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Major Issues of the 84th Legislature

During its 2015 regular session, the 84th Texas Legislature enacted 1,323 bills and adopted seven joint resolutions after considering 6,476 measures filed. This report includes many of the highlights of the regular session. It summarizes some proposals that were approved and some that were not. Also included are arguments offered for and against each measure as it was debated. The legislation featured in this report is a sampling and not intended to be comprehensive.

Other House Research Organization reports covering the 2015 session include those examining the bills vetoed by the governor and the constitutional amendments on the November 3, 2015, ballot, as well as an upcoming report summarizing the fiscal 2016-17 budget.

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Legislative Statistics, 84th Legislature

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	Introduced	Enacted*	Percent enacted
House bills	4,207	819	19.5%
Senate bills	2,069	504	24.4%
TOTAL bills	6,276	1,323	21.1%
HJR s	133	2	1.5%
SJR s	67	5	7.5%
TOTAL joint resolutions	200	7	3.5%

*Includes 41 vetoed bills — 34 House bills and 9 Senate bills

	2013	2015	Percent change
Bills filed	5,868	6,276	7.0%
Bills enacted	1,437	1,323	-7.9%
Bills vetoed	26	41	57.7%
Joint resolutions filed	193	200	3.6%
Joint resolutions adopted	10	7	-30.0%
Legislation sent or transferred to Calendars Committee	1,325	1,504	13.5%
Legislation sent to Local and Consent Calendars Committee	1,320	1,144	-13.3%

Source: Texas Legislative Information System, Legislative Reference Library

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and Economic Development

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* Finally approved

Economic incentive reform, university research initiative

HB 26 by Button
Effective September 1, 2015

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HB 26 creates the Governor's University Research Initiative to help recruit distinguished researchers to Texas universities. Institutions may apply for matching grants through a fund established under the program to recruit Nobel laureates or members of a national academy, with an emphasis on researchers in the fields of science, technology, engineering, mathematics, and medicine. The initiative is administered by the Economic Development and Tourism Office in the governor's office.

The bill dissolves the Emerging Technology Fund. The Texas Treasury Safekeeping Trust Company must wind up the fund's portfolio in a manner that, to the extent feasible, maximizes return on investment. Unencumbered funds remaining after the fund has been wound up may be appropriated only to the Texas Research Incentive Program, Texas Research University Fund, Governor's University Research Initiative, Texas Enterprise Fund, or the comptroller for purposes of managing the state's investments made through the Emerging Technology Fund.

HB 26 creates the Economic Incentive Oversight Board, which is tasked with examining the effectiveness and efficiency of incentive programs and funds administered by the governor's office, the comptroller's office, and the Department of Agriculture. The board will periodically review each incentive program and provide a report on its findings to lawmakers prior to each regular session of the Legislature.

The bill reduces from 91 days to 31 days the time the lieutenant governor and House speaker have to approve a proposal to award money appropriated from the Texas Enterprise Fund before the grant award is considered disapproved. It also changes the name of the Major Events Trust Fund to the Major Events Reimbursement Program.

Supporters said

HB 26 would help balance the state's need to compete for economic growth with a commitment to transparency and accountability. Texas already has

some of the most prestigious research universities in the world. Creating a grant matching program through the Governor's University Research Initiative would help these universities attract prestigious faculty in the sciences and boost Texas' ability to lead the nation with technological innovation.

By eliminating the Emerging Technology Fund, the bill would help ensure that taxpayer money was not used for something as unpredictable and volatile as venture capital. Instead of early-stage funding investment, the bill would encourage the state to look at the best way to invest in long-term economic growth. The Economic Incentive Oversight Board created by the bill would direct the state to actively and consciously consider which economic development programs work, which do not, and which may be needed in the future.

Opponents said

HB 26's elimination of the Emerging Technology Fund would hinder the state's economic development and research generation in the long term. Texas's startup and venture capital industry is dwarfed by those in California and New York. Both those states have made significant commitments to early-stage funding. Without a similar willingness to commit to early-stage funding, Texas might be unable to compete with these states in the long term.

While the bill could help attract distinguished researchers to Texas universities, it might not be the most efficient use of money. Honors issued by the Nobel Foundation and national academies are widely recognized and highly respected, but those awards recognize research that has already been done. The state would be better served by using matching grants to recruit up-and-coming researchers.

Notes

The HRO analysis of [HB 26](#) appeared in Part One of the April 30 *Daily Floor Report*.

Real property transactions and foreclosures

HB 311 by Canales; HB 2063, HB 2066, and HB 2067 by Oliveira
Effective September 1, 2015/HB 2067 effective June 17, 2015

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HB 311 creates liability for sellers who fail to comply with existing requirements to record executory contracts for the sale of real property within 30 days of executing the contract. The damages are capped at \$500 for each calendar year of non-compliance. A recorded executory contract has the same effect as a deed with a vendor's lien in the amount of the unpaid contract price, less any lawful deductions. The lien may be enforced by foreclosure sale or judicial foreclosure.

The bill prohibits the remedies of rescission or forfeiture and acceleration for a seller after an executory contract is recorded. If a purchaser defaults after an executory contract has been recorded, the seller may conduct a foreclosure sale to sell the purchaser's interest in the property.

HB 2063 requires certain documents related to a foreclosure sale to be recorded when they are received by a county clerk and are attached as an exhibit to another document, such as a deed conveying title. The documents required to be recorded include an instrument appointing a trustee to exercise a power of sale in a security instrument or a notice of sale conducted under a power of sale. The documents serve as notice of the information contained in them.

HB 2066 creates a process to rescind a nonjudicial foreclosure sale of property within 15 days of the sale in certain cases, such as when the statutory requirements for the sale were not satisfied, the default leading to the sale was cured before the sale, or a court-ordered or automatic stay of the sale in a bankruptcy case filed by a person with an interest in the property was imposed on the property at the time of the sale.

Notice of the rescission must be served on the purchaser and any debtor obligated to pay the debt. The notice also must be recorded in the real property records of the county where the property is located.

The bid amount paid by a subsequent purchaser at the sale must be returned by the mortgagee within five days of the rescission. Proof of the returned bid must be recorded along with the notice of rescission in the real property records.

If notice of the rescission was not properly filed or acknowledged by a creditor or subsequent purchaser who paid valuable consideration, the rescission is void, but it is binding on the debtor, debtor's heirs, and a subsequent purchaser who did not pay valuable consideration. The rescission restores mortgagees and debtors to their respective title, rights, and obligations under an instrument related to the foreclosure property that existed immediately prior to the sale.

Any lawsuit challenging the rescission must be filed within 30 days after the notice of rescission is recorded. If the sale was rescinded because a stay was imposed in a bankruptcy case, the court could award as damages to the purchaser only the amount paid for the property that has not been refunded. If the rescission was for any other reason, the court could award as damages only the amount paid for the property that has not been refunded, plus interest of 10 percent per year.

HB 2067 specifies that when the maturity date of an obligation is accelerated and the acceleration is later rescinded or waived, the effect is as though an acceleration never occurred. A lienholder's right to accelerate the maturity date in the future is not affected, and past defaults are not waived by this bill.

Supporters said

HB 311 would protect purchasers involved in executory contracts who might not understand their rights under the law. A purchaser's equity and title in the property would be protected by establishing liability if the seller failed to record the contract, as required by law. This bill would also limit the use of rescission or forfeiture and acceleration as remedies when a purchaser defaults, which can cause purchasers to lose their homes and the money they already have paid under the contract.

Businesses still could use executory contracts, but the bill would encourage sellers to record them and would change the remedies used after a default to be more similar to traditional remedies under a mortgage contract, such as a foreclosure sale.

HB 2066 would create a “reset button” for foreclosure sales that never should have taken place. Currently, these situations must be resolved through costly litigation or an agreement by the parties involved. During that time the parties are in limbo because it is not clear who the owner is.

Some sales need to be rescinded because there may be facts that are not known by all of the parties involved, such as the debtor filing for bankruptcy on the morning of the sale, which can make it difficult or impossible to deliver clear title on the property.

The 15-day window for rescission would limit negative effects on the bidding process, and subsequent purchasers would be protected if they did not have knowledge of the rescission.

Opponents said

HB 311 would discourage the use of executory contracts, which are an important tool to convey real property for many people who cannot obtain financing through conventional mortgages. Under current executory contract law, title remains with the seller until the purchaser makes the final payment under the contract. The bill would change the effect of an executory contract to be the same as a deed with a vendor’s lien, essentially giving title to the purchaser at the time of the contract execution.

HB 311 also would limit the remedies available for sellers to protect their interests when purchasers defaulted under a contract. The bill would favor one form of transaction over another by making an executory contract more like a conventional mortgage.

HB 2066 would discourage third-party purchasers from bidding on foreclosure properties because of the uncertainty created by the possibility of rescission. Without third-party purchasers, properties would be sold for much less than they are worth because there would not be as much competition in the bidding process. Fifteen days is too long for a third-party purchaser to be in limbo after purchasing a property.

Notes

The HRO analysis of [HB 311](#) appeared in Part One of the April 22 *Daily Floor Report*. The HRO analysis of [HB 2066](#) appeared in Part Two of the April 21 *Daily Floor Report*; the HRO analysis of [HB 2067](#) appeared in Part Five of the May 8 *Daily Floor Report*. HB 2063 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a Daily Floor Report.

Amending certain cosmetological regulations

HB 2717 by Goldman/HB 3325 by Gutierrez/HB 4069 by Smith
Effective June 10, 2015/Died in the House/Died in Senate committee

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The 84th Legislature considered various bills related to the regulation of cosmetology. **HB 2717**, which took effect June 10, eliminates licenses and certificates for hair braiding. **HB 3325**, which died in the House, would have revised requirements for barber and private beauty culture schools, while **HB 4069**, which died in Senate committee, would have addressed re-enrollment in barber schools and the provision of services at unlicensed facilities.

HB 2717 eliminates licenses and certificates related to hair braiding, refunds fees associated with those licenses, and exempts a person who performs certain hair braiding activities from barbering and cosmetology licensing requirements.

HB 3325, as reported by the House Committee on Licensing and Administrative Procedures, would have amended certain requirements pertaining to barber schools and private beauty culture schools. The Texas Department of Licensing and Regulation (TDLR) could have approved an application for a permit for a barber school offering instruction to those seeking a certificate, license, or permit other than a class A barber certificate — or for a private beauty culture school offering instruction to those seeking a certificate, license, or permit other than a cosmetology operator license — if the school had adequate space, equipment, and instructional material to provide quality training. In addition, the bill would have required beauty culture schools to have access to permanent restrooms and drinking fountain facilities, and to be divided into one area for theory instruction and one area for clinic work.

HB 3325 would have allowed the Texas Commission of Licensing and Regulation to set additional requirements for barber schools and private beauty culture schools applying for permits to offer the instruction described above. A person receiving such instruction could not apply it toward either a class A certificate or an operator license.

HB 4069, as passed by the House, would have amended provisions relating to tuition and coursework at a permitted barber school and changed the applicability of certain licensing requirements.

Currently, students who withdraw or are terminated from a barber or private beauty culture school course may reenroll in the course within four years without paying additional tuition. The bill would have decreased that time from four years to two years.

The bill would have allowed people holding a license, certificate, or permit for barbering or cosmetology to provide services at an unlicensed facility if it was for a special event, such as a wedding or quinceañera. It also would have placed the service of eyebrow threading, a process to remove eyebrow hair with a piece of thread, outside the practices of barbering or cosmetology.

HB 4069 would have increased from nine to 11 the number of members appointed to the advisory board on cosmetology. One would have been a licensed manicurist and another would have been an additional member of the public.

Supporters said

Revising cosmetological regulations would lower the barrier to entry for schools and practitioners across the state. Recent court cases have held that certain regulations in Texas do not advance any legitimate government interest and fail to pass constitutional muster. These bills would refocus regulations on reducing actual risks to the customer's health and safety. Eyebrow threading and hair braiding, for example, are low-risk practices, and the state should not regulate them in the same way as other, more complex cosmetological services.

While eliminating certain licenses could have an initial negative fiscal impact on general revenue, this effect would be cushioned through savings gained from removing the state's inspection and regulatory duties.

HB 3325 would make exceptions to the expensive and demanding requirements otherwise placed on barber and private beauty culture schools, such as maintaining a building containing minimum square-footage, certain equipment, and classroom space. These requirements

would lower barriers for schools to enter the market and create more affordable educational opportunities. The Department of Licensing and Regulation (TDLR) could set additional requirements to ensure high-quality training.

HB 4069 would update regulations covering barbering and cosmetology to keep up with modern demands. The bill would decrease by two years the amount of time a school was required to accept a former student who withdrew or was terminated, which would reduce the likelihood that returning students had forgotten instructional material while their studies had lapsed. This would be beneficial for both re-enrolled students and schools because time in the classroom could be used more efficiently.

Opponents said

HB 2717 would decrease state revenue by eliminating the hair braiding licenses and associated fees. The bill also would cost Texas money because Texas Department of Licensing and Regulation would have to issue refunds to the people who currently hold one of those licenses.

HB 3325 would not be specific enough to ensure that the schools offering licenses or certificates other than class A barber certificates and cosmetology operator licenses were equipped with sufficient space, equipment, or materials needed to provide adequate training and education. Current regulations exist for this purpose and should be preserved.

HB 4069 would maintain the unreasonable requirement that barber and private beauty culture schools accept students who had previously withdrawn from or been terminated by the school. While the timeframe would be limited to two years instead of four, this requirement still would be unreasonable by creating a financial burden and requiring schools to accept many returning students whose education was likely terminated for cause.

Notes

The HRO analysis of [HB 2717](#) appeared in Part Two of the April 22 *Daily Floor Report*. The HRO analysis of [HB 3325](#) appeared in Part Two of the May 4 *Daily Floor Report*. The HRO analysis of [HB 4069](#) appeared in Part Two of the May 7 *Daily Floor Report*.

Expanding and moving the Major Events Trust Fund

SB 633 by Fraser
Effective September 1, 2015

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SB 633 moves administration of the Major Events Trust Fund from the Comptroller of Public Accounts to the Economic Development and Tourism Division in the Office of the Governor. The bill adds 10 events and their respective site selection organizations to the list of eligible events and organizations that may receive funds from the Major Events Trust Fund. In addition, the bill allows a local government corporation authorized to collect a municipal hotel occupancy tax in Harris County to act as an endorsing municipality or county for the purposes of the Major Events Trust Fund. It also eliminates the Special Events Trust Fund.

Supporters said

SB 633 would improve accountability and transparency by placing the Major Events Trust Fund within the governor's office, which is more visible to the public than the comptroller's office.

Expanding the Major Events Trust Fund would ensure that the state continued to reap the benefits that come from hosting large events. Large events bring in substantial tax revenue for cities and counties in Texas, as well as significant economic benefit to area businesses. Other states have begun to establish their own incentive packages, so it is important that Texas add to the list of events eligible for reimbursement. Changes made to the program in recent legislative sessions, including establishing clawback measures and having the program reimburse events rather than pay them in advance, have largely addressed past concerns associated with the fund.

Eliminating the Special Events Trust Fund would help emphasize the Major Events Trust Fund as the primary economic development program for large events in Texas.

Opponents said

Economic development efforts in Texas have been plagued with transparency and accountability issues in the past. Providing incentives to some companies and not others is a dubious use of government resources and distorts the free market. More work should be done to ensure that the Major Events Trust Fund is accountable to taxpayers before it is expanded.

Notes

The HRO analysis of [SB 633](#) appeared in Part Two of the May 25 *Daily Floor Report*.

The 84th Legislature enacted two other bills concerning the Major Events Trust Fund. **SB 293** by Nelson, effective April 8, 2015, amends the Major Events Trust Fund to include three site selection organizations to the list of those eligible to receive funds. Among its many provisions, **HB 26** by Button, effective September 1, 2015, changes the name of the Major Events Trust Fund to the Major Events Reimbursement Program.

On March 26, the House considered SB 293 in lieu of a similar companion bill, **HB 900** by Isaac. The HRO analysis of [HB 900](#) appeared in the March 24 *Daily Floor Report*. The HRO major issues analysis of HB 26 appears on [page 8](#) of this report.

Changes to the Texas Windstorm Insurance Association

SB 900 by L. Taylor
Effective September 1, 2015

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SB 900 reorganizes the funding structure of the Texas Windstorm Insurance Association (TWIA), changes the composition of its board of directors, and creates a depopulation program to encourage transfer of TWIA policies to insurers.

Funding structure. TWIA will pay insured losses in a catastrophe area along the coast from funds in the following priority order:

- TWIA premiums, other revenue, and the Catastrophe Reserve Trust Fund (CRTF);
- proceeds of class 1 public securities issued on or before June 1, 2015, or before the date of the occurrence (together with other class 1 public securities proceeds not to exceed \$500 million);
- proceeds of class 1 public securities issued after the date of the occurrence;
- class 1 member assessments not to exceed \$500 million per year;
- proceeds of class 2 public securities not to exceed \$250 million per year issued on or after the date of the occurrence;
- class 2 member assessments not to exceed \$250 million per year;
- proceeds of class 3 public securities not to exceed \$250 million per year issued on or after the date of the occurrence;
- class 3 member assessments not to exceed \$250 million per year; and
- reinsurance and alternative risk financing mechanisms.

The amount of a member's assessment is determined by the same method used to determine a member's share of insured losses and operating expenses under Insurance Code, sec. 2210.052, based on the amount of premiums collected by each member during the previous year. Members cannot recoup an assessment through a premium surcharge or tax credit.

TWIA's board of directors must determine a sufficient balance for the CRTF to meet cash flow requirements for paying insured losses. The comptroller must invest the portion of the CRTF balance exceeding that amount.

Public security obligations. TWIA must repay public security obligations first from net premiums and other revenue, and if that is insufficient, then from a catastrophe area premium surcharge. The surcharge will be assessed to each TWIA policyholder. Failure of a policyholder to pay the surcharge has the same effect as failing to pay a premium for policy cancellation purposes.

The commissioner of insurance may determine that class 2 and 3 public securities cannot be issued or are financially unreasonable for TWIA and may order payment of the securities by a premium surcharge assessed on certain policyholders. The assessed policies must cover insured property located in a catastrophe area, including automobiles, and must be in effect on or after the 180th day after the commissioner's order.

Board of directors. TWIA's board of directors includes:

- three members from the insurance industry who actively write and renew windstorm and hail insurance in certain coastal counties;
- three members residing in those counties; and
- three members residing in an area of the state located more than 100 miles from the coastline.

One-in-100-year storm. TWIA must maintain total available loss funding in an amount to cover the probable maximum loss for a catastrophe year with a probability of one in 100. To do this, TWIA may purchase reinsurance or alternative risk financing mechanisms in addition to or in concert with funds from the CRTF, public securities, and assessments. Reinsurance may not be used to cover insured losses until the other sources of funding have been depleted.

Depopulation program. TWIA must administer a depopulation program to encourage the transfer of TWIA policies to insurers. Any insurer engaged in property and casualty insurance in Texas may participate in the program.

If an insurer elects to reinsure a policy, the insurer must offer a renewal for three additional years and must offer the policy through the insurance agent of record. The policyholder must have an opportunity to opt out of the reinsurance. An insurer may not offer a policy unless it contains coverage and premiums that are generally comparable to the TWIA policy. The premiums cannot exceed 115 percent of the TWIA premiums.

Supporters said

SB 900 would provide a reliable funding structure for the Texas Windstorm Insurance Association (TWIA) to pay losses due to a catastrophe. The member assessments TWIA could assess would be less expensive than bonds or public securities because there would not be associated fees and interest. TWIA's funding would have to be sufficient to cover losses for a one-in-100-year storm. Ensuring sufficient funding for the coast in the event of a disaster would benefit the entire state.

TWIA's reliance on bonds would decrease because public securities could be repaid through catastrophe area premium surcharges if other funds were insufficient. This would ensure that coastal policyholders, rather than inland residents, bore most of the risk.

The board of directors would include more members from outside the coastal area and the insurance industry to offer balanced representation of the different interests within the state.

The depopulation program would increase voluntary participation in the windstorm and hail insurance industry on the coast and would reduce state reliance on TWIA, helping to make it truly an insurer of last resort.

Opponents said

SB 900 would increase costs for inland policyholders because member assessments would increase. Members would build those costs into the rates and premiums charged to their policyholders. Statewide funding should not be used to pay for property damage in areas with known inherent risks.

If TWIA charged market premiums, it would not need to use bonds or member assessments to cover losses due to a catastrophe, and other insurers could enter the market and compete with TWIA because the rates would be reasonable.

The composition of the new board of directors would weigh heavily in favor of coastal residents, with six of the nine members either residing or working in coastal counties. This would allow the coastal majority to run the board and make decisions favorable to them, such as not allowing rate increases.

Notes

The HRO analysis of [SB 900](#) appeared in Part One of the May 24 *Daily Floor Report*.



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* Finally approved

Alternatives to guardianship for incapacitated persons

HB 39 by Smithee
Effective September 1, 2015

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HB 39 changes certain requirements related to the appointment of a guardian for an incapacitated person.

Substitutes for guardianship. A court must find, by clear and convincing evidence, that alternatives have been considered and determined not feasible before appointing a guardian. The bill defines “alternatives to guardianship” to include various forms of decision-making for individuals with disabilities, including use of medical power of attorney, durable power of attorney, joint bank accounts, management trusts, and special needs trusts.

A court must consider aspects of the ward’s capacity both with and without supports and services before reaching certain decisions or taking certain actions.

Evaluation by physicians. Under the bill, a physician’s letter or certificate required for a court to grant an application to create a guardianship must state certain information, such as whether improvement in the proposed ward’s physical condition or mental functioning is possible and, if so, the period after which the proposed ward should be reevaluated to determine if a guardianship continues to be necessary. If the letter or certificate states that improvement is possible and specifies a period of less than a year after which the ward should be reevaluated to determine continued necessity for guardianship, then an order appointing a guardian must include the date by which an updated letter or certificate must be submitted.

Decisions regarding residence. HB 39 prohibits a guardian, except in cases of emergency, from moving the ward to a more restrictive care facility unless the guardian files an application with the court, provides notice to any persons who request it, and obtains a court order if the ward or another person objects. The bill also requires consideration of whether the ward can make personal decisions about residence at certain stages of the guardianship proceedings.

Attorneys and court appointees. The bill requires that any attorney for an applicant for guardianship complete the same course of study and certification by the State Bar of Texas that is required of court-appointed

attorneys in guardianship proceedings. The bill increases the number of hours required for certification from three hours to four, one hour of which must involve instruction on alternatives to guardianship and supports and services.

Attorneys ad litem must discuss with a proposed ward whether alternatives to guardianship meet the ward’s needs and avoid the need for appointment of a guardian. Attorneys ad litem also must discuss with proposed wards their opinions on whether a guardianship is necessary and, if so, the specific powers or duties of the guardian that should be limited if the proposed ward receives certain supports and services.

The guardian ad litem must investigate whether a guardianship is necessary for the proposed ward and evaluate alternatives and supports and services available that avoid the need for appointment of a guardian. The information gathered by the guardian ad litem is subject to examination by the court.

Supported decision-making agreements. The bill allows adults with disabilities to enter into supported decision-making agreements and specifies the form a valid agreement substantially should take. Under such an agreement, a supporter may provide assistance to an adult in making and communicating certain life decisions without making decisions on behalf of the adult.

Supporters said

HB 39 would help ensure that guardianship was used only as a last resort and would provide guidance to attorneys, judges, and individuals involved in guardianship proceedings. Applications for guardianship have increased dramatically in recent years, and there are currently about 50,000 active guardianships in the state. This increase is expected to accelerate as a result of the “silver tsunami” Texas will experience as the “baby boomer” generation ages. Although guardianship is a useful tool for those who need it, it can be a costly and excessive restriction on those who do not.

This bill would improve the guardianship process by promoting substitutes for guardianship and ensuring that physicians helped determine whether it was necessary and whether courts implemented the least restrictive guardianship provisions possible. It also would promote training and provide guidance to attorneys and individuals involved in guardianship proceedings.

Substitutes for guardianship. HB 39 would present applicants with substitutes for guardianship — including alternatives to guardianship and available supports and services — that could better suit the needs of the wards. This early consideration would help ensure that individuals who did not require overly restrictive guardianships received needed assistance without having their freedom curtailed.

Evaluation by physicians. The bill would help prevent the improper use of guardianship provisions by ensuring that a physician weighed in on the need for assistance and whether alternatives to guardianship or supports and services sufficiently met the proposed ward's needs or if a partial or complete guardianship was needed.

HB 39 also would ensure that if a ward's condition improved, he or she would not remain trapped under burdensome conditions. Instead, the ward would be reevaluated at regular intervals to ensure that the ward's autonomy was not hampered by unnecessary restrictions.

Under the bill, physicians' opinions on the capacity of wards and their guardianship needs would be made available to the courts in hearings to terminate or modify guardianships. In some cases, this could provide evidence that would help wards move to less restrictive guardianships.

Decisions regarding residence. Guardianship frequently is used to move wards into assisted living facilities, even when this is not in the ward's best interest. HB 39 would place consideration of the ward's capacity to make decisions about where to live at every stage of guardianship proceedings.

Attorneys and court appointees. The bill would ensure that those involved with guardianship proceedings received the proper training and guidance to fulfill their roles and protect the interests of the wards. Requiring attorneys representing applicants for guardianships to be properly certified would ensure

that these attorneys were trained on how to consider the needs and autonomy of wards at the application stage. Increasing the number of hours necessary for certification and requiring training on alternatives to guardianship and supports and services further would promote the use of substitutes for guardianship, thus helping to ensure that wards' needs were addressed.

HB 39 also would provide guidance on the role of attorneys and guardians ad litem. Although the current actions of attorneys ad litem and guardians ad litem are usually in line with the guidance provided in this bill, explicitly requiring that they consider alternatives to guardianship and supports and services would create uniformity in the way the needs of wards were protected across the state.

Supported decision-making agreements. Supported decision-making agreements would provide an informal alternative to guardianship that would arrange for support in various life decisions without the formality, expense, restrictiveness, and court involvement of guardianships. It would allow individuals with disabilities to maintain autonomy over their lives while still receiving the support they need. The agreements could delay or negate the need for guardianship.

Opponents said

Substitutes for guardianship. HB 39 unnecessarily would burden the guardianship process. Although there are times when alternatives to guardianship and supports and services are appropriate, taking time to consider them in every case would be unnecessary. This bill would add costly, unnecessary steps in cases where guardianship clearly was necessary.

Attorneys and court appointees. This bill could create a monopoly for attorneys who practice guardianship law. It would impose a costly barrier to entrance to practice in guardianship proceedings that would make it difficult, especially in small counties, for concerned individuals to find attorneys to assist with guardianship applications. Attorneys with large guardianship practices would not hesitate to seek certification, but attorneys in rural areas who did not regularly practice guardianship law likely would choose not to pay for the courses. This would limit severely the availability of guardianship attorneys in these areas.

Notes

The HRO analysis of [HB 39](#) appeared in the April 20 *Daily Floor Report*.

The 84th Texas Legislature enacted other bills related to guardianship, including **HB 2665** by Moody, which allows relatives of wards under guardianships to seek access to them. **SB 1876** by Zaffirini requires courts to maintain lists of persons who can serve as attorneys or guardians ad litem and to appoint attorneys and guardians ad litem from those lists using a rotation system.

The HRO analysis of [HB 2665](#) appeared in Part One of the May 7 *Daily Floor Report*. The HRO analysis of [SB 1876](#) appeared in Part Two of the May 25 *Daily Floor Report*.

Three-judge panels for certain statewide suits

SB 455 by Creighton
Effective September 1, 2015

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SB 455 allows the attorney general to petition the chief justice of the Texas Supreme Court to convene a special three-judge district court in suits against the state involving:

- challenges to school finance or operations; or
- redistricting for the Texas House or Senate, the State Board of Education, the U.S. Congress, or state judicial districts.

Such a petition stays all proceedings in the district court where the original case was filed until the chief justice acts. Within a reasonable time, the chief justice must grant the petition and transfer the case to a special three-judge panel. The panel appointed by the chief justice must include:

- the district judge of the district where the original case was assigned;
- a district judge of another judicial district in a county other than where the original case was filed; and
- a justice of a court of appeals from an appeals district that does not cover the districts of the other two judges.

Judges or justices appointed to the three-judge court from other districts must have been elected to office and may not be serving an appointed term.

The three-judge district court must conduct all hearings in the district court to which the original case was assigned. Travel expenses and other incidental costs related to convening a special three-judge district court would be paid by the Office of Court Administration.

A three-judge district court must, on motion of any party, consolidate any related case pending in any district court or other court in the state with the case the panel is hearing.

The Supreme Court may adopt rules for the operation and procedures of a special three-judge panel. Otherwise, the Texas Rules of Civil Procedure and all other statutes and rules applicable to civil litigation in a district court would apply.

By unanimous consent, the three-judge district court may allow one judge or justice to independently conduct pretrial proceedings and enter interlocutory orders before trial. A judge or justice may not independently enter a temporary restraining order, temporary injunction, or any order that finally disposes of a claim. Any independent action may be reviewed by the entire court at any time before final judgment.

An appeal from interlocutory orders or final judgment will go directly to the Supreme Court, which may adopt rules for such appeals.

Supporters said

SB 455 would help ensure that voters across the state had a say in the judges who heard major civil cases involving school finance and redistricting in which the state was a defendant. Such litigation affects the state as a whole, but under current law, these cases are heard in a single district court, which gives the voters and judges of one county more power over statewide policy than the voters and judges of all other counties. A decision by a panel consisting of elected jurists from different areas of the state is more likely to be perceived by citizens across the state as a legitimate outcome rather than one judge's or one county's policy preferences.

The bill is patterned after the three-judge federal courts that currently are used to decide redistricting cases at the federal level. The special three-judge courts established by the bill would work similarly and would be even more responsive to the people because state district and appellate justices are elected by Texas voters.

Opponents said

SB 455 would give too much authority to the attorney general, who represents the state in school finance and redistricting cases. The bill would allow the attorney general to use a petition for a three-judge district court as a tactic to adversely impact opposing

parties. Under the bill, the attorney general could file a petition at any time to stay the pretrial or trial proceedings for no other reason than as a delaying tactic.

Under the current system, appeals from a single judge's ruling in a school finance or redistricting case are decided by the Texas Supreme Court, whose justices are elected statewide. This provides sufficient opportunity for voters from around the state to have a say in the jurists who review these significant cases.

Notes

SB 455 was laid out in the House on May 13 in lieu of its companion bill, **HB 1091** by Schofield. The HRO analysis of [HB 1091](#) appeared in Part One of the May 11 *Daily Floor Report*.

Discovery of net worth for exemplary damage claims

SB 735 by Fraser
Effective September 1, 2015

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SB 735 establishes requirements for the discovery of evidence relating to a defendant's net worth in civil court cases where exemplary (or punitive) damages are claimed. Specifically, before a trial court may authorize discovery of net worth evidence, a claimant must demonstrate a substantial likelihood of success on the merits for a claim for exemplary damages. A court may authorize only the least burdensome method available to obtain the net worth evidence.

An appellate court reviewing an order for discovery of net worth evidence may consider only the evidence submitted by the parties to the trial court in support of or in opposition to the motion for discovery of net worth evidence.

If a party requests net worth discovery under these provisions, a trial court must assume that the requesting party has had adequate time for discovery of facts on exemplary damages to allow a party from whom net worth discovery is sought to move for summary judgment on the claim for exemplary damages.

Supporters said

SB 735 would reduce frivolous claims for exemplary damages and requests to discover a defendant's net worth by requiring the claimant to demonstrate a substantial likelihood that the exemplary damages claim would be successful before discovering information related to a defendant's net worth. Currently, plaintiffs may file frivolous claims for exemplary damages and motions to compel discovery of a defendant's net worth. This can force defendants to settle to keep their net worth information private, to bear the cost of fighting the motion to compel discovery, or to expend resources compiling net worth information.

In *Lunsford v. Morris*, the Texas Supreme Court ruled in 1988 that a defendant's net worth is relevant to the issue of exemplary damages and is therefore discoverable under the Texas Rules of Civil Procedure. The reasons for allowing discovery of this information under this ruling, however, have been largely nullified

by caps to punitive damages. Because these caps are relatively low, it is unlikely that a defendant's net worth would have a significant impact on an exemplary damages determination.

The bill would not place an overly restrictive burden on discovery of a defendant's net worth. The standard of "substantial likelihood" is a relatively low legal standard compared to the "clear and convincing evidence" or "preponderance of the evidence" standards.

Opponents said

SB 735 is unnecessary because claimants already must meet a high bar in claims for exemplary damages. They are required to plead with specificity facts that, if true, would give rise to an award of exemplary damages. This requirement is sufficient to eliminate the most frivolous exemplary damages claims.

This bill would burden plaintiffs in cases where a defendant's net worth could be critical to determining exemplary damages. Exemplary damages are intended to be punitive, but monetary penalties vary in effectiveness depending on the net worth of the defendant. Net worth discovery is necessary to ensure any exemplary damages awarded are not too weak or too burdensome.

The burden placed on claimants would be significant. Plaintiffs would be required to show a substantial likelihood that a jury would unanimously find, by clear and convincing evidence, that exemplary damages were warranted. That would be a high obstacle to overcome, and it is unlikely that any judge would find that a claimant had met that standard.

Notes

The HRO analysis of [SB 735](#) appeared in the May 21 *Daily Floor Report*.



Criminal Justice and Public Safety

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Border security, human smuggling, DPS policy changes

HB 11 by D. Bonnen
Effective September 1, 2015

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HB 11 enhances certain penalties for the smuggling of persons, creates a new offense of continuous smuggling of persons, extends the use of wiretapping to certain crimes, changes certain policies and duties of the Department of Public Safety, implements technology and crime reporting strategies, and reauthorizes an anti-gang grant program.

Smuggling of persons. The bill makes “intent to obtain a pecuniary benefit” a required element of all offenses of smuggling of persons. Under the bill, it is an offense to encourage or induce an individual to enter or remain in the United States in violation of federal law by concealing, harboring, or shielding that person from detection. The bill increases the penalty for certain smuggling of persons offenses and creates certain exemptions to the affirmative defense to prosecution when an actor is related to the smuggled individual. The affirmative defense is no longer available in cases in which the offense creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death or when it directly results in the smuggled individual becoming a victim of sexual assault or aggravated sexual assault.

Continuous smuggling of persons. HB 11 also creates the offense of continuous smuggling of persons, which occurs when a person engages in smuggling conduct two or more times during a period of 10 or more days. Continuous smuggling of persons is a second-degree felony, except under certain circumstances when the smuggled individual experiences a substantial likelihood of serious bodily injury or death or becomes a victim of a sexual assault. In these circumstances, the penalty is a first-degree felony, punishable in sexual assault cases by a term of 25 years to life. The bill also enhances any penalties for continuous smuggling of persons by one degree if the offense is linked to organized criminal activity. In a jury trial for continuous smuggling, jurors are no longer required to agree unanimously on which specific conduct constituted a smuggling offense, or the exact date on which it occurred.

Wiretapping. The bill adds aggravated promotion of prostitution and compelling of prostitution to the list of crimes for which judges may authorize the interception of wire, oral, or electronic communications if the prosecutor applying for the authorization shows probable cause to believe the communications will show evidence of those crimes.

Transnational and organized crime division. The bill requires the attorney general’s office to create a transnational and organized crime division by December 1, 2015. The division will address matters related to border security and organized crime through a prosecution unit and a trafficking of persons unit that will assist prosecutors and local law enforcement agencies in investigating and prosecuting trafficking offenses, while also assisting victims of trafficking. The division will encourage state assistance, support and coordination among state and local law enforcement agencies and prosecutors.

Policies and duties of the Department of Public Safety. The Department of Public Safety (DPS) may credit up to four years of experience as a peace officer in Texas as years of service when calculating the salaries of newly commissioned officers. The bill allows DPS to accept a qualified person who has served four or more years in the United States armed forces and received an honorable discharge into its trooper trainee academy. It also allows DPS to implement a 10-hour workday and a 50-hour workweek for commissioned officers. The Public Safety Commission may establish a reserve officer corps consisting of former DPS troopers who retired or resigned in good standing. The public safety director may call the reserve officer corps into service if DPS needs assistance conducting background investigations, sex offender compliance checks, or other duties.

The bill requires DPS to implement a strategy for assisting federal authorities in preventing the illegal transfer of contraband and other unlawful activity at international border checkpoints. DPS may share costs for these purposes with the federal government. DPS, working with the Texas Facilities Commission, will build and operate a multiuse training facility available

for use by department personnel, as well as other military and law enforcement agencies. The department also must periodically review and make any necessary improvements to its information technology.

Technology and crime statistics. The bill establishes a goal for each local law enforcement agency in Texas to implement by September 1, 2019, an incident-based reporting system that meets the requirements of the FBI's National Incident-Based Reporting System. By January 1, 2017, DPS will submit a report to the Legislature identifying the number of agencies that have implemented the system.

HB 11 requires the Hidalgo County Sheriff's Department, in conjunction with the McAllen Police Department and DPS, to establish and operate the Texas Transnational Intelligence Center (TTIC). TTIC will serve as a central repository of real-time information relating to criminal activity in the counties along the Texas-Mexico border. The Alcoholic Beverage Commission and the Parks and Wildlife Department, along with each law enforcement agency in a border county, will report information regarding criminal activity in their jurisdictions to TTIC.

Texas Anti-Gang Grant Program. The bill reenacts Government Code, sec. 772.007, providing for the administration of a competitive grant program to support regional, multidisciplinary approaches to combat gang violence.

Joint interim committee. HB 11 requires the lieutenant governor and speaker of the House to create a joint interim committee, which will study border security and submit a full report, including findings and recommendations, to the 85th Legislature.

Supporters said

HB 11 is needed to protect people from smuggling activity and to adequately punish individuals engaged in smuggling for monetary gain. The bill would accomplish these goals by enhancing the penalties for those convicted of smuggling, creating a new offense for continuous smuggling, and strengthening law enforcement agencies' ability to combat these crimes. The bill would help Texas build a steady law enforcement presence along the border instead of relying on temporary Texas State Guard deployment surges.

Smuggling of persons. To ensure that all forms of human smuggling were covered by law, the bill would add to the definition of smuggling encouraging or inducing someone to illegally enter or remain in the country by harboring, concealing, or shielding that person. Language making "intent to obtain a pecuniary benefit" a requirement of smuggling offenses would ensure that the law targeted only the intended criminal element, not the activities of churches and charitable organizations. Enhanced penalties for certain smuggling offenses would ensure that the worst forms of smuggling were prosecuted in proportion to their severity. The bill would leave in place a reasonable affirmative defense for when an actor was related to the transported individual, except in certain cases. This defense would allow people to transport family members without fear of prosecution, as long as they do so in a safe manner.

Continuous smuggling of persons. HB 11 would address inadequate punishment for repeat offenders by creating a continuous smuggling offense. Allowing several smuggling incidents to be part of one offense would recognize the serious, repetitive nature of these crimes, and the enhanced penalties could help deter other potential offenders. Adding continuous smuggling of persons to offenses under the organized criminal activity statute would provide greater penalties for those offenders involved in gang and cartel activity along the border and throughout the state.

Wiretapping. Currently, wiretapping and electronic intercepts are allowed, upon judicial determination of probable cause, for some of the most egregious crimes in the criminal justice system. Adding aggravated promotion of prostitution and compelling of prostitution to that list of crimes would be appropriate and would give law enforcement agencies a mechanism to help them protect some of society's most vulnerable individuals.

Transnational and organized crime division. The transnational and organized crime division would strengthen the state's commitment to combat organized criminal organizations by providing critical state assistance to local prosecutors and local law enforcement agencies in investigating and prosecuting human trafficking and related crimes.

Policies and duties of DPS. The bill would allow licensed peace officers hired by DPS to receive salaries commensurate with their experience, which

would help the department recruit the officers it needs to meet the department's increasing responsibilities along the border. The reserve officer corps created by the bill would give DPS an inexpensive tool to lighten the troopers' load of paperwork and administrative duties. Providing assistance to federal authorities at international border checkpoints would help reduce the flow of guns and money across the border and into the hands of the cartels.

Technology and crime statistics. Creating the Texas Transnational Intelligence Center (TTIC) would help law enforcement agencies along the border identify patterns that could reveal large, organized criminal operations. The incident-based reporting system under the bill would help to quickly establish links between multiple crimes, which would assist prosecutors in seeking stronger penalties for repeat offenders. By giving the department until 2019 to implement the reporting system, the bill would not pose a great burden.

Opponents said

HB 11 would create an unnecessary new offense for continuous smuggling of persons and could enhance punishment to a degree that might not be appropriate in specific circumstances. It also would impose unfair hiring and cost burdens on local law enforcement agencies.

Smuggling of persons. Creating an offense for an actor who "encourages or induces a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection" could criminalize unintentionally behavior that did not constitute smuggling. State judges and peace officers would be responsible for the complicated task of interpreting whether a transported person was in violation of federal immigration law, which could lead to racial profiling. The bill's provisions enhancing penalties for offenses that create a substantial likelihood of bodily injury or death are worded broadly and could enhance penalties for offenses that did not merit it.

Continuous smuggling of persons. Current law already harshly punishes smuggling of persons. The enhancements in this bill could lead to overly severe prosecution for crimes that are not as egregious as the ones this bill aims to combat. Eliminating the requirement for jury unanimity when deciding on the specific conduct that constitutes an offense and the exact date it occurred could be unfair to defendants.

Wiretapping. Wiretapping, by its nature, allows government intrusion on personal privacy. Expanding its use, even in the investigation of serious crimes, could result in violations of individual rights.

Policies and duties of DPS. Although local law enforcement agencies are accustomed to officers transitioning to other agencies, the number of officers that DPS would need to establish a permanent presence along the border could pose a threat to local law enforcement, especially in smaller counties. Additionally, the state and DPS should take care to ensure that their involvement at border checkpoints did not harm legitimate businesses working across the international border.

Technology and crime statistics. Implementing the reporting requirements of the incident-based reporting system could come at a significant cost to law enforcement agencies, most of which currently do not use the system. This mandate should not be imposed on agencies unless the transition is properly funded.

Other opponents said

HB 11 would impose an unnecessary burden on prosecutors to prove that an offense was committed for a pecuniary interest. Proving a pecuniary interest is often difficult, even when such an interest exists, because smuggled persons often are deported before trial and unavailable to give testimony. This burden is unnecessary because intent to conceal an individual from a peace officer or to flee from a peace officer is a required element of the current smuggling of persons offense, and it is unlikely that activities of churches and charitable organizations would meet those requirements.

The added offense for an actor who "encourages or induces a person to enter or remain in this country in violation of federal law" could be unworkable for prosecutors. Evidentiary rules would make it difficult to present evidence, such as testimony by a federal agent, that the person who was encouraged or induced was in violation of federal law.

Notes

The HRO analysis of [HB 11](#) appeared in the March 18 *Daily Floor Report*.

Creating an exoneration review commission

HB 48 by McClendon
Effective June 1, 2015

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HB 48 creates the Timothy Cole Exoneration Review Commission. The commission has 11 members, including four legislators, a member appointed by the governor, and representatives of the Texas Judicial Council, the Texas Commission on Law Enforcement, Texas Indigent Defense Commission, Texas Forensic Science Commission, Texas Criminal Defense Lawyers Association, and the Texas District and County Attorneys Association. The commission may act only on the concurrence of six or more members. Representatives of innocence projects and centers at the state's law schools serve as advisory members to the commission.

