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

Three postponed bills - HB 10 by Branch, HB 234 by Otto, and HB 346 by Kleinschmidt - are on the supplemental calendar for second-reading consideration today. The analyses of these bills are available on the HRO website at http://www.hro.house.state.tx.us/BillAnalysis.aspx.

The House will consider a Local, Consent, and Resolutions Calendar and a Congratulatory and Memorial Calendar today.
Digest (D) | Page:
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SB 309 by Harris | Expanding the events eligible for the Major Events Trust Fund | 1
HB 1000 by Branch | Creating a distribution system for the national research university fund | 5
HB 600 by Solomons (D) | State Board of Education redistricting | 10
HB 1861 by Anchia | Continuing the Commission on State Emergency Communications | 20
HB 33 by Branch | Requiring information on higher education textbooks | 24
HB 115 by McClendon | Creating an innocence commission to investigate wrongful convictions | 28
HB 253 by Hilderbran | Prosecuting bigamy and investigating child abuse | 35
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HB 2257 by Phillips | Standards for emergency notification system by public service providers | 61
SUBJECT: Expanding the events eligible for the Major Events Trust Fund

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 5 ayes — J. Davis, R. Anderson, Miles, Murphy, Sheets

0 nays

2 absent — Vo, Reynolds

SENATE VOTE: On final passage, March 21 — 30-0

WITNESSES: (On House companion bill, HB 735 by Patrick):
For — James Brothers, Arlington Convention and Visitor Bureau; Robert Cluck, Arlington City Council; (Registered, but did not testify: Justin Bragiel, Texas Hotel and Lodging Association; Larry Castro, City of Dallas; Ron Hinkle, Texas Travel Industry Association; T. J. Patterson, City of Fort Worth; Jon Weist, Arlington Chamber of Commerce; Monty Wynn, Texas Municipal League)

Against — None

On — Robert Wood, Comptroller’s Office, Local Government Assistance and Economic Development Division

BACKGROUND: The state has four separate event trust fund programs — the Major Events Trust Fund, the Events Trust Fund, the Motor Sports Racing Trust Fund, and the Special Events Trust Fund — designed to help Texas communities offset the costs of hosting sporting and nonathletic events. The Major Events Trust Fund, formerly the “Other Events Fund,” supports major national or international championship-type events, such as the National Football League (NFL) Super Bowl, National Collegiate Athletic Association (NCAA) Final Four basketball tournaments, Breeders’ Cup World Championship, and Formula One automobile races.

The Major Events Trust Fund applies local and state gains from sales and use, auto rental, hotel, and alcoholic beverage taxes generated over a 12-
month period from certain major sporting championships or events to pay costs incurred from hosting the event.

The fund previously has provided financing for large and well-attended events such as the 2004 and 2011 Super Bowls and the NCAA’s 2004, 2008, and 2011 Men’s Final Four basketball championships.

The trust fund can be used to pay costs related to the event preparation or operation or to pay principal and interest on notes used to build or improve facilities or acquire equipment for the event. One hundred percent of allowable expenses can be funded if sufficient tax receipts are deposited into the trust fund.

To qualify, an event cannot be held more than once yearly. If expected to generate at least $15 million in local and state tax receipts, the event is eligible for prior funding to attract and secure it. If the event recurs, the previous year’s receipts can be used to attract and secure subsequent events.

**DIGEST:**

SB 309 would amend Vernon’s Texas Civil Statutes, art. 5190.14 by adding the Academy of Country Music Awards, the National Cutting Horse Association Triple Crown, and a national political convention for the Republican National Committee or the Democratic National Committee to the list of events eligible for the host city or county to receive reimbursement funding from the Major Events Trust Fund.

Within 18 months of the last day of an event eligible for funding from the Major Events Trust Fund, the comptroller would have to complete a study in the market area of the event on the measurable economic impact directly attributable to preparing for and presenting the event and its related activities, and would have to post the study results online.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS SAY:**

SB 309 would expand the list of qualified events for which the host city or county could receive reimbursement support from the Major Events Trust Fund. The trust fund is an innovative and important economic development tool that has proven successful in recruiting major events to Texas. This program allows cities and counties to compete with other
states in hosting major events such as this year’s NCAA Final Four tournament games in Houston and this year’s Super Bowl in Arlington. The program helps attract and retain events in Texas that provide economic activity that otherwise would not occur. Without these events, the state’s economy would lack the revenue raised from dramatically increased hotel occupancy rates; food, tobacco and beverage consumption; retail and leisure activity; business contracts; utility usage; and air and car travel. The program gives Texas a competitive edge in the events industry.

SB 309 would allow the Academy of Country Music Awards, a national political convention of the Republican National Committee or the Democratic National Committee, and the National Cutting Horse Association Triple Crown to be included as events with access to the program’s funds. The Academy of Country Music Awards is usually held in Las Vegas, but organizers would prefer a venue more in tune with their industry. Texas would be a perfect fit for this event. Also, the National Cutting Horse Association Triple Crown has previously been held in Texas, but the event frequently is recruited by other states. By making these events eligible for the program, Texas could better attract and retain these events rather than lose them and the economic development opportunities that they bring.

This legislation will not cost the state anything because the Major Events Trust Fund does not rely on state revenue. A comptroller-certified portion of the revenue from the event is used to reimburse costs to the host county or municipality after the event occurs. Reimbursement is used to pay costs related to preparing for or conducting the event, such as the public safety officers, snow plows, and sand trucks that were needed immediately before the 2011 Super Bowl. If a city or group of cities in a region is interested in hosting an eligible event, it first must submit an application and economic impact study projecting local and state sales tax revenue from the event to the comptroller. The comptroller then has to certify that the revenue from the event would not exist otherwise. The program only supports an event in Texas if evidence indicates that the event might be moved out of state. The program operates on extra tax revenues that otherwise would not accrue in Texas. A recent study performed on all of the state’s events trust fund programs showed that since 2008, $79.6 million in state and local tax revenue has been generated beyond the money used to reimburse host counties and municipalities for bringing the events to the state.
SB 309 would require the comptroller to perform a study of the measurable economic impact of each event eligible to benefit from the program after the event occurred. This step would ensure that the program had a true positive impact on the state.

**OPPONENTS SAY:**

The Major Events Trust Fund costs the state revenue generated by events that likely would take place in Texas even without the recruitment incentives. For example, the National Cutting Horse Association Triple Crown already uses Texas as its venue. By adding this event to the program, Texas could forfeit state revenue by having to reimburse the host county or municipality for the event.

**NOTES:**

According to the fiscal note, the fiscal impact of SB 309 would depend upon the number and location of events covered. However, no significant fiscal implication to the state is anticipated.

The House companion bill, HB 735 by Patrick, was considered in a public hearing on March 17 and reported favorably, as substituted, on March 29 by the House Economic and Small Business Development Committee.
SUBJECT: Creating a distribution system for the national research university fund

COMMITEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Branch, Bonnen, Brown, D. Howard, Johnson, Lewis, Patrick

0 nays

2 absent — Castro, Alonzo

WITNESSES: For — None

Against — None

On — Daniel David, University of Texas-Dallas; John Keel, State Auditor’s Office; Welcome Wilson, University of Houston Board of Regents

BACKGROUND: The Texas Legislature in 2009 enacted HB 51 by Branch, which established the National Research University Fund (NRUF) to help emerging research institutions join the ranks of the state’s two public, tier-one research universities, the University of Texas at Austin and Texas A&M University. NRUF is a permanent, constitutional endowment approved by Texas voters in 2009 with the enactment of Proposition 4 to repurpose the dormant permanent higher education fund as the NRUF to help emerging research institutions reach and maintain tier-one status.

Texas Constitution, Art. 7, sec. 20(f) authorizes the Legislature to appropriate up to 7 percent of the average net market value of the investment assets of the fund, provided that the 10-year purchasing power of the corpus is preserved. The fund is now valued at about $613 million. The Constitution stipulates that a state university that becomes eligible for a portion of the distributions from the fund in a fiscal biennium remains eligible to receive additional distributions in any subsequent state fiscal biennium. The University of Texas at Austin and Texas A&M University are not eligible to receive money from the fund.

There is no formal definition of a tier-one university, but generally accepted criteria include having academic excellence, world-class
research, and an exceptional student body. The seven institutions designated by the Texas Higher Education Coordinating Board as emerging research institutions are Texas Tech University, the University of Houston, the University of North Texas, UT-Arlington, UT-Dallas, UT-El Paso, and UT-San Antonio.

Once an institution reaches certain benchmarks, it will have access to a portion of the payout from the NRUF endowment. To be eligible for NRUF funding, an emerging research university must have at least two years of annual restricted research expenditures of more than $45 million. It also must meet four of six other criteria:

- an endowment greater than $400 million;
- doctoral degrees awarded exceeding 200 in each of the previous two years;
- membership in the Association of Research Libraries or the housing of a chapter of Phi Beta Kappa;
- high achievement of the freshman class for two years;
- high-quality faculty for two years;
- high-quality graduate education programs.

DIGEST: CSHB 1000 would specify the criteria used to determine annual distributions from the National Research University Fund and define the criteria used to allocate the distributions among the eligible institutions.

The bill would require the comptroller to distribute in each fiscal year to eligible institutions the appropriated funds. It would stipulate that the total amount appropriated from the NRUF corpus for any state fiscal year could not exceed 4.5 percent of the average net market value of the investment assets of the NRUF for the 20 consecutive state fiscal quarters ending with the last quarter of the preceding state fiscal year, as determined by the comptroller.

For a state fiscal quarter that included any period before NRUF was established on January 1, 2010, the average net market value of the investment assets of the fund would include the average net market value of the investment assets of the former higher education fund for the applicable quarter. This provision would expire January 1, 2016.

In each fiscal year, each eligible institution would be entitled to an equal share of the total amount to be distributed. The total amount to be
distributed to eligible institutions in that year would be a portion of the total amount appropriated from the fund for that year, as follows:

- one-half of the total amount appropriated if only one institution has established eligibility;
- two-thirds of the total amount appropriated if two institutions have established eligibility;
- three-fourths of the total amount appropriated if three institutions have established eligibility;
- four-fifths of the total amount appropriated if four institutions have established eligibility;
- five-sixths of the total amount appropriated if five institutions have established eligibility;
- six-sevenths of the total amount appropriated if six institutions have established eligibility.

If the number of eligible institutions were more than six, each institution would receive an equal share of the total amount appropriated from the fund for that fiscal year. The total amount appropriated from the fund for a state fiscal year would not include any portion of the amount used to reimburse the costs of an audit. The comptroller would retain within the fund any portion of an appropriated amount that remained after all distributions were made. The appropriation of the retained amount would lapse at the end of the fiscal year.

