HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 10, 2011
82nd Legislature, Number 73
The House convenes at 9:30 a.m.
Part Two

Twenty-eight bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills on the General State Calendar analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

Fourteen postponed bills - HB 1359 by Veasey, HB 272 by Smithee, HB 2746 by Martinez Fischer, HB 1629 by Anchia, HB 234 by Otto, HB 3790 by Pitts, HB 3640 by Pitts, HB 3665 by Otto, HB 3639 by Pitts, HB 3648 by Otto, HB 3418 by Darby, HB 3132 by Geren, HB 400 by Eissler, and HB 2233 by Huberty - are on the supplemental calendar for second-reading consideration today. The HRO analyses of these bills are available at: http://www.hro.house.state.tx.us/BillAnalysis.aspx.

Bill Callegari
Chairman
82(R) – 73

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 10, 2011
82nd Legislature, Number 73
Part Two

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SUBJECT: Permitting the legal carrying of weapons in watercraft

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 5 ayes — Gallego, Hartnett, Carter, Rodriguez, Zedler

0 nays

4 absent — Aliseda, Burkett, Christian, Y. Davis

WITNESSES: For — *(Registered, but did not testify*: Tara Mica, National Rifle Association; Marissa Stewart; Alice Tripp, Texas State Rifle Association)

Against — None

On — *(Registered, but did not testify*: Jeffery Parrish, Texas Parks and Wildlife Department)

BACKGROUND: Penal Code, sec. 46.02 makes it illegal to intentionally, knowingly, or recklessly carry on one's person a handgun, illegal knife, or club. Carrying a weapon on one's own premises or inside of or directly en route to the person's vehicle is permitted.

Penal Code, sec. 46.02 (a-1) makes it illegal to intentionally, knowingly, or recklessly carry on one's person a handgun in a motor vehicle owned by the person or under the person's control if a person:

- has the handgun in plain view;
- is engaged in criminal activity other than a Class C misdemeanor traffic offense;
- is prohibited by law from possessing a firearm; or
- is a member of a criminal street gang.

Penal Code, sec.46.15 states that sec. 46.02 does not apply to a person who is lawfully hunting, fishing, or engaging in a sporting activity while on or traveling to the premises where a weapon of the type carried is commonly used.

DIGEST:

HB 25 would amend Penal Code, sec. 46.02 to allow carrying of a weapon in a watercraft that was owned or controlled by the person carrying the weapon. The bill would define watercraft as any boat, motorboat, vessel, or personal watercraft, other than a seaplane on water, that could be used for transportation on the water.

The bill would amend Penal Code, sec. 46.02 (a-1) to include carrying a handgun within a watercraft and would exempt boating violations that were class C misdemeanors from the type of criminal activity that would prohibit carrying of weapons in a boat.

HB 25 also would amend Penal Code, sec. 46.15 (b) to allow the legal carrying of weapons on boats while hunting, fishing, or engaging in other sporting activities while on or traveling to the immediate premises of the activity.

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

SUPPORTERS SAY:

HB 25 would make a small, but logical, change in ongoing efforts to protect Texans' right to bear arms under the U.S. and state constitutions. Existing law already permits the legal possession of a handgun in a person's vehicle, even without a concealed handgun license, and HB 25 would simply add watercraft to the statute. A person should be allowed to carry a weapon directly from the person's car or pickup to his or her boat.

Texas lakes, rivers, and coastal waterways often are isolated and unpopulated. HB 25 would allow a person eligible to possess a firearm under state and federal law to have a handgun in that person's watercraft for personal protection. The bill would define watercraft broadly enough that it could include anything from a kayak to a yacht.

The doctrine of legal carrying of weapons while traveling has become well established after revisions during several legislative sessions. HB 25 should not materially change how the law is interpreted or applied.

OPPONENTS SAY:

Even a relatively minor change in the law, such as the one that would be created by HB 25, could cause confusion about how to apply the traveling provisions, reigniting the debate about the definition of legal carrying of weapons while traveling.

SUBJECT: Establishing the Texas Derbies as an annual stakes horse race

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

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

0 nays

WITNESSES: For — Rob Kohler, Christian Life Commission, Baptist General Convention of Texas

Against — None

On — Chuck Trout, Texas Racing Commission

DIGEST: CSHB 254 would amend the Texas Racing Act by requiring the Texas Racing Commission (TRC) to establish the Texas Derbies as four annual stakes races for three-year old thoroughbreds and quarter horses beginning on or after January 1, 2015.

Guidelines for establishing the Texas Derbies. The official state breed registries and the official horseman's organization would have to develop the race conditions, entrance qualifications, and preference system used to determine the race finalists for a Texas Derby open only to Texas-bred horses.

For a Texas Derby not limited to Texas-bred horses, each class 1 racetrack that was awarded a Texas Derby would develop those guidelines.

The guidelines would be subject to review and approval by the executive secretary of the TRC.

The TRC would be required to set the date of and the location for each Texas Derby. Each Texas Derby would have to be held annually at the class 1 racetrack determined by the TRC. The TRC would be required to determine the location of each Texas Derby in consultation with each

class 1 racetrack, the official state breed registries, and the official horsemen's organization.

These requirements would expire January 1, 2016.

Inspection and examination of the horses. For each Texas Derby, the TRC would be required to appoint a state veterinarian to conduct a prerace examination of each horse entered in the race to determine whether the horse was healthy and met the standards set by TRC rule for racing.

The examination could include any procedure that the state veterinarian considered necessary to make the determination and could be conducted at any time before the race.

Texas Derby escrow purse fund. The TRC would be required to establish a Texas Derby escrow purse fund. The TRC would not be allowed to contribute any money to the fund before January 1, 2015.

Effective date. CSHB 254 would take effect September 1, 2011.

NOTES:

According to the fiscal note, there would be an indeterminate revenue gain to the state from the provisions of the bill in fiscal years 2014-2016 resulting from additional horse races and entry fees.

SUBJECT: Making certain TCOOMMI juvenile programs permissive if no funds

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Madden, Cain, Hunter, Perry, White, Workman

0 nays

3 absent — Allen, Marquez, Parker

WITNESSES: For — None

Against — Jodie Smith, Texans Care for Children; (*Registered but did not testify*: Jane Ehinmoro, Texas Criminal Justice Coalition)

On — Ross Robinson, Department of State Health Services; Cheryln Townsend, Texas Youth Commission; Dee Wilson, Texas Department of Criminal Justice; (*Registered but did not testify*: Joe Lovelace, Texas Council of Community Centers; Vicki Spriggs, Texas Juvenile Probation Commission)

BACKGROUND: Health and Safety Code, ch. 614 establishes the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). The duties of the office, which is part of the Texas Department of Criminal Justice, include helping ensure criminal offenders get continuity of care for mental health needs from arrest to postincarceration and helping obtain mental health-related case management, counseling, and medication for juvenile and adult offenders.

Health and Safety Code, sec. 614.019(a) authorizes the office to work with other state entities to establish and maintain programs to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders. Sec. 614.020 authorizes TCOOMMI to establish and maintain in Tarrant County a treatment program for certain youths with severe and persistent mental illness.

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DIGEST:

CSHB 2119 would require TCOOMMI to provide services or programs to juveniles under Health and Safety Code, secs. 614.019(a) and 614.020 only if the Legislature appropriated money specifically for those purposes. If the Legislature did not appropriate money specifically for those purposes, the office could, but would not be required to, provide the service or program using other appropriations.

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 2119 is needed to give clear direction to TCOOMMI that it does not have to establish a Tarrant County pilot program or a collaborative state agency program dealing with juveniles with mental health needs. Currently, the statutes make TCOOMMI's provision of these programs permissive, and they have never been funded or operational. This bill would clarify that these programs would be provided only if TCOOMMI got funding for them. Since these programs have never operated, the bill would make no change in current practices.

CSHB 2119 would not affect TCOOMMI's provision of continuity of care programs for juvenile offenders in fiscal 2012-13, which it would continue under its statutory mandate. The office would continue in fiscal 2012-13 its provision of services, such as case management, counseling, and medication, for juvenile offenders only if it is appropriated funds for them, but that decision will be made through the general appropriations act, not CSHB 2119. This bill is narrowly focused only on the Tarrant County pilot program and a program that would deal with juveniles with mental health needs.

OPPONENTS SAY:

CSHB 2119 could be taken as encouragement to TCOOMMI to not work diligently toward identifying money in its appropriations for certain juvenile services. Juvenile mental health services are critically important, and all efforts to fund these services should be made.

NOTES:

The committee substitute removed from the bill a reference to TCOOMMI's provision of a continuity of care for juvenile offenders with mental impairments.

SUBJECT: Exempting real estate brokers and salespersons from the DTPA

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Hamilton, Quintanilla, Driver, Harless, Kuempel, Menendez, Thompson

0 nays

2 absent — Geren, Gutierrez

WITNESSES: For — Joe Knight, Texas Association of Realtors; (*Registered, but did not testify:* Daniel Gonzalez, Texas Association of Realtors)

Against — Mark Kincaid, Texas Trial Lawyers Association; Joe Longley, Policyholders of America; Philip Maxwell; (*Registered, but did not testify:* Ware Wendell, Texas Watch)

BACKGROUND: The Deceptive Trade Practices-Consumer Protection Act (DTPA), which is contained in Business and Commerce Code, subch. E, protects consumers from false, misleading, or deceptive acts or practices, breaches of warranties, unconscionable actions, and certain violations of the Insurance Code.

The DTPA contains an exemption for a claim for damages based on the rendering of a professional service, essentially the providing of advice, judgment, opinion, or similar professional skill. The exemption does not apply to:

- an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;
- a failure to disclose information if intended to induce the consumer into a transaction;
- an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion;
- breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or
- illegally promoting an annuity contract.

DIGEST:

CSHB 2177 would exempt a licensed real estate broker or salesperson from a claim under the Deceptive Trade Practices-Consumer Protection Act. Claims arising from an unconscionable action or course of action that could not be characterized as advice, judgment, or opinion still could be brought against a real estate broker or salesperson.

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. The bill would apply only to a claim arising from an act or omission that occurred on or after the effective date.

SUPPORTERS SAY:

A professional services exemption was added to the DTPA in 1995 to prevent ordinary professional malpractice claims from being brought under it. The intent was to protect professionals such as doctors, accountants, lawyers and real estate brokers. Instead of naming each profession, the exemption was structured as a conduct-based exemption. While malpractice claims under the DTPA have ceased for most professions, they continue to be brought against real estate brokers.

A real estate broker provides information about real property as part of his or her job. Claimants have urged that this information amounts to factual misrepresentation rather than professional advice, and trial courts often have agreed. The bill would protect real estate brokers from these unfounded lawsuits, as originally intended with the professional services exemption.

Most DTPA claims are won by real estate brokers at the appellate level. However, real estate professionals need a clear exception to discourage unfounded lawsuits and to empower courts to dismiss such claims before each side incurs substantial litigation costs.

If a consumer has a valid claim against a real estate broker, other claims still would be available, such as negligence or fraud in real estate transactions under ch. 27 of the Business and Commerce Code. Attorney fees are available for plaintiffs under the statute on fraud in real estate transactions.

OPPONENTS SAY:

CSHB 2177 would give real estate brokers a special exemption that would extend beyond the professional services exemption. If the bill truly intends to ensure that the professional services exemption protects real estate brokers, then the bill should mirror the language of the professional

services exemption and continue to allow claims for an express misrepresentation and failure to disclose information.

Individual professions should not be exempted from the DTPA. This would only encourage other professions to lobby for their own exemptions, leading to broad exceptions and narrow protections for consumers.

The ability to bring a negligence claim against a real estate broker is not adequate. The DTPA provides for attorney fees if the plaintiff prevails. This provides an incentive for lawyers to take on smaller, worthy claims. Attorney fees are not available for negligence claims, meaning that small claims against real estate brokers would be effectively foreclosed.

There is not ample evidence of frivolous claims against real estate brokers, nor is there justification for taking what is often a consumer's biggest purchase out of the DTPA. Real estate brokers already are protected from misrepresentation claims by affirming their reliance on information from another source, such as an appraisal district or the seller's disclosure. Real estate brokers also can recover attorney fees for groundless claims brought under the DTPA.

