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FOCUS *report*

Vetoes of Legislation: 87th Legislature

Gov. Greg Abbott vetoed 20 bills approved by the 87th Legislature during the 2021 regular legislative session. The vetoed bills include 12 House bills and eight Senate bills.

This report includes a digest of each vetoed measure, the governor's stated reason for the veto, and a response to the veto by the author or the sponsor of the bill. If the House Research Organization analyzed a vetoed bill, the *Daily Floor Report* in which the analysis appeared is cited.

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Earlier parole review for some offenses committed when younger than 17, 18

HB 686 by Moody (Lucio)

Digest

HB 686 would have reduced the minimum prison terms that had to be served before certain individuals who committed certain serious crimes when they were younger than 18 years old or younger than 17 years old could have been considered for release on parole, and it would have required certain factors to be considered when determining whether to release such an inmate on parole. The bill would have applied to any inmate confined in a Texas Department of Criminal Justice facility on or after the bill's effective date, regardless of when an offense occurred.

Governor's reason for veto

"The author of House Bill 686 is to be commended for aiming to provide opportunities for the young offender population. The bill, which addresses parole eligibility for juvenile offenders, admirably recognizes the potential for change and encourages rehabilitation and productiveness in the young offender population. As written, though, the bill's language conflicts with jury instructions required by the Texas Code of Criminal Procedure, which would result in confusion and needless, disruptive litigation. And the bill would cause disparate results in parole eligibility for juvenile offenders by failing to account for all circumstances in Texas Code of Criminal Procedure 42A.054. Further changes to address these issues will allow for meaningful reform on this important matter, and I look forward to working with the House author to accomplish that goal."

Response

Rep. Joe Moody, the bill's author, said: "Gov. Abbott has identified a very specific technical issue with this bill while signaling support for the concept, so I look forward to working with him to resolve that and getting this important legislation passed as quickly as possible for the thousands of Texas families waiting on a Second Look."

Sen. Eddie Lucio, Jr., the Senate sponsor, said: "HB 686, the Second Look bill, would have provided an earlier opportunity for certain juvenile offenders to prove their rehabilitation to a parole board. In the course of working on this bill, I met with several family members of incarcerated individuals who had turned away from their past and improved their lives while in prison through education and peer mentoring opportunities. The bill recognizes that the worst actions of juvenile offenders do not define them for life, and is consistent with a Christian understanding of mercy.

"In his veto message, the governor expressed support for the bill in concept, and identified areas where additional work may be needed, including modifying jury instructions to match the parole timelines in the bill. I welcome the opportunity to address these concerns as soon as possible, for the good of hundreds of juvenile offenders and their families whose hopes were raised by the initial success of this bill."

Notes

The HRO analysis of HB 686 appeared in the April 7 *Daily Floor Report*.

Prohibiting probation conditions that restrict contact with certain persons

HB 787 by Allen (Miles)

Digest

HB 787 would have prohibited judges from establishing certain conditions of community supervision (probation) that prohibited criminal defendants from contacting or interacting with persons involved in specified types of community, training, and advocacy organizations outlined in the bill.

Judges could not have prohibited probationers from interacting with someone who belonged to an organization that included persons who had criminal histories and who engaged in activities that the director of the probation department determined included: working with community members to address criminal justice issues; offering training and programs to assist formerly incarcerated persons; and advocating for criminal justice reform, including by engaging with state and local policymakers.

Governor's reason for veto

"House Bill 787 seeks to encourage rehabilitation of criminal defendants, but in doing so would remove judicial discretion to set certain necessary conditions of probation on a case-by-case basis. Eliminating a judge's ability to analyze and mandate suitable conditions for each individual case is detrimental to public safety. I have signed House Bill 385, which also amends community-supervision conditions and procedures to encourage more robust rehabilitation and prevent recidivism, but I cannot support legislation that eliminates judicial discretion in this way."

Response

Rep. Alma Allen, the bill's author, said: "While I applaud Gov. Abbott's decision to sign HB 385, which will improve rehabilitation and prevent recidivism, I am disappointed by his decision to veto HB 787. HB 787 was intended to promote peer-to-peer recovery support for people on community supervision. Certified peer support, where people with lived experience of substance use, mental illness, and incarceration are trained to help people navigate a path to recovery, is a proven model that greatly enhances long-term success of justice-involved individuals. The bill would have removed a roadblock by prohibiting courts from imposing conditions that preclude participation in programming led by others who have also been involved in the justice system. The bill would also have allowed for greater pro-social involvement in community groups among people under court supervision. Notwithstanding the veto and very much appreciated, Gov. Abbott does acknowledge the rehabilitative benefit of HB 787, and points to the discretion of judges to allow people on supervision to participate in programming and community groups alongside other justice-involved individuals. I hope that judges will recognize the benefit of peer-to-peer support and allow defendants to participate."

Sen. Borris Miles, the Senate sponsor, had no comment on the veto.

Notes

The HRO analysis of HB 787 appeared in Part Two of the April 14 *Daily Floor Report*.

Retaining juvenile court jurisdiction over certain persons; sealing records

HB 1193 by Wu (Whitmire)

Digest

HB 1193 would have established that a juvenile court retained jurisdiction over a person, without regard to the age of the person, if the proceeding had been delayed through no fault of the state. A juvenile court would have been required, on receipt of an application from a person who received a determinate sentence and was not transferred to a district court, to hold a hearing to determine whether it was in the best interest of the person and of justice to order the sealing of the person's records and could have ordered the records to be sealed. A juvenile court would have been prohibited from ordering the sealing of records of a person who received a determinate sentence and was transferred to district court.

Governor's reason for veto

"People who commit youthful indiscretions should have the opportunity to turn their lives around and not be burdened by a criminal record as an adult. Texas law already allows juveniles to clear their records in appropriate circumstances. House Bill 1193, however, would allow juveniles who were sentenced for serious violent crimes to hide their acts from society and from future employers. I have vetoed similar bills in the past sessions that would have concealed serious offenses, and I must do so again here."

