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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 24, 2011
82nd Legislature, Number 84
The House convenes at 9 a.m.
Part Three of Three

Fifty-six bills and four joint resolutions are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part Three of today's *Daily Floor Report* are listed on the following page.

Today is the 134th day of the regular session. Under House Rule 8, sec. 13(c), today is the final day for the House to consider on second reading Senate bills and joint resolutions that have appeared on a daily or supplemental House calendar.



Bill Callegari
Chairman
82(R) – 84

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, May 24, 2011

82nd Legislature, Number 84

Part Three of Three

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SUBJECT: Tuition and fee exemptions for Texas Guard combat theater veterans

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 6 ayes — Branch, Castro, D. Howard, Johnson, Lewis, Patrick
0 nays
3 absent — Alonzo, Bonnen, Brown

SENATE VOTE: On final passage, April 28 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Michael Gutierrez)
On — (*Registered, but did not testify:* Wayne Peck, Adjutant General's Department)

BACKGROUND: Under Education Code, sec. 54.203, public institutions of higher education exempt certain military veterans who were honorably discharged after serving on active military duty for more than 180 days from certain tuition and fee payments.

DIGEST: SB 1734 would exempt a person who was a member of the Texas National Guard or the Texas Air National Guard who was assigned to a theater of combat operation with the armed forces, regardless of the length of the member's active military duty, from paying tuition and fees at Texas public institutions of higher education.

The bill would apply beginning with the 2011 fall semester.

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: According to the fiscal note, tuition losses under SB 1734 would not be considered significant, and the bill would have no significant fiscal implications for state or local governments.

SUBJECT: Freestanding emergency medical care facilities

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Kolkhorst, Naishtat, Alvarado, Coleman, S. Davis, V. Gonzales, Schwertner, Zerwas

0 nays

3 absent — S. King, Laubenberg, Truitt

SENATE VOTE: On final passage, May 2 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Bill Pewitt, Texas Independent Emergency Room Association)

Against — None

On — (*Registered, but did not testify:* Amy Harper, DSHS)

BACKGROUND: The 81st Legislature in 2009 authorized the establishment of freestanding emergency medical facilities, regulated by the Department of State Health Services (DSHS), as an alternative care setting to a physician’s office or hospital emergency room.

DIGEST: CSSB 1206 would specify that Health and Safety Code ch. 254 regulating freestanding emergency medical facilities could not be construed to prohibit a health care professional from providing care or services that were within the scope of his or her license and not required to be provided in another type of facility while he or she was providing emergency care.

The bill also would authorize health care professionals working in a freestanding emergency medical facility to charge a facility fee only for medical care rendered as a part of or during the course of providing emergency care.

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:**

CSSB 1206 is needed to allow patients to benefit from full medical attention when seeking help with an emergency situation. DSHS, in promulgating rules regulating freestanding emergency medical facilities, has strictly interpreted the law to mean that health care professionals can only deliver emergency care, not other services within their scope of practice, while working at these facilities. This interpretation was meant to protect patient safety by prohibiting the delivery of medical services inappropriate to the facilities' purpose, equipment, and structure, such as a routine use of the facilities for nonemergency or cosmetic surgeries.

The bill would protect against inappropriate use by specifying that the nonemergent medical or public health service would have to occur at the time the patient arrived for an emergency. Many people do not have a primary care provider, and thus do not benefit from ongoing medical oversight. This bill would allow them to receive a vaccine or have other medical issues addressed when being treated for emergency care.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The House committee substitute added a provision to the Senate-passed version specifying that a health care professional could charge a facility fee for the provision of medical care or public health services provided while treating an emergency situation.

SUBJECT: Including certain private institutions in THECB's accountability system

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Branch, Castro, Alonzo, Bonnen, Brown, D. Howard, Lewis, Patrick

0 nays

1 absent — Johnson

SENATE VOTE: On final passage, March 28 — 30-1 (Fraser)

WITNESSES: No public hearing

BACKGROUND: In January 2004, the governor issued an executive order requiring the Texas Higher Education Coordinating Board (THECB) to work with institutions and systems to provide the necessary information for determining the effectiveness and quality of education at each institution. The higher education accountability system provides data for these purposes. Institutional groupings allow institutions that share attributes to address relevant topics and issues.

Currently, private postsecondary educational institutions and private career schools and colleges do not participate in the higher education accountability system.

DIGEST: CSSB 38 would amend the Education Code to require THECB to include within the board's higher education accountability system any private postsecondary educational institutions or private career schools and colleges that offered degree programs.

Regardless of whether THECB was conducting a periodic review of institutional groupings, THECB would have to determine whether to create one or more separate institutional groupings for these entities.

THECB would be required to consult with private postsecondary educational institutions and private career schools and colleges regarding

the imposition of reporting requirements and to adopt rules that clearly defined the types and amounts of information that would be reported to THECB by these entities.

CSSB 38 would require THECB, before each regular session of the Legislature, to report to each higher education legislative committee about any private postsecondary education institutions or private career schools and colleges that did not participate in the higher education accountability system.

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

SUBJECT: Teacher Retirement System revisions

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

VOTE: 6 ayes — Truitt, Anchia, Legler, Nash, Orr, Veasey
0 nays
3 absent — C. Anderson, Creighton, Hernandez Luna

SENATE VOTE: On final passage, May 10 — 30-0

WITNESSES: For — Tim Lee, Texas Retired Teachers Association; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas; Bill Barnes, Cindee Sharp, Texas Retired Teachers Association; Glenda Black; Zora Mae Hise; Emma Lea Mayton; La Vonne Rogers; Lowell T. Rogers; Sheila Sargent; Annie Scholtz)
Against — None
On — Brian Guthrie, Teacher Retirement System of Texas

DIGEST: CSSB 1671 would add, amend, and repeal sections of the Government Code and Insurance Code related to the Teacher Retirement System (TRS). The bill would add and amend provisions on TRS administration, TRS benefits, and certain domestic relations orders. It would amend and repeal provisions on the purchase of service credits in TRS and on TRS retirees that return to work. The bill also would amend provisions on the definition of a school year for TRS purposes.

The bill would suspend for fiscal 2012 the requirement that the state contribution percentage to TRS be equal to the member contribution, allowing the state to make a lower contribution. It also would suspend for fiscal 2012 the requirement that the state contribute 1 percent of an active employee's salary to the retired school employees group insurance fund, allowing the state to contribute a lower amount.

The bill would make several amendments to Insurance Code, ch. 1601, which regulates the uniform insurance benefits program for employees of the University of Texas System and the Texas A&M University System. It would amend the definition of dependent, particularly with regards to disabled children over the age of 26. It would permit premium discounts, surcharges, rebates, or other financial incentives for a person to participate in approved wellness, health, and disease prevention programs. It would allow a university system to contribute to the health insurance costs of tenured faculty under a phased retirement agreement. The bill also would establish monthly payroll deductions for the premiums of an employee who was automatically enrolled in the uniform insurance benefits program.

The bill would reduce the frequency with which TRS had to provide certain identifying member and beneficiary data to the comptroller to every five years, rather than annually.

The bill would repeal Government Code, sec. 825.3021, which directs a retirement system that acquires real property through foreclosure to have the property appraised and hire someone to manage it.

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:

CSSB 1671 contains the entirety of the provisions of SB 1667, SB 1668, and SB 1669, all by Duncan. These three bills passed the House on the Local, Consent, and Resolutions Calendar on May 20. CSSB 1671 also contains the entirety of the provisions of HB 2561 by Eissler, which passed the House on April 20, passed the Senate on May 5, and was signed by the governor on May 19.

The House committee substitute differs from the Senate-passed bill by amending Insurance Code, ch. 1601 and by reducing the frequency with which TRS would have to report identifying member and beneficiary data to the comptroller.

The Legislative Budget Board estimates that CSSB 1671 would have a positive impact to general revenue of \$133.7 million for fiscal 2012-13 because it would allow the state contribution rate to the TRS-Care insurance program to be less than 1 percent of total active payroll for

fiscal 2012, assuming a state contribution rate of 0.5 percent, with the TRS-Care Insurance Trust Fund reduced by the same amount. The LBB also estimates that the proposal could have a positive actuarial impact to the TRS retirement fund by requiring additional deposits with the purchase of TRS service credit, but LBB also estimates that the proposal could have a negative actuarial impact to the TRS retirement fund by relaxing the requirements of the return-to-work provisions for retirees.

- SUBJECT:** Limiting the ticketing of students on school campuses and buses
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Gallego, Hartnett, Burkett, Carter, Y. Davis
2 nays — Christian, Zedler
2 absent — Aliseda, Rodriguez
- SENATE VOTE:** On final passage, April 26 — 30-1 (Nelson)
- WITNESSES:** For — Kathryn Freeman, Texas Appleseed; Frank Knaack, American Civil Liberties Union of Texas; Marc Levin, Texas Public Policy Foundation Center for Effective Justice; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Trae Morris, Texas Association School District Police; Lauren Rose, Texans Care for Children; Erica Surprenant, Texas Criminal Justice Coalition)

Against — None
- DIGEST:** SB 1116 would prohibit a law enforcement officer from issuing a citation or filing a complaint for conduct by a child younger than 12 that allegedly occurred on school property or in a vehicle owned or operated by a county or independent school district.
- The bill also would require an officer who issued a citation or filed a complaint for conduct by a child 12 years of age or older that allegedly occurred on school property or in a vehicle owned or operated by a county or independent school district to submit to the court the offense report, a statement by a witness to the alleged conduct, and a statement by a victim of the alleged conduct, if any. A prosecutor would not be allowed to proceed with a trial on the offense unless the officer complied with these requirements.
- SB 1116 would exclude primary and secondary grade students from those who could commit the offense of disruption of class or the offense of disruption of transportation. The bill would specify that for the offense of

disorderly conduct in a public place, a public place would include a public school campus or school grounds on which a public school was located.

The bill would require a student code of conduct to specify the circumstances under which a student could be removed from a vehicle owned or operated by the district. The student code of conduct also would have to provide methods and options for managing students on a vehicle owned or operated by the district.

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

**SUPPORTERS
SAY:**

SB 1116 would decriminalize immature behavior while leaving the necessary tools intact to address dangerous or violent behavior.

SB 1116 would curb the practice of tickets being given to children at school for noncriminal activities, like chewing gum and falling asleep in class. Millions of citations have been issued to students, and research has shown that most citations are issued for noncriminal behavior. Research shows that the citations for noncriminal misbehavior do not improve behavior and are given disproportionately to disabled and minority students.

Records indicate that disruption of class was the citation most commonly used to issue a citation for noncriminal behavior, so SB 1116 would exempt certain students from disruption of class and disruption of transportation offenses. SB 1116 would prohibit a student under 12 from receiving a class C misdemeanor (maximum fine of \$500) citation. Legal remedies are just not the way to address the noncriminal misbehavior of any child under 12.

SB 1116 would require an officer who issued any citation on school property to submit to the court the offense report, a statement by any witness, and a statement by any victim, for the prosecutor to be able to proceed with a trial. This would provide transparency and would serve to verify that criminal behavior, rather than just childish behavior, was the cause for the citation.

For serious offenses, like fighting in school, SB 1116 would empower school peace officers by adding schools to the public places in which a person could be guilty of disorderly conduct.

OPPONENTS
SAY:

By limiting who could receive tickets, SB 1116 could reduce the tools available to school districts to handle students who continuously misbehave. Schools sometimes try to handle these students through one-on-one discussions and working with their parents, but when that does not work, tickets can be an effective tool. The flexibility in current law to handle students who misbehave should not be reduced.

OTHER
OPPONENTS
SAY:

SB 1116 could violate the separation-of-powers doctrine by attempting to bar a prosecutor from proceeding to trial on a case without an act by a third party — in this case the officer's submission of the offense report and statements.

- SUBJECT:** Licensing security camera system installers
- COMMITTEE:** Homeland Security and Public Safety — committee substitute recommended
- VOTE:** 8 ayes — S. Miller, Fletcher, Beck, Driver, Flynn, Mallory Caraway, Peña, Walle
1 nay — Burnam
- SENATE VOTE:** On final passage, April 21 — 31-0 on Local and Uncontested Calendar
- WITNESSES:** *(On House companion bill, HB 1867:)*
For — Rodney Hooker, Texas Burglar and Fire Alarm Association, NTAA, STAA, HGCAA; Troy Maynard, Texas Locksmith Association; *(Registered, but did not testify: Shane Williams, Texas Locksmith Association; On committee substitute: (Registered, but did not testify: Gustavo Garza, Texas Burglar and Fire Alarm Association)*

Against — None
- BACKGROUND:** Occupations Code, ch. 1702 establishes the Private Security Act governing the licensing and regulation of occupations related to private security, such as alarm companies, private investigators, security guards, locksmiths, guard dog companies, and body guards.