NOTES:

The substitute differs from the original by allowing a claim for an unconscionable action against a real estate broker or salesperson under the DTPA.

The companion bill, SB 1353 by Eltife, passed the Senate by 31-0 on April 20. The exemption in the Senate bill would not apply to an express misrepresentation, failure to disclose information, or unconscionable action. SB 1353 was reported favorably, without amendment, by the House Licensing and Administrative Procedures Committee on May 4 and recommended for the Local and Consent Calendar.

SUBJECT: Revising provisions governing the Texas Department of Motor Vehicles

COMMITTEE: Transportation — committee substitute recommended

VOTE: 7 ayes — Phillips, Darby, Fletcher, Lavender, McClendon, Pickett, Rodriguez

0 nays

4 absent — Bonnen, Y. Davis, Harper-Brown, Martinez

WITNESSES: For — Steve Bresnen, Insurance Auto Auctions, Inc; (*Registered, but did not testify:* Gary Barber, Smith County Tax Office, Tax Assessor-Collectors Association of Texas; Luanne Caraway, Tax Assessor-Collector Association of Texas; Jeff Martin, Texas Independent Automobile Dealers Association; Dan Mays, Texas Recreational Vehicle Association, Texas Truck Dealers Coalition; Dick Murphy, Kaufman County Tax Office; Tavie Murphy, Guadalupe County Tax Office; Sheryl R. Swift, Galveston County Tax Office)

Against — None

On — Robert Braziel, Texas Automobile Dealers Association; Randy Elliston and Cheryl Johnson, Texas Department of Motor Vehicles

BACKGROUND: The 81st Legislature in 2009 enacted HB 3097 by McClendon, which created the Texas Department of Motor Vehicles (TxDMV) as a separate state agency and transferred to it certain functions previously performed by the Texas Department of Transportation. The bill charged TxDMV with administering and enforcing laws governing:

- certificates of title and motor vehicle registration;
- motor carrier registration, including federal motor carrier registration;
- the sale and lease of motor vehicles;
- salvage vehicle dealers;
- markings on commercial motor vehicles;

- motor transportation brokers; and
- foreign commercial motor transportation.

TxDMV became operational on November 1, 2009.

The 74th Legislature in 1995 enacted SB 971 by Cain, a non-substantive recodification of statutes relating to transportation. The statutes have not since been recodified.

DIGEST:

CSHB 2357 would revise and reorganize chapters in the Transportation Code — chs. 501 (Certificate of Title Act), 502 (Registration of Motor Vehicles), 504 (Specialty License Plates), and 520 (miscellaneous provisions regarding titles and registration) — that govern TxDMV and its functions. The bill would allow TxDMV to implement an electronic vehicle titling system and collect service fees for electronic payments and credit and debit card transactions. It also would allow the department to adopt rules for a number of processes, modify other provisions regarding titling, and revise other statutory provisions.

Electronic titling system. CSHB 2357 would allow the TxDMV board to adopt rules to implement an electronic titling system, which would contain the official record of vehicle ownership and applicable liens, unless an owner requested a printed title. TxDMV could receive, archive, and transmit electronic documents, provide for access and for search functions, and convert paper documents and other information into an electronic format. An electronic signature would suffice in place of current requirements for written consent.

In addition, TxDMV could accept payments via electronic funds transfer and credit or debit cards for title and registration fees. The department could collect a processing fee for these transactions not to exceed 5 percent of the fee being paid. It could collect an additional transaction fee for a vendor who provided services in connection with electronic payments. An additional service charge could be assessed for a rejected payment. All fees collected for electronic payment would be deposited into the State Highway Fund.

TxDMV powers and duties. The bill would require the TxDMV board to adopt rules governing a number of processes, including:

- requirement that an applicant for a title present identification and provide current personal information, which could be entered into the electronic title system;
- the administration of provisions on vehicle titles and registration under Transportation Code, ch. 520, including waiving fees for a title applicant who could prove that he or she paid fees to a dealer that went out of business;
- the period before which a person could not receive a replacement set of personalized license plates without an additional fee;
- notifying a salvage vehicle dealer if a vehicle was not issued a printed title but had a record in the department's system;
- designating items of evidence sufficient to establish good reason for the delinquent registration of a motor vehicle; and
- the placement of license plates for a motor vehicle, road tractor, motorcycle, trailer, and semitrailer.

The bill would broaden current statutes on specialty license plates to refer to all license plates. It would affirm TxDMV's responsibility to prepare the designs and specifications of license plates — including specialty plates — and to issue personalized plates. If a private license plate vendor operating under contract went out of business, the department could temporarily operate the program and the vendor's share of revenue would go to the General Revenue Fund.

TxDMV would have to post a complete schedule of registration fees and departmental forms on the Internet. TxDMV could conduct public service education campaigns related to its functions. The bill would allow TxDMV to rescind, cancel, or revoke a vehicle title application upon presentation of a signed affidavit from the dealer, title applicant, and any lien holder.

Other provisions. The bill would add, revise, and recodify definitions in Transportation Code, chs. 501, 502, and 504. It would allow an applicant for a title to retain plates that were being transferred to another vehicle. A person could apply for a title in an adjoining county if his or her county of residence was declared a disaster area for an extended duration.

The bill would require an insurance company that paid a claim on a nonrepairable or salvage vehicle to apply for an appropriate title or notify the owner of applicable restrictions. TxDMV could establish a fee to

administer bonds it held to secure a vehicle's title under certain circumstances.

The bill would reduce to one year from five years the period in which an owner could apply for a refund for any overpaid registration fees. It would allow county assessor-collectors to license motor vehicle dealers to title and register vehicles in accord with existing requirements. County assessor-collectors could pay a fee to the dealer as a proportion of the fees the county normally collected.

TxDMV, in consultation with the Texas Department of Public Safety, would have to conduct a study on consolidating data collected by each agency. The study would have to be completed by September 1, 2012, and would have to include recommendations on protecting the privacy and security of information collected.

The bill would take effect January 1, 2012. Changes made to offenses would apply to an offense on or after its effective date.

NOTES:

The Legislative Budget Board (LBB) estimates the bill would have an indeterminate impact on state revenue depending on the assessment and collection of fees by electronic fund transfers and other service charges.

The companion bill, SB 1402 by Williams, was reported favorably as substituted by the Senate Transportation and Homeland Security Committee on May 9.

SUBJECT: Creating an offense for installing an irrigation system without a license

COMMITTEE: Natural Resources — favorable, without amendment

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

0 nays

2 absent — Martinez Fischer, Price

WITNESSES: For — Troy Ellison, Texas Turf Irrigation Association; Jim Reaves, Texas Nursery and Landscape Association; (*Registered, but did not testify:* Donovan Burton, San Antonio Water System; Heather Cooke, City of Austin and Austin Water Utility)

Against — None

BACKGROUND: Occupations Code, sec. 1903.251 requires a person to be licensed by the Texas Commission on Environmental Quality (TCEQ) if that person:

- sells, designs, installs, maintains, alters, repairs, or services an irrigation system;
- provides consulting services relating to an irrigation system; or
- connects an irrigation system to any water supply.

DIGEST: HB 2507 would make it a class C misdemeanor (maximum fine of $500) to install an irrigation system without holding a license. This would not apply to people working in their own yard or who were maintaining the system.

The bill would take effect September 1, 2011.

SUPPORTERS SAY: The TCEQ does not have the authority under current law to punish people for installing an irrigation system without a license. HB 2507 would create such an offense. This bill is necessary because irrigation system installers have the potential to contaminate potable water if the installation is not done properly. A minor criminal penalty of a class C misdemeanor with a

maximum fine of $500 and no jail time would be an appropriate punishment.

OPPONENTS SAY:

While it is not clear that licensing irrigation system installers is necessary, if the state is going to continue to license this occupation, civil and administrative penalties would be more appropriate than a criminal penalty as an enforcement tool. For example, if someone installing an irrigation system disrupted a water or sewage line, they could be held civilly liable for the costs associated with that. Criminal penalties should exist only for agencies overseeing practices that can have dire consequences on the public health and welfare.

SUBJECT: Abolishing state regulation of talent agencies and personnel services

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 6 ayes — Callegari, Lucio, Cain, Frullo, Muñoz, Zedler

0 nays

1 absent — Harper-Brown

WITNESSES: For — Matt Miller, Institute for Justice; (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition; Stephanie Gibson, Texas Retailers Association; Andrew Kerr, Texans for Fiscal Responsibility; Peggy Venable, Americans for Prosperity; Mary Lou Serafine)

Against — Chase Bearden, Coalitions of Texans with Disabilities, Louise Carter, Morris Architects; Kimberly Marks, National Council For Interior Design Qualification; Donna Vining, Texas Association of Interior Design; John DuBard; Kurt Harris; John Torkelson; (*Registered, but did not testify*: Marta Basez; Rebecca (Becky) Blackhall; Meredith Domino; Harmony Edwards-Canfield; Rebecca Elliott; Brittany Hamilton; Dawn James; Michael Love; Janna Paulson; Mary Helen Pratte; Julie Reynolds; Marilyn Roberts

On — Scott Gibson, Texas Board of Architectural Examiners; Cathy Hendricks, Texas Board of Architectural Examiners; Bill Kuntz, Texas Department of Licensing and Regulation; Vikrant Reddy, Texas Public Policy Foundation; (*Registered, but did not testify*: Lew Vassberg Rid Aahid, TBAE Board Member RID)

BACKGROUND: Ch. 2105 of the Occupations Code requires a talent agency in the state to be certified and regulated by the Texas Department of Licensing and Regulation (TDLR). The chapter prohibits certain practices and requires certain records to be kept. A violation of this chapter is considered a false, misleading, or deceptive practice under the Deceptive Trade Practices Act.

Ch. 2501 of the Occupations Code requires a personnel employment service provider to be certified and regulated by TDLR. Occupations

Code, subch. B and C describe the certificate of authority needed by a personnel employment service provider to operate and the practices in which an owner, operator, counselor, agent, or employee of a personnel service may not engage.

TDLR is authorized to investigate and enforce complaints about personnel employment service providers, and may conduct a hearing and decide whether to issue a warning or revoke certification.

DIGEST:

Talent agencies. CSHB 3167 would repeal Occupations Code, ch. 2105, which regulates talent agencies.

An action, including a disciplinary or administrative proceeding, that was pending in relation to a violation of this chapter would be dismissed on the effective date of the bill. An administrative penalty assessed by TDLR related to a violation of the chapter as it existed before the bill still could be collected.

The bill would not affect the pending prosecution of an offense under ch. 2105 as it existed before the effective date of the bill. An offense committed before the effective date of the bill would be governed by the law in effect at the time the offense was committed. An offense would be committed before the effective date of the bill if any element of it was committed before that date.

TDLR would have to return a prorated portion of the fee paid for the issuance or renewal of a registration to the person who held the valid registration.

Personnel services. CSHB 3167 would amend Occupations Code, sec. 2501 to repeal the requirement for a personnel service to hold a certificate of authority issued by TDLR. An action that was pending related to the imposition of a fee by a personnel service before an employment offer was accepted would be dismissed on the effective date of the bill.

An administrative penalty that was assessed by TDLR related to a violation of ch. 2501 as it existed before the effective date of the bill could be collected.

TDLR would have to return a prorated portion of the fee paid for the issuance or renewal of a certificate of authority to the person who held the valid certificate of authority.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

It is inefficient and unnecessary to continue the state licensing of talent agencies and personnel service organizations. The number of licensees for each group is so small that there is no benefit to the consumer to continue regulation by TDLR. The Deceptive Trade Practices Act would provide sufficient protections to consumers who could be harmed by either of these groups.

Talent agencies originally were regulated to protect actors from fraudulent agents. However, there is widespread activity by unregulated parties that offer similar services, and the regulations are easily circumvented, rendering them ineffective.

Personnel services were first regulated in the 1970s, when people used them widely to find employment. With the rise of the Internet and other employment search methods, the use of personnel services has decreased. This decline has eliminated the need for state regulation of such services.

TDLR already is very limited in what it can investigate and enforce, and there have only been minor complaints within the last year. CSHB 3167 would not have a significant impact on consumer protections.