Response

Neither **Rep. Gene Wu**, the bill's author, nor **Sen. John Whitmire**, the Senate sponsor, had a comment on the veto.

Notes

The HRO analysis of HB 1193 appeared in Part One of the May 4 *Daily Floor Report.*

Modifying offense of failing to comply with county fire marshal order

HB 1240 by Coleman (Miles)

Digest

HB 1240 would have lowered from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to a class C misdemeanor (maximum fine of $500) the offense of failing to comply with an order from a county fire marshal to correct a fire or life safety hazard in a structure. The offense would have applied to a person, not just a structure's owner or occupant as under current law, who failed to comply with such an order.

The bill would have made the offense a class B misdemeanor if it was shown on trial that the defendant had been previously convicted of the offense. The offense would have been a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if the commission of the offense had resulted in bodily injury or death.

HB 1240 also would have allowed the commissioners court of a county with a population of 3.3 million or more (Harris County) and the commissioners court of a county adjacent to such a county with a population of 550,000 or more (Fort Bend County) to grant to certain county employees the authority to issue a citation in the unincorporated area of the county only for:

- the offense of failing to comply with a county fire marshal order; or
- a violation of an order relating to fire or life safety issued by the commissioners court that was reasonably necessary to protect public safety and welfare.

Governor's reason for veto

"House Bill 1240 would wisely reduce an existing fire-safety penalty from a Class B to a Class C misdemeanor, and I share the goal of keeping Texans safe by increasing enforcement of the penalty. But House Bill 1240 goes off course in granting broad and unique authority to the county commissioners courts in just a few counties, including Harris County. Under the bill, these county commissioners courts could designate county employers who are not peace officers to issue criminal citations to citizens — a weighty duty usually reserved for the discretion of trained, accountable law-enforcement officials. And the bill's loose language could give the county commissioners courts a blank check to write new safety rules to be enforced criminally by these county employees. A more refined solution is needed."

Response

Rep. Garnet Coleman, the bill's author, said: "Though I am glad that the governor sees the wisdom in reducing unnecessarily harsh jail penalties for those who do not comply with fire marshals' orders, it is disappointing that he deemed the other fire-safety aspects of this bill to be overreach. HB 1240 was modeled after the same authority we already grant public health inspectors and would have authorized the fire marshals in Harris and Fort Bend counties to more efficiently address fire code violations by issuing citations themselves without needing to get a peace officer involved."

Sen. Borris Miles, the Senate sponsor, had no comment on the veto.

Notes

HB 1240 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Expanding performance and payment bond requirements to certain entities

HB 1477 by K. Bell (Nichols)

Digest

HB 1477 would have expanded certain state laws requiring performance and payment bonds for public work contracts. A governmental entity that authorized a nongovernmental entity leasing public property from the governmental entity to enter into a public work contract with a prime contractor would have had to require the contractor to execute performance and payment bonds. The bill would not have included persons who leased properties from certain river authorities.

Governor's reason for veto

"Whenever a government entity leases public property to a non-governmental entity, and the latter decides to enter into a contract for work performed on the property, House Bill 1477 would make the government entity responsible for the prime contractor obtaining a bond to protect subcontractors. If no bond is obtained and the prime contractor does not pay subcontractors, the government entity would be responsible for payment because the bill waives the government entity's sovereign immunity in this situation. Because the government entity may not know who the prime contractor is — or even that there is a contract between the non-governmental entity and a prime contractor — House Bill 1477 could leave the government entity, and taxpayers, on the hook for damages not caused by the government entity."

Response

Rep. Keith Bell, the bill's author, could not be reached for comment on the veto.

Sen. Robert Nichols, the Senate sponsor, had no comment on the veto.

Notes

The HRO analysis of HB 1477 appeared in Part Two of the May 4 *Daily Floor Report*.

Qualifying certain land used for sand mining operations as open-space land

HB 1544 by Guillen (Zaffirini)

Digest

HB 1544 would have specified that the eligibility of land for appraisal as open-space land did not end because the land ceased to be devoted principally to agricultural use to the degree of intensity generally accepted in the area if:

- the owner of the land intended that the use of the land in that manner and to that degree of intensity be resumed;
- the land was used for a sand mining operation; and
- the land was reclaimed according to standard best practices adopted by the Texas Commission on Environmental Quality (TCEQ) by the first anniversary of the date sand mining operations began on the land.

The bill would have applied only to a sand mining operation overlying the Carrizo-Wilcox Aquifer and located within 30 miles of the boundary of a municipality with a population of more than 500,000 or one mile of a building in use as a single-family or multifamily residence.

TCEQ's standard best practices for the reclamation of land used for a sand mining operation would have had to include certain requirements for the reclamation and provide for the protection of surface water, groundwater, agricultural land, wildlife habitat, and wetlands.

Governor's reason for veto

"House Bill 1544 would single out sand-mining operations, and only those within a specific geographic area, for preferential tax treatment. Currently, sand mining is not a qualifying use under open-space appraisal. House Bill 1544 would change that to allow property owners in two counties, if they meet certain conditions, to retain their open-space appraisal if their property is used for sand mining for one year. It would also make the Texas Commission on Environmental Quality (TCEQ) create and enforce rules for reclamation of the sand mines.

"Although the bill is meant to incentivize property owners to reclaim sand mines, it gives a property tax benefit to a very narrow set of property owners that will not be available to other similarly situated property owners around the state. It also allows property owners to retain an open-space appraisal after they chose to put their property to another use, despite existing law that allows this only if the property owner had to involuntarily cease agricultural operations — such as during a drought or to control pests or diseases. And the bill does not set clear standards for TCEQ to use in adopting reclamation rules. For these reasons, House Bill 1544 must be disapproved."

Response

Rep. Ryan Guillen, the bill's author, could not be reached for comment on the veto.

Sen. Judith Zaffirini, the Senate sponsor, said: "HB 1544 would have provided a narrowly tailored solution to a local problem that easily could have been extended statewide next session. Allowing sand-mining operators who adopt reclamation practices to retain open-space appraisals would have provided a much-needed financial incentive to improve land over the Carrizo-Wilcox Aquifer that otherwise would remain barren, underutilized, and unsuitable for agriculture and wildlife. What's more, improving the land using these reclamation practices would improve the recharge ability of the Carrizo-Wilcox Aquifer — a unique benefit (and main reason for the local nature of the bill) due to the geography of the land.