CSHB 1000 would require the coordinating board to prescribe by rule standard methods of accounting and reporting information for the purposes of determining the amount of restricted research funds expended by an eligible institution in a fiscal year. Data submitted to the coordinating board from institutions for the purposes of establishing eligibility to receive allocations of NRUF proceeds would be subject to audit by the state auditor. The coordinating board could request one or more audits as necessary after an institution began receiving distributions. The bill would require the comptroller, from money appropriated from the fund, to reimburse the state auditor for the expense of such audits.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.
SUPPORTERS SAY:

CSHB 1000 is needed to implement an allocation method for distributing funds to the emerging research universities once they begin to qualify for NRUF funding. Currently, none of the universities have qualified, but a few are getting close. The method proposed by the bill would be simple to communicate and understand. It would divide the funds equally among the qualifying institutions and return an equal portion to the fund. If one university met eligibility, then half of the total appropriated amount would go to the university and half would go back to the fund. If two universities met the benchmark, then one-third would go to each university and one-third would go to the fund, and so on.

This distribution method would reward the attainment of the benchmarks while being conservative enough to allow the corpus of the fund to grow. Reinvesting some of the proceeds would be important to the health of the fund. Requiring an independent audit of a university’s restricted research expenditures would ensure a level playing field for all of the universities.

The distribution model would reward those institutions who qualified early, but not so much that it would be unsustainable.

The distribution of NRUF funds should not be based on an eligible institution’s restricted research expenditures. The metric of using an institution’s restricted research expenditures already plays a prominent role in the NRUF because it is the first benchmark that an eligible institution must meet in order to begin to gain access to NRUF funds. Using this metric could give a repeated advantage to certain universities, year after year, across all the major university funds that already use these criteria.

OPPONENTS SAY:

Rather than eligible institutions sharing equally in the appropriation, the distribution model should be more performance-based. Funds should be allocated proportionately based on each eligible institution’s amount of restricted research expenditures over a period of time. This would be a formula-based methodology that currently is used for other major university funding, including the Research Development Fund, the Competitive Knowledge Fund, and others. It would be an accurate reflection of an institution’s performance and reward those institutions for the actual amount of restricted research funds expended in a fiscal year.

NOTES:

The committee substitute differs from the original version of the bill by providing that the state auditor be reimbursed for expenses from money
appropriated from the NRUF. The substitute also would determine the 4.5 percent of the average net market value of the fund’s assets for 20 rather than 12 consecutive quarters.

A related bill, HB 2115 by Coleman, which would establish a distribution formula and allocate appropriations proportionately among eligible institutions based on a three-year average of restricted research expenditures, was considered in a public hearing of the House Higher Education Committee on March 23 and left pending.

Another related bill, SB 557 by Duncan, which would stipulate that the amount available for distribution would be 3.5 percent of the average market value of the fund over the previous 12 quarters and that eligible institutions would receive one-seventh of the total available, plus one-fourth of any remaining amount, was considered in a March 30 public hearing by the Senate Higher Education Committee and left pending.
SUBJECT: State Board of Education redistricting

COMMITTEE: Redistricting — committee substitute recommended

VOTE: 9 ayes — Solomons, Villarreal, Branch, Eissler, Harless, Hunter, Keffer, Peña, Phillips

4 nays — Alonzo, Alvarado, Pickett, Veasey

4 absent — Aycock, Geren, Hilderbran, Madden

WITNESSES: For — Thomas Ratliff

Against — None

On — Gail Lowe

BACKGROUND: The U.S. Constitution, Art. 1, sec. 2 requires an “actual enumeration” or census every 10 years to apportion the number of representatives each state will receive in the U.S. House or Representatives. The release of population figures from the census also triggers redistricting – or redrawing of political boundaries – of the state’s legislative and State Board of Education (SBOE) districts, as well as of congressional districts. The Legislature is not required by the constitution or statute to redistrict the SBOE. However, Education Code, sec. 7.104, which determines election dates for SBOE members, anticipates that the board will be redistricted following a decennial census.

Texas Constitution, Art. 7, sec. 8 establishes the SBOE. Education Code, sec. 7.101 constitutes the SBOE as 15 single-member districts. The SBOE adopts policies and sets standards for educational programs, such as textbook standards, for Texas public schools. It also oversees the Permanent School Fund.

SBOE redistricting in 2001. The 77th Legislature did not enact a redistricting plan of any kind – House, Senate, SBOE, or congressional. The federal Court for the Northern District of Texas drew a district map for the SBOE in late 2001, and it remains in use today.
Under the Texas Constitution, if the Legislature does not enact a valid House or Senate plan during the regular session, the Legislative Redistricting Board (LRB), comprising of the lieutenant governor, the House speaker, the attorney general, the comptroller, and the land commissioner, must draw the lines. Upon adoption by the board and after being filed with the secretary of state, the plan becomes law and is to be used in the next general election. The LRB drew both House and Senate districts in 1971, 1981, and 2001.

No mechanism similar to the LRB exists for redrawing congressional or SBOE districts should the Legislature fail to adopt a redistricting plan. If the Legislature or the LRB fails to draw new districts following the census, or if the district lines are invalidated for failure to meet one of the many legal requirements, the task falls to a court.

Under federal law (42 U.S.C., sec. 2284), a three-judge court hears any actions challenging the apportionment of congressional districts or statewide legislative bodies, such as the SBOE.

**Legal requirements for redistricting the SBOE.** The legal standards for SBOE redistricting fall into three general areas:

- state and federal constitutional standards, such as population equality;
- application of the federal Voting Rights Act (VRA) requirements for challenging discriminatory plans under sec. 2 and the requirements for advance federal approval (“preclearance”) under sec. 5; and

Each standard must be considered in conjunction with the other requirements. The interaction can be complex and contradictory, especially in applying VRA protections to avoid diluting minority voting strength and adhering to the *Shaw* standard that race cannot be the predominant factor in redistricting.

**Federal requirements.** The Legislature will have to consider several aspects of federal law, such as the permissible deviations in district...
population equality, VRA requirements, and court decisions on racial and political gerrymandering.

**District population equality.** A key requirement for redistricting plans is that districts have approximately equal population, or “one person, one vote.” In 1962, the U.S. Supreme Court reversed its long-standing position that apportionment and redistricting were political issues not appropriate for judicial review. In its landmark decision, *Baker v. Carr*, 369 U.S. 186 (1962), the court held that federal courts could consider challenges to state legislative redistricting plans. In *Reynolds v. Sims*, 377 U.S. 568 (1964), the court established a requirement that the seats in a legislature be apportioned on the basis of population, to ensure “substantially equal state legislative representation for all citizens.”


**The 10 percent deviation rule.** Under the most common method for determining population equality in redistricting plans, courts measure the range by which the districts deviate from absolute numerical equality. To determine the size of a plan’s statistically ideal district, the state’s population is divided by the number of districts in the redistricting plan. The resulting number equals the population of the “ideal district.” For example, the ideal SBOE district in Texas, with a headcount population of 25,145,561 in the 2010 census, and 15 SBOE districts, would have a population of 1,676,371.

In *Reynolds v. Sims*, the Supreme Court held that “[m]athematical exactness or precision is hardly a workable constitutional requirement” in state legislative redistricting cases. In *White v. Register*, 412 U.S. 755 (1973), the Supreme Court upheld a total population deviation between the largest and smallest Texas House districts of 9.9 percent. The court stated that larger deviations would require justification. Within the 10 percent range, lower courts have held, the state may use the population deviation range for any rational purpose, such as not splitting towns or counties into separate districts, or making districts compact.
A discriminatory scheme of population deviation might be invalid for other reasons even if the population deviation were less than 10 percent. In 2004, the U.S. District Court for Northern Georgia, in *Larios v. Fox*, 300 F. Supp. 2d 1320, found that the Georgia House and Senate plans, each with a total population deviation of 9.98 percent, were arbitrary and discriminatory. The plans maximized the number of safe Democratic seats by systematically over-populating suburban Republican districts and under-populating Democratic urban and rural districts. The court found the plans lacked “any legitimate, consistently-applied state interests.” The Supreme Court summarily affirmed the lower court position.

In the same year, in *Rodriquez v. Pataki*, 308 F. Supp. 346, the U.S. District Court for the Southern District of New York stated it would still scrutinize a redistricting plan even though its total population deviation was 9.78 percent. The court ruled that plaintiffs in a redistricting challenge must show that the deviation in the redistricting plan resulted solely from the promotion of an unconstitutional or irrational state policy and that policy was the actual reason for the deviation. The Supreme Court summarily affirmed this decision as well.

It is unclear what impact *Rodriquez* or *Larios* would have on Texas redistricting. *Larios* implies that any challenge to a population deviation can be brought in much the same way that a challenge is brought against population deviations in congressional districts, which must have as nearly equal a population as possible. As such, any population deviation, especially those that consistently favor a particular political, racial, or ethnic group or region, may be subject to scrutiny.

**Voting Rights Act.** A new SBOE redistricting plan will be subject to the VRA, which Congress enacted in 1965 to protect the rights of minority voters to participate in the electoral process in southern states. Sec. 5 of the act was broadened to apply to Texas and certain other jurisdictions in 1975. Amendments enacted in 1982 expanded the remedies available to those challenging discriminatory voting practices anywhere in the nation.

Sec. 5 of the VRA (42 U.S.C., sec. 1973c) requires certain states and their political subdivisions with a history of low turnout and discrimination against certain racial and ethnic minorities to submit all proposed policy changes affecting voting and elections to the Voting Rights Section of the Civil Rights Division of the U.S. Department of Justice (DOJ) or to the U.S. District Court for the District of Columbia for “ preclearance.” The
judicial preclearance process requires a jurisdiction covered by the VRA to file for a declaratory judgment action, with the U.S. Justice Department serving as the opposing party. The DOJ reports that almost all preclearance requests follow the administrative preclearance route.

Under sec. 5, state and local governments bear the burden of proving that any proposed change in voting or elections is neither intended, nor has the effect, of denying or abridging voting rights on account of race, color, or membership in a language-minority group. No state or local voting or election change may take effect without preclearance. In effect, changes in election practices and procedures in the covered jurisdictions are frozen until preclearance is granted.

**Retrogression.** A proposed plan is retrogressive under the sec. 5 “effect” prong if its net effect would be to reduce minority voters’ “effective exercise of the electoral franchise” (as defined in *Beer v. United States*, 425 U.S. 130 (1976)) when compared to a benchmark plan. Generally, the most recent plan to have received sec. 5 preclearance (or to have been drawn by a federal court) is the last legally enforceable redistricting plan. For CSHB 600, the 2001, court-created SBOE map would be the benchmark plan.

The effective exercise of the electoral franchise is assessed in redistricting submissions in terms of the opportunity for minority voters to elect candidates of their choice. The presence of racially polarizing voting is an important factor considered in assessing minority voting strength. DOJ or the D.C. circuit court may object to a proposed redistricting plan if a fairly drawn alternative plan could ameliorate or prevent that retrogression.

In *Reno v. Bossier Parish School Board*, 528 U.S. 320 (2000), the Supreme Court ruled that redistricting plans that are not retrogressive in purpose or effect when compared with the jurisdiction’s benchmark plan must be precleared even if they violate other provisions of the VRA or of the Constitution. However, plans precleared under sec. 5 still can be challenged under sec. 2 of the VRA or on 14th Amendment grounds, even by the DOJ that had granted sec. 5 preclearance. However, the burden of proof shifts from the jurisdiction creating the plan to those challenging the proposed redistricting.

