HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 7, 2011
82nd Legislature, Number 51
The House convenes at 10:15 a.m.

Nine bills have been set on the daily calendar for second- reading consideration and are analyzed in today's *Daily Floor Report*. The bills are listed on the following page.

The House will consider a Local, Consent, and Resolutions Calendar and a Congratulatory and Memorial Calendar today.

Bill Callegari
Chairman
82(R) – 51

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Thursday, April 7, 2011
82nd Legislature, Number 51

SUBJECT: Increasing reporting requirements for distribution of alcoholic beverages

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Murphy, Ritter, Villarreal, Woolley

0 nays

1 absent — Martinez Fischer

WITNESSES: For — Alan Gray, Licensed Beverage Distributors; Billy Hamilton, Texas Hospitality Association; Michael Klein, Texas Bar and Nightclub Alliance; (*Registered, but did not testify:* Eric Glenn, Diageo; Shanna Igo, Texas Municipal League; Jim Rudd, California Wine Institute; Dale Szyndrowski, Distilled Spirits Council of US; Ralph Townes, Licensed Beverage Distribution)

Against — (*Registered, but did not testify:* Kyle Frazier, Texas Wine and Grape Growers Association)

On — Mike Reissig, Texas Comptroller of Public Accounts

BACKGROUND: Tax Code, sec. 151.433 allows the comptroller to require each wholesaler or distributor of beer, wine, or malt liquor to file a monthly report of sales to Texas package stores, bars, and restaurants. The report must contain the monthly net sales made to each retail outlet by the wholesaler or distributor, including the amount of beer, wine, and malt liquor sold to the retailer.

Tax Code, secs. 151.7031 and 151.709 allow the comptroller to issue civil and criminal penalties, respectively, for failure to issue a sales tax report.

Alcoholic Beverage Code, sec. 62.12 allows brewers who produce 75,000 barrels or less a year to sell directly to package stores, local distributors, and retailers as if they had a general distributor's license.

DIGEST: HB 11 would require brewers, manufacturers, wholesalers, and distributors to report to the comptroller sales of alcoholic beverages to

package stores, bars, and restaurants. HB 11 also would require package stores to report to the comptroller sales of alcoholic beverages to bars and restaurants.

Brewers, manufacturers, wholesalers, distributors, or package store local distributors would have to file a separate report for each month's sales made to each retailer containing their monthly net sales and separate line items for:

- the number of units of each alcoholic beverage;
- the individual container size and pack of each unit;
- the brand name;
- the type of beverage, such as distilled spirits, wine, or malt;
- the universal product code of the alcoholic beverage; and
- the net selling price of the alcoholic beverage.

The reports would have to be filed electronically, unless the comptroller temporarily postponed the electronic reporting requirement for any entity that showed inability to comply due to undue hardship.

HB 11 would allow the comptroller to impose civil and criminal penalties for failure to file a complete alcohol sales and distribution report. The bill also would authorize the comptroller, in addition to existing civil and criminal powers, to impose a civil penalty of $25 to $2,000 for each day that a violation of the reporting requirements continued.

HB 11 would apply only to those manufacturers and brewers that produced 75,000 barrels a year or less.

The bill would take effect September 1, 2011 and apply only to reports due on or after that date.

SUPPORTERS SAY:

HB 11 would expand the number and types of groups required to report to the comptroller information on sales of alcoholic beverages. HB 11 builds on the success of HB 11 by Cook, enacted in 2007. That bill required wholesalers and distributors of beer and wine to report sales to package stores, bars, and restaurants. This bill would add package stores to the groups required to report sales and would require all groups to report sales of distilled spirits along with sales of wine and malt beverages. This additional information would allow the comptroller to audit alcohol sales

more effectively and collect additional tax revenue already owed to the state.

The sale and distribution of alcohol is a highly regulated industry in Texas. Businesses are permitted and licensed depending on where they are in the supply and distribution chain. In the first tier are large suppliers and manufacturers of distilled spirits, wine, and beer. These groups sell their products to wholesalers and distributors, who comprise the second tier. Wholesalers and distributors supply package stores, which comprise the third tier. Package stores then sell to bars and restaurants, which comprise the fourth tier. The third and fourth tiers are commonly grouped together as retailers because each may sell directly to end-point consumers.

Under current law, suppliers and manufacturers report to the Texas Alcoholic Beverage Commission (TABC) information on their sales to wholesalers and distributors. Wholesalers and distributors also pay excise taxes to TABC. However, wholesalers and distributors do not report to the comptroller information on sales made to package stores. Further, package stores do not report to the comptroller information on sales made to bars and restaurants.

Under HB 11, wholesalers, distributors, and package stores would have to report to the comptroller data on their sales to groups further down the distribution chain. The comptroller then could compare these data to reports filed by package stores, bars, and restaurants on alcohol sales to the public. Having records of both purchasing and sales information would allow the comptroller to detect any underreporting of taxable sales of alcoholic beverages by either package stores or bars and restaurants. The comptroller estimates that having this additional sales data would allow state tax auditors to collect about $25 million in additional general revenue for the fiscal 2012-13 biennium from taxes already owed but not properly reported.

HB 11 would ensure the honest reporting of alcoholic beverage sales. The additional information on sales made by wholesalers, distributors, and package stores to those further down the supply chain would encourage retailers to report their taxable sales of alcoholic beverages honestly. Knowing that the comptroller would have information on all the alcohol purchased would compel them to accurately report all the alcohol sold. Those retailers who already fully and accurately report their taxes would be unaffected by the bill.

