

ETHICS  
CONFLICT OF INTEREST DISCLOSURES

BBFA  
(LEGAL)

**Substantial Interest  
Affidavit**

If a local public official has a substantial interest in a business entity or in real property, the local public official shall, before a vote or decision on any matter involving the business entity or the real property, file an affidavit stating the nature and extent of the interest if:

1. In the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
2. In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

The affidavit shall be filed with the official recordkeeper of the district.

*Local Gov't Code 171.004(a)–(b)*

**Abstention**

The local public official shall also abstain from further participation in the matter.

If a trustee is required to file and does file an affidavit, that trustee shall not be required to abstain from further participation in the matter or matters requiring such an affidavit if a majority of the trustees are likewise required to file and do file affidavits of similar interests on the same official action.

*Local Gov't Code 171.004(a), (c)*

**Definitions**

*“Substantial  
Interest”*

A person has a substantial interest in a business entity if any of the following is the case:

1. The person owns at least:
  - a. Ten percent of the voting stock or shares of the business entity, or
  - b. Either ten percent or \$15,000 of the fair market value of the business entity.
2. Funds received by the person from the business entity exceed ten percent of the person's gross income for the previous year.

*Local Gov't Code 171.002*

*“Business Entity”*

“Business entity” means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership,

ETHICS  
CONFLICT OF INTEREST DISCLOSURES

BBFA  
(LEGAL)

	trust, or any other entity recognized by law. <i>Local Gov't Code 171.001(2)</i>
"First-Degree Relatives"	The local public official is considered to have a substantial interest if a person related in the first degree by either affinity or consanguinity to the local public official, as determined under Government Code Chapter 573, Subchapter B [see DBE], has a substantial interest as defined above. <i>Local Gov't Code 171.002</i>
"Local Public Official"	"Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), central appraisal district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature. <i>Local Gov't Code 171.001(1)</i>
"Real Property"	A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. <i>Local Gov't Code 171.002</i>
Contracts Permitted	A board may contract with a business entity in which a trustee has a substantial interest if the trustee follows the disclosure and abstention procedure set out above. <i>Atty. Gen. Op. JM-424 (1986)</i>
Separate Vote on Budget	A board shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a trustee has a substantial interest. The affected trustee shall not participate in that separate vote, but may vote on a final budget if he or she filed the affidavit and the matter in which he or she is concerned has been resolved. <i>Local Gov't Code 171.005</i>
Depository Bank	A school board member with a "substantial interest" in a depository bank must file an affidavit stating his interest and must abstain from participating in decisions on loan contracts with the depository if action on the matter will have a special economic effect on the bank that is distinguishable from the effect on the public. <i>Atty. Gen. Op. JM-1082 (1989) [See BDAE]</i>
Violations	<p>A local public official commits an offense if the official knowingly:</p> <ol style="list-style-type: none"><li>1. Violates Local Government Code 171.004.</li><li>2. Acts as surety for a business entity that has a contract, work, or business with a district.</li><li>3. Act as surety on any official bond required of an officer of a district.</li></ol> <p><i>Local Gov't Code 171.003</i></p>
Voidable Actions	The finding by a court of a violation of Local Government Code Chapter 171 does not render an action of the board voidable un-

ETHICS  
CONFLICT OF INTEREST DISCLOSURES

BBFA  
(LEGAL)

less the measure that was the subject of an action involving a conflict of interest would not have passed without the vote of the person who violated the chapter. *Local Gov't Code 171.006*

**Conflicts Disclosure  
Statement**

A local government officer shall file a conflicts disclosure statement, as adopted by the Texas Ethics Commission, with respect to a vendor if the vendor enters into a contract with the district or the district is considering entering into a contract with the vendor; and the vendor:

1. Has an employment or other business relationship with the local government officer or a family member of the officer, and the business relationship results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:
  - a. A contract between the district and the vendor has been executed; or
  - b. The district is considering entering into a contract with the vendor;
2. Has given to the local government officer or a family member of the officer one or more gifts, and the gift or gifts have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
  - a. A contract between the district and the vendor has been executed; or
  - b. The district is considering entering into a contract with the vendor; or
3. Has a family relationship with the local government officer.

**Gifts—Exception**

A local government officer is not required to file a conflicts disclosure statement in relation to a gift, as defined by law, accepted by the officer or a family member of the officer if the gift is:

1. A political contribution as defined by Title 15, Election Code; or
2. Food accepted as a guest.

*Local Gov't Code 176.003(a)–(a-1)*

**Filing Date**

A local government officer shall file the conflicts disclosure statement with the records administrator of a district not later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement. *Local Gov't Code 176.003(b)*

ETHICS  
CONFLICT OF INTEREST DISCLOSURES

BBFA  
(LEGAL)

