HOUSE RESEARCH ORGANIZATION bill analysis | 5/9/97 | HB 1172 S. Turner (CSHB 1172 by Rhodes)

SUBJECT: Amending the Texas Non-Profit Corporation Act

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Rhodes, Corte, Elkins, Giddings, Janek, Solomons, Woolley

0 nays

1 absent — Dukes

WITNESSES: For — Larry Niemann, Texas Community Associations Institute

Against — Lisa McGiffert, Consumers Union

BACKGROUND: The Texas Non-Profit Corporation Act (TNPCA), enacted in 1959, controls the formation, powers and operations of non-profit corporations in this state. A non-profit, or not for profit, corporation is a corporation whose members, directors and officers may not receive any part of its income. A "member" of a non-profit corporation is a person or entity that has an interest in the corporation.

Under the act, the name of a non-profit corporation may not be the same, or deceptively similar to, the name of any Texas corporation or any non-Texas corporation authorized to transact business in this state, or a name that has been reserved or registered under certain laws.

DIGEST: CSHB 1172 would amend the TNPCA to allow a dividend or part of the income of a non-profit corporation to be paid or distributed to a member of the corporation that has obtained and maintained an exemption from the Internal Revenue Service classifying it as a 501(c)(3) organization. The bill would amend the TNPCA definition of "non-profit corporation" to reflect this change.

In addition to making other clarifying or conforming amendments, the bill would:

- expand the current provision addressing corporate names so that a non-profit corporation could not use a name that would be the same as, or deceptively similar to, the name of any limited partnership or limited liability company;
- allow a person who has reserved a corporate name to terminate the reservation before it expires by filing an application with the Secretary of State;
- allow the board of directors to call the corporation's annual meeting within 10 days of the specific date and time designated in the corporate by-laws;
- allow election of corporate directors or officers to be conducted by mail or facsimile transmission, regardless of whether that is authorized in the by-laws;
- provide that a corporation has no obligation to retain its books and records for a given fiscal year more than six years after the closing of that fiscal year;
- allow an incorporator or director calling a board meeting to give notice personally or by facsimile transmission, in addition to by mail;
- expand the time during which a dissolved corporation could be reinstated by the secretary of state from 12 to 36 months; and
- expand the time during which a corporation whose certificate of authority has been revoked could be reinstated by the secretary of state from 12 to 36 months.

CSHB 1172 would take effect September 1, 1997, and would apply to non-profit corporations regardless of the date of their formation or incorporation. The bill would not affect any action or proceeding commenced before the effective date.

SUPPORTERS SAY:

CSHB 1172 would implement proposals of the State Bar Business Law Section and the Secretary of State's Office in order to provide Texas with updated, more flexible laws involving non-profit corporations.

Allowing dividends by a non-profit corporation to be paid or distributed to a 501(c)(3) member would allow the non-profit corporation to pay dividends to its parent non-profit corporation in order to repay the investment of and further the charitable purposes of the parent. For example, it is common in Texas for one non-profit 501(c)(3) organization to organize and be a member of another non-profit 501(c)(3) organization. The newly created organization may carry out its own charitable purposes or further the charitable purposes of its creating member. The member often provides initial funding for the newly created organization. If the newly created organization later generates income from an endowment or from the provision of charitable services, the creating member organization should be able to obtain a return on its investment. CSHB 1172 would change the current law that forbids the newly created organization from issuing dividends to its member in support of the member's charitable activities.

Allowing members to elect directors and officers by mail or fax without authorization from the by-laws would give non-profit corporations greater flexibility in the governance of the corporation's affairs.

Explicitly setting forth a six-year time limit on the required retention of books and records would provide non-profit corporations with certainty regarding the length of time they would have to make their books and records available to their members.

OPPONENTS SAY:

Authorizing non-profit corporations to pay dividends would create an oxymoron in Texas law. Generally, a non-profit by definition prohibits any part of its net earnings to be distributed to its members, directors or officers. CSHB 1172 would fundamentally change that definition of a non-profit organization. Texas should not start down a road that could lead to degeneration of the special role of non-profit organizations.

OTHER OPPONENTS SAY:

The provision that would allow payment of a dividend to members should specifically require that the dividend be used only for the same or similar purpose to which it would have been dedicated by the non-profit corporation that issued the dividend.

NOTES:

The committee substitute added the amended definition of non-profit corporation and deleted provisions removing the requirement that corporate purposes be stated in the articles of incorporation, allowing notice of meetings to members by newsletter, allowing directors to vote by proxy without authorization in bylaws or articles, changing standard of care for officers and rules for removal of officers, and allowing nonprofits to merge with other types of corporations. It also increased the books and records retention requirement from three years to six years.