**Sec. 2 challenges.** Sec. 2 of the VRA offers a legal avenue for those who wish to challenge existing voting practices on the grounds that they are
discriminatory. Sec. 2 became a major factor in redistricting in 1982, when Congress amended it to make clear that results, not intent, are the primary test in deciding whether discrimination exists, based on the “totality of the circumstances.”

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the U.S. Supreme Court, in upholding a sec. 2 claim against multimember legislative districts in North Carolina, established a three-part test that plaintiffs must meet when charging invidious vote dilution. The three standards are:

- the protected group is “sufficiently large and geographically compact to constitute a majority in a single-member district”;
- the group is politically active; and
- the majority votes in a bloc to the extent that the minority’s preferred candidate is defeated in most circumstances.

In *Bartlet v. Strickland*, 129 S.Ct. 1231 (2009), the Supreme Court did not rely on citizenship information when determining if a protected group was large enough to constitute a majority in the district. Citizenship is a consideration, though, because both citizenship and voting age population are factors for voting eligibility under Sec. 2 lawsuits designed to protect the rights of voters.

**Maximizing minority-controlled districts.** The U.S. Supreme Court’s analysis in *Johnson v. De Grandy*, 507 U.S. 25 (1993), addressed the key Sec. 2 issue of proportionality or the ratio of minority-controlled districts and the minority’s share of the state population. The *De Grandy* plaintiffs objected to a Florida redistricting plan because it was possible to draw additional Hispanic majority districts in Dade County. Even though the Supreme Court seemed to accept the contention that *Gingles* standards had been met, it rejected claims that additional majority-minority districts were required to meet sec. 2 claims. According to the court: “Failure to maximize cannot be the measure of Section 2.” In other words, the court seemed to reject the contention previously raised in sec. 2 challenges, and adopted by DOJ in sec. 5 preclearance reviews in the early 1990s, that if a majority-minority district can be drawn, then it must be drawn, assuming the *Gingles* criteria are met.

**Gerrymandering.** The word “gerrymandering” was coined in 1812, when a Massachusetts redistricting plan designed to benefit the party of Gov. Elbridge Gerry resulted in a district that a political cartoonist drew to
resemble a salamander. Traditionally, gerrymandering has been considered a technique to maximize the electoral prospects of one party while reducing that of its rivals.

**Racial gerrymandering.** In a series of redistricting challenges during the 1990s, the U.S. Supreme Court grappled with guidelines on how to resolve the tension between race-conscious VRA requirements and the constitutional restraints against race-based actions under the 14th Amendment. In the original Shaw v. Reno opinion, the Supreme Court rejected redistricting legislation with districts alleged to be so bizarrely shaped that on their face they were considered unexplainable on grounds other than race. In Miller v. Georgia, 515 U.S. 900 (1995), the court held that those challenging a redistricting plan need not necessarily show that a district was bizarrely shaped in order to establish impermissible race-based gerrymandering.

In Bush v. Vera, 517 U.S. 900 (1995), a case challenging the Texas congressional redistricting plan, the Supreme Court recognized that the state could consider race as a factor, but found the Texas congressional plan unconstitutional because race was the predominant factor motivating the drawing of district lines and traditional, race-neutral districting principles were subordinated to race.

In the Shaw cases, courts have identified certain traditional, race-neutral redistricting criteria. These include:

- compactness;
- contiguity;
- preserving counties, voting precincts, and other political subdivisions;
- preserving communities of interest;
- preserving the cores of existing districts;
- protecting incumbents; and
- achieving legitimate partisan objectives.

Under the Shaw cases, a redistricting plan will survive a challenge only if it proves that race was not the predominant factor in drawing its challenged minority districts.

**Partisan gerrymandering.** In 1986, the U.S. Supreme Court in Davis v. Bandemer, 478 U.S. 109, established a two-pronged test for invalidating a
politically gerrymandered plan under the equal protection clause of the Fourteenth Amendment. Challengers must show (a) an actual or projected history of disproportionate results and (b) that the electoral system is arranged so that it consistently degrades a voter’s or a group of voter’s influence on the political process as a whole to the point where the individual or group “essentially [has] been shut out of the process.”

In 2004, the Supreme Court, in Vieth v. Jubelirer, 541 U.S. 267, reaffirmed that claims of political gerrymandering can still be made but the court, either rejecting the argument of political gerrymandering altogether or believing the Bandemer standards were unworkable, could not agree on how to evaluate such a claim. In LULAC v. Perry, 548 U.S. 399 (2006), in reviewing the Texas Legislature’s 2003 congressional redistricting plan, the Supreme Court again considered partisan gerrymandering but rejected it as a claim because the court could not find a workable standard. Challenges to political gerrymandering remain uncertain until the Supreme Court establishes a standard.

**Residency.** Election Code, sec. 141.001, requires a person to be a resident of a SBOE district in order to be eligible to represent it.

**DIGEST:**

CSHB 600 would adopt PLAN E111 as proposed by the House Redistricting Committee. Exact data on district population and other demographic information on PLAN E111 and other data are available at [http://gis1.tlc.state.tx.us/](http://gis1.tlc.state.tx.us/). It would apply starting with the primary and general elections in 2012 for members of the board in 2013.

CSHB 600 would create 15 districts. The ideal size of a SBOE district is 1,676,371 based on the 2010 census. Under CSHB 600, 1,676,371 also would be the mean average size of SBOE districts. The overall population range between the districts would be 31,049 or 1.86 percent. SBOE district 8 would be the largest district with a population of 1,691,564. This would be 15,193 people or 0.91 percent above the mean average. SBOE district 3 would be the smallest district with a population of 1,660,515. This would be 15,856 people or 0.95 percent below the mean average.

The bill states legislative intent that if any county, tract, block group, block, or other geographic area was erroneously omitted, a court reviewing the bill should include the appropriate area in accordance with the Legislature’s intent. It also would repeal the SBOE plan imposed by court order following the 77th regular session in 2001.
The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect August 29, 2011.

### CSHB 600 SBOE District Demographics

Ideal Population Deviations and Racial / Ethnic Breakdown

<table>
<thead>
<tr>
<th>District</th>
<th>Population</th>
<th># Deviation from Ideal*</th>
<th>% Deviation from Ideal*</th>
<th>Anglo</th>
<th>Black</th>
<th>Hisp</th>
<th>B + H**</th>
<th>Other</th>
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*Source: Texas Legislative Council

*Ideal District Population is 1,676,371

**Total number of persons who identify as racially black, ethnically Hispanic, or both.

### NOTES:

Legal challenges to use of 2010 Census data in redistricting. Lawsuits challenging the 2010 Census data for use in redistricting already have been filed in Texas. *Teuber v. Texas*, filed in the U.S. District Court for the Eastern District of Texas, challenges the use of counts of non-citizens in census data that will be used for redistricting. *MALC v. Texas*, filed in the
139th state district court in Hidalgo County, argues that significant parts of the Texas population, specifically minorities in urban and border counties, were under-counted by the 2010 census and that an undercount may result in underrepresentation in any redistricting plan that used census 2010 data.
SUBJECT: Continuing the Commission on State Emergency Communications

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 8 ayes — S. Miller, Fletcher, Beck, Burnam, Driver, Flynn, Peña, Walle

0 nays

1 absent — Mallory Caraway

WITNESSES: For — (Registered, but did not testify: Troy Alexander, Texas Medical Association)

Against — None

On — (Registered, but did not testify: Paul Mallett, Commission on State Emergency Communications; Faye Rencher, Texas Sunset Advisory Commission)

BACKGROUND: Created in 1987, the Commission on State Emergency Communications (CSEC) oversees the 911 emergency communications systems in areas of Texas not served by the 24 emergency communications districts or 27 municipal emergency communications districts. CSEC contracts with 24 regional planning commissions to plan, develop, and operate 911 service in 224 mostly rural counties. About one-third of Texans and two-thirds of the state's land area fall under its jurisdiction.

The commission also administers the Texas Poison Control Network, including funding and overseeing the activities of the six regional poison centers that provide information through a toll-free number about treatment for poisoning or toxic exposure.

The CSEC board consists of nine appointed members who serve six-year staggered terms and three ex officio members representing the Public Utility Commission, Department of Information Resources, and Department of State Health Services. The governor appoints five members, including the chairman, and the lieutenant governor and the House speaker appoint two public members each.
CSEC is funded through wire line and wireless emergency service fees and intrastate long distance fees. CSHB 1 by Pitts, the general appropriations bill, would allocate $104 million during fiscal 2012-13 to CSEC and would authorize 25 employees.

CSEC last underwent Sunset review in 1999 and was continued by the 76th Legislature. The agency is subject to the Texas Sunset Act and is scheduled to expire September 1, 2011, unless continued by the Legislature.

DIGEST: HB 1861 would continue the Commission on State Emergency Communications until September 1, 2023. It also would create the Emergency Communications Advisory Committee to help develop a state-level emergency services Internet Protocol network as part of the Texas Next Generation Emergency Communications System or NG 911.

The bill also would include standard Sunset recommendations on implementing negotiated rulemaking and alternative dispute resolution.

NG911 implementation. HB 1861 would authorize the CSEC to work with the new advisory committee to coordinate the development, implementation, and management of the state-level emergency system as part of NG911.

The advisory committee would consist of at least one representative from:

- a regional planning commission;
- an emergency communications district that provided 911 service before September 1, 1987; and
- an emergency communication district created under Health and Safety Code, chapter 772.

CSEC would be required to consult with regional planning commissions and emergency communication districts throughout the state and ensure that advisory commission members had appropriate training, experience, and knowledge in 911 systems and management to help implement and operate a complex NG911 system.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.
HB 1861 appropriately would continue the Commission on State Emergency Communications and its important work in providing 911 emergency communications in rural and lower-populated areas. The mix of state and local management of 911 service has served Texas well because of its large size and population. That organizational structure would be preserved as part of HB 1861. Other state agencies, such as the Public Utilities Commission (PUC), Department of Information Resources (DIR), and Department of Public Safety (DPS), have a role in state telecommunications, and there would be no advantages to consolidating CSEC into these agencies. PUC serves primarily a regulatory function. DIR has technological capacity but lacks the overall programmatic and oversight functions of CSEC. DPS has more expertise in emergency response, rather than the CSEC’s more technological focus on call delivery to public safety answering centers. Both PUC and DIR have non-voting representatives on the CSEC board to help provide coordination when needed, and that would continue under HB 1861.

HB 1861 would provide a workable framework of stakeholder representation through the creation of an NG911 advisory committee. The advisory committee would reflect the perspectives of emergency communication districts that serve both urban and rural portions of the state. The Legislature should not provide an overly detailed description of the membership or role of a group that needs to be flexible enough to complete the complex task of providing the next generation of emergency response technology.

CSEC should take the lead role in developing NG911 because of its unique experience and perspective in overseeing the management of existing 911 emergency communications systems. NG911 must be expanded beyond just dialing 911 from a telephone to include transmission of text, images, video, and other data to a 911 answering center. While national standards will guide NG911, a state entity should be responsible for the development and ongoing oversight of the state-level network. HB 1861 would give CSEC the authority to establish the necessary standards and protocols for information and data sharing across regions and minimum network functions needed for statewide interconnections.