"Regarding clear standards, HB 1544 would have required the Texas Commission on Environmental Quality (TCEQ) to incorporate best practices adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and to establish a process to determine if the land were properly reclaimed. The bill

also listed several reclamation standards and specific rules to be enforced by TCEQ. These included providing for the protection of surface water, groundwater, agricultural land, wildlife habitat, and wetlands; ensuring reclamation occurs concurrently with sand mining operations; requiring the reuse of surface soil removed for sand mining and construction of ponds to catch rainwater; and mandating the use of lime and fertilizer in soil for new grasses and vegetation to grow quickly. These changes would have provided a fiscally conservative solution to an environmental problem. Although disappointed this bill was vetoed, I look forward to working with the governor and his staff to develop acceptable solutions and alternatives for next session."

Notes

The HRO analysis of HB 1544 appeared in the April 12 *Daily Floor Report*.

Discharging bail bonds obligation if accused is in federal custody

HB 2448 by Canales (Hinojosa)

Digest

HB 2448 would have allowed sureties, also known as bail bond agents, to be relieved of their obligation on a bail bond if the accused was in federal custody to determine whether the individual was lawfully present in the United States.

Governor's reason for veto

"During the 85th Legislature, I signed Senate Bill 4 into law to help secure the border. I have fought — and continue to fight — to protect all Texans from dangerous cartels, smugglers, and human traffickers. Because the federal government has failed to act during the ongoing border crisis, Texas has deployed numerous resources to combat the dangers faced in border communities. House Bill 2448 would go in the wrong direction, reversing a good change made by Senate Bill 4 and facilitating the release of potentially dangerous criminals from jail. That is an objective I cannot support."

Response

Neither **Rep. Terry Canales**, the bill's author, nor **Sen. Juan "Chuy" Hinojosa**, the Senate sponsor, had a comment on the veto.

Notes

HB 2448 was digested in Part Two of the April 26 *Daily Floor Report*.

Revising sources of uniform charge for the universal service fund

HB 2667 by Smithee (Perry)

Digest

HB 2667 would have expanded the providers required to pay the uniform charge to fund the Telecommunications Assistance and Universal Service Fund to include providers of Voice over Internet Protocol service that had access to high cost rural areas. The bill would have defined "high cost rural area" as it related to the fund. In establishing the services to which the charge would have applied, the Public Utility Commission could not have assessed the charge in a manner that was not technology-neutral.

Governor's reason for veto

"Coming in to the 87th Legislative Session, everyone knew the Legislature needed to consider significant reforms on broadband and the Texas Universal Service Fund. Transformational broadband reform was achieved through multiple bills that have been signed into law, which significantly expand broadband access in Texas, especially in rural areas. Yet the only meaningful change made to the Texas Universal Service Fund was, in House Bill 2667, to expand the number of people paying fees. It would have imposed a new fee on millions of Texans."

Response

Rep. John Smithee, the bill's author, said: "Unfortunately, the governor's statement of objections reflects an alarming misunderstanding of HB 2667, the communications systems that exist in rural Texas, the existential dangers currently threatening Texas rural communications infrastructure, and the specific problems that HB 2667 was intended to address.

Several clarifying points are appropriate in response.

"1. The governor's objections reference 'transformational broadband reform,' purportedly 'expand[ing] broadband access in [rural] Texas.' The objections fail to recognize that many rural areas of Texas already have access to broadband which far exceeds the standards set forth in the broadband legislation. This is because small rural telephone providers who are recipients of support from the Texas Universal Service Fund ("TUSF") have built hybrid networks capable of telephone service, broadband and all forms of high tech communications service. As a result of the governor's veto, these areas are now placed in a 'Catch-22' situation. On one hand, because of their existing service, these areas will not be eligible under the new broadband programs. But, on the other hand, TUSF is a key revenue component which allows these rural hybrid networks to exist, and without which they cannot continue to exist.

"2. Under current conditions, TUSF will be unable to sustain its statutory mandate to support communications services in rural Texas. Failure to stabilize the TUSF places critical infrastructure and existing broadband in much of rural Texas at severe risk.

"3. Contrary to the governor's apparent understanding that 'the only meaningful change made to the [TUSF] was, in House Bill 2667, to expand the number of people paying fees . . . [i]t would have imposed a new fee on millions of Texans,' HB 2667 did *not* impose any new fees. The bill merely provided direction to the Public Utilities Commission (PUC), in response to the commission's explicit request for clear direction from the Legislature. It is doubtful that PUC's current method of funding TUSF is in compliance with existing Texas law. HB 2667 simply sought to clarify the statutory authority that PUC already possesses.

"4. The governor's objections fail to account for a critical provision of HB 2667, which aimed to reduce or eliminate TUSF's unnecessary subsidies in areas of Texas that are no longer high cost or rural. This direction is essential to ensure that limited TUSF funds are being used as intended, and are not being used to provide an undeserved windfall to select service providers.

"In summary, it is without question that the current financial ability of TUSF to meet its statutorily mandated objectives is unsustainable. It is incumbent on the governor to fully understand the gravity and urgency of the situation and its impact on citizens of rural Texas, and to take appropriate remedial action immediately. Appropriate remedial action could include directing the PUC to act within its current statutory authority to remedy the funding shortfall, or else to open the call of the upcoming special session to finding an alternative solution that the governor does not find objectionable."

Sen. Charles Perry, the Senate sponsor, said: "The Texas Universal Service Fund (TUSF) allows residential and business customers in rural and high cost areas to have access to basic and affordable telephone service. Unfortunately, the Texas Public Utilities Commission (PUC) has not used its statutorily granted powers to properly maintain the fund. This has placed many rural customers at risk of paying exorbitant costs for basic telephone service, and placed many rural telephone companies, who are providers of last resort, at risk of going bankrupt. What is also troubling is that the same fiber that provides telephone service also provides broadband internet. The more that these companies and customers see USF disruptions in their market, the more it places access to rural broadband at risk. The broadband legislation that passed during the legislative session did not address, account for, nor will it make up for the possible loss of broadband in USF supported areas of the state.

