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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, May 2, 2013
83rd Legislature, Number 64
The House convenes at 10 a.m.

Twenty-five bills are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page.

Four postponed bills — HB 318 by Giddings, HB 866 by Huberty et al., HB 376 by Strama et al., and HB 3447 by Gutierrez — are on the supplemental calendar for second-reading consideration today. The bill analyses are available on the HRO website at http://www.hro.house.state.tx.us/BillAnalysis.aspx.

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

Bill Callegari
Chairman
83(R) – 64

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Thursday, May 2, 2013
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SUBJECT: Changing the dental board's complaint resolution process, charging a fee

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — David Mintz, Texas Academy of General Dentistry; (*Registered, but did not testify*: Jim Moriarty; Mark Peppard, Texas Academy of General Dentistry)

Against — None

On — Julie Hildebrand and Glenn Parker, Texas State Board of Dental Examiners; (*Registered, but did not testify*: Rick Black, Texas Dental Association; Kathleen Boyle and Ronda Lane, Texas Dental Assistants Association; Lisa Jones and Irma Rodriguez, Texas State Board of Dental Examiners)

BACKGROUND: Occupations Code, chs. 251 to 267, is the Dental Practice Act. It stipulates that the State Board of Dental Examiners' investigation files and other records are confidential and can only be divulged to the investigated person at the end of an investigation. It requires that an employee consult with a dentist member of the board before dismissing a complaint related to dental morbidity, professional consult, or quality of care.

DIGEST: CSHB 3201 would change the State Board of Dental Examiner's investigation and complaint resolution procedures and allow the board to charge an additional fee to fund the enforcement program.

Investigations. The board would be required to complete a preliminary investigation within 45 days of receiving a complaint. The board would have to first determine if the license holder was a continuing threat to public welfare and decide whether to officially proceed with the complaint. If the board did not complete the preliminary investigation

within 45 days, it would be considered the start of an official investigation. The board would be required to inform the license holder about the specific allegations against the license holder.

Expert panels. The board by rule could appoint expert panels of licensed dentists and licensed dental hygienists to assist with investigations of professional competency. The board would have to adopt specific rules related to expert panels, including procedures for removing a panel member who was repeatedly delinquent in reviewing complaints and submitting reports.

If a preliminary investigation indicated that a license holder fell below an acceptable standard of care on a specific act, the complaint would be reviewed by an expert panel of individuals who practice in the same (or similar) specialty. The expert panel would have to provide a written report specifying the applicable standard of care, the clinical basis of findings, and any other determinations.

The bill would specify procedures for a two-person review of complaints and allow experts to consult with each other. It would include a process for a "tie-breaking" review by a third expert if the other experts disagreed.

Complaint resolution. The board could delegate to a committee of board employees the authority to dismiss or proceed with complaints that did not relate directly to patient care or involved only administrative violations, but the board would have to approve the committee's decision at a public meeting. The bill would specify the situations under which a complaint had to proceed to an informal settlement conference.

Procedures would be established for informal settlement conferences, including procedures for notice, written statements of allegations, rebuttal by the license holder, and recording the settlement conference.

The board would be authorized to use remedial plans to resolve complaints, assess fees to administer the plans, and adopt rules to implement the plans. A remedial plan could not contain certain provisions, be used to resolve certain serious allegations, or be used more than once for the same license holder. A remedial plan would be public information and considered a settlement agreement under the Texas Rules of Evidence.

The investigation and complaint resolution procedures would apply only

to complaints filed with the board on or after January 1, 2014.

Licensing. The board could allow employees to issue licenses to dentists and dental hygienists who clearly met all licensing requirements. Any applicant that did not clearly meet licensing requirements would be reviewed by the board.

Fee. The board would collect an additional $80 for the issuance or renewal of a dental license. This portion of the license fee would be deposited in the dental public assistance assurance account, a dedicated general revenue fund to be used only for the board's enforcement program, including expert panels.

The bill would take effect January 1, 2014, except the board would have to adopt rules to implement the bill's changes by September 1, 2013.

SUPPORTERS SAY:

CSHB 3201 would improve public safety and increase efficiency by strengthening and streamlining the board's investigation and complaint resolution procedures. Recently, many examples of dental and orthodontic fraud and abuse have been exposed and the board is not equipped with enough tools to effectively and efficiently handle these cases. The board takes, on average, more than 400 days to resolve a complaint. By creating deadlines, allowing delegation to board employees, and authorizing the use of new enforcement procedures, the board's ability to effectively oversee the dental profession would be enhanced.