The commission is authorized to review and examine all cases in which an innocent defendant was convicted and then, on or after January 1, 2010, was exonerated. The reviews will be to:

- identify the causes of wrongful convictions and suggest ways to prevent future wrongful convictions and improve the reliability and fairness of the criminal justice system;
- ascertain errors and defects in the laws, evidence, and procedures in the cases;
- consider suggestions to correct the identified errors and defects;
- identify procedures, programs, and educational or training opportunities designed to eliminate or minimize causes of wrongful convictions;
- collect and evaluate data and information from an actual innocence exoneration reported to the commission by a state-funded innocence project;
- identify patterns in errors or defects in the criminal justice system that impact the pretrial, trial, appellate, or habeas review process; or
- consider and suggest legislative, training, or procedural changes to correct the patterns, errors, and defects in the criminal justice system that are identified through the work of the commission.

The commission is required to consider potential implementation plans, costs, savings, and the impact on the criminal justice system for the potential

solutions it identifies and to review and update the recommendations of the Timothy Cole Advisory Panel on Wrongful Convictions. The commission must conduct one public hearing.

The commission must issue a detailed report of its findings and recommendations, including those for implementing procedures and programs to prevent the causes and occurrences of future wrongful convictions. The report may be issued only upon the concurrence of seven members and may not include any recommendations about the use of the death penalty or related procedures. The report must be submitted to the governor, the Legislature, and the Texas Judicial Council by December 1, 2016.

The commission is administratively attached to the Office of Court Administration and is dissolved on either the date it submits its report or December 1, 2016, whichever is earlier.

Supporters said

HB 48 would help prevent the wrongful convictions of innocent people. The wrongful conviction and imprisonment of any innocent person is a miscarriage of justice that carries with it a moral obligation to prevent additional miscarriages of justice. The bill would be the next step after the Timothy Cole advisory panel, which was created by the 81st Legislature to advise the state's Task Force on Indigent Defense in studying wrongful convictions. The panel finished its assignment in 2010, and while the Legislature has enacted many of its recommendations, more needs to be done.

In Texas, there have been at least 200 exonerations after wrongful convictions, according to the National Registry of Exonerations. Many of these inmates served decades in prison before being exonerated through DNA evidence or on other grounds. A wrongful conviction imposes irreparable harm on those who lose their freedom and may mean that a guilty person remains unpunished and possibly free in society, endangering the public and eroding confidence in the criminal justice system.

The bill would address the issue of wrongful convictions by establishing a body to examine certain cases and identify the causes of wrongful convictions and suggest ways to prevent future cases. The Legislature needs to create a state entity dedicated to examining exonerations and recommending systemic changes because currently there is no adequate mechanism or effort to do so. The need for an exoneration commission is not eliminated because certain facets of the criminal justice system have been reformed in recent years or because the Legislature is considering additional changes this session. These efforts can be piecemeal or reactions to one case and do not necessarily identify patterns or systemic failures leading to wrongful convictions.

The commission would not have overly broad or inappropriate authority because the bill clearly outlines the commission's limited powers and duties. The commission would not seek exonerations or re-open cases but only would review certain cases that had reached their conclusion. The commission would have no enforcement powers or disciplinary authority.

Fears that an innocence commission would erode support for the death penalty are unfounded. The death penalty itself is not a cause of wrongful convictions, which is what the commission would be charged with examining.

The commission's limited mission and dissolution date would help ensure that it did not become an unwieldy, permanent bureaucracy.

The cost of the bill is small compared to the costs of wrongful convictions. The state has paid about \$68.9 million in compensation for wrongful convictions in addition to funds used on the prosecution and incarceration of innocent people.

Opponents said

It is unnecessary to create a commission to review wrongful convictions in Texas because the state's criminal justice and legislative systems have checks and balances that work to achieve justice and to identify address and problems.

It is unfair to use cases that may be decades old to argue for an exoneration commission. In the past few decades, the state's criminal justice system has improved substantially, resulting in a just and fair system with rigorous standards and extensive opportunities for review. In addition, the state has adopted almost all of the recommendations made in the 2010 Timothy Cole advisory panel.

The bill would invest an innocence commission with inappropriate, broad authority. With authority to ascertain errors in evidence and procedures, the commission could become an entity working to prove an exoneration, rather than just studying those that have occurred.

An exoneration commission could be used as a backdoor way to erode support for the death penalty in Texas by focusing on certain cases handled before recent reforms without the benefit of the adversarial process central to the criminal justice system.

Post-conviction exonerations and the state criminal justice process could be studied without creating a new government entity. The bill would add unnecessarily to state bureaucracy and cost about \$340,000 for the biennium, according to the bill's fiscal note.

Notes

The HRO analysis of [HB 48](#) appeared in Part Two of the April 30 *Daily Floor Report*.

Open carry for concealed handgun license holders

HB 910 by Phillips
Effective January 1, 2016

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HB 910 allows concealed handgun license holders to openly carry a handgun in a public place if the handgun is carried in a shoulder or belt holster. Weapons also may be carried openly by license holders in a motor vehicle or watercraft they operate if the handgun is carried in a shoulder or belt holster. Personal protection officers who are not wearing a security officer uniform must conceal firearms, regardless of whether they are authorized to openly carry it under any other law.

Trespass by license holder. The bill establishes a class C misdemeanor offense (a maximum fine of \$200) for trespassing with a concealed or openly carried handgun if a license holder entered another's property without effective consent and had received notice that the entry was forbidden. The offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the license holder failed to leave a property after entering and receiving oral notice that remaining on the property was forbidden. The bill defines what is considered proper notice under this provision.

Unlawful carrying by a license holder. The bill creates a class A misdemeanor offense for a license holder to openly carry a handgun on the premises of an institution of higher education. It is a defense to prosecution if the actor brought the handgun in plain view under circumstances in which the actor would have been justified in the use of force or deadly force.

License holders still are prohibited under this bill from carrying their handguns in certain places where concealed carry is prohibited. The bill creates several exceptions and defenses to prosecution for license holders carrying a concealed handgun or a holstered handgun in situations where carrying a gun is otherwise prohibited.

License instruction. Handgun license instructors are required to include instruction on the use of restraint holsters and methods of securely carrying a handgun openly in the handgun proficiency course.

Supporters said

HB 910 would protect law-abiding Texans' Second Amendment rights under the U.S. Constitution by allowing them to openly carry handguns. The bill would not remove a licensed individual's right to carry a concealed handgun nor allow a larger number of people to carry guns. It simply would give the license holder the option to conceal or carry openly by extending existing concealed carry requirements to the open carrying of handguns.

Forty-four states already allow open carry of handguns, and this bill would bring Texas in line with the majority of the country. Many of the same safety concerns brought forward about open carry also were raised about concealed carry before it was enacted in Texas in 1995, and those worries have proved unfounded, as have concerns about open carry in other states.

The background check and licensing process to obtain a concealed handgun license is extremely thorough and prevents people who have committed serious crimes from acquiring licenses, so there would be no increased danger to the community. In fact, crime rates have dropped significantly since the establishment of the concealed handgun licensing system in Texas, and other states also have seen a drop in crime after enacting similar licensing laws.

While police officers might receive some emergency calls involving people openly carrying handguns, other states with open carry have not found the number of these calls to be overly burdensome on law enforcement. In practice, most licensed handgun owners in other states have preferred to keep their weapons concealed. However, the presence of well-trained civilians visibly carrying handguns on their person could provide a valuable deterrent to would-be criminals.

The bill would not infringe on personal property rights because individuals and businesses still would have the right to prohibit handguns on their property by

posting the proper notice. Those from other states who openly carried in Texas under reciprocity agreements that recognize licenses issued in other states would be qualified to do so. As currently occurs, the Texas attorney general and governor would continue to evaluate other state's laws before entering into the agreements.

Opponents said

The changes proposed in HB 910 are unnecessary because the current concealed handgun system in Texas is working, and the bill would not address any real safety concerns. There is no evidence that the open carrying of handguns would deter crime or reduce violence, and it could create an environment of fear, intimidation, and unnecessary provocation.

Although a number of states have open carry laws, many of them have more stringent requirements than would be enacted through this bill. Further, there is no evidence that open carry has reduced crime rates in other states. In fact, individuals who openly carry their weapons could be at greater risk of being harmed by their own guns if someone attempted to steal them.

The bill would place additional burdens on police officers. When officers respond to an emergency call involving handguns, the presence of many people carrying openly could cause confusion and divert police attention away from the criminals. Police officers also may have to spend valuable time and manpower checking the licenses of people openly carrying handguns.

Private property owners should have the right to make the decision to allow open carrying of handguns on their property without being burdened by additional onerous notice requirements.

HB 910 would not include enough requirements for new training and education for handgun license holders. The bill could result in individuals from other states openly carrying handguns in Texas under reciprocity agreements, even though the individuals may not be required by their home states to undergo the same strict licensing requirements as Texans.

At the very least, the bill should be amended to restrict open carry to rural areas because in highly populated urban areas, it could cause unnecessary alarm and confusion in chaotic situations.

Other opponents said

HB 910 inappropriately would require a license and a proficiency course for a person to openly carry a handgun. An individual should not have to obtain a license to exercise his or her Second Amendment rights.

Notes

The HRO analysis of [HB 910](#) appeared in the April 17 *Daily Floor Report*.

The 84th Legislature also considered other measures related to licensing and carrying handguns.

SB 273 by Campbell, effective September 1, 2015, creates civil penalties for a state agency or political subdivision that posts a notice forbidding a concealed handgun license holder from carrying a handgun on the premises of a governmental entity unless the license holder is prohibited from carrying a weapon on the premises under the Penal Code. The HRO analysis of [SB 273](#) appeared in Part Two of the May 22 *Daily Floor Report*.

HB 554 by Springer, effective September 1, 2015, creates a defense to prosecution for the offense of unlawfully carrying a prohibited weapon in or into a security checkpoint area of an airport if the individual was licensed and immediately exited the area when notified that the individual was carrying a handgun. The HRO analysis of [HB 554](#) appeared in Part Two of the May 6 *Daily Floor Report*.

SB 179 by Perry, which died in the House, would have lowered from .32 or above to .22 or above the caliber of a handgun that could be used to demonstrate proficiency for purposes of obtaining a concealed handgun license. The HRO analysis of [SB 179](#) appeared in Part Three of the May 26 *Daily Floor Report*.

SB 342 by Huffines, which died in Senate committee, would have created the Texas Constitutional Carry Act of 2015 to allow for concealed and open carry of handguns without a handgun license.

HB 353 by K. King, which died in Senate committee, would have specified that a governmental unit was not liable in a civil action for the discharge of a handgun by volunteer emergency services personnel licensed to carry a concealed handgun. It also would have created defenses to prosecution for certain offenses for volunteer emergency services personnel with a concealed handgun license. The HRO analysis of [HB 353](#) appeared in Part Two of the May 6 *Daily Floor Report*.

Requiring reports on officer-involved shootings

HB 1036 by Johnson
Effective September 1, 2015

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HB 1036 requires law enforcement agencies to report to the attorney general on incidents in which a peace officer discharged a firearm causing injury or death to another and on incidents in which a person who was not a peace officer discharged a firearm and caused injury or death to a peace officer performing official duties. The bill requires a separate report on each type of incident.

Both reports must be made within 30 days after an incident and must be on written or electronic forms created by the attorney general. If the law enforcement agency maintains a website, a copy of the report must be posted on it.

By February 1 of each year, the attorney general's office must submit a report on both types of incidents to the governor and the legislative committees with primary jurisdiction over criminal justice matters. The annual report must include the total number of incidents, a copy of each report submitted to the office by law enforcement agencies, and a summary of those reports.

Law enforcement agency reports on incidents during which a peace officer discharged a firearm causing injury or death to another must include:

- the date and location of the incident;
- the age, gender, and race or ethnicity of each peace officer involved in the incident;
- if known, the age, gender, and race or ethnicity of each injured or deceased person involved;
- whether the person was injured or died as a result of the incident;
- whether injured or deceased persons used, exhibited, or carried a deadly weapon;
- whether the peace officer was on duty;
- whether the peace officer was responding to an emergency call or request for assistance; and
- whether the incident was related to the execution of a warrant or a hostage, barricade, or other emergency situation.

The office of the attorney general must post the reports on its website within five days after receiving them.

Agency reports on incidents in which a person who was not a peace officer discharged a firearm and caused injury or death to an officer performing an official duty must include:

- the date and location of the incident;
- the age, gender, and race or ethnicity of each injured or deceased peace officer involved in the incident;
- if known, the age, gender, and race or ethnicity of each person who discharged a firearm and caused injury or death to a peace officer during the incident; and
- whether the officer or anyone else was injured or died as a result of the incident.

Supporters said

HB 1036 would help the state gather a full and accurate picture of statewide peace officer-involved shootings, including incidents during which officers were harmed or killed by another person who discharged a weapon. Currently, there is no compilation of statewide data on these incidents involving deadly force. While such incidents may be reported to the state in individual crime reports, the data are not reported in the way required by the bill.

By requiring one statewide entity to collect and report uniform data on individual incidents, HB 1036 would provide valuable information to policymakers and researchers. These data could be used to craft solutions to problems and develop public policies. They also could help the state and others develop a full picture of such incidents, which would increase transparency and could further public trust between officers and communities.

The bill's reporting requirements would not be burdensome on law enforcement agencies because the required information should be easily accessible and could be reported electronically. The narrow scope of the data collected should allow law enforcement personnel who were not officers to file the reports

quickly, so compliance should not depend on the availability of officers. None of the information reported would identify an officer or individual, nor would it have an impact on investigations.

Opponents said

HB 1036 could place a burden on local law enforcement agencies to report information that already appears in crime reports sent to the Department of Public Safety. Duplicating these efforts could be challenging for agencies, many of which already are stretched thin. Timelines for reporting could be difficult to meet, especially if an officer was injured or an investigation was ongoing.

The data requested in HB 1036 might not necessarily give a full, fair picture of officer-involved shootings. Additional information, such as whether the officer was serving a warrant or on patrol, could more accurately portray these incidents and be more useful in crafting policy responses.

Notes

The HRO analysis of [HB 1036](#) appeared in Part One of the May 6 *Daily Floor Report*.

Raising the age for adult criminal responsibility

HB 1205 by Dutton
Died in the House

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HB 1205 would have raised the age of adult criminal responsibility in Texas from 17 to 18 years old. The bill would have made conforming changes to reflect this, including amending juvenile court procedures, changing offenses in which the age of a person committing the offense is a factor, and altering certain criminal procedures. The Texas Juvenile Justice Board would have been required to appoint an advisory committee to monitor and evaluate implementation of HB 1205.

Supporters said

HB 1205 would amend Texas law to better conform with national trends in juvenile justice, scientific knowledge about juveniles, federal law, and the overall goals of the juvenile justice system.

Texas is one of a shrinking number of states that automatically prosecutes all 17-year-olds in the adult system. Federal law and recent Supreme Court rulings indicate that laws and policies should reflect recognized differences between children and adults. Studies on brain development have shown that 17-year-olds are still maturing, making them more susceptible to poor decision-making but also more amenable to rehabilitation. Keeping 17-year-olds in the juvenile justice system holds youth accountable but does so in a setting different from that used for fully developed adults. Current law allows juveniles to receive services and support not available in the adult system.

HB 1205 would resolve some inconsistencies in how the state treats 17-year-olds. While these youth are not able to vote, join the military without parental permission, or buy a lottery ticket, state law holds them accountable for their criminal actions as if they were adults. Charging 17-year-olds as adults subjects them to adult courts, adult punishment, and adult detention. It leaves youth with an adult criminal record that can have long-lasting consequences. Housing 17-year-olds in adult correctional facilities has been shown to increase their risk of abuse or suicide and the likelihood of re-offending.

The costs of not making this change could be greater than the cost of serving 17-year-olds in the juvenile system. For example, compliance with the federal Prison Rape Elimination Act (PREA), which requires 17-year-olds to be separated from older prisoners, has led to extreme and costly measures for some adult facilities. Facilities in noncompliance also could face potential loss of federal funding for failing to comply with PREA.

The January 2017 effective date for HB 1205 would allow gradual implementation of the bill. Juvenile correctional population projections indicate that resources would be available to serve incoming juveniles. In other states, concerns about cost increases have not come to pass. Up-front costs would be offset by preventing youth from becoming adult offenders and instead helping them become contributing taxpayers.

The bill would not change a court's ability to certify 17-year-olds as adults when transfer to adult court was warranted. It would not lead to a surge in certification, because juvenile courts transferring youth to adult court still would require certain specific findings. The Texas Juvenile Justice Department and most county detention facilities already must separate youth by age. The addition of 17-year-olds to the juvenile system would not mean 13- and 14-year-olds would be detained in the same areas as 17-year-olds.

Opponents said

HB 1205 would be a major policy change that could have a significant negative impact on the juvenile justice system. The bill would initiate the flow of thousands of 17-year-olds into the already struggling juvenile system, which has seen a number of upheavals and incidents over the past few years. Seventeen-year-olds are old enough to appreciate their actions, and the current system handles them appropriately.

The bill could have unintended consequences, such as an increased number of juveniles being certified as adults to the criminal system or an increased number in

determinate (fixed) sentences. A 17-year-old in an adult detention setting, as current law requires, would have access to the better oversight and protection of such a facility, while 13- or 14-year-olds in juvenile settings, which are more informal, could be endangered by the introduction of older youth.

Adding 17-year-olds to the population of youth served locally could place a strain on juvenile courts, juvenile probation, and local juvenile programs and facilities. Serving individuals in the juvenile justice system instead of the adult corrections system also would be expensive. Because of its January 1, 2017, implementation date, HB 1205 would cost only about \$6 million through fiscal 2016-17, according to Legislative Budget Board estimates. However, the costs would increase beginning in fiscal 2018-19, the first budget period during which the bill would be in effect for the entire biennium.

Notes

HB 1205 was placed on the House's May 12 General State Calendar but not considered. The HRO analysis of [HB 1205](#) appeared in Part Three of the May 12 *Daily Floor Report*.

A provision that would have raised the age of criminal responsibility to 18 years old was added by the House to **SB 1630** by Whitmire, which revised how the Texas Juvenile Justice Department uses state facilities. However, the provision raising the age was not included in the enrolled version, which took effect September 1, 2015. The HRO analysis of [SB 1630](#) appeared in Part One of the May 25 *Daily Floor Report*.

State responses to children missing during investigations

HB 2053 by Farney
Generally effective September 1, 2015

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HB 2053 revises how the Department of Family and Protective Services (DFPS) and the Department of Public Safety (DPS) respond when children who are the subject of child abuse and neglect investigations go missing. The bill also expands the type of information included in the state's child safety check alert list, establishes a training program on the alert list, and requires an annual progress report to the Legislature on the use of the alert list.

DPS notification of certain missing children.

In abuse or neglect investigation cases that have been assigned the highest priority, DFPS must notify DPS if at any time DFPS is unable to locate the child or family. If DPS locates the child and the child's family, DPS must notify DFPS of their location.

If DFPS has been unable to locate a child or a child's family after not more than 20 days, the department must notify DPS, which in turn must notify the Texas Crime Information Center (TCIC) to put the child and the child's family on the child safety check alert list. The bill eliminates a process under which DFPS, after exhausting all available means, could initiate a process to have a court issue an order to place the child's family members on the alert list.

The purposes of the child safety check alert list are expanded from being used to investigate a report of child abuse or neglect to include providing protective services to a family receiving family-based support services and providing protective services to the family of a child in the managing conservatorship of the department.

Information in child safety check alert list. HB 2053 expands the information, if available, that must be included in the TCIC child safety check alert list to include:

- personal descriptions and identifying numbers of the child and of the family member alleged to have abused or neglected the child;
- physical descriptions and other information relating to the child's parent, managing conservator, or guardian; and

- a description of the motor vehicle suspected of transporting the child.

Law enforcement response to child safety check alert. HB 2053 revises the process that occurs when law enforcement officers locate a child or someone else on the child safety check alert list. Under these new procedures, law enforcement officers must contact DFPS immediately and request information from the department about the case. Similar to a previous requirement, they also must request information from the child and other person about the child's safety, well-being, and current residence. The bill gives officers authority to temporarily detain the child or other person to ensure the child's safety and well-being. Similar to previously existing procedures, if officers determine that certain circumstances outlined in the Family Code exist, officers may take temporary possession of the child without a court order. If the officer does not take temporary possession of the child, the officer must obtain the child's current address and other information and report it to DFPS.

Alert list training, report. The Texas Commission on Law Enforcement must establish an education and training program on the child safety check alert list and make the program available to DFPS child protective services workers. Beginning January 1, 2016, a peace officers must complete the program before obtaining an intermediate or advanced proficiency certificate from the commission.

HB 2053 requires DPS to submit to legislative committees by February 1 of each year a report on the use of the child safety check alert list. The first report is due in 2017.

Supporters said

HB 2053 would help prevent tragedies that can occur when children and their families cannot be located during Department of Family and Protective Services (DFPS) investigations of abuse and neglect. The bill would be called "Colton's Law," in honor of a young

Texas boy who died while he and his family were under investigation by DFPS.

Requiring DFPS to directly notify the Department of Public Safety (DPS) if at any time the location of a child or family was unknown in the highest priority cases would quickly make law enforcement officers statewide aware that a child had gone missing. Having DPS report back to DFPS if it located such children would facilitate information sharing between the agencies.

The bill also would expedite the process of putting missing children involved in abuse and neglect investigations on the state's child safety alert list. Removing the need to go through a court and eliminating a requirement that DFPS exhaust all means available before starting the process could reduce the months that it currently can take to place a child on the alert list. Allowing DPS to directly place these children on the list would remove jurisdictional questions about who can perform this function while more quickly getting this information to all law enforcement officers. The gravity of these cases and the need to find families quickly would outweigh concerns about eliminating the requirement for a court order to place individuals on the list.

The bill would require additional information to be included on the child safety check alert list to help law enforcement more easily recognize missing children, families, and their vehicles. This information would be used only for investigations.

HB 2053 would allow officers to detain the child or other person temporarily, limiting these detentions to cases in which the officer was ensuring the child's safety and well-being. It would be best to give law enforcement officers the discretion for temporary detentions. Officers would continue to have authority to take temporary custody of a child without a court order under certain circumstances.

The bill would improve awareness and use of the alert list by establishing a training program about the list and making it available to child protective services workers and peace officers. An annual report to the Legislature on the use of the alert list in finding missing children would aid future legislative decision making.

Opponents said

Current law has processes and systems that, if followed, could have protected a child in Colton's situation, and people should be educated and trained on those existing policies.

Court approval required in current law to place children and their families into the alert system should continue. This practice provides the oversight and due process needed before placing children and families on the alert list. Judges handling child abuse and neglect cases are used to handling emergency situations and understand the need to issue an order quickly to place a child on the alert list.

Current law also respects limits on detentions by authorizing law enforcement officers to take possession of a child if specific grounds for immediate removal are met, while in other cases requiring officers to obtain contact information, report it to DFPS, and then release children and their families. HB 2053 would go beyond these reasonable limits by authorizing temporary detentions under certain circumstances.

Including certain detailed information in the child-alert list, such as the description of a car in which a child might be transported, could raise privacy concerns.

Other opponents said

While HB 2053 would make some strides in improving the process used to look for children who go missing during child abuse and neglect investigations, it would not go far enough. To recognize that missing children who are part of cases assigned the highest priority by DFPS might be in immediate danger, the bill should require DPS to conduct investigations to locate them. To best protect children, law enforcement officers who locate such children should be required to detain them until DFPS can respond.

Notes

The HRO analysis of [HB 2053](#) appeared in Part Two of the April 27 *Daily Floor Report*.

Revising the selection of grand juries

HB 2150 by Alvarado
Effective September 1, 2015

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HB 2150 revises the state’s system for selecting grand jurors. The bill eliminates the previous process that required jury selection by jury commissioners. District judges are no longer required to appoint three to five jury commissioners who then select persons to be summoned to serve on grand juries. District judges now must follow what used to be an optional system and direct that 20 to 125 prospective grand jurors be selected and summoned in the same way as panels for civil trials in district courts.

The bill requires courts to identify at least 16 qualified jurors and to select 12 individuals to serve as grand jurors with the rest as alternates. The jurors must be randomly selected from a fair cross section of the population of the area served by the court.

HB 2150 adds to the questions that must be asked of jurors when examining their qualifications to include a query about whether the individual has ever been convicted of misdemeanor theft or is under indictment for misdemeanor theft. It also establishes eight new causes that can be used to challenge particular jurors and establishes circumstances under which jurors must recuse themselves from grand jury service. The bill allows chosen grand jurors to be considered unavailable to serve for any reason that the court determines constitutes good cause for dismissing the juror.

Supporters said

HB 2150 would repeal the outdated grand jury commissioner jury selection method — also known as the “key man” system — currently used in Texas and would require a random jury pool call and selection method that about half of the state courts in Texas already use. Almost every other state and the federal court system have moved from using a key man system to the random selection method. The system in Texas should be standardized under the random selection method that would be implemented by this bill.

The bill would lead to more diversity on grand juries by requiring that grand jurors and alternates be randomly selected from a fair cross section of the population served by the court. Grand juries should be more reflective of the diverse communities they serve. Allowing jury commissioners under the key man system to select their acquaintances to serve on the jury can lead to a jury that is not representative of a county’s population.

Amending the grand jury selection system would place more community confidence in grand juries. The current system allows for the grand jury to be stacked with individuals who have close ties to the legal and criminal justice system. This is not fair, can be discriminatory, and does not ensure a cross section of the community on grand juries. Using the random selection method also would reduce repetitive service by the same jurors.

Opponents said

HB 2150 would remove discretion from judges, who should retain the option of continuing to use the jury-commissioner selection system to pick a grand jury if appropriate for their counties.

HB 2150 could make impaneling grand juries in smaller or rural counties more difficult and could decrease the diversity of juries in these counties. Because small and rural counties have fewer residents, random selection can produce a jury that is not as diverse as the key man system that some judges favor. A smaller population also makes it more difficult to find enough individuals who can make the time and other commitments to sit on a grand jury. The current key man system can speed up the process of selecting a grand jury because it allows for a panel of individuals to be selected who already meet some of the qualifications.

Notes

[HB 2150](#) was digested in Part 3 of the May 11 *Daily Floor Report*.

The House approved another bill, **SB 135** by Whitmire, which would have revised the system of selecting grand juries and eliminated selection by jury commissioners. SB 135 died in the Senate after it was amended and passed by the House. The HRO analysis of [SB 135](#) appeared in Part Two of the May 23 *Daily Floor Report*.

Grant program, policies for police body cameras

SB 158 by West
Effective September 1, 2015

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SB 158 establishes a grant program through the governor's office for local law enforcement agencies to help defray the cost of body-worn cameras for law enforcement officers and establishes requirements for body camera policies.

The bill authorizes municipal police departments, sheriffs, and the Department of Public Safety to apply to the governor's office for a grant to equip peace officers with body-worn cameras and to defray the cost of implementing SB 158. The governor's office must create and implement a matching grant program using federal, state, local, and other funding. Local law enforcement agencies must match 25 percent of the grant money. Law enforcement agencies must report annually to the Texas Commission on Law Enforcement (TCOLE) about the costs of body camera programs, and the commission must compile the information and report it to the governor and Legislature.

Local policies. Law enforcement agencies that receive a grant for body cameras or that operate a program with the cameras must adopt a policy on their use. The policy must ensure that a camera is activated only for law enforcement purposes, and it cannot require that the cameras be activated for the entire period of an officer's shift. Local policies must include provisions and guidelines on activating recordings, data retention, and public access to certain recordings.

The bill requires the training of officers and other personnel who work with the cameras and their data. TCOLE, in consultation with other entities, must develop or approve a training curriculum by January 1, 2016.

SB 158 authorizes law enforcement agencies to enter into interagency or interlocal contracts to receive body-worn camera services and have certain operations performed through a Department of Information Resources program.

Handling of certain interactions with public, certain recordings. Officers may choose not to record any non-confrontational encounter, including witness and victim interviews.

The bill establishes guidelines for the handling of recordings of incidents involving the use of deadly force or those related to administrative or criminal investigations of officers.

The bill restricts the use of personally owned cameras for agencies receiving grants under the bill and establishes requirements for other agencies that authorize their use.

Release of recordings. Information recorded by a body camera is not subject to disclosure under Public Information Act requirements in Government Code, sec. 552.021, except for information that was or could be used as evidence in a criminal prosecution. Agencies may assert any existing exception to disclosure and can release information in redacted form. SB 158 expands the deadlines in current law for responses to requests for open records relating to body camera recordings. Recordings are confidential if they were not required to be made and do not relate to law enforcement purposes.

The bill prohibits the release of certain types of recordings, including those made in private spaces and those involving fine-only misdemeanors that do not result in an arrest. SB 158 establishes guidelines for law enforcement agencies in handling voluminous public information requests.

It is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for a peace officer or other law enforcement agency employee to release a recording from a camera without the permission of the law enforcement agency.

Supporters said

SB 158 would help ensure that law enforcement agencies that elected to use body cameras developed policies within the same broad framework and would allow the state to offer support to those agencies through a grant program. The bill would not mandate the use of cameras, allowing that decision to continue to be made on the local level.

The use of recording devices worn by peace officers can help both the public and the police by documenting encounters. The equipment has been part of a recent national debate over law enforcement interactions with the public and can contribute to reductions in the use of force, complaints against police officers, and lawsuits filed against police.

By establishing a grant program, SB 158 would support agencies that wished to use the cameras. The grants could be used to help the agencies with the cost of equipping officers and to defray costs associated with a program, including data storage.

SB 158 would recognize that as the use of cameras grows, there is a need for a statewide framework for local policies. Some uniformity across the state is necessary to ensure that local policies address common issues and that the policies properly balance concerns about the use of cameras. The bill would meet this need by broadly outlining what would have to be addressed in local policies but allowing details to be established at the local level.

The bill would address privacy concerns of both officers and the public by allowing cameras to be deactivated for nonconfrontational encounters with witnesses and victims and prohibiting the release of recordings made in private spaces and those involving fine-only misdemeanors that did not result in arrests.

The bill would address concerns about agencies' ability to meet open records requests by lengthening deadlines for responses to the requests and establishing guidelines for handling voluminous requests. Within the guidelines in the bill, agencies could set parameters on what was recorded so that they were not overwhelmed by data.

The bill would not create a long-term funding obligation for the state. In 2017, the Legislature could evaluate the use of state funds under the bill and make a decision about continued funding.

Opponents said

SB 158 is unnecessary and could infringe on local policies designed to meet local needs. Given the emerging nature of the use of body cameras and the many unresolved issues with their use, it would be premature to establish a statewide framework on how the equipment and data should be handled. For example, there are unanswered questions related to privacy and the handling of large amounts of data that could be produced by the cameras. Local agencies are in the best position to craft such policies, and they should continue to be able to develop standards and practices tailored to meet their needs without being required to meet certain guidelines.

The state should not set up a situation in which it could have an ongoing obligation to local law enforcement agencies for their body camera programs or in which it imposed costs on those programs. The cost of outfitting officers with cameras, storing the data, responding to requests for the recordings, and maintaining the equipment would be high, and local agencies could look to the state as the resource for these expenses if the state required certain policies.

Notes

The HRO analysis of [SB 158](#) appeared in Part One of the May 24 *Daily Floor Report*.

Intent to commit online solicitation of a minor

SB 344 by Huffman
Effective September 1, 2015

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SB 344 revises the offense of online solicitation of a minor. The bill changes the definition of “minor” under the crime so that it means those who are younger than 17 years old and no longer includes those who merely represented themselves to be younger than 17.

The bill changes the intent requirement for the offense when it involves communicating with a minor in a sexually explicit manner or distributing sexually explicit material to a minor. The requirement that actions be taken with the intent to arouse or gratify the sexual desire of any person is eliminated. Instead, actions must be taken with the intent to commit specific sexual offenses or human trafficking offenses. The bill also revises the defenses to prosecution for the crime.

Supporters said

SB 344 would revise the state’s law prohibiting the online solicitation of a minor to address a portion of the law found unconstitutional. In 2013, the Texas Court of Criminal Appeals found in *Ex parte Lo* that Penal Code, sec. 33.021(b) was unconstitutionally overbroad because it prohibited constitutionally protected speech and was not narrowly drawn to achieve only the objective of protecting children from sexual abuse. SB 344 would amend the law to address the court’s concerns and allow Texas to continue to protect children from online sexual predators.

The bill would rectify problems the Court of Criminal Appeals identified with the part of the offense involving communications with a minor. It would address the court’s concern with the intent required to commit the offense by replacing current language with a requirement that a person have the intent to induce a minor to commit specified sex or human trafficking crimes. This change would ensure that conduct that was not targeted by the law or that was protected by the First Amendment did not fall under the law’s provisions. The offenses would be limited and listed in the statute so that the law was narrowly tailored, as required by the court.

The bill also would revise the situations that are not permitted to be used as defenses to prosecution. This change would apply the law to those actually soliciting minors for meetings, not on those engaged in fantasies or fictional scenarios. Other changes to the defenses to prosecution would be made to remove some redundancies and potential conflicts with other parts of the Penal Code.

SB 344 would change the definition of a minor to focus the law on those who are actually younger than 17 years old. The change in the bill would prevent the law from being too broad and potentially affecting two adults pretending to be children.

Opponents said

SB 344 could be unnecessary. It would amend the current definition of a minor even though the Texas Court of Criminal Appeals’ 2013 decision did not suggest any changes were needed. Current law defining a minor would not lead to the prosecution of two adults pretending to be children. Under the bill, there would have to be intent to commit a sexual offense, and two adults pretending to be children would be communicating about a consensual act, not a crime involving a minor. Law enforcement authorities currently would not pursue such cases.

Notes

SB 344 was laid out on May 4 in lieu of its companion bill, **HB 861** by Dale. The HRO analysis of [HB 861](#) appeared in the April 23 *Daily Floor Report*.

Offense, liability for disclosure of intimate visual material

SB 1135 by Garcia
Effective September 1, 2015

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SB 1135 creates criminal offenses and allows civil lawsuits related to the disclosure or promotion of intimate visual material.

Criminal offenses. The bill creates a new criminal offense for the unlawful disclosure or promotion of intimate visual material. A person commits an offense if:

- without consent, an individual intentionally disclosed visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;
- the visual material was obtained or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;
- the disclosure of the material caused harm to the depicted person; and
- the disclosure revealed the identity of the depicted person, including through accompanying or subsequent information or material or information or material provided by a third party in response to the disclosure.

It is an offense to intentionally threaten to disclose, without consent, visual material depicting another with the other person's intimate parts exposed or engaged in sexual conduct to obtain a benefit in return either for not making the disclosure or in connection with disclosure.

It also is an offense to promote such material. A person commits an offense if, knowing the character and content of the visual material, the person promotes the material on a website or other forum that is owned or operated by the person.

It is not a defense to prosecution that the depicted person created or consented to the creation of the material or voluntarily transmitted the material to the one disclosing it. The bill creates several affirmative defenses to prosecution to the disclosure or promotion of material, including ones for:

- disclosure or promotion made in the course of lawful and common practices of law enforcement or medical treatment, reporting unlawful activity, or a legal proceeding;
- disclosure or promotion consisting of visual material depicting in a public or commercial setting only a voluntary exposure of a person's intimate parts or the person engaging in sexual conduct; or
- an interactive computer service, as defined under federal law, if the disclosure or promotion consisted of visual material provided by another person.

These offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000).

Civil liability. The bill makes defendants liable to persons depicted in intimate visual material for damages from the disclosure if:

- the defendant disclosed the material without the effective consent of the depicted person;
- the material was obtained or created under circumstances in which the depicted person had a reasonable expectation that it would remain private;
- the disclosure caused harm to the depicted person; and
- the disclosure of the material revealed the identity of the depicted person in any manner, including through accompanying or subsequent information or material or material provided by a third party in response to the disclosure of the intimate visual material.

Defendants are liable for damages arising from the promotion of the intimate visual material if, knowing the character and content of the material, the defendant promotes the material on an Internet website or other forum owned or operated by the defendant.

A claimant who prevails must be awarded actual damages, including for mental anguish, and may recover exemplary damages.

Courts have personal jurisdiction over defendants in a suit brought under the bill if the defendant resided in Texas, the claimant resided in Texas, the material was stored on a server in Texas, or the material was available to view in Texas.

Supporters said

SB 1135 would address the problem of the electronic distribution of sexually explicit images of someone without the subject's permission. The images, sometimes taken without consent, may be posted on websites or emailed to employers, schools, family members, and others. Sometimes contact or identifying information is included.

Current laws provide inadequate deterrence and punishment for these actions. Explicit images can be uploaded to websites where thousands can see them and they can be shared with other sites. Victims can suffer threats, harassment, stalking, and sexual exploitation as well as embarrassment and shame that intrude into their work, school, or personal lives. Harm is difficult to remedy because removing images from a website rarely prevents continued distribution. Both civil and criminal avenues are important in combating these actions.

The bill would address this problem with new offenses carefully crafted not to be overly broad and to meet all legal and constitutional standards. The bill would not be a constitutionally prohibited content-based restriction on speech but would relate to sexual defamation and would enact permissible provisions. The bill contains several thresholds an action would have to meet to fall under the offense so that common actions were not included. The offense would address situations in which a threat of disclosure had been used to blackmail others.

The bill would include civil penalties as another tool to address the economic incentive related to these actions. Current causes of action can be inadequate in some of these cases, so the bill would establish liability for certain specific actions. Civil penalties could allow those who profit from the disclosure to be held accountable, along with those who make the disclosure. The bill would include injunctive relief and damages related to it to give the court the power to enforce temporary restraining orders or temporary or permanent injunctions.

Opponents said

SB 1135 would be a content-based restriction on speech, which would be presumptively unconstitutional.

The state should be cautious about creating new crimes for nonviolent behaviors. Making such offenses potentially carry jail time could be too punitive given the nonviolent nature of these actions. In some cases, current statutes, including those for harassment and impersonating another, already criminalize some activities that occur in these situations. While distributing these images may be reprehensible, these cases generally could be handled outside the criminal justice system, where victims could seek damages through civil courts.

Instead of making individuals civilly liable for the specific actions described in SB 1135, in some cases civil suits could be brought under existing laws by raising issues such as privacy, emotional distress, or defamation.

Notes

The HRO analysis of [SB 1135](#) appeared in Part 2 of the *May 25 Daily Floor Report*.

Another bill, **HB 603** by S. Davis, dealt with the unlawful dissemination of certain types of visual material and was approved by the House but died in the Senate. The House-approved version of HB 603 would have created an offense if:

- a person intentionally disseminated visual material depicting another person engaging in sexual conduct or with the other person's exposed intimate parts;
- the person obtained the visual material under circumstances in which a reasonable person should have known or understood that the visual material was to remain private;
- the person knew or should have known that the depicted person did not consent to the dissemination;
- the depicted person was identifiable from the visual material or from other information displayed in connection with the material; and
- the material was disseminated with the intent to harass, abuse, or torment the depicted person or to obtain a benefit in connection with the dissemination.

Revising improper photography law

SB 1317 by Menéndez
Effective June 18, 2015

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SB 1317 revises the criminal offense of improper photography and renames it “invasive visual recording.”

The bill eliminates intent requirements for committing the crime that differed depending on whether photographs were taken in a bathroom or private dressing room or whether they were taken elsewhere. The requirement that photographs be taken with the intent to arouse or gratify the sexual desire of anyone is eliminated. Under the bill, the offense is committed if images were taken without the other person’s consent and with intent to invade the other’s privacy. All photographs taken in a bathroom or changing room that meet this requirement are offenses.

For other photographs and images, the bill creates an additional requirement that the images be of the intimate area of another person if the other had a reasonable expectation that the intimate area was not subject to public view. The bill also establishes a definition of “intimate area.”

SB 1317 creates procedures in these cases for handling evidence consisting of images of children. The procedures include requiring that during criminal hearings or proceedings, courts seal and keep from the public images of children younger than 14 years old.

Supporters said

SB 1317 would revise Texas law on improper photography to address problems with the statute identified in a Texas Court of Criminal Appeals 2013 opinion that found part of the law unconstitutional. The bill would update the law to address the use of cell phones and other electronic devices used to take inappropriate photographs and videos without consent. Taking invasive and improper photographs of others without their consent is harmful conduct appropriately addressed by the Penal Code. Concerns that current law is broadly written would be addressed in a constitutional way by eliminating intent requirements based on the sexual desire of any person and basing the offense on the violation of privacy.

Opponents said

The state should move cautiously to ensure that it does not enact a content-based restriction on speech, which would be unconstitutional. The bill could broadly prohibit certain types of images and circumstances in which individuals might not have a privacy expectation, which could lead to unfair convictions.

Notes

SB 1317 passed on the House Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*. **HB 3196** by D. Miller also dealt with the offense of improper photography and was analyzed in Part One of the May 12 *Daily Floor Report*. [HB 3196](#) was placed on the General State Calendar for May 12 but was not considered.

Regionalization plan for juvenile justice facilities

SB 1630 by Whitmire
Effective September 1, 2015

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SB 1630 requires the Texas Juvenile Justice Department (TJJD) to develop a regionalization plan for keeping children closer to home rather than having them committed to state facilities. It also amends court procedures used when certain youths are sent to TJJD facilities, changes some of the department's funding procedures, and expands oversight of the Office of the Independent Ombudsman.

Regionalization plan. SB 1630 requires TJJD to adopt a regionalization plan for keeping children closer to home in lieu of commitment to the department's secure facilities. The plan must define regions to be served by local juvenile probation departments, counties, halfway houses, or private operators. TJJD is required to ensure that each region has research-based programs for its target population.

The regionalization plan must meet several requirements, such as including sufficient mechanisms to divert at least 30 juveniles from TJJD secure facilities in fiscal 2015 and 150 youths in 2016. For fiscal 2018 and each subsequent year, the plan must include savings generated by the decrease in juveniles sent to TJJD facilities. The regionalization plan must be finalized by August 31, 2016, and the plan must create a new division in TJJD to administer and monitor it.

TJJD must develop specialized programs for children committed to its facilities. The programs must ensure safety and security for youths and have developmentally appropriate program strategies. The department must identify children in its facilities who could be safely and appropriately transferred to alternative local placements or halfway houses, placed on parole, or discharged from the department.

Court commitment procedures. SB 1630 changes court procedures for committing to the TJJD a juvenile who is found to have engaged in delinquent conduct that constitutes a felony but is not given a determinate (pre-determined number of years) sentence. In such cases, courts must make a special commitment finding that the child has behavioral health or other needs that cannot be met with community resources.

Funding local probation, regionalization plan.

SB 1630 requires TJJD to use a basic probation funding formula, among other current factors, when allocating funding to local juvenile departments. The basic probation formula must clearly define what basic probation entails and what services are provided.

The bill requires, instead of allows, the TJJD to set aside a portion of its funds for discretionary grants, including for projects dedicated to specific populations based on risk and needs and with established recidivism reduction goals. The grants must be based on documented, data-driven and research-based practices.

The Legislature is authorized to appropriate funds to initiate and support the regionalization plan so that savings are generated by decreases in the population of state facilities. TJJD must reimburse counties for the placement of children in the regional specialized program at a rate that saves the state money over the average cost of keeping a child in a state facility. TJJD may not adversely impact state aid for a local juvenile department that does not serve youths from other counties or does not act as a regional facility.