HB 11 would allow the comptroller to choose more effectively which retailers to audit. Under HB 11, the comptroller could compare retailers' purchases from distributors with their reported sales to consumers, thus more effectively focusing limited auditing resources on the retailers who have most underreported taxable sales. This would allow the comptroller to get the maximum return on auditing efforts.

The bill would grant the comptroller additional authority to issue civil and criminal penalties to enforce more effectively both existing reporting requirements and those that would be added under HB 11. Under existing law, the comptroller may impose a civil or criminal penalty if a business or organization with a duty to report fails to do so. However, the comptroller lacks the ability to issue penalties for filing an incomplete report. HB 11 would grant the comptroller this authority along with the ability to issue an additional civil penalty of $25 to $2,000 for each day a reporting violation continued.

HB 11 would not require wholesalers, distributors, and package stores to report an excessive amount of information. These data on retailers are readily available because the wholesale distribution of these products occurs in a highly regulated industry with compact distribution chains. Also, any reporting burden would be further reduced because the information would be submitted to the comptroller electronically, saving processing and postage costs.

Small wineries and breweries would be subject to the increased reporting requirements under HB 11 because the comptroller's audit division needs a complete picture of the alcohol distribution chain. Under current law, small wineries and breweries that produce fewer than 75,000 barrels a year are allowed to sell directly to package stores, bars, and restaurants. Since they are allowed to act like distributors and wholesalers, they should follow the same reporting requirements.

Small producers should not be exempt because this would prompt other groups to lobby for exemptions. If too many groups are exempt, the comptroller will not have sufficient data to conduct effective audits. Further, if an audit is to be truly effective, the comptroller must have information on all the alcohol a retailer has purchased, regardless of source, in order to be able to account fully for the retailer's sales to consumers. If HB 11 is to be effective, it is important to include even small wineries and brewers.

OPPONENTS SAY:

Small wineries and brewers should be exempt from the increased reporting requirements in HB 11. Smaller manufacturers sell very little inventory to any one package store, bar, or restaurant. As such, HB 11 would require them to file large amounts of additional paperwork covering many small sales. These individual reports would not be of much use to the comptroller's audit division, since each one is insignificant. This additional detailed reporting would be a burden on small- to medium-sized businesses that would contribute little to the comptroller's auditing efforts.

NOTES:

According to the fiscal note, HB 11 would generate about $8 million in general revenue in fiscal 2012, $17.8 million in fiscal 2013, $27.8 million in fiscal 2014, $28.9 million in fiscal 2015, and $30 million in fiscal 2016.

A similar bill, SB 576 by Eltife, passed the Senate by 30-0 on March 22 and has been referred to the House Ways and Means Committee.

SUBJECT: Requiring alternative payment methods for certain misdemeanor fines

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler

0 nays

WITNESSES: For — Chris Cunico, Texas Criminal Justice Coalition; (*Registered, but did not testify:* Jodyann Dawson, Texans Care for Children; David Gonzalez, Texas Criminal Defense Lawyers Association; Andrew Rivas, Texas Catholic Conference)

Against — None

On — Ted Wood, Office of Court Administration

BACKGROUND: When a defendant is convicted and fined, a court may direct a defendant to pay the entire fine and costs at sentencing or at a later date or to pay a portion of the fine and costs at designated intervals. A court also may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.

A judge may send a nonindigent defendant to jail if the defendant has failed to make a good-faith effort to discharge the fine and costs and may send an indigent defendant to jail if the defendant has failed to make a good-faith effort to discharge the fine and costs through community service and could have done so without undue hardship.

DIGEST: CSHB 27 would require courts to allow a defendant in a misdemeanor case who was deemed incapable of paying a fine or costs to make the payment in specified portions at designated intervals or to perform community service as payment.

The bill also would make a conforming change to the Code of Criminal Procedure provision allowing a judge to send an indigent defendant to jail if the defendant has failed to make a good-faith effort to discharge the fine and costs through community service.

The bill would take effect September 1, 2011, and would apply to an offense committed on or after that date.

SUPPORTERS SAY:

Current law allows, but does not require, a judge to create an installment payment plan for fines and costs and allows, but does not require, a judge to mandate community service when a defendant is unable to pay a fine or costs. CSHB 27 would require judges to offer installment plans or community service in lieu of payment when the defendant was unable to pay in misdemeanor cases and cases in municipal courts or justice of the peace courts.

Payment of court costs and fines can easily overburden a low-income individual. Providing options such as making payments in selected installments would increase the likelihood of the defendant paying off the fine. The option to pay in installments also would make it easier for a defendant to provide for a family and make restitution to a victim. Performing community service would benefit the community when the individual is unable to pay immediately or even over time. The bill would encourage defendants to participate in the judicial process, since an inability to pay fines and costs can deter a defendant from appearing in court. The bill also would prevent defendants from being thrown in jail for nonpayment.

The bill would not have a negative fiscal impact because judges are already permitted, but not required, to offer similar options. Most courts already offer the two options that this bill would require. Community service would only be an available alternative to defendants who are unable to pay, meaning no loss of revenue to the state.

OPPONENTS SAY:

Allowing defendants to perform community service instead of paying fines and costs would cause the state to lose revenue. Expanding the availability of community service as a payment option would remove an incentive for defendants to find a way to pay fines and costs.

