SUBJECT: Applying ethics laws to directors of regional mobility authorities

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Denny, Anchia, Anderson, Hughes, J. Jones, T. Smith

0 nays

1 absent — Bohac

WITNESSES: For — Sal Costello, People for Efficient Transportation; Robert Howard, Libertarian Party of Texas (*Registered, but did not testify:* Fred Lewis, Campaigns for People; Suzii Paynter, Christian Life Commission, Baptist General Convention; Suzy Woodford, Common Cause Texas)

Against — None

On — (*Registered, but did not testify:* David Reisman, Texas Ethics Commission)

BACKGROUND: In 2001 and 2003, the Legislature enacted several bills authorizing the creation of regional mobility authorities (RMAs) and expanding their powers. RMAs have the authority to issue revenue bonds for transportation projects, to set tolls, and to lease facilities to private entities, including railroads and the power of eminent domain.

Transportation Code, sec. 370.251 governs the composition and appointment of RMA board directors. It also covers eligibility requirements for service, including disqualification for appointment of any person known to own an interest in property that will be acquired for an RMA project.

Sec. 370.252 details prohibited conduct for directors and employees of RMA boards. Among its specifications, it provides that a director or employee may not:

- accept or solicit any gift or favor that might influence, or is intended to influence, the discharge of official duties;

- accept employment or engage in business activities that might require or induce the disclosure of confidential information acquired through board membership;
- accept other employment or compensation that might impair independent judgment in the performance of official duties;
- make personal investments that might create a conflict of interest;
- knowingly solicit or agree to accept any benefit for the exercise of official powers in favor of another; or
- have a personal interest in an agreement executed by the RMA.

DIGEST:

HB 1708 would require that RMA directors file financial statements and apply conflict of interest and nepotism laws to the directors. The bill also would amend the current provision on indemnification of RMA directors.

**Financial statement requirements.** The bill would require RMA directors to file with the Texas Ethics Commission (TEC) a financial statement required of state officers. Provisions related to filing a financial statement would apply to an RMA director as if the director were a state officer and would govern the contents, timeliness of filing, and public inspection of the required statement. The provision would not apply to a director who already was a state officer subject to these filing requirements.

An RMA director who was a municipal or county officer would file with TEC, rather than with the municipality or county, a copy of respective financial statements, as applicable. Requirements for timeliness of filing and public inspection of a copy of a financial statement filed by a municipal or county officer would be the same as for a state officer.

Failure to file personal financial statements in this manner would constitute a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

**Applicability of conflict of interest and nepotism law.** An RMA director would be regarded as a local public official for the purpose of conflicts of interest and nepotism law. An RMA director, in connection with a vote or decision by the board, would be considered to have a substantial interest in a business entity if a person related to the director in the second degree by consanguinity — a parent, child, brother, sister, grandparent, or grandchild — had a substantial interest in the business entity.

**Revision of current indemnification law.** HB 1708 would authorize an RMA to indemnify one or more of its directors or officers for necessary expenses and costs, including attorney's fees, incurred in connection with any claim asserted against a director or officer only if a majority of the other directors found that the director or officer seeking indemnity was not guilty of negligence or misconduct.

The bill would take effect September 1, 2005.

The requirements for filing a financial statement would apply beginning January 1, 2006. An RMA director required to file a financial statement in the manner of a state officer would not be required to include in that statement financial activity that occurred before January 1, 2005.

The provisions related to applying conflict of interest and nepotism laws to RMA directors would apply only to an action taken by an RMA board on or after September 1, 2005.

SUPPORTERS SAY:

HB 1708 would require RMA board members to follow established reporting measures for public officials to ensure transparency related to their personal financial interests and potential for conflicts of interest. By placing RMA directors under state ethics laws, this bill would create guidelines for appropriate action should conflicts or violations occur.

RMAs are governed by an appointed board of directors who are charged with making policy decisions that address regional transportation needs in areas with high volumes of traffic. While most board members devote their time generously to this public role, the opportunity to profit from this service exists. The board has the power of eminent domain and authority to issue huge amounts of revenue bonds for transportation projects. As a result, circumstances may arise that place RMA directors in positions to shape policy decisions that potentially could affect their business or real estate investments.

While current law does contain provisions that, for example, forbid the appointment of a director who owns an interest in property that will be acquired in an RMA project, there is no measure to assure accountability, such as the requirement to file personal financial statements. By requiring such disclosure, this bill would create transparency in the operations of RMA boards and strengthen public trust in these entities.

OPPONENTS SAY:

RMA directors are not elected officials. In fact, they are considered part of a quasi-governmental board. Extending the burden of requirements for financial disclosure to them might discourage qualified citizens from serving as board members. Current laws governing eligibility for service and prohibited conduct for directors are sufficient to prevent financial improprieties and conflicts of interest.

The proposed indemnification provisions would set different standards for RMA boards than for similar entities. By giving directors who were not seeking indemnity the power to decide whether one of their fellows was not guilty of alleged impropriety, and therefore qualified for indemnification, inappropriately would turn a segment of the board into triers of fact.