Role of ombudsman. SB 1630 gives the office of independent ombudsman authority over post-adjudication facilities for juvenile offenders and other residential facilities in which a court places a child. The bill also gives the ombudsman authority to investigate complaints alleging that the rights of youth committed to these facility were violated.

Sunset date. The bill changes the Sunset date for TJJD, abolishing the department and the TJJD board on September 1, 2021, instead of 2017.

Supporters said

SB 1630 would continue the successful reforms Texas has undertaken in its juvenile justice system during the past several years by ensuring that juveniles received effective treatment to prevent recidivism, were sent to the appropriate programs, and were kept safe.

Keeping certain low- and medium-risk youth closer to home under a regionalization plan, rather than sending them to large, far-away state facilities, could decrease recidivism and have other significant positive outcomes. SB 1630 would help address the needs of youths and allow for regional collaboration. The bill also would improve the treatment and rehabilitation of youth with specialized needs who could not be served in the community. State facilities still would be an option for the most serious youth offenders. The bill would result in overall savings to the state because state-run facilities have been shown to be more expensive to operate than local programs.

The increased authority that the bill would give to the office of the independent ombudsman would ensure that youth served in regional facilities received the same degree of oversight as youth in state facilities while the state works to continue improving outcomes by keeping more children close to home.

Opponents said

SB 1630 could burden juvenile probation departments across the state by extending the powers of the office of the independent ombudsman into some of their operations. Juvenile probation offices already are subject to TJJD oversight, and creating additional reporting requirements could be duplicative and problematic.

Notes

The HRO analysis of [SB 1630](#) appeared in Part One of the May 25 *Daily Floor Report*.



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Increasing member contributions to Texas ERS fund

HB 9 by Flynn
Effective September 1, 2015

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HB 9 increases the member contribution rate to the Employees Retirement System of Texas (ERS). The rate will increase from 7.2 percent of an employee's annual salary in fiscal 2016 and from 7.5 percent in fiscal 2017 to 9.5 percent in fiscal 2016 and subsequent years. The 9.5 percent contribution rate will remain in effect after September 1, 2017, although it would be reduced by one-tenth of one percent for each one-tenth of one percent that the state contribution rate dropped below the rate established for fiscal 2017. The bill also will increase the contribution rate for members of the Legislature from 8 percent to 9.5 percent beginning in fiscal 2016.

The bill eliminates a 90-day waiting period for membership in the retirement system. Membership will begin on the first day a person is employed or holds office and on the first day a person is reemployed or again holds office.

Supporters said

HB 9 would address one aspect of the state's underfunded pension system by increasing state employee contribution rates. The bill, in combination with an increased state contribution rate of 10 percent, is projected to reduce from an infinite period to less than 35 years the period of time required to pay off the fund's unfunded liability of about \$8 billion.

The bill would send a message to bond rating agencies that the Legislature is committed to addressing the ERS shortfall. Moody's Investors Service warned Texas in January to take care of its pension funds to avoid a future negative impact on the state's economy.

The increase in employee contribution rates is expected to be largely offset by a 2.5 percent state employee pay raise. Therefore, the state would address funding while not cutting benefits. Eliminating the 90-day waiting period for member participation would help the fund by providing a larger contribution base.

The bill also could pave the way for a future increase in retiree pay. Government Code, sec. 814.604 requires

ERS to pay a cost-of-living adjustment to certain long-time retirees when the pension fund amortization period is less than 31 years.

The state's retirement program is an essential tool in both recruitment and retention of the Texas workforce. HB 9 would preserve ERS as a valuable part of a state employee's compensation package. Those who argue for benefit cuts often fail to recognize that state salaries generally are lower than those of comparable jobs in the private sector.

Opponents said

HB 9 would not be the best option for addressing the unfunded liability in the state's pension fund. The ERS shortfall largely is a result of lawmakers failing to appropriate adequate funds for 19 of the past 20 years. Increased state appropriations would be a more efficient funding method than increasing employee contributions because employees can cash out their ERS contributions when they leave state employment. According to the fiscal note, significant increases in member contributions could result in more members electing to take a refund of their contributions than historically has happened.

Making the fund solvent should not come at the expense of a real pay raise for state employees, who have seen only modest increases in pay during the past seven years. Failure over the next fiscal biennium to provide a pay raise without requiring a corresponding increase in ERS contributions could lead to higher turnover of employees who do critical work serving Texans.

Other opponents said

The Legislature should not raise employee pay in the state budget to cover the increased member contributions in HB 9. Employees and the state both need to make financial sacrifices to stabilize ERS. In addition, benefit changes should be part of any proposal to shore up the pension fund. ERS administrators have

provided several options for benefit changes that could make the plan sound, including some that would impact current employees. Even with benefit changes, state employees still would enjoy a defined benefit pension system at a time when many private sector employers have shifted to 401(k) or other defined contribution plans.

Notes

The HRO analysis of [HB 9](#) appeared in the April 13 *Daily Floor Report*.

According to the Legislative Budget Board's fiscal analysis, HB 9 in concert with increased state contribution rates is expected to reduce the funding period to 32 years, which would not meet the statutory definition of actual soundness of 31 years.

Changing how a portion of the ESF is invested

HB 903 by Capriglione
Effective May 23, 2015

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HB 903 requires the comptroller to change how the Economic Stabilization Fund (ESF), also known as the “rainy day fund,” is invested. The bill applies to the portion of the fund that exceeds the “sufficient balance,” an amount determined by a legislative committee to ensure an appropriate amount of revenue in the account.

Under HB 903, the comptroller is required to invest a percentage of the ESF balance that exceeds the fund’s sufficient balance in accordance with the investment standard specified in Government Code, sec. 404.024(j). Under that standard, the funds must be invested under the restrictions and procedures for making the investments that people of “ordinary prudence, discretion, and intelligence, exercising the judging and care under the prevailing circumstances, would follow in the management of their own affairs [. . .].”

The comptroller is required to adjust the ESF’s investment portfolio periodically to ensure that the balance is sufficient to meet the fund’s cash flow requirements. The bill also requires the comptroller to include the fair market value of the ESF’s investment portfolio when calculating the cap on the fund and determining allocations from general revenue to the ESF and the State Highway Fund.

HB 903’s provisions requiring investment of part of the ESF expire when the Government Code’s provisions establishing the procedures to determine the ESF’s sufficient balance expire, currently set for December 31, 2024.

Supporters said

HB 903 would modify the Economic Stabilization Fund (ESF) investment strategy to ensure that the state was a responsible steward of taxpayer funds. The bill would balance the state’s need to have an adequate amount of money readily available in the ESF and the need to invest the fund prudently.

Currently, the ESF is in highly liquid, low-yield assets that in financial terms are described as cash

equivalents. Its recent earnings have been less than inflation, meaning that the ESF is losing purchasing power.

While it is prudent for the state to maintain a certain amount of liquidity so that the ESF is readily accessible in the event of an emergency or other need, it is unnecessary to subject the entire fund to this standard. With the fund’s balance estimated to reach \$11.1 billion by the end of fiscal 2016-17, absent any appropriations, there is more than enough in the fund to maintain an appropriate threshold of liquidity while investing a portion of the amount above the sufficient balance in a stable, safe class of assets with a slightly higher return.

The bill would protect the ESF by requiring the comptroller to use the prudent investor standard specified in the Government Code to invest a portion of the fund that is above the sufficient balance. This standard is well defined and considered a best practice by the institutional investment managers. The investments envisioned under HB 903 could be targeted to earn inflation or inflation plus a set percentage. Under some estimates, for every \$1 billion invested under HB 903, the state could earn \$15 million annually.

HB 903 would affect only a portion of the ESF. The bill would allow the comptroller to determine what portion of the fund was invested under the bill, but any amount set as the ESF’s sufficient balance — currently \$7 billion — would remain in the current class of assets. The comptroller should have the flexibility to determine what portion of the amount above the sufficient balance would be invested, rather than designate that amount in law, so that the investing could ramp up slowly and be changed when appropriate and necessary.

Investing part of the ESF would not make the state vulnerable during an emergency or pose problems when the Legislature needed to access the fund quickly. The fund’s sufficient balance would remain readily available. Funds invested under the bill would be liquid enough to be made available quickly if necessary — the majority within days and the rest soon thereafter.

The comptroller is the entity best suited to invest ESF funds. The comptroller currently handles the ESF, and keeping the funds under one entity would make management easier. The Texas Treasury Safekeeping Trust Company, which manages the fund for the comptroller, would continue in its role. While other entities may do a good job of investing state funds, the Texas Treasury Safekeeping Trust Company has the most experience with a large pool of assets that must be kept relatively liquid compared to other types of investments, such as endowments.

Opponents said

HB 903 could subject the state's emergency cash reserves to unnecessary risk. The ESF was set up for the purpose its name suggests — to stabilize state finances in a time of need caused by recession, depression, or other economic disruption. Investing a portion of the funds in a more aggressive portfolio could expose Texas to the risk of losing the very funds on which it would rely in an emergency.

Other opponents said

HB 903 should not limit the potential investment entities for the ESF to the comptroller. Other entities such as UTIMCO, which oversees investments for the University of Texas and Texas A&M systems, could be a better fit to manage the funds. The state could solicit potential investment plans from a number of entities and then retain legislative oversight of the investment of the fund by having the elected members of the Legislative Budget Board decide which plan to follow.

Another way to retain appropriate legislative oversight of the investment of the fund would be to establish a legislative committee to evaluate the investments or to set in statute a percentage of the ESF above the sufficient balance to be invested, instead of allowing the comptroller to determine the portion invested.

Notes

The HRO analysis of [HB 903](#) appeared in the April 13 *Daily Floor Report*.

Creating health-plan option for state employees

HB 966 by Crownover
Effective September 1, 2015

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HB 966 establishes a state consumer-directed health plan option for state employees and their eligible dependents. The board of trustees of the Employees Retirement System of Texas (ERS) is directed to establish health savings accounts and finance a self-funded high deductible health plan, with coverage beginning on September 1, 2016.

State and employee contributions. The state will contribute to a high deductible health plan the amount necessary to pay the cost of coverage, not to exceed the amount the state would contribute annually for a full-time or part-time employee for basic coverage under the existing Group Benefits Program.

For dependents, the state will contribute to a high deductible health plan the same percentage of the costs of coverage it would contribute annually for basic coverage of the dependent. Any remaining required contributions for dependent coverage will be paid by the employee. Amounts contributed by a plan enrollee for dependent coverage may be used to pay the cost of coverage not paid by the state or allocated by the ERS board to an enrollee's health savings account.

Before each plan year, the ERS board may determine the amount of allocation of the state's contribution, if any, to an enrollee's health savings account that remained after payment for coverage. A plan enrollee may contribute any amount allowed under federal law to the enrollee's health savings account.

ERS requirements. The ERS board must ensure that the plan includes preventive health care and must provide information about the plan to eligible employees.

The board is given exclusive authority to determine whether a plan enrollee is eligible to participate in a flexible spending account program. A plan enrollee may not participate in any flexible spending account that would disqualify the enrollee's health savings account from favorable tax treatment under federal law.

The board may not divide the self-funded risk pool of the group benefits program or create a separate self-funded risk pool for that program. The bill also requires ERS to study implementation of the consumer-directed health plan to determine actuarial impact, premium cost fluctuations, health care utilization rates, the status of the risk pool, and the ages of those who opt into the system. The report is due by January 1, 2020, to the governor and Legislature.

Supporters said

HB 966 would give state employees the option of controlling their health care expenses through participation in a high-deductible health plan with a health savings account. Health savings accounts are tax-protected accounts that can be spent only on health care expenses. In order to qualify for a health savings account, an individual would have to enroll in a high deductible health plan.

The bill would give employees the freedom to choose a plan that best fits their needs. Employees could build up their health savings account year to year through their own contributions, along with any state contributions, and take the account with them if they changed jobs.

Adding this option would not weaken the existing employee health plan through "adverse selection" as some have claimed because the bill prohibits the board from dividing the self-funded risk pool from the group benefits program. The overall cost of state employee health coverage would be shared by all participants, no matter which health plan they chose.

This type of plan could encourage participants to actively participate in their health care as consumers, not just as patients. Employees who chose a high deductible health plan with a health savings account could become more involved in the health care process and more conscious of health care costs, which could lead to lower expenditures.

Opponents said

HB 966 could pose unnecessary risks to the health of state employees and the long-term stability of the state's group insurance program. With deductibles of at least \$1,300 for individuals and \$2,600 for families, high deductible plans are most likely to be chosen by younger, higher-paid employees. This could leave older and perhaps less healthy workers in the traditional plan and cause costs to increase. This type of "adverse selection" could undermine the concept of insurance as spreading risk over the broadest possible pool to keep costs under control.

Studies have found that average contributions by employers to employees' health savings accounts did not cover the deductibles in a high deductible plan. Some lower-wage workers could experience financial hardships covering the gap between their health savings and the cost of care. Others could avoid or delay care because of costs.

Health savings accounts would not slow the overall growth of health care costs. Once an individual met the plan's out-of-pocket maximum, the plan would cover expenses in full, similar to a traditional plan. Individuals with chronic disease and high claims still would drive the bulk of health benefit costs, regardless of the type of plan.

Participants in a consumer-directed health plan are expected to shop for health insurance plans, but comparing plans can be difficult, as can managing the health savings account. The onus of making prudent health care decisions should not rest solely on state employees.

Notes

The HRO analysis of [HB 966](#) appeared in Part Two of the May 4 *Daily Floor Report*.

Procedures for public integrity prosecutions

HB 1690 by P. King
Effective September 1, 2015

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HB 1690 establishes procedures for investigating and prosecuting offenses against public administration.

The following are considered offenses against public administration:

- offenses listed in Title 8 of the Penal Code, including bribery and coercion, when committed by a state officer or state employee in connection with the powers and duties of the state office or employment;
- conduct that violates Government Code requirements relating to the Legislature and House speaker;
- conduct that violates Government Code requirements for campaign finance and personal financial disclosure and for registration for representation before state agencies when committed by a state officer or state employee in connection with their state powers and duties or by a candidate for state office;
- violations of nepotism laws committed by state officers in conjunction with their powers and duties of the state office; and
- violations of Election Code regulations of political funds and campaigns committed in connection with a campaign for or the holding of state office or an election on a proposed constitutional amendment.

Investigation. The Texas Rangers are required to establish a public integrity unit, which may perform an initial investigation into whether a person has committed an offense against public administration. The Rangers have authority to investigate such offenses, any lesser included offenses, and any other offenses arising from conduct that constitutes an offense against public administration. The public integrity unit may issue subpoenas to compel the production of relevant evidence that is in Texas. If a person fails to comply with a subpoena, the unit may file suit to enforce the subpoena.

Prosecutions. Investigations that demonstrate a reasonable suspicion that an offense occurred must be referred to the prosecutor in the county where

the defendant resided at the time the offense was committed. A person resides in the county where the person:

- claims a residence homestead under Property Code, ch. 41 if the person is a member of the Legislature, the Texas Supreme Court, or the Court of Criminal Appeals;
- claimed to be a resident before being subject to executive branch residency requirements under Tex. Const., Art. 4; or
- otherwise claims residence if none of the above provisions applies.

A prosecutor may request to be recused from a case for good cause and is disqualified upon submitting the notice of recusal to the court with jurisdiction over the complaint. Following a recusal, the presiding judges of the state's administrative judicial regions would by majority vote appoint a prosecutor from another county in the administrative judicial region where the case was filed. The alternate prosecutor may pursue a waiver to extend the statute of limitations for up to two years.

The bill requires the comptroller to pay from specified appropriations reasonable amounts incurred by a prosecutor for extraordinary costs of prosecuting an offense against public administration.

Cooperation, confidentiality. The bill requires state agencies and local law enforcement agencies to cooperate with public integrity investigations and exempts disclosed information from state public information laws.

Supporters said

HB 1690 would establish a fairer process than the current system for investigating and prosecuting elected officials for public corruption crimes. Complaints would be investigated by the Texas Rangers and prosecuted in the home county of the state officer or employee. This process would disperse power now held by a single district attorney's office in the state capital to prosecutors around the state. This spreading of authority

could help alleviate concerns that politics has played a role in certain high-profile prosecutions of state officials in Travis County.

The Texas Rangers are an elite law enforcement agency with the training and expertise to conduct public integrity investigations. The bill would use a neutral venue for prosecutions and would allow defendants to be tried by a jury of their peers. Contrary to opponents' suggestions that the hometown venue would favor a defendant, the criminal prosecution likely would be more accessible to local voters and covered by local media. If a local prosecutor had a conflict of interest, the bill would create a process for that prosecutor to ask to be recused and for an alternate prosecutor to be appointed. The bill would not rely too much on a prosecutor's willingness to be recused because public pressure likely would force the hand of a prosecutor who should step aside.

The bill would not disturb Travis County's jurisdiction over offenses involving insurance fraud and motor fuels tax collections. The Travis County District Attorney's Public Integrity Unit would continue to prosecute fraud and financial crimes targeting various state programs and certain crimes committed by state employees. These cases make up the majority of the unit's caseload.

Concern about the information provided in connection with public integrity prosecutions being made confidential is overstated. Current law contains exceptions from public information laws for records and information if the release of the information would interfere with a criminal investigation or prosecution, and the exception in HB 1690 is in line with current exceptions.

Opponents said

HB 1690 could result in less accountability in public corruption cases against state officers and state employees by giving those defendants a "home-field advantage" during a prosecution. The bill would make a significant change from the usual prosecution of crimes in the county where the offense occurred. This could lead to troubling situations, such as a public servant accused of official oppression for actions taken while on assignment in one part of the state being tried far from the county where the acts occurred.

The bill is based on incorrect perceptions that the Travis County district attorney has made partisan decisions in public corruption prosecutions. Since its inception, the unit has prosecuted elected officials from both political parties.

Placing venue in an official's home county could set the stage for crony politics if, for example, the local prosecutor overseeing the case were friends or political acquaintances with the official being prosecuted. The bill lacks specific requirements for recusal of a prosecutor, leaving it up to a prosecutor to self-report and ask for a recusal.

There could be conflicts of interest involving the Texas Rangers, which is a division of DPS. The DPS director is hired by the Public Safety Commission, whose five members are appointed by the governor. Many other high-ranking state executives also are appointed by the governor.

HB 1690 would exempt from state public information laws information from state agencies and local law enforcement provided in connection with public integrity prosecutions. This blanket exemption could result in information that normally would be available to the public through open records laws becoming off limits when a local prosecutor takes over one of these cases.

Notes

The HRO analysis of [HB 1690](#) appeared in the April 20 *Daily Floor Report*.

Dedicating excess ESF money to retiring state debt early

HJR 8 by Otto
Died in the Senate

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HJR 8 would have proposed an amendment to the Texas Constitution to dedicate funds in excess of the Economic Stabilization Fund (ESF) cap to retiring state debt early. Under Texas Constitution, Art. 3, sec. 49-g(g) the ESF, also known as the “rainy day fund,” cannot exceed an amount equal to 10 percent of the total amount deposited into general revenue the previous biennium, minus investment income, interest income, and amounts borrowed from special funds.

If approved by voters, HJR 8 would have amended the Constitution to require that money withheld from the ESF by the comptroller to avoid exceeding the cap be deposited in a new general revenue account, from which it could have been appropriated only to retire state debt early. This would have replaced current law that leaves any money exceeding the cap in the general revenue fund.

Supporters said

HJR 8 would establish a fiscally responsible use for money that exceeded the cap on the ESF. The ESF never has been close to reaching its cap so the issue of what to do with excess funds generally has not been considered.

Although the Legislature could appropriate spillover funds to early debt reduction without HJR 8, the amendment is needed to ensure fiscal discipline on this issue. Texas should not use money saved during good economic times to grow state government or to temporarily fund ongoing expenses, and HJR 8 would remove the temptation to use excess ESF funds for these purposes. Allowing funds that spill over from the ESF cap to remain in general revenue could create problems if the funds were appropriated for ongoing, general state spending because the source of the funds would not be dependable from one biennium to the next.

Retiring debt early would be the best use of these funds because reducing the state’s debt burden increases options for spending current revenue and for borrowing in the future. According to the Bond Review Board,

Texas had \$44.3 billion in total debt outstanding at the end of fiscal 2014, and HJR 8 would apply only to retiring that debt early, not to paying regularly scheduled debt service. Decreasing debt would improve the state’s credit position.

The Legislature would retain full control over the spending of funds deposited in the new account under HJR 8. The Bond Review Board, the Texas Public Finance Authority, and other entities could identify debt that might be advantageous for the state to retire early, but the Legislature would decide when and if debt was retired early.

Because HJR 8 would constitutionally dedicate funds to early debt retirement, appropriations of the funds would not count toward the state’s constitutional spending limit, which constrains the use of certain tax revenue not dedicated by the Constitution. This arrangement would be appropriate because retiring debt early is a long-term fiscal strategy that would save the state money, and the spending cap is designed to limit general purpose spending.

HJR 8 would neither reduce the ESF nor divert any money currently earmarked for the fund. The amendment would apply only to funds above the ESF cap that would be slated to remain in the general revenue fund under current law. If HJR 8 were approved in conjunction with HB 8 by Otto, a significant amount of money could be available for early debt reduction beginning in fiscal 2018-19 because HB 8 would reduce the ESF cap.

Opponents said

By dedicating funds in excess of the ESF cap for one purpose, HJR 8 would reduce the flexibility of lawmakers to direct state appropriations. Current law balances the needs of the state both to save money for the future and to meet other spending priorities. Once enough money has been saved in the ESF to reach the cap, funds should continue to be available for any purpose, rather than being reserved for just one.

HJR 8 would result in funds being locked away for early debt retirement, even if it were not advantageous to the state to do so. Debt might be unavailable to retire early, interest on the debt could be so low that other uses of the money might be more beneficial to the state, or consistently retiring debt early could factor unfavorably into the way lenders structure the state's debt.

Texas could consider other worthy causes if it wanted to dedicate funds in excess of the ESF cap. Using excess funds to make contributions to the Employees Retirement System, the Teacher Retirement System, or the Texas Tomorrow Fund would pay down future liabilities of the state. Public education, higher education, or taxpayer relief also could be appropriate uses for excess ESF funds.

The spending limit is designed as a check on state spending, and HJR 8 would work counter to this policy by constitutionally dedicating funds and removing them from the spending limit calculation. The Texas budget should be as transparent as possible and should count the spending of general revenue that spills over the cap toward the spending limit. The proposed amendment also would not be in line with responsible budgeting if funds made available by retiring debt early were used to expand government.

Notes

The House also approved **HB 8** by Otto, which would have prohibited the comptroller from depositing federal money received by the state into the general revenue fund, thus changing the basis for calculating the ESF cap. HB 8 died in the Senate. If it had been enacted, the ESF cap would have decreased from an estimated \$16.7 billion to \$11.8 billion in fiscal 2018-19, according to the bill's fiscal note. Under the lowered cap, a projected \$538 million would have exceeded the cap in fiscal 2018, making that amount available for debt reduction had HJR 8 been approved by the voters.

The HRO analyses of [HJR 8](#) and [HB 8](#) appeared in the April 7 *Daily Floor Report*.

Restricting uses of dedicated revenues

HJR 111 by Darby
Died in the Senate

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HJR 111 would have amended the Texas Constitution to prohibit the use of revenue, other money, and account or fund balances that were dedicated to a particular purpose from being used to certify spending and to estimate available revenue in the biennial revenue estimate.

Use of dedicated revenue to certify spending.

The comptroller would have been prohibited from considering any dedicated revenue or money or account or fund balances as being available to certify that there were available funds for an appropriation for which the money was not dedicated. The Legislature would have been prohibited from enacting laws making an unappropriated balance of dedicated accounts or funds available for general government purposes or for certifying spending except by repealing a dedication.

Use of dedicated revenue for biennial revenue estimate. When making the biennial revenue estimate before each legislative session, the comptroller could not have considered any portion of any dedicated revenue, other money, or account or fund balance as being available for an appropriation that was not for a purpose or entity to which the money was dedicated.

Restriction on spending dedicated revenue.

Dedicated revenue or other money received by the state from a particular source or held or deposited in an identified account or fund inside or outside of the treasury could not have been appropriated or expended for any purpose or to any entity other than that to which it was dedicated, unless the Legislature repealed the dedication.

Supporters said

HJR 111 would increase transparency and accountability in the state's budgeting process. The proposed amendment would move Texas closer to these principles by ensuring that money collected for dedicated purposes was not counted as being available for general purpose spending and that funds collected by the state were used only for the purposes for which

they were collected. While reducing reliance on general revenue dedicated account fund balances could continue without a constitutional amendment, the practice is so ingrained that an amendment is necessary to guarantee the reductions continue and that the practice is not revived.

Revenues dedicated for a specific purpose should not be counted as available for general purpose spending, something the state has been doing since 1991. This is a smoke-and-mirrors technique that artificially increases the amount of general revenue available for certification, even though the balances in dedicated accounts do not reflect truly available funds. The practice distorts the financial picture of the state and has resulted in Texas holding large balances in some accounts instead of spending the money on the purposes for which it was collected.

While the Legislature recently began to address this issue by reducing the amount of dedicated account balances used to certify the budget, HJR 111 would ensure that the reductions continue. For fiscal 2014-15, about \$4.2 billion in dedicated account balances were counted as available for certification, a decrease of \$778 million from the previous biennium, according to the Legislative Budget Board. While the fiscal 2016-17 budget is on track to reduce reliance on dedicated account balances to about \$3 billion, this is still too high.

The proposed resolution would support truth in budgeting by limiting the process for repurposing dedicated funds or accounts. Putting these requirements into the Constitution would solidify the state's policy and ensure that any changes to it were done transparently and publicly.

Opponents said

While reducing the state's reliance on using dedicated fund balances to certify the budget might be a good idea with broad support, using the Constitution to prohibit the practice is unnecessary and could be too restrictive on state budgeting practices.

Just like other budgeting tools, such as delaying a school funding payment until the next fiscal year, using dedicated account balances to certify appropriations or to make the biennial revenue estimate might sometimes be necessary. For example, in a severe economic downturn, this practice might be used to help temper deep cuts to essential state programs and services or tax increases. Constitutionally prohibiting this practice could limit lawmakers' flexibility in crafting state budgets.

The Legislature is committed to continuing to reduce its reliance on using dedicated account balances, and a constitutional amendment would not be necessary to continue this practice. The amount in dedicated revenues used for budget certification was reduced significantly from fiscal 2012-13 to fiscal 2014-15 and is being reduced again for fiscal 2016-17. It would be best to let this process continue without a constitutional deadline and a prohibition that would be difficult to lift if needed.

Notes

The HRO analysis of [HJR 111](#) appeared in Part One of the April 27 *Daily Floor Report*.

Proposed statutory limit on growth rate of appropriations

SB 9 by Hancock
Died in conference committee

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SB 9, as passed by the House, would have established new proposed limits on certain appropriations.

Proposed limit on rate of growth of appropriations. The Legislative Budget Board (LBB) would have been required to establish a proposed limit on the rate of growth of appropriations, other than federal funds, for six categories of state spending. The limits would have been calculated for:

- transportation;
- public primary and secondary education;
- higher education;
- health care;
- public safety and corrections; and
- other general government.

Calculation and application of the proposed limits. The proposed limits would have been based on the rate of growth of population and inflation related to the spending categories. After developing the rates, the LBB would have been required to apply them to proposed non-federal appropriations. If the rate for any category was a negative number, the LBB would have had to recommend that appropriations from all non-federal sources for that category available for the next biennium be the same as the amount in the current biennium.

If the Legislature exempted an appropriation for the next biennium from the proposed spending limits, the LBB would have had to exclude the then-current or previous appropriations that were similar to the exempted one.

Budget recommendations. The LBB would have been required to include in its budget recommendations the proposed limit of appropriations for each spending category. By December 1 of even-numbered years the LBB would have had to hold a public hearing on the proposed method for the calculations and by January 1 of each odd-numbered year, the LBB would have been required to issue a report containing the limits.

Supporters said

SB 9 would establish additional proposed spending limits to help in developing the state budget. While overall state spending currently is limited by a provision in the Constitution, that limit is only one measure that should be used to craft the state's budget. SB 9 would supplement the current spending limit by providing additional information about appropriations in individual budget categories using inflation and population growth.

Under the current constitutional spending cap, appropriations not constitutionally dedicated to particular purposes cannot increase from one biennium to the next beyond the growth rate in statewide personal income adopted by the LBB unless the cap is waived by a majority vote of both houses of the Legislature. However, this cap does not indicate what limits should be used for individual budget categories and because of how it is calculated, might not set appropriate spending limits.

The current cap limits only appropriations of state tax revenue that is not dedicated by the Constitution, leaving a significant portion of the budget not subject to the limit. The bill would address this by proposing additional caps based on all non-federal spending.

The bill also would apply proposed spending limits to six categories of appropriations to be more transparent in how the state spends money and to establish limits that better reflect the changing needs of the state. In some categories, such as those serving children and the elderly, the need to fund state services may grow faster than in other categories. For some categories of spending, such as health care and transportation, inflation could be higher than in others.

Although the current overall cap is based on income growth, it would be helpful for lawmakers to have proposed supplemental caps based on other measures. The bill would provide this information by basing proposed spending caps on population growth and inflation for goods and services in specific categories.

The current spending cap works well to set parameters on spending and should be supplemented by the proposed limits in the bill, but not replaced. For example, replacing the current cap with an overall cap tied broadly to population plus inflation could rely too heavily on the consumer price index. The consumer price index uses a basket of goods and services purchased by consumers, such as groceries and apparel, which does not necessarily reflect the purchases or needs of the state.

If the information provided by SB 9 proved valuable, the next Legislature could consider making the proposed limits mandatory. The Legislature should understand the interaction of the restrictions on spending by seeing examples of the limits before making them binding. Making the proposed limits mandatory would reduce flexibility in budgeting and could make the state less able to respond to changing conditions, to meet a need for a service, or to make large investments in one area of the budget.

Opponents said

SB 9 should make the spending limits calculated under the bill mandatory, rather than proposed. Making the limits mandatory would ensure fiscal discipline was used in writing the state budget. If mandatory, the limits could guide budgeting in each spending category to ensure population and inflation specific to each category were taken into account.

Other opponents said

Instead of adding additional proposed limits to state spending, the current constitutional spending limit based on growth in personal income should be replaced by an overall measure centering on population and inflation. Such a limit would be a more accurate measure of the fiscal position of the state and would work better to limit spending to an appropriate level.

If the Legislature wants to apply a new restriction on state spending, it should be done through a constitutional amendment, just as the current cap was established in 1978.

The Legislature should calculate and apply spending limits for all spending, including federal funds. This would ensure full budget transparency

Notes

SB 9 was amended on the House floor to change the spending limits calculated under the bill from mandatory to proposed limits on each category of spending.

As approved by the Senate, SB 9 would have limited the growth in “consolidated general revenue” appropriations to the estimated growth rate of the economy. Consolidated general revenue would have been defined as the general revenue fund, dedicated accounts in the general revenue fund, and general revenue-related funds.

The HRO analysis of [SB 9](#) appeared in Part One of the May 26 *Daily Floor Report*.

Revising ethics reporting requirements

SB 19 by V. Taylor
Died in conference committee

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SB 19, as passed by the House, would have created new contribution reporting requirements for certain politically active persons or groups, expanded and required the online posting of information included in personal financial statements, established an ethics counselor to advise legislators on conflicts of interest, and prohibited certain oral recordings in the Capitol.

Disclosure of political contributions and expenses. The bill would have created political contribution report requirements for a person or group that:

- did not meet the definition of a political committee;
- accepted contributions in connection with campaign activity from a person that in the aggregate exceeded \$2,000 during a reporting period; and
- made one or more political expenditures, with certain exceptions, that in the aggregate exceeded \$25,000 during a calendar year.

Disclosure of contributions would have been required only if the contribution was made in connection with campaign activity and the aggregate amount from a person exceeded \$2,000 during the reporting period.

A report would not have had to include:

- contributions not connected with campaign activity;
- the total amount of un-itemized political contributions or expenditures;
- the total amount of political contributions maintained by the person or groups;
- expenditures that were not political expenditures; or
- the principal amount of outstanding loans.

Personal financial statements. The bill would have required that the personal financial statements that certain state officers are required to file be submitted electronically through the Texas Ethics Commission website and made available in a searchable format to the

public soon after it was filed. The commission would have been required to redact the home address of a filer before posting the statement on its website.

An individual filing a personal financial statement would have been required to include information about certain referral fees, contracts with government entities, and government contract consulting services, except legal services. Filers would have been required to identify interests of more than 5 percent in a corporation or other business entity that the individual held, acquired, or sold.

The bill also would have required filers to identify any other source of earned or unearned income not reported elsewhere on the form, including federal or state governmental disability payments, other public benefits, or a pension, individual retirement account, or other retirement plan, and the category of the amount of income derived from each source. A “public benefit” would have included the value of an exemption from taxation of the total appraised value of a residence homestead. In addition, filers would have been required to report certain balances on revolving charge accounts carried for 90 or more days. Filers also would have been required to affirm they had paid all federal income and property taxes owed.

Pre-appointment statement of political contributions. Before being appointed as an appointed officer by the governor, lieutenant governor, or House speaker, an individual would have been required to file with the Ethics Commission a statement that disclosed any political contributions made by the nominee or the nominee’s spouse during the two years preceding the nomination to:

- the appointing officer as a candidate or officeholder; or
- a specific-purpose political committee for supporting the appointing officer, opposing the appointing officer’s opponent, or assisting the appointed officer as an officeholder.

Conflicts of interest. Lobbyist reporting. The bill would have restricted a lobbyist from knowingly making a political contribution or expenditure from contributions accepted by the person as a candidate or officeholder for two years after the person left office. A violation would have been a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). The detailed reporting threshold for lobbyists' expenditures on transportation, lodging, food, beverages, or entertainment for a member of the legislative or executive branch would have been set by the Ethics Commission at an amount between \$50 and 60 percent of legislative per diem. The threshold for reporting also would have applied to lobbyist expenditures for the immediate family of a member of the legislative or executive branch.

Governor's staff. The bill would have limited the ability of former members of the governor's senior staff who had ceased employment with the governor to communicate with the governor or a member of the governor's senior staff if the former staff member received a benefit and intended to influence action. The communication would have been banned until the end of the governor's term, or if a staff member ceased work during the final 12 months of the governor's term, until the end of that term and any succeeding term.

Legislators. Legislators would have been prohibited from voting on a measure or bill if the member or the member's spouse would receive a direct and substantial pecuniary benefit because of the vote. "Pecuniary benefit" would have included the avoidance of a pecuniary detriment. A member would not have been prohibited from casting a vote if the benefit accrued to the member or the member's spouse as part of a profession, occupation, or industry to no greater an extent than to the rest of the class.

Ethics counselor. The Texas Legislative Council would have designated a licensed attorney as an ethics counselor, who would have provided oral and written opinions on potential conflicts of interest on request of a legislator. A legislator who reasonably relied on an ethics analysis or opinion would not have been subject to a criminal penalty or other sanction for violating the prohibition on voting on a measure for which the member or member's spouse would receive a direct and substantial pecuniary benefit.

Felony conviction. The governor, legislators, or state elected officials convicted of a felony would have been required to vacate the person's office on the date a felony conviction became final. The bill also would have made members of the Legislature or statewide elected officials convicted of certain felony crimes ineligible for their retirement annuity.

Capitol recordings. SB 19 also contained provisions on recorded oral communications made in the state Capitol building. The bill would have provided that a person had a justified expectation that oral communication while in the Capitol was not subject to interception. A party to a protected oral communication would have had a civil cause of action against a person who:

- intercepted, attempted to intercept, or employed another to intercept the communication or used or divulged information that the person knew or reasonably should have known was obtained by interception of the communication; and
- did not disclose or falsely disclosed on request that the person was intercepting a protected oral communication.

The bill also would have established when communications involving legislators and legislative staff about legislative business was confidential and subject to legislative privilege.

Journalist privilege. Under the bill, the qualified testimonial privilege in Civil Practice and Remedies Code, ch. 22 for journalists would not have applied to a person who:

- was required to report a direct campaign expenditure under Election Code, sec. 254.261;
- controlled a political committee;
- served as the campaign treasurer of a candidate or political committee;
- made a corporate political expenditure to finance the establishment or administration of a general purpose committee;
- was required to be disclosed on an IRS Form 990 in one of the above-listed categories; or
- was an employee or contractor or acted on behalf of anyone described above.

Supporters said

SB 19 proposes reforms that significantly would improve ethics laws and ensure a more responsible government for Texans. The governor declared legislation on ethics an emergency matter for the 84th Legislature. The bill would include provisions to meet the governor's call for strengthening ethics laws related to disclosure of state contracts with elected officials, prohibiting lawmakers from voting on legislation from which they could profit, and increasing disclosure of campaign finance information.

The bill would close a loophole in existing political contribution reporting requirements and ensure that all entities spending money to influence elections were treated the same. Certain nonprofit 501(c)(4) organizations have become increasingly active in Texas elections and should be subject to the same reporting requirements as other political organizations. Persons who were in compliance with campaign finance laws should have no reason to stop contributing to 501(c)(4) organizations because they would be required to disclose their political donations.

The bill would reduce opportunities for elected officials to use their official positions for personal gain by requiring more disclosure of referral fees, contractual relationships with state and local governments, and other sources of income. It would place financial statements online in a searchable format, echoing a successful practice in other states, while redacting a filer's address.

SB 19's prohibition on secret recording of conversations in the Capitol would help address concerns that have arisen this session. A person has a justified expectation that his or her oral communication with others while in the Capitol is not subject to recording unless the communication is public testimony at a legislative hearing.

Opponents said

SB 19 would go beyond reforming ethics laws to infringing on protected constitutional rights to free speech and political association. In trying to increase transparency of the activities of 501(c)(4) organizations, the bill could have a detrimental effect on anonymous political speech while implicating the First Amendment rights of corporations as associations of individuals. It

could discourage political giving by requiring reporting of certain donations greater than \$2,000, which could potentially subject donors to being scrutinized or harassed based on their political views.

The bill also would infringe on the First Amendment by prohibiting the recording of certain conversations that occur in the Capitol and creating a civil cause of action against a person who made or divulged such a recording. This could expose citizens to liability for trying to find out what their elected representatives are doing in the Capitol.

Placing detailed personal financial information online could allow some who would misuse the information to target elected officials or their families.

Other opponents said

The bill would require a "cooling off" period before former senior staff members of the governor's office could try to influence legislation but would not require the same of former legislators. Texas should join 33 states that have enacted a cooling off period before former legislators are allowed to return to the Capitol as lobbyists.

Notes

The HRO analysis of [SB 19](#) appeared in Part One of the May 26 *Daily Floor Report*.

Management and oversight of state contracts

SB 20 by Nelson
Effective September 1, 2015

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SB 20 adds new requirements for contracting and purchasing by state agencies and institutions of higher education. The bill:

- requires governing boards or governing officers to approve contracts valued at more than \$1 million;
- requires agencies to post certain contracting information on their websites;
- prohibits conflicts of interest between agency officers and vendors;
- requires a two-year waiting period before certain state employees may switch jobs between agencies and vendors; and
- requires the state auditor to focus on Health and Human Services Commission (HHSC) contracts exceeding \$100 million in annual value.

Contracting requirements and oversight.

Agencies may enter into contracts for the purchase of goods or services valued at more than \$1 million only if approved by the agency's governing body and signed by the presiding officer. For agencies not governed by a multi-member governing body, the officer who governs the agency must sign the contract. The signature requirement does not apply to certain highway construction or maintenance contracts awarded by the Texas Department of Transportation. The bill also requires agencies to develop and implement contract reporting requirements for contracts valued at more than \$1 million.

For contracts valued at more than \$5 million, the agency contract management office or procurement director must verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy and must submit to the governing body or governing official information on any potential issue that may arise in the contracting process.

The bill also creates new requirements for agencies entering into contracts for information technology (IT) products and services awarded under the Department of Information Resources (DIR) cooperative contracts

program. An agency may award a contract valued at \$50,000 or less directly to a vendor on the DIR approved list for purchases, but it must obtain three bids for purchases valued at more than \$50,000 up to \$150,000 and six bids for purchases valued at more than \$150,000 up to \$1 million. An agency cannot purchase under the cooperative contracts program if the value of the contract exceeds \$1 million.

An agency must consult with DIR before developing and initiating a statement of work for certain IT services contracts valued at more than \$50,000. Money may not be paid to a vendor unless DIR signs the statement of work, and an agency must post each statement of work it enters on its website.

Vendor reporting and reviews. Agencies must post on their websites information about contracts, including the request for proposals for competitively bid contracts, all executed contracts, and the statutory or other authority for contracts that were not competitively bid.

After a contract is completed, each agency must review the vendor's performance and report the results to the comptroller. Open enrollment contracts at HHSC and certain contracts of the Employees Retirement System of Texas and the Teacher Retirement System of Texas are exempt from reporting. The comptroller may bar a vendor from participating in state contracts if more than two contracts between the vendor and the state have been terminated by the state for unsatisfactory performance in the preceding three years. Agencies must retain records of contracts and solicitation documents for seven years after the contract expires.

SB 20 requires the comptroller to consider certain items when determining the contracting information that state agencies must report, including:

- a brief summary of each contract that is quickly and easily searchable;
- contract planning and solicitation documents;
- criteria used to determine the selected vendor;
- criteria used to determine best value, if applicable;

- any conflict of interest documents; and
- criteria for monitoring vendor performance.

The comptroller must establish rules for its vendor performance tracking system to rate vendors on an A through F scale. State agencies must use the tracking system to determine whether to award a contract to a reviewed vendor. The system must be accessible to the public on the comptroller's website.

Conflicts of interest. The bill requires a two-year waiting period before a former state officer or employee who participated in a procurement or contract negotiation involving an entity could work for that entity.

Agency procurement or contract management employees or officials must disclose to their agency any potential conflict of interest specified by state law or agency policy with respect to any private vendor contract or bid. An agency may not enter into a contract if there is a financial interest with a private vendor by a member of the agency's governing body, the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency, or a family member related within the second degree by affinity or consanguinity to any of the above employees or officials. The bill defines financial interest as a situation where the employee or official has an ownership interest of at least 1 percent or could reasonably foresee that a contract with the vendor could result in a financial benefit.

Purchasing study. The comptroller, in cooperation with the governor's budget and policy staff, must conduct a study examining the feasibility and practicality of consolidating state purchasing functions into fewer state agencies or one agency. The study must be posted on the comptroller's website by December 31, 2016.

Higher education contracts. Colleges and universities may not enter into contracts valued at more than \$1 million or amend or renew a contract that increases the value to more than \$1 million without approval from the institution's board of regents. The board must approve any amendment, extension, or renewal that exceeds 25 percent of the original contract value.

An institution's board must establish a code of ethics for officers and employees related to contracting, as well as policies for internal investigation of suspected fiscal irregularities, a contract management handbook, and ethics training.

Colleges and universities must establish contract review procedures and standards for internal audits related to risk management of contracting. The state auditor must report noncompliance to the Legislature and comptroller. Institutions that fail to comply with a remediation plan will have their purchasing authority suspended.

Higher education institutions also must disclose conspicuously the identity of each sponsor of research in public communications about the research.