Provisions that were opposed in the original bill have been addressed by the committee substitute.

OPPONENTS SAY:

Regulation of talent agencies originally was enacted to ensure that actors were not swindled by talent agents who would take money in exchange for future services and then disappear and also to protect legitimate talent agencies. If there is widespread activity by unregulated parties, the bill should address better regulation, instead of removing it completely.

Personnel services were first regulated to protect job seekers from being taken advantage of by being charged an upfront fee for services. Given the currently high unemployment rate, we should not remove consumer protections for the unemployed.

NOTES:

The original version would have modified the Agriculture Code by repealing the regulation of persons engaged in weather modification under the TDLR. It also would have amended the Occupations Code by repealing the regulation of interior designers by the Texas Board of Architectural Examiners.

SUBJECT: Transferring adult education to Higher Education Coordinating Board

COMMITTEE: Higher Education — committee substitute recommended

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

1 nay — Patrick

2 absent — Castro, Bonnen

WITNESSES: For — Dennis Brown, El Paso Community College, Texas Association of Community Colleges; Blas Castaneda, Texas Border Coalition Workforce & Education Committee

Against — Barbara Tondre; (*Registered, but did not testify*: Melissa Sadler-Nitu, Texas Committee of Adult Basic Education; Ellen Thels)

On — Jennifer Jacob, Texas Education Agency (TEA); Gloria Mwase, Jobs for the Future; Raymund Paredes, Texas Higher Education Coordinating Board (THECB); Suzii Paynter, Christian Life Commission, Texas Baptist Convention; (*Registered, but did not testify*: Joanie Rethlake, Harris County Department of Education)

BACKGROUND: The U.S. Department of Education, through the Workforce Investment Act of 1998, provides the majority of funding for adult education in Texas. The state provides the required 25 percent matching funds. The Texas Education Agency has the federal and state fiduciary responsibility for adult basic education in Texas and provides program assistance, monitoring, and compliance with federal requirements. The program is administered by a TEA-approved contractor, *Texas Learns*, within the Harris County Department of Education.

In 2007, the Texas Legislature directed the Texas Higher Education Coordinating Board to collaborate with the Texas Education Agency and the Texas Workforce Commission to develop and implement plans to align adult basic education with postsecondary education.

DIGEST:

CSHB 3461 would transfer adult education and literacy programs from the Texas Education Agency (TEA) to the Texas Higher Education Coordinating Board as of January 1, 2012, make conforming changes to reflect the transfer, and define various related terms.

The bill would require the coordinating board to:

- provide adequate staffing to develop, administer and support a comprehensive statewide adult education program and coordinate related federal and state programs for educating and training adults;
- develop the mechanism and guidelines for coordinating comprehensive adult education and related skill training services with other public and private organizations;
- administer all state and federal funds for adult education and related skill training services for the state;
- prescribe and administer standards and accrediting policies for adult education;
- prescribe and administer rules for teacher certification for adult education;
- accept and administer grants, gifts, services, and funds from available sources for use in adult education;
- adopt or develop and administer a standardization assessment mechanism for assessing all adult education program participants who need literacy instruction, adult basic education, or secondary education leading to an adult high school diploma or the equivalent; and
- monitor and evaluate educational and employment outcomes of students who participate in the board's adult education and literacy programs.

The assessment mechanism would have to include an initial basic skills screening instrument and comprehensive information about baseline student skills before and student progress after participation in an adult education program.

The bill would require adult education programs to be provided by public school districts, public junior colleges, public technical institutes, public state colleges, general academic teaching institutions, public nonprofit agencies, and community-based organizations approved in accordance with state law with rules adopted by the coordinating board.

Programs would have to be designed to meet the education and training needs of adults, to the extent possible, using available public and private resources. Bilingual education could be used to instruct students who did not function satisfactorily in English whenever it was appropriate for students' development.

Advisory committee. The coordinating board would be required to establish an adult education and literacy advisory committee of no more than nine members appointed by the board. Members of the committee would have to have expertise in adult education and literacy. The committee would include three representatives from public junior or community colleges and could include adult educators, providers, advocates, and current or former adult education and literacy program students.

The committee would be required to meet at least quarterly and report to the coordinating board at least annually. The committee also would be required to advise the coordinating board on:

- the development of policies and program priorities that supported the development of an educated and skilled workforce in Texas;
- the development of statewide curriculum guidelines and standards for adult education and literacy services that ensured a balance of education and workplace skill development; and
- any other issue the coordinating board considered appropriate.

State funding. Appropriated funds would be required to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in Texas and to implement and support a statewide program to meet the total range of adult needs for adult education and related skill training. The coordinating board would have to ensure that public local education agencies, public nonprofit agencies, and community based organizations had direct and equitable access to those funds.

The Legislature could appropriate additional funds to the coordinating board for skill training in direct support of industrial expansion and new business development and to those locations, industries, and occupations designated by the board.

The Legislature also would be authorized to appropriate an additional amount to the coordinating board for skill training that was conducted to support the expansion of civilian employment opportunities on U.S. military reservations.

By December 1 of each even-numbered year, the coordinating board would be required to report to the Legislature about the educational and employment outcomes of students who participated in the adult education and literacy programs.

The coordinating board and the Texas Education Agency would be authorized to adopt rules to administer the transfer of adult education and literacy programs. By October 1, 2011, TEA and the coordinating board would have to enter into a memorandum of understanding relating to the transfer, including a timetable and specific steps and methods for the transfer on January 1, 2012. The memorandum would have to include measures to ensure against any unnecessary disruption to adult education and literacy services provided at the local level.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

Transferring responsibility for federal adult basic education (ABE) to the coordinating board would be the most effective way to administer the program. Research has shown that moving ABE students into the higher education pipeline is the most effective pathway for these students. The bill's provisions would be in line with the coordinating board's current collaboration with TEA to develop and implement a coordinated, long-range plan to align ABE and post-secondary education.

CSHB 3461 merely would annex oversight of ABE to the coordinating board. Collaboration among the coordinating board, TEA, and the Texas Workforce Commission would not change – all three agencies would continue working together just as they currently are.

Other states, including Illinois, Washington, Oregon, and others, have followed the most current research and integrated ABE into their community college systems.

Texas spends the minimum requirement for the federal/state matching funds, while other highly populated states, such as California, New York, and Florida, match the federal allotment at higher rates. Given the limited

spending on ABE in Texas, it is essential that Texas make the most of the resources available for this critical program. The coordinating board would be able to leverage more federal funds as well as expertise within the agency to lower administrative costs and direct more resources to expand direct service delivery by providers.

Additional resources could be used to:

- create a cost-efficient delivery system, expanding the provider base to include the entire community college system. The current federal program excludes over half of the state's community college districts. There are over 3 million adult Texans in need of adult basic education services. The program currently serves about 80,000 Texans;
- provide better service options for English language students inappropriately enrolled in developmental education and academic English as a second language (ESL) classes at community colleges.
- align assessments with the state's college readiness assessment program;
- leverage the activities to compete for external funding from private foundations to serve more students;
- create targeted career pathway programs for ABE students beginning at the 8th grade functional literacy level, rather than after obtaining a GED;
- create a statewide data system for provider reporting, student tracking, and wraparound service referrals not possible with the current administration;
- align reporting and accountability of the program with the state's higher education accountability and reporting system;
- integrate the program providers and workforce boards into the state's P-16 council system; and
- eliminate redundancy in state leadership activities, professional development programs, technical assistance contracts, and research and evaluation contracts being implemented at both TEA and the coordinating board.

If the coordinating board took oversight of ABE, there would not necessarily be a wholesale change to the administration of the programs. The current contractor would likely remain in place. In addition, nothing in the bill would prohibit ABE programs from being offered at an ISD campus or facility.

OPPONENTS SAY:

The adult education program administered by TEA is a very effective, stable, and prosperous program, and it should not be moved. There are significant processes and infrastructure in place, like the information management system that tracks the program across the state, that would be extremely expensive to recreate. In today's budgetary climate it is not clear how this would be accomplished financially.

Eighty percent of adult learners function below an 8th grade level. A large number of adult learners are not college ready and are not ready to make the transition to higher education. Only 20 percent of adult learners are at the GED level of college readiness. It is important to remember that most adult learners are learning to read and write English. They simply are not comfortable being on a college campus because the college environment is intimidating. Currently, most adult education classes are held on ISD campuses and facilities or in education centers. Often an adult learner will drop off their children at school and attend their classes on the same campus.

ISDs are offering a majority of the programs now and are linked with the local communities they serve. They are able to provide access to the programs because there are far more ISD facilities than community college facilities. It is not known how adult learners in rural parts of the state would continue to have easy access to the programs they need if they were no longer held in the local ISD campus.

ESL and GED classes currently are free. It is not known if they would continue to be if they were moved to a community college.

If students lose their motivation to continue their courses or struggle with the college atmosphere, seeing it as something they cannot navigate, then the entire state would lose. If they did not succeed then they would not be able to find jobs, become productive, and pay taxes.

OTHER OPPONENTS SAY:

Whether ABE is administered by TEA or the coordinating board, the largest obstacle for the program is the lack of funding. Other large states spend much more. For example, California spends 10 times the amount Texas does on ABE.

NOTES:

The companion bill, SB 1763 by Rodriquez, was reported favorably, as substituted, by the Senate Higher Education Committee on May 5.

SUBJECT: Contracts for probation programs, services instead of stand-alone CSCD

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Madden, Allen, Cain, Marquez, Perry, White, Workman

0 nays

2 absent — Hunter, Parker

WITNESSES: For — Doots Dufour, Diocese of Austin; (*Registered, but did not testify*: Joshua Houston, Texas Impact)

Against — None

On — Carey Welebob, Texas Department of Criminal Justice – Community Justice Assistance Division

BACKGROUND: Under Government Code, sec. 76.002 (a)(1), the district judges trying criminal cases in each judicial district are required to establish a community supervisions and corrections (probation) department (CSCD). Sec. 76.002(e) allows the Texas Board of Criminal Justice to adopt rules allowing community supervision and corrections departments to contract with one another for services or facilities, and the board has done so.

DIGEST: HB 3691 would require, instead of allow, the Texas Board of Criminal Justice to adopt rules allowing community supervision and corrections departments to contract with one another for services or facilities. The bill would authorize probation programs and services to be provided in a judicial district through a contract with a community supervision and corrections department in another judicial district, in lieu of requiring each judicial district to establish a department.

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:

HB 3691 is needed to ensure that the current practice of obtaining probation services for three counties in the 394th Judicial district through a contract with a CSCD in a neighboring county can continue. While current law says that the Texas Board of Criminal Justice may adopt rules allowing one community supervision and corrections department to contract with another for services, the law also says that each judicial district shall establish a CSCD. A 1982 attorney general's opinion (MW-542) stated that each district is required to establish and maintain its own probation office. While no one has complained about the current situation, it would be best to clear up the confusion.

HB 3691 would do this by stating clearly that probation programs and services could be provided through a contract with a CSCD established for another judicial district, in lieu of establishing a stand-alone probation department. This would codify current practice and put to rest questions about the use of contracts with CSCDs for probation services. HB 3691 would deal only with contracts between two government entities. Requiring each district to create their own CSCD would increase costs and inefficiencies for districts that have found it beneficial to obtain probation services and programs through a contract with another CSCD.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Administrative subpoenas to combat child pornography and sexual abuse

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Gallego, Hartnett, Burkett, Carter, Christian, Rodriguez, Zedler

0 nays

2 absent — Aliseda, Y. Davis

WITNESSES: For — Mathew Gray, Houston Metro Internet Crimes Against Children Task Force; David Keith, Grier Weeks, National Association to Protect Children (*Registered, but did not testify:* Donald Baker, Austin Police Department; Lon Craft, Texas Municipal Police Association; Deborah Ingersull, Texas State Troopers Association; Diana Martinez, TexProtects, the Texas Association for the Protection of Children)

Against — None

On — Jeff Eckert, Texas Office of the Attorney General

DIGEST: CSHB 3746 would create a new chapter of the Government Code, ch. 422, on Internet-based sexual exploitation of a minor. The act would be called Alicia's Law. The bill would give administrative subpoena power to a prosecuting attorney or Internet Crimes Against Children Task Force (ICAC) officer under certain circumstances and would set up an Internet Crimes Against Children Account.