"HB 2667 was a heavily negotiated bill, with all interested parties participating, taking prudent steps to help stabilize the fund. HB 2667 explicitly includes Voice over Internet Protocol (VOIP) into the TUSF assessment in order to create logical parity because VOIP provides the same voice service that other TUSF-assessed technology uses. The bill also sets clearer standards for the PUC to follow when deciding which areas of the state are no longer high cost and rural. These new standards would help move areas of the state off TUSF support, which would put downward pressure on the need to raise the TUSF assessment any higher than necessary."

Notes

The HRO analysis of HB 2667 appeared in Part One of the May 3 *Daily Floor Report*.

Allowing multi-unit commercial property tenants to vacate due to certain unlawful activities

HB 2803 by S. Thompson (Huffman)

Digest

HB 2803 would have specified that a landlord of a multiunit commercial property, such as a strip mall, shopping center, or office building that was owned or managed as a single property, was in breach of a lease with a tenant if:

- the tenant reasonably believed that another tenant in the same multiunit commercial property was engaging in certain unlawful activity, such as prostitution, human trafficking, or operating a non-compliant massage establishment;
- the complaining tenant made a report regarding the unlawful activity to an applicable law enforcement agency;
- the complaining tenant gave the landlord written notice of the offending tenant's engagement in the unlawful activity; and
- the landlord did not file a forcible detainer suit against the offending tenant before the 30th day after the date the notice was given.

If the landlord had been in breach of a tenant's lease, the tenant could have terminated the tenant's rights and obligations under the lease, vacated the leased premises, and avoided liability for future rent and any other sums due under the lease for terminating the lease and vacating the premises before the end of the lease term.

Governor's reason for veto

"House Bill 2803 seeks to prevent human trafficking, an aim I whole-heartedly share and applaud the author and sponsor for advancing. I have fought against human trafficking throughout my service as Attorney General and Governor. But House Bill 2803 goes about it in the wrong way, pitting tenants against other tenants and landlords, and drawing in basic licensing rules that are unrelated to trafficking. Texas law already allows a landlord to seek forcible eviction upon a reasonable belief that a tenant is engaging in prostitution or human trafficking on the premises. Under House Bill 2803, however, one tenant could have another tenant dragged into court just by making an accusation to the landlord, of something as mundane as sloppy recordkeeping by a massage establishment. That is no basis for governmental interference with a private contract between the landlord and the finger-pointing tenant. And the landlord is caught in the middle, practically forced to file against an allegedly offending tenant to avoid the severe, artificial consequences from inaction. The bill would be ripe for abuse by a disgruntled tenant looking for a way to break the lease or harass the neighbors.

"The unforeseen negative consequences of this bill could be substantial, with no potential remedy until some future legislative session would be able to fix the flaws in the statute. But even then, there is never any certainty that a proposed bill would pass. The better strategy is to prepare a more narrowly tailored bill to achieve the end sought while avoiding the potential adverse consequences."

Response

Neither **Rep. Senfronia Thompson**, the bill's author, nor **Sen. Joan Huffman**, the Senate sponsor, had a comment on the veto.

Notes

HB 2803 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Revising powers of and authority over SH130 Municipal Management District

HB 3135 by Cole (Eckhardt)

Digest

HB 3135 would have allowed the SH130 Municipal Management District No. 1 to define areas or designate certain district property to pay for improvements, facilities, or services that primarily benefited that area or property and did not generally and directly benefit the district as a whole. The bill would have exempted the district from a prohibition on the imposition of certain fees, taxes, or construction requirements on single-family detached residential property, duplexes, triplexes, and fourplexes.

The bill also would have provided to Travis County authority over the district that was similar to the authority the City of Austin currently has, including the authority to issue bonds or adopt certain taxes. The district could have contracted with the county to provide law enforcement services in the district for a fee.

Governor's reason for veto

"House Bill 3135 would levy special assessments on residential properties and allow the City of Austin to subsequently annex the very improvements paid for by these property owners. The effect of this bill would be to impose additional costs on property owners for specific improvements, only to see the City annex the improved area without bearing any of the cost. I signed property-tax reform two years ago to keep local governments from spending outside their means. House Bill 3135 evades the intent of those reforms and is unacceptable."

Response

Rep. Sheryl Cole, the bill's author, could not be reached for comment on the veto.

Sen. Sarah Eckhardt, the Senate sponsor, said: "HB 3135 was the result of a bipartisan collaboration between lawmakers and property owners in Travis County. The changes HB 3135 sought to make to SH130 Municipal Management District No. 1 would have allowed this underserved portion of the county to grow, develop, and increase in property value. Municipal management districts like this are not new. This MMD would help to ensure Austin's economic boom can continue and that individuals moving to Austin will have an affordable place to live. What the governor described as imposing 'additional costs on property owners for specific improvements, only to see the City annex the area without bearing any of the cost' is exactly how these districts have always operated all around the state. To be clear: the 'property owner' in question is the developer that requested this legislation. I'm very disappointed in the governor's veto of this bipartisan bill."

Notes

HB 3135 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Allowing TRS retirees to return to work without losing benefits during a disaster

HB 3207 by Herrero (Menéndez)

Digest

HB 3207 would have prohibited the Teacher Retirement System of Texas from withholding a monthly benefit payment from a retiree who was employed in a Texas public education institution in an area subject to a declaration of disaster by the governor under Government Code ch. 418 or a declaration of local disaster under that chapter while the declaration was in effect.