The Texas Private Security Board registers and licenses security company professionals, and has seven members appointed by the governor: four public members; one private investigator; one member licensed as an alarms system company; and an owner or operator of a guard company.
- DIGEST:** CSSB 1400 would amend Occupations Code, sec. 1702.221(b) to include a camera systems installer as an occupation requiring license and registration.

The bill would define a camera systems installer as someone who installed, maintained, or repaired a closed-circuit television or still camera system or advertised such services.

CSSB 1400 would define “closed-circuit television or still camera system” as a device that recorded or transmitted images, including through an intranet or Internet device, was monitored by security personnel, and was not used exclusively to:

- view or monitor traffic conditions on public roads;
- detect motor vehicle violations on public roads;
- conduct telephone or video conferencing;
- monitor a manufacturing process;
- conduct a medical purpose;
- record or archive depositions or testimony;
- conduct an ongoing investigation by a private investigation company; or
- monitor criminal activity for a law enforcement agency.

The bill would provide exemptions to the licensing requirements, including for a person who installed an electronic access control device, lock, or closed-circuit television or still camera system on the person’s own property for personal protection.

The bill also would amend Occupations Code, sec. 1702.288 to allow an alarms system company to not provide certain notifications to its customers if its contact information had not changed.

CSSB 1400 also would expand the Texas Private Security Board to nine members, including a fifth public member and a licensed locksmith. The governor would be required to appoint the additional members by February 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 House companion bill, HB 1867 by Fletcher, was considered in a public hearing on April 4 by the Law Enforcement Issues Subcommittee of the House Homeland Security and Public Safety Committee and was reported favorably, as substituted, by the full committee on April 18.

SUBJECT: Repealing certain reporting by THECB and higher education institutions

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 7 ayes — Branch, Alonzo, Bonnen, Brown, D. Howard, Lewis, Patrick
0 nays
1 present not voting — Castro
1 absent — Johnson

SENATE VOTE: On final passage, March 24 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Sec. 51.3062 of the Education Code governs the higher education Success Initiative. Under the provision, higher education institutions are required to assess the academic skills of each entering undergraduate student to determine the student’s ability to enroll in freshman-level courses. Under current law, every higher education institution is required to submit an annual report to the Texas Higher Education Coordinating Board (THECB) showing the success of its students and the effectiveness of its Success Initiative.

Sec. 61.086 of the Education Code governs THECB’s uniform recruitment and retention strategy. The board is required to develop and annually update a uniform strategy to identify, attract, retain, and enroll students that reflect the population of Texas. Every higher education institution is required to implement the uniform strategy and has to include information about its implementation in its annual report to THECB.

Sec. 61.9683 of the Education Code authorizes THECB to operate an endowment fund to support geographic education programs to improve geography education in Texas. Sec. 61.9685 requires THECB to submit a biennial report to the Legislature detailing the value of the fund and the advisory committee’s membership. The report has to include a summary

of each project supported by a grant from the fund as well as other information deemed important by the board.

Sec. 2056.011 of the Government Code governs THECB's consolidated public junior and community college plan. The board is required to work with all state-funded junior and community colleges to develop a consolidated strategic plan for these institutions.

DIGEST:

SB 282 would exempt medical and dental units of higher education institutions from reporting annually to THECB on the success of their students and the effectiveness of the Success Initiative.

Secs. 61.086 and 61.9685 of the Education Code and sec. 2056.011 of the Government Code would be repealed.

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.

SUBJECT: Allowing electric vehicles to use HOV lanes and vehicle mileage fee pilot

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Phillips, Bonnen, Y. Davis, Harper-Brown, McClendon,
Rodriguez

1 nay — Lavender

4 absent — Darby, Fletcher, Martinez, Pickett

SENATE VOTE: On final passage, May 5— 29-1 (Hegar)

WITNESSES: *(On House companion bill, HB 3308:)*
For — Dan Frakes, General Motors; Russ Keene, Plug-In Texas; Bradley Smith, NRG Energy/eVgo (*Registered, but did not testify*: Robert Braziel, Texas Automobile Dealers Association; Robert Peeler, Ford Motor Company; Kate Robertson, Environmental Defense Fund; Alejandro Savransky, Environment Texas; Chris Shields, Toyota Manufacturing; David Weinberg, Texas League of Conservation Voters)

Against — Terri Hall, Texas TURF, Texans for Accountable Government, Central Texas Republican Liberty Caucus; Don Dixon

On — Vincent Obregon, METRO

BACKGROUND: Transportation Code, sec. 224.153 allows the Texas Department of Transportation (TxDOT) to designate high-occupancy vehicle lanes on the state highway system. High-occupancy lanes are designated lanes where a bus or other vehicle occupied by a specified number of people is given preference over other vehicles moving in the general stream of highway traffic.

TxDOT also can authorize a motorcycle or another low-emissions vehicle to use a high-occupancy vehicle lane regardless of the number of persons on the motorcycle or occupants in the vehicle, unless doing so would violate federal transit or highway funding restrictions.

DIGEST:

CSSB 1742 would allow a motor vehicle displaying a “plug-in electric vehicle” insignia to use a high-occupancy vehicle (HOV) lane regardless of the number of occupants in the vehicle, unless doing so would violate federal transit or highway funding restrictions. This privilege would expire January 1, 2013.

Plug-in electric vehicle insignia. The bill would require the Texas Department of Motor Vehicles (TxDMV) to issue the plug-in electric vehicle insignia to a participant in the motor vehicle mileage fee pilot program it established for a vehicle that:

- was made by a manufacturer primarily for public highways;
- had not been modified from original manufacturer specifications;
- was rated at not more than 8,500 pounds unloaded gross vehicle weight;
- was acquired for use or lease by a consumer and not for resale;
- could reach speeds of at least 65 miles per hour;
- was propelled to a significant extent by an electric motor that drew electricity from a battery that could be recharged from an external source of electricity and had a capacity of at least four kilowatt hours.

Recreational vehicles that drew power for purposes other than propulsion, such as a camper or motor home, would not be eligible.

TxDMV would have to issue the insignia to a person who submitted an application and proof of eligibility. The department could charge a fee for issuing the insignia of no more than \$20 per vehicle.

Vehicle miles traveled pilot. CSSB 1742 would require TxDMV to adopt rules establishing:

- the administrative framework to implement a system for assessing a motor vehicle mileage fee; and
- a pilot program to gather data regarding the feasibility of such a program using the established mileage framework.

The program would have to begin by January 1, 2012, and could last no longer than July 15, 2012. TxDMV would submit a report with recommendations on assessing a motor vehicle mileage fee by October, 2012.

The program would provide for optional participation for those who own electric or plug-in hybrid vehicles registered in counties in federal air quality non-attainment areas. Participants would be issued an insignia as provided in the bill, but could not be charged a fee for participating. Mileage would be based on an odometer reading. TxDMV would consider a number of factors in the bill when assessing the feasibility of implementing a vehicle mileage fee.

Effective date. 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:

CSSB 1742 would provide a small but important incentive for drivers who registered to participate in a motor vehicle mileage fee pilot program in the most heavily congested metropolitan areas of the state, specifically, Houston and Dallas, to purchase plug-in electric vehicles.

These vehicles are distinguished from other hybrid and fuel-efficient vehicles by a battery that is recharged through an adapted electrical socket. Nissan and General Motors recently introduced plug-in electric vehicles, the Nissan *Leaf* and the Chevy *Volt*, and Ford and Toyota are planning to release electric models in the near future. There currently are a very small number — fewer than 300 by some estimates — plug-in electric vehicles on the road in Texas. This number is expected to increase very gradually, reaching perhaps 5,000 by the end of the upcoming biennium.

The bill would have an impact only in Dallas and Houston, since currently those are the only municipalities that have designated HOV lanes. This incentive would make particular sense for those areas, since both are in federal air quality non-attainment zones and suffer from severe traffic congestion. Encouraging residents in these areas to buy electric cars would reinforce decisions that improved air quality and protected the environment.

The committee substitute for SB 1742 added some key improvements over its House companion bill, HB 3308, which the House considered earlier. The committee substitute is narrowly restricted to apply only to those drivers who participated in the vehicle miles traveled fee pilot. Vehicle miles traveled fees, which have received increasing attention in recent years, make particular sense for electric vehicles, which do not pay a tax on gasoline. The bill would accomplish two separate objectives by

combining these objectives — encouraging electric vehicles and studying means to make taxes more equitable for conventional and electric vehicles. It would be a temporary program that would sunset on January 1, 2013.

Taking steps to study the possibility of a vehicle miles traveled tax is necessary since the state motor fuels tax, which has not been raised since 1991, is inefficient and incapable of providing the revenue necessary to maintain the state's transportation network in the long-term. Projected increases in fleetwide fuel efficiency undermine the ability of the motor fuels tax to keep up with costs from wear and tear on the state's roads. The possibility of charging drivers based on the number of miles they travel, as opposed to the gallons of fuel they consume, is worth studying as a possible future alternative. A study would not result in any additional taxes on Texas drivers, would not involve a separate cost according to the Legislative Budget Board, and would help ascertain the viability of such a tax for lawmakers to deliberate in the future.

OPPONENTS
SAY:

CSSB 1742 would put in place a measure, however limited, that is contrary to the intended purpose of HOV lanes. The bill would take the dubious measure of carving electric vehicles out of occupancy requirements for HOV lanes. The chief purpose of HOV lanes is to move a greater number of people — such as those in buses, carpools, and vanpools — efficiently and quickly. Allowing operators of electric vehicles to use these lanes, irrespective of the number of people in the vehicle, would be counter to this purpose. Setting the precedent of allowing even a few electric vehicles to use these lanes could create a “slippery slope.” Why should this privilege be confined to electric vehicles and not hybrid vehicles, or low-emission vehicles more generally? Access to HOV lanes should be based exclusively on the number of vehicle occupants and not the type of vehicle someone drives.

In addition, TxDOT already has the authority through current law to implement a policy permitting low-emission vehicles to use HOV lanes. The department, and not the Legislature, should be the ultimate arbiter over what vehicles may use the HOV lanes. If allowing electric vehicles to use HOV lanes is important, interested parties should work with TxDOT to accomplish this administratively.

Studying the vehicle miles traveled tax with taxpayer money would not be the best use of valuable highway-related funds because such a fee's basic structure is not ideal for implementation in Texas. The virtues of a mileage

based tax are greatly outweighed by the overwhelming privacy concerns and other implementation difficulties such a tax likely would pose.

**OTHER
OPPONENTS
SAY:**

The bill includes unclear language about a vehicle miles traveled tax. The bill would require TxDMV to adopt rules to “establish the administrative framework needed to implement a system for assessing a motor vehicle mileage fee.” This provision sounds as though it would authorize TxDMV to take steps to implement a vehicle miles traveled fee, while the bill’s apparent intent is only to authorize a pilot program..

NOTES:

The House committee substitute to the Senate-passed version of the bill. added provisions to establish a vehicle miles traveled pilot program.

The companion bill, HB 3308 by Rodriguez, passed the House by 78-67 on second reading, but on third reading was postponed by the author until September 27, 2011.

SUBJECT: Revising higher education Success Initiative

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 6 ayes — Branch, Castro, D. Howard, Johnson, Lewis, Patrick
0 nays
3 absent — Alonzo, Bonnen, Brown

SENATE VOTE: On final passage, May 4 — 31-0

WITNESSES: For — Bill Hammond, Texas Association of Business; Leslie Helmcamp, Center for Public Policy Priorities; (*Registered, but did not testify:* Rey Garcia, Texas Association of Community Colleges; Justin Yancy, Governor’s Business Council)
Against — None
On — David Gardner, Texas Higher Education Coordinating Board

BACKGROUND: Sec. 51.3062 of the Education Code governs the higher education Success Initiative. Under the provision, higher education institutions are required to assess the academic skills of each entering undergraduate student to determine the student’s ability to enroll in freshman-level courses. The Texas Higher Education Coordinating Board (THECB) must designate assessment instruments to assist institutions in measuring student readiness. The board must prescribe standards for the assessment instruments that reflect student readiness. An institution of higher education may adopt more stringent assessment standards.

Each higher education institution may refer a student to developmental coursework as considered necessary to address the student’s deficiencies in readiness to perform freshman-level academic coursework.

Each institution must determine when a student is ready to perform freshman-level academic coursework. The institution must make its determination on an individual basis according to each student’s needs.

The determination must include requiring a student to retake an assessment instrument or another board-approved means of evaluating student readiness.

