

SUBJECT: Texas Council on Environmental Technology conflict-of-interest disclosure

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 6 ayes — Bonnen, Kuempel, Crownover, Chisum, W. Smith, West

0 nays

1 absent — Flores

WITNESSES: For — *(registered but did not testify:)* Tom “Smitty” Smith, Public Citizen
Texas Office

Against — None

BACKGROUND: In 2001, the 77th Legislature enacted SB 5 by Brown, which added Chapter 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 to create solutions to air, water, and waste problems by identifying and evaluating new technologies and by seeking EPA approval for and facilitating development of those technologies. An important TCET function is to award grants for development of new emissions-reducing technologies, such as alternative-fuel engines and emissions-control systems.

In Opinion No. JC-0484 (March 27, 2002), the Attorney General’s Office determined that a TCET grant made under chapter 387 is subject to the strict common-law rule prohibiting conflicts of interest. As the rule is interpreted by the attorney general, TCET could not award a grant if one of its members had a direct or indirect pecuniary interest in the grant, including a grant to that member or 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 43 would amend Health and Safety Code, sec. 387.005 to require a member of TCET who was an employee or owner of an entity that applied for a grant to disclose such employment or ownership before a vote on the grant.

The member could not vote or otherwise participate in the awarding of the grant. If the TCET member did not comply with this provision, the applying entity would not be eligible for the grant.

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:**

HB 43 would allow TCET council members to prevent conflicts of interest in a reasonable and appropriate manner. Most TCET council members (10 out of 11) are Texas university professors who, under prevailing the common-law rule, would be forced to resign from the council when faced with potential grants that would benefit their schools or other entities. By allowing interested members to disclose conflicts of interest and recuse themselves in advance, the bill would preserve TCET's integrity short of forcing members to resign.

This remedy is same as that prescribed by the 75th Legislature for similar concerns about grant awards from 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 TIF board members who are employees of an entity applying for a TIF grant.

TCET serves an important function for Texas in developing solutions to environmental problems and stimulating economic development in the process. It should be allowed to continue its important work without the destabilizing influence exerted on its leadership by current law.

**OPPONENTS
SAY:**

This bill would override long-standing conflict-of-interest provisions in common law designed to promote confidence in the decision-making process of public institutions. The Legislature should be cautious in approaching any statutory dilution of conflict of interest restrictions designed to preserve in both fact and appearance the integrity of the grant-awarding process.

TCET council members belong to a close-knit, technologically specialized, academic circle. 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 council's decision.

NOTES: The companion bill, SB 620 by Armbrister, has been referred to the Senate Natural Resources Committee.

A related bill, HB 289 by Chisum, pending in the Land and Resource Management Committee, includes a similar provision concerning conflicts of interest for committee members or the executive director of the Office of Rural Community Affairs.