Advisory committees, by their very nature, are passive and consultative entities. They lack the authority and accountability of the ultimate decision makers who can then ignore their recommendations. Not following
technological and programmatic advice could have serious consequences given the life-affecting nature of providing 911 systems.

NOTES:

The companion bill, SB 648 by Whitmire and Hegar, was reported favorably, without amendment, by the Senate Government Organization Committee on March 29.

The Sunset Advisory Commission staff had considered a proposal to consolidate the six interconnected poison control centers, but did not include a recommendation in the CSEC Sunset legislation. The poison centers had been administered jointly by CSEC and the Department of State Health Services until the 81st Legislature enacted HB 1093 by Pickett, which transferred oversight to CSEC on May 1, 2010.

HB 1015 by Harper-Brown, which would consolidate the poison control centers, was heard and left pending in the House Public Health Committee on March 9. Its companion bill, SB 435 by Nelson, was referred to the Senate Health and Human Services Committee.
SUBJECT: Requiring information on higher education textbooks

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Branch, Bonnen, Brown, D. Howard, Johnson, Lewis, Patrick

0 nays

2 absent — Castro, Alonzo

WITNESSES: For — Marc Eckhart, Barnes & Noble College Bookstores; Stephanie Gibson, Texas Retailers Association; Alex Jones, University of Texas at Austin; Amy Turpin, Nebraska Book Company; (Registered, but did not testify: Yannis Banks, Texas NAACP; Robert Floyd, Association of American Publishers; Dana Henning, Allie Smith, University of Texas at Austin; John Lawler, Texas Student Association; Katie Thompson, Texas College Republicans)

Against — None


DIGEST: CSHB 33 would require each public and private higher education institution to compile course schedules for all courses for each semester or academic term and to include detailed information about each course’s textbook requirements, to the extent practicable. The information would have to include the book's retail price, author, publisher, most recent copyright date, and the ISBN, if any. No later than 30 days before the start of classes, institutions would be required to provide the information on their websites and with any course schedules provided in hard copy.

Institutions would have to make the information available to college bookstores and other bookstores that generally serve the students of the institution. Institutions would have to disseminate specific information about revisions to the institution’s course schedule and textbook list as soon as practicable after the information became available. An institution...
would be exempt from having to publish a textbook list or any revisions to that textbook list if a college bookstore, at the required times, published that list and revisions on its Internet website on behalf of the institution.

To allow for timely placement of textbook orders by students, each institution would have to establish a deadline for faculty members to submit information for the course schedule and textbook list.

Institutions would have to make reasonable efforts to disseminate to students, to the extent practicable, information on institutional programs for renting or buying used textbooks, guaranteed textbook buyback programs, alternative delivery of textbook content, and other available cost-saving strategies.

When providing information on a textbook or supplemental information to faculty members, publishers would have to provide written information that included:

- the price of the textbook or supplemental material to college bookstores or other bookstores that serve students;
- the copyright dates of the current and three preceding editions of the textbook;
- a description of any substantial content revisions between the current edition of the textbook or supplemental material and the most recent preceding edition of the textbook or supplemental material, including new chapters, new material covering additional time periods, new themes, or new subject matter.

Textbook publishers would have to provide to faculty information on whether the textbook or supplemental material was available in other formats, such as a paperback or an unbound version, and the price at which the publisher would make such materials in an alternative format available to bookstores.

The bill would require a textbook publisher to comply with the bill's requirements for a custom textbook – one that is compiled at the direction of a faculty member - only to the extent reasonably practicable. The bill would restrict the bundling of materials for sale in a single package.

The bill would take effect September 1, 2011, and would apply beginning with the 2012 fall semester.
SUPPORTERS SAY:

CSHB 33 would align state law with provisions on required information concerning college textbooks already in federal law. It would mirror the federal Higher Education Opportunity Act (HEOA). Since the federal law became effective in July 2010, universities and book vendors already have had to put many of the bill's provisions into practice. These provisions were negotiated and agreed to by multiple stakeholders over several years. Even though the bill would require institutions to do a few additional things, they would be wholly in line with the existing federal requirements.

Many institutions already voluntarily provide textbook assistance through textbook loan programs. Many college bookstores also provide textbook rental programs that can cut the price of textbooks by almost half.

Textbook costs are an increasingly large part of the cost of higher education. The bill would help students make more informed decisions about their books and courses to manage costs. If faculty were made aware of less costly alternatives to bound textbooks, they also could make more informed decisions.

Requiring institutions to make course schedules and textbook information available to both college bookstores and other bookstores that serve students would improve transparency and enable students to comparison shop for the books and materials they need, while facilitating fair treatment of all bookstores that serve students. It would allow for competition and benefit students with lower prices. The bill would require institutions to make reasonable efforts to inform students about textbook buy-back programs, programs to rent and purchase used textbooks, and other cost-saving strategies.

Because some colleges and universities are moving away from printed course catalogues, the bill would not require institutions to produce hard copies of their course catalogues in order to comply with bill. If an institution did produce a hard copy of its course catalogue, it still would be required to print textbook information within it.

Since many colleges and universities contract with their university-affiliated bookstore to collect information needed from faculty and publishers, the bill would authorize the course schedule information to be posted on the college bookstore’s website. The university affiliated-bookstore still would be required to disseminate textbook information as it
was compiled and revised to other bookstores that generally serve the students of the institution.

OPPONENTS SAY: No apparent opposition.

NOTES: The committee substitute differs from the original version of the bill by applying to both public and private higher education institutions. It changed “university affiliated bookstore” to “college bookstore” to mirror language in the federal HEOA law. The substitute would allow a college or university that contracted with its university bookstore to collect information needed from faculty and publishers to comply with the bill and would stipulate that the information could be posted on the college bookstore’s website. The substitute would specify that an institution did not have to produce a hard copy of its course catalogue in order to comply with the bill.
SUBJECT: Creating an innocence commission to investigate wrongful convictions

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Y. Davis, Rodriguez

1 nay — Zedler

1 absent — Christian

WITNESSES:

For — Joshua Houston, Texas Impact; Ana Yanez-Correa, Texas Criminal Justice Coalition; (Registered, but did not testify: Anthony Graves, Texas Defender Service; Maria Huemmer, Texas Catholic Conference - Roman Catholic Dioceses of Texas)

Against — None

On — Scott Henson, Innocence Project of Texas; (Registered, but did not testify: Jim Bethke, Task Force on Indigent Defense)

BACKGROUND: The 81st Legislature in 2009 enacted HB 498 by McClendon, which required the state's Task Force on Indigent Defense to study the causes and means of the prevention of wrongful criminal convictions and created an advisory panel to assist the task force in the study. The panel, named the Timothy Cole Advisory Panel on Wrongful Convictions, was composed of 10 members designated in the bill, including legislators and representatives of the criminal justice system, law schools, and the governor. In August 2010, the panel released its report, which included recommendations for changes in the state's criminal justice system. Under HB 498, the authority for the panel expired on January 1, 2011.

DIGEST: CSHB 115 would create the Texas Innocence Commission. The commission would be required to thoroughly review or investigate each case in which an innocent person was convicted and exonerated, including convictions vacated based on a plea to time served, to:
• identify the causes of wrongful convictions;
• determine errors and defects in the laws, rules, proof, and procedures used to prosecute cases or implicated by cases of wrongful convictions;
• identify errors and defects in the Texas criminal justice process;
• consider and develop solutions to correct the errors and defects; and
• identify procedures, programs, and educational or training opportunities demonstrated to eliminate or minimize the causes of wrongful convictions and to prevent wrongful convictions and the resulting executions.

The commission would be composed of nine members appointed by the governor who would serve staggered six-year terms and would elect their presiding officer. The commission would have to consider potential implementation plans, costs, savings, and the impact on the criminal justice system for each potential solution it identified.

At least annually the commission would have to conduct a public hearing that would have to include a review of its work. The commission would have to meet in Austin at least once a year, but could meet at other times and places. Proceedings would be conducted by majority vote of those present.

The University of Texas at Austin, the Legislative Council, and the Legislative Budget Board (LBB) would be required to assist the commission. The commission could request assistance from other state agencies and officers, who would have to assist the commission if requested. The commission also could inspect the records, documents, and files of any state agency.

The commission would be able to enter into contracts for necessary and appropriate research and services to facilitate its work or to investigate a post-exoneration case, including forensic testing and autopsies.

The commission would have to compile an annual report of its findings and recommendations and could compile interim reports. The findings and recommendations in official commission reports could be used as evidence in any subsequent civil or criminal proceeding, according to the procedural and evidentiary rules that applied for that proceeding. The commission’s reports would have to be submitted to the governor, the lieutenant
governor, the speaker, and the Legislature by deadlines set in the bill. Commission reports would have to be available to the public on request. The commission’s working papers would be exempt from public disclosure requirements.

The commission would be able to accept gifts, grants, and donations, but would have to do so in an open meeting and report each item in its public records. From the grants it accepted, the commission could disburse subgrants for appropriate programs, services, and activities.

Commission members would not be compensated for service but could be reimbursed for expenses, if appropriated funds were available. CSHB 15 would establish operating requirements for the commission, including for member qualifications, grounds for removal from the commission, and commission member training. Neither state employees nor registered lobbyists could serve on the commission.

The commission would not be subject to Government Code provisions governing state agency advisory committees, but would be subject to the Texas Sunset Act, and would be abolished September 1, 2023, unless continued by the Legislature.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. Commission members would have to be appointed within 60 days of CSHB 115’s effective date.

**SUPPORTERS SAY:**
CSHB 115 is necessary to address the state’s problem of wrongful criminal convictions. The wrongful conviction and imprisonment of any innocent person is a miscarriage of justice that carries with it a moral obligation to prevent additional miscarriages of justice. CSHB 115 would help the state address this issue. The bill would continue the work done by the Timothy Cole Advisory Panel, created by the 81st Legislature to advise the state’s Task Force on Indigent Defense in studying wrongful convictions, which finished its assignment in August 2010.

In Texas, at least 42 men have been exonerated after wrongful convictions, according to the Innocence Project. Many of these inmates served decades in prison before being exonerated through DNA evidence or on other grounds. The innocence commission created by CSHB 115 could investigate such cases, help identify what went wrong and why, examine
the criminal justice system as a whole, and recommend changes to prevent future wrongful convictions. This could help ensure public safety and confidence in the criminal justice system, since a wrongful conviction may mean that a guilty person remains unpunished. An innocence commission could investigate cases similarly to the way the national safety board investigates transportation accidents.

The commission would not blur the lines between state entities and the courts because the bill clearly states that the commission would examine cases only after an exoneration. Since the state’s clemency system can be slow, the bill would not limit the commission’s authority to investigating only persons who had been formally pardoned. The commission would not work to achieve exonerations, only to investigate those that had occurred.

The need for an innocence commission is not eliminated because certain facets of the criminal justice system, such as indigent defense and post-conviction DNA testing procedures, have been reformed in recent years or because the Legislature is considering additional changes to front-end procedures such as interrogations. An innocence commission would identify additional needed changes, examine the system as a whole, and determine which procedures were followed and which failed in individual cases.