The bill would also promote uniformity by aligning the enforcement procedures with those of the Texas Medical Board.

OPPONENTS SAY:

The current charge to renew a dental license is $350 per year, making $80 a substantial increase in fees. It is unclear whether the board would actually need this much money to implement the new enforcement procedures.

NOTES:

The Legislative Budget Board estimates that the bill would be cost-neutral to general revenue funds because the cost of additional full-time employees would be offset by an increase in licensing fee revenue. The increase in fees would generate about $5.3 million each fiscal year for the general revenue dedicated dental public assistance account.

SUBJECT: Eligibility of temporary election workers for unemployment compensation

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 9 ayes — J. Davis, Vo, Bell, Y. Davis, Isaac, Murphy, Perez, Rodriguez, Workman

0 nays

WITNESSES: For — Ed Johnson, Harris County Clerk office; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County Commissioners Court; Michael Vasquez, Texas Conference of Urban Counties)

Against — None

On — Chuck Ross, Texas Workforce Commission; (*Registered, but did not testify*: Steve Riley, Texas Workforce Commission)

BACKGROUND: The Unemployment Compensation Act (Labor Code, ch. 201) contains standards for determining eligibility for unemployment insurance and other aspects of unemployment compensation in the state. Labor Code, sec. 201.063 provides that certain positions, such as an elected official, do not qualify as employment under the Act. These positions do not qualify for unemployment compensation benefits.

DIGEST: CSHB 983 would amend Labor Code, sec. 201.063 to add election workers to the list of positions that did not qualify as employment under the Unemployment Compensation Act. The bill would apply only to election workers being paid less than $1,000 during the calendar year.

The bill would take effect September 1, 2013, and would apply only to a claim for benefits made on or after that date.

SUPPORTERS SAY: CSHB 983 would add to state law a category of work that, under federal law, is not considered "employment" for the purpose of eligibility for unemployment compensation benefits. All of the other exceptions to

employment that appear in federal law already exist in Labor Code, sec. 201.063 . The bill merely would add this exception for temporary election workers earning less than $1,000 per year, a proposed change that has received approval from the U.S. Department of Labor.

County clerk offices in Harris and Bexar counties, among others, have incurred costs related to temporary election workers filing for unemployment compensation after working only on election day. This bill would not affect the election workers who begin work during the early election period and easily earn more than $1,000 in a calendar year.

OPPONENTS SAY:

The bill could move Texas in the wrong direction with respect to unemployment benefits. According to measurements by the Department of Labor, Texas consistently exhibits a low rate of unemployed individuals actually receiving the unemployment benefits for which they qualify. This bill, rather than solving this issue facing the state, could contribute to the problem.

SUBJECT: Deadlines for processing provisional ballots and conducting canvasses

COMMITTEE: Elections — favorable, without amendment

VOTE: 7 ayes — Morrison, Miles, Johnson, Klick, Miller, Simmons, Wu

0 nays

WITNESSES: For — Dana DeBeauvoir; Sondra Haltom, Empower the Vote Texas; Ed Johnson, Harris County Clerk's Office; Glen Maxey, Texas Democratic Party; B R "Skipper" Wallace, Republican County Chairmans Association; (*Registered, but did not testify:* Jacquelyn Callanen, Bexar County Elections; Cheryl Johnson, Galveston County Tax Office; John Oldham, Texas Association of Election Administrators; Eric Opiela; Sheryl Swift, Galveston County Tax Office)

Against — (*Registered, but did not testify:* Stewart Snider, League of Women Voters of Texas)

On — (*Registered, but did not testify:* Keith Ingram, Texas Secretary of State, Elections Division)

BACKGROUND: Election Code, sec. 65.051, requires the early voting ballot board to verify and count provisional ballots not later than the seventh day after the date of the election. The secretary of state sets procedures regarding how a county's voter registrar must assist the early voting ballot board to verify and count provisional ballots.

Under sec. 67.003, a local canvassing authority must meet to conduct the local canvass no earlier than the eighth day or no later than the 11th day after the election, except for elections held on the uniform election date in May. Under sec. 67.012, the governor must conduct the state canvass no earlier than the 15th or no later than the 30th day after the election.