Authority for administrative subpoena. A prosecutor or an ICAC officer would be able to issue and serve an administrative subpoena if the subpoena related to an investigation of an offense that involved the sexual exploitation of a minor and there was reasonable cause to believe that an Internet or electronic service account provided through an electronic communication service or remote computing service had been used in the sexual exploitation or attempted sexual exploitation of the minor. The attorney general would assist prosecuting attorneys in obtaining administrative subpoenas to investigate and prosecute offenses that involved the Internet-based sexual exploitation of a minor.

Documents allowed to be required for production by administrative subpoena. The subpoena could require the production of any records or documents relevant to the investigation, including:

- a name;
- an address;
- a local or long distance telephone connection record, satellite-based Internet service provider connection record, or record of session time and duration;
- the duration of the applicable service, including the start date for the service and the type of service used;
- a telephone or instrument number or other number used to identify a subscriber, including a temporarily assigned network address; and
- the source of payment for the service, including a credit card or bank account number.

Documents protected from administrative subpoena disclosure. The provider of an electronic communication service or remote computing service would be required to disclose the following information by court order, but would not be allowed to disclose the following information in response to the administrative subpoena:

- an in-transit electronic communication;
- an account membership related to an Internet group, newsgroup, mailing list, or specific area of interest;
- an account password; or
- any account content, including any form of email, an address book, contact list, or buddy list, a financial record, Internet proxy content or Internet history, or a file or other digital document stored in the account or as part of the use of the account.

Required contents of administrative subpoena. The subpoena would be required to describe any objects or items requested and give a reasonable date for the items to be gathered and produced.

Petition to quash administrative subpoena. Before the date the information was required for production, the person who received the subpoena could petition to a court in the county where he or she resided or did business for an order to modify or quash the subpoena or to prohibit disclosure of certain information.

Documents obtained through administrative subpoena if criminal case not brought. If a criminal case did not result from production of the documents within a reasonable period, the prosecutor would be required to destroy the documents or return the documents to the person who produced them.

Confidentiality of materials produced through administrative subpoena. Any information, records, or data reported or obtained under the administrative subpoena would be confidential and could not be disclosed to any other person unless the disclosure was made as part of a criminal case related to those materials.

Service of administrative subpoena. A person authorized to serve process under the Texas Rules of Civil Procedure would be allowed to serve an administrative subpoena.

Internet Crimes Against Children Account. The account would be created in the General Revenue Fund. Money in the account could be appropriated only to support the administration and activities of an ICAC task force that was operating under the attorney general or had its principal office located in a municipality with a population of one million or more. Any money in the account that was appropriated would be appropriated in equal amount to each ICAC task force.

The account would consist of money transferred by the Legislature to the account, in addition to gifts, grants, and donations. Interest earned on the account would be credited to the account. The fund would be exempt from the state's fund consolidation process.

Effective Date. This bill would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 3746 would provide the support successful ICAC teams need to catch dangerous predators and rescue more children from sexual exploitation and abuse. Federal legislation enacted in 1998 created the National Crimes Against Children Task Force Program that now is a network of 61 coordinated task forces across the nation. Texas has three federally funded ICACs, which receive small grants from the U.S. Department of Justice. The Texas ICACs are in Dallas and Houston and in the Attorney General's Office. They currently have 10 officers, but that is just not enough to handle the magnitude of the problem and does not reflect the urgency with which the exploited children deserve to be

rescued. With limited resources, ICAC has been very successful, rescuing one child for every three arrests.

For those cases that ICAC officers are able to investigate now, the primary concern is rescuing children from further exploitation and before they are sexually abused. CSHB 3746 would allow prosecuting attorneys and ICAC officers to compel production of subscriber data from an Internet service provider on a computer IP address that was trafficking in pornographic images of children. When a suspect has been identified and an investigation starts, going through the normal grand jury subpoena process can take weeks if the investigating officer cannot find a prosecutor to sign off on the subpoena or a grand jury is not meeting for weeks, as can be the case in rural counties.

With reasonable cause, the administrative subpoena would allow the ICAC officer to get to a vulnerable child in a matter of hours. Administrative subpoenas would be allowed only in this very narrow circumstance when children were being exploited and only for ICAC officers and prosecutors on these cases, not for any crime. Federal officers that investigate these cases have administrative subpoena power, and some other states allow administrative subpoenas in these types of cases as well.

This bill is named Alicia's law for Alicia Kozakeiwicz, who was abducted at 13 by a predator she met on the Internet. He held her and tortured her in a basement for four days. Unfortunately, children like Alicia are out there now and need our help. The U.S. Department of Justice reports that crimes related to child pornography are the fastest-growing class of crimes in this country. More than 30,000 individual computers in Texas were identified as trafficking in sadistic images of children being raped and tortured.

These images are not just naked children and are not images of high school girls gone wild on spring break; these images are of sexual penetration of young children. Eighty three percent of the images are of 6- to 12-year-olds. The most popular recent video for these types of child pornographers involves an 18-month-old girl. Eighty percent of these child porn predators want to see a child being penetrated in the image, and 21 percent want to see the child being tortured. The link between this kind of child pornography and hands on sexual abuse has been documented. The Butner federal prison study found that of 64 felons serving time for child pornography, 80 percent of them molested an average of 19 children each. Law enforcement has identified three factors related to child pornography

on a person's computer that if present indicate a 90 percent chance the person will sexually abuse a child in the future.

The problem is staggering, but with the proper resources, we have the tools to catch these dangerous predators. Law enforcement has software that can track those indicators to identify the truly dangerous child exploitation pornographers. The problem is that law enforcement can only investigate one percent of suspects identified. Setting up the Internet crimes against children account under CSHB 3746, although not yet funded, would bring needed attention to this issue and would serve as a catalyst for rallying support for more funding. CSHB 3746 would set up the account so that one day, hopefully soon, it would provide the ICAC officers the funding needed to investigate many more identified suspects and save many more children from exploitation and abuse.

OPPONENTS SAY:

CSHB 3746 could allow rogue officers to abuse administrative subpoena power. Although the intent is to allow an officer to get information only from an Internet service provider, a vigilante officer could create a subpoena compelling a suspect to provide the information. The possibilities for harassment and violation of constitutional search and seizure protections by a rogue officer would just be too great. Texas does not allow administrative subpoenas for anything right now, and this bill would be a huge step that should not be taken without adequate protections in place, which CSHB 3746 would not provide.

Moreover, the problem the bill would attempt to fix does not exist. The grand jury subpoena process does not take a long time. An officer merely finds out when and which grand jury will be meeting in two weeks, which is usually the time given to produce the requested documents, and asks the prosecutor to sign off on it. This process is working just fine, and having the prosecutor sign off on the subpoena is an important safeguard of our civil liberties.

The basis for this bill is faulty to begin with because just because someone looks at a nude picture of a child does not mean that person is going to sexually abuse children. CSHB 3746 could violate the rights of many law-abiding citizens. Drawing sweeping conclusions from the Butner study about the connection between child pornography and subsequent sexual abuse is unfair because the only people polled were convicted criminals in treatment, not the thousands of people who might view child pornography without ever producing or trafficking the material.

OTHER OPPONENTS SAY:

While CSHB 3746 would provide the administrative subpoena power ICAC officers need to protect more children, the bill needs a procedural fix. The bill would allow a person who received a subpoena to petition to quash the subpoena in the court where the person resided or did business, but the state should not have to travel to another jurisdiction to defend its subpoena. The bill should require the petition to be brought to the court in the county where the subpoena was issued.

NOTES:

The companion bill, SB 1843 by Carona, was reported favorably, as substituted, by the Senate Criminal Justice Committee on May 10.

SUBJECT: Electing, not appointing, four Teacher Retirement System board members

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 7 ayes — Truitt, Anchia, C. Anderson, Hernandez Luna, Nash, Orr, Veasey

0 nays

2 absent — Creighton, Legler

WITNESSES: For — Tim Lee, Texas Retired Teachers Association (TRTA); Ted Melina Raab, Texas American Federation of Teachers; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Ann Fickel, Texas Classroom Teachers Association; Zora Mae Hise; Derrick Osobase, Texas State Employees Union; Josh Sanderson, Association of Texas Professional Educators; Sheila Sargent)

Against — None

On — Ronnie Jung, Teacher Retirement System

BACKGROUND: Government Code, ch. 825, subch. A outlines provisions for the administration by the board of trustees of the Teacher Retirement System (TRS) of Texas. The TRS board comprises nine trustees appointed by the governor to six-year staggered terms with the following composition:

- three trustees directly appointed;
- two trustees appointed from a list recommended by the State Board of Education (SBOE);
- two trustees appointed from three public school district active member candidates nominated by employees of public school districts;
- one trustee appointed from three higher education active member candidates nominated by employees of higher education institutions; and
- one trustee appointed from three retired member candidates who are nominated by retired TRS members.

These appointments are subject to confirmation by the Senate. The direct appointments by the governor and those recommended by the SBOE must have demonstrated financial expertise, have worked in private business or industry, and have broad investment experience.

Sec. 825.0041, Government Code requires a person appointed to the TRS board to receive training before participating in board proceedings. A training program must provide the person with information regarding:

- the legislation that created TRS and its programs, functions, rules, and budget;
- the results of the most recent formal audit;
- open meetings, public information, administrative procedure, and conflicts of interest; and
- any applicable ethics policies adopted by TRS or the Texas Ethics Commission.

DIGEST:

CSHB 3747 would require that TRS members elect four members on the TRS board of trustees. Members whose most recent service was for a public school district would elect two individuals employed by a public school district. These two elected members would hold office for staggered terms. TRS members whose most recent service was for a higher education institution would elect one member employed by a higher education institution to the board. Retired members would elect one retired member of TRS to the board.

The governor still would appoint five members, including three directly and two from a list provided by the SBOE.

Elected members would have to receive the same required training as appointed members. The bill would expand the training program to include information on the legislation that created the board of trustees, the policymaking functions of the board, and the rules of the retirement system, with an emphasis on the rules relating to disciplinary and investigatory authority. Like appointed members, elected members of the board would be entitled to reimbursement for travel expenses incurred to attend training.

The bill would apply to the appointment or election of a member of the board on or after September 1, 2011. 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 3747 would respond to the demands of active and retired teachers for a more direct voice in the administration of their retirement fund. While the current composition of the TRS board represents active and retired teachers, the representation does not come directly from the members, but instead from the governor's appointments from a slate of preferred candidates.

A 2009 House Pensions and Investments Committee's interim report to the 81st Legislature stated that pension plans could be strengthened by providing a more direct voice for members and beneficiaries on the boards of trustees. CSHB 3747 would provide this representation. These changes would place the board of TRS more in line with the current composition of the board of the Employees Retirement System (ERS), half of the trustees of which are directly elected by ERS members and retirees. The direct election that the bill would require would alleviate the uncertainty felt by active and retired members about the board, while also making it more accountable to its members.

The bill would leave intact the financial expertise requirements. Five trustees, a majority of the TRS board, still would be required to have this necessary expertise and would be appointed by the governor.

OPPONENTS SAY:

While well-intentioned, CSHB 3747 could politicize unnecessarily the TRS board of trustees with undue influence by outside groups. Having the governor appoint members from a slate of nominees helps remove outside influence from the equation.

NOTES:

A related bill, HB 2120 by D. Miller, which would allow one the TRS trustee positions required to be a higher education institution employee instead to be held by any TRS member or retiree and require input from current and retired TRS members in preparing the nomination list from which the governor would choose the trustee, was on the May 9 General State Calendar.

A related bill, HB 2656 by D. Miller, was enacted by the 81st Legislature and vetoed by the governor. Under the bill, instead of appointing one member from a slate of three TRS retirees nominated by the retirees, the governor would have appointed two retiree members from the nominated

slate. Instead of appointing two members with demonstrated financial expertise and broad investment experience from a list of nominees submitted by the SBOE, the governor would have appointed one member from the SBOE list. The board would have remained at nine members. The two retired members would have held office for staggered terms. The governor's stated reason for vetoing the bill was that it would decrease the number of TRS trustees with financial expertise.

