BILL ANALYSIS

Senate Research Center

S.B. 1233
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Texas law, nonprofit corporations are prohibited from making any distribution of income or paying dividends to a member, director, or officer of the nonprofit corporation, with limited exceptions. This law applies regardless of whether the member is a nonprofit corporation.

Today, some nonprofit corporations are partnering with one another to undertake joint venture projects. To conduct these joint ventures, the nonprofit corporations are forming a new nonprofit corporation, of which the initial nonprofit corporations are members. Sometimes, the new joint venture entity makes a profit or has excess funds, none of which can be distributed to the joint venture's members.

Under the following circumstances, this legislation would create an exception to the general prohibition on distributing funds to a nonprofit corporation's members, provided that the members are themselves 501(c)(3) nonprofit corporations:

- the distributions are made in accordance with the purpose or purposes of the corporation as stated in the certificate of formation;
- the distributions are made in accordance with the fiduciary responsibilities of the board of directors; and
- after the distributions are complete, the corporation will be able to pay its debts as they become due in the usual course of the corporation's activities and the corporation's total assets would at least equal the sum of its total liabilities.

S.B. 1233 amends current law relating to authorizing certain distributions of income from a nonprofit corporation to members of the corporation who are certain nonprofit corporations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 22.001(5), Business Organizations Code, to redefine "nonprofit corporation."

SECTION 2. Amends Section 22.053, Business Organizations Code, as follows:

> Sec. 22.053. DIVIDENDS PROHIBITED. Provides that a dividend may not be paid to, and no part of the income of a corporation may be distributed to, the corporation's members, directors, or officers, except as provided by Section 22.054. Makes a nonsubstantive change.

SECTION 3. Amends Section 22.054, Business Organizations Code, as follows:

> Sec. 22.054. AUTHORIZED BENEFITS AND DISTRIBUTIONS. Authorizes a corporation to:

(1) pay compensation in a reasonable amount to the members, directors, or officers of the corporation for services provided;

(2) confer benefits on the corporation's members in conformity with the corporation's purposes;

(3) make distributions to the corporation's members on winding up and termination to the extent authorized by this chapter; and

(4) make distributions of its income to the corporation's members who are nonprofit corporations organized under this code and who are exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if:

(A) the distributions are made in accordance with the purpose or purposes of the corporation as stated in the certificate of formation and with the fiduciary responsibilities of the board of directors, including the duty to safeguard restricted funds for their intended purposes; and

(B) after the distributions are complete:

(i) the corporation would be able to pay the corporation's debts as they become due in the usual course of its activities; and

(ii) the corporation's total assets would at least equal the sum of its total liabilities.

SECTION 4. Effective date: upon passage or September 1, 2015.