DIGEST:

SB 1564 would add a section to the Success Initiative provision to define “program evaluation” as a systematic method of collecting, analyzing, and using information to answer questions about the effectiveness and cost-efficiency of developmental education courses, interventions, and policies.

The bill would require THECB to set a single standard or set of standards for each assessment instrument. The bill would remove the authority of institutions to adopt more stringent assessment standards.

SB 1564 would require institutions that required a student to enroll in developmental coursework to offer a range of developmental coursework, including online courses. The developmental coursework would have to be based on research-based best practices that included:

- assessment;
- differentiated placement and instruction;
- faculty development;
- support services;
- program evaluation;
- technology integration with an emphasis on instructional support programs;
- noncourse-based developmental education interventions; and
- pairing of developmental education courses with credit-bearing courses.

THECB would have to adopt rules to implement these requirements.

The board would be required to consult with higher education institutions to create and provide professional development programs, including instruction in differentiated instruction methods to address students’ diverse needs, for faculty and staff who taught developmental courses.

SB 1564 would require an institution to base its determination of student readiness using learning outcomes for developmental education courses developed by the board and based on established college and career readiness standards, as well as student performance on one or more appropriate assessments.

The bill would remove the requirement that an institution make each determination on an individual basis and that the determination include requiring a student to retake an assessment instrument or another board-approved means of evaluating student readiness.

SB 1564 would repeal sec. 51.3062(e) of the Education Code, which requires THECB to designate additional assessment instruments to measure college readiness.

The bill would apply beginning with the 2012-13 school year. It 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.

SUBJECT: Creating a public online comparison tool of certain academic institutions

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 8 ayes — Branch, Castro, Alonzo, Bonnen, Brown, D. Howard, Lewis, Patrick
0 nays
1 absent — Johnson

SENATE VOTE: On final passage, April 28 — 31-0, on the Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Currently the Texas Higher Education Coordinating Board (THECB) compiles and makes public various statistical reports and data on certain general academic teaching institutions on its website.

THECB does not offer an online mechanism for a person to compare teaching institutions using certain criteria.

DIGEST: SB 1730 would require THECB to make available on its website a search tool that would allow a person to compare general academic teaching institutions that met certain criteria, including the offering of a particular major or program of study.

The bill would require that the comparison tool be accessible from THECB's website, allow a user to identify general academic teaching institutions according to selection criteria as determined by THECB, and to be accessible to the public without a required registration or user name, password, or other user identification.

SB 1730 would require the comparison tool to generate a comparison chart in a grid format that listed the general academic teaching institutions that matched a user's search criteria and provided information for each institution listed that THECB had determined would aid a prospective student in evaluating the institution.

The Internet page displaying the comparison chart would have to include a link to the Texas Workforce Commission's website and, to the extent practicable, the information would have to consist of information that a general academic teaching institution was already required to report to the THECB.

The bill would require each general academic teaching institution to provide THECB with information for the comparison tool no later than October 1, or a date determined by THECB, each year. The bill also would require THECB to update the comparison tool as soon as practicable after receiving information from each institution.

The bill would take effect September 1, 2011, and the THECB would have to create and post the comparison tool on its website by February 1, 2013.

- SUBJECT:** Certification, continuing education, and appraisal of teachers
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 6 ayes — Eissler, Aycock, Huberty, Shelton, T. Smith, Weber
1 nay — Allen
4 absent — Hochberg, Dutton, Guillen, Strama
- SENATE VOTE:** On final passage, April 28 — 23 – 8 (Davis, Ellis, Gallegos, Hinojosa, Uresti, Van de Putte, Watson, Zaffirini)
- WITNESSES:** For — Jerel Booker, Stand for Children; (*Registered, but did not testify:* Andrew Erben, TIER; Rebecca Flores, Houston ISD; Nelson Salinas, Texas Association of Business; David Thompson; Amber Welsh)

Against — Jennifer Canaday, Association of Texas Professional Educators; Melva Cardenas, Texas Association of School Personnel Administrators; Holly Eaton, Texas Classroom Teachers Association; Eric Hartman, Texas AFT; Richard Kouri TSTA; (*Registered, but did not testify:* Harley Eckhart, Texas Elementary Principals and Supervisors Association)

On — (*Registered, but did not testify:* Ann Smisko, TEA)
- BACKGROUND:** The State Board for Educator Certification (SBEC) prescribes a comprehensive examination for each class of certificate issued by the board. SBEC identifies continuing education courses and programs that fulfill educators' continuing education requirements.

The recommended appraisal process and criteria on which to appraise the performance of teachers are based on observable job-related behavior, include an evaluation of a teacher's implementation of discipline procedures, and consider student performance. Appraisals include distinct categories of professional skills and characteristics with a rating for each category. A conference between the teacher and the appraiser is required to be diagnostic and must prescribe any remediation needed in overall

performance and by category. An appraiser must be the teacher's supervisor or a person approved by the board of trustees.

DIGEST: CSSB 4 would require SBEC to implement an appraisal and accountability system for continuing education courses and monitor the quality of all continuing education courses.

Comprehensive examinations. CSSB 4 would require SBEC to prescribe a comprehensive examination on which a person would have to perform satisfactorily to be certified to teach early childhood through fourth grade classes. The examination would include components in reading, language arts, science, social studies, and mathematics. The reading component would have to include material covering the science of reading.

Minimum scoring standard. SBEC would have to by rule provide a minimum scoring standard that would demonstrate satisfactory performance and content mastery for the cumulative score and each component area. The minimum standard for the cumulative score would have to be greater than the total of the proposed minimum scoring standard for each component.

Educator appraisal. The board would have to adopt a new recommended appraisal process and criteria on which to appraise the performance of teachers that would have to include a measurement of teacher effectiveness. The measurement for teacher effectiveness would have to be fair, transparent, timely, rigorous, and valid. A teacher would be assigned a rating of one through five for the teacher's overall performance. A greater number of separate ratings could be used to detail a teacher's performance under each appraisal criterion. The recommended process would have to provide a method for determining the effectiveness of teachers who did not teach a subject in which a state assessment was not administered.

The adopted process would have to require a significant portion of the appraisal to be based on the teacher's student learning objectives and outcomes, which would include student performance on state assessments. Student assessments could not be the primary indicator of teacher effectiveness.

The commissioner would have to solicit and consider the advice of teachers, administrative leaders, education experts, and parents. The

commissioner would have to develop, validate, and test proposals regarding the recommended process before the commissioner could adopt a recommended process. The commissioner could initiate pilot projects to implement and test proposals, which could address different aspects of the process.

As a part of the appraisal process, a teacher would have to complete a self-evaluation to be considered by the appraiser. Appraisers would have to be monitored as necessary to ensure fairness, thoroughness, and accuracy. The recommended appraisal process would have to guarantee that a conference between the teacher and the appraiser occurred as soon as possible after the appraisal was complete.

Appraisal frequency. A teacher would be appraised at least once each school year, and consistent and clear expectations would have to be communicated to the teacher at least once per school year. The recommended process could provide a modified and less frequent appraisal of a teacher if the most recent appraisal of the teacher rated the teacher at the highest level and did not identify any area of deficiency, but the teacher would have to be appraised at least once every three years.

Qualifications of an appraiser. The commissioner would have to adopt rules regarding the minimum qualifications necessary for a person who conducted a teacher appraisal. The rules would have to require the appraiser to be highly qualified to assess instructional quality and demonstrate instructional leadership.

The bill would take effect September 1, 2011. The commissioner would have to adopt a recommended appraisal process by September 1, 2015.

**SUPPORTERS
SAY:**

CSSB 4 would expand a current requirement by providing a voluntary tool to increase the effectiveness of appraisals. The bill would answer the call of teachers who would like increased accountability and oversight to capture data that could help teachers to increase the quality of the lessons taught to their students.

Most public and private employees enjoy the benefits of annual feedback about their job performance. This feedback allows the employees to adjust their actions to meet their goals. Teachers should be afforded the same feedback to promote growth and reward the teachers' best attributes. The teacher evaluation has been an underutilized tool that could promote

teacher professional growth and measure teacher effectiveness in the classroom. The bill would require multiple criteria, which is the best way to evaluate a teacher.

Two large school districts have intricate and successful teacher appraisals systems that have been successful in comparing teachers within their own school districts. Smaller and rural school districts are unable to benefit from similar systems due to the cost and the sizes of their districts. Many large school districts, due to budget constraints, cannot afford to maintain the programs. A statewide appraisal process would afford all school districts the ability to compare equally their students and teachers to those across the state.

The comprehensive exam requirement for early childhood education teachers would likely increase the quality and effectiveness of such teachers.

OPPONENTS
SAY:

CSSB 4 would seek to control the most locally controlled decision in the public school system — the hiring and evaluation of teachers by their employers. Teacher quality is not the strongest predictor of student success, so the state should focus its limited resources on other aspects of public education, such as class size and the length of the school year. The state should focus on a remedy to the loss of knowledge experienced by a student from a low socioeconomic background over the summer months rather than teacher appraisals. Low socioeconomic students learn as much as their wealthier counterparts during the school year, but do not retain this knowledge like their wealthier counterparts because they do not participate in educational activities and suffer disadvantages at home.

CSSB 4 would impose an unfunded mandate on school districts, doubling the number of appraisals conducted each year by a school district. The state should not increase the number of mandates on school districts when state funding is decreasing.

CSSB 4 would spend more money to burden teachers and school districts. Teachers do not require this or any other incentive to provide quality education in the classroom. Texas should not underestimate its teachers; they will continue to teach children despite decreased funding. The state does not need yet another accountability system to prove this.

Teachers do not want increased appraisals. Teachers have asked for useful data that can be used to interpret student's needs. The state collects copious data, but the data are not used to shape or change the classroom. The state should analyze its current data to produce meaningful conclusions for teachers and the state.

The requirement that a significant portion of the appraisal include student performance on state assessments would continue to encourage the high-stakes testing and intense pressure felt by public school students and teachers. An appraisal system based on state assessments is not supported by scientific research. Since the Texas Education Agency does not release state assessment scores until the following semester, the timeliness and relevance of a teacher appraisal based on student assessments would be diminished. More importantly, the state assessments used in Texas do not incorporate a student growth measure.

NOTES:

The House committee substitute differs from the Senate-passed version in numerous ways, including by deleting a provision that would have required individualized professional development plans for teachers.

SUBJECT: Dismissal of certain complaints against property tax professionals

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Hamilton, Geren, Harless, Kuempel, Menendez, Thompson

0 nays

3 absent — Quintanilla, Driver, Gutierrez

SENATE VOTE: On final passage, May 9 — 30-1 (Nichols)

WITNESSES: (*On House companion bill, HB 1692:*)
For — Michael Barnett, Smith County Appraisal District; Luanne Caraway, Tax Assessor-Collectors Association; (*Registered, but did not testify:* Jim Allison, County Judges & Commissioners Assoc. of Texas; Jim Barron, Yoakum County; Thomas Hays, Gregg County Appraisal District; Deborah Hunt, Texas Association of Appraisal Districts, Tax Assessor-Collectors Association of Texas; Jim Robinson, Texas Association of Appraisal Districts Legislative Committee; Brent South, Hunt County Appraisal District; Larry Gaddes)

Against — None

On — (*Registered, but did not testify:* William Kuntz, Texas Department of Licensing and Regulation)

BACKGROUND: Under Tax Code, Title 1, an appraisal review board must:

- determine protests initiated by property owners;
- determine challenges initiated by taxing units; and
- determine whether an exemption or partial exemption is improperly granted and whether land is improperly granted appraisal.

Under Occupations Code, sec. 1151.204, the Texas Department of Licensing and Regulation may dismiss a complaint without conducting a hearing if:

- the complaint challenges only the appraised value of a property or another matter for which Tax Code, Title 1, specifies a remedy and does not credibly allege a violation; and
- the disagreement has not been resolved in the complainant's favor by an appraisal review board.

In 2009, the 81st Legislature abolished the Board of Tax Professional Examiners and transferred its functions to the Texas Department of Licensing and Regulation (TDLR).

DIGEST:

Under SB 1334, TDLR would have to dismiss a complaint after investigation, in part or entirely, without conducting a hearing if the subject matter had not been finally resolved in the complainant's favor by an appraisal review board, governing body, arbitrator, court, or the State Office of Administrative Hearings, and the complaint challenged:

- the imposition of or failure to waive penalties or interest on certain delinquent taxes;
- the appraised value of a property;
- the appraisal methodology;
- the grant or denial of an exemption from taxation; or
- any matter for which Tax Code, Title 1, specified a remedy, including an action that a property owner was entitled to protest before an appraisal review board.