DIGEST: HB 985 would require the early voting ballot board to verify and count provisional ballots in a general election for state and county officers no later than the 13th day after the election. The secretary of state would have to set procedures allowing the voter registrar seven calendar days to review a provisional voter's eligibility in a general election for state and

county officers.

The local canvass could be set no later than the 14th day after a general election for state and county officers and the state canvass no earlier than the 18th day or no later than the 33rd day after the election.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 985 would help voter registrars comply with the law and provide a more appropriate deadline for processing provisional ballots and completing a canvass. It is sometimes impossible for voter registrars and early voting ballot boards to complete their duties under Election Code, sec. 65.051 within the prescribed limits. In some Harris County elections, more than 8,000 provisional ballots are cast, and simply collecting the ballots can take half the allotted time. It is important to protect the integrity of voting, and HB 985 would ensure that election administrators and officials did their jobs correctly and not just quickly.

The delay caused by the bill in the final posting of election results would be negligible, if it occurred at all. The bill would push the deadline for the governor's canvass back by only three days, and this extra time would be needed to compensate for that allotted to other entities by the bill. The bill would have no effect on the unofficial results, which would still come in on election night as they always do. The official canvassed results would be pushed back, at most, by three days.

OPPONENTS SAY:

HB 985 could create delays in the announcement of official election results. By pushing back the deadlines for the processing of provisional ballots and the local and state canvasses, the bill would allow the governor's office to conduct the state canvass later and delay the results of general elections.

NOTES:

During the 2011 regular session, the House unanimously passed a similar bill, HB 2190 by Elkins, which was placed on the Senate local and uncontested calendar but not enacted.

SUBJECT: Offense for physical contact with a child that is offensive, sexual in nature

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody

2 nays — Schaefer, Toth

1 absent — Hughes

WITNESSES: For — PD Jackson, Allen Police Department; Eric Vickers, Abilene Police Department; (*Registered, but did not testify:* Lauren Donder, Children's Advocacy Centers of Texas, Inc.; Daniel Earnest, San Antonio Police Officers Association; Stephanie LeBleu, Texas CASA; Diana Martinez, TexProtects, The Texas Association for the Protection of Children; James McLaughlin, Texas Police Chiefs Association; Washington Moscoso, San Antonio Police Officers Association; Glenn Stockard, Texas Association Against Sexual Assault; Charley Wilkison, Combined Law Enforcement Associations of Texas; Columba Wilson)

Against — David Gonzalez, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association; Bobby Allen; Herman Buhrig; Richard Carden; Sharon Carden; GB Wardian)

On — (*Registered, but did not testify:* Shannon Edmonds, Texas District and County Attorneys Office)

BACKGROUND: Penal Code, sec. 21.11 makes indecency with a child a crime, including engaging in sexual contact with a child. Sexual contact is defined as touching, including through clothing, of the anus, breast, or any part of the genitals of a child or touching any part of the body of a child, including through clothing, with the anus, breast, or any part of the genitals of a person. The offense must be committed with the intent to sexually arouse or gratify someone and is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

Under the assault statute in Penal Code, sec. 22.01 it is a class C misdemeanor (maximum fine of $500) to intentionally or knowingly cause

physical contact with another when one knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Penal Code, sec. 22.011 establishes an affirmative defense to prosecution under the sexual assault statute if the defendant was the spouse of the child at the time of the offense or:

- if the defendant was not more than three years older than the victim at the time of the offense and was not required to register for life on the state's sex offender registry or was not required to register as a sex offender because of a sexual assault conviction; and
- the victim was 14 years old or older and not someone whom the defendant would be prohibited from marrying under the state's bigamy laws.

DIGEST:

CSHB 1010 would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) for a person at least 17 years old who intentionally or knowingly caused physical contact with a child in such a way that a reasonable person would regard the contact:

- as offensive and sexual in nature and;
- as likely to precede sexual conduct prohibited under sections of the Penal Code governing sexual offenses and assaultive offenses.

The bill would extend the current affirmative defense to prosecution in the sexual assault statute to the offense in CSHB 1010.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 1010 would address the serious problem of the sexual "grooming" of children. This occurs when sexual predators use inappropriate acts of a sexual nature, such as touching or massage, to build trust and desensitize children for later sexual abuse. CSHB 10 would protect Texas children and prevent sexual abuse by giving law enforcement authorities a way to punish those who commit these harmful and dangerous acts and to deter them in the first place.