The bill would allow special treatment for defendants who are temporarily unable to pay but have the means to pay fines and costs. Temporary cash flow problems should not make defendants eligible for an installment plan. Requiring these defendants to pay the entire fine and costs at a later date would be preferable.

NOTES: The committee substitute differs from the original by referring to defendants who are unable to pay fines and costs rather than to indigent defendants. The committee substitute also added language allowing the performance of community service for certain defendants.

SUBJECT: Cost benefit analyses of environmental rules

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — W. Smith, Aliseda, Legler, Lyne, Reynolds

2 nays — Farrar, Burnam

2 absent — Chisum, Hancock

WITNESSES: For — Stephen Minick, Texas Association of Business; Kathleen White, Texas Public Policy Foundation; (*Registered, but did not testify:* Walt Baum, Association of Electric Companies of Texas (AECT); Trey Blocker, Texas Association of Manufacturers; Steve Hazlewood, Dow Chemical; Dennis Kearns, Burlington Northern Santa Fe Railway; Chris Macomb, Waste Management of Texas, Inc.; Mike Nasi, Clean Coal Technology Foundation of Texas; Bill Oswald, Koch Companies; David Roznowski, Lyondell Basell Industries; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Christina Wisdom, Texas Chemical Council; Monty Wynn, Texas Municipal League; Rachel Delgado)

Against —Tom "Smitty" Smith, Public Citizen; (*Registered, but did not testify:* Cyrus Reed, Lone Star Chapter, Sierra Club; David Weinberg, Texas League of Conservation Voters)

On — Robert Martinez, Texas Commission on Environmental Quality (TCEQ)

BACKGROUND: Government Code, sec. 2001.0225 requires a regulatory analysis for environmental rules defined as "major." A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

DIGEST:

CSHB 125 would require TCEQ to conduct a regulatory analysis that weighed the expected costs and environmental effects before adopting an environmental rule.

After considering public comments and determining that a proposed rule should be adopted, TCEQ would have to prepare a final regulatory analysis that complied with the Administrative Procedures Act.

An environmental rule would mean a rule intended to protect the environment or reduce risks to human health from environmental exposure.

Impact analysis. When giving notice of an environmental rule, TCEQ would have to incorporate into the required fiscal note, a draft impact analysis that identified:

- the problem the rule was intended to address;
- the environmental effects of the rule, including the projected level of reduction of pollutants or contaminants in air, water, and soil;
- the costs to state agencies, local governments, the public, and the affected regulated entities, other than small businesses; and
- in a separate economic impact analysis, the expected costs to small businesses.

When identifying the environmental effects of the rule, if the rule would be included in the state implementation plan, TCEQ would have to include the modeled improvement for the criteria pollutant design value expected from implementing the rule.

Strict compliance. A person who submitted a public comment in accordance with the Administrative Procedure Act could challenge the validity of an environmental rule that was not proposed and adopted in strict compliance with procedural requirements by filing an action for declaratory judgment within 30 days of the effective date of the rule. If the court determined that an environmental rule was not proposed and adopted in strict compliance with the procedural requirements of the bill, the rule would be invalid.

Effective date. This bill would take effect September 1, 2011, and would only apply to rules proposed on or after December 1, 2011.

SUPPORTERS SAY:

CSHB 125 would require TCEQ to conduct certain analyses for all environmental rules it proposed, rather than only for rules defined as "major" under existing law. It would require TCEQ to create for all environmental rules an economic impact analysis and to weigh a rule's potential costs and environmental effects. Because of the existing requirement to conduct such analysis only for "major" rules, TCEQ has conducted only one impact analysis in the last 14 years. The bill also would strengthen the required analysis and streamline it to include just three steps — identifying the problem, describing the environmental effect, and describing the economic impact.

The bill would add needed regulatory transparency by requiring a simple, concrete analysis. As a required step in rulemaking, this would help regulators design the most efficient regulation. The bill would encourage a more open rulemaking process, leading to fruitful dialogue and more effective solutions to environmental problems. Through the public comment period, citizens could comment on the agency's assumptions, provide important information, and suggest less intrusive but equally successful ways to address the problem. Providing the public with insight as to what problem the agency was trying to address and allowing more opportunity for public comment on proposed solutions would make the rulemaking process more collaborative and provide more creative and effective and less costly solutions to regulatory dilemmas.

The bill actually would aid TCEQ and the courts in making informed decisions by providing more streamlined guidelines. Rules would be analyzed before being promulgated, ensuring that they presented a true benefit to the public. Given the lack of certainty about the direct cause of certain health conditions, thorough analysis should be conducted before engaging in expensive regulation. Unnecessary regulation can have a negative impact on business, especially small business, leading to slow productivity and job creation.

CSHB 125 need not increase administrative cost or preclude adoption of otherwise authorized rules. The regulatory analyses described by CSHB 125 could be performed by current agency personnel who already must prepare a fiscal note for proposed rules. TCEQ already collects economic data on many proposed rules. Formalizing requirements for a cost-benefit analysis would not be a major addition to existing procedures. The bill's fiscal note says the bill would result in no fiscal implication to the state.

OPPONENTS SAY:

CSHB 125 would delay the TCEQ process for adopting rules and add costs. The analysis required by the bill would duplicate similar ones in federal regulation, and TCEQ seldom goes beyond the minimum of federal regulation. Similar language in current law applies only to major rules, but it has been invoked by TCEQ only once since 1997 because it is seen as duplicative and unnecessarily costly.