Supporters said

SB 20 would address recent reports of abuse in certain state government contracting processes by requiring increased management, oversight, and reporting of contracts. Over the past few decades, state government has shifted from directly delivering services to contracting for the delivery of many of those services. This shift has resulted in an increasing percentage of the state's budget being spent through contracts, including some contracts involving millions of dollars.

Increasing oversight of contracts exceeding \$1 million could help avoid contracting malfeasance. State agencies would be required to post contracts on their websites, including the authority for no-bid contracts. The bill also would establish a publicly available system to track vendor performance, including an evaluation by the comptroller's office.

SB 20 contains strong conflict-of-interest provisions, including disclosure requirements. An agency could not enter into a contract with a private vendor in which any of the agency's leadership or their families had a financial interest. In addition, it would end the "revolving door" that sometimes occurs between agency employees and vendor employees by requiring a two-year period before a former agency employee who participated in a contract negotiation with a vendor could accept employment from that entity.

Opponents said

SB 20 could curtail the ability of state agencies to choose contracting vehicles that best meet their needs for specific goods and services. Allowing agencies greater latitude in choosing contractors leads to increased competition and better value for the state.

The requirement that DIR sign off on agency IT contracts involving statements of work would be cumbersome and could lead to delays in approving and administering contracts. The state agency performance reviews of vendors should include feedback from all individuals involved in the administration and supervision of a contracted project.

The bill contains an overly broad “revolving door” prohibition that could harm the employment opportunities of lower-level state agency workers. A state agency employee who merely worked for a division or agency and who had no role in deciding whether a contract was awarded to a vendor should not necessarily be barred for two years from future employment with that vendor.

Notes

SB 20 was laid out in the House on May 13 in lieu of its companion bill, **HB 3241** by Price. The HRO analysis of [HB 3241](#) appeared in Part Two of the May 4 *Daily Floor Report*.

The 84th Legislature considered other state contracting oversight legislation, including **HB 15** by Otto. The bill, which failed to receive Senate approval of a conference committee report that was approved by the House, would have abolished the Contract Advisory Team at the comptroller’s office and established a Contract Management and Oversight Team at the Legislative Budget Board (LBB). The LBB team would have been required to review and make recommendations regarding certain high-risk contracts, defined as contracts with a value of at least \$10 million or contracts with a value of less than \$10 million that met other criteria set out in the bill. The HRO analysis of [HB 15](#) appeared in Part One of the April 27 *Daily Floor Report*.

The Legislature also revised provisions on conflicts of interest reporting in local government contracting. **HB 23** by S. Davis, effective September 1, 2015, makes changes to disclosure statements for local government officer conflicts of interest and vendor conflict-of-interest questionnaires that are filed with the records administrator of the local governmental entity. The bill extends disclosure requirements to certain employees involved in the procurement process and requires disclosure of familial relationships between vendors and government officers.

HB 23 makes changes to the definition of “local government officer” to include an agent of a local government entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. The bill also adds water districts to the definition of local governmental entity. The bill lowers the monetary threshold for reporting gifts from a vendor from \$250 to \$100 in aggregate value in the preceding 12-month period.

The bill makes it an offense for a local government officer to knowingly fail to file a required conflicts disclosure statement by a specified time. A vendor commits an offense for knowingly failing to file the required questionnaire by a specified time. An offense is a class C, class B, or class A misdemeanor, depending on the value of the contract.

The HRO analysis of [HB 23](#) appeared in Part One of the April 27 *Daily Floor Report*.

Interstate voter registration crosscheck program

SB 795 by Perry
Effective September 1, 2015

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SB 795 requires the secretary of state to cooperate with other states and jurisdictions to develop systems to compare voters, voter history, and voter registration lists to identify voters whose addresses have changed. The bill specifies that this requirement is to maintain the statewide voter registration list and to prevent duplication of registration in more than one state or jurisdiction.

Any system developed must comply with the National Voter Registration Act.

Supporters said

SB 795 would help ensure that the state maintains accurate voter rolls by requiring Texas to participate in an interstate voter registration crosscheck program. Texas does not have a system in place to prevent duplicate registration in another state, and this lack of oversight can lead to voter fraud if it allows the same person to vote in a single election multiple times. Participation in an interstate database comparison program would help identify duplicate registrations. The state could use these data to clean up its voter registration lists and prevent voter fraud.

The bill would not dictate which interstate database crosscheck program should be used to compare voters. The Office of the Secretary of State would have the flexibility to select a program that would best serve the interests of the state, to change programs, or to select both programs, as several other states have done.

SB 795 would not remove eligible voters from the voter rolls. Any interstate database comparison program implemented by the secretary of state would serve only to identify potential duplicate registrations. The process for removing a registered voter from a list of eligible voters still would be governed by the National Voter Registration Act and state laws related to removal. These safeguards would ensure that voters were not erroneously removed from the lists.

Opponents said

While it is important for the state to maintain accurate voter rolls, SB 795 could disenfranchise registered voters in good standing by embarking on a program that might remove them in error. Although some say the provisions of the National Voter Registration Act would protect eligible voters from such a mistake, individuals still could be removed erroneously. While registered voters could rectify the problem by responding to a notice sent to them by the state, they might not respond to all mail they receive and should not have to go through that process if they receive a notice in error.

Because no funds would be appropriated to implement SB 795, it is likely that the secretary of state would choose the Interstate Voter Registration Crosscheck (IVRC) program, which is free, over the Electronic Registration Information Center (ERIC) system, which employs a more rigorous method for identifying potential duplicate voters but requires the payment of an initial fee and annual dues. While participating in the ERIC system would cost the state money, it might lead to fewer errors.

Notes

The HRO analysis of [SB 795](#) appeared in the May 20 *Daily Floor Report*.



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Authorizing a needle-exchange pilot program

HB 65 by McClendon
Died in Senate committee

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HB 65 would have allowed certain counties and hospital districts to authorize a disease control pilot program, including a hypodermic needle-exchange program, under the guidance of the Health and Human Services Commission.

A county or hospital district could have authorized an organization to establish a pilot program designed to prevent the spread of HIV, hepatitis B, hepatitis C, and other communicable diseases. The program could have included disease control outreach programs that:

- provided for the anonymous exchange of used hypodermic needles and syringes for an equal number of new hypodermic needles and syringes;
- offered education on the transmission and prevention of communicable diseases; and
- helped participants obtain health care and related services, including mental health and substance abuse treatment services and blood-borne disease testing.

The county or hospital district could have authorized an organization operating the pilot program to register with the county or district and pay a reasonable fee to distribute hypodermic needles and syringes under the pilot program. The organization could have charged a fee to a program participant for each needle or syringe used in the program. Distribution of the hypodermic needles in the program would have been conducted by a licensed wholesale drug or device distributor.

The bill would have required safe and proper storage and disposal of needles and syringes, and access to them would have been restricted to authorized employees or volunteers of the disease control program.

The bill would have provided exceptions to prosecution for certain offenses related to drug paraphernalia under the Texas Controlled Substances Act for a person involved with the disease control pilot program who:

- dispensed or delivered a hypodermic needle and syringe for a medical purpose, including a needle-exchange program;
- manufactured hypodermic needles and syringes for delivery to the program; or
- was an employee, volunteer, authorized agent, or participant and used, possessed, or delivered a hypodermic needle and syringe as a part of the program.

An organization operating the disease control pilot program would have been required annually to provide to the Department of State Health Services and the authorizing county or hospital district information on the effectiveness and impact of the program in reducing the spread of communicable diseases and injected drug use.

The organization could have solicited and accepted gifts, grants, or donations to fund the program. Statutory authorization for the pilot programs would have expired September 1, 2025.

Supporters said

HB 65 would allow the creation of a needle-exchange program for certain counties and hospital districts. Needle-exchange programs limit certain drug users' exposure to used syringes, reducing the transmission of HIV and other blood-borne diseases. Rates of HIV and hepatitis C increase significantly when intravenous drug users share needles. Texas has one of the highest HIV/AIDS rates in the country, and treating HIV/AIDS can be costly. As a result of the state's high rate of uninsured residents, this cost frequently falls on county hospitals and taxpayers. Prevention of HIV through a needle-exchange program would be significantly less expensive and could save the county and taxpayers thousands of dollars.

This bill would give certain counties and hospital districts an effective way to provide counseling and health services to populations that often do not seek these services for fear of prosecution. Studies have

shown that drug use decreases with the introduction of needle-exchange programs into communities. These programs offer more than clean needles — participants gain access to other mental and physical health care services, including substance abuse treatment. While there is no guarantee a participant would enter a substance abuse program, needle-exchange programs in other cities have seen many participants enter treatment after the program was established.

Opponents said

HB 65 could send a message that the Legislature condones risky and illegal activity by providing a tool for illegal drug use and allowing counties to use local tax dollars to enable drug abusers. The state should not support or encourage this activity, let alone contribute to the supply of equipment involved in substance abuse. Instead, the state should focus its efforts on supporting programs that help people recover from addiction and abstain from drug use altogether.

While needle-exchange programs may include services designed to help addicts recover, there is no guarantee that drug users actually would take advantage of them. An individual might participate only to receive a syringe package and not to benefit from any of the other services provided by the program. This bill could be a vehicle for individuals with substance abuse issues to receive a steady supply of drug paraphernalia, further enabling their addiction.

Notes

The HRO analysis of [HB 65](#) appeared in Part One of the May 11 *Daily Floor Report*.

Qualified health plan designation for insurance ID cards

HB 1514 by Sheffield
Effective September 1, 2015

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HB 1514 requires a health insurance identification card or other similar document issued to an enrollee of a qualified health plan purchased through an Affordable Care Act exchange to display the initialism “QHP” on the card or document in a location of the issuer’s choice.

The bill directs the insurance commissioner to monitor federal law governing definitions of terms in HB 1514 related to the Affordable Care Act and to report to the Legislature if the commissioner determines it is in the best interest of the state to adopt an amended definition of the terms in the bill. The commissioner must consider the effects an amendment might have on those receiving medical and health care services in the state and on health care providers and physicians.

Supporters said

HB 1514 would provide a consistent, easily identifiable way for providers to distinguish which patients were covered by a qualified health plan (QHP). Including the “QHP” designation would allow a provider to educate the patient about the importance of paying premiums, especially if the patient was not familiar with using health insurance. Simply having this designation on a card would not lead to providers rejecting patients.

The bill would allow providers to identify patients enrolled in a QHP who might need more information about the importance of paying premiums on time to ensure that their insurance paid for services provided. By allowing providers to identify these patients, HB 1514 would address a gap in federal law that could make providers liable for the cost of services provided to a patient who failed to pay a QHP insurance premium during a 90-day grace period. If a patient failed to pay a past-due premium, the patient’s plan could be retroactively canceled, and the provider would have to pay back the insurer for any paid claims. The provider would pass those costs on to patients, creating a financial burden for both providers and patients.

HB 1514 would not open the door to discrimination against patients. Insurance cards already include other information about the type of plan held by a patient, including whether the plan is an HMO or a PPO and the name of the plan or insurance carrier. This information helps a provider to determine the plan’s benefits, whether a referral was needed for service, network restrictions, and other information necessary for the patient’s visit.

The solution proposed in HB 1514 would be more effective than requiring insurance companies to notify providers that patients enrolled in QHPs had not paid their insurance premiums because it would lower the administrative burden for providers.

Opponents said

HB 1514 could open the door to discrimination against patients who were insured under a QHP. Requiring health insurance identification cards to show whether a person purchased their insurance in an Affordable Care Act exchange would amount to a “scarlet letter” and an invasion of a patient’s privacy because buying a plan through an exchange may indicate that a patient is low-income and received a federal subsidy.

The concern with the premium payment grace period applies to a small number of patients who do not pay their premiums. Requiring all patients enrolled in a qualified health plan to have the “QHP” designation on their cards would not provide useful information to a health care provider because the grace period issue does not apply to patients who did not receive a subsidy.

HB 1514 would target only QHPs for payment liability issues, when these issues can exist with any health insurance plan. Providers risk being held liable for the cost of a provided service whenever a patient provides a new insurance card because providers cannot identify whether a patient’s insurance plan is active simply from looking at the patient’s card.

Other opponents said

Providers have a valid concern that they may be held responsible for the cost of providing a service to a patient whose QHP coverage was canceled after the date of service. However, this issue should be addressed by requiring insurers to inform providers if a patient has not paid his or her premiums when providers call to verify a patient's coverage.

Notes

The HRO analysis of [HB 1514](#) appeared in Part One of the May 8 *Daily Floor Report*.

Abolishing DARS and transferring its functions

HB 2463 by Raymond/SB 208 by Campbell
Generally effective September 1, 2015

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Two bills enacted by the 84th Legislature together serve to transfer Department of Assistive and Rehabilitative Services (DARS) programs and functions to the Health and Human Services Commission (HHSC) and the Texas Workforce Commission (TWC). **HB 2463** is the Sunset bill for DARS. It abolishes DARS as an agency and transfers some of its programs to HHSC. **SB 208**, the Sunset bill for the Texas Workforce Commission (TWC), transfers the rest of DARS' programs to TWC. Both bills address specifics of the transition and require the creation of a legislative oversight committee to facilitate the transfer.

Program transitions. On September 1, 2016, HB 2463 abolishes DARS and transfers the following programs from the department to HHSC:

- children's autism;
- blind children's vocational discovery and development;
- blindness education, screening, and treatment;
- independent living program for individuals who are blind or have visual impairments;
- independent living program for individuals with significant disabilities;
- comprehensive rehabilitation services;
- deaf and hard of hearing services;
- early childhood intervention; and
- disability determination services.

On the same date, SB 208 transfers the following programs and institutions from DARS to TWC:

- vocational rehabilitation programs;
- independent living services program for older individuals who are blind;
- the Criss Cole Rehabilitation Center; and
- the Business Enterprises Program of Texas.

Data and evaluation. HB 2463 requires the department to establish guidelines for caseworker decisions in all of the department's direct services programs. The department must create a single, consistent case review system for direct services programs that includes risk assessment tools. It

must use the case review system to evaluate direct services programs and prioritize review of certain cases, focusing on areas of highest risk. HB 2463 also requires a caseworker's supervisor to use reviews of a caseworker's cases in performance evaluations.

Independent living services. HB 2463 requires all state independent living services that used to be performed by the department to now be performed by nonprofit centers for independent living (CILs) by August 31, 2016. In areas of the state with limited services, the bill allows a CIL to subcontract with other nonprofits and organizations to provide independent living services. The department may contract directly with other entities to provide services if a CIL cannot subcontract. While services are provided by the CILs, the department must provide necessary staff training, technical assistance, and funding for CIL services. The department also must monitor the performance of CILs, including how the centers monitor the performance of subcontractors.

As part of the consolidation of independent living services, HB 2463 requires the department to combine into a single program the Independent Living Services Program for individuals who are blind or have visual impairments and the Independent Living Services Program for individuals with significant disabilities. HB 2463 also establishes both the Comprehensive Rehabilitation Services Program and the Children's Autism Program in statute.

Supporters said

HB 2463 would increase access to independent living services for those who need it, reduce unnecessary duplication of services, improve case and program oversight, and recognize in statute that autism services and comprehensive rehabilitation services are vital programs.

Transferring provision of all direct independent living services from the department to centers for independent living (CILs) would increase access to independent living services across the state. DARS

currently has heavy caseloads and waiting lists for its independent living services, which supplement services provided by CILs. As a result, the agency struggles to provide services statewide. By contrast, CILs have an extensive statewide network, have specialized staff, and already provide many of the same services as the agency, including home visits.

The short transition period in HB 2463 would minimize disruption of services to individuals with disabilities while providing enough time for CILs to expand their array of services, including those services previously delivered by the division of blind services at DARS.

Establishing the department's role as monitoring the funding and performance of the services would ensure that services had better oversight and that consumers were better able to access services at the local level. Savings from the bill would help to expand the current array of services offered by CILs to meet the needs of all Texans with disabilities. HB 2463 also would direct the department to provide technical assistance, additional resources, and training to CILs' staff to ensure that CILs offered the same robust services as the department.

HB 2463 would reduce duplication of services by combining two independent living programs into one. Many of the services delivered by each program are similar and instead could be provided directly by CILs, as the bill would stipulate. Furthermore, the bill would require department caseworkers to refer people seeking independent living services to CILs, which would ensure that individuals seeking services could find them.

SB 208 would respond to stakeholder concerns that blind services need to be provided within a workforce-readiness framework by moving vocational rehabilitation services for blind individuals from the department to TWC. The bill also would address stakeholder concerns about the importance of keeping blind services together by transferring independent living services for older blind individuals and the Criss Cole Rehabilitation Center from the department to the Texas Workforce Commission (TWC).

Amending the Texas State Plan for Independent Living does not require legislative action and is therefore not included in HB 2463.

HB 2463 would increase case oversight of its direct services program to control spending and ensure effective delivery of services. By creating clear guidelines for case management, the bill would help caseworkers make good decisions that lead to successful, cost-effective outcomes. Moreover, HB 2463 would improve the agency's ability to monitor direct services programs by requiring the department to analyze performance data and case review data for all of the direct services programs.

Opponents said

HB 2463 would reduce access to independent living services, unnecessarily split up services for individuals who are blind or visually impaired, and make it harder for individuals with disabilities to find information about services provided by the state. Services for the blind and visually impaired should not be combined with other independent living services and should remain at the department.

Combining the two independent living programs and outsourcing them to CILs would not provide the same level of exceptional services that are available at the department. HB 2463 also would not ensure that existing department caseworkers would transfer to the CILs. CILs currently do not have the same specialized staff as DARS, particularly for individuals who are blind or visually impaired. Services for individuals who are blind or deaf are very different from services for individuals with an intellectual disability and require a specialized approach.

Traveling to a new center can be difficult and frightening for older people who are blind or visually impaired, and HB 2463 would not mandate that CILs provide services directly in an individual's home, as DARS currently does. Separating services among the department, CILs, and other agencies would make it difficult for individuals who are blind, deaf, or have both disabilities to learn about and access services at each agency.

The Texas State Plan for Independent Living also would need to be amended to reflect the transfer of all direct independent living services to CILs and the future transfer of duties from DARS to other agencies.

The savings resulting from these bills would be very low compared to how much they would disrupt services for individuals who are blind or visually impaired.

Other opponents said

HB 2463 and SB 208 should move all blind services to the same agency if the goal of the Sunset Advisory Commission is consolidation. Keeping services together would facilitate collaboration, which is key to successful service provision. All services for blind individuals should transfer entirely to TWC because blind services are meant to provide workforce-readiness skills. Transferring services to one agency also would ensure that families with young children and seniors easily could find information about available services.

Notes

The HRO analysis of [HB 2463](#) appeared in Part One of the April 8 *Daily Floor Report*. The analysis of [SB 208](#) appeared in Part One of the May 25 *Daily Floor Report*.

Another bill enacted by the 84th Legislature, **SB 200** by Nelson, consolidates functions of health and human services agencies and provides for the transfer of DARS functions to the HHSC. The HRO major issues analysis of SB 200 appears on [page 90](#) of this report.

Insurance coverage for ovarian cancer screening

HB 2813 by K. King
Effective September 1, 2015

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HB 2813 requires Texas health insurance plans that cover diagnostic medical procedures to include coverage for an annual CA 125 blood test for the early detection of ovarian cancer. The test is in addition to the cervical cancer screening required as part of a woman's annual diagnostic medical examination. The coverage is required for applicable health insurance plans that cover women 18 and older. The bill exempts certain supplemental and limited benefit policies from the requirement.

Supporters said

HB 2813 would make headway in the prevention and early detection of ovarian cancer by ensuring that certain health insurance plans provided coverage for a simple blood test for ovarian cancer as part of annual well-woman exams. Ovarian cancer has a high mortality rate, largely because the disease has vague symptoms that are not unique to ovarian cancer and that patients do not recognize until the disease is too advanced. Unlike breast or testicular cancer, women cannot detect ovarian cancer by self-examination, and doctors usually do not offer women a blood test unless they are aware of the disease in their family history.

The CA 125 test is inexpensive and could save the lives of thousands of women through early detection. The increase in costs from requiring coverage of an annual ovarian cancer screening would be nominal, and it is easier for health insurance plans to administer a mandate than an optional benefit, which some have suggested be offered instead. Requiring this test would be a step in the right direction.

The CA 125 blood test can result in a false positive, but it would be better to investigate a false positive than to miss the opportunity to find out about this serious cancer. Pap smears for cervical cancer also can result in false positives, but that test still is mandated for all women. When the initial test is positive, any subsequent testing can be considered diagnostic testing rather than screening and is usually covered by major medical health plans.

Opponents said

By requiring certain health insurance plans to cover ovarian cancer screening in an annual exam, HB 2813 would add a new, expensive mandate that could increase the costs of health insurance for businesses and employers and incentivize consumers not to carry insurance.

The bill also would not explicitly require health insurance plans to cover multiple ovarian cancer blood tests in one year, which could be needed to confirm the accuracy of the first test. The CA 125 test can be an unreliable indicator of whether a woman has ovarian cancer. For example, the test can return a high number of false positives. If health insurance plans were not required to cover subsequent tests to ensure the first one's accuracy, patients could have to pay out of pocket for them and a false result could cause patients to receive unnecessary aggressive treatment.

Notes

The HRO analysis of [HB 2813](#) appeared in the April 15 *Daily Floor Report*.

Providing artificially administered nutrition and hydration

HB 3074 by Springer
Effective September 1, 2015

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HB 3074 specifies that existing law requiring a patient to be given life-sustaining treatment does not authorize the withdrawal or withholding of pain management medication, medical procedures necessary to provide comfort, or any other health care provided to alleviate a patient's pain. Life-sustaining treatment includes artificially administered nutrition and hydration.

Under existing law, if an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient, the physician's refusal must be reviewed by an ethics or medical committee. The patient must receive life-sustaining treatment during the review, including for up to 10 days from the time the patient or surrogate received the committee's written decision that life-sustaining treatment is not appropriate. The patient also must receive life-sustaining treatment pending transfer to a facility willing to comply with the directive.

Under HB 3074, the 10-day period during which a patient must receive life-sustaining treatment begins after both the committee's written decision and the patient's medical record are provided to the patient or the patient's surrogate. The bill requires that after the 10-day period the patient receive artificially administered nutrition and hydration unless providing it would:

- hasten the patient's death;
- be medically contraindicated such that the provision of the treatment seriously exacerbated life-threatening medical problems not outweighed by the benefit of the treatment;
- result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment;
- be medically ineffective in prolonging life; or
- be contrary to the patient's or surrogate's clearly documented desires.

HB 3074 allows a patient or the patient's surrogate to ask a district or county court to extend the 10-day pending transfer period if the court finds that there is a

reasonable expectation that a physician or health care facility willing to provide the life-sustaining treatment may be found if the extension is granted. The patient or the patient's surrogate is entitled to receive a copy of a portion of the patient's medical record as well as a copy of the patient's reasonably available diagnostic results and reports.

The bill adds new language to the explanatory form that a patient must receive under current law when a physician does not honor the patient's advance directive or health care or treatment decision. The new language specifies that the physician and the ethics committee must conclude that providing life-sustaining treatment under such circumstances would not be "medically" appropriate. Together with the form, HB 3074 requires that patients receive a list of licensed physician and health care facilities in addition to health care providers and referral groups that would consider accepting the patient's transfer.

Supporters said

HB 3074 represents a negotiated compromise that requires artificial nutrition and hydration to be provided to a patient in the natural process of death. It includes clear criteria that would have to be met to address situations when providing food and water actually could be harmful to the patient. No federal laws prohibit withholding of nutrition and hydration when medically appropriate, and current law does not provide clear criteria for when and how a decision to remove artificially administered nutrition and hydration may be made. The bill would clarify that nutrition and hydration provided to a patient is not actually artificial but, rather, "artificially administered."

The bill would further protect patients by ensuring that the time period for transfer of a patient from one physician or facility to another did not start until the patient or surrogate received a copy of the relevant portion of the patient's medical records.

Medical professionals need discretion when trying to heal patients. There are cases when providing food and water can exacerbate a patient's condition and hasten his or her death. HB 3074 would specify that providing a patient with life-sustaining treatment does not authorize withholding or withdrawing pain management medication, procedures necessary for the patient's comfort, or any other care provided to alleviate a patient's pain. The bill also carefully defines the exceptions to providing nutrition and hydration. Doctors have the medical training and expertise to make these decisions, and the bill would allow doctors to use their discretion in these cases only when necessary.

HB 3074 is not designed to be an omnibus advance directives bill. It would focus specifically on artificially provided nutrition and hydration to address stakeholder concerns on this particular issue.

Opponents said

By specifying certain circumstances under which hospitals could withhold nutrition and hydration from a patient, HB 3074 inappropriately would allow a hospital to remove food and water from a patient. The bill also would allow a physician to make decisions about the patient's care based on what was medically appropriate without defining what the term would mean.

One physician's opinion may differ from another's, and the bill would not provide enough guidance to protect a patient's wishes concerning end-of-life decisions.

Notes

The HRO analysis of [HB 3074](#) appeared in Part Three of the May 11 *Daily Floor Report*.

Revising judicial bypass for minors seeking an abortion

HB 3994 by Morrison
Effective January 1, 2016

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HB 3994 revises the process of judicial bypass which is used when used when a pregnant minor who is not emancipated wishes to have an abortion without notifying one of her parents, her managing conservator, or her guardian.

Identification. The bill requires a physician to use due diligence to determine that a woman seeking an abortion is not a minor or is an emancipated minor. Due diligence includes requesting certain types of proof of identity and age listed in the Family Code or a copy of a court order removing the disabilities of minority. It remains a defense to prosecution for physicians that the minor falsely represented the minor's age or identity to the physician by displaying apparently valid documents.

Court decision and appearance in court. The bill requires a court to use a standard of clear and convincing evidence, rather than a preponderance of the evidence, to make determinations on whether the minor is mature and sufficiently well informed to make the decision to have an abortion without notification or consent or whether the notification and attempt to obtain consent would not be in the minor's best interest. The bill includes factors for the court to consider when making these determinations. The court may consider all relevant factors, including considering whether the minor is informed about state-published informational materials on abortion, and may require the minor to be evaluated by a licensed mental health counselor within three days. HB 3994 also allows courts to make certain inquiries, including the minor's reasons for seeking an abortion.

The bill requires the court proceedings to be conducted in a manner that protects the confidentiality of the minor's identity, rather than the minor's anonymity.

HB 3994 removes a previous requirement that the court enter judgment on a minor's application for a judicial bypass immediately after a hearing is concluded. The bill extends from two to five business days the time a court has to rule on an application and issue written findings on a minor's application.

If the court fails to rule and issue written findings within five business days, the minor's application is considered not approved, replacing previous provisions which considered applications granted if not done by the two-day deadline. The bill prohibits the use of videoconferencing, teleconferencing, or other remote electronic means for a minor to appear in court.

Medical emergencies. The bill adds requirements for notifying an unemancipated minor's parent, managing conservator, or guardian if an abortion is performed because of a medical emergency and there is insufficient time to provide required notice or to obtain consent. A physician must make a reasonable effort, within 24 hours of performing an abortion during a medical emergency, to inform, in person or by telephone, the parent, managing conservator, or guardian of the unemancipated minor. Within 48 hours, the physician also must send written notice to the parent, managing conservator, or guardian that a medical emergency occurred.

The bill uses the definition of "medical emergency" in Health and Safety Code, sec. 171.002, which deals with abortion. The bill eliminates provisions authorizing such an abortion based on a physician's good faith clinical judgment that certain conditions exist.

Filing requirements. A minor's application for a court order authorizing the minor to consent to an abortion under judicial bypass must be filed in a county court, court having probate jurisdiction, or district court, including a family district court, in the minor's county of residence. The ability to file an application in a court in any county is eliminated. The bill specifies the circumstances under which a minor may file in a court in a contiguous county or a court in a county where the minor intends to obtain the abortion. These circumstances include when the minor's county of residence has a population of less than 10,000, when the minor's parent, managing conservator, or guardian is a presiding judge in the county of residence, or when the minor is not a Texas resident. A minor must include in her application a statement about her current residence, including the physical address, mailing address, and telephone number.

The bill adds requirements for when a minor may or may not withdraw an application or initiate a new proceeding. HB 3994 requires attorneys retained by a minor to fully inform themselves of the minor's prior application history. If an attorney assists the minor in the application process in any way, with or without payment, the attorney must attest to the truth of the minor's claims regarding the venue and prior applications in a sworn statement.

Guardian ad litem. HB 3994 specifies that the minor's court-appointed guardian ad litem must represent the best interest of the minor. The bill prohibits the guardian ad litem from also serving as the minor's attorney ad litem.

Reporting. HB 3994 requires courts to submit reports to the Office of Court Administration with information on judicial bypass cases. The Office of Court Administration must publish certain aggregated report data each year on the cases. The report must protect the confidentiality of the identity of all minors and judges who are the subject of the report and certain information that could identify individual cases.

Appeals. HB 3994 extends the number of business days the court of appeals has to rule on an appeal to five days from two business days after the date the notice of appeal is filed with the court that denied the application. The bill removes a previous provision under which an appeal was considered to be granted if the court of appeals failed to rule on the appeal during the time limit.

Claims of physical or sexual abuse. HB 3994 expands on the previous duty of physicians to report suspected abuse. If a minor claims to have been physically or sexually abused or if a physician or physician's agent has reason to believe that a minor has been abused, the physician or physician's agent must immediately report the suspected abuse to local law enforcement, in addition to DFPS, and still is required to refer the minor to DFPS. If a judge or justice, as a result of court proceedings, has reason to believe that a minor has been or may be physically or sexually abused, the judge or justice must immediately report the suspected abuse and name of the abuser to DFPS and local law enforcement and refer the minor to DFPS.

HB 3994 requires the local law enforcement agency and DFPS to investigate reports of suspected abuse. The local law enforcement agency must respond and write

a report within 24 hours of being notified of the alleged abuse. To protect the health and safety of the minor, a law enforcement officer or a DFPS agent may take emergency possession of the minor who is the subject of a report of physical or sexual abuse without a court order.

Penalty. Those who intentionally, knowingly, recklessly, or with gross negligence violate the provisions of Family Code, ch. 33, which covers minors and notice, consent, and judicial bypass, are liable for a civil penalty of \$2,500 to \$10,000. The attorney general must enforce chapter 33 and bring an action to collect the civil penalty. A civil penalty may not be assessed against a minor who has an abortion or attempted abortion or a judge or justice hearing a court proceeding related to consent for a minor's abortion. It is not a defense to prosecution that the minor gave informed and voluntary consent.

Severability. HB 3994 specifies that any provision in the bill — and any application of its provisions — can be severed from one another. The bill specifies that it is the Legislature's intent and priority that the constitutionally valid applications of the bill's provisions be allowed to stand alone if other provisions in the bill are found by a court to be invalid.

Supporters said

HB 3994 would improve the protection of a minor girl who wished to have an abortion, while ensuring the protection of parental rights. The language in the bill was developed through consultation with stakeholders and represents a balance between interests.

Extending the period a court would have to make a determination would allow the court enough time to make a considered decision about whether a minor was mature and sufficiently well informed or whether an abortion was in a minor girl's best interest. The bill also would apply a more appropriate standard by requiring the minor to provide to the court clear and convincing evidence rather than a preponderance of evidence when requesting a judicial bypass. The bill would bring judicial bypass applications into line with other judicial decisions by considering a judicial bypass petition to have been denied, not automatically granted, if a judge did not rule within a certain number of days.

The due diligence requirement for physicians to check a patient's identity is an important, common-sense requirement that would ensure that a physician did not perform an abortion on a minor girl without the appropriate consent from her parent, managing conservator, or guardian or from a court order. HB 3994 would not impose an unreasonable requirement, as the bill would allow numerous ways to establish proof of identity and age.

The bill would provide guidance to courts and protection for minor girls who might be in danger because it would give judges lists of things that could be considered and asked of the minor, including whether parental notification or the attempt to obtain consent could lead to physical or sexual abuse. By allowing judges to ask more substantial, relevant, and considerate questions of the minor, the bill would give courts the tools to find the relevant facts before reaching an important decision about whether the minor was mature and well informed or whether forgoing parental notice and consent was not in the best interest of the minor.

Limiting the venue for judicial bypasses to the minor's county of residence, a nearby county, or the county where the abortion would be performed would improve the accountability of judges and ensure judges gave appropriate consideration to the minors' applications. The bill would protect a minor's confidentiality by allowing the minor to file in a different county under certain circumstances. Teleconferencing is used rarely and is not necessary when the bill provides other court venue options.

The bill would strengthen the definition of when an abortion was a "medical emergency" by referring to a single, strong definition in Health and Safety Code provisions governing abortion, which was added by the enactment of HB 2 by Laubenberg during the 83rd Legislature's second called session. Using one definition would reduce confusion among health care providers and patients. The definition is broad enough to include conditions that are life-threatening but may not cause immediate death. The bill also would strengthen parental rights by requiring a physician to notify a minor's parents in the case of a medical emergency that necessitated an abortion.

The bill would better protect minors by requiring judges who had reason to believe a minor had been or was being abused to notify DFPS and law enforcement.

It also would expand the requirement for physicians to report potential abuse to include circumstances in which a minor claims to have been abused.

HB 3994 would improve the state's information about judicial bypass by requiring courts to report on cases to the Office of Court Administration. The bill protects the confidentiality of the minors' and judges' identities in state reports on judicial bypasses.

The bill would separate the roles of the attorney ad litem and the guardian ad litem to reduce conflict of interest and to ensure that the guardian ad litem could properly provide an unbiased view of what was in the best interest of the minor.

The penalties provided by the bill are important for its enforcement and are appropriate, and the bill specifies that certain actors are exempt from the civil penalty.

Opponents said

HB 3994 could put women and minors at risk by increasing the time it took to petition a court for permission to have an abortion and by requiring certain types of identification for all women seeking an abortion. Many minors seek judicial bypass because they might be at risk or endangered if they were required to have parental consent. Making the infrequent procedure of judicial bypass harder for minor girls to access could cause a minor's pregnancy to become more noticeable following a long wait, which could increase the chance of domestic abuse against the minor. The language in the current law was worked out through compromise with many stakeholders and balances protection for a minor with parental rights. It should not be changed.

The bill's requirement for courts to make determinations for judicial bypass by clear and convincing evidence would place an unreasonable and unnecessary burden on minors to meet the new standard within the time constraints of accessing a safe, legal abortion.

Requiring all women to provide identification to a physician to prove they were not a minor before accessing an abortion would be an unreasonable

restriction, as some women do not have the required identification because they cannot afford it or because they are undocumented.

The requirement, in most cases, for minors to file bypass petitions only in their own county of residence or, under certain circumstances, in a neighboring county or the county in which they intended to have the abortion could compromise the confidentiality of the proceedings, as people working at the court or attending to other matters there might know the minor.

Disallowing teleconferencing would remove the discretion of well-trained district judges who are careful about the welfare of those children who may have an abusive family that prevents them from going to court. Judges should have discretion to allow a minor to appear in court through teleconferencing if the judge decides it is necessary.

The definition of a “medical emergency” used in the bill could provide a disincentive for a physician to perform an abortion even if it were medically necessary or when forgoing the abortion could be harmful or lead to death.

The civil penalties established by the bill would be too severe and could increase the incentive for physicians not to provide legal abortions.

Notes

The HRO analysis of [HB 3994](#) appeared in the May 13 *Daily Floor Report*.

Banning the sale of e-cigarettes to minors

SB 97 by Hinojosa
Effective October 1, 2015

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SB 97 prohibits the sale of e-cigarettes to minors and applies certain existing tobacco regulations to the devices. The term “e-cigarette” means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to allow users to inhale nicotine or other substances. The term does not include a prescription medical device unrelated to the cessation of smoking.

Offenses. The bill makes it a class C misdemeanor (maximum fine of \$500) for a person, with criminal negligence, to sell, give, or cause an e-cigarette to be sold or given to someone younger than 18 years old. A person also may not sell, give, or cause an e-cigarette to be sold or given to someone younger than 27 years old without an apparently valid proof of identification.

It is an offense punishable by a fine of up to \$250 for individuals younger than 18 years old to:

- possess, purchase, consume, or accept an e-cigarette; or
- falsely represent themselves to be 18 years old by displaying false proof of age to obtain possession of, purchase, or receive an e-cigarette.

Child-resistant cartridges. The bill prohibits a person from selling or causing to be sold a container that contains liquid with nicotine and that is an accessory for an e-cigarette unless:

- the container satisfies federal child-resistant effectiveness standards; or
- the container is a prefilled cartridge sealed by the manufacturer that is not intended to be opened by a consumer.

E-cigarettes on school property. The bill applies to e-cigarettes certain state law that prohibits the use and possession of tobacco on school property.

Signs. In an extension of current law governing information that must be displayed at locations where tobacco is sold, a person who sells e-cigarettes must post a sign at a retail or vending machine location

stating that the sale of e-cigarettes to minors is prohibited by law. The comptroller on request must provide the sign without charge to any person who sells e-cigarettes and to distributors.

Direct access to e-cigarettes. A retailer or other person may not permit a customer direct access to e-cigarettes and may not install or maintain a vending machine for e-cigarettes. As under current law governing direct access to tobacco products, this does not apply to certain businesses that are off limits to minors, including cigar stores and package liquor stores. Also, a retailer may not redeem or distribute to a person younger than 18 years old an e-cigarette coupon, free sample, or discount.

Delivery sales. SB 97 also regulates the delivery sale of e-cigarettes to minors. A person may not mail or ship e-cigarettes in connection with a delivery sale order unless the person verifies through a commercially available database that the prospective purchaser is at least 18 years old.

Block grants and inspections. The comptroller may make available block grants to counties and municipalities for local law enforcement agencies to reduce the sale of e-cigarettes to minors. The bill requires random, unannounced inspections to be conducted at various locations where e-cigarettes are sold or distributed, including by delivery sale, to ensure compliance with the provisions of the bill.

Report. SB 97 requires the Department of State Health Services to report to the governor, lieutenant governor, and speaker of the House by January 5 of each odd-numbered year on the status of e-cigarette use in the state.

Supporters said

SB 97 would provide necessary regulation for e-cigarettes and ensure controls were in place to prevent minors from accessing or buying the devices either at brick-and-mortar stores or online. Many minors and older individuals who have never smoked traditional

cigarettes have used e-cigarettes, which can still contain dangerous chemicals, including known carcinogens. SB 97 would prevent the lack of regulation in the e-cigarette industry from possibly jeopardizing the progress the state has made in reducing the risks to health from smoking.

The long-term effects of these products are unknown, yet many of them contain flavoring, as well as nicotine, which can be highly addictive. E-cigarette liquid that does not contain nicotine still may include ingredients such as propylene glycol, which is safe to ingest but not proven safe to inhale. Moreover, e-cigarette liquid, including liquid that contains nicotine, comes in flavors that are attractive to children and could serve as a gateway to traditional cigarettes by introducing them to the idea of smoking. Some users also load e-cigarette cartridges with other drugs. Prohibiting the sale of all e-cigarettes to minors would help to alleviate concerns about the potential risks these devices pose to the state's youth.

Opponents said

While the sale of e-cigarettes to minors should be prohibited, SB 97 inappropriately would group e-cigarette vapor products that do not contain tobacco with tobacco products. E-cigarettes do not have the same potential for harm as tobacco products, such as the dangers posed by exposure to tar or carbon monoxide. Furthermore, vapor products are not necessarily a gateway to tobacco smoking. Rather, people tend to switch from smoking to vaping, not from vaping to smoking.

Notes

The HRO analysis of [HB 170](#) by Alvarado, a companion to SB 97, appeared in Part Five of the May 8 *Daily Floor Report*.

Continuing the Health and Human Services Commission

SB 200 by Nelson
Effective September 1, 2015

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SB 200 continues the Health and Human Services Commission (HHSC) until September 1, 2027, and consolidates aspects of the state's health and human services system by transferring certain functions to HHSC from other agencies. It also continues the Department of Family and Protective Services (DFPS) and the Department of State Health Services (DSHS) with a Sunset date of September 1, 2023.

Consolidation. The bill consolidates functions of the state's health and human services agencies in phases. Phase One transfers occur on or after the date the HHSC executive commissioner submits a transition plan, due March 1, 2016, and not later than September 1, 2016. Phase Two transfers occur between September 1, 2016, and September 1, 2017. The bill requires administrative support services to consolidate and transfer to HHSC not later than September 1, 2017.

Phase One. In the first phase of consolidation, the bill transfers to HHSC all functions, including any remaining administrative support services, of:

- the Department of Assistive and Rehabilitative Services (DARS);
- the Health and Human Services Council;
- the Aging and Disability Services Council;
- the Assistive and Rehabilitative Services Council;
- the Family and Protective Services Council;
- the State Health Services Council; and
- the Texas Council on Autism and Pervasive Developmental Disorders.

SB 200 abolishes these agencies after all their functions have transferred to HHSC.

Under Phase One, client services of the health and human services system transfer to HHSC, including those of the Department of Aging and Disability Services (DADS), DFPS, and DSHS. Prevention and early intervention services transfer to DFPS, including the Nurse-Family Partnership Competitive Grant Program.

Phase Two. In the second phase of consolidation, all remaining functions of DADS transfer to HHSC, along with the regulatory functions of DFPS and DSHS and functions related to DSHS' state-operated institutions. The bill abolishes DADS after its functions have transferred.

The bill maintains DFPS as a separate agency and specifies the functions that will continue at the agency. The bill also maintains DSHS as a separate state agency with control over its public health functions, including health care data collection and maintenance of the Texas Health Care Information Collection program.

Agency oversight. The bill establishes the Health and Human Services Transition Legislative Oversight Committee to facilitate the transfer of agency functions and administrative support services functions to HHSC with minimal negative effect on the delivery of services. The HHSC executive commissioner must establish an executive-level office to coordinate policy and performance efforts across the health and human services system by October 1, 2015. The bill establishes an HHSC Executive Council to receive public input and advise the HHSC executive commissioner on the operation of the consolidated agency.

Divisions within HHSC. The HHSC executive commissioner must establish new divisions within HHSC along functional lines, with separate directors.

Internal audit. The bill requires HHSC to operate a consolidated internal audit program.

Websites. HHSC must establish a process to ensure system websites across the health and human services system are developed and maintained according to standard criteria for uniformity, efficiency, and technical capabilities.

NorthSTAR and behavioral health. SB 200 removes references in statute to the NorthSTAR behavioral health demonstration project. The bill requires HHSC to ensure that Medicaid managed care organizations fully integrate recipients' behavioral

health services into their primary care coordination and specifies that “behavioral health services” do not include NorthSTAR.

Medicaid. The bill requires HHSC to develop and implement a statewide effort to assist Medicaid managed care recipients with maintaining their eligibility for Medicaid and avoiding lapses in coverage. The agency must collect Medicaid quality care data and must develop a dashboard by March 1, 2016, to compare the performance of Medicaid managed care organizations using certain indicators. HHSC must create a centralized Internet portal through which providers may enroll in the program and may use the portal to create a single, consolidated Medicaid provider enrollment and credentialing process.

HHSC also must develop a pilot program to increase the use and effectiveness of incentive-based provider payments by Medicaid managed care organizations. When HHSC pursues the renewal of the sec. 1115 Medicaid waiver from the federal government, it must seek to include only projects most critical to improving the quality of health care and that are consistent with HHSC’s operational plan.