The Legislature needs to create a state entity to examine exonerations and recommend systemic changes because currently there is no adequate mechanism for doing so. While other bodies may recommend changes to criminal justice procedures, the innocence commission could do so based on findings from actual cases. The exoneration of some individuals through the judicial or clemency systems does not necessarily force the examination or change of the criminal justice system as a whole. Innocence projects, such as those at some Texas law schools, focus on individual cases and should not be depended upon to examine systemic issues. A legislatively created entity would express the will of the Legislature that certain issues be examined, put the authority of the state behind its actions, be directly tied to lawmakers with power to make changes, and make the body more accountable to the public through legislative oversight. Having the governor appoint the members would allow them to be independent.

The authority and powers that CSHB 115 would grant the commission would be necessary and appropriate to perform its duty to investigate
exonerations. The commission’s authorization to contract for services is necessary so that it could adequately investigate cases. The bill would allow the findings in the commission’s reports to be admissible in a court, according to procedural and evidentiary rules, to ensure that any use of the commission’s findings was appropriate. The ability to have other agencies assist the commission is important to make the best use of state resources. Fears about the commission overreaching its authority or abusing its powers are unfounded because it would be clearly tasked with examining the causes of exonerations, not proving exonerations.

Fears that an innocence commission would erode support for the death penalty are unfounded. The death penalty itself not a cause of wrongful convictions, which is what the commission would be charged with examining. Under CSHB 115, the commission would consist of gubernatorial appointees who could be held accountable for their reports and actions. The Legislature would have oversight of the commission and the power to revise or eliminate it if its work strayed from legislative mandates.

The commission’s appointed members, limited mission, and legislative oversight would help ensure that it did not become an unwieldy bureaucracy. The fiscal note estimates no fiscal implications for the state, and any appropriations for the commission would have to be approved by the Legislature. The bill would allow the commission to accept grants and gifts that could be used to fund its work. In addition, the commission would be assisted by the Legislative Council, the LBB, UT-Austin, and, as needed, other state agencies.

**OPPONENTS SAY:**

It is unnecessary to create an innocence commission in Texas because the criminal justice and legislative systems in the state have checks and balances that work to achieve justice and to identify and address problems. Other entities in the state can and do review and report on wrongful convictions. The commission that would be created by CSHB 115 would have powers that were too broad and open-ended and that would fall outside the state’s traditional jurisprudence system.

It is unfair to use cases that may be decades old to argue for an innocence commission. In the past two-and-a-half decades, the state’s criminal justice system has improved substantially, resulting in a just and fair system that protects the public. For example, the state’s Fair Defense Act improved the system that provides attorneys for indigent criminal
defendants, and the state now has a system of post-conviction DNA testing that allows defendants to get testing that was not available when they were convicted.

Post-conviction exonerations and the Texas criminal justice process could be studied without creating a new governmental entity. An interim study could be conducted by a legislative committee. The governor, the attorney general, or another state official could appoint a special committee to study the issue of wrongful convictions. The Texas Criminal Justice Integrity Unit, established in June 2008 by Judge Barbara Hervey of the Court of Criminal Appeals, has studied the state’s criminal justice system and issued a report that included recommendations for preventing wrongful convictions on the front end of the system. Innocence projects at the state’s law schools already investigate alleged claims of innocence and receive some state funding. Other efforts include those on the local level, including in Dallas and Harris counties.

CSHB 115 would invest an innocence commission with inappropriate authority and quasi-judicial powers. The commission would have to investigate post-conviction exonerations, which are undefined. The authority would not be limited to cases involving a pardon or that had other specific criteria. The commission would be allowed to contract for forensic testing and autopsies in individual cases, powers that would be inappropriate for a state entity tasked with studying convictions that already have been identified as wrongful. With these powers, the commission could become an entity working to prove an exoneration, rather than one studying those that already have occurred. The bill would require other state agencies to assist the commission, something that could be difficult or inappropriate, and would allow findings and recommendations of the commission to be admissible in civil or criminal proceedings, which could lead to complications in the courts.

The state should continue to let the court and clemency systems handle individual cases of alleged innocence. The Legislature should focus on preventing errors at the front end of the criminal justice system, such as eyewitness identification or interrogations, and bills in these areas currently are pending in the Legislature. Pursuing these types of reforms would be better than spending resources to examine cases that relied on outdated procedures.
An innocence commission could be used as a back-door way to erode support for the death penalty in Texas. It would emphasize relatively few mistakes – especially those from long ago – in a system for which rigorous standards are enforced and extensive opportunities for review afforded. CSHB 115 would create a commission that could reflect a bias toward eliminating the death penalty, focused only on negative aspects of criminal cases and lacking the traditional adversarial process central to the criminal justice system. This could institutionalize opposition to the death penalty and allow the use of public funds and the weight of the state to further the political goal of eliminating capital punishment, an objective not shared by most Texans.

Creating an innocence commission would unnecessarily add to state bureaucracy and to demands for state funding. It is unclear how such a commission would obtain funds to reimburse members for expenses and to operate. It could be hard to abolish because governmental entities traditionally are difficult to eliminate and tend to grow in scope to justify their continued existence.

OTHER OPPONENTS SAY:
It might be better to create a commission composed of elected officials or representatives of the criminal justice system than one consisting of gubernatorial appointees who could be politically motivated.

NOTES:
The committee substitute made several changes to the original bill, including changing the terms of the members of the Innocence Commission from four years to six years, adding a specific date for the commission to be abolished under the Sunset Act, and eliminating a section regarding legislative findings.

The Legislative Budget Board’s fiscal note anticipates that the bill would not have a significant fiscal implication for the state. It assumes that the bill would not require a significant increase in the workload or demand for resources or services of the agencies required to provide assistance to the commission.

A similar bill, SB 1835 by Ellis, has been referred to the Senate Criminal Justice Committee.
SUBJECT: Prosecuting bigamy and investigating child abuse

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, Morrison, Gonzalez, Hopson, Hughes, Hunter, Naishtat, V. Taylor

1 nay — Laubenberg

WITNESSES: For — None

Against — Tim Lambert, Texas Home School Coalition; Judy Powell, Johana Scot, Parent Guidance Center; Josh Upham

On — Don Clemmer, Office of the Attorney General; Elizabeth Kromrei, Department of Family and Protective Services

BACKGROUND: **Bigamy.** Under Penal Code, sec. 25.01, bigamy — marriage to more than one person — is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000). Bigamy is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if committed with a person age 16 years or older, and 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 committed with someone younger than 16.

The current statute of limitations for bigamy is three years. This means that charges relating to bigamy must be filed within three years of the offense.

**Child abuse or neglect.** The Family Code requires the Department of Family and Protective Services (DFPS) to make reasonable efforts to prevent or eliminate the need to remove a child from his or her home during an investigation of child abuse or neglect. In deciding what is a reasonable effort, DFPS’s top concern must be the child’s health and safety.

DFPS may remove the alleged perpetrator of abuse from the home instead of removing the child if it files a court petition showing that:
there is an immediate danger to the health or safety of the child or the child was a victim of sexual abuse;
- there is no time for an adversary hearing;
- the child is not in danger of abuse from another parent or adult in the home; and
- issuing a restraining order is in the best interest of the child.

In deciding whether to issue an emergency order removing a child from the home, a court must consider if the child is in immediate danger, if there is no time for an adversary hearing, and if DFPS made reasonable efforts to prevent the removal of the child. The court also may consider whether the home includes a person who has abused, neglected, or sexually abused another child.

Current law does not explicitly allow or prohibit a person who had been living with the child during the abuse to continue living with the child once the child is placed elsewhere.

**Birth certificate filing.** The Health and Safety Code makes the failure to properly fill out and file a birth or death certificate a class C misdemeanor (maximum fine of $500).

**DIGEST:**

**Bigamy.** CSHB 253 would extend the statute of limitations for bigamy from three to seven years, unless the victim was younger than 18, in which case it would be 10 years from the 18th birthday of the victim. The change in the statute of limitations would not apply to an offense if its prosecution was barred by limitation before the effective date of the bill.

The bill also would make bigamy with a 17-year-old a second-degree felony, and bigamy with someone 16 years old or younger a first-degree felony. An offense committed before the effective date of the bill would be governed by current law.

**Child abuse or neglect.** CSHB 253 would allow a court to find that, in certain circumstances, no reasonable efforts existed that would prevent DFPS from removing a child from the home. In this case, DFPS would not need to satisfy the “reasonable efforts” requirement in the Family Code.

A court could issue a restraining order to remove an alleged perpetrator of abuse from the home instead of the child if DFPS showed that, in addition
to the existing requirements, the parent or other adult remaining with the child:

- would make a reasonable effort to monitor the home; and
- would report to DFPS and law enforcement if the alleged perpetrator attempted to return to the home.

A restraining order petition removing an alleged perpetrator from a home filed before the effective date of the bill would be governed by current law.

In deciding whether to issue an emergency order removing a child from the home, a court would have to consider if the home included a person who had abused, neglected, or sexually abused another child, in addition to the existing requirements.

CSHB 253 would bar DFPS from allowing any person normally entitled to custody of a removed child from continuing to reside with the child unless:

- the person was a minor when the child was removed;
- the person and child were placed with a licensed and regulated child care provider; or
- a court ordered DFPS to allow it.

**Birth certificate filing.** CSHB 253 would make failure to properly fill out and file a birth certificate a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

**Effective date.** The bill would take effect September 1, 2011.

**Supporters Say:**

**Bigamy.** CSHB 253 would give prosecutors a stronger tool to combat the serious crime of bigamy. Many people who are victims of bigamy do not know about it until after the three-year statute of limitations has ended. Since these cases often take longer to come to light than other crimes, the bill would extend the time that law enforcement officers have to bring charges against offenders.

Further extending the statute of limitations for child victims is necessary because these victims often do not speak out about abuse, or even know they have been abused, until they are older. Child victims often are unable
to report abuse immediately because they are traumatized, fearful, or still living with the abusers. Using the 18th birthday of the victim as the point to start the statute of limitations would match the statute of limitations for injury to a child, the circumstances of which also warrant this limit.

Although prosecutors could bring other charges against bigamists, CSHB 253 would give them another effective tool if they opted to use a bigamy charge. Prosecutors would have the flexibility to use the charges that fit the situation best and offered the most appropriate punishment.

CSHB 253 would not burden defendants unduly. Prosecutors would have to prove that a crime was committed, and defendants would be able to defend themselves. Since proving older cases would be difficult, prosecutors would use discretion and be cautious about pursuing questionable cases with weak or little evidence.

**Child abuse or neglect.** While in most cases, DFPS must and should make all reasonable efforts to prevent a child from being removed from the home, there are certain circumstances when no reasonable efforts exist. In these rare circumstances when the child’s health and safety are in imminent danger, DFPS should be allowed to remove a child.

If DFPS files a restraining order petition for an alleged perpetrator of child abuse to be removed from the home instead of the child, the court should be satisfied that the parent or adult caring for the child would make every reasonable effort to prevent the alleged perpetrator from re-entering the home and would report any attempts to do so to law enforcement.