SB 1334 would not apply to:

- a matter referred to the department by the comptroller under the required review of an appraisal district;
- a complaint that concerned a registrant's failure to comply with certain registration and certification requirements; or
- a complaint that concerned a newly appointed chief appraiser's failure to complete a training program.

SB 1334 would apply only to a complaint filed on or after the effective date of the bill.

SB 1334 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:**

Under Title 1 of the Tax Code, the appraisal review board process is used to determine the outcome of protests initiated by property owners regarding whether an exemption was properly granted or land was properly appraised. However, many property owners who are unhappy with the outcome of their protests are filing complaints with TDLR as an alternative.

The role of the TDLR complaint process is to address ethical issues and the licensing regulation of appraisers, not to settle disputes surrounding tax appraisals or exemptions. SB 1334 would give TDLR the clear authority to dismiss complaints that were not within the department's jurisdiction, allowing them to focus on legitimate complaints.

Proper regulation of the property tax profession is needed, and if a registrant committed an act that was unethical or unlawful, that registrant should be investigated and punished accordingly. But the registrant should not have to undergo an unnecessary investigation for simply performing his or her duties according to state law. The legal costs of fighting complaints filed with TDLR often fall on the employee in question and not the appraisal district. This is a substantial burden for an appraiser who was simply doing his or her job. Property owners are using the TDLR complaint process to intimidate appraisers to try to get them to assign a lower market value to their property. This is unacceptable and would be remedied by SB 1334.

Due process for property owners is readily available through the appraisal review board process, so there needs to be a mechanism for the quick dismissal of complaints that do not follow procedure. Penalties and interest for delinquent tax bills are statutorily required to be levied by tax assessors, yet property owners are filing complaints regarding such fees with TDLR that the department then must use resources to investigate.

In 2009, legislation was enacted requiring the comptroller to conduct an extensive audit of the governance of each appraisal district at least once every two years, and districts must comply with all of the resulting recommendations. Concerns regarding appraisal standards, procedures,

and methodology are all addressed in this mandatory review process and should not be filed under TDLR's complaint process.

The bill would not limit the ability of someone to file a complaint with TDLR. It would simply clarify what types of complaints were appropriate to file with the department.

**OPPONENTS
SAY:**

SB 1334 would limit the opportunities available for property owners to file a complaint against an appraiser. A property owner's complaint should be considered by TDLR without being automatically dismissed. If there are a large number of complaints being filed with TDLR, the Legislature should investigate why. SB 1334 would not address the reason why the number of complaints has increased. If SB 1334 was enacted, the opportunity to explore the reason for the increased number of complaints would be lost.

NOTES:

The House companion bill, HB 1692 by Flynn, was considered in a public hearing on April 12 and was reported favorably, as substituted, by the House Licensing and Administrative Procedures Committee on May 2.

SUBJECT: Third-degree felony for assault of emergency room personnel

COMMITTEE: Criminal Jurisprudence — favorable, as amended

VOTE: 7 ayes — Gallego, Hartnett, Burkett, Carter, Christian, Y. Davis, Zedler
0 nays
2 absent — Aliseda, Rodriguez

SENATE VOTE: On final passage, April 19 — 31- 0

WITNESSES: For — James Willmann, Texas Nurses Association, Texas Emergency Nurses Association; (*Registered, but did not testify:* Jennifer Banda, Texas Hospital Association; Ed Berger, Seton Family of Hospitals; Gretchen Birdwell, Texas Emergency Nurses Association; Gregg Knaupe, Seton Family of Hospitals)

Against — Gyl Switzer, Mental Health America of Texas

On — Sarah Kidder, Hogg Foundation for Mental Health

BACKGROUND: Penal Code, sec. 22.01 establishes the offense of assault. The offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Under five circumstances, the offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), including if committed against someone the defendant knows is emergency services personnel while the person is providing emergency services.

DIGEST: SB 295, as amended, would expand the circumstances under which assault could be a third-degree felony to include assault of a person the defendant knew was emergency room personnel while the person was providing emergency services. Emergency room personnel would be defined as a person in a hospital emergency department who, while working or volunteering, provided services for the public during emergency situations. It would be an exception to this enhancement if a person were a patient and the emergency room personnel had not received training in certain de-escalation and crisis intervention techniques to facilitate

interaction with patients, including patients with mental impairments. The training would have to meet minimum standards established by the Department of State Health Services.

The offense would be a class A misdemeanor if, at the time of the offense, the defendant was a person with mental illness or intellectual disabilities.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 295 is needed to better protect from assault persons who work in emergency rooms. Currently, assault of emergency services personnel is a third-degree felony, but an attack on an emergency room worker would be only a class A misdemeanor. Violent attacks on nurses and other emergency room workers have increased. In one recent survey, 25 percent of emergency room nurses surveyed reported experiencing physical violence more than 20 times in the last three years. Nurses and other emergency room staff deserve the same protections given to emergency services personnel providing emergency services.

Emergency room workers place themselves at risk as part of their routine work or volunteer duties and deserve the extra protection that SB 295 would give them. Raising the penalty for assault to a third-degree felony would have a deterrent effect on assaults and would recognize the special need for protection of all emergency room workers. The current enhanced penalty for assault on certain categories of individuals includes not only emergency services personnel but also public servants and security officers, and emergency room staff belong among these groups.

The bill would ensure that staff assaults by persons with mental impairments were handled appropriately. The offense would remain a class A misdemeanor if committed by persons with mental illness or intellectual disabilities.

The bill would encourage training of staff, but not mandate it, by creating an exception to the third-degree felony penalty if an assault was committed by a patient and the emergency room worker did not have training in de-escalation and crisis intervention.

The fiscal note estimates that there would be no significant fiscal implication to the state and that the number of persons convicted under the bill would not result in a significant impact on corrections agencies

OPPONENTS
SAY:

SB 295 is unnecessary because the existing laws on assault adequately punish all of these offenses, including those against emergency room staff. Emergency room workers should be protected by the same laws as others, and there should not be varied treatment of victims subject to similar harm. If an assault is serious, it could be charged as an aggravated assault.

Texas cannot afford to enhance criminal penalties when existing punishments are adequate. The criminal justice system already faces a resource shortage, and lengthening prison sentences could strain the system further.

NOTES:

The committee amendment to the bill would make assault against emergency room personnel a class A misdemeanor if at the time of the offense, the defendant was a person with mental illness or intellectual disabilities.

- SUBJECT:** Voluntary decertification of certified capital companies
- COMMITTEE:** Economic and Small Business Development — favorable, without amendment
- VOTE:** 6 ayes — J. Davis, Vo, R. Anderson, Miles, Murphy, Sheets
0 nays
1 absent — Reynolds
- SENATE VOTE:** On final passage, April 21 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** *(On House companion bill, HB 3374:)*
For — *(Registered, but did not testify:* Craig Casselberry, Texas Coalition for Capital; Jeffrey Clark, Technology Association of America (Tech America); Jeffrey Craver, Advantage Capital Partners; Scott Crist, Texas Ventures; Ron Hinkle, Advantage Capital Partners, Stonehenge Growth Capital; Mike Meroney, Accent Capital; Steven Moya, General LED; Gingee Prince, Enhanced Capital Partners; Damon Rawie, Advantage Capital Partners; Gary Valdez, Focus Strategies Investment Banking)

Against — None

On — Byron Beasley, Texas Treasury Safekeeping Trust Co.; *(Registered, but did not testify:* Paul Ballard, Texas Treasury Safekeeping Trust Co.)
- BACKGROUND:** Insurance Code, ch. 228 allows insurance companies to invest in private government-sponsored capital-venture companies. These certified capital companies (CAPCOs) invest in and provide capital to Texas-based companies. The insurance companies receive tax credits on their state insurance taxes equal to their investment in CAPCOs. They also receive interest on their investments and a chance to participate in the profits of a CAPCO. The comptroller administers the program through the Texas Treasury Safekeeping Trust Company. Since 2005, the Legislature has authorized about \$400 million in tax credits for the program.

DIGEST: SB 1744 would allow the comptroller to decertify a certified capital company upon request by the company if the comptroller found that the company had made qualified investments in an amount equal to 100 percent of the company's certified capital.

Voluntary decertification would not authorize the recapture and forfeiture of premium tax credits.

The comptroller would have to give notice of the certification to any appropriate state agencies.

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

SUPPORTERS SAY: SB 1744 would allow CAPCOs to voluntarily decertify after successful completion of the program and satisfaction of all investment obligations. Decertification would mean leaving the program and the responsibilities that accompany it. Current law does not provide companies with a method for doing so. These companies continue to pay fees, undergo audits, and file reports with the comptroller long after their investments have been made. As a business decision, some CAPCOs would like to move onto other opportunities and no longer desire to continue to participate in the program.

CAPCOs should not be required to file reports after fulfilling their part of the bargain. Once they leave the field, they should not be required to further monitor it.

OPPONENTS SAY: SB 1744 would further weaken the state's oversight over the very complex CAPCO program. Too many of the investments CAPCOs make fail to meet the minimum number of jobs created as a condition of investment. By allowing voluntary decertification, CAPCOs no longer would be required to self-report their job creation and retention rates, weakening the state's ability to monitor the effectiveness of the program.

NOTES: The identical companion bill, HB 3374 by Murphy, was reported favorably, as substituted, by the Economic and Small Business Development Committee on April 12.

SUBJECT: Requiring used tire retailers to scrap certain tires and other regulations

COMMITTEE: Environmental Regulation —favorable without amendment

VOTE: 7 ayes — W. Smith, Aliseda, Burnam, Chisum, Hancock, Legler, Reynolds
1 nay — Farrar
1 absent — Lyne

SENATE VOTE: On final passage, April 29 — 31-0

WITNESSES: No public hearing

DIGEST: SB 615 would add provisions regarding the resale of used vehicle tires and establish procedures to regulate the scrap tire industry in Texas.

Prohibiting resale of certain vehicle tires. SB 615 would require a business that sells new or used vehicle tires to render certain used tires as unusable if they could not pass a safety inspection. The business would alter the unsellable tires by puncturing a hole at least two inches in diameter through the body to ensure that it could not be temporarily repaired and take any other action necessary to prevent the use of the tire on a vehicle.

The bill would not apply to a tire that remains mounted on a the wheel of a motor vehicle that was held as inventory by a dealer or one that was attached to a vehicle that was purchased or received as part of a retail installment transaction. An exemption also would apply to a tire that would be sold for scrap to a business registered and authorized to engage in this industry with the Texas Commission on Environmental Quality (TECQ).

The bill would create a maximum civil penalty of \$500 for each violation of this requirement. The attorney general or appropriate district or county attorney could bring an action in either Travis County or the local county

where the violation occurred. The bill would authorize the Department of Public Safety to adopt the necessary rules to implement these provisions.

Handling of scrap tires. SB 615 would require a scrap tire transporter (a person that collects and transports scrap tires to a processor, end user or disposal facility) to file a sureties bond of at least \$100,000 with the TCEQ. A scrap tire generator (a person that generates scrap tires, including a tire dealer, junkyard, or fleet operator) who stored scrap tires outdoors would be required to store them in a fully enclosed area or container that could be made secure by locking.

The bill would create a maximum civil penalty of \$500 for each violation. A new penalty could be imposed each day a violation occurred. The attorney general or appropriate district or county attorney could bring an action in the county where the violation occurred or where the person lived. The bill would authorize the TCEQ to adopt the necessary rules to implement these provisions.

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

- SUBJECT:** Transition and employment services for special education students
- COMMITTEE:** Public Education — favorable, without amendment
- VOTE:** 7 ayes — Eissler, Allen, Aycock, Shelton, T. Smith, Strama, Weber
0 nays
4 absent — Hochberg, Dutton, Guillen, Huberty
- SENATE VOTE:** On final passage, April 29 — 29-2 (Birdwell, Hegar)
- WITNESSES:** No public hearing
- BACKGROUND:** The federal Individuals with Disabilities Education Act (IDEA) of 2004 was created to ensure that every child with a disability received a free public education appropriate to meet their individualized needs. It was also created to assist states and other entities with providing education for students with disabilities, and requires that transition services for students begin no later than age 16.
- Subch. A of ch. 29 of the Texas Education Code governs special education programs in public schools. Sec. 29.011 covers transition planning for students enrolled in special education programs as they move to life outside of the public school system. The commissioner of education is required to create rules to outline procedures for Texas schools to comply with federal requirements for transition services. The procedures have to detail how a student’s admission, review, and dismissal committee has to consider and address the following issues in the student’s individualized education program:
- suitable student involvement in the transition to life outside the public school system;
 - suitable parent involvement in the transition, if the student is younger than 18 or the parent is invited to participate;
 - options for postsecondary education;
 - a functional vocational evaluation;
 - goals and objectives of employment;

- availability of age-appropriate instructional environments for students at least 18;
- goals and objectives of independent living; and
- circumstances under which a student or the student's parents should be referred to a governmental agency for services.