Due to the way the definitions have been drafted, the cost-benefit analysis would be biased toward cost rather than benefit. The expanded definition of cost would not adequately account for externalities such as cost of health care. Cost-benefit analyses of environmental rules would require an agency to place monetary values on the cost of saving lives and preventing disease. It usually is easier to quantify the costs of complying with an environmental rule than it is to qualify the benefits, but those benefits can be of immeasurable importance. How would one assign a cost to whether or not a child suffered from asthma? It would be difficult for the agency to make such calculations. There are grave costs to *not* providing environmental protections and the long-term benefits for all citizens that come from clean air and safe water.

This bill also would add a strict compliance requirement for environmental rules, rather than the substantial compliance required under current law. This would run counter to the Administrative Procedure Act, which states that mere technical defects that do not result in prejudice to a person's rights or privileges are not grounds for invalidation of a rule. Ordinarily, a rule that is not in substantial compliance is voidable not invalid. The bill would take away judicial discretion and impede TCEQ from carrying out its mission by making the adoption of environmental rules more difficult and easier to invalidate.

NOTES:

Comparison of original to substitute. The committee substitute differs from the original bill in that it would require TCEQ to incorporate into the fiscal note a draft impact analysis when giving notice.

The original bill would have required the draft impact analysis to meet the regulatory requirements under existing law while the committee substitute would identify specific required information.

The committee substitute contains certain provisions not in the original bill, including:

- definitions of cost, environmental effect, environmental rule, and small business;
- a requirement for TCEQ to conduct a regulatory analysis that would weigh the costs and environmental effects before adopting an environmental rule;
- authorization for a person who submitted a comment to challenge the validity of an environmental rule;
- providing a rule would be invalid if a court determined the rule was not proposed and adopted in strict compliance with procedural requirements; and
- requiring TCEQ to include certain information in identifying the environmental effects of a rule to be included in the state implementation plan.

SUBJECT: Requiring a TABC license for certain BYOB establishments

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 9 ayes — Hamilton, Quintanilla, Driver, Geren, Gutierrez, Harless, Kuempel, Menendez, Thompson

0 nays

WITNESSES: For — Andy Acord, Dallas Police Department and Chief of Police David Brown; Napoleon Gonzalez, Brownsville Police Officers Association; Chris Jones, Combined Law Enforcement Associations of Texas; Jason Sabo, Children at Risk; *(Registered, but did not testify*: Bill Elkin, Houston Police Retired Officers Association; Eduardo Garces; James Jones, San Antonio Police Department; Christopher Kaiser, Texas Association Against Sexual Assault; Donald Lee, Texas Conference of Urban Counties; James McLaughlin, Texas Police Chiefs Association; Harold Nanos, Texas Alcoholic Beverage Commission Officers Association; Jessica Sloman, Houston Police Department; Carlos Zamorano)

Against — None

On — Alan Steen, Texas Alcoholic Beverage Commission (TABC)

BACKGROUND: Commercial establishments that serve alcoholic beverages, including those offering sexually oriented entertainment, must apply for TABC licenses. However, businesses that allow patrons to bring their own alcoholic beverages for on-premise consumption (Bring Your Own Bottle or BYOB clubs) are not required to obtain TABC licenses. Like establishments with TABC licenses, some BYOB establishments allow persons over the age of 18 rather than 21 to enter. But unlike bars and clubs with TABC licenses that allow topless dancers, some BYOB establishments can feature all-nude dancers.

DIGEST: CSHB 175 would require businesses that allowed patrons to bring their own alcoholic beverages for consumption on the premises and that provided entertainment or charged admission fees to obtain an on-premise consumption-only license from TABC. The bill also would allow local

governments to prohibit the location of such a business near a school, church, or hospital.

The annual fee for an on-premise consumption-only license would be $1,000. The issuance, cancellation, or suspension of the license would be governed by provisions of the Alcoholic Beverage Code regulating retailers that sell alcoholic beverages.

The following types of businesses would be exempt from the required on-premise consumption-only license:

- restaurants that had a food service permit, prepared and served at least eight entrees, had a health department permit, and served food during regular operating hours;
- fraternal or veterans' organizations;
- religious or charitable organizations or a government entity; and
- businesses that had another TABC license.

TABC would have to adopt rules to implement the bill's requirements by January 1, 2012, at which point a failure to obtain a license would be considered an offense. TABC also could suspend or cancel an on-premise consumption-only license because of a breach of the peace at the establishment after giving notice and an opportunity to show compliance with state law and TABC regulations.

The bill would take effect on September 1, 2011.

SUPPORTERS SAY:

CSHB 175 would enable TABC and law enforcement officers to prevent illegal operators from skirting the law by setting up BYOB establishments that do not require TABC review and licensing. Many businesses have lost their liquor licenses for employing underage dancers or for other infractions, only to reopen later as establishments that allow patrons to bring their own alcoholic beverages for consumption on the premises. A business whose liquor license has been revoked should not be able to operate with patrons consuming alcohol on the premises. In some cases, those who could not pass a TABC criminal background check just open a new BYOB establishment.

The bill would exempt restaurants, charitable and religious organizations, private clubs, and bars with liquor licenses from the new licensing requirement. Establishments that are unable to obtain liquor or food

licenses through the state should not be allowed to operate as BYOB nightclubs. While alcohol is not served at BYOB establishments, it is still consumed and therefore should be regulated by TABC.

