouse or dependent child, are not affected by a person's ineligibility to receive a full service retirement annuity under Subsection (b).

(j) Requires the governing body of a public retirement system to adopt rules and procedures to implement this section.

(k) Requires a court to:

(1) determine and order as applicable for a person convicted of an offense described by Subsection (b) the amount by which the person's service retirement annuity payments are to be reduced or accrued service credits are to be reduced; and

(2) notify the affected public retirement system of the terms of a conviction ordered under Subdivision (1).

ARTICLE 2. TRANSPARENCY AND DISCLOSURE REQUIREMENTS

SECTION 2.01. Amends Section 572.023, Government Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Provides that the account of financial activity consists of:

(1)-(12) Makes no change to these subdivisions;

(13) and (14) Makes nonsubstantive changes; and

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

(A) for the sale of goods in the amount of \$2,500 or more or services, including professional services as defined by Section 2254.002 (Definitions), consulting services as defined by Section 2254.021 (Definitions), or legal counsel, in the amount of \$5,000 or more;

(B) to which the individual, the individual's spouse, the individual's dependent child, or any business entity of which the individual, the individual's spouse, or the individual's dependent child has at least a 50 percent ownership interest is a party; and

(C) with a governmental entity or a person who contracts with a governmental entity, to fulfill one or more of the person's obligations to the governmental entity under that contract.

(e) Defines "governmental entity" for the purpose of this section.

ARTICLE 3. CONFLICTS OF INTERESTS

SECTION 3.01. Amends Section 7.103(c), Education Code, to prohibit a person who is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, from acting as the general counsel to the State Board of Education (SBOE). Deletes existing text prohibiting a person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession, business, or association related to the operation of SBOE, from serving serve as a member of SBOE or acting as the general counsel to SBOE.

SECTION 3.02. Amends Section 141.001(a), Elections Code, as follows:

(a) Requires a person, to be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, to:

(1)-(4) Makes no change to these subdivisions;

(5) Makes a nonsubstantive change;

(6) not be required to be registered as a lobbyist under Chapter 305, Government Code; and

(7) Redesignates Subdivision (6) text as Subdivision (7).

SECTION 3.03. Amends Subchapter C, Chapter 572, Government Code, by adding Sections 572.062, 572.063, and 572.064, as follows:

Sec. 572.062. FORMER LEGISLATOR: LOBBYING RESTRICTED; CRIMINAL OFFENSE. (a) Defines "administrative action," "communicates directly with," "legislation," "member of the executive branch," and "member of the legislative branch."

(b) Prohibits a former member of the legislature, except as provided by Subsection (c), before the second anniversary of the date the person ceases to be a member, from engaging in activities that require registration under Chapter 305.

(c) Provides that Subsection (b) does not apply to a former member who does not receive compensation other than reimbursement for actual expenses for communicating directly with a member of the legislative or executive branch to influence legislation or administrative action.

(d) Provides that a former member who violates this section commits an offense. Provides that an offense under this section is a Class A misdemeanor.

Sec. 571.063. CERTAIN REFERRALS FOR LEGAL SERVICES PROHIBITED; CRIMINAL OFFENSE. (a) Prohibits a member of the legislature or an executive officer elected in a statewide election who is a member of the State Bar of Texas or who is licensed to practice law in another state or a United States territory from making or receiving any referral for legal services for monetary compensation or any other benefit.

(b) Provides that a person commits an offense if the person violates this section. Provides that an offense under this section is a Class B misdemeanor.

Sec. 572.064. REPRESENTATION BY LEGISLATORS REGARDING PUBLIC SECURITIES ISSUANCES PROHIBITED; CRIMINAL OFFENSE. (a) Prohibits a member of the legislature from, for compensation, providing bond counsel services for an issuer, as defined by Section 1201.002(1) (defining "issuer"), including by providing contractual services authorized by Section 1201.027 (Authority of Issuer to Contract for Services) to an issuer.

(b) Provides that a member of the legislature commits an offense if the member violates this section. Provides that an offense under this subsection is a Class A misdemeanor.

SECTION 3.04. Amends Chapter 601, Government Code, by adding Section 601.011, as follows:

Sec. 601.011. ELECTED OFFICER MAY NOT BE REGISTERED LOBBYIST. (a) Prohibits a person from qualifying for a public elective office if the person is required to be registered as a lobbyist under Chapter 305.

(b) Provides that Subsection (a) does not apply to an office for which the federal or state constitution prescribes exclusive qualification requirements.

SECTION 3.04. Amends Section 1201.027, Government Code, by adding Subsection (e), to prohibit an issuer from selecting or contracting with a member of the legislature to provide legal services necessary in connection with the issuer's issuance of public securities.

ARTICLE 4. TRANSITIONS; EFFECTIVE DATE

SECTION 4.01. Provides that Section 12, Article 42.01, Code of Criminal Procedure, and Article 42.0199, Code of Criminal Procedure, as added by this Act, apply only to a judgment of conviction entered on or after the effective date of this Act.

SECTION 4.02. Makes application of Section 802.004, Government Code, as added by this Act, prospective.

SECTION 4.03. Provides that Section 572.023, Government Code, as amended by this Act, applies only to a financial statement filed under Subchapter B, Chapter 572, Government Code, as amended by this Act, on or after January 1, 2017. Makes application of this Act prospective to January 1, 2017.

SECTION 4.04. Provides that Section 572.062, Government Code, as added by this Act, applies only to a member of the legislature who ceases to be a member on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 4.05. Provides that Section 572.063, Government Code, as added by this Act, applies only to conduct that occurred on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 4.06. Provides that Sections 572.064 and 1201.027(e), Government Code, as added by this Act, apply only to services rendered on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 4.07. Provides that the changes in law made by this Act in amending Section 7.103(c), Education Code, and Section 141.001(a), Election Code, and in adding Section 601.011, Government Code, apply only to the eligibility and qualification requirements for a candidate or officer whose term of office will begin on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 4.08. Effective date: upon passage or September 1, 2015.