Current law is inadequate to address this problem. While the offense of indecency with a child makes it a crime to engage in sexual contact with a child, the contact that must occur is narrowly defined and involves

touching specific parts of a child that may not occur during grooming. The crimes of sexual assault and aggravated sexual assault of a child also do not cover grooming.

The offense of assault also is inadequate to address grooming. While assault allows for offensive or provocative touching to be a crime, it is a class C misdemeanor carrying only a fine of up to $500 and no jail time, a mere slap on the wrist for acts that constitute grooming. Offensive touching can be punished as a class A misdemeanor if committed against an elderly or disabled person, and children deserve the same level of protection with a class A misdemeanor against grooming. Creating a specific offense under the assault statute would allow the crime to encompass the sexual nature of grooming, which differs from other offensive touching.

Prosecuting attempted assault or indecency with a child does not work in the context of prosecuting grooming actions. Absent a confession, it is too easy for persons accused of grooming to argue that their actions were not directed toward currently defined criminal conduct. CSHB 1010 would address this adequacy in the law by expanding the assault statute to make it a crime to perform certain acts likely to precede a sexual assault. No child should have to wait until a crime escalates to sexual assault to be protected under the law.

CSHB 1010 contains safeguards that would ensure that only acts related to grooming children for sexual purposes would be considered a crime. First, the act would have to be committed intentionally and knowingly. In addition, the act would have to be regarded as offensive and sexual in nature and likely to precede illegal sexual conduct. This language is specific enough to apply only to sexual, abusive touching but broad enough to cover grooming actions, which often are tailored to a particular child and situation. Taken together, these checks and balances would ensure that purely innocent, non-sexual acts would not fall under the bill.

Standards for prosecuting crimes also would provide protections for actions that were not sexual abuse. Law enforcement authorities and prosecutors would exercise their discretion and would not bring cases that consisted of innocent, non-criminal behavior or those with weak or questionable evidence. Prosecuted cases would have to be proved beyond a reasonable doubt.

The bill would include other safeguards, including requiring offenders to be at least 17 years old and extending the affirmative defensive in sexual assault statute, sometimes called the "Romeo and Juliet" defense, to the offense in CSHB 1010.

OPPONENTS SAY:

While grooming is a serious problem and the state should do all it can to protect children, language in the bill could be too broad to capture only behaviors leading up to sexual abuse. The bill would use vague and undefined language, such as requiring actions to be "likely to precede sexual conduct," making it both hard to prove and hard to defend against. The broad language could allow some innocent actions to be interpreted as criminal.

The bill is unnecessary. Current crimes of indecency with a child, assault, or attempts to commit these crimes could be used to address these situations.

SUBJECT: Studying the risk of bovine tuberculosis in dairy farming in certain areas

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 4 ayes — T. King, Kacal, Springer, White

0 nays

3 absent — Anderson, M. González, Kleinschmidt

WITNESSES: For — *(Registered, but did not testify:* Elizabeth Choate, Texas Veterinary Medical Association; Darren Turley, Texas Association of Dairymen; Josh Winegarner, Texas Cattle Feeders Association*)*

Against — None

On — Dee Ellis, Texas Animal Health Commission; Orlando Flores

BACKGROUND: Bovine tuberculosis (TB) is caused by the bacterial infection that can cause infected cattle to develop tubercles, or encapsulated lesions in the lungs, lymph nodes, or in other internal organs. The disease can also infect humans. Cattle TB infection usually is first detected at slaughter plants, where inspectors examine carcasses, which they collect and submit for laboratory confirmation. While awaiting lab results, the carcasses are held or allowed to be used only in cooked products. Cooking meat or pasteurizing milk, which also is a heat treatment process, kills TB bacteria.

The El Paso Milk Shed, an historically dairy-rich area in El Paso and a portion of Hudspeth counties along the U.S.-Mexican border, experienced a TB infection of dairy cows despite repeated quarantines, testing, and removal of infected cows. In 2001, the affected herds were depopulated with indemnity funds from USDA, and agreements specified that dairies could not be re-established in the El Paso Milk Shed. No conclusion was drawn about what caused the recurring cases of bovine tuberculosis, although Mexico dairies were suspected. HB 2463 by Glaze was passed in the 77th Legislature to prevent issuance of dairy permits in an area classified as high risk for bovine tuberculosis for these dairy farmers to participate in the USDA buyout. Today, the USDA has designated the entire state as "TB-free."