Office of Inspector General. The HHSC executive commissioner, after consulting with the Office of Inspector General (OIG), must define by rule the commission’s and the office’s respective roles in and jurisdiction over managed care audits. OIG may not conduct criminal history checks for health care providers who are confirmed to be licensed and in good standing.

Hotlines and call centers. HHSC must conduct an inventory and assessment of health and human services system hotlines and call centers and periodically consolidate them along functional lines.

Ombudsman. The executive commissioner must establish the office of the ombudsman with authority and responsibility for the state’s health and human services system. The office will provide dispute resolution services, perform consumer advocacy functions, and collect inquiry and complaint data. The office of the ombudsman does not have the authority to provide a separate process for resolving complaints or appeals.

Advisory committees. SB 200 removes certain advisory committees from statute, including those with Sunset dates, and requires the HHSC executive commissioner to re-establish advisory committees for major areas of the agency. The bill also requires HHSC to create an advisory committee to advise on the consolidation of women’s health programs.

HHSC must post an advisory committee meeting master calendar online and stream advisory committee meetings on the agency’s website.

In addition, SB 200 includes provisions that:

- require a Texas-licensed dentist to be the dental director for Medicaid;
- remove the permanent food stamps disqualification for certain drug-related felony convictions, with certain exceptions for parole violators and repeat offenders;
- direct state agencies to conduct a study on the transfer of the Austin State Hospital to another location;
- require notarized identity verification for certified copies of vital records orders and mandate fingerprint-based background checks for anyone with access to vital records;
- require all local registrars to submit an annual self-assessment report to the state registrar; and
- instruct HHSC and DSHS to establish strategic plans for certain chronic diseases and HPV-related cancer.

Supporters said

SB 200 would address problems of accountability, inefficiency, and policy inconsistency among the state’s health and human services agencies by consolidating the agencies under the Health and Human Services Commission (HHSC). The bill would promote government efficiency and reform within the HHSC system.

Both the Sunset Advisory Commission report and the governor’s HHSC Strike Force report concluded that the state’s health and human services system is not working and needs to be realigned. SB 200 would incorporate many of the strike force’s recommendations, including taking a more graduated approach to reorganization. The bill would help ensure significant

legislative oversight through every step of the transition to see that the restructuring was working. The aim of the bill is less to create a “mega-agency” and more to improve services for clients.

The bill also would address stakeholder concerns by retaining the Department of State Health Services and the Department of Family and Protective Services as separate agencies within the HHSC system. Keeping these agencies separate but still under the consolidated system would ensure that they could continue to effectively fulfill their missions of improving Texans’ public health and protecting children and seniors.

SB 200’s phase-in plan would provide enough time to allow for a thoughtful transition to take place, even if HHSC decided to apply for a renewed sec. 1115 Medicaid waiver. A longer timeline might create more problems with implementation and could lead to an incomplete or failed consolidation.

Discontinuing NorthSTAR and moving to a new model would result in significant savings to the state. NorthSTAR represents an outdated model for delivery of behavioral health services and prevents the Dallas area from taking advantage of new federal funding opportunities. The bill would help ensure continuity of care for clients as they moved from NorthSTAR to behavioral health as part of managed care.

The transition plan process would require the Transition Legislative Oversight Committee to consider input from appropriate stakeholders and to hold public hearings throughout the state to help ensure that input from all affected parties was considered.

The bill would require advisory committee meetings to be public and streamed online, which would increase access to this important venue for detailed policy discussions and meaningful stakeholder input.

By consolidating hotlines and requiring HHSC to develop criteria for assessing the need for all existing hotlines and call centers, the bill would help ensure that the agency’s call centers could fully resolve client complaints and that constituents had a quick point of contact with the agency.

The bill also would clarify the role and authority of the HHSC ombudsman’s office to resolve complaints throughout the system and to collect standard complaint

information. Consolidating the ombudsman offices at HHSC, except for those that are federally required, would provide a centralized office through which individuals could address their concerns.

In addition, the bill would reduce gaps in Medicaid recipients’ eligibility status by requiring the state to assist with maintenance of Medicaid eligibility statewide and to help ensure continuity of Medicaid eligibility for individuals with Social Security income.

Opponents said

SB 200’s reorganization and consolidation of the state’s health and human services agencies might not be a cure-all for poor coordination or performance. The governor’s HHSC Strike Force report found that many of the commission’s current problems resulted from the execution of the state’s attempt at consolidation in 2003. The creation of a mega-agency through the bill could make it harder for HHSC to attract and retain well qualified directors of its newly created divisions.

The phase-in plan for the bill would be relatively short in duration and might not leave enough time for HHSC to manage oversight of Medicaid managed care for nursing home residents and those who are dually eligible for Medicaid and Medicare, as well as the renewal of the sec. 1115 Medicaid waiver.

SB 200 would eliminate a successful behavioral health pilot program by dismantling NorthSTAR. This change could increase waiting lists for needed mental health care and would reduce access to mental health providers. Clients in the NorthSTAR program report shorter wait times for appointments with mental health providers, which represents a cost savings to the state in the form of avoided emergency room visits for untreated mental health issues.

There is a lack of clarity in the bill about how the consolidated health and human services enterprise would engage robust and geographically diverse citizen and stakeholder input. The creation of a single council for issues related to HHSC, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services also might dilute the specific expertise necessary to guide the combined functions of these three agencies.

Provisions specifying that the ombudsman's office at HHSC would have no authority to provide a separate process for resolving complaints or appeals should be clarified.

Notes

The HRO analysis of [SB 200](#) appeared in Part One of the May 24 *Daily Floor Report*.

Transferring occupational licensing programs from DSHS

SB 202 by Nelson
Effective September 1, 2015

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SB 202 transfers certain occupational licensing programs from the Department of State Health Services (DSHS) to the Texas Department of Licensing and Regulation (TDLR) and others to the Texas Medical Board.

The bill deregulates state licensure, certification, and registration for bottled and vended water, contact lens dispensers, opticians, personal emergency response systems, bedding, indoor air quality in state buildings, rendering, and tanning bed facilities effective September 1, 2015. The bill transfers 13 occupational licensing programs from DSHS to TDLR by the end of fiscal 2019. The bill requires four occupational licensing programs to transfer to the Texas Medical Board according to the dates specified in a transition plan adopted by DSHS and the board.

SB 202 specifies that any independent boards related to the transferred licensing programs will become advisory boards. Any related advisory committees will continue as advisory committees at TDLR. The bill specifies that advisory committees will provide advice and make recommendations to TDLR.

Supporters said

SB 202 would eliminate unnecessary regulation and would reduce the role of the Department of State Health Services (DSHS) in occupational licensing, allowing the agency to focus on its core function: improving the health and well-being of Texans. By moving certain programs to the Texas Department of Licensing and Regulation or to the Texas Medical Board, the bill would maintain necessary licensing and regulation for certain professions. SB 202 represents a compromise among stakeholders and professionals that would be affected by the change in regulation.

The bill is narrowly focused on licensing and is not a DSHS Sunset bill. Sunset provisions related to DSHS as well as other Sunset recommendations for the agency would be addressed in other bills pending before the Legislature, including SB 200 by Nelson, the Health

and Human Services Commission Sunset bill. Other recommendations, such as developing a public health system inventory and conducting a strategic review of behavioral health services, are reflected in the proposed state budget for fiscal 2016-17.

Opponents said

SB 202 does not contain a Sunset provision for DSHS and leaves uncertainty as to whether the agency would be continued after its expiration date of September 1, 2015.

Other opponents said

SB 202 should include Sunset recommendations that require DSHS to develop a public health system inventory and to conduct a strategic review of behavioral health services. These recommendations would provide needed coordination of health services across the state.

Notes

The HRO analysis of [SB 202](#) appeared in Part One of the May 24 *Daily Floor Report*.

SB 200 by Nelson, the Health and Human Services Commission Sunset bill, continues DSHS until September 1, 2023, and generally takes effect September 1, 2015. The HRO major issues analysis of SB 200 appears on [page 90](#) of this report.

Other Sunset recommendations for DSHS are included in **SB 1507** by Garcia, effective May 28, 2015; **SB 277** by Schwertner, generally effective September 1, 2015; **SB 1899** by Campbell, effective June 19, 2015; and the fiscal 2016-17 general appropriations act. SB 1507 includes provisions related to the regional allocation of mental health beds and integrating behavioral health services. SB 277 abolishes certain health-related advisory committees and makes changes to others. SB 1899 imposes additional

requirements on emergency services providers, including that they have a permanent physical location in order to obtain a license from DSHS. Riders in the fiscal 2016-17 state budget include provisions for behavioral health services review and development of a public health system inventory and action plan.

Considering closure of state-supported living centers

SB 204 by Hinojosa
Died in conference committee

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SB 204, as reported by the House Committee on Human Services, was the Department of Aging and Disability Services (DADS) Sunset bill, which died in conference committee. The bill would have closed the Austin State Supported Living Center (SSLC) and would have required that other SSLCs in the state be considered for closure.

The House committee substitute of SB 204 would have established a restructuring commission whose purpose would have been to evaluate each SSLC to determine if closure was recommended to maintain only the number of centers necessary to meet the needs of the state. The commission would have been required to submit proposed closures to the Legislature for consideration. If an SSLC had been approved for closure by the Legislature, it would have been required to close on or before August 31, 2025. The bill would have required the department to establish a plan for the Austin SSLC that provided for a closure date not later than August 31, 2017.

SB 204 would have discontinued DADS as an independent agency and transferred its functions to the Health and Human Services Commission. It also would have implemented various other recommendations of the Sunset Advisory Commission.

Supporters said

SB 204 appropriately would close the state supported living center (SSLC) in Austin while authorizing a commission to recommend whether other centers should be closed. Maintaining this large system of state-run facilities is too expensive. It would be more cost effective to place individuals in these centers in comparable living situations in the community.

The bill would improve services for those at the remaining SSLCs. The shift to a smaller system would allow the agency to focus on providing higher quality care to people with intellectual and developmental disabilities who have the greatest needs. Currently, there is no waiting list for the SSLCs, but there is a

waiting list for community living options for those with disabilities.

The bill also would be a step toward aligning Texas' practices with those of other states. Most states operate with three institutions on average, and large states operate about seven. Texas currently has 13 SSLCs.

SB 204 would not lead to the closure of every SSLC. Certain centers would remain open to serve those who truly cannot function within the community. It would create an SSLC restructuring commission to make recommendations to the Legislature, but decisions on closures would be made by elected officials.

Opponents said

SB 204 inappropriately would remove certain residents from SSLCs, some of whom simply could not survive outside of these centers. SSLCs are the only publicly funded, comprehensive medical and psychological care facilities for some of the most vulnerable Texans, and these centers have served the severely disabled well for decades.

The bill would cause the closure of the Austin SSLC, which would involve moving many Austin residents away from their families to other SSLCs, making family visitation difficult for some. This closure also would remove some individuals from a home they have known most of their lives.

Furthermore, the bill should not involve formation of an SSLC restructuring commission. Closure proposals and decisions should be made by elected legislators, not appointed citizen commissions.

Notes

The HRO analysis of [SB 204](#) appeared in Part One of the May 23 *Daily Floor Report*.

The House adopted a number of amendments to the bill during floor debate, including one that removed the bill's provisions closing the Austin SSLC and establishing an SSLC restructuring commission.

SB 200 by Nelson, the Health and Human Services Commission (HHSC) Sunset bill, which took effect September 1, 2015, transfers the functions of DADS to the HHSC through a two-phase process that concludes with the abolition of the department no later than September 1, 2017. The HRO major issues analysis of SB 200 appears on [page 90](#) of this report.

Continuing Dept of Family and Protective Services

SB 206 by Schwertner
Effective September 1, 2015

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SB 206 continues the Department of Family and Protective Services (DFPS) until September 1, 2027. It changes certain notification and reporting requirements for the department, the type of information shared with prospective adoptive parents, department planning requirements, and the child care licensing program administered by DFPS.

Notifications. SB 206 amends the notification procedures for parents and others concerned with the care of a child in the managing conservatorship of DFPS. The department must:

- make a reasonable effort to notify the child's parent within 24 hours if there is a significant change in the medical condition of the child, if the child is enrolled or participating in a drug research program, or if the child receives an initial prescription of psychotropic medication;
- notify the child's parent and other concerned parties at least 48 hours before a change to the child's residential child-care facility; and
- notify the child's parent and other concerned parties as soon as possible but not later than 10 days after the department becomes aware of other significant events affecting the child, as specified in the bill.

Information for prospective adoptive parents. SB 206 provides for changes to the type of information shared with prospective adoptive parents and the manner in which the information may be shared. It allows the department to modify the form and contents of the health, social, educational, and genetic history report for a child based on factors specified by the bill. In addition, it authorizes DFPS to allow prospective adoptive parents, after reviewing the health, social, educational, and genetic history report for a child and indicating they want to proceed with the adoption, to examine the records and other information relating to the history of the child. The department must provide a child's case record upon the request of prospective adoptive parents who have reviewed the history report and indicated a desire to proceed with the adoption.

The bill requires DFPS to conduct a study on whether authorization agreements should be expanded to include agreements between a parent of a child and a person unrelated to the child. Under current law, authorization agreements, which can allow another adult to make medical, educational, and other decisions for a child, must be with a grandparent, an adult sibling, an adult aunt or uncle, or a person with whom the child is placed under a parental child safety agreement.

Reporting requirements. SB 206 specifies certain reporting requirements for the department. It requires an annual report of statistics by county on key performance measures for child protection. The report must be provided to the Legislature and made electronically available to the public. It must include certain information, such as the number of child abuse and neglect reports, the number of child deaths from abuse and neglect in the state, and the number of children in managing state conservatorship at the time of their death. The report also must include statistics related to pregnant and parenting children in foster care, as well as children who go missing or are victims of trafficking while in care. To the extent feasible, the department must report information about the funding for child abuse and neglect prevention services by county and the rate of child abuse and neglect per 1,000 children by county.

The department must annually seek and evaluate public input on the usefulness of reporting requirements and any proposed changes.

Planning requirements. SB 206 requires DFPS to address its planning in three major areas.

Child protective services plan. DFPS must develop and implement an annual business plan for the child protective services program. The plan must include long-term and short-term performance goals, identification of priority projects, a statement of staff expectations that identifies responsible persons or teams, expected tasks and deliverables, resources

needed, a time frame for the completion of each project, and expected outcomes. Each year by October 1, the department must submit the annual business plan to the governor, lieutenant governor, speaker of the House, and chairs of relevant House and Senate committees.

Prevention and early intervention services plan.

The bill requires that DFPS develop and implement a five-year strategic plan for its prevention and early intervention services program and issue a new plan by September 1 of the last fiscal year in each five-year period. The plan must identify methods to leverage other sources of funding or provide support for existing community-based prevention efforts and include a needs assessment that identifies programs to best target the needs of the highest-risk populations and geographic areas. It also must identify the goals and priorities for the department's overall prevention efforts, methods to collaborate with other state agencies on prevention efforts, and specific strategies to implement the plan and to develop measures for reporting on the overall progress toward the plan's goals. DFPS must update the plan annually and post it on the department's website.

Foster care redesign plan. DFPS must develop and maintain a plan for implementing its foster care redesign initiative. The plan must include:

- a description of the department's expectations, goals, and approach to implementing foster care redesign;
- a timeline for implementing foster care redesign throughout the state, any limitations related to the implementation, and a contingency plan to provide continuity of foster care service delivery if a contract with a single source continuum contractor ends prematurely;
- delineation and definition of case management roles and responsibilities of the department and its contractors, as well as duties, employees, and related funding that will be transferred to the contractor by the department;
- identification of training needs and plans;
- a plan for evaluating costs and tasks associated with each contract procurement, including initial and ongoing contract costs for the department and contractor;
- the department's contract monitoring approach and a plan for evaluating the performance of each contractor and the foster care redesign

system as a whole, including an independent evaluation of processes and outcomes; and

- a report on transition issues resulting from implementation of the foster care redesign.

DFPS must update the implementation plan and post the updated plan on its website annually.

Child care licensing. SB 206 directs the executive commissioner of HHSC to develop, adopt, and publicize an enforcement policy for regulation of child care facilities. The policy must include a method for determining appropriate disciplinary action for child care licensing violations. The bill also removes from statute specific fee amounts associated with child care licensing and requires the HHSC executive commissioner to set fees by rule. It also provides for the adoption of rules regarding a certification and registration renewal process.

Other provisions. SB 206 also makes various changes to the Education Code, including revisions that allow children to attend a certain school regardless of certain other changes in the child's conservatorship status and that permit a child in foster care to be home-schooled, with certain exceptions. Other provisions relate to permanency hearing procedures and home studies for child placement and adoption.

Supporters said

SB 206 would make essential changes to the Department of Family and Protective Services (DFPS) to protect the safety and well-being of children while also considering needs of the agency and the rights of parents. In its recent reports, the Sunset Advisory Commission characterized DFPS as an agency frequently responding to crisis and highlighted a high turnover rate among child protective services caseworkers as a key issue needing to be addressed. Stakeholders have worked extensively on SB 206 to ensure that it reflects the relevant Sunset recommendations. In addition, an operational review, input from DFPS, and the recommendations of a workgroup also were considered in formulating the bill.

As one example of the type of balance achieved by the bill, SB 206 would allow DFPS to retain some discretion about which information to release to

prospective adoptive parents, including the ability to modify the form they are required to use. At the same time, the bill would require the agency to provide the child's case record if prospective adoptive parents requested it after indicating a desire to proceed with the adoption and receiving other information.

Opponents said

While SB 206 reflects effort and progress in improving the quality of services for children in foster care or who are otherwise affected by the work of DFPS, some specific issues important to certain stakeholders would not be addressed.

For instance, under the bill, DFPS would have too much discretion about which information to release to prospective adoptive parents. This could be a problem for prospective adoptive parents who need access to timely and complete information concerning the child they are considering adopting. Certain information about the child's medical or behavioral history might be critical in their decision to go forward with an adoption, and withholding such information until late in the process could cause disruption or even a reversal of the process.

Notes

The HRO analysis of [SB 206](#) appeared in Part One of the May 26 *Daily Floor Report*.

SB 200 by Nelson, effective September 1, 2015, consolidates functions of health and human services agencies and provides for the continuation of DFPS until 2023. The HRO major issues analysis of SB 200 appears on [page 90](#) of this report.

HHSC inspector general Sunset recommendations

SB 207 by Hinojosa
Effective September 1, 2015

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SB 207 is the Sunset bill for the Office of Inspector General (OIG) under the Health and Human Services Commission (HHSC). The office is charged with preventing, detecting, and investigating fraud, waste, and abuse throughout the state's health and human services system. Under the bill, OIG must undergo a special-purpose Sunset review during the 2020-21 review cycle but will not be abolished.

Coordination with HHSC. SB 207 requires OIG to coordinate closely with staff of health and human services programs in preventing fraud, waste, and abuse and enforcing state law related to certain programs. The HHSC executive commissioner must work in consultation with the OIG regarding the adoption of rules necessary to implement a power or duty related to OIG operations.

HHSC's internal audit division must regularly audit the OIG and include OIG in its risk assessments. OIG is required to conduct its investigations independently from HHSC but must coordinate with HHSC programs to ensure that OIG staff thoroughly understand the state's health and human services system. The HHSC executive commissioner is responsible for performing all administrative support services necessary to operate the office.

Definition of fraud. The bill changes the definition of "fraud" in statute to specify that the term does not include unintentional technical, clerical, or administrative errors.

Investigations. OIG must complete a preliminary investigation of a health care provider for Medicaid fraud and abuse within 45 days of receiving a complaint or of having reason to believe that the fraud or abuse occurred. Full investigations must be completed within 180 days. If OIG determines that more than 180 days is needed to complete an investigation, it must notify the provider who is the subject of the investigation.

The HHSC executive commissioner must adopt rules for opening and prioritizing cases and must work with OIG to adopt rules for the office's investigation procedures and for enforcement and punitive actions.

OIG must review its investigative process, including its use of sampling and extrapolation to audit provider records. Based on the review and practices of other offices of inspector general, OIG and the HHSC executive commissioner must by rule adopt sampling and extrapolation standards.

Payment holds. The bill specifies that a payment hold is a serious enforcement tool that the office imposes to mitigate ongoing financial risk to the state. The OIG must notify a provider affected by a payment hold within five days of imposing the hold. The bill also specifies the circumstances under which the OIG may or may not impose a payment hold.

Administrative hearings. If a provider wishes to contest a payment hold, SB 207 requires a provider to request an expedited administrative hearing within 10 days of receiving notice of a payment hold from OIG. The State Office of Administrative Hearings must hold the expedited hearing within 45 days of receiving the request.

During the expedited hearing, OIG must show probable cause that the credible allegation of fraud related to the payment hold has indications of reliability and that continuing to pay the provider poses an ongoing financial risk to the state and a threat to the integrity of the Medicaid program. The bill also establishes other requirements for administrative hearings, including making OIG responsible for the costs of the hearing.

Informal resolution. SB 207 allows OIG to decide whether to grant a provider's request for an informal resolution meeting. The bill specifies that informal resolution meetings are confidential and provides other requirements for the informal resolution process.

Medicaid and managed care. OIG must decide within 10 days after receiving an application whether a health care professional may participate in Medicaid. The bill also requires OIG, in consultation with HHSC, to investigate fraud, waste, and abuse by managed care organizations and to establish requirements for training of special investigative units.

Supporters said

SB 207 would help address management and due process concerns found during the Sunset review of the Health and Human Services Commission (HHSC). The bill also would provide needed structure, guidelines, and performance measures for the investigative processes of the Office of Inspector General (OIG) to reduce overzealous investigation of Medicaid providers and to help ensure consistent and fair results.

Given the lack of data to fully evaluate OIG's performance, especially related to investigations, the bill would require the office to undergo special review by the Sunset Advisory Commission in six years. Within that period, OIG should have a case management system and the ability to track data to better illustrate its overall performance.

Under the bill, the governor would continue to appoint the inspector general, maintaining an arm's length relationship with the HHSC executive commissioner that would promote accountability and independence in the inspector general position while still allowing HHSC to have input in rulemaking at OIG. The HHSC executive commissioner would be responsible for performing all administrative support services necessary to operate the office, which would help hold the executive commissioner accountable for OIG's performance.

By specifying that the definition of "fraud" does not include unintentional technical, clerical, or administrative errors, the bill would focus OIG's investigations on those actually committing fraud and would help prevent resources from being wasted on providers who commit clerical errors.

The bill would streamline the payment hold process to more quickly mitigate state financial risks and reduce any undue burden on providers. It also would clarify the intended serious nature of payment holds and would specify that payment holds should be reserved for significant events, such as in cases of fraud and to compel the production of records.

Making informal resolution meetings before a payment hold hearing an option rather than a statutory right would help make the hearing process more efficient. A provider still would have a right to two informal resolution meetings before a hearing.

Opponents said

SB 207 could do more to foster accountability of the OIG. The bill also inappropriately would change certain aspects of current law.

Given the important work done by OIG and concerns uncovered in the Sunset review, it would be more appropriate for OIG to undergo special review in three years rather than six. This would permit enough time for changes to be made without allowing any problems to get out of hand.

Current law requiring the governor to appoint the inspector general fosters confusion about whether the inspector general answers to the governor or the HHSC executive commissioner. There are problems with this structure and its lack of clear accountability.

The Medicaid program has had significant problems in the past with providers who actually were committing fraud, waste, or abuse and endangering the health of children. Limiting the definition of fraud might impair OIG's ability to investigate providers and find those who had legitimately committed fraud.

The timeline proposed in the bill for how soon a provider would have to respond to notice of a payment hold to request an expedited administrative hearing is too short. Providers need more than 10 days to get billing sheets from the billing company in order to respond.

SB 207 should not allow OIG to determine whether a provider should be granted an informal resolution meeting and should not remove timelines that were just recently added to code. These changes would make the informal resolution process less transparent and slower.

Notes

The HRO analysis of [SB 207](#) appeared in Part One of the May 23 *Daily Floor Report*.

Revoking nursing home licenses for certain violations

SB 304 by Schwertner
Generally effective June 19, 2015

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SB 304 requires the executive commissioner of the Health and Human Services Commission (HHSC) to revoke the license of a convalescent or nursing home or related institution if the Department of Aging and Disability Services (DADS) determines that:

- the license holder has committed three violations that represented an immediate threat to health and safety related to the abuse or neglect of a resident within a 24-month period; and
- each violation was reported in connection with a separate survey, inspection, or investigation visit that occurred on separate entrance and exit dates.

An “immediate threat to health and safety” is defined as a situation in which immediate corrective action is necessary because a facility’s noncompliance with one or more requirements has caused or is likely to cause serious injury, harm, impairment, or death to a resident.

However, the executive commissioner may not revoke a facility’s license if:

- the violation and determination of immediate threat to health and safety are not included on the written list of violations left with the facility at the initial exit conference for a survey, inspection, or investigation;
- the violation is not included on the final statement of violations; or
- the violation has been reviewed under an informal dispute resolution process and a determination was made that the violation should be removed from the license holder’s record or that the violation is reduced in severity so that it no longer is considered an immediate threat to health and safety.

If a license is revoked, the department may request the appointment of a trustee to operate the institution, assist with obtaining a new operator for the institution, or assist with the relocation of residents to another institution.

The executive commissioner may choose to stop or “stay” a license revocation if it is determined that this decision will not jeopardize the health and safety of residents or place them at risk of abuse or neglect.

Other provisions address monitoring visits, rapid response team visits, and an informal dispute resolution process. For example, under the dispute resolution process, the bill requires HHSC to contract with an appropriate disinterested nonprofit organization to adjudicate disputes between a facility and the department concerning statements of violations that are prepared by the department in connection with a survey.

Supporters said

SB 304 would implement a “three-strikes” policy to address concerns that relatively few sanctions are issued for serious and repeated nursing home violations. When the Department of Aging and Disability Services (DADS) underwent Sunset review during the 2014-15 review cycle, the Sunset Advisory Commission found that few long-term care providers faced enforcement action for violations. SB 304 would help protect vulnerable Texans from potential abuse or neglect by creating a strong state response to facilities with serious, repeated health and safety violations that would include revoking their licenses to operate, if warranted.

At the same time, the bill would be fair to facilities because it generally would allow them an opportunity to fix problems identified by the state before facing license revocation. SB 304 also would ensure that the executive commissioner of the Health and Human Services Commission retained some discretion to stay a license revocation when doing so would not jeopardize the health or safety of residents. The informal dispute resolution provision, including a component to ensure the independence of the adjudicator, would provide a way for facilities to dispute unfair claims of violations. These and other provisions of the bill would help ensure that only bad actors were affected and would place reasonable parameters around the revocation process.

SB 304 also would help facilities that want to improve. Provisions in the bill would strengthen the department's quality monitoring program, which could improve quality of care through means other than enforcement action.

Opponents said

While intending to help nursing home residents, SB 304 could lead to the closure of nursing homes or other long-term care facilities, which would be difficult for many residents and their families. Rather than shutting down facilities, the state's goal should be to improve quality and maintain access to care. This course of action could be particularly problematic in rural parts of the state that do not have many nursing homes or other long-term care facilities. In some areas, these facilities are important employers. Shutting down a facility could punish residents, family members, and staff, when most of them have done no wrong.

Evaluation teams that conduct surveys of nursing homes and other long-term care facilities are not always consistent in applying standards. In particular, violations of "immediate jeopardy to health and safety" can be subjective. Survey team members may not always have appropriate clinical knowledge and experience to properly evaluate a nursing home. The bill would not necessarily ensure that standards were applied fairly and consistently, even though a facility's license could be at stake.

The state already has the ability to revoke a license if warranted. SB 304 could push more facilities in that direction, rather than helping them improve. Instead of implementing additional punitive measures, the state should provide more funding to help struggling facilities restricted by low Medicaid reimbursement rates to attract and retain high-quality staff.

Notes

The HRO analysis of [SB 304](#) appeared in Part One of the May 22 *Daily Floor Report*.

Low-THC cannabis for medical use by epilepsy patients

SB 339 by Eltife
Effective June 1, 2015

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SB 339 creates the Texas Compassionate Use Act, which requires the Department of Public Safety (DPS) to license organizations that dispense low-THC cannabis to certain patients with intractable epilepsy. The bill also requires DPS to establish and maintain a secure, online compassionate-use registry, which must contain information about the prescribing physician, the dosage of low-THC cannabis that was prescribed, and patient information. The registry is accessible to law enforcement agencies and dispensing organizations.

The bill defines “low-THC cannabis” to mean the plant *Cannabis sativa* L. and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contained up to 0.5 percent by weight of tetrahydrocannabinols (THC) and at least 10 percent by weight of cannabidiol.

Prescribing physicians. The bill sets requirements and conditions under which physicians may prescribe low-THC cannabis for the treatment of epilepsy, including that the drug be administered by means other than smoking. It also requires that patients prescribed the drug be permanent Texas residents.

Dispensing organizations. The bill requires an organization that cultivates, processes, or dispenses low-THC cannabis to have a license and sets eligibility requirements for obtaining the license. A license is valid for two years from the date of issue or renewal.

DPS may issue or renew a license to operate a dispensing organization if the organization meets certain requirements and if issuing the license is necessary to ensure reasonable statewide access to and availability of low-THC cannabis for patients in the compassionate-use registry. A dispensing organization may not transfer its license to another person before the prospective applicant and the applicant’s directors, managers, and employees provide fingerprints and pass a background check. A dispensing organization is required to verify the validity of a person’s prescription before dispensing low-THC cannabis.

DPS may suspend or revoke a license if the licensee does not maintain eligibility requirements or fails to comply with duties imposed by the act. After suspending or revoking a license, the director of DPS may seize or place under seal all low-THC cannabis and drug paraphernalia owned or possessed by the dispensing organization. The seized items may not be disposed of until the time for an organization to administratively appeal the order has elapsed or until all appeals have ended. When a revocation order becomes final, all low-THC cannabis and drug paraphernalia may be forfeited to the state.

Exceptions to current laws. The bill prohibits a municipality, county, or other political subdivision from enacting, adopting, or enforcing any type of regulation that would prohibit the cultivation, production, dispensing, or possession of low-THC cannabis, as authorized by SB 339. The bill exempts a person who engaged in the acquisition, possession, production, cultivation, delivery, or disposal of a raw material used in or by-product created by the production or cultivation of low-THC cannabis from certain marijuana offenses if the person:

- is a patient or the legal guardian of a patient for whom low-THC cannabis is prescribed and the person has a valid prescription from a dispensing organization; or
- is a director, manager, or employee of a dispensing organization and the person solely acquired, possessed, produced, cultivated, dispensed, or disposed of low-THC cannabis, raw materials, or related drug paraphernalia as part of the person’s regular duties at the organization.

The bill also exempts a dispensing organization that possesses low-THC cannabis and is licensed under the provisions of SB 339 from registering with DPS under the Texas Controlled Substances Act. The Texas Pharmacy Act does not apply to dispensing organizations.

Supporters said

SB 339 would provide an effective, compassionate-use option for people with intractable epilepsy, including children, for whom other treatments have not controlled their seizures. It is not a recreational marijuana or broad medical marijuana bill; SB 339 is narrowly drafted to give people with epilepsy another tool where others have failed.

The bill would apply only to low-THC cannabis, a form that has a low propensity for abuse and no street value on the black market. The bill limits THC in the treatment to 0.5 percent, which is not enough to produce a euphoric effect. SB 339 also would help prevent drug abuse because low-THC cannabis for medical use could not be smoked and users would be registered in a state registry.

Only patients who are Texas residents with intractable epilepsy could receive a prescription for low-THC cannabis under SB 339. The bill includes sufficient regulation of physicians to protect patients. Dispensers also would have to be registered and licensed through DPS, which could seize the treatment and drug paraphernalia if a dispensing organization's license were revoked.

Drugs approved by the U.S. Food and Drug Administration (FDA) that are currently prescribed for epilepsy in children are stronger than low-THC cannabis and can have more severe side effects, such as risk of liver failure, kidney stones, or pneumonia. Patients who have used low-THC cannabis report nothing more serious than sleepiness among its side effects. Low-THC cannabis allowed under the bill could be used to treat certain syndromes for which there are no treatments currently approved by the FDA.

Concerns about the effect of low-THC cannabis on a child's brain are not sufficient to reject an effective treatment. The same concerns could apply to FDA-approved anti-epileptic drugs because many of them were not clinically tested for use with children, but only for adults. Many FDA-approved anti-epileptic drugs also have value on the black market.

Other states have legalized this treatment, and Texas families who wish to legally obtain low-THC cannabis to treat their child's epilepsy sometimes must move to another state. This is an unreasonable burden for Texas families, who should be able to receive this effective medical treatment under controlled conditions in this state.

Opponents said

SB 339 would run the risk of causing harm by allowing patients to use a treatment that has not yet been approved by the FDA. Children's brains are still developing and could be harmed by using a drug that has not been proven to be safe and effective.

Patients wishing to use low-THC cannabis should wait for this treatment to be fully tested because its side effects are relatively unknown. Low-THC cannabis has been designated an "orphan drug" by the FDA, which means that the trial process is likely to move quickly for this treatment.

The bill also could create the opportunity for other children, such as those in the same household who were not prescribed the treatment, to use low-THC cannabis if they were not properly supervised. While the treatment would be low-THC, it would not be free of this psychoactive substance and still could be sold on the black market.

SB 339 also would not provide adequate regulation for the sale of low-THC cannabis. The fact that other states have enacted similar legislation is not a reason for Texas to follow suit.

Notes

The HRO analysis of [SB 339](#) appeared in the May 18 *Daily Floor Report*.



Higher Education

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* Finally approved

Authorizing tuition revenue bonds to finance facilities

HB 100 by Zerwas
Effective September 1, 2015

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HB 100 authorizes the issuance of \$3.1 billion in tuition revenue bonds (TRBs) for institutions of higher education to finance construction and renovation of infrastructure and facilities.

The bonds are payable from pledged revenue and tuition, and if a board of regents does not have sufficient funds to meet its obligations, funds may be transferred among institutions, branches, and entities within each system. The bill authorizes TRBs for individual institutions and projects for the following universities and university systems:

- Texas A&M University System (\$800.8 million);
- University of Texas System (\$922.6 million);
- University of Houston System (\$362.5 million);
- Texas State University System (\$256.4 million);
- University of North Texas System (\$269 million);
- Texas Tech University System (\$247.1 million);
- Texas Woman's University (\$38 million);
- Midwestern State University (\$58.4 million);
- Stephen F. Austin University (\$46.4 million);
- Texas Southern University (\$60 million); and
- Texas State Technical College System (\$41.7 million).

HB 100 does not affect any authority or restriction on the activities an institution of higher education may conduct in connection with facilities financed by the TRBs.

The bill also repeals provisions added by the 81st Legislature requiring approval by the Legislative Budget Board (LBB) before transferring state appropriations to reimburse the board of regents of the University of Texas Medical Branch at Galveston (UTMB) for the debt service on certain TRBs. Under the provisions, LBB was required to consider certain factors in determining whether to approve the transfer of state funds.

Supporters said

HB 100 would authorize tuition revenue bonds (TRBs) that would be essential for the state's higher education institutions to build and maintain facilities, provide for enrollment growth, and remain competitive. Since their inception, TRBs successfully have funded capital construction projects at institutions of higher education.

These bonds are a cost-effective way to fund projects, such as new labs and classrooms, that are not likely to be funded by other means. Other funding mechanisms are limited in their ability to help institutions fund needed capital growth and facilities upgrades. TRBs are the best option for funding capital construction projects at the state's higher education institutions without exceeding the constitutional spending cap.

Authorizing TRBs for new facilities also would accommodate enrollment growth, allowing more Texans to pursue higher education. Although online learning has grown, there is no consensus on whether it should replace classroom learning. The investment in a building that could last several years and serve many students also may yield a better value than technology that must be upgraded every few years and that requires students to buy new computers and software.

The TRBs provided in this bill would be a good investment for the state because they offer a high return. New labs that facilitate research and development benefit all taxpayers, not just students. Moreover, investment in state-of-the-art facilities would help attract renowned faculty members and researchers to the state's universities, which is one of Gov. Abbott's top priorities.

The costs that TRBs present to the state are no different from other investments made in legislative priorities. Financing for any state program is the responsibility of future lawmakers, and all state-funded programs and entities face uncertainty about whether the Legislature will approve their funding. The Legislature

typically appropriates general revenue funds to reimburse institutions for the tuition spent toward debt service on TRBs to demonstrate that higher education is a state priority.

HB 100 would demonstrate necessary fiscal discipline by not fully funding all of the TRB requests made this session. TRB authorizations for larger universities in the bill reflect that these schools serve larger student populations, but smaller schools, particularly newer campuses, also would receive needed support in the bill.

The last major statewide authorization for TRBs was in 2006. Institutions have put off needed repairs and construction since then. Now is an opportune time to fund TRB requests because interest rates and construction costs are relatively low and the state has enough money to fulfill many of the institutions' capital construction needs.

Opponents said

HB 100 would result in a massive sum of debt from TRBs that would be risky both for taxpayers and institutions of higher education. TRBs promised by one Legislature cover only a portion of the cost of projects, and the remaining debt becomes the responsibility of future legislatures and taxpayers.

TRBs are unreliable for long-term project planning because institutions cannot predict whether their TRB requests will be authorized. Additionally, any amount of TRB debt that an institution incurs that cannot be covered by tuition increases would be shifted to another institution within that system. Alternatively, TRB debt service reimbursed by the Legislature in general revenue places the cost of these projects on the taxpayers, instead of the institutions and students who benefit from them. The state should use a more reliable and transparent mechanism for funding capital construction projects at universities.

Texas has many demands that compete for limited resources, and higher education institutions and lawmakers should consider alternative methods for funding capital construction projects. Formula funding for state universities, if used carefully, is enough to cover the needs of higher education institutions. Other options include creating a direct appropriation from the state's budget or the rainy day fund, establishing

public-private partnerships, or authorizing general obligation bonds. Paying for these projects with a direct appropriation, for example, would save taxpayers a substantial amount in interest payments resulting from TRBs. The state and universities also could invest more in online education, which does not rely heavily on capital construction funding.

Other opponents said

Although HB 100 would issue TRBs for many needed projects, the \$3.1 billion is not enough to address institutions' full request of \$5.6 billion for fiscal 2016-17.

In addition, HB 100 would authorize TRBs for several labs and research facilities, but STEM is not the only area that needs focus and development. Other degree programs can lead to high wages and steady employment, and the state should invest in these other disciplines through TRB projects.

Larger institutions, including Texas A&M and the University of Texas, always receive a large share of higher education funding, but TRBs and other funding mechanisms should address needs at smaller campuses that also play an important role by educating many first-generation college students and adult learners.

Notes

The HRO analysis of [HB 100](#) appeared in Part One of the April 8 *Daily Floor Report*.

The 84th Legislature considered other bills related to the funding of campus construction projects, including **SB 1191** by Seliger, which generally took effect August 31, 2015. SB 1191 increases by 50 percent the annual Higher Education Fund (HEF) allocation — the amount of an annual constitutional appropriation to certain public institutions of higher education — beginning in fiscal 2016. This allocation was last increased by the 79th Legislature in 2005. The bill also provides adjustments for HEF appropriations to specific institutions, which can be used for construction, renovation, or certain other types of projects specified by Tex. Const., Art. 7, sec. 17(a). The HRO analysis of [HB 2848](#) by Crownover, the companion to SB 1191, appeared in the April 16 *Daily Floor Report*.

Abolishing the Texas B-On-time student loan program

HB 700 by Giddings
Effective September 1, 2015

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HB 700 abolishes the Texas B-On-time loan program, which is a no-interest college loan program administered by the Texas Higher Education Coordinating Board. B-On-time loans are forgiven if a student graduates within four or five years, depending on the program, and maintains a 3.0 grade point average.

The bill directs the coordinating board to stop making new B-On-time loan awards beginning with the fall semester of 2015. Renewal of awards received before September 1, 2015, is allowed for eligible students until the fall semester of 2020, as long as those students continue to meet eligibility requirements. On September 1, 2020, the Texas B-On-time account from which the loans are made will be abolished.

The bill eliminates the 5 percent tuition set-aside required of institutions specifically for the B-On-time program. It also reduces from 20 percent to 15 percent the amount of tuition in excess of \$46 per semester credit hour that institutions must set aside for overall student financial assistance.

Following termination of the program, any balance left in the Texas B-On-time account will be distributed to eligible institutions by the coordinating board. The board must develop a formula to fairly allocate these remaining funds to institutions at which the B-On-time program was underutilized. The loan program would be considered underutilized if the institution's percentage of the total tuition set-aside for the program across all institutions was greater than the percentage of students at that institution who received a B-On-time loan for the same period.

Supporters said

HB 700 would abolish a financial aid program that has been underutilized, inequitable, and ineffective. Since the program's inception in 2003, millions of dollars in general revenue and tuition set-asides have sat unused in a general revenue account. The Sunset Advisory Commission's review of the Texas Higher Education Coordinating Board for the 83rd Legislature

revealed that few schools that contributed set-aside funds to the B-On-time program recaptured much or any of the money paid into the account. In view of this, the bill would eliminate the 5 percent set-aside for the B-On-time program and reduce the overall tuition set-aside requirements.

Abolishing the B-On-time program would allow the Legislature to focus on financial aid programs that serve more students more effectively, such as the TEXAS Grant program, which benefits a larger and higher-need student population.

B-On-time requirements can be difficult for students to understand and meet. Many students change majors, are commuters, take time off, or work part-time while in school and may not complete their degrees under the time and grade point average constraints required to have their loans forgiven. Students who receive loans have not succeeded at the rate desired, and when students do not succeed, these loans have a higher default rate than other loans. Those students who do complete the program risk being stuck paying substantial taxes for the forgiven debt just as they leave school to pursue a career. Due to federal regulations, schools must follow several burdensome requirements to be able to advertise or promote B-On-time loans. Therefore, many students do not know about the program.

The bill would ensure that schools that had been paying into the loan program without receiving much benefit received a fair allocation of leftover funds when the account was closed in 2020. The allocation to institutions that underutilized the program funding would reflect the reality that the program has not served certain institutions' students well and that the burden of promoting the program outweighed the utility of students knowing about it.

Opponents said

HB 700 would eliminate a financial aid program that has never been given a real chance to succeed. Concerns about the program could be remedied easily

and are not an indication of whether the concept itself is good. For instance, the Legislature could empower the coordinating board to distribute funds differently, or the program could serve a more targeted population. Efforts are underway at the federal level to change restrictions on promoting loan programs like B-On-time.

The B-On-time program has received inconsistent funding over its short existence, hindering its ability to serve large numbers of students and making its future uncertain for many would-be recipients. The outcomes the program has seen, even without reaching full potential, have been positive, with higher graduation rates reported for students using the loan. Further, these loans are issued by the state interest-free, so even when students do not complete the program for loan forgiveness, they receive a great benefit.

The bill would remove an innovative financial aid program at a time when financial aid has not kept pace with the cost of a college education. B-On-time provides access to higher education to middle-income families that often do not qualify for need-based aid programs.

Other opponents said

The allocation of B-On-time funds remaining in the general revenue account as outlined in HB 700 would not be effective or equitable. The bill's wind-up method includes a definition for "underutilized" that would seem to reward institutions that had not worked hard the past decade to promote and improve the B-On-time program.

Notes

The HRO analysis of [HB 700](#) appeared in Part One of the April 22 *Daily Floor Report*.