DIGEST:

Transition planning. SB 35 would require transition planning to begin at age 14 for Texas students with disabilities. The commissioner would have to require each school district to designate a transition-focused employee for the school district or for a shared service arrangement. Minimum guidelines for training the designee would have to be developed by the commissioner. The designee would be required to provide information and resources about transition planning, services, and interagency coordination to ensure that school staff worked with students and parents, and as needed, the local and regional staff of the:

- Health and Human Services Commission (HHSC);
- Department of Aging and Disability Services;
- Department of Assistive and Rehabilitative Services;
- Department of State Health Services, and
- Department of Family and Protective Services.

Transition and employment guide. The Texas Education Agency (TEA) would have to work with the HHSC to create a guide addressing transition and employment for students and their parents. The guide would have to include information on services and programs in Texas that assisted in the transition process. TEA would be allowed to contract with a private entity to create the guide, which would have to be available on TEA's website in an electronic format. The agency would have to update the guide at least biennially. The guide would have to include information specific to Texas in areas including, but not limited to:

- transition services;
- employment and supported employment services;
- social security programs;
- community and long-term services and support; and
- postsecondary educational programs and services.

School districts would be required to post the guide on their websites. Districts would have to provide written information and any necessary

assistance to parents regarding how to access the online guide at the first meeting of the student's admission, review, and dismissal committee that addressed transition.

TEA, in conjunction with HHSC, would be required to complete the transition and employment guide by September 1, 2012. School districts would have to meet their requirements regarding the guide on the date the guide became available.

SB 35 would apply to the 2011-2012 school year. It would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 35 would improve transition services for students with disabilities in Texas public schools. More effective transition services would both increase the probability of these students obtaining employment after high school and decrease dropout rates. TEA reports that 5,507 students with disabilities dropped out of Texas high schools in the 2008-09 school year. By requiring transition services earlier in students' careers, schools and parents would be better able to prepare students to function effectively after high school. Students with disabilities would also be more informed of postsecondary options and therefore could be more motivated to complete high school.

SB 35 would not create an unfunded mandate for school districts. Additional staff or personnel would not necessarily need to be hired to fill the transition designee position. Information that would be included in the transition and employment guide currently exists, but needs to be put into a more accessible format. By clarifying the shared goals between parents and school districts, the bill would ensure that information currently required by law would be disseminated more effectively. SB 35 simply would ensure that parents had access to a particular point of contact and to information regarding transition planning for students with disabilities.

The bill would assist students and families greatly by requiring that each district have a designated employee to facilitate transition and employment services. Parents would be more informed about transition services and would in turn become more involved with the school districts in preparing students for life outside of high school. As a result of SB 35, well-prepared adults with disabilities would have more options upon

graduation, would be employable, and would not be as dependent upon state services.

Postsecondary career planning opportunities often are available to traditionally developing students as early as 13 years of age. Additionally, many school districts across the state already begin transition planning prior to students turning age 14. SB 35 would create equal access to post-secondary planning for students with disabilities across the state and would allow for similar treatment between students with disabilities and traditionally developing students.

**OPPONENTS
SAY:**

SB 35 would create an unfunded mandate for Texas public school districts that they currently cannot afford. The bill would require school districts to appoint additional personnel and deal with increased administrative issues. Since the current federally mandated age to begin transition planning is sufficient, the added requirements under the bill would place unnecessary burdens on school district staff and resources.

SUBJECT: No state retirement for elected officials convicted of certain crimes

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

VOTE: 6 ayes — Truitt, Anchia, Legler, Nash, Orr, Veasey
0 nays
3 absent — C. Anderson, Creighton, Hernandez Luna

SENATE VOTE: On final passage, May 10 — 31-0

WITNESSES: (*On House companion, HB 246:*)
For — None
Against — None
On — William (Shack) Nail, Employees Retirement System

DIGEST: CSSB 371 would make members of the Legislature and statewide elected officials who are not part of the judicial retirement systems ineligible to receive retirement annuities from the Employee Retirements System (ERS) of Texas if they had been convicted of certain felonies committed while in office that arouse directly from the official duties of elected office.

The bill would apply to persons convicted of:

- bribery;
- embezzlement, extortion, or other theft of public money;
- perjury;
- conspiracy; or
- the attempt to commit any of these crimes.

The retirement system would be required to suspend payments to persons ineligible to receive an annuity under CSSB 371.

Persons who were not eligible to receive retirement payments would be entitled to a refund of their retirement annuity contributions, including interest. A person whose conviction was overturned on appeal, had received a full pardon based on innocence, or had been granted relief based on actual innocence would be entitled to receive the accrued total of payments, with interest, withheld during the suspension period and could resume receiving payments upon repayment of any contributions they were refunded.

Benefits payable to an alternate payee, such as a spouse or child, who was recognized under a domestic relations order established before September 1, 2011, would not be affected by a person's ineligibility to receive a retirement annuity under CSSB 371. Ineligible for a retirement annuity under the bill would not affect a person's receipt of other retirement benefits.

The bill also would repeal an obsolete 1921 provision in the civil statutes that makes certain persons not entitled to a pension, including persons confined in state asylums, state penitentiaries, and those leaving the state for certain periods.

The bill would take effect September 1, 2011. It would apply only to members of the Employees Retirement System who are or were members of the Legislature or who hold or have held a statewide elected office and on or after the bill's effective date committed a felony listed in the bill.

NOTES:

The House committee substitute added provisions to the Senate-passed version of the bill, including allowing someone whose conviction was overturned to resume receipt of annuity payments upon repayment of any contribution that was refunded to them and allowing interest on contributions to be included if a person not eligible to receive retirement benefits was refunded their contributions.

The companion bill, HB 246 by Johnson, was considered in a public hearing on March 29 and was reported favorably, as substituted, by the House Pensions, Investments and Financial Services Committee on April 12.

SUBJECT: Establishing the T-STEM Challenge Scholarship program

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 6 ayes — Branch, Castro, Alonzo, Bonnen, Lewis, Patrick

1 nay — Brown

2 absent — D. Howard, Johnson

SENATE VOTE: On final passage, May 6 — 28-2 (Nelson, Ogden)

WITNESSES: No public hearing

DIGEST: CSSB 1729 would establish the Texas Science, Technology, Engineering, and Mathematics (T-STEM) Challenge Scholarship Program. The Texas Higher Education Coordinating Board would establish and administer the program for students that met certain eligibility requirements. For the initial award, a student would have to:

- graduate from high school with a grade point average of at least 3.0 on a four-point scale in mathematics and science courses;
- enroll in a STEM program at an eligible institution; and
- agree to work no more than 15 hours a week for a business that participated in the STEM program.

To continue to qualify for the scholarship, a student would have to:

- remain enrolled in a STEM program at an eligible institution;
- maintain an overall grade point average of at least 3.0 on a four-point scale;
- complete at least 80 percent of all semester credit hours attempted for each semester;
- complete at least 30 semester credit hours per academic year; and
- work no more than 15 hours a week for a business that participated in the STEM program.

No student could receive scholarships for more than two academic years.

To participate in the program, an institution would have to be a public or private junior college or public technical institute, admit at least 50 students into a STEM program each academic year, and develop partnerships with business and industry to identify local employment needs in the STEM fields and provide part-time employment for students enrolled in a STEM program.

To maintain eligibility, beginning with the second year following implementation of a scholarship program, an institution would have to demonstrate to the coordinating board that at least 70 percent of the institution's T-STEM Challenge Scholarship graduates, within three months after graduation, were:

- employed by a business in a science, technology, engineering, and math (STEM) field; or
- enrolled in upper-division courses leading to a baccalaureate degree in a STEM field.

The bill would stipulate that, subject to available funding, the coordinating board would have to award scholarships with at least 50 percent of the amount awarded from private funds. The board could use any available revenue and could solicit and accept gifts and grants for the program.

An eligible student could receive a scholarship for up to two academic years. The scholarship awards would begin with the 2011-2012 academic year.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

The bill would establish the Texas Science, Technology, Engineering, and Mathematics (T-STEM) Challenge Scholarship Program for eligible students attending eligible two-year institutions. The purpose of the program would be to encourage students to enroll in STEM programs administered by lower-division postsecondary institutions in partnership with business and industry in order to address local employment needs in these areas.

There is a critical need for more STEM graduates in Texas. CSSB 1729 would be a strong step in the right direction for the state.

Institutions would remain eligible for scholarship funding as long as 70 percent of the scholarship students were employed by a STEM business or were enrolled in upper-division courses leading to a bachelor's degree in a STEM field.

**OPPONENTS
SAY:**

While the goals of the bill are laudable, now is not the time to establish a new scholarship program, especially when the state is cutting back on funding for higher education and student financial aid.

NOTES:

The House committee substitute differs from the Senate-passed version by authorizing the coordinating board to use any available revenue and to solicit and accept gifts and grants for the program, whereas the Senate-passed version authorized the coordinating board to use any available revenue, including legislative appropriations, and to solicit and accept gifts and grants for the program.

According to the fiscal note, the bill would cost \$280,000 each year starting in fiscal 2013, if fully funded.

- SUBJECT: Requiring a construction fund trust account for retainage
- COMMITTEE: Business and Industry — favorable, without amendment
- VOTE: 5 ayes — Deshotel, Orr, Garza, Giddings, Workman
0 nays
4 absent — Bohac, S. Miller, Quintanilla, Solomons
- SENATE VOTE: On final passage, May 18 — 20-11 (Eltife, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Patrick, Seliger, Shapiro, Uresti)
- WITNESSES: (*On House companion bill, HB 1428:*)
For — Elisa Fox, Cummings Electricals, Inc.; Todd Hewitt, Texas Fifth Wall Roofing Systems, Inc.; Dennis Lewis, Potter Concrete, Ltd.; Kenneth Loper, TAS Commercial Concrete Construction, LLC; Richard Thomas, Texas Construction Association; (*Registered, but did not testify:* Barbara Douglas, Lumbermen’s Association of Texas; Jon Fisher, Associated Builders and Contractors of Texas; Corbin Van Arsdale, Associated General Contractors of America Texas Building Branch)

Against — John Fleming, Texas Mortgage Bankers; Manuel Munoz, Texas Association of Builders; Karen Neeley, Independent Bankers Association of Texas; (*Registered, but did not testify:* Celeste Embrey, Texas Bankers Association; David Mintz, Texas Apartment Association; Gardner Pate, Texas Building Owners and Managers Association; Kelly Rodgers, Wells Fargo Bank, N.A.)
- BACKGROUND: Contractors, subcontractors, and suppliers secure credit through the issuance of mechanics’ and materialmens’ liens, which use property being improved as collateral for payment on construction contracts. Property Code, ch. 53, establishes who is entitled to a lien, procedures for perfecting such a lien, and what actions may be taken after such a lien is perfected. If a contractor, subcontractor, or supplier of labor or materials used in the construction, repair, or improvement of real property is not paid, a lien may be executed. If notice requirements for such liens are met and the debt is not paid, the property subject to the lien may be foreclosed.

Retainage refers to a percentage of the contract price or value of the work in a construction project held by the owner. Sec. 53.101 provides that during the work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work is completed, the owner shall retain:

- 10 percent of the contract price of the work to the owner; or
- 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work.

Sec. 53.103 says a claimant has a lien on the retained funds if the claimant sends proper notices and files an affidavit claiming a lien no later than the 30th day after the work is completed, terminated, or abandoned.

DIGEST:

SB 1425 would require a property owner who entered into a construction loan or financing agreement for the improvement of real property that was secured by a lien on the property or improvement to deposit retainage in a construction trust fund account at the time payment was made to a contractor or earlier. The bill would define a construction trust fund account as an account in a federally insured financial institution, consisting solely of retainage and funds necessary to pay account charges.

Trust funds deposited in a construction trust fund account would be required to be used first to satisfy statutory retainage requirements. Remaining funds could be used for other construction payments or for other purposes of the owner. Trust funds would not be subject to seizure, offset, or taking by the financial institution or a creditor of the owner.

A construction trust fund account would not be required for the construction, remodeling, or repair of a single-family house or duplex used for residential purposes or for improvements of \$250,000 or less.