DIGEST:

HB 1081 would require the Texas Animal Health Commission (TAHC) to conduct a study on the current risk level for bovine tuberculosis "in areas of this state determined by the commission by rule to be infected with or at high risk for bovine tuberculosis."

The report would include:

- an economic impact statement projecting the financial impact of allowing dairy farming in areas determined to be infected with or at high risk for bovine tuberculosis;
- to the extent possible, an assessment of the risk level for bovine tuberculosis presented by areas in Mexico bordering this state;
- to the extent possible, a description of efforts taken by the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food and other agencies of the United Mexican States to eliminate bovine tuberculosis in the state of Chihuahua and other areas;
- a description of current practices adopted by USDA and TAHC to eliminate bovine tuberculosis;
- an assessment of risk level for bovine tuberculosis for the state if dairy farming were to occur in areas determined to be infected with or at high risk for bovine tuberculosis; and
- an assessment of whether the areas determined to be infected with or at high risk for bovine tuberculosis could be decreased in size.

TAHC would submit a report by September 1, 2014, on the results of the study to the Department of Agriculture, the governor, the lieutenant governor, the House Committee on Agriculture and Livestock, the Senate Committee on Agriculture, Rural Affairs, and Homeland Security, the House Committee on Public Health, and the Senate Committee on Health and Human Services. TAHC would present the results of the study at an open commission meeting as soon as possible.

This 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, 2013.

SUPPORTERS SAY:

Before the buyout and prohibition of dairy farming in an area classified as high risk for bovine tuberculosis, El Paso County was one of the top five milk-producing counties in Texas. El Paso County was also responsible for 5 percent of the milk production in the United States.

El Paso County lost a $40-million-a-year industry that directly employed 200 individuals and resulted in the loss of another 200 related jobs. This led to a decline of El Paso's agricultural economy, which was unable to continue production of crops such as alfalfa, corn, and sorghum, that supported the dairy farms.

In the decade since the buyout there has been no further investigation to determine whether El Paso County is still at high risk for bovine tuberculosis. No firm conclusion was drawn as to what caused the outbreaks, although Mexico dairies were the suspected source. The El Paso Milk Shed is the only area in the nation restricted from having dairy operations. However, counties that neighbor El Paso County and are within the same proximity to Mexico have dairy farming operations and no cases of bovine tuberculosis have been reported in that region. There are currently no positive cases of tuberculosis in the northern part of Mexico and the municipalities bordering the United States, including the cities of Juarez and Ojinaga.

Circumstances have changed since the buyout and prohibition of dairy farming in an area classified as high risk for bovine tuberculosis. The USDA no longer will downgrade a state's tuberculosis free status because of a positive confirmation of tuberculosis in a cattle population, as long as the state is willing to quarantine infected herds, destroy infected cattle, and monitor the herd for future outbreaks. USDA's policies no longer support depopulation of cattle populations unless it will lead to extermination of disease nationwide. These changes merit a study to determine whether this area still stands at a high risk for bovine tuberculosis. CSHB 1081 would help determine that risk level so the state can make informed decisions.

OPPONENTS SAY:

It might be difficult for the Texas Animal Health Commission to meet the requirements of CSHB 1081 without additional resources, as it would cost the agency about $52,492 to contract with a third party to conduct the economic impact statement and tuberculosis testing in El Paso County.

NOTES:

Rep. M. Gonzalez intends to offer an amendment that would remove the economic impact statement from the study. The Texas Animal Health Commission estimated CSHB 1081 would cost $25,000 to contract with a third party to conduct the economic impact statement and $27,492 to conduct tuberculosis testing in El Paso County.

SUBJECT: Excluding land from certain water districts that do not provide service

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio, Martinez Fischer, D. Miller

0 nays

2 absent — Johnson, Keffer

WITNESSES: **(On original bill:)**
For — Paul Davis, City of Pasadena; Steve Skarke, Kaneka North America; Dennis Terry; *(Registered, but did not testify:* Holly Deshields, Mike Jackson, Mitsuru Kuwahata, Luis Saenz, and Neil Thomas, Kaneka North America; Steve Hazlewood, The Dow Chemical Company; Mike Meroney, Huntsman Corp.; Hector Rivero, Texas Chemical Council*)*

Against — John Branch, John Greytok, and Bill Schweinle, Clear Lake City Water Authority; CJ Farley; Nancy Johnson; Lilian Norman Keeney; Douglas Peterson; *(Registered, but did not testify:* Elias Garcia and Jennifer Morrow, Clear Lake City Water Authority; Nina Johnston*)*

On — Justin Taack, Texas Commission on Environmental Quality

(On committee substitute:)
Against — Lilian Norman Keeney

BACKGROUND: Water Code, sec. 49.3076 governs procedures for excluding land from certain water districts that fail to provide service to the land.

