

SUBJECT: State Conservatorship Board appointees, funding

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 25 ayes — Junell, Delisi, Carona, Clemons, Coleman, Cook, Conley, H. Cuellar, R. Cuellar, Davis, Gallego, Glaze, Gray, Haggerty, Heflin, Hernandez, Johnson, Kubiak, McDonald, Mowery, Ogden, Park, Raymond, Swinford, S. Turner

0 nays

2 absent — Greenberg, Harris

SENATE VOTE: On final passage, April 19 — 30-0

WITNESSES: None

BACKGROUND: Government Code Chapter 2104 allows the governor to place under conservatorship agencies found by the Legislative Audit Committee to be in a state of gross fiscal mismanagement. Upon notice from the committee, the governor by proclamation may place an agency under the direction of a three-member, governor-appointed State Conservatorship Board.

The law requires that appointees be experienced in education, administration or fiscal management and may not be public officers. Members serve six-year terms, and appointments are subject to the advice and consent of the Senate.

Board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. The governor is to provide the board with administrative services and may use appropriations under the deficiency claims process (Government Code sec. 403.075) to provide those services.

The board assumes all powers and duties of officers responsible for policy direction of the agency, and agency officers may not act unless authorized by the board. The board may terminate the employment of any employee whose conduct it determines contributed to the conditions that caused the

conservatorship, employ agency personnel and change the agency organization or structure as necessary to alleviate the conditions that caused the conservatorship. The board may contract with a person for management or administrative services and delegate any part of its powers and duties to that person, except rulemaking authority. The conservatorship lasts until the governor or the legislative audit committee determines that it should be dissolved.

On Tuesday, April 18, the Legislative Audit Committee found the Texas Commission on Alcohol and Drug Abuse (TCADA) to be grossly mismanaged and recommended state conservatorship. State and federal audits of the agency and service providers who contract with it found indications of fraud and criminal acts, failure to keep adequate records or to maintain proper controls over assets and liquid funds and misuse of state funds. A March 30 audit by the Coopers & Lybrand firm found the agency's audit department to be understaffed and its programs unmonitored.

The House and the Senate general investigating committees jointly recommended placing TCADA under conservatorship on Wednesday, April 12. The governor indicated he was willing to issue the proclamation once the board members were designated. Placement of an agency in conservatorship is believed to be unprecedented in modern Texas history.

TCADA's two-year budget was set at about \$343 million for fiscal 1994-95 and at about \$400 million in fiscal 1996-97 budget proposals. The agency has about 280 employees.

DIGEST:

SB 17 would permit a public officer to serve on the State Conservatorship Board, exempt the board members from appropriations act limitations on reimbursement for state boards and commissions and allow expenses of the board to be paid from funds appropriated to the agency under conservatorship if funds are not appropriated to the board. The bill would take immediate effect if approved by two thirds of the membership of each house.

**SUPPORTERS
SAY:**

SB 17 would help the governor provide the state conservatorship board with expert and committed members and sufficient funds to carry out the difficult task of putting the affairs of TCADA in order.

State conservatorship board members should be adequately reimbursed for expenses relating to their voluntary, uncompensated commitment of time and effort to resolve an unprecedented state problem. Board members may have to spend many weeks away from their homes and livelihood. The task before them will most likely be a fulltime job. The general appropriations act requires state agency board and commission members to be paid a compensatory per diem of up to \$30 per day, to be reimbursed for actual meals and lodging up to \$75 per day and to be reimbursed for transportation costs, which may not be adequate to reimburse those faced with this unique task. Other statutes make different compensation and reimbursement provisions for certain board and commission members, and SB 17 would provide needed flexibility in determining reimbursement for those serving under these unique circumstances.

Allowing public officers to serve on the state conservatorship board would provide the governor the freedom to appoint individuals who have knowledge of state government and issues and are familiar with state agency operations. Public officers could also help coordinate state resources between the agency they serve and the agency under conservatorship to improve state services. The potential for conflicts of interest would be small because the fundamental goal of conservatorship is to improve state services and eliminate fiscal mismanagement, not to protect an agency's existence or authority.

SB 17 would also provide a funding alternative for conservatorship board activities. Funding from the agency under conservatorship would be appropriate, and the conservatorship could be long-term, complex and costly. The appropriations bill can still be adjusted before enactment to provide specific funding for the board, but the change in SB 17 would allow interim funding from the agency in the meantime. The governor's funding resources should be reserved to be spent on other unforeseen and unbudgeted emergencies.

OPPONENTS
SAY:

The state conservatorship board should not receive special treatment denied other boards. Board members for other state agencies work long and hard too, yet are subject to limited reimbursement for travel and expenses.

Public officers should not be allowed to serve on a state conservatorship board because of the potential for conflicts of interest. A public officer may not be able to provide objective oversight over the operations and programs of the agency in conservatorship. There could be a temptation to reduce agency operations in order to transfer functions to the agency served by the public officer. Texas has plenty of individuals in the private sector who would meet existing requirements for board members; there is no need for one person to serve in two different public offices.

Using TCADA funds for activities of the conservatorship board could reduce funds for services and adversely affect Texans in need of substance abuse treatment. Specific funds should either be appropriated by the Legislature or the Governor' Office should fund activities of the board. Government Code sec. 2104.015 requires the governor to provide administrative services for the board and allows the governor to use appropriations under the deficiency claims process.