SUBJECT: Requiring the LBB to study research and development franchise tax credits

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 11 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Martinez Fischer, Murphy, Ritter, Villarreal, Woolley

0 nays

WITNESSES: For — (*Registered, but did not testify:* Bill Allaway, Texas Taxpayers and Research Association; Luke Bellsnyder, Texas Association of Manufacturers; Jeffrey Clark, Technology Association of America (TechAmerica); Lee Couch, Bell Helicopter Textron; Kathy Grant, AT&T; Bill Hammond, Texas Association of Business; Larry McGinnis, The Boeing Company; Hector Rivero, Texas Chemical Council; Jennifer Rodriguez, Lockheed Martin Aeronautics Company)

Against — None

BACKGROUND: Prior to its repeal in HB 3 by the 79th Legislature in its third called session in 2006, the research and development franchise tax credit allowed a business to receive a 5-percent tax credit for the amount of increased research and development expenditure over the company's historical spending levels on research and development. The credit was capped at half of a business's franchise tax payment.

DIGEST: CSHB 2383 would require the Legislative Budget Board (LBB) to conduct a study of the costs and benefits of reenacting the tax credit for research and development that was in effect before the enactment of HB 3 in 2006 by the 79th Legislature. The LBB also would have to study the types of research and development incentives available in other states.

The LBB would be allowed to seek assistance from other state agencies, but the study could be completed only with existing resources. The LBB would have to report the results of the study to the Legislature by January 1, 2013. The bill's provisions would expire September 1, 2013.

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.

NOTES:

The companion bill, SB 1458 by Harris, was referred to the Senate Finance Committee on March 22.

SUBJECT: Revising provisions governing coordinated transportation authorities

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Phillips, Fletcher, Harper-Brown, Lavender, McClendon, Pickett

2 nays — Martinez, Rodriguez

1 present not voting — Y. Davis

2 absent — Darby, Bonnen

WITNESSES: For — Charles Emery and Rider Scott, Denton County Transportation Authority; (*Registered, but did not testify:* Ken Whalen, Texas Daily Newspaper Association, Texas Press Association)

Against — None

BACKGROUND: Transportation Code, ch. 460 allows a county commissioners court in a county adjacent to another with a population greater than one million (counties around Harris, Dallas, Tarrant, Bexar, and Travis counties) to initiate a process to create a coordinated county transportation authority. Current law establishes procedures for adoption of a service plan and tax rate for the transportation authority. A service plan can be implemented only in an area of a participating county with a majority vote for the associated tax in an authorization election.

To date, Denton County is the only county to implement a coordinated county transportation authority. The Denton County Transportation Authority (DCTA) was approved by voters in 2002 and offers bus service, shuttle service, and the A-Train — a regional passenger train planned to run from Denton to Carrolton upon completion.

DIGEST: CSHB 2884 would revise provisions governing coordinated transportation authorities, including establishing penalties for not paying fares for using transportation services, allowing authorities to employ fare enforcement officers, increasing the amount of a contract an authority's board could approve without a competitive bid, and establishing tax increment financing areas for services provided by a transportation authority.

Penalties for not paying fares. CSHB 2884 would allow the board of a coordinated county transportation authority to prohibit a person from using the public transportation system without paying a fare and to assess a reasonable administrative fee for not doing so. An offense for not paying a fare would be a misdemeanor punishable by a fee no greater than $100. It would be an admission of guilt if a person did not provide adequate proof of paying a fare, as outlined in the bill, and did not pay an administrative fee within 30 days of receiving notice from the authority. The authority could enter into an agreement with a justice court in its service area to try all nonpayment of fare cases.

Fare enforcement officers. An authority could employ fare enforcement officers who could request and inspect evidence showing payment of the appropriate fare and issue a citation to a person who did not pay. A fare enforcement officer could:

- request evidence showing payment of the appropriate fare or an exemption from the payment requirement;
- request personal identification or other documentation designated by the authority from a passenger who did not offer evidence of paying a fare;
- instruct a passenger who did not have evidence of paying a fare to immediately leave the public transportation system; or
- file a complaint in the appropriate court that charged the person with an offense.

Fare enforcement officers could not carry a weapon while on duty unless they were certified peace officers, and could not enforce an unrelated criminal law. The bill would establish requirements for training and uniforms for fare enforcement officers.

Tax increment financing for public transportation. As an alternative to current procedures, the bill would allow a municipality to adopt an ordinance designating a public transportation financing area. The area would have to include one or more transit facilities and would have to be within one-half mile on either side of a proposed route served by those facilities. The ordinance would have to designate a portion of the amount of the tax increment to the authority and state whether the increment would come from property taxes, sales and use taxes, or both. The municipality would have to hold a public hearing to create the financing area and would have to post notice of the hearing.

A service plan could be implemented in an area of a municipality that did not authorize an authority's sales and use tax if the combined sales and use tax from the municipality and other local governments would exceed 2 percent, and the municipality agreed with the authority to provide public transportation services in a transportation financing area in exchange for a portion of the tax increment in that area.

The amount designated in the increment could not be greater than the amount that would be collected by the authority if the municipality had authorized its sales and use tax levy, unless the increment was not enough to cover the costs of providing services. In that case, the municipality would have to designate to the authority, upon its request, the entire amount of the tax increment. The municipality would have to reach an agreement with the comptroller to administer payments from the tax increment financing zone. An agreement could require a municipality to pay a capital recovery fee to the authority. The bill would establish procedures for use of surplus tax increment payments and for terminating a transportation financing area.

An authority that reached a service agreement with a municipality would have to establish a tax increment account. Taxes in the increment account could be used only to compensate the authority for expenses — including capital costs and a capital recovery fee— of providing public transportation services, as well as bonds or other obligations issued for public transportation projects.

Noncompetitive contracts. The bill would increase the amount of a contract the board could negotiate without a competitive bid to $50,000 from the current limit of $25,000.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 2884 would improve the operations of the DCTA. The bill would make a number of statutory changes to assist DCTA with operations of the A-Train, a commuter rail system anticipated to launch in June that will provide service from Denton to Carrolton and link up with Dallas Area Rapid Transit (DART). DCTA, to assist with operating the A-Train and to adopt procedures similar to DART, needs the authority to enforce fares on the line.

For this purpose, the bill would grant DCTA the authority to hire fare enforcement officers, who could board trains and ask a passenger for evidence of a ticket. The bill would create a $100 fine and misdemeanor offense for a person who skipped a fare. This authority is in keeping with powers granted to other transportation authorities under different statutes, such as METRO in Houston, VIA in San Antonio, and Capital Metro in Austin.

The bill would allow municipalities who wished to participate in DCTA service, such as Corinth and Lake Dallas, a means to do so without reallocating their portion of sales and use tax. It would allow municipalities, upon their motion, to establish a public transportation financing area, similar to a tax increment financing zone. The municipality could designate an area around a transit facility and devote any incremental increase of either property or sales and use taxes in that area over a number of years to the DCTA. The bill establishes procedures and requirements for an agreement between a municipality and the DCTA, including allowing the municipality to gradually satisfy membership fees owed to the authority. These measures would provide a means for municipalities that were "capped out" in their allocations of sales and use taxes to become DCTA members.

Authorizing the tax financing areas would allow local governments to maximize available resources without tax increases. Although property values in a financing area could increase as a result of economic development stemming from a transit facility, no property would be taxed at a higher rate due to its inclusion.

CSHB 2884 also would increase the minimum threshold for a requirement for the DCTA board to hold a noncompetitive bid to $50,000. This would reflect recent increases in this threshold for other transportation authorities in the state, as well as for municipalities, counties, and school districts that were increased in 2009. Raising the threshold would reduce administrative burdens without reducing transparency. Anyone seeking information about the transaction could contact DCTA and request the desired information.

OPPONENTS SAY:

By allowing competitive sealed proposals for contracts up to $50,000, CSHB 2884 could diminish the transparency of the transportation authority's transactions and result in the availability of less information for the public about how tax dollars were being spent. Decreasing information

available to the public would lessen the opportunity for citizens to object to the decisions of DCTA with which they may disagree.

Authorizing municipalities to designate transportation financing areas to direct property and sales and use taxes to a transportation authority is problematic. For one, this would be an expansion of the troubling practice of using property taxes to fund transportation projects and services. Transportation financing areas are a questionable use of property taxes — which are problematic and antiquated in themselves — and could create an incentive to increase appraisals of property in the area. Further, the increment dedicated to paying the costs to DCTA would be diverted from other pressing local needs.

Allowing municipalities to dedicate an increment of the local sales and use tax also would take funds away from other necessary services and would be a way around the current statutory process of holding a vote to designate a service area and set a tax rate. That process was put in place to ensure that people had a voice in designating service zones for transportation authorities. Through tax-financing areas, DCTA would not have to hold a public vote.

NOTES:

The companion bill, SB 1422 by Nelson, passed the Senate by 31-0 on the Local and Uncontested Calendar on May 5 and was referred to the House Transportation Committee on May 9.

SUBJECT: Comprehensive smoking ban

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Kolkhorst, Naishtat, Alvarado, Coleman, V. Gonzales, S. King, Truitt, Zerwas

2 nays — Laubenberg, Schwertner

1 absent — S. Davis

WITNESSES: For — John Carlo, American Heart Association and Texas Medical Association; Boyer Derise, Flemings Prime Steakhouse; Joel Dunnington, American Cancer Society; James Gray, American Cancer Society; Carlos Higgins, Texas Silver-Haired Legislature; Philip Huang, Austin/Travis County Health Dept. and Smoke-Free Texas; Jacqueline Petterson, American Heart Association; Kristy Sommers, Coalition for a Smoke Free Texas; Trena Stafford, Texas PTA; Michael Brown; Kathleen Foster; Johnson, Katherine; Mitchell Moore; (*Registered, but did not testify:* Brandon Aghamalian, City of Denton, Mayor and Council and City of Corpus Christi, Mayor and Council; Joel Ballew, Texas Health Resources; Yannis Banks, Texas NAACP; Tom Banning, Texas Academy of Family Physicians and Texas Pediatric Society; Ed Berger, Seton Family of Hospitals; Jaime Capelo, Texas Chapter American College of Cardiology; Teresa Devine, Blue Cross Blue Shield of Texas; Darrick Eugene, Texas Carbon Capture and Storage Association; Marisa Finley, Scott & White Center for Healthcare Policy; Amanda Fredriksen, AARP; Duane Galligher, Greater San Antonio Chamber of Commerce and Association of Substance Abuse Programs of Texas; Edward Gomez, Greater Austin Hispanic Chamber of Commerce; Liza Gonzalez, Greater San Antonio Chamber of Commerce; Lauren Hutton Bibiahaus, Livestrong; Richie Jackson, Texas Restaurant Association; Sara Kemptner, Aetna; Lee Lane, Texas Association of Local Health Officials; Melinda Little, Campaign for Tobacco Free Kids; Mark Malone, Humana Health Plans; James Martinez, The American Lung Association; David Marwitz, Texas Dermatological Society; Luke Metzger, Environment Texas; Mary Nava, Bexar County Medical Society; Anne Olson, Texas Baptist Christian Life Commission; David Pearson, Texas Organization of Rural and Community Hospitals; David Power, Public Citizen; Cyrus Reed, Lone Star Chapter Sierra Club;

Andrew Rivas, Texas Catholic Conference; Claudia Rodas, American Cancer Society; Joel Romo, American Heart Association and Texas Public Health Coalition; Denise Rose, Texas Hospital Association; Lauren Rose, Texans Care For Children; Susan Ross, Texas Dental Association; Mari Ruckel, Texas Oil and Gas Association; Jason Sabo, United Ways of Texas; Gabriela Saenz, CHRISTUS Health; Morgan Sanders, March of Dimes; Emily Shelton, Texas Impact; Andrew Smith, University Health System; Bryan Sperry, Children's Hospital Association of Texas; David Weinberg, Texas League of Conservation Voters; James Willmann, Texas Nurses Association; Stacy Wilson, Community Care; Jared Wolfe, Texas Association of Health Plans; Eric Woomer, Texas Wings, Incorporated; Joseph Blackburn; Melody Chatelle; Ruby Moore; Sylvia Stern)

Against — Philip Robert Brinson, Fast Eddie's Billiards; (*Registered, but did not testify:* Steve Bresnen, Coalition for the Survival of Charitable Bingo; Cathy Dewitt, Texas Association of Business; Stephen Fenoglio, Texas Charity Advocates; Cindy Mallette, Americans for Prosperity)

On — Rick Allgeyer, Health and Human Services Commission; Lewis Foxhall, UT MD Anderson Cancer Center; Lauri Kalanges, Texas Department of State Health Services; (*Registered, but did not testify:* Penny Harmonson and Adolfo Valadez, Texas Department of State Health Services)

DIGEST:

HB 670 would add sec. 169 to the Health and Safety Code to prohibit smoking in certain public spaces, places of employment, and outdoor events. The bill would supersede any local ordinance, rule, or regulation, unless the local provision was more restrictive.