Carrying concealed handguns on college campuses

SB 11 by Birdwell
Generally effective August 1, 2016

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SB 11 allows concealed handgun license holders to carry concealed handguns onto the campuses of public higher education institutions or private or independent higher education institutions.

After consulting with students, staff, and faculty, private or independent institutions may prohibit handguns on campus, including any grounds or building on which an activity sponsored by the institution is being conducted, or a passenger transportation vehicle owned by the institution.

Campus-specific regulations. Higher education institutions may establish rules for licensees carrying concealed handguns on campus after such consultations, but these regulations may not generally prohibit or have the effect of generally prohibiting license holders from carrying concealed handguns on campus. These provisions may be amended as necessary for campus safety and are required to give effective notice of any premises where license holders may not carry handguns. Institutions also may establish rules concerning storage of handguns in campus dormitories or other residential facilities that are owned or leased and operated by the institution.

The regulations must be reviewed by the board of regents or other governing board of the institution, which may amend them. The final regulations must be widely distributed to all students, staff, and faculty, including by posting them on the institution's website. Institutions must submit a biennial report to the Legislature that describes and explains the institution's regulations for carrying concealed handguns on campus.

Immunity. The bill prohibits courts from holding any of the following liable for damages caused by an applicant or a concealed handgun license holder or by an action or failure to perform a duty imposed by applicable concealed handgun license statutes:

- an institution of higher education;
- a private or independent institution of higher education that had not opted out of allowing handguns on campus; or
- an officer or employee of either.

A cause of action may not be brought against any of the above institutions or individuals based on any damage caused by the actions of an applicant or license holder. These protections do not apply if the act or failure to act was capricious or arbitrary or if the conduct of any of these covered officers or employees with regard to their possession of the handgun on campus was the basis of a claim for personal injury or property damage.

Penalties. The bill creates a class A misdemeanor offense (up to one year in jail and/or a maximum fine of \$4,000) for a license holder who intentionally or knowingly openly carries a handgun, regardless of whether the handgun was holstered:

- on the premises of a public, private or independent institution of higher education or
- on any public or private driveway, street, sidewalk or parking area of an institution of higher education.

The bill creates a class A misdemeanor offense for a license holder who carries a handgun on the campus of a private or independent institution that has opted out of the campus carry law or on a portion of campus where an institution has prohibited the carrying of guns by regulations, whether or not the handgun is concealed, as long as the institution gives effective notice.

The bill also creates defenses to prosecution and exemptions from these penalties and establishes deadlines by which public institutions of higher education, private or independent institutions, and public junior colleges are required to take action to adopt rules under the bill.

Supporters said

SB 11 appropriately would protect the right of a concealed handgun license holder to carry a handgun on the public property of an institution of higher education funded with taxpayer dollars. License holders on college campuses should be able to exercise the right to self-defense, which is currently restricted by the status of

campuses as “weapon-free zones” in which criminals and campus shooters can operate with little fear of meeting armed, well-trained resistance.

The bill gives universities flexibility to create their own rules for concealed handgun license holders on their campuses. Further, allowing private colleges and universities to opt out of allowing handguns on campus would treat them the same as private businesses in this respect.

Law enforcement officers responding to a shooting on campus would have no more difficulty distinguishing between criminals and licensed handgun holders defending themselves than they would off-campus, where concealed carrying of handguns is allowed.

The state’s background check and process for obtaining a handgun license is extremely thorough and prevents people who have committed serious crimes from acquiring licenses. Moreover, concealed handgun license holders are much less likely than unlicensed civilians to commit a crime. This bill would not apply to most undergraduates because an individual must be 21 years or older in order to obtain a concealed handgun license.

Opponents said

SB 11 could contribute to a more dangerous environment and a culture of fear at Texas’ colleges and universities by allowing the concealed carry of handguns on campus. An increase of lethal weapons on campus would detract from an environment intended to foster learning and academic debate. College students and professors should have the freedom to discuss ideas without the potential intimidation factor of handguns in the classroom.

Officers responding to a shooting could have difficulty differentiating between shooters if one or more concealed handgun license holders were trying to stop an aggressor. Even with the required training and education that comes with a license, shooting calmly and with precision is extremely difficult and can contribute to casualties from crossfire.

The bill could increase the risk of handguns not being secured properly in a campus residence or on a person, which could result in guns falling into the wrong hands. Colleges and university mental health

officials also worry about the correlation between guns and suicide, which is a leading cause of death among university students that can be greatly facilitated by access to guns.

SB 11 could make Texas universities less competitive for recruiting and retaining top faculty. Published reports of campus surveys suggest that a large majority of faculty oppose the presence of concealed handguns on campus. The bill also may increase costs for universities incurred for lockers, training, and personnel, which would require either increases in state appropriations or tuition collected, or eliminating other student services or activities.

Other opponents said

SB 11 should not allow private or independent institutions to opt out of, nor public institutions to regulate, the carrying of handguns on campus. The right to self-defense for students should not be infringed by university regulations.

Notes

The HRO analysis of [SB 11](#) appeared in Part One of the May 26 *Daily Floor Report*.

SB 386 by V. Taylor, effective September 1, 2015, authorizes public junior colleges to appoint one or more employees as school marshals who are authorized to carry a concealed handgun on the premises of a public junior college under regulations adopted by the governing board.

Graduate medical education expansion and study

SB 18 by Nelson/SB 295 by Schwertner
Effective September 1, 2015

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SB 18 amends certain strategies, such as grant programs, aimed at expanding and supporting the state's graduate medical education (GME) offerings. It also requires the Texas Higher Education Coordinating Board to prioritize the funding of programs in medical specialties that are at critical shortage levels in the state. To determine specialties with critical shortage levels, the board will use several sources, including research conducted by the Health Professions Resource Center at the Department of State Health Services.

SB 18 establishes a permanent fund within the state treasury, outside the general revenue fund, to support graduate medical education. The Texas Department of Insurance, after an actuarial study, will transfer certain excess funds from the Texas Medical Liability Joint Underwriting Association to the permanent fund.

The bill also abolishes the Resident Physician Expansion Grant Program.

SB 295 requires the Texas Higher Education Coordinating Board to establish and maintain a data system to track initial residency program choices made by Texas medical school graduates and the initial practice choices of those completing residency programs in the state.

The system established by the bill will track data available to the coordinating board, including data from medical schools or residency programs in Texas. The tracking system will collect certain relevant information on doctors for the two-year period following completion of their residency programs, including:

- whether and for how long these doctors work in primary care in Texas and which medical specialties they report as their primary medical practice; and
- the locations of the practices established by these doctors.

The coordinating board will establish the tracking system by January 1, 2016.

Supporters said

SB 18 would make several necessary changes to the state's approach to training and educating its medical residents. Texas has too few available residency spots to accommodate its medical school graduates. Moreover, several new medical schools are slated to open within the next few years, accelerating a "brain drain" of Texas-educated medical students to other states. SB 18 would help ensure that there were enough residency positions available for Texas medical school graduates and to potentially attract graduates from other states.

By setting up the permanent GME fund, the bill would ensure that the state expanded medical education and sustained the expansion to serve future medical school graduates. The bill also would streamline GME programs by eliminating duplicative programs, such as the Resident Physician Expansion Grant Program.

The bill would make effective use of excess funds held at the Texas Medical Liability Joint Underwriting Association, which currently does not cover a large number of medical professionals and institutions. The state could make better use of the funds by supporting future physicians, which is a recommendation of the Legislative Budget Board. The state should prevail in the event of any potential lawsuit filed by policyholders.

SB 295 would improve the state's ability to invest effectively in medical education and training. While medical schools and residency programs track their own data on residency and job placement outcomes, the state currently lacks such a system.

Supporters of both bills said that efforts to study resident and doctor distribution across practice and geographic areas in Texas would help provide a vehicle for channeling needed funding to address a shortage of doctors in rural areas and in certain areas of medical practice and would ensure that the state had access to the necessary research to develop plans to meet the state's medical specialty and geographic needs.

Opponents said

SB 18 significantly would affect the Medical Liability Joint Underwriting Association, which offers a necessary service to many medical professionals and institutions. In addition, the association's funds are in large part composed of investment income or money paid in by policyholders, so appropriating these funds for a state purpose might expose the state to a lawsuit. The bill should provide the association and its agents some immunity from liability or implement a hold harmless policy, as afforded to other state employees, to protect agents from any potential litigation as a result of complying with the bill's requirements.

SB 295 should track outcomes for five years, rather than two, after a doctor completed residency. This would give a more accurate picture of medical and geographic practice areas because national data indicate that many initial job placements after residency are temporary.

Notes

The HRO analysis of [SB 18](#) appeared in the May 20 *Daily Floor Report*. The HRO analysis of [SB 295](#) appeared in Part Two of the May 22 *Daily Floor Report*.

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Eliminating the System Benefit Fund

HB 7 by Darby/HB 1101 by Sylvester Turner
Effective September 1, 2015/Effective June 17, 2015

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HB 7, among other changes to provisions governing general revenue dedicated funds, removes the 15 percent cap on the discount rate for low-income electricity customers offered under the System Benefit Fund. The bill gives the Public Utility Commission discretion to set the rate at a level necessary to spend the fund's unexpended balance by its expiration date at the end of fiscal 2016. HB 7 also allows the reduced rate to be provided year-round during fiscal 2016, rather than only during the summer months.

HB 1101, like HB 7, removes the 15 percent cap on the discount rate for low-income customers, gives the PUC discretion to set the rate for low-income customers at a level sufficient to exhaust the fund, and allows the reduced rate to be provided year-round. HB 1101 differs from HB 7 by extending the expiration date of the fund through fiscal 2017 in the event that any money remained in the fund to continue providing discounts to low-income customers after the end of fiscal 2016.

Supporters said

Removing the 15 percent cap on the discount rate for low-income utility customers for 2016 and allowing the discount rate to be available year-round would allow the money to be used for the purpose for which it was intended and would allow the program to end as scheduled at the end of fiscal 2016.

The System Benefit Fund is administered by the Public Utility Commission to fund the operation of the agency, pay for customer education programs, and provide a utility rate discount to eligible low-income utility customers during the warm-weather months of May through September. The SBF receives its revenue through a per-megawatt-hour fee collected from electricity ratepayers in areas open to competition. In recent years, revenue collected for the SBF has exceeded appropriations, and the fund ended fiscal 2013 with a balance of \$811.3 million.

The 83rd Legislature eliminated the fee deposited to the System Benefit Fund beginning in fiscal 2014 and set the fund's expiration date for end of fiscal 2016.

However, due to lower-than-expected enrollment in the discount program, combined with a mild summer, the Public Utility Commission estimates that the fund will have an unexpended balance of \$227 million at the end of fiscal 2016.

Opponents said

Instead of directing the Public Utility Commission to exhaust the entire System Benefit Fund balance through the low-income electricity customer program, the Legislature should appropriate some of the funds for critical-need medical customers, for whom an interruption of electricity service for overdue payments could be life-threatening.

Notes

The HRO analysis of [HB 7](#) appeared in Part One of the April 27 *Daily Floor Report*. The HRO digest of [HB 1101](#) appeared in Part Two of the May 7 *Daily Floor Report*.

Extending and updating emissions reduction plan

HB 14 by Morrison
Died in conference committee

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HB 14, as passed by the House, would have extended the expiration date of the Texas Emissions Reduction Plan (TERP) from August 31, 2019, to August 31, 2023. Under TERP, the Texas Commission on Environmental Quality (TCEQ) and the comptroller provide grants and other funds for upgrading or replacing older vehicles and equipment in order to reduce emission of pollutants. The bill would have expanded a list of counties specified in statute as eligible to apply for TERP grants and would have made changes to several incentive programs funded by TERP.

Expiration dates. The bill would have moved the expiration dates of TERP and several of its programs to 2023. For example, the Light-Duty Motor Vehicle Purchase or Lease Incentive Program, scheduled to expire August 31, 2015, would have been extended until August 31, 2023. TERP programs set to expire between 2017 and 2019 that would have been extended to 2023 include the Texas Clean Fleet Program, the Natural Gas Vehicle Grant Program, the Alternative Fueling Facilities Program, the Clean School Bus Program, and the New Technology Implementation Grant Program.

Affected counties. Bell, McLennan, and Webb counties would have been added to a statutory list of “affected counties” eligible to apply for certain TERP funds.

Oil field flaring and releases. The bill would have made additional projects eligible for funding under the New Technology Implementation Grant Program. Among those eligible for grants would have been new technology projects that reduce emissions from certain oil and gas activities, including the replacement, repower, or retrofit of stationary compressor engines or the installation of systems to reduce or eliminate the loss of gas, flaring of gas, or burning of gas using other combustion control devices.

Program changes. HB 14 also would have made changes to certain administrative and other aspects of several TERP programs.

Clean Transportation Triangle. The bill would have repealed provisions in statute establishing the Clean

Transportation Triangle Program and transferred some provisions to the Alternative Fueling Facilities Program to allow for the combination of these two programs. Areas eligible for incentives under the Alternative Fueling Facilities Program would have been expanded to include counties in the Clean Transportation Triangle.

Vehicle purchase and lease program. Hydrogen fuel cells would have been added to the fuel systems eligible for the Light-Duty Motor Vehicle Purchase or Lease Incentive Program. New light-duty vehicles powered by compressed natural gas or liquefied petroleum gas would have been eligible for a \$5,000 incentive, an increase from \$2,500. The bill would have limited this incentive to 1,000 vehicles each fiscal biennium, a decrease from 2,000 in fiscal 2014-15.

Natural gas vehicle grants. The bill would have amended certain definitions and eligibility provisions for the replacement or repower of a vehicle under the Natural Gas Vehicle Grant Program. It also would have removed a provision directing TCEQ to provide for contracts with “participating dealers,” who are required to assist applicants in submitting forms under the program, and would have removed other references and requirements related to these entities in statute.

Clean fleet program. The bill would have removed a provision allowing TCEQ to require an applicant to submit a photograph or other vehicle documentation only after the commission had decided to fund a project.

Diesel emissions reduction program. TCEQ would have been authorized to streamline the application process for the Diesel Emissions Reduction Incentive Program by developing a system to accept applications electronically through its website.

Supporters said

HB 14 would extend and make several improvements to the Texas Emissions Reduction Plan (TERP), a program that already has proved effective at supporting the reduction and control of air pollution. In particular, the bill would allow TERP to continue

helping to reduce nitrogen oxide emissions from mobile sources. The bill also would improve the efficiency and streamline the requirements of certain TERP programs.

Moving the expiration date of TERP and its programs to 2023 would allow TCEQ to continue using the plan's funding to help decrease emissions of nitrogen oxide gases, which are primary precursors to ozone formation. If the Environmental Protection Agency (EPA) finalizes a proposal to lower federal ground-level ozone standards, the deadline for certain areas of the state to meet the new requirements is expected to be between 2020 and 2023. Extending TERP would help counties reach attainment under the stricter standards. The bill also would continue incentives for Texans to buy eligible electric or natural gas-powered vehicles by extending the deadline of the Light-Duty Motor Vehicle Incentive Program by eight years.

Adding three more counties to those eligible for TERP grants would provide economic and health benefits to businesses and communities in those areas by helping individuals and fleet owners replace older, heavily polluting vehicles with newer, cleaner-running ones. In addition, further reducing ozone-forming pollutants in these counties would help them remain in attainment of federal standards if the EPA finalizes stricter requirements.

The bill would introduce promising new elements into TERP. Among these are projects eligible for TERP funding that would reduce emissions from oil and gas production, storage, and transmission activities, such as the installation of systems to reduce flaring or the burning of gas using other combustion control devices.

HB 14 also would improve funding and program mechanics under TERP. The Clean Transportation Triangle Program and the Alternative Fueling Facilities Program fund similar projects, so combining them would make their administration more efficient while reducing confusion for applicants. In addition, removing cumbersome requirements related to "participating dealers" in statute would simplify processes for those taking part in the Natural Gas Vehicle Grant Program, and eliminating the requirement that TCEQ may request certain documentation under the Clean Fleet Program only after grant selections are made would reduce delays and uncertainty for applicants.

While some might argue that the bill could do more, HB 14 would improve an already successful program and expand its geographic reach. Moreover, TERP is a market-based tool that helps Texas preserve clean air and promote public health while improving the state's economic strength.

Opponents said

HB 14 could exacerbate problematic issues with a costly program. It is inappropriate for the state government to use taxpayer funds to subsidize natural gas and renewable energy schemes in response to overreaching federal regulations.

Notes

The HRO analysis of [HB 14](#) appeared in Part Two of the May 6 *Daily Floor Report*.

HB 14 died in conference committee. It was amended in the Senate to include provisions from two other bills relating to TERP programs, SB 12 by Uresti and SB 911 by Zaffirini.

SB 12, which died in the House Calendars Committee, would have established the state's intent, subject to available funds, that state agency fleets of more than 15 vehicles be converted into or replaced with vehicles that use compressed or liquefied natural gas, petroleum gas, hydrogen fuel cells, or electricity. It also would have required that TCEQ create a grant program with TERP funds to help eligible state agencies, counties, or municipalities buy or lease vehicles that operate primarily on an alternative fuel.

SB 911, which died in the House, would have included in the Clean Transportation Triangle program counties contained in the triangular area between San Antonio, Corpus Christi, and Laredo.

Expressly preempting local oil and gas regulations

HB 40 by Darby
Effective May 18, 2015

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HB 40 expressly preempts ordinances and regulations enacted by a political subdivision of the state that ban, limit, or otherwise regulate an oil and gas operation unless the regulation:

- regulates only above-ground activity;
- is commercially reasonable;
- does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and
- is not otherwise preempted by state or federal law.

“Commercially reasonable” regulations are defined as those that allow a reasonably prudent operator to fully and economically exploit oil and gas resources. An ordinance is considered commercially reasonable if has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.

The bill specifically includes hydraulic fracturing operations in the definition of oil and gas operations. Also included are other activities associated with the exploration, development, production, processing, and transportation of oil and gas.

Supporters said

HB 40 would affirm the preemptive nature of state regulations on oil and gas production over local ordinances, ensuring consistent, fair application of rules across the state.

Oil and gas regulation should take place at the state level. State agencies are the most experienced regulatory bodies and have highly specialized subdivisions equipped to handle issues that local governments cannot. The bill would provide local governments an incentive to work with operators because municipalities no longer would be able to regulate without considering the property rights of mineral owners. This would create a better balance between property rights and reasonable restrictions on oil and gas operations.

HB 40 would create regulatory certainty by removing the patchwork of municipal regulations, which can vary significantly. Furthermore, most local regulations are duplicative with state law, so Texas would not see a decrease in environmental quality or public health as a result of the bill.

The bill would protect the property rights of mineral owners in Texas. Current protections against regulatory takings are not sufficient because local ordinances effectively can ban the exploitation of minerals in a given area, and the outcome of current litigation is uncertain.

Opponents said

By stripping local governments of their authority to respond to citizen concerns, HB 40 could result in significant damage to environmental quality and public health. Local ordinances are necessitated by the failure of the state to adequately regulate and enforce regulations on oil and gas production. The effects of oil and gas operations are necessarily localized, and state agencies frequently are beyond the reach of the average citizen.

Differences in regulatory schemes between municipalities are not bad and merely reflect differences in operating environments. Urban areas should have different standards from rural areas. This bill would make uniform some regulations that should vary based on the specific needs of different communities.

This bill could have an expansive effect, preempting even basic public safety ordinances, such as parts of the fire code or traffic ordinances. Several terms in this bill are not well defined and are cross-applied from different parts of law in ways that might not be appropriate.

HB 40 is unnecessary because current protections against regulatory takings are adequate. Regulatory takings would likely be ruled inverse condemnations under current law, in which case mineral owners would be compensated.

Notes

The HRO analysis of [HB 40](#) appeared in the April 17 *Daily Floor Report*.

Appealing desired future conditions of groundwater

HB 200 by Keffer
Effective September 1, 2015

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HB 200 revises the process used to appeal the approval by groundwater conservation districts of “desired future conditions” for groundwater resources in management areas under their jurisdiction. Desired future conditions are a description of what aquifer resources should be at specified future times.

Administrative appeal of desired future conditions. The bill eliminates the current petition process through the Texas Water Development Board (TWDB) that is used to appeal the reasonableness of desired future conditions approved by a groundwater conservation district. The bill instead allows an affected person to file a petition with a district requiring the district to contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing appealing the reasonableness of a desired future condition. The bill places the final decision on adopting the desired future condition with the district and provides a process for district court appeal.

Dispute resolution. The district may seek the assistance of the Center for Public Policy Dispute Resolution, TWDB, or other dispute resolution systems to mediate the issues raised in the petition. If the issues cannot be resolved, SOAH will proceed with the hearing.

Hearing location and notice. A hearing must be held in accordance with the Administrative Procedure Act and SOAH rules at the district office or regular meeting location of the district board. The bill establishes requirements for providing notice of the hearing.

Prehearing conference. SOAH must hold a prehearing conference to determine preliminary matters, including who could participate as an affected person or party to the hearing.

Hearing costs. The petitioner must pay the costs of the contract for the hearing. After the hearing, SOAH may assess costs to other parties and refund any excess to the petitioner.

Final order. On receipt of the administrative law judge’s findings of fact and conclusions of law in a

proposal for decision, including a dismissal of a petition, the district will have to issue a final order stating the district’s decision on the contested matter and the district’s findings of fact and conclusions of law. Under certain circumstances, the district may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order. If the district vacates or modifies the administrative law judge’s proposal for decision, the district must report, in detail, the reasons for disagreement, including the policy, scientific, and technical justifications for the district’s decision.

Finding of unreasonable desired future condition. If the district finds that a desired future condition is unreasonable, the other districts in the management area will have to reconvene within 60 days in a joint planning meeting to revise it. A district’s final order finding that a desired future condition is unreasonable will not invalidate it for a district that did not participate as a party in the hearing.

Appeal of desired future conditions to a district court. A final district order may be appealed to a district court and will be decided under the substantial evidence standard of review. The venue for appeal will be a district court with jurisdiction over any part of the territory of the district that issued the order.

Finding of unreasonable desired future condition. If the court finds that a desired future condition is unreasonable, the court must strike the desired future condition and order the districts in the same management area as the district that received the petition to reconvene in a joint planning meeting within 60 days of the court’s decision to revise the desired future condition.

Supporters said

HB 200 would protect private property rights and maintain local control by creating a meaningful appeals process for property owners to challenge the establishment of desired future conditions of aquifers that could result in unreasonable restrictions on an

owner's right to produce groundwater. Setting the desired future conditions is the first step in groundwater management, making it important that landowners and other groundwater users have a fair way to dispute the desired future condition.

The current method for questioning the reasonableness of a desired future condition at the Texas Water Development Board (TWDB) lacks the necessary administrative procedures to ensure a clear, fair resolution. For this reason, the State Office of Administrative Hearings (SOAH) would be the best venue for these hearings. The bill would provide due process and a system of checks and balances and would place the proper emphasis on the role of science, while allowing groundwater conservation districts to achieve their primary purpose of properly managing the groundwater resources.

While the bill would remove TWDB's petition process for desired future conditions, it would maintain the board's important role through an administrative review of the desired future condition and a scientific and technical analysis. TWDB's administrative and technical review would provide a record for an entity to challenge the adoption of the desired future condition in district court.

Concerns that the bill would result in lawsuits being decided by people without knowledge of the water issues involved are unfounded because SOAH's specialized teams and administrative law judges have the expertise to handle these kinds of contested case hearings. The final decision on adopting the desired future condition would be with the district and there would be a process for judicial appeal.

Opponents said

Replacing the process for challenging the reasonableness of a desired future condition at TWDB with an appeals process involving a contested case hearing at SOAH and potential court appeals could lead to more lawsuits that would be decided by people without knowledge of the water issues involved. TWDB is better informed and better able to make decisions regarding desired future conditions than is SOAH.

Notes

The HRO analysis of [HB 200](#) appeared in Part One the *May 5 Daily Floor Report*.

Permitting, regulating aquifer storage and recovery

HB 655 by Larson
Effective June 16, 2015

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HB 655 repeals the current regulations for surface water aquifer storage and recovery (ASR) projects, including the requirement for developers to conduct pilot projects before filing a permit application for an ASR project. The bill instead provides the same regulatory framework for all ASR projects, whether the injected water was surface water or groundwater.

Jurisdiction over ASR projects. The bill gives the Texas Commission on Environmental Quality (TCEQ) exclusive jurisdiction over the regulation and permitting of ASR injection wells.

In issuing permits for ASR projects, TCEQ may act by rule, general permit, or individual permit and must consider:

- whether the injection well will comply with the Safe Drinking Water Act;
- the extent to which the amount of water injected could be recovered successfully and the effects of any commingling with native groundwater;
- the effect of the project on existing wells; and
- the potential for native groundwater quality degradation.

Additional authorization is not needed for the holder of a surface water right to store appropriated surface water in an ASR project before beneficial use, as long as the water right holder complies with the terms of the water right.

ASR wells located in a groundwater conservation district. If located in a groundwater conservation district, ASR injection and recovery wells will have to be registered with the district and will be subject to regular well registration fees.

TCEQ is required to limit the amount of water that a project can recover to the total amount that is injected. It also must further limit that amount to account for loss of native groundwater due to displacement from the injection.

If the project produces more water than the amount authorized for withdrawal by TCEQ, the project operator must report the excess volume to the district. A district's spacing, production, and permitting rules and fees apply only to withdrawals that exceed the amount authorized.

Groundwater conservation districts may consider ASR-related hydrogeologic conditions when planning and monitoring for the achievement of the desired future condition of the aquifer.

Reporting and other requirements. All wells that make up a single ASR project must be located on a continuous parcel of land or two or more adjacent parcels under common ownership or contract. The ASR project developer must meter all wells and report total injected and recovered amounts monthly to TCEQ and the district, if applicable, as well as results of annual water quality testing of injected and recovered water.

Exempt districts. The Edwards Aquifer Authority, the Harris-Galveston Subsidence District, the Fort Bend Subsidence District, the Barton Springs-Edwards Aquifer Conservation District, and the Corpus Christi Aquifer Storage and Recovery Conservation District are not affected by HB 655.

TCEQ rules. TCEQ is required to adopt rules, including rules related to well construction, completion, metering, and reporting requirements for ASR projects, by May 1, 2016. The commission may not adopt or enforce groundwater quality protection standards that are more stringent than federal standards.

Supporters said

HB 665 would encourage the development of aquifer storage and recovery (ASR) projects, which could provide a significant portion of the storage needed to meet future demand for water. ASR projects are resistant to many of the problems associated with storing water above ground in surface water reservoirs, such as adverse environmental impacts, land

requirements, high costs, and significant water losses due to evaporation. ASR facilities yield 100 percent of their stored water, which could help Texas communities endure times of drought.

While more than 80 ASR projects are operating in the United States, only three are in Texas. This number is so low largely because current regulations and statutes, both statewide and local, do not readily facilitate the most beneficial use of either groundwater or surface water for ASR projects. The bill would remove regulatory roadblocks to ASR projects, specifically the current dual regulatory scheme that gives TCEQ jurisdiction over the injection of water into the aquifer while groundwater conservation districts have jurisdiction over the recovery of that stored water. Under HB 655, the permitting process would go through TCEQ, with monthly and annual reports being submitted to both TCEQ and the local district.

District pumping limits would be applied only when a project had pumped more water from the aquifer than was injected. This would ensure that operators could access the water they injected without regulatory interference, while allowing districts to manage and protect native groundwater.

Opponents said

While further consideration and development of ASR projects is warranted, there are some provisions of the bill that could be problematic.

Groundwater conservation districts should play a vital role in the evaluation and oversight of ASR projects, and HB 655 would go too far in limiting that role. The transfer of the ASR regulatory authority from the districts to TCEQ would eliminate a district's opportunity to evaluate and address the impacts of proposed ASR projects. Districts need to have a regulatory and permitting role, particularly for the recovery process. Without this, groundwater districts no longer would have the ability to manage the aquifer. The bill would allow district oversight only if a project pumped more water from the aquifer than was injected. A better approach would be to allow groundwater districts to adopt ASR rules for approval by TCEQ.

Further, the bill would prescribe an overly simplified approach to determining the amount of water that could be produced from an ASR project based solely on the volume of water injected into an aquifer. This approach could subject ASR projects to controversy that could be avoided with a more technical and scientifically established approach based on monitoring water quality characteristics. Monitoring would help ensure that water produced by ASR recovery activities was actually injected water.

Water quality in bodies of water can vary greatly. Water quality testing of both the injected and recovered water should be done more than once a year as the bill would require, especially if injecting treated wastewater.

The bill should provide an option for TCEQ to deny a permit based on a determination that water loss as a result of the project would be so high that the injection was wasteful or not consistent with public welfare. Instead, TCEQ merely would restrict the amount of water that could be recovered to account for the loss.

HB 655 would prohibit TCEQ from setting groundwater quality protection standards more stringent than applicable federal standards even when circumstances might require higher standards to protect an aquifer. TCEQ should have the authority go beyond federal requirements in appropriate circumstances.

Notes

The HRO analysis of [HB 655](#) appeared in Part One the April 21 *Daily Floor Report*.

Ammonium nitrate, tier 2 hazardous chemical reporting

HB 942 by Kacal
Generally effective September 1, 2015

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HB 942 transfers tier 2 hazardous chemicals reporting requirements and enforcement authority from the Department of State Health Services (DSHS) to the Texas Commission on Environmental Quality (TCEQ) on September 1, 2015. The transfer includes all resources used for reporting. The bill allows a state fire marshal to enter ammonium nitrate facilities in order to complete an inspection for hazardous conditions and grants the facility owner up to 10 days to correct the hazard. Local fire departments may perform pre-fire planning assessments of the facilities. The bill also adjusts various timelines for reporting requirements for ammonium nitrate storage facilities.

Fire prevention. The owner or operator of an ammonium nitrate storage facility must, on request and at a reasonable time, allow a fire marshal to enter the facility to make a thorough examination and allow the local fire department access to the facility to perform a pre-fire planning assessment.

A fire marshal who determines the presence of certain hazardous conditions that endanger the safety of a structure or its occupants by promoting or causing fire or combustion must notify the facility's owner or operator of the need to correct the condition.

On request by a fire marshal or the Texas Feed and Fertilizer Control Service, the owner or operator of the facility must provide evidence of compliance with tier 2 reporting requirements and U.S. Department of Homeland Security registration requirements. A fire marshal who identifies a hazardous condition or a violation must notify the Texas Feed and Fertilizer Control Service. If directed by the service to correct a hazardous condition or a violation, an owner or operator must remedy the condition or violation within 10 days. If the Texas Feed and Fertilizer Control Service determines that the condition or violation has not been remedied, it must take appropriate enforcement action.

The bill requires that ammonium nitrate or ammonium nitrate material be stored in a fertilizer storage compartment or bin constructed of wood, metal, or concrete protected against impregnation by the ammonium nitrate or ammonium nitrate material and

separately from any non-fertilizer materials. Ammonium nitrate or ammonium nitrate material also must be separated from combustible or flammable material by at least 30 feet. Warning placards must be placed on the outside of the storage area.

Reporting requirements. The operator of a facility storing ammonium nitrate used in fertilizer must file a tier 2 form with TCEQ within 72 hours, instead of 90 days, of beginning operations or having a reportable addition of ammonium nitrate. The operator also will have to file an updated tier 2 form within 72 hours of a change in the chemical weight range of previously reported ammonium nitrate.

Within 72 hours of receiving a tier 2 form, TCEQ must provide a copy to the state fire marshal and the Texas Division of Emergency Management. The state fire marshal is required to provide a copy to the chief of the fire department with jurisdiction over the facility. The Texas Division of Emergency Management must provide a copy to the appropriate local emergency planning committee.

Fees. The bill provides that up to 20 percent of fees collected for the tier 2 program could continue to be used to provide grants to local emergency planning committees to assist them in fulfilling responsibilities related to chemical storage. TCEQ is authorized to use up to 15 percent of fees collected for the tier 2 program for DSHS administrative costs under Health and Safety Code, ch. 502.

Violations and penalties. The bill prohibits a facility operator from violating the community right-to-know laws and transfers the existing administrative, civil, and criminal penalty structure.

Supporters said

HB 942 would improve public safety by clarifying the oversight and regulation of ammonium nitrate storage facilities. Ammonium nitrate is a commonly used fertilizer due to its high nitrogen content. It is also a hazardous chemical with strict guidelines for handling

and storage. On April 17, 2013, an explosion at an ammonium nitrate facility in the community of West, Texas, killed 15 individuals, injured multiple others, and leveled parts of the town. This bill was developed as a result of interim Homeland Security and Public Safety Committee hearings as well as investigations that took place following the disaster in West.

This bill is a product of significant stakeholder input, and would strike a careful balance between public safety regulations and the agriculture industry that is so crucial to Texas.

Currently, fire marshals do not have the legal authority to enter a property to conduct an inspection. Had the appropriate emergency authorities been aware of the contents of the West facility before the fire occurred, the tragedy might have been avoided. There are currently 83 ammonium nitrate facilities operating in Texas, 45 of which are fertilizer companies similar to the facility in West. The bill would take common-sense steps to reduce the likelihood of another disaster while avoiding cost-prohibitive provisions that would burden industry compliance.

While there is an existing tier 2 reporting requirement that should keep state and local emergency entities aware of hazardous chemicals such as ammonium nitrate, reporting is not consistent, and some smaller facilities were not even aware of the reporting requirement. The annual tier 2 report now requires an update within 90 days of a reportable change, which means any reportable quantity of fertilizer could be sold by the time it would have to be reported. The bill would adjust this reporting timeline for ammonium nitrate storage facilities to hasten the notice to state and local emergency entities.

The bill would allow the state fire marshal to enter ammonium nitrate facilities in order to complete inspections and would allow local fire departments to do pre-fire planning assessments of the facilities. While there are concerns that this bill could place an additional regulatory burden on private facilities, many of the requirements of the bill, including the storage requirements, already are enforceable by the Texas state chemist's office. This bill simply would codify existing rule. The bill would not change the existing penalty structure.

Opponents said

HB 942 would impose additional regulations on private facilities that could hinder business. While intended in the interest of safety, the expedited reporting requirements as well as some of the corrective actions the facilities might be required to make could be cost-prohibitive and burdensome to smaller businesses.

Notes

The HRO analysis of [HB 942](#) appeared in Part Two the May 1 *Daily Floor Report*.

Desalination of seawater

HB 2031 by Lucio
Effective June 17, 2015

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HB 2031 creates Water Code, ch. 18, which allows the diversion and use of state marine seawater for beneficial purposes and establishes permitting requirements for the diversion of marine seawater, the conveyance of treated seawater, and the discharge of desalination waste. The bill also requires a joint study between the Texas Parks and Wildlife Department (TPWD) and the General Land Office (GLO) to identify diversion and discharge zones and to provide recommendations on where intake and discharge structures could be permitted by the Texas Commission on Environmental Quality (TCEQ).

Diversion and use of marine seawater. Under Water Code, ch. 18, a person may divert and use state marine seawater for any beneficial purpose as long as the seawater is treated according to TCEQ rules governing its ultimate use.

Marine seawater may not be diverted from a bay or estuary. A permit is required if the point of diversion is within three miles of the coast or if the seawater contains a total dissolved solids concentration of less than 20,000 milligrams per liter. An entity seeking to build a facility to divert marine seawater may not begin without a permit until it provides data to TCEQ on the total dissolved solids concentration at the water source.

TCEQ, by rule, must adopt an expedited permit process providing for notice, an opportunity to submit written comments, and an opportunity for a contested case hearing. Permits must address the points from which, and the rate at which, a facility may divert marine seawater.

Discharge of treated seawater or resulting waste. A person must obtain a permit to discharge treated marine seawater into a natural stream, lake, or other impoundment and to discharge desalination waste into the Gulf of Mexico. Desalination waste may not be discharged into a bay or estuary.

Marine seawater must be treated to at least the same water quality standards as those adopted by TCEQ for the receiving stream or impoundment before it may be

discharged. A person must comply with state and federal requirements when discharging desalination waste into the Gulf of Mexico.

TCEQ, by rule, must adopt an expedited permit process for both the discharge of treated marine seawater into a surface water source and the discharge of desalination waste into the sea three miles or less from the coast. The rules must provide for notice, an opportunity to submit written comment, an opportunity to request a public meeting, and an opportunity for a contested case hearing.

TCEQ rules for discharge of desalination waste further than three miles out to sea must provide for notice and an opportunity to submit written comment.

Conveyance of treated marine seawater. With prior authorization by the TCEQ, as well as a discharge permit, a person may use the bed and banks of any flowing natural stream or a lake, reservoir, or other impoundment to convey marine seawater that has been treated to meet water quality standards at least as stringent as those adopted by TCEQ for the receiving body of water.

TCEQ must provide notice and take written comment on commission actions for an authorization to use the bed and banks of a flowing natural stream, a lake, reservoir, or other impoundment to convey treated marine seawater. An opportunity for a contested case hearing will be provided only when a lake, reservoir, or other impoundment is involved to convey treated marine seawater but not when a natural stream is used for this purpose.

Diversion and discharge zones. HB 2031 requires TPWD and GLO to conduct joint studies to identify zones in the Gulf of Mexico appropriate for the diversion of marine seawater or the discharge of desalination waste, taking into account the protection of marine organisms, and to recommend zones for designation by TCEQ by September 1, 2018. The commission must adopt rules designating appropriate diversion and discharge zones by September 1, 2020.

A desalination facility need not operate in a diversion or discharge zone until TCEQ has adopted applicable rules, but it must in the meantime consult with TPWD and GLO on locations for diverting state marine seawater or discharging desalination waste into the Gulf of Mexico

Desalination of seawater for drinking water.

TCEQ must adopt rules allowing marine seawater treated by a desalination facility to be used as public drinking water and ensure that the water meets the Health and Safety Code public drinking water requirements. Construction of a facility that will desalinate marine seawater for drinking water purposes cannot begin construction unless approved by TCEQ.

Regional water planning. The bill requires the regional water plans to identify opportunities for and the benefits of developing large-scale desalination facilities for marine seawater that would serve local or regional entities.

Supporters said

HB 2031 would streamline the regulatory process and reduce the time required for and cost of marine seawater desalination. Marine seawater is a promising new source for drinking water, and seawater desalination could allow for this and other beneficial uses.

The bill is the product of much stakeholder input designed to establish a workable permitting process to exploit the vast quantities of seawater from the Gulf of Mexico while also protecting the state's bays and estuaries. Seawater desalination facilities should be developed in a timely and cost-effective way to help the state meet its current and future water needs.

HB 2031 would provide an expedited and streamlined authorization for marine seawater desalination facilities consistent with appropriate environmental and water rights protections. The process described in the bill would avoid unnecessary costs and delays while providing the regulatory certainty to encourage significant investment in such facilities.

Although there are concerns that limiting the permitted area to three miles from the coast would not sufficiently protect the state's bays and estuaries, any farther from the coastline could be cost-prohibitive

for industry due to the expense of pipelines and other equipment. Three miles from the coastline is well outside any area that would be sensitive to a disruption of the salinity levels, so the bill would not have a negative impact on the marine ecosystem.

While it is possible that limiting regulations during the period before TCEQ adopted rules could result in a race to start construction, HB 2031 would contain a safeguard requiring facilities to consult with the Parks and Wildlife Department and the General Land Office regarding locations for diverting state marine seawater or discharging desalination waste into the gulf. The bill would allow the time needed for stakeholder involvement to ensure that the rulemaking process was adequately vetted and thorough.

Opponents said

By requiring a permit for seawater diversion and the discharge of desalination waste only within three miles of the coast, HB 2031 might not adequately protect the state's bays and estuaries. Extending the permitted area six miles out to sea would be more appropriate because some areas of transition closer to shore might be impacted by reduced stream flow due to drought conditions.

The bill could spark a race to begin the construction of facilities by limiting regulations during the period before TCEQ adopted rules for the designation of diversion and discharge zones. These activities should not begin before the commission has adopted standards necessary to protect water supplies and the environment.

Notes

The HRO analysis of [HB 2031](#) appeared in Part One of the April 30 *Daily Floor Report*.

Two related bills were enacted by the 84th Legislature. HB 4097 by Hunter, effective June 17, 2015, requires the Public Utility Commission to conduct studies related to seawater desalination, including those on the adequacy of electric infrastructure to serve a desalination project and the potential for a project to participate in demand response opportunities in the state's power grid. The bill also allows TCEQ to issue permits related to seawater desalination and its associated waste for industrial purposes.

HB 30 by Larson, effective June 19, 2015, requires each regional water planning group to include in its regional water plan to the Water Development Board opportunities for and the benefits of developing large-scale desalination facilities for seawater or brackish groundwater that serve local or regional brackish groundwater production zones.

The HRO analysis of [HB 4097](#) appeared in Part Two of the May 8 *Daily Floor Report*. The HRO analysis of [HB 30](#) appeared in Part Two of the May 7 *Daily Floor Report*.

Studying the development of a water market

HB 3298 by Larson
Died in Senate committee

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HB 3298, as passed by the House, would have required the Texas Water Development Board (TWDB) to conduct a study to evaluate improvements to the transfer of water entitlements and the functioning of statewide and regional water markets. TWDB also would have been required to study opportunities for and barriers to the potential establishment of a statewide or regional water grid, including an integrated network of natural and constructed works, such as pipelines, pumping stations, and reservoirs, for the conveyance of water between and within river basins, water sources, and areas of water use in the state.

TWDB would have had to consult with the Texas Commission on Environmental Quality, the Public Utility Commission, the Railroad Commission, and the General Land Office as part of the study and offer the public an opportunity to submit written comments. By September 1, 2016, TWDB would have been required to submit to the Legislature a final written report containing the findings of the study and recommendations for any legislation or other action necessary to implement the program.

Supporters said

HB 3298 would charge the Texas Water Development Board (TWDB) with taking the first step in creating a master plan for an efficient conveyance of water throughout the state by means of water markets and a water grid.

Water markets have been widely recognized as valuable tools to alleviate scarcity. The existence of a water market outside the current regulatory scheme would allow municipal utilities to seek willing sellers of water, rather than the state having to enforce the water rights priority system or force cutbacks in agricultural water deliveries. The development of such a market along with a water grid would facilitate the conveyance of water from water right holders with excess supplies — or areas of relative abundance — to areas of relative shortage. Shifting supplies of water in this

fashion would improve water security and help prevent shortages that could be devastating to the economy and environment.

While some say the focus of the study should be on conservation strategies instead of a market and network for water, conservation, while a key strategy, is not enough. To meet an ever-growing need, it is imperative that the state begin working toward ways to transport water from areas with abundant resources to water-insecure communities. HB 3298 would help break away from the practice of hoarding water within arbitrary political boundaries by working toward a blueprint for a hydrovascular network that would enable the mutually beneficial sharing of water supplies between communities.

While there were concerns that the bill would not protect property rights or give sufficient consideration to the areas from which water could be transported, HB 3298 would only create a study and would not change the current regulatory environment or impact existing water rights.

Opponents said

HB 3298 would require a study on constructing a water grid — essentially pipelines — that could be costly, energy intensive, environmentally harmful and politically challenging, with the potential to pit some areas of the state against others. Developing a water grid could create management challenges if the wet areas of the state faced an extended drought and communities relying on imported water were left high and dry.