CSHB 175 would ensure that only the truly problematic after-hours establishments would be targeted. The bill would authorize law enforcement to suspend or cancel an on-premise consumption-only license for a breach of the peace on the premises. TABC would have the authority to adopt rules and procedures to ensure that the restrictions did not apply to restaurants allowing patrons to bring their own beer or wine or to neighborhood block parties. Also, CSHB 175 would mirror existing statutes and rules for TABC license applications and provide a streamlined way to apply and change those standards.

After initial start-up costs, the new fee would raise additional revenue to help fund TABC and other state operations during tight budgetary times. In many cases, the establishments that would apply for the new license already would have TABC licenses, and the bill would allow the state to recapture those fees that already had been collected. The bill also would help make TABC more efficient because improving its enforcement tools would reduce the problems now caused by BYOB establishments.

OPPONENTS SAY:

Not all BYOB establishments allow illegal activities to take place on the premises. Those that engage in illegal activities should be investigated and prosecuted for those specific offenses. Requiring all BYOB businesses that are not restaurants or veterans' organizations to obtain licenses would not address the problem of illegal activity in nightclubs. The regulations imposed by CSHB 175 could affect some legitimate businesses that may not be able to afford or qualify for a TABC license.

The Legislature should not try to change the way that many Texans live and infringe on their personal choices just to stop a few undesirable businesses. Enough laws exist to control establishments that permit after-hours drinking, and those laws should be better enforced. CSHB 175 could lead to the requirement that neighborhood block parties get licenses or that patrons not bring their own beer and wine to restaurants that lack TABC licenses.

Even though it may be called a license fee, CSHB 175 would add what is essentially a "sin tax." It would be contrary to the principle of truth in taxation.

OTHER OPPONENTS SAY:

CSHB 175 should have retained the penalties and offenses named for denial of a license that were included in the original bill.

NOTES:

CSHB 175 differs from the original bill by deleting provisions that would have required a county judge to deny an on-premise consumption-only license if the applicant or applicant's spouse had been convicted in the past five years of a felony or certain other offenses. The original bill would have made it a class C misdemeanor (maximum fine of $500) to operate a commercial BYOB establishment without a license and would have increased the penalties for subsequent offenses.

The Legislative Budget Board estimates that the bill would increase general revenue by $162,757 through the biennium ending August 31, 2013, by requiring licensing fees. Since TABC now collects licensing fees on a biennial basis, TABC would collect $2,000 every other year from each of the 70 businesses estimated by TABC to be affected by the bill.

During the 2009 regular session, a similar bill, HB 206 by Jackson, passed the House by 140-0 and was referred to the Senate Business and Commerce Committee, but no further action was taken.

SUBJECT: Prohibiting the possession of glass containers in state-owned riverbeds

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, T. King, Beck, Creighton, Hopson, Keffer, Larson, Lucio, Price

0 nays

2 absent — Martinez Fischer, D. Miller

WITNESSES: For — (*Registered, but did not testify*: Ken Kramer, Lone Star Chapter, Sierra Club; Matt Phillips, The Nature Conservancy)

Against — None

On — Robert Goodrich, Texas Parks and Wildlife Department

BACKGROUND: The Texas Litter Abatement Act prohibits the disposal of glass into inland or coastal water of the state. It is not illegal to possess glass within state-owned riverbeds. Certain local ordinances do prohibit glass containers within riverbeds.

DIGEST: CSHB 218 would prohibit the possession of glass containers within state-owned riverbeds. "Glass container" would mean a container made of glass that was designed to hold a beverage, including a bottle or jar.

It would be a defense to prosecution if the person who possessed the glass container:

- did not transport the glass container into the boundaries of the riverbed;
- possessed the glass container only for the purpose of lawfully disposing of the glass container in a designated waste receptacle; or
- was the owner of property adjacent to the section of the riverbed where the person possessed the glass container.

A person would be exempt if he or she possessed a glass container only for the purpose of water sampling or conducting scientific research authorized by:

- a government entity;
- an electric, public, or retail public utility;
- a power generation company;
- a surface coal mining and reclamation operation; or
- a school- or university-sponsored educational activity.

The offense would be a Class C misdemeanor (fine of up to $500) unless it was shown that the defendant had been convicted of the offense previously, in which case it would be a Class B misdemeanor (fine of up to $2,000 and/or jail term of up to 180 days).

CSHB 218 would take effect September 1, 2011.

SUPPORTERS SAY:

Increased litter around state-owned riverbeds is making recreational activities more dangerous. When not disposed of properly, glass containers put swimmers, paddlers, and campers at risk of injury caused by broken glass. CSHB 218 would create a safer environment.

Glass containers that are improperly disposed of pollute riverbeds and harm the river's ecosystem, wildlife, and water quality. Polluted riverbeds deter tourists from visiting Texas rivers. CSHB 218 would keep Texas riverbeds clean and safe for local visitors and tourists.

The bill would not ban all beverage containers from riverbeds, only those made of glass that create a clear hazard. While many cities already have adopted ordinances banning glass containers from riverbeds, HB 218 would cover the entire state, including unincorporated areas.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The committee substitute differs from the original bill in creating an exemption for a person who possessed a glass container only for the purpose of water sampling or conducting scientific research authorized by a power generation company, a surface coal mining and reclamation operation, or a school- or university-sponsored educational activity.

