

SUBJECT: Marketing intellectual property developed by the Health Department

COMMITTEE: Public Health — favorable, without amendment

VOTE: 7 ayes — Berlanga, Hirschi, Coleman, Davila, Glaze, Janek, Maxey

0 nays

2 absent— Delisi, Rodriguez

WITNESSES: For — None

Against — None

On — Susan Steeg, Texas Department of Health

DIGEST: HB 1520 would allow the Texas Department of Health (TDH) to apply for, register, secure, hold and protect a patent, copyright, trademark or other intellectual property product. TDH could contract, sell, lease, market or distribute its intellectual property and be compensated for the development or purchase of intellectual property. Intellectual property and trademarks patented or registered by TDH would be exempted from disclosure under the Texas Open Records Act.

The bill would allow TDH to establish, maintain and accept grants and donations for a Public Health Development Center that would submit and solicit approvals for funding the discovery, development and commercialization of new products, technology and scientific information. The center could own and license products and own shares in corporations engaged in developing, manufacturing or marketing intellectual property. The center could not receive general revenue funds, and would have to cooperate with similar programs by other state agencies.

TDH employees who created, discovered, invented or developed intellectual property could own or be awarded equity interest or participation in the research, development, licensing or exploitation of that property, with the approval of the health commissioner. At the request of the commissioner, employees also could serve on the board of directors of business entities that

had an agreement with a Texas agency relating to intellectual property in which TDH or the center had an ownership interest. Under HB 1520, these activities would not violate conflict of interest statutes.

The bill would require the health commissioner to institute intellectual property policies for TDH and establish minimum standards for public disclosure, departmental review, licensing, identification of ownership, royalty participation, equity and management participation by the inventor.

HB 1520 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

HB 1520 would ensure that Texas taxpayers would benefit from intellectual property projects initiated at TDH. Currently, TDH is only authorized to market software developed within the agency; other marketable intellectual property can be appropriated by outside parties and resold in the private sector, sometimes at a considerable profit. The return on investment for properties developed with taxpayer funds should accrue to taxpayers, not to outside interests taking advantage of legal loopholes to turn a quick buck for little work.

In order to properly serve Texas residents, TDH and its employees have developed a number of innovations that classify as intellectual properties. With HB 1520, the department could register and patent these technologies, logos, processes, television programs, and training manuals and then market them, retaining the profits for the state.

HB 1520 would allow TDH to streamline this process by consolidating marketing and licensing functions within the Center for Public Health Development. The center would serve as a central point for tracking and monitoring the agency's intellectual property agreements. The authority allowed the center reflects common practice in the industry. It takes time to develop new scientific technologies into a marketable product, so inventors usually receive stock in the firm that is licensing their idea instead of upfront cash. Allowing the center to own stock and participate in the ownership of firms that market TDH intellectual properties would ensure that the state received long-term benefits from ideas that succeed in the marketplace. Alternatively, the state would lose nothing if a property failed because the

center would be self-supporting and receive no funding from general revenue.

Because the center could own stock and have other ownership interests in a company, it makes sense to allow TDH employees to serve on company boards of directors. This provision would help ensure that the agency's interests are considered when key decisions are made. The bill also would allow TDH employees who helped develop an intellectual property to receive an equity interest in order to encourage them to continue their good work. The bylaws that would be adopted by the center would address concerns with fraud and conflict of interest.

Other Texas agencies as well as state institutions of higher education have successfully developed and marketed technology and products under current law that gives them this authority. HB 1520 would merely extend similar authority to TDH, an agency with tremendous potential in the area of marketable intellectual properties.

**OPPONENTS
SAY:**

The state should not become a shareholder or limited partner in a private corporation because it would have no control over the firm's employees and there would be no accountability in the event of a fraudulent transaction.

Allowing agency employees to serve on the board of directors for a business that has an agreement with the state could generate serious conflicts of interest, even if rules were in place to govern their conduct. Furthermore, HB 1520 would not require that TDH follow any competitive bidding process in its intellectual property agreements, which also raises concerns about fraud and conflict of interest.

NOTES:

The companion bill, SB 994 by Harris, was reported favorably by 7-1 by the Senate International Relations, Trade and Technology Committee on April 3 and has been placed on the Intent Calendar.