The bill would provide a specific list of areas where individuals would be prohibited from smoking, including:

- restaurants, bars, shopping malls, and other enclosed retail or service establishments;
- theaters, convention facilities, sports arenas, and outdoor events;
- enclosed places of employment;
- government buildings;
- public transportation facilities, including ticketing and boarding areas;
- health care facilities and licensed child and adult care providers;

and

- other common areas, including public restrooms, lobbies, hallways, elevators, and reception areas.

Owners, operators, and managers would have to post conspicuous "no smoking" signs.

The bill would allow the following exemptions from the smoking ban:

- a private residence, except when used as a child care, adult day care, or health care facility;
- a nursing home or long-term care facility;
- a patio or outdoor seating area of a bar or restaurant;
- a tobacco shop or bar;
- a tobacco convention;
- a tobacco-related business where the product was subject to manufacturer testing;
- a private club that had no employees, was not used for public functions, and was not established to avoid compliance; and
- certain hotel or motel rooms that were designated as smoking rooms.

The Department of State Health Services (DSHS) would have to provide a continuing education program to explain the purpose and requirements of the smoking ban to employers, owners and operators, and managers.

DSHS would have to enforce the smoking ban. The bill would authorize DSHS or any other state agency or political subdivision to inspect an establishment for compliance. A person could file a complaint concerning a violation. The attorney general could bring an action for injunctive relief to enforce the ban.

A person who committed a violation of the smoking ban would commit a class C misdemeanor, punishable by a maximum $50 fine. An owner, manager, operator, or employer in violation would commit a class C misdemeanor punishable by a maximum $100 fine or a maximum $200 fine if it was a repeat offense within the past year.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

HB 670 would improve public health and lower health care costs in Texas. The public health risks associated with tobacco products are very serious. Tobacco use is the leading cause of preventable deaths in the state, killing up to 25,000 Texans each year.

The bill would protect nonsmoking Texans from the dangers of second hand smoke at work and in public places. Secondhand smoke kills approximately 53,000 nonsmoking Americans per year, illustrating that smokers are not the only people affected by tobacco use. All exposed individuals are more likely to develop cancer and heart and lung disease. People who work in bars and restaurants are exposed to secondhand smoke at even higher levels than those who work in offices. Individuals working at restaurants where smoking is permitted are more likely than other workers to die of lung cancer. Every Texan has a right to be protected from toxic hazards at work, and HB 670 would help to ensure that workers in this state have access to safe working conditions.

Most Texans working in bars and restaurants are uninsured and receive lower wages, which makes it difficult for them to access health care. They often wait until the illness becomes more advanced and then seek care in more expensive settings like emergency rooms or hospitals, which pass the costs onto taxpayers or to the insured through higher premiums. HB 670 would save the state millions of dollars in health care costs by preventing exposure to secondhand smoke.

HB 670 also could help businesses achieve significant cost savings. Independent studies have shown that the hospitality industry in cities with comprehensive smoking bans have not been negatively impacted. Studies conducted in Houston and El Paso determined that the smoking ban had no adverse impact on bars, restaurants, or tourism. Businesses also could experience reduced health care costs and cleaning costs.

HB 670 would not infringe upon the liberty of others because it would not prohibit individuals from smoking; it would simply ask them to step outside, to avoid harming the health of others.

OPPONENTS SAY:

HB 670 would represent an over-expansion of government and set a dangerous precedent for banning legal activity in public. The bill would violate the rights of individuals and business property owners. Tobacco is a legal product that millions of Americans choose to enjoy.

The bill would harm small businesses, particularly restaurant and bar owners, in Texas. Some businesses have noted significant drops in business after implementation of a smoking ordinance. This economic burden also impacts the restaurants and bar staff who rely heavily on tips. Many bars and restaurants spent large amounts of money to install air filtration systems as a response to restrictive smoking ordinances. These systems are expensive, and their costs cannot be recovered.

HB 670 also would reduce the charitable revenue generated through bingo parlors. Surveys conducted in bingo halls have revealed that most players are smokers. The implementation of local smoking ordinances in the city of Dallas closed several bingo parlors, and the charitable organizations never recovered.

NOTES:

The fiscal note suggests that there would be no significant fiscal impact for the state, but the bill could have a secondary effect resulting in significant savings in the state's various health care programs.

The companion bill, SB 355 by Ellis, was reported favorably as substituted by the Senate Health and Human Services Committee on March 14.

SUBJECT: Revised regulations for tax increment financing reinvestment zones

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 11 ayes — Hilderbran, Otto, Christian, Elkins, Gonzalez, Lyne, Martinez Fischer, Murphy, Ritter, Villarreal, Woolley

0 nays

WITNESSES: For — John Kuhl, Jody Richardson, Community Redevelopment Coalition; Trey Lary, Allen Boone Humphries Robinson LLP

Against — None

BACKGROUND: The Tax Increment Financing Act (Tax Code, ch. 311) permits cities and counties to designate tax increment financing reinvestment zones to acquire blighted or undeveloped real estate to preserve or protect historic sites, implement beautification and redevelopment projects, or acquire, construct, reconstruct, or install public works, facilities, or other public improvements in a specified area.

Tax Code, sec. 311.009(a) establishes a tax reinvestment zone governing board of five to 15 members. Each taxing unit of the zone, other than the city or county that created it, may appoint one member. Tax Code, sec. 311.0091(f) requires a member of the board to be a qualified voter, at least 18 years old, and own property in the zone or be an employee or agent of a property owner in the zone.

DIGEST: CSHB 3275 would amend Tax Code, ch. 311 to:

- allow a taxing unit other than the city or county that created the zone to appoint a board member if the taxing unit had approved the payment of the tax increment produced by the unit into the zone's tax increment fund;
- specify that the eligibility criteria for board members in Tax Code, sec. 311.0091(f) do not apply to individuals appointed by a conservation and reclamation district with a jurisdiction of four counties;

- add counties as an entity authorized to designate the area of a tax reinvestment zone; and
- change the deadline for the city or county governing body to submit financial reports, including reports and audits, to the chief executive of the taxing unit from 90 to 150 days.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 3275 would make straightforward and simple changes to give conservation and reclamation districts some flexibility in appointing tax reinvestment zone members and clarify that counties as well as cities could initiate the creation of such districts. The change in qualifications for appointments by conversation and reclamation districts would have only a limited effect. Allowing a longer deadline for submission of financial reports would ease administrative burdens on the city or county governing bodies, which have limited support staff and would still provide information on a timely basis to the taxing entities.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Changes to regulation of the title insurance industry.

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Eiland, Nash, Sheets, Taylor, Torres, Vo, Walle

0 nays

1 absent — Hancock

WITNESSES: For — Merritt Hopson, Texas Land Title Association, Fidelity National Title Group; (*Registered, but did not testify*: Mark Borskey, First American Title; James Dudley, Central Texas Land Titles, Inc.; Randy M Lee, Stewart Title Guaranty Co., Brian Pitman, Independent Title Agents of Texas; Glen Cochran; Suzanne Frossard; Alex Harris; Guy Jackson; Dawn Moore; Phyllis Mulder; Jack Rattikin III)

Against — None

On — (*Registered, but did not testify*: Robert Carter, Texas Department of Insurance, David Muckerheide, Texas Department of Insurance)

BACKGROUND: The Texas Department of Insurance (TDI) licenses and regulates title insurance agents and escrow officers.

The commissioner holds a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or certain members of the public request to be considered or that the commissioner determines necessary to consider.

DIGEST: CSHB 1457 would amend provisions for obtaining a license or license renewal for a title insurance agent or escrow officer, the prohibited grounds for rejection, delay, or denial of applications or renewals for title insurance agents or escrow officers, and the process for public hearings to consider changing a premium rate.

License application and renewal. The bill would make changes to the license renewal process for a title insurance agent and the license application and renewal process for an escrow officer.

It would amend the Insurance Code to provide that not later than 20 business days after the Department of Insurance received a renewal application from a title agent, or a license application or renewal for an escrow officer, the department would notify the applicant in writing of any deficiencies in the application that would render it incomplete.

Not later than the fifth business day after the date the application was complete, the department would notify the applicant in writing of the date that the application or renewal was complete.

A renewal application automatically would be approved on the 30th business day after the date the renewal application was complete unless the department notified the applicant in writing on or before that date of the factual grounds on which the department proposed to deny the license.

Title agent appointment. The bill would make changes to the multiple appointment process for a title agent.

TDI would have to notify the title insurance agent and appointing title insurance company not more than the 20 business days after the department received a notice from a company alerting them of the additional appointment of a licensed title insurance agent of any deficiencies in the notice that rendered the notice incomplete. Otherwise the notice would be considered complete on the date the department received it. Within five business days after the notice was complete, the department would notify the title insurance agent and appointing title insurance company in writing of the date that it was complete.

Under the bill, TDI could not reject or delay notices of appointment based wholly or partly on a pending department audit, complaint investigation, or a pending disciplinary action against certain applicants or license holders that had not been closed or finally adjudicated on or before the date the notice was received by the department or certain applications were filed.

Notice of disciplinary or enforcement action. CSHB 2408 would require that department notify a title insurance license holder of a disciplinary or enforcement action in writing not later than 30 business days, and an escrow license holder not later than 20 business days, after the department assigned a file number to the action. A notice would provide a license holder fair notice of the alleged facts known by the department on the date of the notice that constituted grounds for the action.

A disciplinary or enforcement action would be automatically dismissed with prejudice unless the department served a notice of hearing on the license holder not later than the 60th business day after the date the department received a hearing request from the license holder.

Hearing on premium rate change. Under the bill, the commissioner would order a public hearing to consider changing a premium rate, including fixing a new premium rate, in response to a written request by:

- a title insurance company;
- an association composed of at least 50 percent of the number of title insurance agents and title insurance companies licensed or authorized by the department;
- an association composed of at least 20 percent of the number of title insurance agents licensed or authorized by the department; or
- the office of public insurance counsel.

The bill would require the commissioner to hold a public hearing at least once every five years.

Under the bill, certain public hearings would be conducted by the commissioner as a contested case hearing at the request of:

- a title insurance company;
- an association composed of at least 50 percent of the number of title insurance agents and title insurance companies licensed or authorized by the department;
- an association composed of at least 20 percent of the number of title insurance agents licensed or authorized by the department; or
- the office of public insurance counsel.

If a hearing for a premium rate change was not conducted as a contested case hearing, the commissioner would have to render a decision and issue a final order not later than 120 days after the date the commissioner received a written request.

If a hearing held was conducted as a contested case hearing, the commissioner:

- would have to issue a notice of call for items to be considered at the hearing not later than 30 days after the date the commissioner received a request for a public hearing;
- could not require responses to the notice of call before 60 days after the date the commissioner issued the notice of call;
- would have to issue a notice of public hearing requested not later than 30 days after the date responses to the notice of call were required;
- would have to commence the public hearing not earlier than 120 days after the date the commissioner issued a notice of hearing;
- would have to close the public hearing not later than 150 days after the date the commissioner issued the notice of public hearing; and
- would have to render a decision and issue a final order not later than 60 days after the record made in the public hearing was closed.

A party's presentation of relevant, admissible oral testimony in a public hearing could not be limited, and the commissioner would consider each matter presented in a hearing and announce in a public hearing all decisions on all matters considered. A party could petition a district court in Travis County to enter an order requiring the commissioner to comply with the deadlines described if the commissioner failed to meet a requirement.