Governor's reason for veto

"The Teacher Retirement System of Texas relies on a sophisticated set of rules to ensure that current and former teachers' pension funds are protected, and a key component of that is an 'Employment After Retirement' policy that triggers penalties if a retired school employee returns to service in violation of the rules. House Bill 3207 would dismantle that careful architecture, eliminating penalties for violations in any area subject to any disaster declaration. The desire to help both retirees and school children is laudable, but the bill lacks the necessary safeguards. Not every disaster merits the same response, and disaster declarations often must remain in place for an extended period of time in order to ensure the availability of federal assistance long after immediate personnel needs have been met. In order to protect the pension fund, the exception contemplated by House Bill 3207 needs to be tailored to actual needs."

Response

Rep. Abel Herrero, the bill's author, said: "During the COVID-19 pandemic, many retired school district employees returned to work to help their communities, only to later find they were penalized a month's annuity check for their selfless efforts. HB 3207 was intended to ensure retirees were never penalized again for supporting neighborhood schools in need. Moving forward, we will continue to work with everyone, especially the governor, to ensure our retirees are unencumbered when they respond during a crisis such as COVID-19."

Sen. José Menéndez, the Senate sponsor, could not be reached for comment on the veto.

Notes

HB 3207 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Establishing a cause of action for bad faith washouts of oil and gas leases

HB 4218 by Craddick (Hughes)

Digest

HB 4218 would have authorized a person to bring a cause of action for a bad faith washout of the person's overriding royalty interest in an oil and gas lease. A person would have been entitled to a remedy if able to prove by a preponderance of the evidence that:

- the person owned or had a legal right to the overriding royalty interest;
- the defendant had control over the oil and gas lease burdened by that interest;
- the defendant caused a washout of the person's interest; and
- the defendant acted in bad faith by knowingly or intentionally causing the washout.

An owner of a royalty interest who prevailed in an action could have recovered actual damages, enforcement of a constructive trust on the oil and gas lease or mineral estate acquired to accomplish the washout of the overriding royalty interest, and court costs and attorney's fees.

Governor's reason for veto

"Texas prizes the freedom of parties to enter into private contracts and to have their bargains enforced. House Bill 4218 would contravene these principles, representing a remarkable intrusion by the State into the contractual relationship between overriding royalty interest-holders and oil-and-gas lessees. The Legislature sought to address a 'wash out' of an interest holder, where a lessee allows the lease to terminate — which extinguishes the royalty interest under some contracts — and then acquires a new lease on the same property. But those are contractual rights the parties bargained for, and the interest-holder could have given something up in exchange for protection from a wash-out. The answer is not to trample every such contract in Texas and provide an extra-contractual cause of action against the lessee, paired with an award of fees for the lawyers who will surely seek out these claims. Instead of enriching lawyers through costly litigation on the back end, as House Bill 4218 would do, Texas law should encourage the parties to negotiate wash out protections in advance."

Response

Rep. Tom Craddick, the bill's author, said: "HB 4218 was overwhelmingly supported in both chambers and was a reasonable, negotiated, thoughtful response to decades of court decisions, many of which requested this to be settled in the Texas statutes.

"HB 4218 received full support when voted out of the House Committee on Judiciary and Civil Jurisprudence. It was then voted on by the full House of Representatives with 148 members supporting the measure. In the Senate, the bill received full support in the Committee on Natural Resources and Economic Development and was approved with 31 votes in favor on the local calendar. This legislation was heard in both chambers and no one testified, or even registered, in opposition to the legislation. I worked with stakeholders during the legislative process and all of their concerns were readily addressed. Not once during the lengthy legislative process or during the veto period did anyone from the governor's office reach out with concerns.

"The governor's veto statement indicated that this legislation would be an intrusion on contractual rights of the parties and an impetus for additional litigation. Neither of these contentions is supported by members of the oil and gas industry, including mineral interest holders and operators. In fact, the Texas courts have been asking the Legislature to clarify the definition of a bad faith washout for many years to prevent contractual disputes.

"The two controlling decisions repeatedly cited on bad faith washouts are *Sunac Petroleum Corp. v. Parkes*, *416 S.W.2d 798 (Tex. 1967)* and *Ridge Oil Co.*

v. Guinn Investments, Inc., 148 S.W.3d 143 (Tex. 2004). Both of these cases stated there is a lack of clarity as to when a 'washout' occurs and indicated the difficulty in extrapolating such in a contractual negotiation and documentation. The courts have pointed out that it is difficult for the overriding interest holder to know when, or even if, they have been washed out. In *Stroud Prod., L.L.C. v. Hosford*, *405 S.W.3d 794 (Tex. 2013)*, the First Court of Appeals in Houston went so far as to say 'the existence and scope of any duty owed by a lessee to a holder of an overriding royalty interest is an open question under Texas law.' The court's cry for clarification was answered in HB 4218.

"Texas is at a pivotal point in its relationship with the oil and gas industry. HB 4218 added the layers of protection against bad actors needed by mineral interest holders and set the framework for contractual relationships in the industry. We need good operators in Texas who respect royalty rights. We need good business people in Texas who respect fairness. We should not tolerate bad faith actions, and the right thing to do is to update our statutes to prohibit such in the future.

"My office is open to the governor's feedback on what better way to bring the clarification sought by the courts and industry alike. I look forward to working on this issue with the governor during the special sessions this summer and provide the necessary statutory clarification sought by the courts, needed by the industry, and required by mineral holders."

Sen. Bryan Hughes, the Senate sponsor, had no comment on the veto.

Notes

The HRO analysis of HB 4218 appeared in Part One of the April 20 *Daily Floor Report*.

Revising hazing reporting requirements, creating higher ed mental health services task force

SB 36 by Zaffirini (C. Turner)

Digest

SB 36 would have added peace officers or law enforcement agencies to the entities to whom one could report knowledge of a hazing incident to avoid committing an offense and would have repealed the requirement that the report be in writing. The bill would have included an entity organized to support an organization in the definition of a person who could receive immunity from civil or criminal liability that might otherwise result from a reported hazing incident if the person reported the incident under certain circumstances.

SB 36 also would have established a higher education mental health services task force under the direction of the commissioner of higher education to perform certain functions related to the mental health needs of students, including students who had experienced hazing. The task force would have been required to report on its activities by December 1, 2024, and would have been abolished September 1, 2025.