While HB 3298 would make a good-faith effort to meet the state's water challenges, an expensive and elaborate water grid could harm the already stressed rivers and aquifers and risk the economic viability of rural areas from which water would be exported. Any discussion of water transfers should include consideration of long-term effects on the areas from which water would be transferred, including any impact on property rights.

Using state and agency resources on a statewide grid could undermine efforts to build a consensus on statewide water policy that balances rural and urban interests. The study instead should focus on maximizing conservation and efficiency in Texas agriculture, industry, and cities. Maximizing water efficiency would minimize the financial, environmental, and social costs of pumping and transporting more water supplies.

As the state grows, it would be more appropriate to develop voluntary regional water markets, bound by clear conditions to protect rivers, aquifers, and rural communities. Texas also should continue to focus on local and regional projects, such as aquifer storage and recovery and wastewater reuse, to help communities meet reasonable water demands without subsidizing growth with water from other parts of the state.

Notes

The HRO analysis of [HB 3298](#) appeared in Part One of the May 7 *Daily Floor Report*.

Limited Sunset review process for river authorities

SB 523 by Birdwell
Effective June 19, 2015

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SB 523 establishes a limited Sunset review process for river authorities on governance, management, operating structure, and compliance with legislative requirements.

Limited Sunset review schedule. The river authorities are subject to a review as if they were state agencies but cannot be abolished. The following authorities are slated for limited Sunset review according to the following schedule, based on the date each would be abolished if it were a state agency:

September 1, 2017, and every 12th year after:

- Central Colorado River Authority;
- Palo Duro River Authority of Texas;
- Sulphur River Basin Authority; and
- Upper Colorado River Authority.

September 1, 2019, and every 12th year after:

- Guadalupe-Blanco River Authority;
- Lower Colorado River Authority (not including the management of the generation or transmission of the authority's wholesale electricity operation and the authority's affiliated nonprofit corporations, unless recommended by the state auditor following the results of an audit conducted before December 1, 2016);
- Nueces River Authority; and
- Red River Authority of Texas.

September 1, 2021, and every 12th year after:

- Brazos River Authority;
- Lower Neches Valley Authority;
- Sabine River Authority of Texas;
- San Jacinto River Authority; and
- Upper Guadalupe River Authority.

September 1, 2023, and every 12th year after:

- Angelina and Neches River Authority;
- Bandera County River Authority and Groundwater District;

- Lavaca-Navidad River Authority;
- San Antonio River Authority; and
- Trinity River Authority of Texas.

The bill repeals a former provision in state law that made the Sulphur River Basin Authority subject to Sunset review every 12 years as if it were a state agency, with an abolition date of September 1, 2017.

River authorities are required to pay the cost incurred by the Sunset Advisory Commission in performing the review and will not be required to conduct a management audit as required by Texas Commission on Environmental Quality rule.

Supporters said

SB 523 would provide direct oversight of river authority operations by establishing a consistent, uniform Sunset review process. River authorities are entrusted with broad powers and the ability to manage the state's water, yet the Legislature has no direct oversight or review of their actions.

A Sunset review would ensure that river authorities were meeting their core functions. This is especially important given the prolonged drought that the state has experienced in recent years. Also, a Sunset review would provide an opportunity to examine more efficient ways to manage the authorities and issue bonds.

A river authority could not be abolished as a result of the limited review authorized by SB 523. The Sunset Advisory Commission would conduct these reviews for the purposes of open government, accountability, and transparent operations of river authorities. The bill would protect the bonding authority of river authorities by permitting only limited Sunset review to guard against concerns that the possibility of abolishment under a regular Sunset review could increase these entities' borrowing costs on the bonding market.

While an audit by the State Auditor's Office could be beneficial, it would be limited to the financial

transactions of the authorities and should be used in addition to, rather than in place of, a Sunset review.

Opponents said

SB 523 is unnecessary and would be costly because river authorities already have multiple layers of oversight. While the bill would no longer require river authorities to have an independent management audit performed every five years, these entities are subject to review by the Legislative Budget Board and the State Auditor's Office, as well as the continued supervision by the Texas Commission on Environmental Quality. Furthermore, the Legislature already has the ability to place a river authority under Sunset review as it deems necessary.

According to the Sunset Advisory Commission, the estimated cost per review could exceed \$60,000, depending on the river authority and travel time of Sunset Advisory Commission staff. The larger river authorities, such as the Lower Colorado River Authority and Brazos River Authority, would incur higher costs. River authorities also could experience additional internal costs. A Sunset review could be a significant financial burden because many of the authorities operate on modest budgets with five or fewer employees. The authorities with the earlier Sunset dates might be further burdened by not having adequate time to prepare.

While the bill was designed in an attempt to avoid any negative impact to an authority's bond rating by not allowing for an authority to be abolished, a Sunset review still could create uncertainty and negatively affect an authority's bond rating, thereby increasing its borrowing costs. Other options to increase transparency would be less damaging, such as an audit by the State Auditor's Office.

Other opponents said

SB 523 would affect any river authority, whether or not it met criteria to warrant a Sunset review. Some river authorities do not own or manage any surface water rights. It would be more appropriate to put all governor-appointed boards that own, market, and manage the state's surface water under Sunset review, whether those entities were river authorities or water districts.

Notes

The HRO analysis of [SB 523](#) appeared in Part One the May 22 *Daily Floor Report*.

Revising process for contested environmental permits

SB 709 by Fraser
Effective September 1, 2015

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SB 709 makes various changes to the process for individuals or groups to contest environmental permits before they are issued as final by the Texas Commission on Environmental Quality (TCEQ).

List of disputed issues. For a request to reconsider the executive director's decision on a permit or to hold a contested case hearing, SB 709 requires that each of the disputed issues provided to the administrative law judge for consideration have been raised by an affected person in a comment that was timely submitted. The list of issues also must be detailed and complete and include either only factual questions or mixed questions of fact and law.

Time frame. Administrative law judges must complete a contested case proceeding and provide a proposal for decision to TCEQ no later than 180 days after the preliminary hearing or the date specified by the commission. This deadline may be extended by agreement of the parties with approval by the administrative law judge or if the judge determines that failure to grant the extension would deprive a party of due process or another constitutional right.

If the applicant or the executive director requests that the application be referred directly to a contested case hearing immediately after the executive director issues a preliminary decision, the administrative law judge may not hold a preliminary hearing until the executive director of TCEQ has issued a response to public comment.

Applicant's draft permit and rebuttal. SB 709 establishes that the draft permit as prepared and preliminarily approved by the TCEQ, along with other supporting documentation submitted in the application process, serves as a prima facie demonstration that the permit application meets necessary legal and technical requirements and that it would protect human health and safety, the environment, and property. A party may rebut this demonstration by presenting certain evidence. The bill allows the applicant and the TCEQ executive director to respond by presenting additional evidence supporting the draft permit.

Persons affected. SB 709 establishes factors the commission may consider in determining whether a person or association is a person affected by the draft permit for purposes of the contested case hearing process. These include:

- the merits of the underlying application, including whether it meets the requirements for permit issuance;
- the likely impact of the permitted activity on the hearing requestor's health, safety, and use of property;
- the administrative record, including the permit application and other documentation;
- the analysis and the opinions of the TCEQ executive director; and
- other relevant information.

TCEQ may not find that a group or association was an affected person unless the group or association timely identifies by name and address a member who would be a person affected in the person's own right. It also may not find that a hearing requestor is an affected person unless the requestor timely submitted comments on the permit application.

Notice of draft permit. Under SB 709, notice of draft permits must be provided to certain state lawmakers when an applicant or the executive director requests that an application be referred directly to a contested case hearing or when a person requests that the commission reconsider the executive director's decision or hold a contested case hearing. In these instances, the executive director must provide written notice to the state senator and state representative of the area in which the facility subject to the permit is located at least 30 days before the commission issues the draft permit.

Supporters said

By shortening the time during which a contested case hearing could occur, SB 709 would provide more certainty for companies seeking environmental permits as part of building or expanding their facilities or

operations. The current process is not predictable and can last much longer than six months. This can have an adverse impact on economic growth and can deter companies from locating in Texas. Other states have different processes that may allow them to issue permits within a more predictable time frame.

The bill would create other limitations on the contested case process that would make it more fair and balanced. For example, the bill would clarify that if the Texas Commission on Environmental Quality (TCEQ) had already issued a preliminary decision on an applicant's permit application and met other related requirements, this served as adequate evidence that the permit was adequate to protect health, safety, property, and the environment for purposes of the contested case hearing. Previously, applicants whose permits were being contested typically presented information to the judge to show that they had met these requirements even if their applications already had received a level of approval by TCEQ.

SB 709 also would ensure that those contesting the permit application were personally affected and had been participating in the process before contesting a specific case. In the past, associations or groups could be considered affected even if no individual person could be identified that was affected in his or her own right early in the process. In this way, the bill would discourage groups from inappropriately contesting cases to further a broad agenda or for frivolous reasons. TCEQ already performs a thorough review of permit applications, and applicants must spend time and resources to satisfy and participate in that process. The bill would shorten the contested case process when it did occur and would create greater efficiency for everyone involved by ensuring that concerns surfaced early in the process for legitimate and specific reasons and that all parties knew who was raising concerns.

Opponents said

SB 709 further would limit public participation in a process in which concerned people have few tools to oppose the building or expansion of a facility that they believe could harm the environment, their health, or their property. Shortening the duration of cases and placing additional restrictions on who could be considered an affected party — as well as which types of issues could be raised — would increase the risk that problems with a permit were not identified, possibly resulting in harm to the environment and public health.

The bill would shift the burden of proof onto those protesting a permit and away from those applying for the permit in a contested case, even though companies trying to obtain permits have more time and resources to make their case than does the average citizen. This is of special concern to individuals who live in rural, unincorporated areas because counties have limited power to prohibit incompatible land uses. As a result, citizens who might not be schooled in law or have the resources to hire an attorney must rely on the contested case process to protect their rights and property. Placing the burden on the party contesting the permit to disprove the applicant's evidence, rather than requiring the applicant to prove that the proposed project was not harmful, would change the nature of the process.

SB 709 would reduce the number of people who could contest a case, either because the person did not participate in the process early enough or because the person did not articulate the issues in the right way at the right time, even if the person would indeed be affected.

The imposition of a 180-day time limit represents a “one-size-fits-all” approach that would not be appropriate in all cases and might not allow enough time for meaningful discovery, presentation of evidence, and adequate analysis of all the information presented in a complex case. By some estimates, contested cases in Texas last about 245 days on average. Shortening that process would reduce its effectiveness in allowing environmental concerns to surface.

The contested case process often results in improvements to, rather than denial of, the permit. By introducing a more restrictive process and a limit of 180 days for contested cases, the bill would increase the chance that permits were approved or issued based on bad information or faulty analysis, which could erode the protections offered through the process.

Notes

The HRO analysis of the House companion bill, [HB 1865](#) by Morrison, appeared in Part Two of the April 30 *Daily Floor Report*.

Automatic renewal of certain groundwater permits

SB 854 by Zaffirini
Effective September 1, 2015

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SB 854 requires groundwater conservation districts to renew groundwater production permits automatically without a hearing as long as renewal application fees are paid in a timely manner and the permit holder does not request any change requiring a permit amendment.

A groundwater conservation district is not required to renew a permit automatically if the permit holder:

- is delinquent in paying fees to the district;
- is subject to a pending district enforcement action for substantive violation of the permit, order, or rule that has not been finalized; or
- has not paid a penalty or complied with a final non-appealable decision that the permit holder violated a permit, order, or rule.

If a permit holder is subject to a pending enforcement action, the permit remains in effect until the conclusion of the action.

If a permit holder requests an amendment at the time of permit renewal, the existing permit remains in effect until the later of:

- the conclusion of the permit amendment process or permit renewal process, as applicable; or
- a final settlement or adjudication of a legal proceeding on the issue.

If the groundwater conservation district denies a permit amendment request, the permit holder must receive the opportunity to renew the permit as it existed before the permit amendment process.

A district may initiate an amendment to an operating permit, through the renewal of a permit or otherwise, in accordance with district rules. If a district initiates an amendment, the existing permit remains in effect until the conclusion of the permit amendment or renewal process.

Supporters said

SB 854 would provide more certainty in the permitting process by requiring groundwater conservation districts to renew groundwater production permits automatically under certain circumstances. Reasonable certainty and predictability in the regulatory environment are important, especially when financing large-scale water projects that could require the issuance of long-term bonds. A typical groundwater production permit is valid for five years, which makes long-term planning difficult. Knowing that in as few as five years a district might not renew a permit or that the permit renewal could be subject to a contested case hearing can create an unstable environment for utilities, ratepayers, and investors.

The bill would strike a balance in groundwater permitting by providing regulatory certainty for water providers while protecting the district's ability to manage the aquifer. Safeguards would include allowing the district to initiate a permit amendment at any time in accordance with its rules and allowing it to deny an automatic renewal if the permit holder were not in good standing.

SB 854 would not limit public participation in the management of an aquifer. The opportunity for contesting a case hearing existed when the permit was initiated. Under the bill, permits could be automatically renewed only if the permit holder did not request a change related to the renewal that would require an amendment to the initial permit. Further, existing law relating to permit amendments and the bill's provision allowing the district to initiate a permit amendment would require district rulemaking and the opportunity for public participation. Any rule change implementing this bill would be accompanied by public notice and comment.

Opponents said

Requiring groundwater conservation districts to automatically renew groundwater production permits under certain conditions would eliminate the opportunity for members of the community to participate in a contested case hearing. It can take years for the full effect of a groundwater production permit to be recognized because districts have limited information when approving the initial permit. While the bill would allow districts to initiate amendments to permits at any time, the public should have the opportunity to weigh in as well, especially if the amendment was proposed in response to changes in the aquifer's condition.

Notes

SB 854 passed the House on the Local, Consent, and Resolutions Calendar.

A similar bill, **HB 1248** by Lucio, passed the House on April 30 and was referred to the Senate Committee on Agriculture, Water, and Rural Affairs, where no further action was taken. The HRO analysis of [HB 1248](#) appeared in Part Two the April 29 *Daily Floor Report*.

Changing the allocation of sales tax revenue for parks

SB 1366 by Kolkhorst
Effective September 1, 2015

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SB 1366 eliminates the statutory allocation percentages to each Texas Parks and Wildlife Department fund receiving sporting goods sales tax (SGST) receipts. The bill instead limits the revenue transferred among the accounts to a total amount not to exceed total SGST revenue available, plus the cost of state contributions for benefits of department employees whose salaries are paid from those accounts.

Supporters said

SB 1366 would give the Legislature discretion in how best to spend funds for state and local parks by removing the statutory allocation percentages to each Texas Parks and Wildlife Department (TPWD) fund receiving sporting goods sales tax (SGST) receipts. Funding state parks is a major priority this budget cycle, and available SGST receipts should be allocated to state and local parks.

The TPWD allocation percentages in statute limit the Legislature's flexibility to appropriate SGST receipts where they are needed most. For example, entering fiscal 2016-17, the local parks accounts have a balance of about \$47.7 million, which far exceeds the department's budget request for this purpose. By removing the statutory allocation percentages, SB 1366 would allow budget writers to use that balance to fully fund local parks, with money left over to meet the needs of the state park system, including much-needed funds for deferred maintenance projects.

Opponents said

Giving the Legislature discretion on how to spend SGST revenues on state and local parks could make funding for this purpose subject to the whim of any future legislature. A more prescriptive approach would be more appropriate. For example, other legislation proposed this session would reapportion the statutory allocation percentages to give more funding to state parks to pay for deferred maintenance, while still dedicating money to address the needs of local parks.

Notes

SB 1366 was laid out on May 8 in lieu of its companion bill, **HB 300** by Gonzales. The HRO analysis of [HB 300](#) appeared in Part One of the May 4 *Daily Floor Report*.

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Creating and funding a high-quality pre-K program

HB 4 by Huberty
Effective May 28, 2015

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HB 4 creates a new high-quality prekindergarten (pre-K) grant program, beginning with the 2015-16 school year. In addition to existing half-day funding under the Foundation School Program for eligible students, the bill directs the commissioner of education to make awards to school districts and charter schools that meet all high-quality prekindergarten standards. The grant funding may not exceed \$1,500 per qualifying student, and the total amount of funding distributed to districts may not exceed \$130 million for fiscal 2016-17.

A student qualifies for the grant funding if the student is 4 years old on September 1 of the year the student begins the program and if the student meets certain eligibility requirements, including being from a low-income family, being unable to speak or comprehend English, being homeless or in foster care, or having parents on active military duty.

Requirements for a high-quality program include:

- implementing a curriculum that includes prekindergarten guidelines established by the Texas Education Agency (TEA);
- measuring the progress of students in meeting the recommended learning outcomes;
- having a teacher who is certified and meets additional early childhood certification or experience requirements;
- attempting to maintain an average ratio of not less than one certified teacher or teacher's aide for each 11 students;
- not using national curriculum standards developed by the Common Core Standards Initiative; and
- implementing a family engagement plan to achieve and maintain high levels of family involvement and positive family attitudes toward education.

A district may administer diagnostic assessments to evaluate student progress but may not administer a state standardized exam to students in a program class.

The commissioner must evaluate the use and effectiveness of grant funding and identify effective

instruction strategies. Beginning in 2018, the results will be reported to the Legislature by December 1 of each even-numbered year through 2024.

Districts may contract with eligible private providers for services or equipment. Private providers must be licensed by and in good standing with the Department of Family and Protective Services (DFPS). Private providers also must be accredited by a research-based, nationally recognized, and universally accessible accreditation system approved by the commissioner or meet other requirements.

The bill requires TEA to produce and publish on the agency's website annual district and campus reports on early education. The reports must contain:

- class size and ratio of instructional staff to students;
- a description and results of each type of assessment instrument used;
- curricula used;
- the number of students in grades K-2 whose scores from a diagnostic reading instrument indicate reading proficiency; and
- the number of kindergarten students who were enrolled in a pre-K program in the previous school year in the same district or school.

TEA and DFPS must conduct a joint study to develop recommendations on optimal class sizes and student-to-teacher ratios for prekindergarten classes and submit a report to the Legislature by September 1, 2016.

Supporters said

HB 4 would give districts the flexibility and incentives to boost the quality of their prekindergarten programs. These programs serve students most at risk of not succeeding in kindergarten through third grade, including English language learners and students from low-income households. Districts and charter schools that adopt the voluntary standards could use the extra funding to hire new teachers, extend their programs from half-day to full-day, or otherwise improve the

quality of their prekindergarten offerings. This opt-in approach would be preferable to mandating full-day prekindergarten because it would give districts the opportunity to expand or enhance existing half-day programs.

The ability to partner with private providers would be a financially equitable way for districts to meet the high-quality prekindergarten standards. This option could be particularly helpful for fast-growing districts that did not have space in their elementary schools for new classrooms. High-performing private day care providers and preschools could benefit from the partnerships instead of being forced to compete with local public school programs.

Opponents said

HB 4 would create an expensive new prekindergarten program that might not achieve the improvements in early school success that supporters claim. Although the new program would be limited to certain students, the bill could create a slippery slope toward universal full-day prekindergarten for every 4-year-old in Texas. For most 4-year-olds, the best learning environment is at home with a parent.

By attaching funding to the new prekindergarten standards, the bill could provide a financial incentive for public schools to crowd out some private pre-K providers. Without revenue from classrooms serving 4-year-olds, some licensed day care centers could not afford to provide more costly infant care. Nonprofits such as churches and local community organizations also could be affected as parents chose free public school programs.

Other opponents said

HB 4 would be a good start to focus resources on prekindergarten but would not go far enough. It would not expand eligibility to all 4-year-olds nor require full-day prekindergarten. A quality full-day program would deliver the best, most sustainable results for educationally disadvantaged children and would be most helpful to working parents who find it difficult to pick up students from school in the middle of the day.

Notes

The HRO analysis of [HB 4](#) appeared in Part One of the April 8 *Daily Floor Report*.

Dual credit and postsecondary planning initiatives

HB 18 by Aycock
Effective June 19, 2015

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HB 18 requires that all students in grade 7 or 8 receive instruction in developing their high school graduation plans and preparing for college or career. It establishes postsecondary and career counseling academies for middle and high school counselors and advisors. The bill also allows high school students to enroll in an unlimited number of dual credit courses. It increases the number of districts and charter schools that can participate in the Texas High Performance Schools Consortium.

High school and postsecondary planning. The bill requires the Texas Education Agency to develop uniform public outreach materials that explain changes to the high school curriculum made in HB 5 by Aycock, enacted by the 83rd Legislature in 2013. The materials must be made available to school districts in a form that would allow them to be mailed to students and parents and must be published in English, Spanish, and Vietnamese. The materials must include an explanation of high school endorsements, curriculum requirements for automatic college admission under the Top 10 Percent law, and information about state student financial aid programs.

School districts must provide instruction to students in grade 7 or 8 on creating a high school personal graduation plan, available endorsements, college readiness standards, and potential career choices. A district may establish a new elective course for this instruction or provide the instruction as part of an existing course in the required curriculum or an existing career and technology course.

HB 18 also requires institutions of higher education that administer the Texas Success Initiative assessment, which measures college readiness, to provide districts with information on the performance of their graduates.

Counseling academies. The Center for Teaching and Learning at The University of Texas at Austin is required to develop postsecondary education and career counseling academies for middle and high school counselors and other postsecondary advisors. A

counselor who attends the academy is entitled to receive a stipend in the amount determined by the center.

An academy must provide counselors with knowledge and skills on high school and postsecondary planning, including:

- requirements for earning endorsements;
- ways for a student to earn credit for a course not offered at the student's school, including through online courses;
- college admission requirements;
- regional workforce needs; and
- participation in mentorships and business partnerships.

The center must develop an online instructional program that districts may use in providing instruction on high school and postsecondary planning.

Dual credit access. The bill prohibits the Texas Higher Education Coordinating Board from adopting a rule limiting the number of dual credit courses or semester credit hours in which a high school student may enroll. It also requires that dual credit courses be taught by a qualified instructor approved or selected by the public junior college who meets specified degree requirements. In addition, the bill allows money from the Skills Development Fund administered by the Texas Workforce Commission to be awarded to school districts, in addition to lower-division institutions of higher education, to support dual credit courses that lead to an industry-recognized credential.

High Performance Schools Consortium. The bill increases the number of districts and charter schools that may participate in the Texas High Performance Schools Consortium from 20 to 30 and the percentage of students from 5 percent to 10 percent of total public school enrollment. The bill adds the State Board of Education (SBOE) to entities that must be informed about methods for improving student learning through the consortium and requires the consortium to report to the Legislature, SBOE, and the commissioner by December 1 of each even-numbered year.

Supporters said

HB 18 would strengthen high school and postsecondary readiness by providing additional training for high school counselors and removing the current limit on the number of dual credit courses in which high school students may enroll.

The bill would build on high school curriculum reforms in HB 5 by Aycock, enacted by the 83rd Legislature, which allows students who take additional or specific courses to earn endorsements in one of five areas of study. HB 18 would provide training to better prepare counselors to advise students about their personal graduation plans and the benefits of pursuing an endorsement. It also would provide public outreach materials and instruction to middle schoolers to help students and their families make informed choices about high school. Schools would have several options for providing that instruction to avoid interfering with middle-school students' electives.

Removing limits on dual credit courses would enable more students to simultaneously earn credit toward a high school diploma and a college degree or industry certificate. This could allow students to earn a postsecondary degree or credential in less time and save on tuition costs. Students already must demonstrate college readiness to enroll in dual credit courses, which would prevent them from overloading their schedules with difficult college courses.

Allowing districts that have a memorandum of understanding with an area community college to access job training funding could help with costs related to industry-related dual credit programs and encourage more districts to partner with higher education institutions to offer such courses.

Opponents said

HB 18 would not address the need for additional counselors to meet the increased workload required by the enactment of HB 5 in 2013. It also would not address the extent to which non-counseling duties related to testing and other issues are reducing the time school counselors have available for career planning with students and their parents. Instead, the bill would direct millions of dollars to one university to create counseling academies even though there are other institutions that already deliver this curriculum.

The bill also would not provide funding to cover costs that districts could incur in preparing outreach materials and developing and staffing new career planning courses for middle-school students.

Allowing districts to deliver instruction about high school and career planning through a new elective course could impact the ability of middle-school students to take other electives, such as music or art. Fine arts instruction can help keep students engaged in school and should not be crowded out by a new career planning course.

Prohibiting any limit on dual credit courses could lead to students overloading their schedules with rigorous college courses and could result in unanticipated costs and consequences for students and their families. For example, while tuition might be waived for the courses, students still could incur costs for textbooks and commuting to area community colleges. In addition, students might be unaware that some dual credit courses count toward the calculation of the student's college grade point average. Districts that pay tuition and fees for students to attend dual credit courses could experience increased costs.

Notes

The HRO analysis of [HB 18](#) appeared in Part Three of the May 8 *Daily Floor Report*.

HB 505 by E. Rodriguez, effective May 23, 2015, contains similar language prohibiting the coordinating board from adopting a rule limiting the number of dual credit courses in which a high school student may enroll. The HRO analysis of [HB 505](#) appeared in Part Two of the April 8 *Daily Floor Report*.

STAAR test design and curriculum standards study

HB 743 by Huberty
Effective June 19, 2015

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HB 743 adds new requirements for the design of State of Texas Assessments of Academic Readiness (STAAR) exams for grades 3-8. The bill requires the Texas Education Agency (TEA) to conduct a study on the STAAR exams and the required state curriculum, known as the Texas Essential Knowledge and Skills (TEKS). The bill also requires TEA to audit and monitor performance by testing contractors.

Test design. Beginning with the 2015-16 school year, all STAAR exams administered in grades 3-8 must, on the basis of empirical evidence, be determined valid and reliable by an entity independent of TEA and any other entity that developed the assessment instrument.

An assessment instrument must be designed so that 85 percent of students in grades 3-5 can finish within two hours and 85 percent of students in grades 6-8 can finish within three hours. The amount of time allowed for test administration may not exceed eight hours, and a test must be administered within one day.

TEKS study. TEA must conduct a study to evaluate the number and scope of the TEKS standards identified as readiness or supporting standards and whether the number or scope should be limited. The study also must evaluate the number and subjects of standardized exams that are required to be administered to students in grades 3-8, how those exams assess standards essential for student success, and whether the exams also should assess supporting standards, including analysis of:

- the portion of the TEKS that can be accurately assessed;
- the appropriate skills that can be assessed within the testing parameters under current law; and
- how current standards compare to those parameters.

TEA's report on the study must be submitted to the State Board of Education by March 1, 2016. The board must by May 1, 2016, submit to the governor and Legislature the agency's report and board recommendations regarding each issue evaluated.

Testing contract. TEA is required to develop a comprehensive methodology for auditing and monitoring performance under contracts to develop or administer tests in order to verify compliance. All new and renewed contracts must include a provision allowing TEA or a designee to conduct periodic contract compliance reviews, without advance notice, to monitor vendor performance.

Supporters said

HB 743 would place restrictions on the length of time students spend on STAAR tests and would redesign the exams to align with grade-level standards. This redesign could result in tests with fewer questions, reducing the time spent preparing for and taking exams. This could reduce testing stress on students, teachers, and parents.

The requirement for the Texas Education Agency (TEA) to conduct a study on whether the Texas Essential Knowledge and Skills (TEKS) should be limited could help determine whether critics are correct in saying that the state curriculum covers too much material in too little depth. The bill would retain the State Board of Education's authority over the curriculum by requiring the board to review TEA's report and make recommendations to the governor and Legislature.

TEA's management of the state's multi-million dollar testing contract was criticized in a 2013 state audit. The October 2014 Sunset report on TEA recommended that the agency provide more centralized contract oversight and develop monitoring plans for all major contracts. HB 743 would require TEA to develop a process for auditing and monitoring testing contractors.

Opponents said

HB 743 could weaken the rigorous curriculum standards that serve as building blocks to help students succeed in their education. To the extent that changes

to state curriculum and assessment processes were not approved by the U.S. Department of Education, the bill could result in the loss of federal funds. For instance, shorter reading and math assessments for grades 3-5 might not measure the entirety of the TEKS for those grades and subjects, which could remove the assessments from compliance with federal law.

Students must be prepared to compete in a global economy, and Texas should not back away from a testing and accountability system that measures whether students are being prepared for their next grade or higher-level course. The required TEA evaluation of the number and subjects of exams could lead to further reductions in testing, including the possible elimination of the grade 8 social studies exam. If students are not tested in social studies, there could be less emphasis on teaching young Texans about America's unique role in the world and how to participate in the political process.

The current STAAR exams are fully aligned to the TEKS and meet established reliability and validity guidelines established by national organizations such as the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. There is no need for the state to spend money for an independent validation of exams that have already met established guidelines.

Notes

The HRO analysis of [HB 743](#) appeared in Part Two of the May 1 *Daily Floor Report*.

Revising school finance formulas

HB 1759 by Aycock
Died in the House

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HB 1759 would have revised formulas used to determine school district and charter school entitlement funding under the Foundation School Program. It would have repealed certain school funding provisions, including cost-of-education adjustments, the transportation allotment, the high school allotment, and additional state aid for staff salaries.

Adjustments and allotments. The bill would have removed a requirement that the basic allotment per student include a cost-of-education adjustment that reflects variations in education costs beyond the control of districts. It also would have repealed:

- districts' allotment for providing transportation to students who reside two or more miles from their regular campus;
- districts' entitlement to an annual allotment of \$275 for each student in average daily attendance in grades 9-12; and
- additional state aid for staff salary increases, which entitles districts to \$500 multiplied by the number of full-time non-professional employees and \$250 multiplied by the number of part-time district employees, other than administrators.

Adjustments for small and mid-size districts would have been revised. The level of application of the mid-size district adjustment would have been reduced to 75 percent of the value of the adjusted basic allotment for the 2015-16 school year, and would have decreased by 5 percent in each subsequent school year until it was phased out. The small district adjustment would have been increased slightly.

Equalized wealth. The bill would have repealed provisions that result in a higher equalized wealth level for certain districts based on the district's 1992-93 revenue per student plus the indexed change between the current equalized wealth level and the level established in 1993.

Transitional funding. Districts would have been entitled to receive transitional funding for any amount of maintenance and operations revenue lost as a result

of the bill's enactment. The total amount of transitional funding could not have exceeded \$75.7 million for the 2015-16 school year and \$81.2 million for the 2016-17 school year.

Supporters said

HB 1759 would help improve the overall funding and equity of the school finance system. The bill, in conjunction with the House-passed version of the general appropriations act, could provide an additional \$3 billion for public schools while ending an ongoing lawsuit.

The bill would simplify school funding laws by eliminating outdated adjustments, such as the cost-of-education index (CEI), which has not been updated in 25 years. Money saved by ending the CEI and allotments for transportation, high school, and school support staff could increase the basic allotment from \$5,040 to \$5,888 per student and improve equity, according to models developed by the Legislative Budget Board (LBB).

The bill also could ease the impact of property tax revenue recapture for some districts, according to the LBB. This could benefit large urban districts such as Houston and Austin that are property wealthy but also have large populations of economically disadvantaged students who are more expensive to educate. Under the current system, it is difficult for these districts to ask voters for tax increases when a large portion of the revenue collected would be distributed to property-poor districts across the state.

Opponents said

HB 1759 would increase the funding gap between the highest-wealth and lowest-wealth districts. It would not address funding weights for economically disadvantaged students and English language learners, which was one of the primary concerns of the district court in its 2014 ruling.

HB 1759 by itself would not increase the basic allotment, which instead would be done through the general appropriations act. The bill would repeal aspects of the funding system without guaranteeing that the savings were rolled into the basic allotment. With no corresponding statutory change to the basic allotment, any increase could be temporary.

Instead of doing away with the cost-of-education index (CEI), the state should update it to reflect current values. Eliminating the index would undermine the ability of certain urban districts to compete with suburban districts for the best teachers. The adjustment for mid-size districts should not be phased out because fixed and uncontrollable costs are higher for those districts on a per-student basis.

Notes

The HRO analysis of [HB 1759](#) appeared in the May 14 *Daily Floor Report*.

Certain provisions in HB 1759 were enacted as part of **HB 7** by Darby, which took effect September 1, 2015. Under HB 7, those provisions provide a mechanism to enable districts with compressed tax rates that are below \$1.00 per \$100 valuation to receive funding equal to districts with compressed tax rates that are at \$1.00. The affected districts may convert certain additional tax effort — known as “copper pennies” — into Tier 1 basic entitlement pennies, which would generate a higher yield as a result of being tied to the basic allotment. Districts will be limited to converting the number of pennies needed to achieve a compressed tax rate of \$1.00. Rate conversion will be optional for districts in fiscal 2016 and 2017 and will be automatic beginning in fiscal 2018.

The Legislative Budget Board estimates that, based on the current tax rates of the affected school districts, the total amount of additional state aid to those districts would be \$94.3 million in fiscal 2016 and \$98 million in fiscal 2017.

Interventions for low-performing schools

HB 1842 by Aycock
Effective June 19, 2015

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HB 1842 changes the interventions and sanctions for campuses that have been identified as academically unacceptable for two consecutive years. Changes include requiring such campuses to prepare a turnaround plan. The bill allows districts with academically acceptable ratings to be designated as innovation districts and to be exempt from certain state requirements.

Campus turnaround plan. After a campus has been identified as unacceptable for two consecutive years, the commissioner of education must order the district to prepare and submit a campus turnaround plan. The district board of trustees must consult with the campus intervention team to provide notice to and request assistance from parents, the community, and stakeholders. The plan must include details on the method for restructuring, reforming, or reconstituting the campus and could involve granting a district charter or partnering with a higher education institution.

The bill removes statutory requirements that a campus intervention team decide which educators at the underperforming school should be retained and that the principal be removed unless certain conditions are met.

The commissioner may approve a campus turnaround plan only after determining that it would satisfy all student performance standards under the state accountability system not later than two years after its implementation. A turnaround plan must be implemented following the third consecutive school year that the campus has been rated academically unacceptable.

If a campus for which a turnaround plan has been ordered receives an academically acceptable rating for the school year following the order, the district board may implement, modify, or withdraw the plan. A district required to implement a plan may modify it if the campus receives an academically acceptable rating for two consecutive years following implementation of the plan.

Board of managers. If a turnaround plan is not approved, the commissioner must:

- appoint a board of managers to govern the district;
- order alternative management of the campus; or
- close the campus.

If a campus has an unacceptable rating for three consecutive years after the campus is ordered to submit a turnaround plan, the commissioner must appoint a board of managers or close the school.

A board of managers must take appropriate actions to resolve the conditions that caused a campus to be low performing, including amending the district's budget, reassigning staff, or relocating academic programs. A board may be removed only after the campus receives an academically acceptable rating for two consecutive years. If a campus receives an unacceptable rating for two additional consecutive years following the appointment of a board of managers, the commissioner may name a new board.

Alternative management. If the commissioner orders alternative management, the district must execute a contract with a managing entity for a term of up to five years. The commissioner may require a district to extend the contract if the commissioner determines an extension is in the best interest of students. If a campus is academically unacceptable for two consecutive years after the managing entity assumes management, the commissioner must cancel the contract.

Closure. Under an order of closure, a campus may be repurposed only if the commissioner finds that a repurposed campus would offer a distinctly different academic program and would serve a majority of grade levels not served at the original campus. Any student assigned to a campus that has been closed must be allowed to transfer to any other campus in the district and receive transportation on request.

Charter schools. HB 1842 allows charter holders to establish new campuses if they meet all requirements and if the commissioner has not provided a written notice to the charter holder that the commissioner has determined the charter holder has not satisfied the accountability and other statutory requirements for

campus expansion. It also requires the commissioner to adopt an informal procedure for certain decisions regarding charter non-renewals, revocations, or governance reconstitutions. The procedure must allow representatives of the charter holder to meet with the commissioner and submit additional information, to which the commissioner must provide a written response in a final decision.

Innovation districts. A school district with an acceptable performance rating can seek designation as a district of innovation by a resolution adopted by the board of trustees or a petition signed by a majority of the district-level committee established to review district and campus improvement plans. The board must hold a public hearing and may decline to pursue designation as an innovation district or may appoint a committee to develop a local innovation plan. Such a plan must provide for a comprehensive education program for the district, which may include:

- innovative curriculum and instructional methods;
- modifications to the school day or year;
- provisions regarding budget and program funding;
- accountability and assessment measures that exceed state and federal requirements; and
- the identification of certain Education Code requirements from which the district should be exempted.

Two-thirds of trustees must vote to adopt a local innovation plan, which cannot exceed five years. The commissioner may terminate a district's designation if the district receives unacceptable academic or financial ratings for two consecutive school years. Instead of termination, the commissioner may permit the district to amend the innovation plan to address concerns. The commissioner must terminate a district's designation if the district receives unacceptable academic or financial ratings for three consecutive school years.

Monitoring reviews. The bill allows the Texas Education Agency (TEA) to conduct monitoring reviews to ensure district compliance with academic or financial standards. A monitoring review may include desk reviews and on-site visits. TEA also must adopt written procedures for conducting special accreditation investigations, including procedures that allow the

agency to obtain information from district employees in a way that prevents a district or campus from screening that information.

Supporters said

HB 1842 would address chronically low-performing schools by streamlining the sanctions and intervention process and providing finality for the community. Districts and local school boards no longer could allow low-performing campuses to continue operating for years. The knowledge that the state would intervene would force a school board to either fix the campus or give students a better option.

Districts would have flexibility to craft a campus turnaround plan that met local needs and included input from parents and teachers. Instead of punishing educators for working in a troubled school by requiring their replacement, the bill would allow them to play a crucial role in turning the campus around.

The requirement for alternative management contracts to be revoked after two years if a school did not improve would prevent a campus from being allowed to remain unacceptable for longer than that just because such a contract was in effect. HB 1842 would require closure or the naming of a board of managers after a school had five consecutive years of academically unacceptable performance. These are drastic but appropriate options for schools with long records of consistently low performance.

The bill would allow academically acceptable districts the same flexibility to innovate that charter schools enjoy by allowing a supermajority of the school board to claim district-level exemption from most laws from which charters are exempt. It would free school boards to experiment with scheduling, staffing, and other restrictions that are locally determined to impede student progress.

Opponents said

HB 1842 would spend \$1.6 million on staff at the state level instead of funding programs directly to help students at failing schools succeed. Money for tutoring, technology, and counseling could do more to improve student performance than yet another series of bureaucratic interventions and sanctions.

HB 1842 would not provide sufficient time for alternate management arrangements to work. Some entities that specialize in school interventions have said they would need a minimum of five years to turn a failing school around.

The bill would allow districts to eliminate certified employee contract rights and other benefits that teachers have worked hard to obtain. Districts also could eliminate classroom size limits and certain legal protections for students. These laws are the minimum standards that the state decided should be in place for public schools, and it is unlikely that districts would get better results from hiring uncertified teachers and placing them in larger classrooms.

Notes

The HRO analysis of [HB 1842](#) appeared in Part One of the May 11 *Daily Floor Report*.

The 84th Legislature considered other bills related to school interventions and district governance. **HB 1798** by Deshotel would have replaced provisions in Chapter 12 of the Education Code, which governs home-rule school districts, with a petition process for a school district to become a local control school district and be exempted from certain laws. HB 1798 did not pass to engrossment in the House. The HRO analysis of [HB 1798](#) appeared in the May 13 *Daily Floor Report*.

SB 14 by L. Taylor would have allowed parents to petition the education commissioner for interventions and sanctions related to a campus rated unacceptable after three consecutive school years. After passing the Senate on April 15, the bill was left pending in the House Public Education Committee.

Amending penalties and procedures for truant conduct

HB 2398 by J. White
Effective September 1, 2015

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HB 2398 amends requirements for school responses to truancy as well as court penalties and procedures for truancy cases. The bill requires truancy cases to be handled as civil judicial matters rather than as class C misdemeanor crimes (maximum fine of \$500) or as conduct indicating a need for supervision under the Family Code.

Truancy prevention measures. HB 2398 requires school districts to adopt truancy prevention measures designed to intervene before a student engages in truant conduct. The bill would define truant conduct as students failing to attend school on 10 or more days or parts of days within a six-month period during the same school year. Missing three or more days or parts of days without an excuse within a four-week period no longer would be considered truant behavior that indicates a need for supervision; instead, the bill requires schools to initiate truancy prevention measures when this level of absenteeism occurs. The bill raises the compulsory school attendance age from 18 to 19 years old, and establishes procedures for handling students voluntarily in school after their 19th birthday who have unexcused absences.

Truancy prevention measures may include behavior plans, school-based community service, or a referral to services such as counseling or mentoring. Services could involve a student's parent or guardian if necessary. School districts must employ truancy prevention facilitators or juvenile case managers or designate an existing employee to implement truancy measures. The Texas Education Agency by rule must develop minimum standards for truancy prevention measures for school districts, establish best practices for these measures, and adopt sanctions for noncompliant school districts.

Court procedures and penalties for truancy.

Referrals to truancy courts. Under HB 2398, once a student has failed to attend school on 10 or more days within a six-month period during a school year, the student's school district is required to refer the case to a truancy court, except under certain circumstances. A school district may delay or decline to make a referral if the school is applying truancy prevention measures

and determines that these measures are succeeding and that it is in the student's best interest to delay or not make a referral to truancy court. If a school district determines that a student has engaged in truant conduct because of pregnancy, being in the state foster program, homelessness, or being the principal earner for the family, the school district must offer additional counseling to the student and may not refer the student to truancy court.

The bill designates truancy courts as certain constitutional county, municipal, and justice courts, which are given exclusive jurisdiction over truancy allegations.

Court procedures. HB 2398 requires truant conduct to be prosecuted only as civil cases in truancy courts. Prosecutors will be appointed to screen truancy referrals and decide whether or not to file a petition with the truancy court for truant conduct. The bill contains provisions establishing several procedures, standards, and rights for students related to truancy cases.

Court orders. If courts find that a child has engaged in truant conduct, the courts must order children or their parents to pay a \$50 court cost if they are financially able to do so. Courts also may make a range of remedial orders, including requiring school attendance or completion of relevant programs, such as an alcohol and drug abuse program. The bill prohibits courts from making certain orders in truancy cases, including ordering a child to attend a juvenile justice alternative education program or a boot camp or to perform more than 16 hours of community service per week. Truancy courts may order the Department of Public Safety to suspend or deny issuance of a student's driver's license if a child is found to have engaged in truancy conduct. Truancy court orders may be appealed to a juvenile court.

Parents contributing to nonattendance. It remains a misdemeanor criminal offense for a parent to contribute to a student's nonattendance. HB 2398 establishes graduated fines of \$100 for a first offense to \$500 for fifth and subsequent offenses.

Enforcing truancy orders. The bill provides enforcement mechanisms for orders issued by truancy courts and for when a child is in contempt of a truancy court. Courts may assess a \$100 fine or order the Department of Public Safety to suspend or deny issuance of a driver's license or permit, or both. Failure by a child under 17 years old to comply with a truancy court order or certain cases of contempt of a truancy court may result in a referral of the child to the juvenile probation department and may lead to a juvenile court hearing under certain circumstances.

In the case of repeated juvenile court referrals, a juvenile prosecutor could pursue delinquency charges against the child or order a detention hearing. Courts may not order the confinement of children who fail to comply with a remedial order of a truancy court. If a child has been found to have engaged in truancy, courts may issue orders to parents or others to take certain actions, such as attending a class for students at risk of dropping out of school.