Vendor Questionnaire	A person who is both a local government officer and a vendor of a local governmental entity is required to file a vendor questionnaire if the person enters or seeks to enter into a contract with the local governmental entity; or is an agent of a person who enters or seeks to enter into a contract with the local governmental entity. [See CHE] <i>Local Gov't Code 176.006(e)</i>
Definitions <i>"Agent"</i>	"Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee. <i>Local Gov't Code 176.001(1)</i>
<i>"Business Relationship"</i>	"Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:  <ol style="list-style-type: none"><li>1. A transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;</li><li>2. A transaction conducted at a price and subject to terms available to the public; or</li><li>3. A purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.</li></ol> <i>Local Gov't Code 176.001(a-1)</i>
<i>"Family Member"</i>	"Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Government Code Chapter 573, Subchapter B. [See DBE] <i>Local Gov't Code 176.001(2)</i>
<i>"Family Relationship"</i>	"Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Government Code Chapter 573, Subchapter B. [See DBE] <i>Local Gov't Code 176.001(2-a)</i>
<i>"Gift"</i>	"Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. <i>Local Gov't Code 176.001(2-b)</i>
<i>"Investment Income"</i>	"Investment income" means dividends, capital gains, or interest income generated from:  <ol style="list-style-type: none"><li>1. A personal or business:</li></ol>

ETHICS  
CONFLICT OF INTEREST DISCLOSURES

BBFA  
(LEGAL)

- a. Checking or savings account,
  - b. Share draft or share account, or
  - c. Other similar account;
2. A personal or business investment; or
  3. A personal or business loan.

*Local Gov't Code 176.001(2-d)*

*"Local  
Government  
Officer"*

"Local government officer" means a member of the board, the superintendent, or an agent (including an employee) of the district who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Local Gov't Code 176.001(4)*

*"Records  
Administrator"*

"Records administrator" means the director, superintendent, or other person responsible for maintaining the records of a district or another person designated by the district to maintain statements and questionnaires filed under Local Government Code 176 and perform related functions. *Local Gov't Code 176.001(5)* [See CPC]

*"Vendor"*

"Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. *Local Gov't Code 176.001(7)*

Duties of Records  
Administrator

A records administrator shall:

1. Maintain a list of local government officers of the district and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Local Government Code 176.006; and
2. Maintain the statements and questionnaires that are required to be filed under Government Code Chapter 176 in accordance with the district's records retention schedule. [See CPC]

*Local Gov't Code 176.0065*

Internet Posting

A district that maintains an Internet website shall provide access on the district's Internet website to the conflicts disclosure statements and questionnaires required to be filed with the records administrator. *Local Gov't Code 176.009*

Violations

A local government officer commits an offense if the officer is required to file a conflicts disclosure statement and knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business

ETHICS  
CONFLICT OF INTEREST DISCLOSURES

BBFA  
(LEGAL)

day after the date on which the officer becomes aware of the facts that require the filing of the statement. It is an exception to the application of the penalty that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after receiving notice from the district of the alleged violation.

A board may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under Local Government Code 176. [See DF series]

A board may, at its discretion, declare a contract void if the board determines that a vendor failed to file a conflict of interest questionnaire required by Local Government Code 176.006.

*Local Gov't Code 176.013*

**Affidavit Disclosing  
Interest in Property**

If a public servant has a legal or equitable interest in any property that is to be acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant shall file an affidavit as follows:

1. The affidavit shall be filed with the county clerk(s) of the county or counties in which the property is located and of the county in which the public servant resides within ten days before the date on which the property is to be acquired by purchase or condemnation.
2. The affidavit must:
  - a. State the name of the public servant and the public office title or job designation held or sought.
  - b. Fully describe the property.
  - c. Fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest and the date the interest was acquired.
  - d. Include a verification of the truth of the information in the affidavit.
  - e. Include an acknowledgment of the same type required for recording a deed in the deed records of a county.

*Gov't Code 553.002*

"Public Servant"—  
Government Code

"Public servant" means a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as:

1. A candidate for nomination or election to public office, or

ETHICS  
CONFLICT OF INTEREST DISCLOSURES

BBFA  
(LEGAL)

2. An officer of government.

*Gov't Code 553.001*

Violations

A public servant who fails to file the affidavit when required is presumed to have the intent to commit an offense. An offense under this section is a Class A misdemeanor. *Gov't Code 553.003*

**Annual Financial  
Management Report**

A district's annual financial management report shall include summary reports of reimbursement received by each board member, reports of certain gifts from school vendors, and reports of board member business transactions with the school district. [See CFA] *Education Code 39.083; 19 TAC 109.1001(o)*

**Trustee Financial  
Statement—Districts  
in El Paso County**

Each member of the board shall file a financial statement with:

1. The board of trustees; and
2. The commissioners court of the county in which the school district's central administrative office is located.

The provisions of Subchapter B, Chapter 572, Government Code, governing the contents, timeliness of filing, and public inspection of a statement apply to a statement filed under this section as if the trustee were a state officer and the commissioners court of the county were the Texas Ethics Commission. A trustee is not required to file a statement under this section for financial activity occurring on or after January 1, 2018.

If the commissioners court of the county determines that a required financial statement is late, the trustee responsible for filing the statement is liable to the county for a civil penalty of \$500. If a statement is more than 30 days late, the commissioners court shall issue a warning of liability by registered mail to the trustee responsible for the filing. If the penalty is not paid before the tenth day after the date on which the warning is received, the trustee is liable for a civil penalty not to exceed \$10,000.

Violations

A trustee commits a Class B misdemeanor if the trustee fails to file the required statement.

*Education Code 11.0641*

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**Note:** See also CBB for conflict of interest requirements when federal funds are involved.

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**Private Corporation**

It is lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the non-

profit corporation or other nonprofit entity. *Local Gov't Code*  
*171.009*