Governor's reason for veto

"Hazing on campus is a serious problem that deserves serious attention, which is why I signed Senate Bill 38 into law last session. This session's Senate Bill 36 was a worthy effort to further clarify the anti-hazing statute, until the House sponsor added an unnecessary provision that would simply grow government by creating yet another new task force. It is important to ensure that students receive mental-health services, and Texas's existing agencies and institutions can already study the issues that would be addressed by this vast new bureaucratic entity. Unfortunately, the Senate author's good idea to clean up a statute has been undercut by the House sponsor."

Response

Sen. Judith Zaffirini, the bill's author, said: "I am thankful that the governor signed my hazing bill, SB 38, in 2019 and wish he would have signed SB 36 to further improve its provisions. The amendment that caused the governor's veto was the addition of my SB 1521, relating to creating a mental health task-force to study mental health services provided at institutions of higher education, which the Senate passed overwhelmingly.

"SB 1521 would have allowed us to research the capacity of institutions of higher education in Texas to identify and address the mental health needs of students and explore innovative and effective approaches to this issue. Without a centralized task force that studies these issues to develop best practices, Texas students will continue to have disparate access to mental health services."

Rep. Chris Turner, the House sponsor, said: "The importance of SB 36 is evidenced by its strong bipartisan support. The bill's language was passed out of committee with unanimous support, and once the final version of SB 36 was passed out of the House 97 to 49, it passed the Senate 31 to zero before heading to the governor's desk. It is extremely disappointing that the governor chose to ignore the will of both chambers of the Legislature and the needs of college students across the state by vetoing SB 36.

"Gov. Abbott's stated reason for the veto is his concern that SB 36 'would simply grow government,' but that is certainly at odds with his decision to sign HB 2287 this session, a valuable bill which expanded the scope and authority of the Collaborative Task Force on Public School Mental Health Services — the public education counterpart to the task force which would have

been established by SB 36. Additionally, the governor's strikingly disparaging tone throughout the governor's veto proclamation speaks for itself. Regardless of Gov. Abbott's motivations, it is unfortunate that students at Texas institutions of higher education will be the ones left to suffer the potentially dangerous consequences of his decision to veto SB 36."

Notes

The HRO analysis of SB 36 appeared in Part Two of the May 25 *Daily Floor Report*.

Allowing a citation instead of arrest for certain criminal trespass offenses

SB 237 by Bettencourt (Gervin-Hawkins)

Digest

SB 237 would have added criminal trespass punished as a class B misdemeanor to the list of offenses for which peace officers could issue a citation in lieu of an arrest.

Governor's reason for veto

"Senate Bill 237 would add criminal trespass to the list of offenses for which law enforcement can 'cite and release' instead of arrest an intruder. I appreciate the good intentions of the bill's author and supporters, but it would allow (and tempt) agencies to categorically mandate cite-and-release for this crime, taking away an important tool for officers to keep Texans safe. It would have a particularly troubling impact in the City of Austin, where local voters recently condemned the City's self-inflicted homelessness crisis, because businesses and homeowners count on criminal-trespass arrests to protect themselves and their guests from homeless people who refuse to leave their property. It would also contravene the State's goal of maintaining law and order in communities along the border."

Response

Sen. Paul Bettencourt, the bill's author, had no comment on the veto.

Rep. Barbara Gervin-Hawkins, the House sponsor, said: "During the 87th regular legislative session I authored bill HB 694 relating to the issuance of a citation for a criminal trespass offense punishable as a class B misdemeanor. This bill would allow a citation to be issued instead of an arrest for certain criminal trespass offenses. HB 694 was co-authored by Rep. Ellzey. The Senate companion is SB 237 and was authored by Sen. Bettencourt and co-authored by Sen. Johnson. This bill had overwhelming bipartisan support and was voted out of the House with 146 Yeas, zero Nays, one Present, not voting, and out of the Senate 31 to zero. I'm immensely disappointed that SB 237 was vetoed by the governor. This would have been an effective piece of legislation that is about safety for our residents as well as lowering both incarceration and recidivism numbers and helping our officers to be more effective, efficient and safe. The stakeholders — the apartment associations — brought this bill to me during the 86th legislative session and at that time expressed the need for this bill for safety reasons. I filed this legislation in both the 86th and 87th. SB 237 would have lowered the arrests, helping bring our incarceration numbers down. Allowing officers the option to issue a citation in appropriate trespass situations would be both effective and efficient. Giving a citation instead of an arrest would have been optional, and peace officers would retain the authority to make arrests in criminal trespass cases if warranted. Vetoing SB 237 to continue to arrest homeless people for criminal trespass and making arrests in border communities are actions I believe are unnecessary. I do not agree with criminalizing the homeless and/or migrant families. I look forward to working with my colleagues in both chambers to narrow the scope of this bill and refiling it again during the 88th legislative session."

Notes

The HRO analysis of SB 237 appeared in the May 19 *Daily Floor Report*.

Making statements by a hypnotized person inadmissible in criminal trials

SB 281 by Hinojosa (Lucio)

Digest

SB 281 would have established that statements made during or after a hypnotic session by a person who had undergone investigative hypnosis for the purpose of enhancing the person's recollection of an event at issue in a criminal investigation or case were inadmissible against a defendant in a criminal trial.

Governor's reason for veto

"The author of Senate Bill 281 is to be commended for aiming to bring accountability to the criminal justice system by addressing the use of investigative hypnosis. But the House sponsor's late amendment to the bill would dramatically expand its scope in an unacceptable way. The sponsor added language so that for any person who has undergone investigative hypnosis, all statements that person makes 'after' the hypnosis — even ones made long 'after' the hypnosis session and unrelated to that session — are barred from being admitted into evidence in any criminal trial. The House sponsor's amendment would grant lifetime immunity, for everyone who undergoes this type of hypnosis, from having any subsequent statements used in a criminal trial."