If the commissioner failed to comply with the requirements, a combination of at least three associations, persons, or entities could jointly petition a district court of Travis County to adopt a rate based on the record made in the hearing.

If the record made in the hearing before the commissioner was not complete before the request for the court to adopt a premium rate, the

court would hold an evidentiary hearing to establish a record before adopting the premium rate.

After a petition was filed, the commissioner could not issue findings or an order related to the subject matter of the petition until after the date the court entered a final judgment. A district court could appoint a magistrate to adopt a rate.

Other provisions. Under the bill, notice of certain hearings would be sent to certain parties and published in the Texas Register and on the department's website.

The bill would require the contents of the annual statistical report, including any amendments, be established in a rulemaking hearing. An amendment to the report could not apply retroactively.

Under CSHB 2408, a title insurance company or agent would not be prohibited from providing continuing education, whether or not for accreditation, at market rates.

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

NOTES:

The companion bill, SB 1457 by Harris, was considered in a public hearing by the Senate Business and Commerce Committee on April 12 and left pending.

SUBJECT: Costs for cruelly treated animal proceedings

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Hartnett, Scott, Thompson

2 nays — Madden, Raymond

1 absent — Woolley

WITNESSES: For — Michael Camp, City of Fort Worth; Linda Geffin, Harris County Attorney's Office; Joseph Guerra, Houston Humane Society; Robert "Skip" Trimble, Texas Humane Legislation Network; Tara Yurkshat, Houston SPCA; (*Registered, but did not testify*: Julie Covey, Fox Terrier Rescue of Central and North Texas; Sherry Ferguson, Houston Humane Society; Monica Hardy, Cile Holloway, Texas Humane Legislation Network; Frances Jonon, Austin Humane Society; Bill Longley, Texas Municipal League; Patt Nordyke, Texas Federation of Animal Care Societies; Nicole Paquette, The Humane Society of the United States; Stacy Schuelke, Houston Humane Society; Diane Coker; Jeanne O'Neil; Lisa Starr)

Against — Zandra Anderson, Texas Dog Commission; Mark Homer, Martine Huslig, Responsible Pet Owners Alliance; Gib Lewis, Texas Wildlife Association; Scott Kirby; Jeff Shaver; (*Registered, but did not testify*: Curtis Fuelberg, Texas Sporting Dog Association; Marion Sanford; Sara Whittington)

BACKGROUND: Health and Safety Code ch. 821 stipulates that if a court determines that a person treated his or her animal cruelly, the person would lose ownership privileges. The court must order that the animal be sold at auction, given to an animal shelter, or humanely killed. Furthermore, the former owner must pay all court costs.

A person who has lost ownership privileges can appeal a court's ruling. Within 10 days after the court order, he or she can file an appeal notice and an appeal bond to cover the expenses for sheltering the animal. Within five days after the appeals notice, the court must deliver the court's

transcripts to the county court. Within 10 days after the county court receives the transcript, the county court must rule on the appeal. Until that ruling is made, the animal may not be sold, given away, or killed.

DIGEST:

CSHB 963 would require a court that found an animal owner guilty of cruelly treated the animal to determine the estimated costs likely to be incurred by the city or county animal shelter or nonprofit organization for housing and caring for the animal during the appeals process. The court would then have to set the amount of bond for an appeal equal to the sum of administrative court costs and the costs incurred in caring for the animal. A court could not require a bond amount greater than or in addition to this sum.

If and when a former owner filed an appeal, he or she also would have to file a cash or surety bond. The court then would have to deliver the clerk's records, not just the transcripts, to the clerk of the county court. When ruling on the appeal, the court would have to consider the matter as a new case and, if requested by any party, hold a jury trial.

The laws made in these provisions would have standing in case of any conflict with other parts of Texas statute.

The changes made in CSHB 963 would apply only to proceedings on or after the bill's effective date of September 1, 2011.

SUPPORTERS SAY:

CSHB 963 would standardize the appellate process for persons who have lost ownership of their animals due to a civil case on animal cruelty. This process was amended by SB 408 during the 81st Legislature, but since a person could appeal from a justice court, a municipal court, or a municipal court of record, the process was too inconsistent.

CSHB 963 would better define the costs incurred by the court, thereby creating a more standard bond amount. This would protect the courts by ensuring that they were adequately reimbursed for their costs. It also would protect defendants by prohibiting courts from assessing a bond amount higher than cost.

By requiring the court to hear the appeals case as new and giving the option for a jury trial, the bill would quicken the process, thereby lowering costs and resolving the issue for both the owner and the animal in a more timely manner.

OPPONENTS SAY:

CSHB 963 would make the appellate process far too costly for persons trying to reclaim their animal ownership privileges. As a prerequisite for an appeal, CSHB 963 would mandate that the person pay a bond to include cost of the investigation, expert witnesses, auction, and potential killing of the animal. Additionally, he or she would have to pay for the shelter of the animal, not just through the appellate process, but from the initial proceedings. If the person won the appeal, much of the bond would be reimbursed, but since bonding companies charge a nonrefundable fee, the owner would not be repaid the full amount.

NOTES:

The companion bill, SB 541 by Carona, was referred to the Senate Criminal Justice Committee on February 17.

SUBJECT: Enforcement of a self-service storage facility lien

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Solomons

0 nays

2 absent — S. Miller, Workman

WITNESSES: For — Brian Cisarik; Silvia Pendleton (*Registered, but did not testify:* Emily Cates, Daily Commercial Record; Laura Matz, Texas Self Storage Association)

Against — None

BACKGROUND: Property Code, ch. 59 governs self-storage facility liens. A lessor has a lien on all property in a self-service storage facility for the payment of charges that are due and unpaid by the tenant. A tenant may redeem property seized prior to its sale or other disposition by paying the lessor the amount of the lien and the lessor's reasonable expenses incurred.

A lessor may enforce a lien by seizing and selling the property if the seizure and sale are made under the terms of a contractual landlord's lien as in the written rental agreement. Otherwise, a lessor must have a court order to foreclose the lien and to sell the property.

To enforce a lien by seizing and selling or otherwise disposing of the property, the lessor must deliver written notice of the claim to the tenant to be delivered in person or by certified mail. The lessor must publish the notice once in each of two consecutive weeks in a newspaper of general circulation. If there is not a newspaper of general circulation in the county, the lessor may instead post a copy of the notice at the self-service storage facility and at least five other locations near the facility.

If the tenant fails to pay before the 15th day after the day that the notice is delivered, the lessor must publish or post notices advertising the sale. If notice is by publication, the lessor may not sell the property until the 15th day after the day that the first notice is published. If notice is by posting,

the lessor may sell the property after the 10th day after the day that the notices are posted.

If the proceeds of a sale are greater than the amount of the lien and the reasonable expenses of the sale, the lessor must notify the tenant who has two years to request the excess or the lessor owns the excess.

The Servicemembers Civil Relief Act. The Servicemembers Civil Relief Act defines a service member as a member of the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service. The Act, 50 U.S.C. sec. 537, does not permit a person holding a storage facility lien on the property or effects of a service member, during any period of military service of the service member and for 90 days thereafter, to foreclose or enforce a lien without a court order. A person who acts without a court order would be fined or imprisoned for not more than one year, or both.

DIGEST:

CSHB 1259 would make various changes to statutes governing self-storage facility liens.

It would include members of the Texas State Guard and the Texas National Guard in a definition of service members in Property Code, ch. 59, entitling them to the protections and rights for enforcement of storage liens of the federal Servicemembers Civil Relief Act.

The bill would require a notice of a claim to include a statement requesting a tenant in the military service to notify the lessor of the tenant's current military service status immediately. The lessor could require written proof of a tenant's military service.

The bill would permit notice of a claim to be delivered via e-mail if agreed upon in the rental agreement between the tenant and the lessor. The bill would require that a tenant satisfy a claim within 14 days, rather than 15 days, after being notified to avoid the sale of the property.

The bill would amend the timeframe for notification and action for the enforcement of a lien involving certain motor vehicles required to be titled, including those registered or titled outside this state. Within 30 days of the lessor taking possession of the property to enforce a lien, the lessor

would have to give written notice of sale to the last known owner and each holder of a lien recorded on the registration or certificate of title.

The notice would include the amount of the charges secured by the lien, a request for payment, and a statement that if the charges were not paid in full before the 31st day after the date the notice was mailed or published, the property could be sold at public auction.

The notice required could be given in the print or electronic version of a newspaper in the county in which the vehicle or boat was stored if:

- the lessor submitted a written request by verified mail to the governmental entity with which the vehicle was registered or titled requesting information on the identity of the last known owner and any lienholder;
- the lessor was advised in writing that the entity was unwilling or unable to provide the information or the lessor did not receive a response;
- the identity of the last known owner could not be determined;
- the registration or title did not contain an address for the last known owner; and
- the lessor could not determine the identities and addresses of the lienholders of record.

The lessor would not be required to publish notice if notice were sent and returned as unclaimed or refused with a notation that the addressee was unknown or had moved without a valid forwarding address.

If a constitutional or statutory lien were foreclosed, the Texas Department of Transportation could issue a new certificate of title in the name of the purchaser at the foreclosure sale.

A person would commit a class C misdemeanor (maximum fine of $500) if the person knowingly provided false or misleading information in a notice.

The bill would take effect January 1, 2012, and would apply only to self-service storage facility rental agreements entered into, extended, or renewed on or after that date.

NOTES: The companion bill, SB 690 by Carona, passed the Senate by 30-0 on March 24 and was reported favorably, as substituted, by the House Business and Industry Committee on April 13, making it eligible for consideration in lieu of HB 1259.

SUBJECT: Eligibility for filing a sworn complaint with the Texas Ethics Commission

COMMITTEE: Elections — committee substitute recommended

VOTE: 7 ayes — L. Taylor, Hernandez Luna, Berman, Branch, Burkett, Farias, P. King

1 nay — Veasey

1 absent — Isaac

WITNESSES: For — None

Against — None

On — Andy Wilson, Public Citizen; (*Registered, but did not testify*: David Reisman, Natalia Ashley, Texas Ethics Commission)

BACKGROUND: Government Code, ch. 571 governs the Texas Ethics Commission (TEC). Sec. 571.122 sets forth procedures and eligibility for filing complaints with the commission. Sec. 571.1221 requires the TEC to dismiss a complaint if the commission determines that the complaint was filed at the direction or urging of a person who is not a Texas resident.

Two subsections (b-1) of sec. 571.122 are numbered the same but are inconsistent in meaning and applicability. The "first" subsection number (b-1) was added by HB 3218 by Naishtat, 81st Legislature, and stipulates that to be eligible to file a sworn complaint with the commission, an individual must be a resident of this state. A complainant must provide a number of identifying documents.

The "second" subsection (b-1) was added by HB 677 by Hartnett, 81st Legislature, and stipulates that to be eligible to file a sworn complaint with the commission, an individual must be a resident of this state or must own real property in this state. A complainant must provide identifying documents, including a property tax bill, notices of appraised value, or other document that proves that the person owns the property.

DIGEST:

CSHB 1036 would repeal sec. 571.122(b-1), as added by HB 677, 81st Legislature, which would eliminate the eligibility to file a complaint with the Texas Ethics Commission nonresidents who own property within the state.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

The discrepancy in both of the sections has created confusion when dealing with the eligibility to file complaints. Removing one of the duplicate sections would clear up the confusion. The bill would not restrict residents of Texas, whether they owned property or not, from filing sworn complaints with the Texas Ethics Commission.

OPPONENTS SAY:

Landowners who have a vested interest in the state should not be prohibited from filing complaints with the Texas Ethics Commission regardless of whether they are Texas residents.

SUBJECT: Reporting the cost of undocumented immigrants to state services

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Menendez, Craddick, Frullo, Harless, Hilderbran, Huberty, Solomons, Turner

0 nays

4 absent — Gallego, Geren, Oliveira, Smithee

WITNESSES: For — Maria Martinez, Immigration Reform Coalition of Texas

Against — Andrew Rivas, Texas Catholic Conference; (*Registered, but did not testify:* Stefanie Collins, ACLU of Texas; Luis Figueroa, Mexican American Legal Defense and Educational Fund; Esther Reyes, Reform Immigration for TX Alliance; Emily Shelton, Texas Impact; Antolin Aguirre; B.J. Lee; Jesus Mares; Maria Medina; Karla Resendiz; Dianna Tavera; Walter Trejo)

On — Adrian Reyna, Texas DREAM Alliance

DIGEST: HB 608 would require each state agency to submit an annual report to the comptroller on the costs of services and benefits provided to undocumented immigrants by December 31 of each year. Each agency would have to determine the extent to which undocumented immigrants were served by it by considering the statements and other personal information provided by program recipients, or by using an aggregated statistical method if it was not practical to directly determine if each program recipient was an undocumented immigrant.