SUBJECT: Liability for interest on property taxes on certain improvements

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Martinez Fischer, Ritter, Villarreal, Woolley

0 nays

1 absent — Murphy

WITNESSES: For — Beth Carmichael, Camden Property Trust and Texas Apartment Association; Jim Robinson, Texas Association of Appraisal Districts; (*Registered, but did not testify:* John Brusniak; Daniel Gonzalez, Texas Association of Realtors; Ken Hodges, Texas Farm Bureau; James LeBas, Association of Electric Companies of Texas; Randy M. Lee, Stewart Title Guaranty Company; Ned Muñoz, Texas Association of Builders; Ginny Sutton, Texas Self Storage Association)

Against — None

BACKGROUND: Under Tax Code, sec. 26.09, if a property is subject to property taxes during a prior year in which it escaped taxation, county tax assessor-collectors are to add interest to the back taxes.

Under Tax Code, sec. 33.01, the interest penalty is 6 percent of the amount of the tax for the first calendar month it is delinquent. An additional 1 percent is added for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent. However, a tax delinquent on July 1 incurs a total penalty of 12 percent without regard to the number of months the tax has been delinquent. An additional 1 percent is added for each additional month the taxes remain delinquent.

Tax Code, ch. 41A allows property owners to appeal their property taxes through binding arbitration. Tax Code, sec. 41A.10 requires a taxpayer first to pay the amount of property taxes that are not in dispute in order to be eligible for binding arbitration.

Tax Code, ch. 42 allows property owners to appeal their property taxes through judicial proceedings in an appropriate district court. Tax Code, sec. 42.08 requires a taxpayer first to pay the lesser of either the tax on the portion of the taxable value of the property that is not in dispute or the amount of taxes due in order to be eligible to bring the property tax appeal to judicial review.

DIGEST:

HB 234 would exempt a property owner from interest on back taxes on an improvement that escaped taxation in a prior year if the appraisal district had constructive notice of the presence of the previously untaxed improvements on the property and:

- the land on which the previously untaxed improvement was located did not escape taxation in the year in which the improvement escaped taxation;
- the appraisal district had actual or constructive notice of the presence of the improvement in the year in which the improvement escaped taxation; and
- the property owner paid all back taxes due on the improvement within 120 days.

HB 234 would require a property-tax bill that was sent to a property owner giving notice of back taxes on an improvement that previously escaped taxation to state that no interest was due on those taxes if the back taxes were paid within 120 days.

A property owner owing back taxes on an improvement that escaped taxation in a prior year and for which the appraisal district had constructive notice would be considered to have paid the minimum amount due to be eligible for appeal through arbitration or judicial review.

The bill would take effect September 1, 2011, and would apply only to an omitted improvement included in a tax bill that was first sent to the owner on or after the effective date.

SUPPORTERS SAY:

HB 234 would ensure that property owners did not have to pay interest on taxes owed for a property improvement the chief appraiser omitted from prior year tax rolls if the appraiser had notice of the improvement, the land on which the improvement was located did not escape taxation for the year in question, and the property owner paid all the back taxes due on the

omitted property within 120 days. The taxpayer should not have to pay interest for the mistakes of local officials.

In 2006, the Harris County Central Appraisal District (CAD) failed to properly value a multifamily property that was under construction. The appraisal district should have known about the improvements because the property owner had received permits and started construction. The district appraised the property as unimproved. After 2006, the property was valued correctly.

In 2009, the Harris County CAD realized the improvements had not been appraised in 2006 and had escaped taxation. One of the taxing entities, Alief ISD, issued a tax bill on the omitted improvement with 38 percent interest. The property owner unfairly was required to pay interest for the mistake of the local appraisal district. HB 234 would prevent this unfairness in the future.

HB 234 would not create a significant cost to local governments. According to the LBB's fiscal note, HB 234 would have no effect on either state or local finances.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The companion bill, SB 551 by Williams, was reported favorably, without amendment, by the Senate Finance Committee on March 29 and is scheduled for consideration by the Senate on today's Local and Uncontested Calendar.

SUBJECT: Banning texting while driving

COMMITTEE: Transportation — committee substitute recommended

VOTE: 11 ayes — Phillips, Darby, Bonnen, Y. Davis, Fletcher, Harper-Brown, Lavender, Martinez, McClendon, Pickett, Rodriguez

0 nays

WITNESSES: For — Jeanne Brown, Johnny Mac Brown, Katrina Brown, Remembering Alex Brown Foundation; Philip Cortez, City of San Antonio; Jim Jones, San Antonio Police Department; Lisa Chapa; Leticia Cantu; (*Registered, but did not testify*: Tris Castaneda, Sprint; Carrie Kroll, Texas Pediatric Society; Anne O'Ryan, AAA Texas; Thomas Patterson, City of Fort Worth; Clyde Peterson, Texans Against Texting While Driving; Michael Peterson, AT&T)

Against — Terri Hall, Texas TURF, Campaign for Liberty, Texas, Texans for Accountable Government, We Texans; (*Registered, but did not testify:* Stefanie Collins)

On — Rebecca Davio, Texas Department of Public Safety

BACKGROUND: The Transportation Code prohibits drivers from using a wireless communication device for any communication in a school crossing zone unless the vehicle is stopped or unless they are using a hands-free device or making an emergency call. A political subdivision must post at the entrance to each school crossing zone a sign informing vehicle operators that use of a wireless communications device within the zone is prohibited and can result in a fine.

A bus driver with a minor on board may not use a wireless device unless the vehicle is stopped or the device is being used to make an emergency call.