Response

Sen. Juan "Chuy" Hinojosa, the bill's author, said: "Unfortunately, the veto of SB 281 misses the legislation's intent and the issue being addressed. Science has clearly established that investigative hypnosis is not a reliable memory-recovery method and can lead to inaccurate testimony and wrongful identification. This message was echoed by law enforcement here in Texas when the Department of Public Safety and the Texas Rangers suspended their hypnosis programs and stated they have instead turned to more reliable methods of interrogation like cognitive interviewing. The House and Senate worked together throughout session to perfect language that received overwhelming bipartisan support from both chambers and stakeholders. This included language to specifically ensure that any other evidence derived during or after a hypnotic session would still have been admissible if it independently corroborated the crime. The weight of science and research shows that testimony retrieved under hypnosis is unreliable. While I am disappointed in the outcome, I am ready to take on this challenge again next session and finally end the use of investigative hypnosis."

Rep. Eddie Lucio III, the House sponsor, had no comment on the veto.

Notes

The HRO analysis of SB 281 appeared in the May 18 *Daily Floor Report*.

Regulating outside restraint of dogs; creating a criminal offense

SB 474 by Lucio (Collier)

Digest

SB 474 would have prohibited an owner from leaving a dog outside and unattended using a restraint unless the dog had access to adequate shelter, shade, and potable water and could avoid standing water. The bill also would have restricted the kinds of restraints that could be used for a dog outside and unattended, including by prohibiting the use of a chain or any restraint that caused pain or injury to the dog. A violation of the bill's provisions would have been a class C misdemeanor, or if a person had previously been convicted of the offense, a class B misdemeanor.

Governor's reason for veto

"Texans love their dogs, so it is no surprise that our statutes already protect them by outlawing true animal cruelty. Yet Senate Bill 474 would compel every dog owner, on pain of criminal penalties, to monitor things like the tailoring of the dog's collar, the time the dog spends in the bed of a truck, and the ratio of tether-to-dog length, as measured from the tip of the nose to the base of the tail. Texas is no place for this kind of micro-managing and over-criminalization."

Response

Sen. Eddie Lucio Jr., the bill's author, said: "While animal cruelty laws do exist, they are for extreme cases for offenses such as dog fighting and torture of an animal. These crimes fittingly carry harsh penalties, including jail time. There is not, however, an enforceable law with a lesser penalty which would protect dogs from chronic neglect and mistreatment caused by improper outdoor tethering. While many cities have ordinances against this conduct, there is no minimum statewide standard. This is legislation that law enforcement has been requesting for several sessions so they can have the ability to stop animal cruelty and neglect when they see it happening."

Rep. Nicole Collier, the House sponsor, said: "Current law regarding the welfare and safety of animals outdoors lacks clarity. SB 474 provided basic definitions of adequate shelter, collar, harness, restraint and owner, and set standards for unlawful restraint of dogs. This bipartisan legislation was the result of years of consultation from various animal control officers, law enforcement agencies, prosecutors and advocates, and would have provided guidance on how to safely and humanely tether a pet and offer adequate shelter."

Notes

HB 873, the House companion to SB 474, was digested in Part Two of the May 12 *Daily Floor Report.*

Allowing entities to claim a tax credit on rehabilitation costs of certified historic structures

SB 813 by Hughes (Hefner)

Digest

SB 813 would have allowed certain entities to apply for a credit against state premium tax liability for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure if:

- the rehabilitated certified historic structure was placed in service on or after September 1, 2021;
- the entity had an ownership interest in the certified historic structure in the year during which the structure was placed in service after rehabilitation; and
- the total amount of the eligible costs and expenses incurred exceeded $5,000.

An entity could have claimed a maximum credit of 25 percent of the total eligible costs and expenses incurred in the certified rehabilitation of a single certified historic structure.

The bill would have established provisions governing certification of eligibility for the credit from the Texas Historical Commission, required certain documentation to be submitted to the comptroller to claim the credit, and specified how an entity could have sold or assigned the credit for eligible costs and expenses.

Governor's reason for veto

"I am vetoing Senate Bill 813 at the request of the author and sponsor based on the Legislature's passage of House Bill 3777, which would amend the Texas Tax Code to narrow the applicability of the Texas Historic Preservation Tax Credit Program. That program issues franchise tax or insurance premium tax credits worth up to 25 percent of the eligible expenses of rehabilitating a certified historic structure. Senate Bill 813 would have duplicated the authorizing statute for the program in the Texas Insurance Code, but would have created parameters for certified historic structures that differ from House Bill 3777 and thus could cause confusion with respect to the qualification of a project for insurance or franchise tax credits."

Response

Sen. Bryan Hughes, the bill's author, had no comment on the veto.

Rep. Cole Hefner, the House sponsor, could not be reached for comment on the veto.

Notes

SB 813 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Requiring public school instruction on prevention of child abuse, family and dating violence

SB 1109 by West (Anchia)

Digest

SB 1109 would have required public school students to receive instruction on the prevention of child abuse, family violence, and dating violence at least once in middle school and at least twice in high school. It would have added requirements for school district dating violence policies to include reporting procedures and guidelines for students who were victims of dating violence and, to the extent possible, make available age-appropriate educational materials and resources to students seeking help.

Governor's reason for veto

"Senate Bill 1109 would require every school district to provide instruction to middle school and high school students regarding the prevention of child abuse, family violence, and dating violence. These are important subjects and I respect the Senate author's good intentions, but the bill fails to recognize the right of parents to opt their children out of the instruction. I have vetoed similar legislation before on this ground, because we must safeguard parental rights regarding this type of instruction. I look forward to working with the Legislature on a narrower approach."

Response

Sen. Royce West, the bill's author, said: "Senate Bill 1109 was vetoed following the 87th Regular Session of the Texas Legislature because the governor wished to ensure that Texas parents had the full ability to opt their children out of the type of instruction specified by the Christine Blubaugh Act.

Although current law already allowed this type of opt-out, we redrafted the bill working with the governor's office to ensure his concerns were addressed, and parents would be informed of their right to opt out of this type of instruction.

The Christine Blubaugh Act ultimately passed as SB 9 during the Second Called Session of the 87th Texas Legislature."

Rep. Rafael Anchía, the House sponsor, had no comment on the veto.