If a property owner required to maintain a construction trust fund account opened and maintained a separate trust account with the financial institution for each project, the periodic statement received from the financial institution would be required to refer to the account as a "construction trust fund" account and identify the project for which the construction trust fund account was maintained. If a property owner opened and maintained a trust account into which funds for two or more

projects were deposited, the periodic statement received from the financial institution would be required to refer to the account as a “construction trust fund” account and the owner would be required to maintain an account record that provided information relating to:

- the source and amount of the funds in the account and the date the funds were deposited;
- the date and amount of each disbursement from the account and the person to whom the funds were disbursed; and
- the current balance of the account.

By the 14th day after receipt of a written request, a property owner would be required to provide a beneficiary of trust funds with a copy of the periodic statement received from the financial institution and the account record required to be maintained by the owner.

If a beneficiary of trust funds incurred actual damages as a result of the property owner’s failure to establish or maintain a construction trust fund account or failure to establish or maintain an account record, the beneficiary could recover actual damages, reasonable attorney’s fees, and a civil penalty of \$500 from the property owner and each trustee who was an owner, officer, director, or agent of the property owner and who received trust funds or controls or directed trust funds.

The bill would take effect September 1, 2011, and would apply only to an amount retained under an original contract entered into on or after the effective date.

**SUPPORTERS
SAY:**

SB 1425 would ensure that contractors and subcontractors were paid for their work. Lenders typically only disburse 90 percent of a construction loan, with the rest held as retainage to protect contractors and subcontractors from nonpayment. However, in circumstances where the owner has defaulted on the construction loan, lenders have failed to disburse the final 10 percent of the loan and have effectively seized retainage. Lenders may even know that the owner has defaulted but will take no action until the building has been completed to improve the lender’s position in a foreclosure. This is unfair to contractors and subcontractors who complete their work but will not be fully paid. When subcontractors are not fully paid, they are often forced to lay off workers or go out of business, since subcontractors in Texas are typically small, closely held businesses.

Mechanics' and materialmans' liens typically are wiped out in a foreclosure because a lender's deed of trust mortgage is superior to mechanics' liens. For this reason, retainage is the primary form of protection for contractors and subcontractors. SB 1425 would ensure that contractors and subcontractors actually received retainage.

Owners are required under current law to hold 10 percent of the contract price as retainage. These funds can come either from loan proceeds or the owner's own funds. Owners who are drawing down only 90 percent of the loan are not complying with current retainage law.

OPPONENTS
SAY:

SB 1425 would increase construction costs. Under current law, construction lenders typically only disburse 90 percent of the loan. SB 1425 would require an owner to pull down the full amount of the loan and hold 10 percent as retainage in a trust account. This would require owners to pay interest on the full amount of the loan, rather than 90 percent of the loan. It is also possible that banks would refuse to disburse the full amount of the loan and instead the owner would have to fund the trust account from the owner's own funds. Owners already are subject to significant equity requirements in order to obtain a construction loan. Requiring owners to pay for retainage from the owner's own funds rather than from the construction loan would be overly burdensome.

SB 1425 would create a special protection for contractors and subcontractors over and above the protections they enjoy under current law. In addition to mechanics' and materialmans' liens, contractors and subcontractors would enjoy the benefit of a trust account. The bill would give contractors and subcontractors a higher level of priority that would increase business risks for other creditors.

SB 1425 would change the relationship between borrower and lender. Under current law, the relationship between borrower and lender is arm's length. Requiring a trust account to be established would create a fiduciary relationship between the borrower and lender.

The bill also would require retainage to be held in a financial institution. Recent bank failures have highlighted the risk of keeping account balances over FDIC insurance limits. For large construction projects the value of a construction trust fund account could easily exceed FDIC limits.

NOTES:

The House companion bill, HB 1428 by Deshotel, was reported favorably, as substituted, by the House Business and Industry Committee on March 30.

- SUBJECT:** Licensing and regulation of certain health professionals at the TMB
- COMMITTEE:** Public Health —favorable, without amendment
- VOTE:** 10 ayes — Kolkhorst, Naishtat, Coleman, S. Davis, V. Gonzales, S. King, Laubenberg, Schwertner, Truitt, Zerwas
- 0 nays
- 1 absent — Alvarado
- SENATE VOTE:** On final passage, March 17 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — James Willmann, Texas Nurses Association; (*Registered, but did not testify*: Jennifer Banda, Texas Hospital Association; Dan Finch, Texas Medical Association; Michael Gutierrez)
- Against — None
- On — Melinda McMichael; Mari Robinson, Texas Medical Board
- BACKGROUND:** The Texas Medical Board (TMB) regulates the practice of medicine and certain health professionals, including surgical and physician assistants and acupuncturists. The Texas Physician Assistant Board and the Texas State Board of Acupuncture Examiners are appointed by the governor, and their rulemaking is subject to TMB approval. The Surgical Assistant Advisory Committee is appointed by TMB and has no direct regulatory authority over surgical assistants.
- DIGEST:** SB 190 would amend provisions relating to the handling of complaints, eligibility for licensure, contested hearings and disciplinary actions by the TMB and related boards for physician assistants and acupuncturists.
- Physician licensing and regulation.** SB 190 would prohibit TMB from considering a complaint involving care provided more than seven years before the complaint was filed, with exceptions for minors. If the care involved a minor, the board could not consider complaints after the date the minor turned 21 years old or the seventh year after the date of care,

whichever was later. The TMB could consider a previously investigated complaint to determine if a physician had a pattern of violations.

The bill would prohibit the board from accepting anonymous complaints, and would specify that all complaints filed by insurers and insurance agents and pharmaceutical companies would have to include the name and address of the person filing the complaint. TMB would be required to notify physicians of complaints filed by these entities, unless the notification would jeopardize the investigation.

TMB would have 45 instead of 30 days to complete a preliminary investigation of a complaint. For informal meetings regarding contested cases, the bill would extend the time the board had to notify a licensee of a scheduled meeting to 45 days instead of 30 days in advance of the meeting, and give the licensees 15 instead of five days to provide a rebuttal to the allegations for the information to be considered at the meeting. Physicians could request the recording of the informal meeting, which could not be released to a third party unless authorized.

SB 190 would amend current statutes regarding licensing provisions for physicians, including prohibiting the TMB from issuing a license to a physician that held a full, provisional, or temporary (for faculty) medical license who was restricted because of a disciplinary order, surrendered, or canceled in another state or country for cause, or was under investigation for in another state or country. The bill also would remove a provision in current law allowing the TMB to charge a physician a fee of \$700 or less to reinstate a license after cancellation for cause.

Surgical assistants. TMB would be authorized to hear all evidence and arguments and deliberate disciplinary actions in executive session, exempt from the Open Meetings Act and Open Records Act.

Physician assistant licensing and regulation. The Texas Physician Assistant Board would be authorized to hear all evidence and arguments and deliberate disciplinary actions in executive session, exempt from the Open Meetings Act. The bill would remove limitations on the granting of temporary licenses and instead authorize the board to make rules regarding temporary license issuance and expiration. The bill would authorize the board to issue postgraduate training permits to students in graduate physician assistant education training programs. The bill would prohibit

the renewal of a license that had been expired for a year or longer and require the person to obtain a new license.

Acupuncturist licensing and regulation. The Texas State Board of Acupuncture Examiners would be authorized to hear all evidence and arguments and deliberate disciplinary actions in executive session, exempt from the Open Meetings Act. The bill would make confidential and not subject to discovery complaints, adverse reports, and other investigative information gathered or received by the acupuncture board or TMB relating to license holders or applicants.

Effective date. The bill would take effect September 1, 2011. The provisions in this bill would apply only to license applications, complaint investigations and contested case hearings on or before the effective date.

**SUPPORTERS
SAY:**

SB 190 would make a number of improvements to the complaints process and regulatory functions of the TMB. The bill would end anonymous complaints at the TMB, which prevent health care professionals from being able to adequately defend themselves. The bill would not discourage legitimate complaints made against health care professionals because most would remain confidential.

Currently, only a small percentage of all complaints made to the TMB are anonymous, so there is little reason to believe that SB 190 would substantially reduce the number of complaints. The bill would address the concerns by health care professionals that have been forced to defend their reputation because insurance providers or competitive doctors have issued complaints to the board for reasons beyond the standard of care. Under the bill, physicians would be notified of a complaint that was filed by an insurance agent, insurer, pharmaceutical company, or other third-party actor. This will allow physicians to challenge unfair complaints that often are made by insurance providers and drug companies who are trying to reduce the number of claims rather than address patients' needs.

The bill also would lengthen the time a physician had to respond to a complaint. This is important because physicians are trying to care for patients, manage their practices, and still deal with complaints. They should have sufficient time to respond to a complaint that could jeopardize their livelihood.

The bill also would prohibit the TMB from issuing any medical license to a physician who had their license canceled or surrendered for cause, or whose license was under investigation by another state or country. This would keep Texas patients safe by preventing bad doctors from practicing in the state.

SB 190 would make the same meetings provisions in place for investigation proceedings for physicians apply to acupuncturists and physician and surgical assistants.

**OPPONENTS
SAY:**

SB 190 would prohibit anonymous complaints to the TMB, which could silence credible complaints because an individual feared the consequences from an accused physician. While most complaints made to the TMB come directly from patients or their families, a number of legitimate concerns about a doctor's practice come from a physician's colleagues, such as a nurse or physician assistant who works side-by-side rather than in competition with the physician. These health care professionals are in a unique position to raise the alarm about a bad actor because they have the medical expertise to understand the medical consequences of a physician's treatment.

Prohibiting the TMB from accepting anonymous complaints could cause harm to a patient. Physicians' expertise and close relationships with patients put them in a unique position of power over those patients. Other state regulatory agencies, such as Child Protective Services, permit anonymous complaints for vulnerable populations because it is important to protect the health and well-being of Texans. This is an important safety issue and the current law on this point should remain intact.

SUBJECT: PRB monitoring and bond funding of certain public retirement systems

COMMITTEE: Pensions, Investments and Financial Services — favorable, without amendment

VOTE: 5 ayes — Truitt, Creighton, Legler, Nash, Orr
2 nays — Anchia, Veasey
2 absent — C. Anderson, Hernandez Luna

SENATE VOTE: On final passage, April 13 — 31-0

WITNESSES: For — None
Against — (*Registered, but did not testify:* Mike Higgins, Texas State Association of Firefighters; T.J. Patterson, City of Fort Worth)
On — Christopher Hanson, Pension Review Board

DIGEST: SB 1612 would require the Pension Review Board (PRB) to prepare an annual report about the investments of public retirement systems that administer defined benefit plans and have at least \$100 million in total assets. The bill would establish the required contents of these reports and require that the reports be posted on the PRB website each year. The public retirement systems included in the report would have a review and comment period prior to the report's posting. A report to the Legislature or the governor would have to identify any public retirement system that did not provide the required or requested information for the report and any response from such a retirement system.

The bill would allow the PRB to require a public retirement system with at least \$100 million in assets to conduct an actuarial experience study and provide that study to the PRB. The PRB could not require such a study more often than every five years. The bill would remove a prohibition against PRB enforcement of a rule on certain reporting requirements for a PRB review if compliance with that rule would cause a public retirement system to incur a major expense.

The bill also would repeal Local Government Code, ch. 107, thereby revoking a municipality's authority to issue obligation bonds to fund any or all of a pension fund's unfunded liability. The bill would specify that the repeal would not affect the validity of an obligation already issued or diminish or impair the right of an obligation holder.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 1612 would ensure the PRB could detect potential problems in the investments of public retirement systems before they became disastrous. The need for strengthened oversight is evident given recent crises in the financial markets. Nationwide, workers have lost substantial savings and had to delay retirements due to insufficient oversight of financial investments. SB 1612 would improve the PRB's ability to assist public retirement systems and help protect Texans' retirement plans.

The bill also would facilitate informed decision-making by state and local policymakers. The annual reports on these systems' investments, which would include rates of return, solvency and cash flow projections, and levels of compliance with internal investment strategies, would allow stakeholders to assess both the absolute success of a given public retirement system and make an apples-to-apples comparison of the retirement system relative to others, prior to making or changing policy.

The bill would improve the transparency of public retirement systems by publishing the proposed reports on the PRB website. These systems hold public funds, so their investment decisions and outcomes should be accessible for public review. Concerns about impaired competition for investments due to the online report posting are unfounded. Private mutual funds post their portfolios online and remain fully able to compete for investments. Eliminating pension obligation bonds, which simply cost-shift debt from one budget column to another, also would increase transparency of a system's operations.

**OPPONENTS
SAY:**

By requiring public retirement systems' investment portfolios to be posted online in an annual report, SB 1612 would make competition for good investments less dynamic. The bill further would weaken cities' ability to manage their retirement systems efficiently by eliminating the tool of pension obligation bonds.