Drivers under the age of 18 may not use a wireless device anywhere for any communication unless they are making an emergency call.

DIGEST:

CSHB 243 would prohibit a driver from reading, writing, or sending a text-based communication unless the vehicle was stopped. Text-based communication would include a text message, instant message, and e-mail.

Posting requirements for political subdivisions enforcing the ban on using wireless devices for any communication in a school crossing zone would not apply to the texting ban.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 243 would promote driver safety by prohibiting drivers from texting, instant messaging, or e-mailing. Texting may not be the only distraction while driving, but it is one of the most dangerous. The bill would introduce a commonsense safety law that would help deter this dangerous behavior.

Accumulating research resoundingly concludes that texting while driving distracts drivers and increases response times to sudden traffic incidents. Like drunk driving, driving while texting has injured and killed drivers, passengers, and innocent bystanders.

Simply adding texting while driving to offenses that are punishable with a maximum $200 fine would deter the activity. CSHB 243, like other sensible safety laws such as mandatory seat belts, would help educate Texans about the dangers of texting while driving.

To address the dangers of texting while driving, many municipalities have adopted ordinances prohibiting this behavior. While commendable, different local approaches to the problem can create confusion because the local ordinances may not be well-publicized and may vary among cities. A uniform statewide prohibition would create consistent, well-publicized standards barring texting while driving statewide.

In addition to saving lives and preventing car accidents, CSHB 243 would ease traffic congestion on Texas roads by eliminating a major distraction for drivers.

OPPONENTS SAY:

While its intent is good, CSHB 243 actually could have a detrimental effect on public safety. Drivers trying to hide their wireless devices while texting to avoid notice by a public safety officer may take their eyes

further from the road, becoming more distracted and causing an even greater hazard.

Instead of implementing an ineffective government ban on texting, a more successful initiative would involve insurance companies preventing drivers from texting while driving by instituting harsher penalties for policyholders who were texting during an accident or traffic violation.

OTHER OPPONENTS SAY:

CSHB 243 would single out texting among numerous distractions that can cause dangerous driving. Drivers are distracted by radios, various electronic controls, passengers, and many other activities that decrease awareness and distract from safe driving.

This bill would not address other distracting uses of a wireless device, including using smartphone applications like Google or Facebook or manually dialing a phone number.

Banning texting would not address the core issue of distracted driving. The state should focus on improving driver education and ensuring that driver's education courses fully cover the topic of distracted driving, including possible consequences.

Since it would be difficult to determine if an individual was texting, enforcing this bill would be very difficult. The bill should be revised to make texting while driving a secondary offense that could be enforced only while pursuing a driver for a primary offense, such as speeding or reckless endangerment.

NOTES:

The companion bill, SB 46 by Zaffirini, has been referred to the Senate Transportation and Homeland Security Committee, which considered in a public hearing and left pending a similar bill, SB 119 by Uresti, on March 16.

SUBJECT: Online posting of campaign finance reports for school board candidates

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Eissler, Hochberg, Allen, Guillen, Huberty, Shelton, Strama

1 nay — Weber

3 absent — Aycock, Dutton, T. Smith

WITNESSES: For — Andy Wilson, Public Citizen, Inc.; (*Registered, but did not testify*: Keith Elkins, Freedom of Information Foundation of Texas; Frank Knaack, American Civil Liberties Union of Texas; Michael Schneider, Texas Association of Broadcasters; Ken Whalen, Texas Daily Newspaper Association, Texas Press Association; Andrew Wheat, Texans for Public Justice; Paige Williams, Texas Classroom Teachers Association)

Against — Patricia Hughes, El Paso Independent School District, Texas Association of School Boards

BACKGROUND: The Elections Code requires candidates for a school district board of trustees to file campaign finance reports with their local school districts.

DIGEST: CSHB 336 would amend Election Code, ch. 254 to require that campaign finance reports filed by school board candidates or members or by specific-purpose committees created to support, oppose, or assist school board candidates or members be posted on the school district's website. The bill would apply to school districts entirely or partially located within municipalities with more than 500,000 residents.

The bill would require school districts to post the reports no later than five business days after the date the report was filed with the district. Access to the report on the district's website would be in addition to the public's access to the information through other electronic or printed means.

School districts would have the option to redact address information, other than the city, state, and zip code, of a person listed as a campaign contributor. If a district exercised the redaction option, the redacted

information would have to remain available on the report in the school district's office.

The bill would take effect September 1, 2011, and would apply only to electronic posting of reports with filing deadlines on or after January 1, 2012.

SUPPORTERS SAY:

CSHB 336 would help promote more accountable and transparent local government in Texas. The posting of campaign finance reports for school board members and candidates on school district websites would advance the goal of transparency by providing easier access to valuable information. CSHB 336 would codify practices already in place in several large school districts, including the Dallas and Houston independent school districts.

The need for improved transparency in financial reporting for school board elections has increased. Under CSHB 336, the public would be able to identify connections between contributors and interested persons and groups that come before school boards. Taxpayers have the right to know who financially supports board members and who has an interest in board decisions made in determining the course of their children's education. CSHB 336 would reduce opportunities for corruption.

The bill would provide uniform posting requirements for Texas' larger urban school districts without burdening smaller districts, which would not be subject to the requirement. The bill would not discourage anyone interested in running for a school board seat by imposing additional or cumbersome conditions. School districts still would be responsible for dissemination of campaign finance reports, and the website posting would provide a simple way to do it.