Notes

SB 1109 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Requiring OCA to create standardized forms for certain protective orders

SB 1458 by Zaffirini (Neave)

Digest

SB 1458 would have required the Office of Court Administration (OCA) to develop and make available on its website standardized forms and other materials necessary to apply for, issue, deny, revise, rescind, serve, and enforce:

- a protective order or temporary ex parte order for family violence or for victims of sexual assault or abuse, stalking, or trafficking; or
- a magistrate's order for emergency protection.

Individuals filing an application for and courts issuing a protective order, temporary ex parte order, or emergency protection order would have been required to use the applicable standardized form.

Each standardized form to be used by a magistrate or court issuing an order would have had to include the prohibitions and requirements imposed on the respondent, the duration of the order, the potential consequences of violating the order, and any other required admonishments or warnings.

The forms would have had to include a procedure to ensure that a copy of an order was transmitted to all required parties and all relevant information required to be collected by the Department of Public Safety (DPS) bureau of identification and records was entered into the statewide law enforcement information system maintained by DPS and any other applicable databases.

In developing the required applications, forms, and materials, OCA would have had to consult with individuals, organizations, and state agencies specified in the bill and give consideration to promoting uniformity of law among the states that enact the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

The standardized forms would have had to be developed and made available by June 1, 2022. The bill would have applied only to an application for a protective order filed or a temporary ex parte order, protective order, or magistrate's emergency protection order issued on or after that date.

Governor's reason for veto

"Senate Bill 1458's goal of having model forms for protective orders, orders for emergency protection, and temporary ex parte orders is a sound one, but this is already allowed. The Office of Court Administration can, and is encouraged to, create model forms to help achieve the commendable goals behind Senate Bill 1458. But the bill would go further and impose categorical mandates that courts use standardized forms, without addressing what happens if a court deviates from the prescribed form and without allowing flexibility for unique cases. I vetoed similar legislation last session because, without appropriate safeguards, mandating the use of standardized forms in criminal cases sets a trap for courts whose orders may be challenged as void for deviating from the form and creates loopholes for opportunistic litigants to pursue needless challenges. I appreciate the good intentions of the bill author and sponsor in aiming to protect the victims of horrible crimes like family violence and sexual assault, but the mandatory use of standardized forms can inadvertently cause more problems that may detract from the effort to help victims."

Response

Sen. Judith Zaffirini, the bill's author, said: "SB 1458 did not mandate rigidity in the exclusive use of the forms. Instead, it required that orders included minimum information in a standard format that law enforcement could understand easily. The bill did not prohibit courts

from adding information to the order or forms to address unique circumstances.

"When developing these forms, the Office of Court Administration also would have been required to consult stakeholders, including judges and justices of various courts, law enforcement agencies, and prosecutors, to ensure the forms served their needs. I am confident the result of this process would have addressed the governor's concerns. What's more, the bill did not require courts to start using the standardized forms until June 1, 2022. That provided more than enough time to train the state's judicial branch to use them properly and to prevent the disqualification of valid protective orders.

"Without standardized forms, we expose Texans seeking protection from violence to a substantial risk of harm. The variation in paperwork issued to apply for an order can delay the Department of Public Safety (DPS) in uploading information to the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS). Accordingly, subjects of protective orders could pass a background check and purchase a firearm before DPS entered their information into the NICS database, which could have deadly consequences.

"The use of standardized forms also would prevent errors when DPS submitted protective orders into NICS that could prevent legally eligible persons from purchasing a firearm.

"Count me among those who will continue to try to make these standardized forms a reality in 2023."

Rep. Victoria Neave, the House sponsor, could not be reached for comment on the veto.

Notes

SB 1458 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Establishing voluntary Texas Pollinator-Smart program for solar energy sites

SB 1772 by Zaffirini (Zwiener)

Digest

SB 1772 would have required the Texas A&M AgriLife Extension, in consultation with the Texas Department of Agriculture (TDA) and the Texas Parks and Wildlife Department (TPWD), to establish and implement the Texas Pollinator-Smart program to encourage the voluntary establishment and conservation of habitats for bees, birds, and other pollinators in and near solar energy sites.

The bill also would have required the AgriLife Extension, in consultation with TDA and TPWD, to develop educational materials for the voluntary pollinator program and award the Texas Pollinator-Smart certificate to solar energy sites with pollinator habitats that had met or achieved a certain standard.

Governor's reason for veto

"Senate Bill 1772 offered a program that was totally voluntary. Voluntary laws are not needed to drive public behavior."

Response

Sen. Judith Zaffirini, the bill's author said: "Senate Bill (SB) 1722 would have established the Texas Pollinator-Smart program to encourage the establishment and conservation of habitats for bees, birds, and other pollinators at and near solar energy sites. Pollinator populations continue to decline globally, due in part to loss of habitat, parasites, diseases, and pesticide exposure, a reduction that has critical implications for human food security and life in general. By promoting pollinator-friendly habitats at solar sites, the bill would have provided an opportunity for the state to simultaneously help Texas agriculture and the energy industry. The numerous benefits include increasing crop yields and groundwater recharge, reducing soil erosion, and providing long-term cost savings for the operations and maintenance of solar installations. By creating a cooler microclimate, perennial vegetation also would increase solar panels' efficiency, thereby improving their energy output.

"The bill would have made the program voluntary, as the governor noted, because mandating it for all solar facilities simply does not make sense. Given the diverse terrain and environments across the state, not all solar facility sites have arable soils suitable for cultivating native plants.

"Numerous Texas laws incentivize positive actions, including in the environmental arena in which mandates are unpopular. If voluntary programs truly are not needed to drive behavior, why does the state continue to maintain and promote economic development programs such as the Event Trust Fund, environmental programs such as the Texas Voluntary Cleanup Program for contaminated sites, or quality rating and improvement systems such as the Texas Rising Star Program for child-care facilities? Perhaps because effective — and even cost-effective — public policy includes both influencing 'good behavior' on a voluntary basis and enforcing or penalizing 'bad behavior.'"

Rep. Erin Zwiener, the House sponsor, had no comment on the veto.

Notes

SB 1772 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

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