Sealing, expunction of records. Youth who have been found truant may apply when they turn 18 years old to seal records relating to their case that are held by a court, a prosecutor, or a school district. Courts can order the records destroyed on or after the child turns 21 years old if the child had not been convicted of a felony. The bill also requires courts to order the expunction of criminal truancy convictions or complaints and related records of youth under the former truancy laws.

Supporters said

HB 2398 would help to move the state away from relying on the criminal justice system to handle truancy. While the state and school districts should take truancy seriously, it is not a criminal act and is best handled in other ways.

Many jurisdictions use the current option of filing criminal truancy complaints in justice or municipal courts, which can result in overly harsh consequences, including criminal records. These consequences can have long-lasting effects, including making it difficult to obtain a job and higher education. Students currently may be assessed \$500 fines and court costs, which can be difficult for some to pay, resulting in additional consequences. Judges also may order students to attend certain truancy boot camps or programs, which may be costly to attend or inappropriate. Some students appear

before the courts without an informed legal advocate to help them understand the consequences of a conviction.

Handling these cases as criminal matters can be especially unfair because some truant students have underlying problems or reasons outside of their control that keep them from school. For example, family, health, economic, and transportation issues can lead to multiple absences.

HB 2398 would address these issues by eliminating the criminal offense of truancy and handling cases more appropriately as civil actions. It would encourage school districts to initiate truancy prevention measures before involving the courts, and it could eliminate inflexible attendance policies that force cases to be filed in local courts. These interventions would not be burdensome to districts, as many existing interventions in school districts already may meet requirements.

By maintaining the offense of contributing to school nonattendance and allowing the court to increase fines for subsequent offenses, the state can continue to hold parents accountable.

Allowing record sealing and requiring record expunction for those with existing criminal truancy convictions would ensure that students were not burdened with a court record for truancy or a criminal record after truancy was decriminalized.

A uniform statewide approach is needed to reduce inconsistent treatment of truancy and to keep all truant out of the criminal justice system. The bill would make Texas law consistent with that of almost every other state by handling truancy as a civil matter.

Opponents said

HB 2398, by eliminating the class C misdemeanor for truancy, would reduce the tools available to school districts and courts to handle students who accumulate excessive unexcused absences. Truancy's classification as a class C misdemeanor is appropriate as it is analogous to a traffic citation.

Currently, by the time a case is filed in a justice or municipal court, students have been given multiple chances to meet attendance requirements, and the threat of criminal consequences may be necessary to deter truant behavior.

The state should not mandate that districts adopt specific types of intervention programs. Many already have successful truancy programs that might have to be altered to fit the provisions of the bill. Requiring all school districts to adopt and use truancy intervention programs could burden schools and impose added costs on some. It could be difficult to offer the services and intervention required by the bill with existing staff and resources

Notes

The HRO analysis of [HB 2398](#) appeared in Part Five of the May 8 *Daily Floor Report*.

The 84th Legislature considered other truancy reform bills this session. **HB 1490** by Huberty, as passed by the House, would have authorized a progressive truancy intervention system with at least three tiers at the school level and would have decriminalized truancy offenses by making them a civil action with a fine of up to \$100. The HRO analysis of [HB 1490](#), which died in conference committee, appeared in Part Two of the May 5 *Daily Floor Report*.

HB 2632 by Dutton, as passed by the House, also would have decriminalized truancy and authorized a civil penalty of up to \$100. The HRO analysis of [HB 2632](#), which died in Senate committee, appeared in Part Two of the May 8 *Daily Floor Report*.

Revising the public school accountability system

HB 2804 by Aycock
Generally effective June 19, 2015

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HB 2804 adopts a new system for evaluating school districts and campuses that includes additional performance indicators unrelated to state standardized testing. The bill also requires the Texas Education Agency (TEA) to assign each campus a performance rating corresponding to the letters A-F. The new accountability system and ratings will begin in the 2017-18 school year.

Performance indicators. TEA will evaluate districts and campuses in three domains related to student achievement on State of Texas Assessments of Academic Readiness (STAAR), with some results aggregated across grade levels by subject area. The first domain includes STAAR results for students in grades 3-8 and high school end-of-course exams, as well as the results of tests for certain students of limited English proficiency and those in special education programs. The second domain includes the percentage of students who met standards for annual improvement on STAAR. The third domain includes differences in STAAR annual improvement among students from different racial and ethnic groups and socioeconomic backgrounds.

Districts and campuses also will be evaluated in two more domains unrelated to STAAR. In the fourth domain, measures for high schools include graduation and dropout rates, military enlistment, advanced placement enrollment, endorsements and distinguished achievement, postsecondary credit, and industry certification. For elementary schools, it includes student attendance. For middle and junior high schools, fourth domain measures include attendance, dropout rates, and the percentage of students in grades 7 and 8 who receive instruction in preparing for high school, college, and career.

The fifth domain includes three locally selected and evaluated programs or categories related to community and student engagement. Districts and campuses will select three programs or categories from an existing statutory list that includes fine arts, wellness and physical education, community and parental involvement, workforce development, second language acquisition, digital learning, dropout prevention, and gifted and talented programs.

In assigning an overall district or campus rating, the commissioner will attribute 55 percent of the evaluation to the achievement indicators for the first, second, and third domains; 35 percent to applicable achievement indicators for the fourth domain; and 10 percent to the locally selected indicators for the fifth domain.

A-F ratings. TEA will assign each campus a performance rating of A, B, C, D, or F. Ratings will be publicly released not later than August 15 of each year. In addition to the overall performance rating, district and campuses will receive a letter grade for each domain. The letter grades will correspond to existing ratings in the following manner:

- an A reflects exemplary performance;
- a B reflects recognized performance;
- a C reflects acceptable performance; and
- a D or F reflects unacceptable performance.

A district may not receive either an overall or domain rating of A if the district includes any campus with a corresponding overall or domain rating of D or F. The commissioner must adopt procedures to ensure that a repeated rating of D or F in one domain is not compensated for by a higher rating in another domain.

By January 1, 2017, the commissioner must submit a report to standing education committees of the Legislature providing a preliminary evaluation of districts and campuses under the new rating system, with data disaggregated by race, ethnicity, and socioeconomic status. The report must include the rating each district and campus would have received for the first through fourth domains if those indicators had been in place for the 2015-16 school year. It also must include the correlation between each designated letter rating and the percentage of students at each district and campus who qualify for free or reduced-price breakfast and are of limited English proficiency.

Accountability system study. The bill establishes a commission to develop and make recommendations for new systems of student assessment and school accountability. The Texas Commission on Next Generation Assessments and Accountability has 15

members, including the chairs of House and Senate public and higher education committees, a member of the State Board of Education, parents, educators, business and civic community members, and leaders in student assessment development. The commission must deliver its recommendations to the governor and the Legislature in a report due September 1, 2016.

Supporters said

HB 2804 would redesign the school accountability system to reduce the weight of STAAR scores on district and campus ratings and to give parents and the public a clearer picture of school performance.

Performance indicators. Educators and parents have consistently expressed concerns about the emphasis on STAAR results in evaluating schools and districts. The state and local communities need to know how students are performing on state assessments, and tests would account for more than half of a district and campus rating. At the same time, the bill recognizes that student academic achievement involves more than test scores, and would require the consideration of valuable measures other than STAAR results, such as high school endorsements, postsecondary credit, industry certification, and military enlistment. In addition, a portion of performance ratings would be under local control and independent from the state. This would allow schools and districts to design their own measurements of student and community engagement to self-assess how well they are doing.

A-F ratings. The introduction of letter grades to rate campuses under the new accountability system would portray school performance in a more relatable manner to the public. Similar to a report card brought home by students, parents would be able to see how a school was “graded” on each domain. Parents might not know what an “acceptable” designation means for their campus or district, but most would understand that a C rating connotes satisfactory, but unexceptional, performance. This information could empower parents to demand changes when improvement was needed.

Opponents said

HB 2804 would not sufficiently move the school accountability system away from its reliance on a questionable testing program. The use of A-F grades to label campuses could unnecessarily stigmatize schools and neighborhoods.

Performance indicators. Results from STAAR exams would continue to dominate the system and should account for no more than half of the rating received by a campus or district. In addition, some of the new non-testing measures could place smaller districts at a disadvantage. For instance, students in some rural schools might not have access to college courses that could allow them to earn postsecondary credit, which is one possible measure of student attainment. The new system should include a measure of teacher quality to help hold districts accountable for staffing decisions that could strongly impact student achievement.

A-F ratings. The bill would adopt letter grades to rate campuses under a system that remains largely reliant on high-stakes testing. Labeling a campus as D or F could negatively impact not only the school but the surrounding neighborhood, which in many cases would be a high-poverty community. This could make it more difficult for those schools to attract and keep good teachers. The bill would change the way Texas schools are rated under the guise of reform instead of helping low-performing schools access resources needed to boost student achievement.

Notes

The HRO analysis of [HB 2804](#) appeared in Part Five of the May 11 *Daily Floor Report*.

Alternate methods to satisfy graduation requirements

SB 149 by Seliger
Effective May 11, 2015

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SB 149 establishes an alternative method to satisfy state graduation requirements for high school seniors who have failed to pass up to two end-of-course (EOC) exams. For each of those students, school districts and open-enrollment charter schools would be required to establish an individual graduation committee to determine whether the student may qualify to graduate. The alternative method applies to students graduating in 2015, 2016, and 2017. The alternative method expires September 1, 2017.

The committee includes:

- the principal or principal's designee;
- the teachers of the corresponding courses for the failed EOC exams;
- the department chair or lead teacher supervising the student's teacher; and
- the student's parent or person standing in parental relation, a designated advocate, or the student if the student is at least 18 years old or is an emancipated minor.

To be eligible for this process, a student must successfully have completed the required high school curriculum. A student's individual graduation committee is required to recommend additional requirements for a student to complete. This includes additional remediation and completion of a project or portfolio that demonstrates proficiency in the subject area of the corresponding course. A student could submit coursework previously completed to satisfy a recommended additional requirement.

In determining whether a student is qualified to graduate, the committee must consider the recommendation of the course teacher, the student's course grade, EOC exam scores, performance on any additional requirements recommended by the committee, overall preparedness for postsecondary success, and school attendance rate.

In addition, the committee must consider other indicators of a student's academic performance, including hours spent on remediation; scores on college readiness and other proficiency tests; successful completion of certain high school pre-AP, AP, or international baccalaureate courses; completion of career and technical courses required to attain an industry-recognized credential or certification; and any other academic information designated by the local school board.

After considering the required criteria, the committee may determine that the student was qualified to graduate and receive a high school diploma. The committee decision, which must be unanimous, is final and applies only if the student successfully completes the additional requirements set by the committee.

Supporters said

SB 149 would provide an alternative graduation method for seniors who did not pass one or two of their end-of-course (EOC) exams. The class of 2015 was the first required to pass State of Texas Assessments of Academic Readiness (STAAR) EOC exams in order to graduate. These students have been subjected to the phase-in of a more difficult testing system as well as legislatively mandated midstream changes to the number and design of the exams. Seventeen of the 20 states that require graduation tests provide an alternative option similar to the one contained in the bill.

The STAAR EOC exams are just one way of measuring student success and should not be the ultimate determination of a student's future. A committee could consider other legitimate measures of student achievement such as college placement exams or military vocational aptitude tests. The lack of a high school diploma could prevent students who lacked a satisfactory score on one or two EOC exams from entering college or a trade school program or joining the military.

Opponents said

SB 149 would mark the first time in nearly three decades that the state eased its high school graduation test requirements. The bill effectively would create social promotion for high school seniors and make it easier for public schools to pass along unprepared students. By doing so, it could introduce incentives for students to neglect their EOC exams and devalue the diplomas of the 90 percent of students who persevered and passed all their testing requirements.

Allowing students to bypass testing requirements would not help students succeed in college and the workplace. The STAAR testing system is designed to measure students' ability to think critically, which is essential to their ability to embark upon rewarding careers.

The bill further would weaken the state's public school accountability system, which already lists 90 percent of campuses as meeting or exceeding expectations. The slow phase-in of STAAR tests has created a system where students must answer fewer than half of questions correctly on some exams in order to pass. Texas must have a clear, accurate picture of how students are truly faring in order to determine education policies.

Notes

The HRO analysis of [SB 149](#) appeared in Part Two of the April 21 *Daily Floor Report*.

Revising curriculum, limiting textbook adoptions

SB 313 by Seliger
Vetoed by the governor

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SB 313 would have required the State Board of Education (SBOE) to narrow the content and scope of the Texas Essential Knowledge and Skills (TEKS) at each grade level for the foundation curriculum. The SBOE would have considered the time required for a teacher to provide comprehensive instruction on a particular standard or skill and the time a typical student would need to master it. The board also would have had to determine whether each standard could be comprehensively taught within the required 180-day school year, excluding testing days, and whether inclusion of college and career readiness standards was possible.

The bill would have required the SBOE to consider whether state-required assessments adequately measured a particular standard or skill. After the administration of each such assessment in grades 3-8, the Texas Education Agency would have provided to the student, the student's parent or guardian, and the student's teachers a detailed report on the student's performance on each standard or skill and whether the student had mastered it.

SB 313 also would have limited the projected cost of new instructional materials proclamations to 75 percent of the total amount available for the instructional materials allotment during that biennium. Districts would have been entitled to a biennial, instead of an annual, allotment from the state instructional materials fund and would have received funding in the first year of each biennium.

Supporters said

SB 313 would require the State Board of Education (SBOE) to narrow the scope of the required curriculum for each subject and grade level, which could result in Texas Essential Knowledge and Skills (TEKS) that were more aligned to in-depth learning and more reasonable for teachers to cover in a school year. Many educators have said they would like to have more classroom time for students to develop a deeper understanding of a topic through discussions and projects. By requiring the board to consider whether state assessments are measuring

a particular standard or skill, the bill could lead to the development of more manageable and appropriately limited state-required exams.

The curriculum review would not be a way for national Common Core standards to be integrated into the TEKS curriculum because Texas law prohibits the implementation of Common Core in Texas.

The bill would give districts flexibility to use their instructional materials allotment (IMA) to purchase technology by limiting the costs of textbooks adopted by the SBOE. Although the Legislature intended the IMA to be a dual-purpose fund, technology expenditures have plummeted as the SBOE has issued proclamations, or "calls," for expensive new textbooks for social studies and science. SB 313 also would help districts to better manage their purchases of textbooks and technology by giving them their entire instructional materials allotment at the start of each fiscal biennium. This could encourage districts to order materials early, allowing teachers to have textbooks ready for the first day of class.

Opponents said

SB 313 could have a negative effect on the quality and quantity of instructional materials by limiting the SBOE's ability to call for new textbooks when needed. The board has a process in place to replace textbooks that become outdated or that are physically falling apart. At times, new materials are needed because the Legislature has focused on a particular subject or adopted a new testing regimen. The board needs to retain its ability to respond to districts' needs for new textbooks. Shifting to more technology-based instructional materials could disadvantage students who did not have computers and Internet access at home.

The curriculum review and modifications required by SB 313 could lead to the implementation of national Common Core standards into the TEKS. Common Core has been controversial in many states where it has been adopted, and Texas should take care to retain its own curriculum.

Notes

The HRO analysis of [SB 313](#) appeared in Part One of the May 25 *Daily Floor Report*. An analysis of the bill also appeared in HRO Focus Report No. 84-5, [Vetoed of Legislation: 84th Legislature](#), July 16, 2015.

Literacy achievement academies for certain teachers

SB 925 by Kolkhorst
Effective May 21, 2015

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SB 925 requires the commissioner of education to develop literacy achievement academies to aid the professional development of teachers who provide reading instruction to students in any grade from kindergarten through grade 3. These academies must include training in effective and systematic instructional practices in reading and in the use of empirically validated instructional methods appropriate for struggling readers. They also may provide training for effective instructional practices in writing.

The commissioner must identify certain criteria for teachers to attend a literacy achievement academy, granting priority to teachers at a campus where half or more of students are educationally disadvantaged. The commissioner must provide a process for teachers without priority to attend the literacy achievement academies if space is available and the teacher's school district pays for the teacher's attendance.

A teacher who attends the academy may receive a stipend in an amount determined by the commissioner. This stipend cannot be considered in determining whether a school district is paying the teacher the minimum monthly salary under Education Code, sec. 21.402.

At the request of the commissioner, regional education service centers must help with training and activities related to the literacy achievement academies. Literacy achievement academies are scheduled to be dissolved September 1, 2027.

Supporters said

SB 925 would allow Texas teachers to receive professional development in literacy skills to help improve outcomes for students, particularly those who are educationally disadvantaged. Teachers would be trained in new instructional materials and methods that they could apply to the classroom immediately. English language learners are a fast-growing group that now makes up nearly 18 percent of the student population in Texas. Literacy achievement academies could help ensure consistent instruction for these students.

Opponents said

SB 925, which the Legislative Budget Board estimates would cost \$17.8 million in fiscal 2016-17, would not be a good use of state funds because certified teachers already should have mastered the information and training provided by the proposed academies. Teachers who receive their certification from universities should be well prepared to teach students to read, and any additional literacy achievement training should be provided through continuing education courses. If teachers are not receiving adequate training for literacy improvement, then certification course requirements in universities should be adjusted to ensure this occurs.

Notes

SB 925 was laid out in the House on May 6 in lieu of its companion bill, HB 1843 by Aycock. The HRO analysis of [HB 1843](#) appeared in the April 28 *Daily Floor Report*.

Two related bills by Sen. Kolkhorst were enacted by the 84th Legislature: [SB 972](#) and [SB 935](#). Both analyses appeared in Part One of the May 22 *Daily Floor Report*. SB 972 requires the commissioner to develop reading-to-learn academies for teachers who provide reading instruction in grades 4 or 5. The bill provides professional development through in-person and Internet training. Selection criteria and stipends for teachers are similar to those in SB 925.

SB 935 requires the commissioner of education to establish a pilot program for reading excellence teams to provide professional development and assistance to teachers at eligible school districts. Eligibility is based on low student performance, as determined by the commissioner, on certain assessments administered in kindergarten through grade 3.



taxation and Revenue

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Decreasing the state sales tax rate

HB 31 by D. Bonnen
Died in Senate committee

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HB 31 would have reduced the state sales tax rate from 6.25 percent to the lower of 5.95 percent or a certain rate determined by the comptroller. A rate adopted by the comptroller would have decreased in proportion to any increase from one biennium to the next in the unencumbered positive balance of general revenue not transferred to the rainy day fund.

The comptroller would have been required to provide the Legislature with a report detailing the effect of this bill on the sales tax rate and what further reductions could be made based on a review of existing sales tax exemptions.

Supporters said

HB 31 would provide broad tax relief to all Texans, stimulating job growth and consumption statewide. Cutting the sales tax would create thousands of new jobs and make a good business climate even better, generating billions of dollars in additional economic output by 2020.

Economic analysis by the Legislative Budget Board concludes that the bill would have a more positive economic impact in almost every category than an equivalent franchise tax cut or homestead exemption increase. HB 31 would be preferable to a cut in the property tax because the property tax is not controlled by the state, and property tax relief could be offset by rate increases or rising appraisal values. Reducing the sales tax rate also would be more beneficial than cutting the franchise tax because the sales tax disproportionately burdens small businesses, most of which already are exempted from the franchise tax.

A sales tax cut would be appropriate at this time because the fiscal 2016-17 budget is expected to include more money to properly fund a variety of critical state services. As it addresses these priorities, the Legislature also should provide sales tax relief that will create jobs and stimulate economic activity in Texas.

Even following a sales tax cut, Texas should have sufficient revenue to meet its obligations in future biennia. The revenue stream from the ongoing shale oil boom in recent years should be reliable despite a recent drop in oil prices that is likely to be temporary. The state also has billions of untapped dollars in the rainy day fund that could compensate for any unforeseen loss of revenue.

Opponents said

HB 31 would not have a significant impact on the average Texan, and the state would lose the opportunity to make investments with potentially better returns in areas of critical needs, such as transportation or education. The state has a good business climate and does not need to reduce taxes to attract businesses to the state.

Any tax cuts are likely to be unsustainable over the long term. A substantial amount of the current surplus comes from money left over from last session and increased severance tax revenue from oil and gas sales. The Legislature has no guarantee that either of those sources will persist into future fiscal biennia, while tax cuts, once granted, are effectively permanent. This could unnecessarily create a difficult fiscal situation that might lead to cuts in vital state services, as was the case following the 82nd legislative session.

Other opponents said

Texans need tax relief, but lowering other taxes would be more beneficial than a sales tax cut. Texas could cut property taxes by increasing the homestead exemption and deliver the entirety of tax relief directly to individuals. Alternatively, the state could reduce franchise taxes, which would directly drive job creation.

Notes

The HRO analysis of [HB 31](#) appeared in the April 28 *Daily Floor Report*.

Decreasing the franchise tax rate

HB 32 by D. Bonnen
Effective January 1, 2016

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HB 32 reduces the franchise tax rate from 1 percent to 0.75 percent of the entity's taxable margin. The franchise tax on retailers is reduced from 0.5 percent to 0.375 percent of the taxable margin. The franchise tax rate on businesses using the E-Z computation is reduced from 0.575 to 0.331 percent of the entity's apportioned total revenue.

The bill allows taxable entities with less than \$20 million in total revenue to file using the E-Z computation, rather than only those with less than \$10 million in total revenue.

The comptroller must conduct a comprehensive study to identify the effects of economic growth on future state revenue. The report should identify revenue growth allocation options in meeting the state's revenue needs if the franchise tax were repealed, including revenues designed to provide property tax relief. The comptroller must conduct the study by September 30, 2016, and report the results to the governor and the Legislative Budget Board.

Supporters said

HB 32 would create thousands of new jobs and make a good business climate even better, generating billions of dollars in additional economic output by 2020. Allowing more businesses to use the E-Z computation would reduce compliance costs for businesses that are impacted the most.

This bill is preferable to a property tax cut because the property tax is not controlled by the state, and relief could be offset by increases in the tax rates or rising appraisal values. Similarly, cuts to the franchise tax are preferable to spending increases because the state already has fulfilled its obligations and increased funding in many areas with critical needs.

Even following a franchise tax cut, Texas should have sufficient revenue to meet its obligations in future biennia. The revenue stream from the ongoing shale oil boom in recent years should be reliable despite a recent drop in oil prices that is likely to be temporary. The state

also has billions of untapped dollars in the rainy day fund that could compensate for any unforeseen loss of revenue.

Opponents said

HB 32 would not provide tax relief directly to individuals. Also, the state would lose the opportunity to make investments with better returns in areas of critical need, such as transportation or education. Texas already has a good business climate with no personal income tax and does not need to reduce taxes to attract businesses to the state.

According to analysis by the Legislative Budget Board, a significant portion of the benefits from HB 32 could go to consumers and businesses that operate in Texas while being based in other states. This means that the Texas economy might not see substantial economic benefit from franchise tax cuts.

Tax cuts are likely to be unsustainable. A substantial amount of the current surplus is due to money left over from last session and increased severance tax revenue from oil and gas sales. The Legislature has no guarantee that either of those sources will persist into future biennia, even though tax cuts are effectively permanent. This could unnecessarily create a difficult fiscal situation that might lead to cuts in vital state services, as was the case following the 82nd legislative session.

Other opponents said

Texans need tax relief, but lowering other taxes would be more beneficial than a franchise tax cut. Specifically, the state instead could cut property taxes by increasing the homestead exemption and deliver the entirety of tax relief directly to individuals. Alternatively, the state could reduce the sales tax rate.

Notes

The HRO analysis of [HB 32](#) appeared in the April 28 *Daily Floor Report*.

Increasing the homestead property tax exemption

SJR 1 by Nelson/SB 1 by Nelson
Generally effective upon voter approval of SJR 1

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SJR 1 would amend the Texas Constitution to increase the mandatory homestead exemption from \$15,000 to \$25,000, if approved by the voters at the November 3, 2015 election. The taxable value of homesteads owned by the elderly or by people who are disabled also would be correspondingly reduced.

The proposed amendment would prohibit the enactment of a real estate transfer tax and would allow the Legislature to prohibit the reduction or elimination of optional homestead exemptions established by non-school district taxing districts.

SB 1 is the enabling legislation for SJR 1. Upon voter approval of SJR 1, the bill would entitle a school district to certain additional state aid through the Foundation School Fund to make up for maintenance and operations tax revenue and tax revenue used to service eligible debt that would be lost as a result of increasing the homestead exemption. The bill also would prohibit the reduction or elimination of an optional homestead exemption by a school district, municipality, or county through 2019.

The bill requires school district tax assessors to prepare tax bills as though SB 1 and SJR 1 have taken effect. SB 1 then requires the assessor of a school district to calculate and publish on a provisional tax bill a statement of the amount saved from the pending increase in the homestead exemption. That provisional tax bill must assume the higher homestead exemption.

If SJR 1 is not approved by the voters, the bill requires the assessor for each school district to prepare and mail a supplemental tax bill accounting for the difference. Assessors are not be liable for civil damages nor subject to criminal prosecution for complying with these provisions.

SB 1 has various transitional provisions for the 2015 tax year. It requires a school district's effective tax rate and rollback tax rate, wealth per student, local share of program cost, enrichment tax rate, local revenue, bond tax rate, existing debt rate, and taxable value of property for the 2015-16 school year to be calculated assuming a \$25,000 homestead exemption.

Certain school districts may request approval from the commissioner of education to delay an election on possible actions that would allow the district to achieve the equalized wealth level for the 2015 tax year. Such a district also may adopt a tax rate before its equalized wealth level is certified by the commissioner of education. A district that fails to hold the election or does not receive voter approval at the election will be subject to detachment and annexation of property as necessary to achieve the equalized wealth level as soon as practicable after the canvass of the votes on SJR 1.

Supporters said

By increasing the homestead exemption, SJR 1 would provide broad-based, crucial tax relief to Texans and drive economic growth.

Economic impact. Because the property tax is imposed on living spaces, virtually everyone in the state pays it in some manner. Homeowners pay directly, and renters pay it through higher rents as landlords factor in the cost. Although an increase in the homestead exemption would not directly benefit renters, it would drive down the cost of owning a home, which could lower rents by reducing demand for rental property.

The property tax is not related to income or consumption so it can negatively impact those with fixed incomes who have not had the dollar amount of their property tax bills "frozen" under Tex. Const., Art. 8, sec. 1-b(d), which limits the total amount of property tax levied on the homestead of a person or the spouse of a person who is 65 or older or disabled. When appraisal values rise significantly and tax rates are not adjusted downward, such people may find themselves priced out of their homes. Data from the comptroller's Tax Exemptions and Tax Incidence report indicates that homestead exemptions particularly benefit low-income individuals because a dollar-value homestead exemption exempts a higher percentage of the total value of a less expensive home. In this way, SJR 1 would provide meaningful relief to Texas homeowners even in the face of rising appraisals.

Local control. State law places limitations on school districts' ability to set property tax rates, and partially as a result of this, it is impractical for many districts to decrease rates even when appraisals increase.

Taxpayers continually request property tax relief from the state, so it is appropriate to address this issue through a constitutional amendment at the state level, rather than to rely on local governments to take action.

Revenue stability. Texas should have sufficient revenue to meet its obligations in future biennia, including SB 1's requirement that the state hold public schools harmless for a reduction in local property tax revenue resulting from the increased homestead exemption. The revenue stream from the ongoing shale oil boom in recent years should be reliable despite a recent drop in oil prices that is likely to be temporary. The state also has billions of untapped dollars in the rainy day fund that could compensate for any unforeseen loss of revenue.

Spending alternatives. The fiscal 2016-17 budget passed by the 84th Legislature includes more money for a variety of critical state services, ensuring that they are well funded. Because these priorities have been addressed, the state should provide tax relief that will create jobs and stimulate economic activity.

Tax cut alternatives. The property tax should be cut because it is an onerous and noticeable tax for a large number of Texans. It is a tax upon the ownership of property, one of the most fundamental rights that people have. While taxpayers frequently ask for property tax cuts, they rarely report being overly burdened by the sales tax and see only the secondary effects of the franchise tax.

Opponents said

Increasing the homestead exemption as proposed in SJR 1 would not have a significant impact on the average Texan, and the state would lose the opportunity to make better investments in areas with critical needs, such as public or higher education.

Economic impact. Increasing the homestead exemption would not provide meaningful relief for the millions of Texans who rent or who otherwise do not

own homes. Other tax cut alternatives, such as a sales tax cut, would provide broader and more equitable tax relief.

State law already provides relief for some of those who are most likely to be on fixed incomes. Tex. Const., Art. 8, sec. 1-b(d) freezes the amount of tax that may be levied on homesteads owned by certain individuals, including those who are at least 65 years old or disabled.

Local control. Property taxes are fundamentally local, and the state should not take ownership of rising local tax burdens. SJR 1 and SB 1 are motivated by growing tax burdens caused by rising appraisals and static tax rates. When appraisals rise, total tax collections also rise without an increase in the tax rate. If, however, the cost to facilitate local services paid for by the property taxes is the same, then rising appraisals should be addressed by reducing the tax rate. Instead of accepting increases in tax revenue due to rising appraisals, local governments should reduce tax rates and keep the total tax collected the same. Local taxing districts should be held accountable by the voters, rather than the state taking responsibility for tax rates.

Revenue stability. Any tax cuts are likely to be unsustainable over the long term. The Legislative Budget Board's fiscal note on the enabling legislation to SJR 1 estimates a cost of about \$1.2 billion per fiscal biennium to keep school funding constant while increasing the homestead exemption by \$10,000. A substantial amount of the current surplus that would be used for this purpose comes from money left over from last session and increased severance tax revenue from oil and gas sales. The Legislature has no guarantee that either of those sources will persist into future fiscal biennia, while tax cuts created by SJR 1 effectively would be permanent. This could unnecessarily create a difficult fiscal situation that might lead to cuts in vital state services, as was the case following the regular session of the 82nd Legislature.

Spending alternatives. The money required to reimburse school districts for lost property tax revenue due to the increased homestead exemption can and should be spent elsewhere. The state has an obligation to adequately fund basic services that help protect Texas' economic future, and the state needs further investment in other critical areas

Tax cut alternatives. Because an increase in the homestead exemption would provide tax relief only to homeowners, the state instead should pursue tax cuts in other areas. A reduction in the sales tax would provide tax relief across the board, while further cutting franchise taxes would directly drive job creation. Analysis by the Legislative Budget Board predicts that either of these options would have a greater positive economic impact than an increase in the homestead exemption.

Notes

The HRO analysis of [SJR 1](#) and [SB 1](#) appeared in Part One of the May 24 *Daily Floor Report*.



Transportation

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* Finally approved

Creating metrics and criteria for transportation projects

HB 20 by Simmons
Effective June 3, 2015

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HB 20 provides for the development of metrics and criteria for use in transportation planning and in prioritizing and selecting projects. The bill requires the Texas Transportation Commission to establish performance metrics for use in reviewing the statewide transportation plan, rural transportation plans, and the unified transportation program, as well as project-specific funding decisions.

The commission also must adopt and periodically report on metrics that:

- assess the performance of the transportation system relative to the requirements in federal law;
- provide stakeholders with understandable information;
- assess the effectiveness and efficiency of projects and service; and
- demonstrate transparency and accountability.

The commission must establish a scoring system for prioritizing projects and determining which should receive funding. The bill also requires each metropolitan planning organization (or Department of Transportation districts in an area not contained within a planning organization) to develop a 10-year transportation plan for the use of funding allocated to its jurisdiction.

Each planning organization or department district must develop recommendation criteria to be applied to each project, including considerations of available funding and a project's effect on:

- congestion and safety;
- economic development opportunities;
- the environment, including air quality; and
- minority or low-income neighborhoods.

HB 20 provides for the creation of House and Senate select committees on Transportation Planning, which will study revenue projections, funding categories, project selection criteria and performance metrics, and all department- or commission-proposed rules or policies of statewide significance, among other topics.

The bill also establishes requirements and limitations on the use of design-build contracts by the Department of Transportation and eliminates a provision that allowed monies from the state highway fund to be used by the Department of Public Safety to administer and enforce traffic and safety laws on public roads.

Supporters said

HB 20 would increase effectiveness and transparency in the transportation project selection process in Texas and ensure the state received the greatest possible return on investment. Transportation is a core state responsibility that is critical to Texas' growing economy, and the state should make certain that appropriations are used wisely and transparently. Any increased administrative costs would be more than worth it for the improved transparency and additional information made available to policymakers.

Objective criteria are needed for making transportation funding decisions. The bill would remove the bureaucratic discretion that allows political influence into the process, increasing the efficiency with which the state spends its tax dollars.

The Legislature should not be overly specific in establishing guidelines for project selection criteria because local entities better understand the needs of their jurisdictions and are better equipped to respond if changes to the criteria are necessary. If the bill were too specific in setting guidelines, the planning organizations would have to wait until the next legislative session to reconstruct criteria.

Opponents said

HB 20 would impose a significant burden on TxDOT and could deny funding to valuable projects. Under the bill, the commission would have to create periodic reports for each of the performance metrics created. This would duplicate existing efforts used to report on budgetary performance measures and divert staff from other valuable projects.

It is not clear that quantitative metrics would capture the real transportation needs of Texans. TxDOT should have more room to make discretionary decisions. The scoring system, depending on how it was developed, could further codify a bias toward highway construction at TxDOT, making it more difficult to get funding for other types of transportation projects. The metrics developed by the agency might not adequately reflect the value of other types of projects, such as mass transit.

Other opponents said

The Legislature should be more specific when establishing points of consideration for the development of project selection criteria because planning organizations could adopt criteria that unintentionally reduced the chances of certain types of projects to receive funding. The bill also should require planning organizations to consider a life-cycle cost analysis of the project to ensure that all costs were taken into account when selecting projects.

Notes

The HRO analysis of [HB 20](#) appeared in Part One of the April 30 *Daily Floor Report*.

Some provisions added in the committee substitute to HB 20 in the Senate Transportation Committee, including those requiring planning organizations to establish project recommendation criteria and develop 10-year transportation plans, were included in **HB 13** by Pickett, which was not enacted. [HB 13](#) was analyzed in Part One of the April 30 *Daily Floor Report*.

Banning texting while driving

HB 80 by Craddick
Died in the Senate

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HB 80, as reported by the Senate Committee on State Affairs, would have made it a misdemeanor offense for a motorist to read, write, or send a text-based communication with a portable wireless communication device, such as a mobile phone, while operating a motor vehicle, except when the vehicle was stopped.

A “text-based communication” would have been defined as data, other than a telephone number or GPS data, that was read from or manually entered into a wireless communication device to communicate with a person, such as an SMS text, e-mail, or instant message. The bill would have expanded the definition of “hands-free device” to include a function allowing the use of a wireless communication device without the operator’s hands, except to turn on or off a function of the device.

The first offense would have been punishable by a fine between \$25 and \$99, and a subsequent offense by a fine between \$100 and \$200. The Department of Public Safety would not have assigned points to a person’s license as part of the Driver Responsibility Program for texting while driving.

The bill would have created a defense to prosecution for a driver who used a portable wireless communication device under certain circumstances, such as in conjunction with voice-operated technology, a push-to-talk function, or a hands-free device, or to report illegal activity or summon emergency help. The offense would not have applied to drivers licensed by the Federal Communications Commission who were operating a radio frequency device other than a portable wireless communication device.

Law enforcement personnel who stopped motorists could not have taken or inspected a device to see if the motorist had been texting, except as already authorized by current law.

The Texas Department of Transportation would have been required to post signs at highways entering the state indicating that texting while driving was an offense that carried a fine.

The bill would have preempted all local ordinances, rules, or regulations that related to texting while driving.

HB 80 would have made it a misdemeanor for a driver under the age of 18 to use a handheld or hands-free wireless communication device while operating a vehicle and for a driver younger than age 17 to use a handheld or hands-free wireless communication device while driving a motorcycle or moped. The offense would have been punishable by a fine between \$25 and \$99 for the first conviction and between \$100 and \$200 for subsequent convictions.

An applicant taking a driver’s license exam would have been tested on his or her knowledge of the effect on safe driving of using a wireless communication device or engaging in other actions that could distract a driver.

Supporters said

HB 80 is a common-sense measure that would improve the safety of the state’s roadways and send a clear message to motorists that texting while driving is dangerous.

Distracted driving is responsible for many vehicle crashes in the state, and the safety hazards of texting while driving are comparable to those that accompany drinking and driving. In the same way that seat belt laws made seat belt use habitual, HB 80 would start a cultural shift away from texting while driving.

The bill would create a uniform state law that would provide Texas drivers with more predictability by prohibiting texting while driving across the state instead of allowing a patchwork of laws that vary by jurisdiction. It also would bring Texas law in line with texting-while-driving prohibitions adopted in most other states.

Despite concerns to the contrary, the bill would be enforceable. State law already prohibits texting while driving in certain circumstances, and law enforcement has had no difficulty enforcing these laws.

Traffic safety measures such as HB 80 do not infringe on individual liberties. Roads are public resources, and motorists using them must observe various restrictions related to behavior and equipment and must operate vehicles in a safe and consistent way to ensure public safety.

Texting while driving behaviors cannot be reached with reckless driving laws because those laws require wanton and wilful conduct, which a jury is unlikely to find in the case of texting while driving.

A state law is needed because variations in local laws make it difficult for drivers to know what the law is when driving across Texas.

Opponents said

HB 80, while well intentioned, would not be the best way to address the dangers of texting while driving in Texas. The bill would single out one potentially dangerous distraction, texting, while ignoring other distractions, such as eating and grooming, that can pose hazards. Better data about the effects of texting and driving should be collected before banning it outright.

The number of exceptions to the prohibition on texting while driving could create challenges for law enforcement in distinguishing between drivers who were texting and those who were using the phone for legal purposes, making the law difficult to enforce.

Prohibiting and penalizing texting while driving would infringe on the liberties of Texans by attempting to micromanage motorists' behavior.

Dangerous driving caused by texting while driving should be addressed with existing laws, such as those for reckless driving, rather than by creating new laws to curb that behavior.

Other opponents said

By preempting local ordinances, HB 80 would treat texting while driving as a state issue when it would be better handled at the local level. Municipalities are in the best position to tailor these laws to address their unique circumstances.

Notes

The HRO analysis of [HB 80](#) appeared in the March 25 *Daily Floor Report*.

Eliminating the Texas Mobility Fund's borrowing ability

HB 122 by Pickett
Effective June 10, 2015

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HB 122 ends the ability of the Texas Mobility Fund to issue new bond debt and places conditions on the future use of money within the fund.

The Texas Transportation Commission may use money in the fund not committed to servicing existing debt for any purposes authorized by Transportation Code, ch. 201, subch. M, including state highways and public transportation but excluding toll roads. The commission also may refinance existing debt obligations.

Supporters said

HB 122 would bring common sense to highway funding by eliminating the issuance of bonds from the Texas Mobility Fund. Borrowing to finance road construction and maintenance was necessary 15 years ago when money was tight and the state had no other way to build needed roads. Now that cash is available to pay for roads directly, it is time to begin the process of paying down existing bond debt and return to the traditional “pay-as-you-go” method of funding roads.

Voter approval of Proposition 1 in November 2014 amended the Texas Constitution to allocate to the State Highway Fund (Fund 6) one-half of the general revenue derived from oil and gas production taxes that formerly was transferred to the rainy day fund. Now that this revenue is available for roads, there is less need to finance road construction and maintenance with debt, which costs the state much more in the long run. In fiscal 2014, the state spent more than \$359 million from the fund on debt service, which is nearly half of the \$730 million it spent from the fund on transportation projects and maintenance.

Debt service has become a significant cost to TxDOT as the Texas Mobility Fund continues to accumulate debt. Already, more than three quarters of money in the fund goes to debt service, and this proportion will only increase in the future. This has negative implications for state's ability to build and maintain roads necessary to accommodate population and economic growth in Texas.

Opponents said

HB 122 would tie the hands of the Texas Transportation Commission and could impede the completion of future transportation projects. Although it may make sense in today's favorable economic climate to pay for Texas roads with cash rather than borrowed money, eliminating the authority to issue bonds through the Texas Mobility Fund could interfere with TxDOT's ability to build roads in the future when oil and gas revenues might not be sufficient to fill the Fund 6 coffers.

Texas voters acknowledged the need for some borrowing ability to finance road construction and maintenance when they voted to create the Texas Mobility Fund in 2001. Although the state now has cash on hand to build roads on a pay-as-you-go basis, a growing population of Texans will need more roads in the future, and TxDOT could need to borrow money for this purpose in leaner times. Eliminating the ability to borrow money through the Texas Mobility Fund would remove an important tool from the road funding toolbox.

Because the conditions for using money from the Texas Mobility Fund are more flexible than those for using money from the Texas Highway Fund, mass transit agencies sometimes request mobility funds for system expansions and upgrades. These funds also help Texas draw down federal dollars for mass transit because they are included in the local contribution under federal funding formulas. By reducing the amount of money available to support mass transit projects, the bill could impede the ability of state and local authorities to address the transportation needs of a growing population that increasingly may need to rely on mass transit.

Notes

The HRO analysis of [HB 122](#) appeared in Part Two of the April 8 *Daily Floor Report*.

Amending penalties under Driver Responsibility Program

HB 2671 by S. Thompson
Died in the House

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HB 2671, as reported by the House Committee on Transportation, would have made changes to penalties associated with the Driver Responsibility Program (DRP), which requires the Department of Public Safety (DPS) to assess an annual surcharge on the driver's license of a person who has been convicted of certain traffic-related offenses for three years after that conviction.

The bill would have modified these surcharges by assessing them one time after each conviction, rather than each year for three years. Surcharges would range from \$300 to \$6,000 depending on the nature of the offense, any prior convictions, and the extent to which someone convicted of driving under the influence was intoxicated. The bill also would have extended the minimum duration of an installment plan from 36 months to 48 months for surcharges of \$500 or more.

HB 2671 would have prohibited DPS from extending a license suspension as a penalty for a conviction of driving with a suspended or revoked license if:

- the license was originally suspended for non-payment of DRP surcharges; and
- the person had not been convicted of driving with an invalid license in the previous 36 months.

A judge could have dismissed a charge of operating a motor vehicle without a driver's license if the defendant obtained a license within 60 working days of the offense. A judge also could have dismissed a charge of driving without insurance if the motorist obtained insurance within 20 working days of the offense. A defendant whose charges had been dismissed under these circumstances would have been required to pay an administrative fee of up to \$50.

Driver education and driver safety courses would have been required to include information about DRP surcharges.

Supporters said

HB 2671 would make the penalties assessed under the Driver Responsibility Program (DRP) more manageable for offenders trying to get back on their feet after paying their debts to society. The DRP often creates a cycle of license suspensions for working Texans, and surcharges can create a double-bind in which motorists with suspended licenses must drive to work to have sufficient income to afford to pay the fine. HB 2671 would help address this conundrum by ending the extension of license suspensions for driving with an invalid license and increasing the duration of the installment plan for certain surcharges.

Opponents said

About 50 percent of the proceeds from the DRP are directed to hospitals for uncompensated trauma care services. The state should avoid modifications to the DRP that could reduce funding for these life-saving services.

Other opponents said

HB 2671 would make penalties more manageable for most drivers, but it would be of limited help for low-income motorists. The DRP needs more significant reform to allow low-income drivers to legally get to work. Texans should not lose their licenses because they cannot afford to pay a debt.

Notes

HB 2671 was placed on the May 12 General State Calendar but was not considered. It was not analyzed in a *Daily Floor Report*.

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