The board of a district that has a total area of more than 5,000 acres is required to call a hearing on the exclusion of land from the district if a landowner whose land had been taxable property within the district for more than 28 years and whose taxes had contributed to the payment of outstanding bonds issued by the district files a petition, with the consent of the owners of a majority of the acreage proposed for exclusion, claiming that the district has not provided the land with retail utility services.

At the conclusion of the hearing, the land must be excluded from the district unless the district presents evidence that the requirements and grounds for exclusion have not been met. Excluded land is not liable for bond debt issued by the district after the land's exclusion.

A petition triggering an exclusion hearing must have been filed before August 31, 2007.

DIGEST:

CSHB 1324 would amend the Water Code to specify procedures for excluding land from certain water districts that failed to provide service to the land.

Hearing. The bill would increase the total acreage of a district subject to the bill from 5,000 to 10,000, and would not apply to a district that supplied raw water wholesale and had fewer than 500 retail customers.

CSHB 1324 would require the land in question to have been included in and taxable by the district for 20 years, instead of 28 years, and the petition would have to have been filed by a landowner who owned land more than half the acreage of which had been included and taxable by the district. The district would be required to hold the hearing triggered by the petition within 60 days of receiving it, and the petition would no longer have to have been filed before August 31, 2007.

Tax liability. The bill would specify that excluded land would still be liable for taxes on outstanding bonds until the excluded land's share of district debt was paid. The excluded land would remain in the district for the limited purpose of assessment and collection of such taxes until the excluded land payment was satisfied. A person could pay the district the excluded land payment, in whole or in part, by delivering payment to the district tax assessor-collector.

The bill would repeal Water Code, sec. 49.3076 (a-1), which currently specifies a land exclusion petition and hearing process in districts with a total area ranging from 1,000 acres to 5,000 acres.

This 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, 2013.

SUPPORTERS

CSHB 1324 would create a process to address a local dispute in the Clear

SAY:

Lake/Houston area involving a water authority taxing an industrial company in their boundaries without providing utility service.

Kaneka North America is being taxed by the Clear Lake City Water Authority (CLCWA) despite never having received services from the authority. The company purchases potable water, sewage and drainage services, and industrial water from other entities because CLCWA does not have the infrastructure in place to handle their needs. For more than 30 years, Kaneka has been paying taxes to CLCWA, including more than $589,000 in 2011, without receiving any benefit. The bill would give Kaneka an opportunity to petition for exclusion and to demonstrate at a hearing that CLCWA had failed to provide service. The hearing also would give CLCWA the chance to present evidence to the contrary.

CSHB 1324 still would require companies to pay their portion of the principal amount of outstanding bonds currently paid by the authority. For Kaneka, the anticipated cost associated with this ranges from $3 million to $4 million. The company would like to pay this debt up front, which the bill would allow.

OPPONENTS SAY:

CSHB 1324 would enact a state law in an attempt to deal with a local issue. Kaneka has approached the Legislature for help to de-annex from CLCWA, rather than pursuing a service request it initiated with the Clear Lake Water Authority, citing the authority's alleged failure to provide service. CWA has offered to provide service on several occasions since Kaneka built its Bayport plant in 1982.

While the process involving Kaneka's request for service has stalled due to a dispute about the provision of engineering specifications, the solution proposed by CSHB 1324 is unreasonable and would open the door for any corporation to ask the Legislature for a process to exclude it from other taxing jurisdictions, including school districts, cities, and other special districts. A better approach would be to allow time for Kaneka and CLCWA to resolve the pending utility service request to the mutual benefit of both parties, without enacting a state law that could have consequences reaching beyond this local dispute.

CLCWA is required by law to tax everyone in its boundaries according to the value of their land. Excluding Kaneka would impact all the other residents and businesses in CLCWA because it would remove up to 12 percent of the tax revenue from the authority, which would have to be

made up by other property owners.

OTHER OPPONENTS SAY:

While the bill is intended to address a dispute between CLCWA and Kaneka North America, the language intended to apply only to the Clear Lake City Water Authority could impact other districts that also meet the description of the bracket.

