

**SUBJECT:** Office of Rural Community Affairs conflict-of-interest disclosure

**COMMITTEE:** Land and Resource Management — favorable, without amendment

**VOTE:** 6 ayes — Mowery, J. Jones, Guillen, Haggerty, Hochberg, Howard  
1 nay — Noriega  
1 absent — Pickett

**WITNESSES:** For — David Pearson, Texas Organization of Rural and Community Hospitals  
Against — None  
On — Robert J. “Sam” Tesson, Office of Rural Community Affairs

**BACKGROUND:** The 77th Legislature enacted HB 7 by Chisum, creating the Office of Rural Community Affairs (ORCA) governed by a nine-member body appointed by the governor, lieutenant governor, and House speaker to perform various functions for residents of rural areas. ORCA, codified in Government Code, ch. 487, is required, among other duties, to:

- administer the federal community development block grant non-entitlement program;
- manage the state’s Medicare rural hospital flexibility program under federal law; and
- enter into and enforce contracts and execute and deliver conveyances and other instruments necessary to make and administer grants, loans, and loan guarantees in connection with the permanent fund for rural health facility capital improvement, under sec. 403.1065.

The 77th Legislature also enacted SB 5 by Brown, which added ch. 387 to the Health and Safety Code, establishing the Texas Council on Environmental Technology (TCET). This 11-member body, appointed by the governor from academic and nonprofit communities, is charged with helping solve air, water, and waste problems by identifying and evaluating new technologies and by seeking EPA approval for and facilitating development of those technologies.

TCET awards grants for development of new emission-reducing technologies, such as alternative-fuel engines and emissions-control systems.

In Opinion No. JC-0484 (March 27, 2002), the attorney general determined that a TCET grant made under ch. 387 was subject to the common-law rule prohibiting conflicts of interest. As a result, according to the opinion, TCET could not award a grant in which a member had a direct or indirect pecuniary interest, including a grant to the TCET member or a grant to the university that employed that member. The interested council member's recusal from voting or participating still would void the grant under the strict conflict-of-interest rule of common law.

**DIGEST:**

HB 289 would amend sec. 487.059 to require a member of the executive committee or other committee established under the ORCA statute who had a financial interest in an entity that applied for any monetary award from ORCA, including a loan or grant, to disclose such interest before a vote on the award. The ORCA member could not vote or otherwise participate in a discussion or any other activity that related the awarding of the grant. If the ORCA member did not comply with this provision, the applying entity would not be eligible for the grant.

If ORCA's executive director had a financial interest in an entity that applied for a monetary award, the executive director would have to, as soon as possible, disclose the financial interest to the executive committee and could not participate in staff evaluations regarding the monetary award.

If the executive director under office procedures had a vote on a matter that involved the monetary award, the director would have to disclose the interest before a vote on the award, and the committee would enter the disclosure into the minutes of the meeting at which a vote on the award took place. The director could not vote or otherwise participate in a discussion or any other activity relating to the granting of the award. If ORCA's executive director did not comply with this provision, the applying entity would not be eligible for the monetary award.

The bill would take immediate effect if finally passed by a two-third record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

HB 289 would provide a workable way for an ORCA member to avoid a conflict of interest while continuing to provide leadership that ORCA needs. The attorney general's opinion that a TCET member would have a conflict of interest by having the ability to influence the making of grants to the member's employer, also probably would apply to ORCA members. As a result, in order for a hospital that employed an ORCA member to win a loan or grant administered by ORCA, the hospital employee likely would have to resign either his ORCA membership or his hospital employment. Rural areas often lack a surplus of qualified and willing people to manage rural hospitals, and ORCA needs these same people to serve on its governing board. By allowing interested members to disclose conflicts of interest and recuse themselves in advance, the bill would preserve ORCA's integrity short of forcing members to resign.

This remedy is the same as one prescribed by the 75th Legislature for similar conflicts of interest concerning grants by the Telecommunications Infrastructure Fund (TIF). In 1997, the 75th Legislature enacted SB 249 by Sibley, which amended the Utilities Code to allow disclosure and recusal of a TIF board member who was an employee of an entity applying for a TIF grant.

**OPPONENTS  
SAY:**

HB 289 would override long-standing conflict-of-interest provisions rooted in common law designed to promote confidence in the decision-making process of public institutions and ensure that officials would fulfill their fiduciary duties to the public. Mere recusal by an interested party, no matter how honest or well-intentioned the council member, would be insufficient to negate the influence that member inevitably would exert over the office's decision.

**NOTES:**

HB 43 by Chisum, which includes a similar disclosure and recusal provision concerning conflicts of interest for TCET members, has passed both the House and the Senate and was sent to the governor on May 2.