Abuse of other children in the home is pertinent to the health and safety of a child. Alleged perpetrators of abuse frequently are repeat offenders, and the court should consider the entire story concerning abuse in the home. CSHB 253 would require, instead of allow, a court to consider this.

When a child is removed from a home because of abuse, a person who was responsible and did not adequately care for the health and safety of that child should be prohibited from staying with the child except in certain limited instances.

**Birth certificate filing.** Prosecution of bigamy with a child under the age of 18 and child abuse and neglect are made more difficult when the child’s birth information was never reported to the Bureau of Vital Statistics.
Failure to report this information is a class C misdemeanor, which does not sufficiently deter this practice. Making the failure to properly report a birth a class A misdemeanor would properly deter this practice.

**OPPONENTS SAY:**

**Bigamy.** The current statute of limitation adequately balances the needs of both prosecutors and the accused. Extending the statute of limitations for bigamy could render accused persons unable to defend themselves adequately. Over time, witnesses’ memories fade, and evidence becomes more difficult to obtain.

It is unnecessary to single out a certain type of bigamy for an especially long statute of limitations. Most cases involving bigamy with a child would be prosecuted more effectively under other serious offenses, such as sexual assault.

**Child abuse or neglect.** CSHB 253 would give DFPS far too much power to remove children from their homes and would needlessly punish innocent families across Texas.

By removing the required “reasonable effort” guidelines that are intended to ensure that DFPS takes all steps to keep children in their homes, the bill would allow the state to needlessly remove children from their families and homes.

Requiring a court to consider outside abuse cases, instead of allowing judicial discretion, would deliberately reduce the “imminent danger” standard required for removal of a child. If no imminent danger to the health and safety of a child exists, DFPS should not be allowed to remove the child from the home.

A parent or guardian who is not an alleged perpetrator of abuse should not be needlessly and unconstitutionally punished by being prevented from residing with his or her child. Being removed from a home, regardless of the circumstances, is a traumatic incident for a child, who will need support and care from his or her family.

**Birth certificate filing.** As with a death certificate, failure to fill out and properly file a birth certificate is already a crime as a class C misdemeanor. Increasing the penalty for this crime would be unnecessary and would not serve as a deterrent.
NOTES: A floor amendment acceptable to the author will be offered that would strike language from CSHB 253 that would:

- allow DFPS to remove a child from a home without reasonable efforts to prevent their removal in certain circumstances;
- require a court to consider abuse, neglect, and sexual abuse of another child in the home when determining an emergency removal; and
- bar DFPS from allowing persons normally entitled to custody from residing with the removed child.

The committee substitute removed a provision in the original version of the bill that would have expanded the enforcement of compulsory public school attendance. It also removed language that would classify bigamy with a child as a first-degree felony if the alleged perpetrator was 18 years or older, and as a second-degree felony if the alleged perpetrator was under 18.
SUBJECT: Applying limited liability for corporations to limited liability companies

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Deshotel, Orr, Bohac, Garza, Quintanilla, Solomons, Workman
0 nays
2 absent — Giddings, S. Miller

WITNESSES: For — Val Perkins, Texas Business Law Foundation; (Registered, but did not testify: Mike Barnett, Texas Association of Realtors; David Mintz, Texas Apartment Association)
Against — None

BACKGROUND: Under Business Organizations Code, sec. 101.114, a member or manager of a limited liability company (LLC) is not liable for a debt, obligation, or liability of the LLC, unless the company agreement specifies otherwise.

Under sec. 21.223, a holder of shares, a beneficial owner, or a subscriber for shares whose subscription has been accepted, or any affiliate of such a party or affiliate of a corporation, may not be held liable to the corporation or its obligees regarding:

- the shares, other than the obligation to pay the corporation the full amount of consideration, fixed in compliance with secs. 21.157-21.162, for which the shares were or are to be issued;
- any contractual obligation of the corporation or any matter relating to an obligation on the basis that the holder, beneficial owner, subscriber, or affiliate is or was the alter ego of the corporation or on the basis of actual or constructive fraud, a sham to perpetrate a fraud, or other similar theory; or
- any obligation of the corporation on the basis of the failure of the corporation to observe any corporate formality.

Under sec. 21.224, the limited-liability protections of sec. 21.223 pre-empt any other liability imposed for that obligation.
Under sec. 21.225, the limitation on liability can be suspended if a person:

- expressly assumes, guarantees, or agrees to be personally liable to the obligee for the obligation; or
- is otherwise liable to the obligee for the obligation under any applicable law.

Under sec. 21.226, a pledgee or other holder of shares as collateral security is not personally liable as a shareholder. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver is not personally liable as a holder of or subscriber to shares of a corporation. The estate and funds administered by any of such parties are liable for the full amount of the consideration for which the shares were or are to be issued.

**DIGEST:**

HB 521 would align the standards for piercing the liability shield of limited liability companies with the standards used to pierce the liability shield (“corporate veil”) of corporations. HB 521 would amend the Business Organizations Code to direct that secs. 21.223 (limitation of liability for shareholders), 21.224 (pre-emption of liability), 21.225 (exceptions to limitations on liability), and 21.226 (liability of pledgees and trust administrators) would apply to an LLC and its members, owners, assignees, affiliates, and subscribers.

HB 521 would create several definitions that would be used to apply the rules for piercing a corporation’s limited-liability protections to an LLC. A reference to:

- “shares” would include “membership interests”;
- “holder,” “owner,” or “shareholder” would include a “member” and an “assignee”;
- “corporation” or “corporate” would include a “limited liability company”;
- “directors” would include “managers” of a manager-managed limited liability company and “members” of a member-managed limited liability company;
- “bylaws” would include “company agreement”; and
The bill would take effect on September 1, 2011.

SUPPORTERS SAY:

Current law is silent as to what standards a court should use to determine whether an LLC’s limited-liability protections should be pierced and whether the LLC’s stakeholders should be held personally responsible for the obligations of the LLC. HB 521 would clarify that standards for piercing the corporate veil that currently apply to corporations also would apply to LLCs. HB 521 would provide no more or less protection to LLCs than current law grants to corporations.

Two out-of-state courts recently held that the liability shield for an LLC is less protective than that of a for-profit corporation. These rulings are of serious concern for the thousands of current Texas LLCs and could impact the decisions of prospective businesses weighing whether to move to Texas. Texas case law has supported the alternative position, that state law principles for piercing the corporate veil of corporations should be applied to LLCs. HB 521 would clarify in statute that the standards for piercing the liability shield of a corporation apply equally to an LLC.

Texas created LLCs to allow groups that could not incorporate to enjoy some of the same desirable legal protections provided to a corporation under Texas law. It would be appropriate to use the rules for piercing the limited liability of corporations for analogous situations involving LLCs.

OPPONENTS SAY:

LLCs are inherently less formal than corporations and should not enjoy all the same liability protections that corporations do. It should be easier to pierce an LLC’s limited-liability protections than to pierce those of a corporation. If the stakeholders of an LLC desire the same protections of a corporation, they should incorporate or the Legislature should establish a separate set of standards for piercing limited-liability protections for LLCs.

NOTES:

The companion bill, SB 323 by Carona, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 17 and was reported favorably, without amendment, by the House Business and Industry Committee on April 13.
During the 2009 regular session, a similar bill, SB 1773 by Fraser, passed the Senate by 31-0 and was placed on the General State Calendar, but the House took no further action.
SUBJECT: Allowing advance payment of Driver Responsibility Program surcharges

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 8 ayes — S. Miller, Fletcher, Beck, Burnam, Driver, Flynn, Peña, Walle

0 nays

1 absent — Mallory Caraway

WITNESSES: For — Scott Henson; (Registered, but did not testify: Kristin Etter, Texas Criminal Defense Lawyers Association; Donald Lee, Texas Conference of Urban Counties; Michelle Romero, Texas Medical Association; Denise Rose, Texas Hospital Association; Dinah Welsh, Texas EMS, Trauma & Acute Care Foundation)

Against — None

On — Rebecca Davio, Texas Department of Public Safety

BACKGROUND: In 2003, the 78th Legislature enacted HB 3588 by Krusee, which created the Driver Responsibility Program (DRP), a system for identifying drivers who habitually violate traffic laws and assessing surcharges for different kinds of violations. Drivers pay a surcharge to the state if they accumulate a certain number of points or commit certain offenses. The points are based on traffic violations committed after September 1, 2003, including:

- accumulating six or more points from specific moving violations;
- driving while intoxicated (DWI) or failing a blood alcohol test;
- driving with a suspended license or without insurance; or
- driving with no license or an expired license.

The surcharge, which is collected each year for three years, ranges from $100 for the first six points to $2,000 for a DWI offense with a blood alcohol test of 0.16 or more.

About half of the DRP surcharge is designated for the state’s Trauma Facility and EMS Fund, while the rest is used for program administration and for general revenue.
In subsequent sessions, the Legislature has authorized DPS to establish a periodic amnesty program and has required the department to establish a program for indigent drivers and an incentives program allowing the deduction of one point for each year that a driver does not accumulate points.

The DPS offered a one-time amnesty for drivers who had a surcharge assessed between September 30, 2004, and December 31, 2008, and are delinquent on those payments. The deadline to apply for the amnesty expired on April 7, 2011.

**DIGEST:**

HB 588 would require DPS to offer drivers with DRP surcharges the option to make a single upfront payment of the amount due during the next three years. DPS would have to notify the driver of the amount due over three years and to offer the option to make a one-time advance payment. If the driver made the payment and did not commit any additional violations requiring a surcharge, DPS would not have to take additional action to collect the surcharge or annually notify the driver of the surcharge.

The change would apply to any surcharge assessed before, on, or after the September 1, 2011 effective date of the bill.

**SUPPORTERS SAY:**

HB 588 would allow drivers owing DRP surcharges for three years, particularly those convicted of driving without a license, to make a one-time payment to clear their accounts. It can be a hassle for both the driver and DPS to track these payments for three years. Allowing this option would reduce the time and costs for making installment payments. Besides, some drivers will want to rectify the situation by making the payment as quickly as possible. They still could make installation payments and would not have to pay a lump sum.

The bill would fix an oversight in the program that makes no provisions for a one-time lump sum payment. DPS should be required to accept upfront payments even if few drivers took advantage of the program. Unlike the optional amnesty, indigent, and incentive programs, an upfront payment program would allow the state a better chance to collect the full amount due for the surcharges.

Despite criticism of its implementation, the DRP program has yielded about $720 million in funding for trauma hospitals since its inception, and
eliminating the surcharge would take needed dollars away from an already
distressed state budget.

**OPPONENTS SAY:**

HB 588 would raise little or no extra money. Drivers would just wait for the next amnesty period, if they even bothered to try to settle their accounts. The experience with the most recent amnesty period — which attracted a compliance rate estimated by DPS to be about 14 percent — offers little optimism about the success of a single upfront payment program.

**OTHER OPPONENTS SAY:**

All drivers owing a surcharge, not merely indigent ones, should receive a reduced rate to make a one-time payment. Providing a discount would give drivers an incentive to make those payments, and more money would be collected more quickly for trauma hospitals and the general revenue fund.