- SUBJECT: Contracts between school districts and food service providers
- COMMITTEE: Public Education — favorable, without amendment
- VOTE: 6 ayes — Eissler, Guillen, Huberty, Shelton, T. Smith, Weber
2 nays — Dutton, Strama
3 absent — Hochberg, Allen, Aycock
- SENATE VOTE: On final passage, May 6 — 30-0
- WITNESSES: For — (*Registered, but did not testify*: Amy Beneski, Texas Association of School Administrators; David Holt, Texas Association of Community Schools; Julie Shields, Texas Association of School Boards)
Against — (*Registered, but did not testify*: Jim Grace, ARAMARK)
- BACKGROUND: Sec. 44.031, Education Code governs the purchases for which a school district must use specific contract procedures. Sec. 44.031(a) states that with few exceptions, a school district must use one of the following contract methods for purchases greater than \$50,000:
- competitive bidding;
 - competitive sealed proposals;
 - a request for proposals, for services other than construction services;
 - an interlocal contract;
 - a design/build contract;
 - a contract to construct, rehabilitate, alter, or repair facilities using a construction manager;
 - a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility;
 - the reverse auction procedure; or
 - the formation of a political subdivision corporation.

According to sec. 44.031(b), in determining to whom to award a contract, a district must consider:

- the purchase price;
- the reputation of the vendor and of the vendor's goods or services;
- the quality of the vendor's goods or services;
- the extent to which the goods or services meet the district's needs;
- the vendor's past relationship with the district;
- the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
- the total long-term cost to the district to acquire the vendor's goods or services; and
- any other relevant factor.

According to sec. 44.031(g), notice of the time when and place where a bid or proposal will be due must be published in the county of the district's central administrative office once weekly for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

A Texas attorney general opinion (GA-0500, January 12, 2007) determined that school districts participating in federal school nutrition programs could contract with food service management companies if the district adhered to federal and state regulations controlling such contracts. A school district contracting with a company for services does not have to contract separately for the underlying goods a company may use in providing its services. When a school district contracts competitively with a food service management company that merely permits or requires the company to provide food as part of its services, a school district is not violating a statutory duty or delegating a governmental function under state law.

DIGEST:

SB 1113 would require a school district contract valued at \$50,000 or more in a 12-month period for food service management or provision to:

- adhere to Education Code, sec. 44.031(a) in providing the best value to the entity and school district;
- consider the factors specified under sec. 44.031(b) in determining to whom to award the contract; and
- follow the process specified in sec. 44.031(g).

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. It would apply only to contracts entered into on or after the effective date.

**SUPPORTERS
SAY:**

A school district can choose to manage the kitchens of its schools, including the purchasing of food, or the school district can contract with a food service provider to manage the kitchens and purchase the food. Currently, some school districts contract with a provider who does not publicly bid the purchase of the food provided to schools.

SB 1113 would afford transparency by allowing a school district to know the true price of the food purchased and would ensure high-quality food was provided to public schools whose districts contracted with food management services.

Transparency. A food service management provider contracting for the food it provides to a school district should be subject to the same contracting requirements a school district must follow when contracting for food. When a provider is required to publicly bid, the food specifications are detailed in the bid, including brand, fat content, and other important nutrition information found on food labels. When the provider does not publicly bid, the food specifications provided to school districts contain only the descriptors “cheese,” “meat,” or “milk.” Such generalizations permit the food provider to change the product constantly to achieve a lower cost without regard for the quality of the food provided to the schools.

National buying power. The bill would not negatively impact school districts. Food service management providers would retain the benefit of their national buying power—the ability to purchase in bulk. As such, food service providers still would enjoy lower prices on products purchased in bulk.

The bill would address the issue of one food service management provider in Texas that does not publicly bid the purchase of the food. This provider used to publicly bid but then stopped doing so after the 2007 attorney general opinion. There is no reason why this provider could not return to public bidding while remaining competitive and not costing school districts money.

Food retailers reward all food service management providers based on the amount of product purchased. The more a provider charges per unit of product, the greater the rebate the provider receives from the retailer.

When publicly bid, the provider factors the rebate into the front end of the contract to offer the most competitive price and quality of food to the school district. In a public bid, the school district receives all the benefits of the rebates and national buying power. Opposing a requirement to publicly bid the purchase of food only seeks to preserve the food service management provider's profits, which were acquired by inflating the prices.

Guaranteed food service surplus. The bill no longer would permit the questionable use of federal funds because if publicly bid, the "surplus" would be represented in the overall cost of the food service management as a savings. Some say that the bill likely would eliminate the guaranteed food service surplus paid to school districts by some food service management providers, but the surplus represents a possible misuse of federal funds. School districts receive federal appropriations to provide food services to certain students. In contracting with the food service provider, the school district uses a combination of state and federal appropriations. To entice business, a food service provider agrees to pay a surplus at the end of the school year if the school district contracts with that provider. The question arises when the school district uses the surplus to fund nonfood-service-related initiatives because it appears to be an indirect reallocation of federal funds.

OPPONENTS
SAY:

SB 1113 would increase the cost of food services for certain districts, crippling them during these tough economic times. One school district estimates that its food prices would increase by at least \$260,000.

National buying power. The bill would not allow a food service management provider to use its national buying power to provide lower prices.

Guaranteed food service surplus. The bill likely would cause the guaranteed food service surplus paid to a school district by the food management service provider at the end of each school year to be eliminated. School districts use this surplus to reimburse energy and custodial costs and to upgrade kitchen equipment and facilities. Without

the surplus, the districts would have to fund such expenditures through local operating budgets or bond referendums.

NOTES: The companion bill, HB 2233 by Huberty, passed the House by 134-12 on May 12 and was referred to Senate Education Committee on May 13.

SUBJECT: Revising the composition and duties of the Forensic Science Commission

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

VOTE: 7 ayes — S. Miller, Fletcher, Beck, Driver, Flynn, Mallory Caraway, Pena
2 nays — Burnam, Walle

SENATE VOTE: On final passage, May 13 — 31-0

WITNESSES: No public hearing

BACKGROUND: In 2005 the Legislature created the Forensic Science Commission (FSC). Under Code of Criminal Procedure art. 38.01 the commission is composed of nine members:

- four appointed by the governor, with two required to have expertise in forensic science, one required to be a prosecutor, and one required to be defense attorney;
- three members appointed by the lieutenant governor, with one being a faculty or staff member from the University of Texas who specializes in clinical laboratory medicine, one being a faculty or staff member from Texas A&M University who specializes in clinical laboratory medicine, and one being a faculty or staff member of Texas Southern University with expertise in pharmaceutical laboratory research; and
- two members appointed by the attorney general, with one being a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database and one being a faculty or staff member of the Sam Houston State University College of Criminal Justice with expertise in forensic science or statistical analyses.

Commission members serve two-year terms, and the governor appoints the presiding officer.

The duties of the commission are to:

- develop and implement a reporting system for accredited laboratories, facilities, or entities to report professional negligence or misconduct;
- require all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence or misconduct to the commission; and
- investigate allegations of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

DIGEST:

SB 1658 would change the composition and duties of the Forensic Science Commission (FSC), exempt certain information from its investigations from the Public Information Act, require an annual report from the commission, and administratively attach the commission to Sam Houston State University.

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.

Composition of commission. SB 1658 would reduce the size of the commission from nine to seven members and change its composition. All seven members would be appointed by the governor. Five members would have to have expertise in forensic science, and one member would have to be a prosecutor and one a defense attorney. The governor would continue to appoint the presiding officer.

By January 1, 2012, the governor would be required to appoint five of the commission members. The terms of the members of the FSC who were serving when CSSB 1658 became effective would expire upon the last of these five gubernatorial appointments.

Duties of the commission. The duties of the commission would be changed so that they applied only to crime laboratories and not to accredited laboratories, facilities, or entities.

If certain conditions were met, the commission would be authorized to initiate, for educational purposes, an investigation of a forensic analysis without a report of an allegation of professional negligence or professional misconduct involving the forensic analysis. This could be done if the

commission determined by a majority vote of commission members that an investigation would advance the integrity and reliability of forensic science in Texas. If the commission investigated a forensic analysis under this authority, it would have to prepare a written report that contained:

- observations of the commission about the integrity and reliability of the forensic analysis conducted;
- best practices identified by the commission; and
- other recommendations.

The bill would establish different reporting requirements for FSC investigations, depending on the type of crime lab investigated.

If the investigation were of a crime lab accredited by the Department of Public Safety pursuant to allegations of professional negligence or professional misconduct involving an accredited field of forensic science, the investigation would have to include a written report that identified and described the methods and procedures used to identify:

- the alleged negligence or misconduct and whether it occurred;
- any corrective action required;
- observations of the commission regarding the integrity and reliability of the forensic analysis conducted;
- best practices identified by the commission during the investigation; and
- other recommendations.

If the investigation were of a crime lab not accredited by DPS or the investigation were pursuant to allegations involving a forensic method that was not an accredited field of forensic science, the investigation could include a written report that contained:

- observations of the commission about the integrity and reliability of the forensic analysis conducted;
- best practices identified by the commission during the investigation; and
- other recommendations.

All of the reports described above would have to be made available to the public.

For two types of reports, the commission would be prohibited from making a determination of whether professional negligence or professional misconduct occurred or issuing a finding on that question. This prohibition would apply when the commission conducted investigations that it initiated without a report of an allegation of professional negligence or professional misconduct and when it investigated crime labs that were not accredited by the DPS or were pursuant to allegations of a forensic method that is not an accredited field of forensic science.

The commission would be prohibited from issuing findings related to the guilt or innocence of parties in an underlying civil or criminal trial. The commission's written reports would not be admissible in civil or criminal cases.

The DPS director would have to require laboratories, facilities, or entities that had to be accredited by DPS to agree to requests for cooperation by the Forensic Science Commission.

Public information exemption. Information filed as part of an allegation of professional misconduct or professional negligence or that was obtained during an investigation into one of these would not be subject to release under the Government Code's public information statutes until the conclusion of the commission's investigation.

Annual report. By December 1 each year, the commission would have to publish a report that included several items listed in the bill, including a description of complaints filed in the preceding year and the disposition and status of the complaints. The first annual report would be due by December 1, 2012.

Affiliation with Sam Houston State University. The commission would be attached administratively to Sam Houston State University. The Texas State University Board of Regents would have to provide administrative support to the commission. The university and the board of regents of the Texas State University System would have no authority or responsibility for the duties of the commission.

SUPPORTERS
SAY:

SB 1658 is needed to clarify the scope and duties of the Forensic Science Commission. Almost since its creation, the commission has been bogged down with questions about its authority and operations, especially during its investigation into the case of Cameron Todd Willingham, executed

after a fire that killed his three daughters. The changes in the bill would improve the structure of the commission and clarify its jurisdiction so that it could move forward with its work and increase public confidence in the Texas criminal justice system.

Composition of the commission. SB 1658 would require the governor to make all appointments to the FSC, something not unusual for state commissions. With five of the appointees being required to have expertise in forensic science, one required to be a prosecutor, and one required to be a defense attorney, the expertise of the commission would be focused on forensic science and courtroom knowledge.

Duties of the commission. SB 1658 would broaden the FSC's powers so that it could launch an investigation without first receiving a complaint. This would give the commission more flexibility to address issues in the use of forensic science, which would lead to continued improvements. This authority, along with authority to investigate nonaccredited fields of forensic science, would give the commission the necessary discretion to look into junk science or other areas it deemed appropriate. These investigations could only be ordered by majority vote and would have to be done to advance the integrity and reliability of forensic science.

The bill would clarify the FSC's duties by outlining what was required to be in the reports of different types of investigations. Including best practices in the reports would help courts and others evaluate uses of forensic science.

Prohibiting the commission from issuing findings about guilt or innocence and prohibiting its reports from being used as evidence in civil and criminal cases would ensure that the commission focused its work on improving forensic science, not on issues in specific court cases.

Public information exemption. SB 1658 would provide only a limited and temporary exemption to the Public Information Act so that during an investigation the commission could keep its investigative and work files confidential. This would be a common-sense exception to allow the FSC to conduct proper investigations and to ensure that its investigations are not tainted. Information on cases would become accessible and open to the public after an investigation was completed.

Annual report. Requiring an annual report of the FSC would ensure that the public and stakeholders were kept informed of the commission's work.

Affiliation with Sam Houston State University. SB 1658 would officially administratively attach the FSC to Sam Houston State University, which already provides administrative support to the commission and houses the FSC's office. The bill would clarify that the commission was otherwise independent from the university.

