

- SUBJECT:** Creating an ethics policy for the State Board of Education
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 8 ayes — Sadler, Dunnam, Grusendorf, Hochberg, Lengefeld, Oliveira, Olivo, Smith
- 0 nays
- 1 absent — Dutton
- WITNESSES:** For — Dianne Hensley, Concerned Women of America
- Against — None
- BACKGROUND:** The State Board of Education is charged with developing and updating a long-range education plan for Texas, with the advice and assistance of the education commissioner. The board also is authorized to invest Permanent School Fund money within constitutional parameters. The commissioner is considered the state's educational leader and is the executive officer of the state board and of the Texas Education Agency (TEA).
- The Permanent School Fund is the perpetual endowment for Texas public schools. Established in 1854, it consists of all land appropriated for public schools by law, all the unappropriated public domain remaining in Texas, and proceeds and investment relating to public lands. Currently, the state owns 13.3 million acres of land reserved for the fund. The lands have a current market value of between \$16.5 billion and \$17 billion. About \$700 million was transferred from the fund to school districts last year.
- DIGEST:** CSHB 3739 would amend the Education Code by requiring the State Board of Education to adopt and enforce an ethics policy relating to the board's conduct in managing and investing the Permanent School Fund. The ethics policy would govern persons responsible for managing and investing the fund, including the education commissioner, assistant commissioners, employees of TEA, and persons hired to provide management and investment services. The policy also would have to include provisions for conflicts of interest and reporting of expenditures.

The policy would have to set guidelines for:

- ! general ethical standards;
- ! conflicts of interest;
- ! prohibited transactions and interests;
- ! the acceptance of gifts and entertainment;
- ! compliance with applicable professional standards;
- ! ethics training; and
- ! compliance with and enforcement of the ethics policy.

The board would have to submit the proposed ethics policy or amendment or revision of the policy to the Texas Ethics Commission and the state auditor for review and comments at least 45 days before the date on which the board intended to adopt the policy, amendment, or revision. The board would have to consider any comments before adopting the proposed policy.

Applicable ethics provisions for consultants hired to help manage or invest the fund would have to be based on the Code of Ethics and the Standards of Professional Conduct prescribed by the Association for Investment Management and Research or other related standards. The board would have to ensure that these provisions were included in any contract under which a person provided management and investment services for the fund.

If anyone subject to the ethics policy had a business, commercial, or other relationship that could compromise the person's independence of judgment as it related to managing or investing the fund, the person would have to disclose that relationship in writing to the board. Upon disclosure, the person could not give advice or make decisions about a matter affected by the conflict of interest unless the board allowed it upon consultation with the general counsel.

The board or its representative would have to define in the ethics policy the types of relationships that posed a conflict of interest.

Consultants, advisors, brokers, or other persons providing management or investment services to the board relating to the fund would have to file a report detailing any expenditure of more than \$50 made on behalf of a board member, the commissioner, or an employee of TEA or of a nonprofit investment management corporation designated by the board.

The board would have to prescribe forms for statements of possible conflicts of interest and related waivers and for expenditure reports. All statements, waivers, or reports would be public information. The board would have to designate a TEA employee to act as custodian of these documents.

This bill would take effect September 1, 1999. The board would have to adopt the required ethics policy and forms by January 1, 2000.

**SUPPORTERS
SAY:**

CSHB 3739 would require the creation of strong ethical guidelines that would promote the continued integrity of the management and investment of the Permanent School Fund.

In 1996, the State Auditor's Office issued a comprehensive report on controls over investment practices at six major state investing entities, including the Permanent School Fund. In that report, the auditor identified opportunities for improving ethics-related policies and procedures. Since then, the State Board of Education has increased its use of external advisors and managers significantly. Meanwhile, questions have arisen in recent months concerning the bidding process for contracts relating to the Permanent School Fund.

Current ethics policies developed when the board managed the bulk of its affairs internally are no longer adequate to address situations raised by these new relationships with external parties. Any ethical issue that arises now is referred directly to the board's general counsel on a case-by-case basis. This ad hoc approach does not provide formal, systematic guidelines for board members. Difficult questions are farmed out to the Texas Ethics Commission or the attorney general for an opinion. Conflicts of interest and expenditure reports are governed by internal measures that remain unclear.

CSHB 3739 would address these concerns by creating clear guidelines for board members. Addressing conflicts of interest and tracing expenditures would become easier. With the growth in the use of outside consultants by the board and TEA and with related growth in outside expenditures, these ethics guidelines would help curb any ethical misunderstandings.

CSHB 3739 would provide broad guidelines for an ethics policy, but the board would retain the authority to develop the relevant rules. The board would not lose any substantive rulemaking authority. TEA also would be involved in drafting these rules.

OPPONENTS
SAY:

The State Board of Education already is accountable to the people of Texas and is capable of formulating ethics guidelines on its own initiative. To that end, the board already has implemented new campaign donation disclosure rules that govern its members. An ethics system provided from outside of the board would send the wrong signal to the board that it is incapable of monitoring its own affairs.

NOTES:

The original bill would have required only that the board adopt and enforce an ethics policy requiring that consultants, advisors, brokers, and others providing services related to managing or investing the Permanent School Fund file regular reports with the board detailing any expenditure of more than \$50 on behalf of a board member, the commissioner, an employee of TEA, or employee of a nonprofit corporation providing services.