

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

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Mowery, Escobar, Haggerty, Hochberg, Howard, Pickett
0 nays
3 absent — J. Jones, Guillen, Noriega

SENATE VOTE: On final passage, April 10 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*Registered, but did not testify:*)
For — David Pearson, Texas Organization of Rural and Community Hospitals; Bob Turner, Rural County Judges Association

Against — None

On — Jerry R. Hill, Texas 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:

CSSB 755 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, which would be entered into the meeting minutes. A financial interest in the applying entity would include holding an ownership interest in the entity or being employed by the entity. The ORCA member with a financial interest in the award applicant could not vote or otherwise participate in a discussion or any other activity that related to the awarding of the loan or grant. If the ORCA member did not comply with this provision, the award applicant would not be eligible for the award.

These provisions also would apply to:

- an executive director holding a financial interest in an entity that applied for an award from ORCA, including a case in which the executive director under office procedures had a vote on the matter;
- an executive committee member employed by an entity that offered to enter into a contract with ORCA; and
- an executive committee member employed by an entity affiliated with the ORCA award applicant or with an entity that offered to enter into a contract with ORCA.

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

**SUPPORTERS
SAY:**

CSSB 755 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 committee. 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:**

CSSB 755 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 committee member, no matter how honest and well-intentioned, would be insufficient to negate the influence that member inevitably would exert over ORCA's decision granting a monetary award.

NOTES:

Under SB 755 as engrossed by the Senate, disclosure and recusal provisions for executive committee members would not have applied to a member who had an ownership interest in the entity that applied for a monetary award from ORCA. The provision would have applied only to committee members employed by the ORCA award applicant. The House committee substitute

also defined the term “financial interest in an entity” and specifically included the executive director among board members who could not have a financial interest in a grant applicant.

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.