Qualified school board candidates should have no concern about making campaign finance reports available online, yet CSHB 336 could discourage candidates seeking school board positions who did not support transparent and accountable government. The bill would not require posting of a candidate's personal financial information, but would enhance public access to the sources of campaign contributions and expenditures. The address redaction allowed by the bill for online reports would follow existing standards for candidates who file with the Texas Ethics Commission.

OPPONENTS SAY:

CSHB 336 could affect not only larger school districts, but smaller ones located entirely or partially within a large municipality. The bill's focus on the population of the municipality rather than the size of the school district could make the bill apply to smaller school districts that may or may not be equipped to make website changes easily. Although the costs would be minimal for some school districts, the bill would not consider the financial burden imposed on districts without the resources to post campaign finance reports in a timely manner. The decision to post on a district website should be made locally and voluntarily because districts have varying resources. The bill could become an unfunded mandate.

School board positions are voluntary, and members are not compensated with taxpayer money. The increased and unnecessary attention on campaign finance information could discourage potential candidates from seeking school board positions.

OTHER OPPONENTS SAY:

CSHB 336 would not improve transparency and access to local government if the district were allowed to redact information before posting reports. Transparency would not be achieved by a name paired with an incomplete address after redaction, and such listings could create confusion for those attempting to identify campaign contributors. When an open records request is made to obtain a campaign finance report, no changes are made to the document. An open records request still would be necessary to obtain complete information.

School districts should not be singled out under CSHB 336 because all local governments should be subject to similar requirements. If the goal is transparency of local government, then all elected officials with taxing authority, such as community college trustees, should be included.

NOTES:

The committee substitute differs from the original by giving school districts the option to redact address information instead of requiring them to do so.

The companion bill, SB 603 by Rodriguez, has been referred to the Senate State Affairs Committee.

SUBJECT: Felony punishment for burglary while evading arrest

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler

0 nays

WITNESSES: For — Stephen Casko, Houston Police Department; Chris Jones, Combined Law Enforcement Associations of Texas; Gary Tittle, Dallas Police Department (*Registered, but did not testify*: Donald Baker; John Chancellor, Texas Police Chiefs Association; Lon Craft, Texas Municipal Police Association; Bill Elkin, Houston Police Retired Officers Association; James Jones, San Antonio Police Department)

Against — (*Registered, but did not testify*: Jodyann Dawson, Texans Care for Children)

BACKGROUND: Penal Code, sec. 30.02 defines burglary as entering a building not then open to the public or remaining concealed in a residence or building, without the consent of the owner and with the intent to commit a felony, theft, or assault, or entering a building and committing or attempting to commit a felony, theft, or assault.

Burglary is punishable as a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) if committed in a building other than a residence, as a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if in a residence, and as a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) if in a residence and the person entered with intent to commit a felony other than felony theft.

DIGEST: HB 341 would make it an offense under the burglary statute, Penal Code sec. 30.02, to, without the consent of the owner, enter a building or habitation while evading or attempting to evade arrest or detention, to enter a building not then open to the public with intent to evade arrest or detention, or to remain concealed in a building or habitation with intent to evade arrest or detention.

HB 341 would exclude burglary while evading arrest or detention from first-degree felony punishment.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

When suspects flee law enforcement and enter someone's home to evade arrest, the risk to the family and to law enforcement from an ambush justifies a felony charge. The current offense charged is criminal trespass, which is a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if a residence and a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if a building.

Burglary already is an offense that requires intent to commit another crime, such as theft. This bill would not be an enhancement of the burglary offense, but simply would fix the statute, which always should have included evading arrest. The point of the burglary statute, as opposed to criminal trespass, is to protect the sanctity of the home from people with bad intent. If a person enters another's home with the intent to do something illegal, then the risk is greater to the family and the punishment should be more severe.

The offense of evading arrest on foot, in Penal Code sec. 38.04, is a Class A misdemeanor, but is a state jail felony if the actor uses a vehicle to flee or was previously convicted for evading arrest. The same logic would apply here. Just as using a vehicle makes evading arrest more dangerous to others and warrants harsher punishment, entering a person's home with the intent to evade arrest creates a potentially dangerous situation that warrants felony punishment. Although relatively few cases of burglary while evading arrest would be charged, resulting in no significant fiscal impact to the state, the statute still needs to be changed to better protect the sanctity of the home.

OPPONENTS SAY:

HB 341 would not protect the public or police any more than current law. When a suspect flees down a hallway and into someone's apartment to evade arrest, that suspect would not know that the punishment had been changed to a felony. The suspect would not be deterred by the more severe penalty, especially in the panic of evading arrest. Even though this enhancement to the burglary statute would not provide greater safety, it

would cost the state additional money because a felony conviction would mean prison time.

Burglary while evading arrest also could result in unintended consequences, with juveniles likely the most at risk. Juveniles who commit minor crimes, or perhaps commit no crime at all but feel guilty about something, could see a police officer approaching and take off running. Once the juvenile entered an office building accidentally left open, a relatively minor infraction could turn into a felony. Serving prison time in this scenario would not fit the crime.

The burglary statute has long been about breaking into a home to steal or to harm someone. HB 341 would complicate that traditional understanding of burglary. The intention of the suspects in these cases is to evade police, not to burglarize the house in the traditionally understood sense. Evading arrest statutes are the better place to address a person fleeing police, and criminal trespass statutes better address running into the building to hide. Current law is sufficient.