**NOTES:**

According to the fiscal note, the bill would have no significant fiscal implication because it would not affect the amount of revenue received from the surcharge, only the year when the revenue was received.

On March 22, the Homeland Security and Public Safety Committee considered two other DRP bills. The committee left pending HB 299 by Berman, which would abolish the DRP, and HB 1810 by Burnam, which also would repeal the program but would replace funding for the assistance to trauma care hospitals with an increase in the cigarette tax.
SUBJECT: Requiring notice of withdrawal or nonattendance of foreign students

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 6 ayes — Branch, Bonnen, Brown, D. Howard, Johnson, Lewis

0 nays

3 absent — Castro, Alonzo, Patrick

WITNESSES: None

BACKGROUND: Three avenues allow students from other countries to come to the United States as nonimmigrants for a specific purpose and period of time. The F visa is for those pursuing a full-time academic education; the M visa is for those pursuing a non-academic (vocational) course of study; and the J visa is a cultural exchange visa that can include scholars, professors, and foreign medical graduates, among others.

Under 8 C.F.R. sec. 214, students issued F and M visas must physically check in to their places of study before registering for classes. Educational institutions approved to receive foreign students must submit and update certain information to the federal Student and Exchange Visitor Information System (SEVIS) administered by the Department of Homeland Security (DHS), including:

- identity and address of the alien;
- nonimmigrant classification of the alien, including the date of visa issuance, and any change or extension;
- academic status of the alien (e.g., full-time enrollment); and
- any disciplinary action taken by the school, college, or university as a result of a crime committed by the alien.

An educational institution is required to update SEVIS within 21 days of certain changes in a student’s status, including a student who has failed to maintain status or complete his or her program or a student who has graduated early.
Foreign students who decide to transfer schools must first notify their current educational institutions of the intent to transfer. The student must obtain the necessary documentation from the new institution, which is responsible for determining that the student has maintained the student’s status at the original institution and thus is eligible for transfer. When the change of schools is complete, the new institution is required to update the SEVIS within 15 days of the program start date.

U.S. Customs and Immigration Services (USCIS) performs regular audits for compliance with these requirements. Institutions that fail to adhere to the requirements could lose their ability to accept international students.

**DIGEST:**

CSHB 743 would add Education Code, sec. 51.9091 to require a public institution of higher education approved by the U.S. secretary of Homeland Security to enroll foreign students to promptly notify the federal Student and Exchange Visitor Information System (SEVIS) or a successor program if a student who was enrolled under a nonimmigrant F or M visa:

- withdrew from the institution;
- withdrew from all courses in which the student was enrolled;
- was dismissed by the institution for non-attendance; or
- had any other official administrative action taken as a result of non-attendance.

The bill would take effect September 1, 2011.

**SUPPORTERS SAY:**

CSHB 743 would add a requirement for public educational institutions to notify SEVIS if a foreign student withdrew from all of the student’s courses or from the school or if a program terminated the student’s enrollment for not attending class. While a federal standard is in place, adding this standard in the Texas law would emphasize the importance of this system. By requiring institutions to notify SEVIS promptly, CSHB 743 would encourage faster reporting, creating a more accurate and complete reporting system for foreign students attending a college or university on a student visa.

Concerns about security remain a top priority nearly 10 years after the September 11, 2001, terrorist attacks by foreign nationals, which included several terrorists on student visas. The arrest and arraignment of a Saudi student in Lubbock accused of buying chemicals and equipment to build a
bomb is a reminder of the importance of keeping track of foreign students studying in the United States. The numbers of foreign nationals attending American educational programs has more than doubled in the last two decades.

OPPONENTS SAY: CSHB 743 is unnecessary because federal law already mandates that all higher education institutions enrolling foreign students participate in the SEVIS program, which collects comprehensive data about the status of foreign students.

NOTES: The committee substitute would require a public institution of higher education to promptly notify the federal notification system under the conditions outlined by the bill rather than to immediately notify the system.

The companion bill, SB 1009 by Huffman, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 7 and was referred to the House Committee on Higher Education on April 11.
SUBJECT: Revising eligibility criteria for service on an appraisal review board

COMMITTEE: Ways and Means — favorable, without amendment

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

0 nays

1 absent — Woolley

WITNESSES: For — Georgia Provost

Against — None

On — Debbie Cartwright, Comptroller of Public Accounts

BACKGROUND: Under Tax Code, sec. 6.412, a person cannot serve on an appraisal review board of an appraisal district in a county with a population over 100,000 if that person has served for all or part of the previous three terms as a board member or auxiliary board member.

DIGEST: HB 975 would allow a person who served all or part of three consecutive terms as a member of an appraisal review board for an appraisal district to serve another term, as long as the person did not serve a consecutive fourth term.

The bill would take immediate effect if finally passed by a two-thirds record vote by the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY: People who have served on an appraisal review board for all or part of three consecutive terms already have been trained and have experience in the field. Barring people who already have training and experience from continuing to serve does the county a disservice. There are currently 39 counties affected by this prohibition.
In counties with populations under 100,000, some people will serve on an appraisal review board for three consecutive terms, take off one term, and then return to serve another term. HB 975 would allow counties with populations larger than 100,000 to have the same option. It can be difficult to find people to serve on appraisal review boards, and this bill would provide counties with a larger pool of applicants from which to choose.

OPPONENTS SAY:

HB 975 would roll back the current limits on how many years a person could serve on an appraisal review board in the state’s larger counties. It is important to rotate new people into an appraisal review board so that the board’s operations do not become overly institutionalized and unresponsive to taxpayer appeals. Board members and auxiliary board members should be impartial arbitrators of the arguments and claims of both taxpayers and the appraisal districts. Rolling back term limits could compromise this.
SUBJECT: Defining “last work” in relation to initial unemployment insurance claims

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 6 ayes — J. Davis, Vo, R. Anderson, Miles, Murphy, Sheets

0 nays

1 absent — Reynolds

WITNESSES: For — (Registered, but did not testify: Kathy Barber, National Federation of Independent Business; Cathy Dewitt, Texas Association of Business; Monty Wynn, Texas Municipal League)

Against — None

On — Steve Riley, Texas Workforce Commission

BACKGROUND: Labor Code, Title 4, Subtitle A is the Texas Unemployment Compensation Act (TUCA), which establishes the state’s unemployment insurance (UI) system in statute. Labor Code, ch. 208 addresses the filing of claims for UI benefits.

DIGEST: HB 1050 would amend Labor Code, sec. 208.002 to define “last work” and “person for whom the claimant last worked” for use in connection with an initial UI benefits claim. Under the bill, the “person for whom the claimant last worked” would be the last person for whom the claimant worked that met the TUCA definition of an employer or the last person for whom the claimant worked at least 30 hours during a week.

The bill would take effect September 1, 2011, and would apply only to claims for unemployment insurance benefits filed on or after that date.

SUPPORTERS SAY: HB 1050 would close an eligibility loophole in the unemployment insurance system that currently allows individuals to circumvent disqualification and collect UI benefits at the expense of their prior employers or the UI Trust Fund. Under current law, an employee who is fired can maintain eligibility for unemployment benefits by assuming an
informal, temporary job for a short time, often with a neighbor, relative, friend, or other individual not liable for UI taxes under the TUCA. Once the short-term job ends, the person applies for benefits that are paid by the last employer who paid unemployment taxes, frequently the employer that fired that person. HB 1050 would add a reasonable and enforceable provision to define "last work" that would close this loophole and effectively end this deceptive practice. According to a 2003 TWC survey, eight other states have incorporated provisions similar to those in HB 1050 into their UI statutes to address this issue, and another 27 states have incorporated some other form of temporary and casual-labor exclusions from the "last employer" determination.

The Texas Workforce Commission (TWC) estimates that implementing HB 1050 would stop 3,400 fraudulent claimants per year, saving the UI Trust Fund an estimated $18 million in fiscal 2012 and another $17 million in each of the subsequent four years, for a total potential five-year savings of $84.6 million. By eliminating these illegitimate claims, the bill would reduce the benefit charges and UI tax rates employers would pay.

HB 1050 would strike the right balance between targeting fraud and supporting deserving UI claimants by requiring one of two provisions defining "last work" to be met. There are legitimate employers, such as churches and non-profits, who would not be registered as employers with TWC and would not report wages for UI purposes but could have employees working at least 30 hours per week. Similarly, an individual could work full time for a new employer for four to five weeks at minimum wage before the employer had paid $1,500 in earnings during the quarter, thus becoming a “liable employer” for UI purposes. Such employees would not qualify for benefits when laid off if both “last work” provisions had to be met. HB 1050 would appropriately balance eligibility flexibility and program integrity safeguards.

**OPPONENTS SAY:**

HB 1050 would prevent deserving unemployed Texans from receiving the UI benefits they had earned. The state's unemployment insurance system already presents so many obstacles that Texas ranks 48th in the country for the percentage of unemployed job-seekers claiming UI benefits, according the U.S. Department of Labor. The bill would deny benefits to a laid-off Texan who had worked for a legitimate employer that did not have to report wages for UI purposes, such as a church or non-profit, if that individual had worked fewer than 30 hours per week. TWC already has strict penalties for fraud in place. The state should be looking for ways to
ensure the deserving unemployed receive the UI benefits for which their employers have already paid taxes, rather than focusing on measures that would only worsen our shamefully low 20 percent recipiency rate.

The extent of fraud in the unemployment system and the fiscal benefits of the bill may be overstated. Although TWC has stated the bill would result in large savings to the UI Trust Fund and reduced employer taxes, the fiscal note reports there would be no significant fiscal implication to the state and no impact on the state UI tax rate.

OTHER OPPONENTS SAY:

HB 1050 would be even more effective in reducing fraudulent claims if both of its provisions defining “person for whom the claimant last worked” were required, rather than just one or the other, so that the claimed employer had to meet the TUCA definition of employer and the claimant had to have worked at least 30 hours during a week for that employer.

NOTES:

The companion bill, SB 458 by Seliger, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 24 and was reported favorably, without amendment, by the House Economic and Small Business Development Committee on April 12.

In 2009, HB 1348 by Christian and SB 859 by Seliger were identical to this session’s HB 1050. HB 1348 died in the House Calendars Committee, and SB 859 passed the Senate but died in the House.
SUBJECT: Alert for missing person with intellectual developmental disability

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — S. Miller, Fletcher, Beck, Burnam, Driver, Flynn, Peña, Walle

0 nays

1 absent — Mallory Caraway

WITNESSES: For — (on original version:) Dennis Borel, Coalition of Texans with Disabilities; Lon Craft, Texas Municipal Police Association; Susanne Elrod, Texas Council of Community Centers; Tamela Kelley; Connie Lee Mauk, Aim High Home and Community Services; Michelle Mills, Mary’s House; (Registered, but did not testify: Melinda Griffith, Combined Law Enforcement Association of Texas; (on committee substitute:) Clay Boatright, The ARC of Texas)

Against — None

On — Angela Lello, Texas Council for Developmental Disabilities

BACKGROUND: The 78th Legislature in 2003 enacted SB 57 by Zaffirini, which created a statewide AMBER (America’s Missing: Broadcast Emergency Response) alert system to track abducted children and return them to safety. This codified the governor’s 2002 executive order to create the statewide AMBER alert system. The network is a cooperative program of the Governor’s Office, the Department of Public Safety (DPS), the Department of Transportation (TxDOT), and the Texas Association of Broadcasters.