OPPONENTS
SAY:

Composition of commission. SB 1658 would give too much power to the governor by allowing all commission appointments to be made by the governor. Current law splits appointments among the governor, the lieutenant governor, and the attorney general, ensuring that no one official has the power to dominate the commission. SB 1658 would move too quickly to consolidate this power in the governor's hands by removing the current members as soon as the governor made five appointments.

Reducing the size of the commission from nine to seven and eliminating requirements for certain types of expertise also would weaken the commission by reduce the commission's depth and diversity of knowledge.

Duties of the commission. Allowing the FSC to investigate cases without a complaint would give the commission too much authority. Requiring that the commission operate after complaints, and not simply on its own, ensures that its investigations are focused on specific uses or misuses of forensic science.

SB 1658 should require that the commission issue reports in all its investigations, instead of giving it the option to report on cases of non-accredited labs or non-accredited fields of forensic science.

Prohibiting the commission from issuing findings about guilt or innocence would be too restrictive. The commission should have discretion to make this kind of finding if it deemed appropriate.

Public information exemption. SB 1658 would thwart the goal of open and accessible government by exempting some FSC documents from the Public Information Act. One of the goals of the commission was to improve public trust in the criminal justice system, and denying access to information, even during an investigation, would work against this goal.

The exception in SB 1658 would allow the commission to hide from the public its on-going investigations, which could restrict the public's oversight of the commission.

- SUBJECT:** Spouses inheriting totally disabled veteran's homestead tax exemption
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 7 ayes — Hilderbran, Otto, Elkins, Gonzalez, Lyne, Murphy, Woolley
0 nays
4 absent — Christian, Martinez Fischer, Ritter, Villarreal
- SENATE VOTE:** On final passage, May 12 — 31-0
- WITNESSES:** *(On House companion bill, HB 472:)*
For — James Cunningham, Texas Coalition for Veterans Organizations, Texas Council of Chapter Military Officers Association of America; Morgan Little, Texas Coalition of Veterans Organizations; *(Registered, but did not testify:* Marida Favia del Core Borromeo, Exotic Wildlife Association; Carlos Higgins, Texas Silver-Haired Legislature; Patrick Reilley)

Against — None

On — Tim Wooten, Texas Comptroller of Public Accounts
- BACKGROUND:** Tax Code, sec. 11.131 fully exempts the residential homesteads of totally disabled veterans from property taxes.
- DIGEST:** SB 516 would allow the surviving spouse of a totally disabled veteran to continue to receive the property tax exemption for a residential homestead after the veteran's death. A homestead would qualify if:
- it had received the exemption from property taxes under the disabled veteran's exemption;
 - the property was the residence homestead of the surviving spouse when the disabled veteran died;
 - the property remained the residence homestead of the surviving spouse; and
 - the surviving spouse had not remarried.

SB 516 would allow the exemption to follow the surviving spouse to a new homestead. The exemption would be limited to the dollar amount of the exemption in the prior qualifying homestead. The exemption would end if the surviving spouse remarried.

The surviving spouse would be entitled to receive from the local appraisal district information necessary to determine the dollar amount of the homestead exemption to which the surviving spouse was entitled on a subsequently qualifying homestead if the spouse decided to move.

The change would apply starting with the tax year beginning January 1, 2012. The bill would take effect January 1, 2012, if the Texas Constitution was amended to authorize the Legislature to provide for these changes.

**SUPPORTERS
SAY:**

Current law provides a full exemption from property taxes on the residential homesteads of totally disabled veterans. Unfortunately, this exemption does not transfer to a surviving spouse upon the death of a veteran. As a result, the loss sustained by the surviving spouse is compounded by the need to ascertain how to pay for unexpected property tax bills.

As these disabled veterans face their final years, their greatest concern relates to the fate of their families. SB 516 would provide them with some measure of peace of mind.

Texas already grants certain surviving spouses the right to inherit other property tax breaks. For instance, the school tax freeze awarded to the owner of a residential homestead at age 65 is transferable to a surviving spouse as long as the spouse is at least 55 years old at the time of the transfer. SB 516 would be a sensible extension of this policy.

SB 516 would help to contain the cost of this exemption by allowing it to follow the surviving spouse into a new homestead property. If the surviving spouse moved to a less valuable property, then the more valuable original homestead would be returned to the property tax rolls. If the surviving spouse moved to a more valuable property, the spouse would be able to exempt only the value of the original homestead.

OPPONENTS
SAY:

By extending the time that certain properties remained exempted from property taxes, SB 516 would decrease ad valorem revenue to local governments. The state should not grant tax exemptions when schools, health care, and other essential programs are critically underfunded.

NOTES:

The proposed constitutional amendment that would authorize this legislation, SJR 14 by Van de Putte, is on today's Constitutional Amendments Calendar.

SUBJECT: Private and parochial school participation in UIL activities

COMMITTEE: Public Education — favorable, without amendment

VOTE: 7 ayes — Eissler, Hochberg, Allen, Huberty, Shelton, Strama, Weber
1 nay — Aycock
1 present not voting — Guillen
2 absent — Dutton, T. Smith

SENATE VOTE: On final passage, May 6 — 21-8 (Duncan, Eltife, Fraser, Hegar, Nichols, Uresti, Watson, Wentworth)

WITNESSES: *(On House companion bill, HB 2322:)*
For — Jerry Eshleman, Cornerstone Christian Schools; Charles Evans, Texas Association of Non-public Schools; Tim Lambert, Texas Home School Coalition; Margaret McGettrick, Catholic Bishops of Texas; Paul Hastings; *(Registered, but did not testify: MerryLynn Gerstenschlager, Texas Eagle Forum; Ann Hettinger, Concerned Women of America for Texas; Roy Casanova)*

Against — Mike Motheral, Texas Association of School Administrators/Sundown ISD; D.W. Rutledge, Texas High School Coaches Association; Howell Wright, Rockdale ISD, Texas Association of Community Schools; *(Registered, but did not testify: Monty Exter, Association of Texas Professional Educators; Rebecca Flores, Houston ISD; Graham Sweeney, Texas Rural Education Association; Sam Tipton, Texas Girls Coaches Association)*

On — Mark Cousins, University Interscholastic League

DIGEST: SB 1214 would require the University Interscholastic League (UIL) to allow private and parochial schools equal opportunity to participate in league activities, excluding football and basketball. The league would have to allow eligible private and parochial schools to participate in UIL-related academic activities beginning with the 2011-2012 school year,

division 1A and 2A athletic activities beginning the spring of the 2011-2012 school year, division 3A athletic activities beginning the 2012-2013 school year, division 4A athletic activities beginning the 2013-2014 school year, and division 5A athletic activities beginning the 2014-2015 school year.

To become a member of the league, a private and parochial school would have to be accredited, not have had its eligibility from a similar organization revoked or suspended in the previous five years, offer a four-year curriculum, require daily attendance at the school's location, and offer interscholastic competition. The UIL could not require additional requirements of these schools beyond what was required of public schools.

The UIL would have to establish rules to prevent private and parochial schools from recruiting students for the purpose of participating in league activities.

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:**

Private and parochial schools currently are able to apply for membership into the UIL, but regulations governing their eligibility are so stringent that very few schools can participate. Requirements that these schools not be members of other similar organizations often prohibit them from joining the league. These restrictions are unfair to private and parochial school students, especially when UIL activities have been shown to boost academic test scores and help with college admissions.

SB 1214 would recognize that equal opportunities for private and parochial schools would give these schools the ability to recruit certain students. Therefore, it would specifically require the league to implement rules that would prohibit this practice.

**OPPONENTS
SAY:**

SB 1214 would encourage private and parochial schools to recruit students based on their prospective participation in UIL activities. These schools would, therefore, have an unfair advantage over public schools in league activities.

NOTES:

The House companion bill, HB 2322 by Garza, was reported favorably, without amendment, by the House Public Education Committee on May 5.

SUBJECT: Early notice of a wind-powered facility near radar or military installations

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 8 ayes — Pickett, Sheffield, Berman, Farias, Landtroop, Perry, Scott,
V. Taylor

0 nays

1 absent — Flynn

SENATE VOTE: On final passage, April 4 — 30-1 (Patrick)

WITNESSES: *(On House companion bill, HB 1509:)*
For — Sam Fugate, City of Kingsville; George Holt, 136th AW, NAS Ft. Worth; Captain Mark McLaughlin, U.S. Navy at NAS Kingsville; Dick Messbarger, Texas Defense, Aviation, Aerospace Alliance; *(Registered, but did not testify:* Duane Galligher, Port San Antonio; Rudy Garza, City of Corpus Christi; Larry McGinnis, The Boeing Company;

Against — Patrick Woodson, E. On Climate and Renewables;

On — Paul Sadler, The Wind Coalition; *(Registered, but did not testify:* Glenn Jones, Paul Kite, Naval Air Station Kingsville Texas; Robert Martinez, Texas Commission on Environmental Quality; Patrick Paddock, Naval Air Station Kingsville Radar and Nav aids Expert; Robert Wood, Comptroller of Public Accounts; Donald Zimmerman, Naval Air Station Corpus Christi)

DIGEST: CSSB 497 would amend the Utilities Code relating to the construction or expansion of a wind-powered electric generation facility located within 25 miles of a federally owned or operated radar installation or military installation.

The bill would allow federally owned or operated radar or military installations to request that the Public Utility Commission (PUC) notify the installation of a planned construction or expansion project if any part of the construction would occur within 25 miles of the boundaries of the

installation. The PUC would be required to create, maintain, and publish on the agency's website a list of federally owned or operated entities that requested this notification.

The bill would require wind-powered electric generating facilities with structures at least 200 feet above ground level and within 25 miles of a federally owned or operated radar or military installation to provide notice of construction or expansion projects to the PUC within 120 days of construction. Within 25 days of receiving notice, the PUC would be required provide a copy of the notice to certain entities as provided by the bill.

Construction or expansion of a wind energy project could not begin until a copy of a Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration (FAA) was filed with the PUC.

The PUC would be allowed to charge a fee to a person who provided a notice of construction or expansion.

The PUC could impose an administrative penalty for noncompliance. The PUC could adopt rules to implement the provisions of the bill and would have to adopt procedures no later than January 1, 2012.

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 construction or expansion of a wind-powered electric generation facility that began on or after the effective date.

**SUPPORTERS
SAY:**

Radar is susceptible to wind turbine interference because the radar equipment cannot differentiate between a large wind turbine with turning blades and a moving aircraft. The Federal Aviation Administration (FAA) gives only 30 days' notice of construction or expansion projects, which is not enough time to determine compatible siting of the wind turbines in relation to a military radar installation. Also, the FAA regulation is not enforceable and would affect only the financing of the project. CSSB 497 would provide for early notification by requiring wind-powered electric generating facilities to provide notice of construction or expansion projects within 25 miles of a federal aviation installation or military installation to the PUC within 120 days of construction. The PUC then would notify the installations.

OPPONENTS
SAY:

CSSB 497 would add a layer of state bureaucracy by duplicating a notice provision that already is required by the Federal Aviation Administration (FAA). The FAA regulates air space and requires notification of the construction of any structure with a height of 200 feet or more. When notified of such a structure, the FAA then notifies certain agencies, including all military branches. If a suspected hazard is determined by the agencies or military branches, the process is brought to a halt, and the facility has to resolve the hazard with the FAA and the concerned agency. For wind energy generation, this would be on a turbine by turbine basis. It would be unnecessary to require the Public Utility Commission (PUC) to set up a list of those military installations that would like to have notification of a wind energy project and then require the project to notify the PUC. The existing FAA regulations are sufficient to ensure safe air space and prevent interference of radar equipment.

While there are concerns that the notification that the FAA gives does not provide enough time to determine compatible siting of wind turbines, if a notified agency raised a concern about a suspected hazard, construction would stop until the issue was resolved. Further, the planning for a wind energy project takes well over a year, and the financing is dependent on the “no hazard” determination from the FAA. As a practical matter, the wind developer must get the FAA determination well before 30 days of completion of the project.

NOTES:

The companion bill, HB 1509 by Pickett, was considered in a public hearing by the House Defense and Veterans’ Affairs Committee on March 24.

The House committee substitute differs from the Senate-passed version by:

- including a provision authorizing the Public Utility Commission of Texas (PUC) to establish an expedited process to allow a person who provided written notice to the PUC of certain construction or expansion of a wind-powered electric generation facility to alter the notice to reflect a change in the information required to be included in the notice; and
- requiring a person who began emergency construction or expansion of a wind-powered electric generation facility to file the copy of a Determination of No Hazard to Air Navigation in a manner determined by the PUC. The Senate-passed version would have

required the filing of a determination not later than the fifth day after the date the person began the construction or expansion.