The comptroller would have to compile this information and submit a biennial report to the Legislature on the estimated financial impact of undocumented immigrants on the state budget and economy. The report would have to use aggregated statistical data that did not contain personally identifiable information and could not violate any federal or state laws, including ones related to privacy.

The bill would take effect September 1, 2011, and would apply only to applications for services or benefits made on or after the effective date.

SUPPORTERS SAY:

HB 608 would provide Texans with reliable information about the financial impact of undocumented immigrants on the state. Speculation has driven the debate on this contentious issue, largely because quality data that accurately capture this information are lacking. Previous studies and agency reports have relied on estimates based on imprecise and dated federal and state information. HB 608 would authorize state agencies to compile datasets from application and enrollment forms and would provide the most reliable source of information available.

The bill would authorize the comptroller to compile the datasets from state agencies and complete a report on the financial impact of undocumented immigrants on the Texas budget for the Legislature each biennium. This would be an unbiased and impartial source of information that could be trusted by all interested parties.

OPPONENTS SAY:

HB 608 would burden state agencies with extra work without providing the resources necessary to carry out this mandate. The bill would require each state agency to collect data from program applications and other relevant information submitted for enrollment. As a result, agencies would have to redesign application forms, pay for additional staff or for an external contractor to collect the vast amounts of information, and perform other administrative duties to meet the bill's requirements. Most state agencies have begun and will continue to make significant reductions in staff, so it would be inappropriate to mandate such an expensive project for an academic exercise. Given that undocumented immigrants are prohibited by federal law from enrolling in the vast majority of social programs, including Medicaid, Temporary Assistance for Needy Families (TANF), and food stamps, this legislation would represent an unnecessary imposition on state agencies.

OTHER OPPONENTS SAY:

HB 608 would fall short of providing the Legislature and public with credible information on the fiscal impact of undocumented immigrants, because it would focus only on the costs incurred by undocumented immigrants and would ignore the budgetary (e.g., tax revenue) and economic benefits. While the bill could clarify some questions driving this issue, it would be inappropriate for the state pay for and present a report that was unbalanced and focused only on the negative aspects of undocumented immigrants' financial impact. The bill would be improved

if the comptroller also was authorized to assess the financial benefits contributed by undocumented immigrants to the state budget and the economy.

Additionally, the bill would not assess the impact of undocumented immigrants on local communities, which might pay the greatest share of the costs. The bill also should permit the comptroller to provide information about the fiscal costs and benefits to local communities.

SUBJECT: Confidentiality of certain information regarding state election inspectors

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — L. Taylor, Berman, Branch, Burkett, P. King

2 nays — Farias, Veasey

2 absent — Hernandez Luna, Isaac

WITNESSES: For — (*Registered, but did not testify*: Skipper Wallace, Texas Republican County Chairmen's Association)

Against — (*Registered, but did not testify*: Anthony Gutierrez, Texas Democratic Party)

On — (*Registered, but did not testify*: David Glickler, Office of the Attorney General; Ann McGeehan, Office of the Secretary of State)

BACKGROUND: Elections Code, sec. 34.001 allows the secretary of state to appoint one or more state inspectors for an election. The secretary is required to do so if requested by 15 or more registered voters in the area that the inspector would monitor. That request is not available for public inspection until the day after the election.

DIGEST: If the secretary of state appointed one or more election inspectors, HB 2060 would make the appointment confidential until the day after the election. Additionally, HB 2060 would make information on where the inspectors were appointed to monitor confidential until the day after the election.

The bill would take effect on September 1, 2011.

SUPPORTERS SAY: To prevent voter intimidation, the identities of people requesting the presence of an election inspector are kept confidential. The election inspectors, who work to protect our most basic democratic right and privilege, should be extended that same right to confidentiality.

These election inspectors do not influence elections, but simply monitor their proceedings to prevent voter fraud and intimidation.

OPPONENTS SAY:

HB 2060 would decrease transparency and remove accountability of our election officials. By hiding the identities of election inspectors, HB 2060 would end safeguards ensuring impartial election monitoring, giving the secretary of state too much power to influence the outcomes of elections.

SUBJECT: State requirement to make Medicaid the payor of last resort

COMMITTEE: Public Health — favorable, without amendment

VOTE: 11 ayes — Kolkhorst, Naishtat, Alvarado, Coleman, S. Davis, V. Gonzales, S. King, Laubenberg, Schwertner, Truitt, Zerwas

0 nays

WITNESSES: For — None

Against — None

On — Billy Millwee, Texas Health and Human Services Commission; Jon Weizenbaum, Department of Aging and Disability Services

DIGEST: HB 2722 would require the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules to ensure, to the extent allowed by federal law, that the Medicaid program:

- was the payor of last resort; and
- provided reimbursement for services, including long-term care services, only if, and to the extent, other adequate public or private sources of payment were not available.

If a state agency determined that a waiver or authorization from a federal agency was necessary to implement the bill, the agency would be required to request the waiver or authorization and could delay implementing the provision until the waiver or authorization was granted.

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: Federal law requires Medicaid to be the payor of last resort. Currently, when an individual moves into a nursing home, Medicaid is billed on the first day, and third party payors are prorated over the first month. If the individual leaves the facility in the first month, for reasons such as the need for a hospital stay or the death of the patient, Medicaid has paid a

disproportionate share of the cost of care for that individual, since other payment sources have not been exhausted. HB 2722 would require the HHSC commissioner to adopt rules to ensure that Medicaid was not paying until other resources were exhausted. The bill would improve "cost avoidance" policies, resulting in a claim being denied if there was evidence of third-party liability.

OPPONENTS SAY:

This bill is not necessary because federal law already requires Medicaid to be the payor of last resort. There already are systems in place to ensure that Medicaid does not pay a disproportionate share of the cost of care for patients who stay in a nursing home less than a full month.

SUBJECT: Revising performance and payment security requirements for CDAs

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Phillips, Darby, Y. Davis, Harper-Brown, Lavender, McClendon

0 nays

5 absent — Bonnen, Fletcher, Martinez, Pickett, Rodriguez

WITNESSES: For — Howard Cowan, Texas Surety Federation; Terri Hall, Texas TURF, TAG; (*Registered, but did not testify:* Michael Chatron, AGC Texas Building Branch; Thomas Ratliff, American Insurance Association; Michael White, Texas Construction Association)

Against — Celeste Morris; (*Registered, but did not testify:* Mary Anderson, Texans Against Tolls; Heather Fazio, Libertarian Party of Texas; Melissa Cubria, Texas Public Interest Research Group; Thomas Davis; Pam Dickinson; Russell Doyle; Robert Morrow; Beverly Nuckols; Randall Peterson; Travis Snavely)

BACKGROUND: Transportation Code, title 6 regulates roadways. Within that title, sec. 223.205, sec. 366.404, and sec. 370.308 establish nearly identical requirements for performance and payment security for a comprehensive development agreement (CDA) between a private contractor and the Texas Department of Transportation (TxDOT), a regional tollway authority (RTA), or a regional mobility authority (RMA), respectively. If a construction contract defaults, performance security ensures that funds are available to complete the project, while payment security ensures that the workers and suppliers on the job get paid.

The three sections require a private entity entering into a CDA to provide either a performance and payment bond or an alternative form of security of certain sufficient value. The acceptable alternative forms of security are cashier's check, U.S. bond or note, irrevocable letter of credit, or any other form of security determined suitable by TxDOT or the RTA or RMA, as applicable. These sections mandate TxDOT, RTAs, and RMAs to prescribe, by rule, requirements for an alternative form of security.

If TxDOT determines that it is impracticable for a private entity to provide security of the certain sufficient value mentioned above, TxDOT must set the amount of the security. The same is required of a RTA or a RMA.

DIGEST:

CSHB 2032 would amend the performance and payment security requirements for a CDA between a private entity and TxDOT, an RTA, or an RMA, as provided by Transportation Code, sec. 223.205, sec. 366.404, or sec. 370.308.

The bill no longer would allow TxDOT, an RTA, or an RMA to determine other forms of security to be suitable as alternative forms, and it would remove their associated rule-making authorities. The bill would require an irrevocable letter of credit to be from a U.S. domiciled bank acceptable to TxDOT, the RTA, or the RMA and a performance and payment bond to be issued by a corporate surety authorized to issue bonds in Texas.

The bill would not allow TxDOT, an RTA, or an RMA to set the amount of security if the standard sufficient value was impracticable unless the contract amount exceeded $250 million in construction costs. If it did, TxDOT, the RTA, or the RMA could set the amount at or above $250 million, as determined by TxDOT, the RTA, or the RMA to be in the best interest of the state. The bill would prohibit a security provided from covering the portion of the CDA that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

The bill would take effect September 1, 2011, and would apply only to a CDA for which a best value proposer was selected on or after the effective date.

SUPPORTERS SAY:

CSHB 2032 would protect Texas taxpayers, ensuring that the roads funded by their tax dollars got completed. The bill also would protect a construction project's suppliers and laborers, which often work for small or midsize subcontractor businesses that depend on the project's payment security if the general contractor defaults. The current language regulating alternative securities is so vague and gives state regulators such broad and subjective authority that the entities directly involved in a CDA may unintentionally under-secure a project, leaving the state, taxpayers, and subcontractors exposed to risk.

CSHB 2032 would remove this ambiguity from statute and allow use of only the most secure methods of protection available for these projects. Performance and payment bonds, the traditional means of securing construction projects, have served the state and the nation well for over 100 years. Such bonds are a highly liquid and readily accessible form of security, as are cashier's checks, U.S. notes or bonds, and irrevocable letters of credit from a U.S. domiciled bank. These options provide a reliable, ready source of funding if a contractor defaults. All of these options, but only these options, would remain available for securing CDA projects under CSHB 2032, prudently balancing the needs for flexibility and security in establishing construction contracts.

The bill would have no fiscal implication to the state, and the Alamo RMA, the Grayson County RMA, the Cameron County RMA, and the North Texas Tollway Authority anticipate no fiscal impact due to the bill as well.

OPPONENTS SAY:

CSHB 2032 would limit the ability of TxDOT, an RTA, or an RMA to assist a CDA construction business by negotiating suitable alternative securities on its behalf. The bill's new restrictions on alternative securities would limit flexibility in establishing CDAs and slow the urgently needed construction of roads around the state.

By eliminating all agency and authority discretion in finding suitable alternative securities, the bill would use a sledgehammer to address a concern that could be resolved with a sculptor's chisel. Under current law, TxDOT, RTAs, and RMAs have to prescribe, by rule, requirements for alternative forms of security. The rule-making processes of these entities are always open to public and stakeholder input. Each of these entities has an open comment period during their public meetings in which the public or stakeholders can propose suggested revisions to the rules, and these groups are also welcome to submit electronic or written comments on proposed rules or suggested changes. If stakeholders feel the agency and authority rules on alternative securities are too lax in some regard, they should help fine-tune those rules, rather than completely eradicating them, as CSHB 2032 would do.

CSHB 2032 could prohibit small and mid-size construction businesses from entering into a CDA for a large project because they would be unlikely to have the equity or resources needed to provide the new $250 million minimum security. These businesses have a better opportunity to

enter into such construction contracts under current law, which gives TxDOT, an RTA, or an RMA greater discretion to lower the required amount of security.

OTHER OPPONENTS SAY:

While CSHB 2032 would improve taxpayer protection, the bill should go further, fully eliminating the concept of "impracticable to secure" and requiring a construction contractor to provide security for 100 percent of the standard sufficient security value in all cases. Allowing TxDOT, an RTA, or an RMA to lower the required amount of the security for a gargantuan road construction project to $250 million would reduce the liability of the contractor and shift it onto the taxpayers.