When a local law enforcement officer activates an AMBER Alert, DPS issues a notice on the Emergency Alert System, which is relayed to television and radio stations within a 200-mile radius of the kidnapping. DPS also alerts other law enforcement agencies and instructs TxDOT to flash messages on electronic highway signs warning motorists to watch for the suspect’s vehicle. The Texas Lottery Commission also participates by
displaying information about abducted children on electronic lottery terminal signs at businesses selling lottery tickets.

The 80th Legislature in 2007 enacted SB 1315 by Uresti, which created a statewide Silver Alert system for missing senior citizens. DPS issues a Silver Alert upon request of a local law enforcement agency if:

- a Texas resident aged 65 years or older is reported missing;
- the senior citizen has an impaired mental condition; and
- an investigation determines that the senior citizen’s disappearance poses a credible threat to his or her health and safety.

Health and Safety Code sec. 593.005 requires a physician or psychologist to base a determination of mental retardation (now more commonly known as intellectual developmental disability) on an interview and assessment that includes, at a minimum:

- a measure of the person’s intellectual functioning;
- a determination of the person’s adaptive behavior level; and
- evidence of origination during the person’s developmental period.

The physician or psychologist may use a previous assessment, social history, or relevant record from a school district, public or private agency, or another physician or psychologist in determining that any of these items is valid. The determination is performed at state expense if the person is indigent.

**DIGEST:**

CSHB 1075 would establish an alert system for missing persons with intellectual developmental disabilities. DPS would have to activate the AMBER Alert system upon a local law enforcement agency’s request for a person with an intellectual developmental disability if:

- a person with an intellectual developmental disability was reported missing;
- local law enforcement at the time of the report verified that the person had an intellectual developmental disability and that his or her location was unknown;
- an investigation determined that the disappearance posed a credible threat to the person’s health and safety; and
sufficient information was available to give to the public that could assist in locating the person.

An intellectual developmental disability would be defined as significantly subaverage general intellectual functioning that was concurrent with deficits in adaptive behavior and originated during the developmental period. The term would include a pervasive developmental disorder, such as autism, that met the criteria in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

The bill would incorporate the termination process for the new alert system into the AMBER Alert termination process now covering only abducted children.

The DPS director by rule could assign a name other than AMBER to the alert system when it was activated for missing persons with intellectual developmental disabilities.

The bill would take effect on September 1, 2011, and the DPS director would have to adopt rules and issue directives necessary to implement it by December 1, 2011.

SUPPORTERS SAY:

An alert system for missing persons with intellectual disabilities would help locate these individuals quickly and before they became endangered. The program would build upon the success of the AMBER Alert system for abducted children, which has made the public aware that an AMBER alert means a vulnerable person is missing and needs to be found immediately.

Since it is more widely known, the AMBER Alert system would be a better vehicle for this purpose than the Silver Alert system. Using the AMBER Alert system for this population also makes sense because children and those with intellectual developmental disabilities often are vulnerable in the same ways, such as in not recognizing dangerous situations.

This bill is needed to stop another tragedy like the 2010 death of a 31-year-old Mansfield woman with intellectual developmental disabilities, who wandered away from home and was discovered five days later drowned in a creek four miles from her home. Although her family
reported her missing, she did not meet the criteria for an AMBER alert. It was later revealed that a member of the community saw her walking barefoot and was concerned, but did not report the sighting because she was unaware that the woman was missing.

Since the AMBER Alert system already is in place and so few people with intellectual developmental disabilities are likely to be the subject of an alert, the cost of adding this vulnerable population should be minimal. According to the fiscal note, it is unknown how many reported missing people would qualify as having intellectual developmental disabilities, but the number is expected to be relatively small. Six other states have alert systems that protect those with intellectual disabilities.

Finding a missing person with intellectual developmental disabilities is different from finding a missing 10-year-old, but the general need for prompt public awareness remains the same. The alerts could be made on a strictly local basis if the person wandered away on foot, causing no more alarm than necessary. The DPS director could change the name of the alert to prevent any confusion.

Opponents Say:

Overuse of alerts could reduce their effectiveness. Activating alerts too often in nonemergencies, such as when a person just wanders away down the street, could make the public less responsive in more serious criminal child abduction cases. Too many appeals could cause the public to stop heeding them and could dilute the effectiveness and credibility of all alert programs.

AMBER Alerts are for children who have been criminally abducted, and people might assume that an AMBER Alert for an intellectually developmentally disabled person meant that the person was abducted when they had just wandered away. Law enforcement should not create more alarm than necessary. The Silver Alert system might be a better fit for this proposal because that program is also designed to locate missing, vulnerable people who need to be found but who are not victims of crime.

Although DPS could call the alert something other than AMBER, the bill would require it to change the name for an alert for a person with intellectual developmental disabilities, so public and media confusion could result.
OTHER OPPONENTS SAY:

CSHB 1075 might not protect all whom it intends to protect. A mother who calls law enforcement to report her missing autistic child would be asked whether her child is intellectually developmentally disabled according to the Health and Safety Code. Although autistic, the child may not fit the description under that statute. This would contradict the bill’s perceived intention to include persons with pervasive developmental disorders, which include autism.

NOTES:

The original version of the bill would have implemented an AMBER Alert system for missing incapacitated persons rather than for missing persons with intellectual developmental disabilities.

The substitute would allow the DPS director by rule to assign a name other than AMBER when the system was activated for a missing person with an intellectual developmental disability. The original bill would have repealed a law regarding a local law enforcement agency’s duty to verify that activation criteria were met before contacting DPS to request activation; the substitute would not repeal that law. The original bill would have required local law enforcement that located a missing person to notify DPS as soon as possible; the substitute did not include that requirement.

HB 2099 by Truitt, which would create an alert for a missing person with an intellectual disability through the Silver Alert program, was considered in a public hearing by the Homeland Security and Public Safety Committee on March 22 and was left pending.
SUBJECT: Standards for emergency notification system by public service providers

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — S. Miller, Fletcher, Beck, Burnam, Driver, Flynn, Peña, Walle

0 nays

1 absent — Mallory Caraway

WITNESSES: For — (Registered, but did not testify: James (Drew) Campbell, Tech Radium; Heather Cooke, City of Austin, Austin Water Utility)

Against — (Registered, but did not testify: Mari Ruckel, Texas Oil and Gas Association)

On — Ben Downs, Texas Association of Broadcasters

DIGEST: CSHB 2257 would authorize public service providers to enter into contracts for emergency notification systems that use a dynamic information database to inform their customers, governmental entities, and others about disasters or emergencies and about required actions during disasters or emergencies.

The dynamic information databases would have to:

- be able to simultaneously transmit emergency messages to all recipients through at least two industry-standard gateways to at least one telephone or electronic device in a way that did not negatively impact the existing communications infrastructure;
- allow the public service provider to store prewritten emergency messages in the database and generate messages in real time based on provider inputs;
- allow recipients to select the language in which to hear the messages and transmit messages in that language;
- convert text messages to sound files and transmit those sound files;
- assign recipients to priority groups for notification; and
- allow recipients’ responses to be collected and verified.
The dynamic information database would have to comply with specific federal programs and standards outlined in the bill.

Public service providers using emergency notification systems authorized by CSHB 2257 would be entitled to information that is confidential under Health and Safety Code laws dealing with 911 services information. The public service provider would be allowed to use this information only for the notification system authorized by the bill.

CSHB 2257 would apply to persons or entities that provide essential products or services to the public and are required to be regulated under the Natural Resources Code, Utilities Code, and Water Code, including common carriers in the Natural Resources Code, telecommunication providers under the Utilities Code, and others providing or producing heat, light, power, or water.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 2257 would help ensure that information sent from service providers through third parties during disasters and emergencies was effective and targeted and did not strain the public communications system. Currently, public service providers like water and power companies may contract with a third party for a system to make notifications in an emergency, but such systems are not required to meet any minimum standards and may not use a targeted system to send out notifications. CSHB 2257 would solve this problem by establishing standards for these notification systems and requiring that they use a dynamic data base.

During an emergency, service providers may need to notify the public, first responders, and others about an emergency or a disaster or what to do during one of these events. For example, a utility might want to target messages to residents in one area about an impending flood, while not notifying those who would not be in danger, or a utility may want to notify residents of rolling power blackouts like the ones experienced this winter.

Some service providers have contracted with private entities to provide these notifications, but without minimum statewide standards, the quality of these systems cannot be guaranteed. The standards in CSHB 2257
would give service providers confidence that any contractor they hired was offering a system that could operate effectively in an emergency and would meet the public’s needs. Because public safety is at issue during disasters and emergencies, it would be appropriate for the state to establish minimum standards for these systems.

CSHB 2267 would establish reasonable minimum requirements to ensure that these third-party notification systems were effective and used dynamic databases, which allow portions of databases to be targeted. Using this type of database for notifications could help ensure that the telephone systems were not overwhelmed. Other standards would ensure quality systems by requiring that messages be translated into multiple formats so that they could be sent to more recipients simultaneously and that the system be able to group recipients by priority so that, for example, first responders could be notified before others. The technology to meet these requirements already is available and in use by a number of existing companies.

CSHB 2257 is permissive and would not require any public service provider to adopt a notification system. The bill would not replace traditional methods of spreading emergency information, such as the emergency alert system of broadcasters or state agency notifications. Instead, it would give public service providers an additional tool for disseminating emergency public service messages. Any notices sent through systems authorized in CSHB 2257 would be created and authorized by the service providers, not the third-party contractors.

The bill would authorize public service providers operating notification systems authorized by the bill to extract information from the 911 database to ensure that notifications could go to those who might be affected by an emergency. This information would include land-line phone numbers and addresses, not any personal data. The authorization would be in-line with the purpose of the database for emergency notifications and with others who have access to the information. CSHB 2257 would ensure that the privacy of any information taken from the 911 database was protected by limiting use of it to informing persons of a disaster or emergency. In addition, anyone using information in the 911 database would have to follow rules governing the database’s usage.

Concerns about notification systems operating outside of a local area’s emergency management system are misguided because local service
providers already are adopting their own notification systems and sending out information during emergencies. CSHB 2257 would bring uniformity and standards to these systems, but would not interfere with the current, established notification systems that operate through local emergency management coordinators.

**OPPONENTS SAY:**

The sending of emergency notifications should be coordinated as a part of the current emergency management system, which sends certain notifications and information through the emergency management director or coordinator for a local area. CSHB 2257 could perpetuate a fragmented system in which service providers send out notifications that are outside of this system.

**NOTES:**

The committee substitute made several changes to the original bill, including specifying that providers could enter into contracts for notification systems and limiting public service providers’ use of information collected or received to notices of disasters or emergencies and actions required to be taken during disasters and emergencies.

The companion bill, SB 1238 by Carona, was scheduled for an April 13 public hearing by the Senate Transportation and Homeland Security Committee.