SUBJECT: Revising provisions governing property appraisal review boards

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

2 absent — Martinez Fischer, Ritter

WITNESSES: For — Debra Bawcom-Roberson, Texas Association of Property Tax Professionals; John Brusniak, National Association of Property Tax Attorneys; Lorri Michel, Texas Association of Property Tax Professionals; Ken Nolan, Dallas Central Appraisal District; James Popp, Popp Hutcheson; (*Registered, but did not testify*: George Allen, Texas Apartment Association; Justin Bragiel, Texas Hotel & Lodging Association; George Christian, Texas Taxpayers and Research Association; Stephanie Gibson, Ryan and Co.; Daniel Gonzalez, Texas Association of Realtors; James LeBas, Texas Chemical Council, AECT, TxOGA; Chet Morrison, Texas Association of Property Tax Professionals; Kelli Morrison, Morrison & Head LP; Melissa Ramirez, American Property Tax Counsel; Scott Retzloff, Texas Association of Property Tax Professionals; Bradley Gates II)

Against — Dick Lavine

On — Michael Amezquita, Bexar Appraisal District; Debbie Cartwright, Comptroller of Public Accounts; Marya Crigler, Travis Central Appraisal District; Alvin Lankford, Williamson Central Appraisal District; Jim Robinson, Texas Association of Appraisal Districts; (*Registered, but did not testify*: Rodrigo Carreon)

BACKGROUND: Appraisal Review Boards (ARBs) are independent groups of citizens appointed to resolve disputes between taxpayers and resolve disputes between taxpayers and the appraisal district. In most counties, members of an appraisal review board (ARB) are appointed by resolution of a majority of the board of directors of an appraisal district.

DIGEST: CSHB 585 would modify provisions governing property tax appraisals.

Appointments of ARB members. Under the bill, the local administrative district judge would appoint members of the ARB for all counties with a population more than 120,000 (amounting to 35 counties). The local administrative district judge or a board of directors of the appraisal district could remove a member of the review board if there was clear and convincing evidence of repeated bias or misconduct.

A member of the appraisal district board would be prohibited from communicating with the local administrative district judge regarding the appointment of appraisal review board members. This prohibition would not apply to a communication between:

- a member of an appraisal review board and the local administrative district judge regarding the member's reappointment;
- the taxpayer liaison officer and the judge in the course of the officer's clerical duties so long as the officer did not offer an opinion or comment regarding the appointment of ARB members; or
- a chief appraiser and another party regarding whether an applicant owed any delinquent property taxes.

A chief appraiser or another employee of the appraisal district would be prohibited from communicating with a member of the appraisal review board, appraisal board of directors, or the local administrative law judge. Violating this provision would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

Local administrative district judges would appoint review board members as soon as practicable after January 1, 2014. Certain provisions would only apply to members appointed before that date.

Multiple property appeals. A petition filed by an owner or lessee could include multiple properties that were owned or leased by the same person and were of a similar type or were part of the same economic units and typically would sell as a single property. A petition so filed could be amended to include additional properties in the same county owned or leased by the same person and of a similar type.

The bill would modify procedures governing the determination of whether a plaintiff was a proper party to bring a petition.

Comptroller actions. The comptroller would prepare model hearing procedures that appraisal review boards would have to follow. The model procedures would include specific elements in the bill. The comptroller could develop different procedures for different categories of districts, defined by population, number of protests filed, and other factors.

The comptroller would design a survey to provide the public an opportunity to offer comments and suggestions concerning an appraisal review board. The survey form would be provided to each property owner at or before each protest hearing.

As part of training to be an appraisal review board member, each trainee would have to pledge to comply with the requirements governing appraisal proceedings. The comptroller would prescribe the form to be used for this purpose.

Taxpayer liaison. A taxpayer liaison officer would be responsible for receiving and compiling a list of comments and suggestions submitted by the chief appraiser, a property owner, or an owner's agent. The liaison would forward the list to the comptroller. Taxpayer liaison officers would have to provide public information to assist property owners and inform them of the procedures for filing comments and suggestions.

The bill would extend the requirement to appoint a taxpayer liaison officer to counties with a population of more than 120,000 from a current minimum of 125,000 (adding Gregg, Grayson, Potter, and Randall counties).

Taxpayer liaison officers also would be responsible for providing clerical assistance to local administrative district judge in selecting appraisal review board members.

ARB hearings. The bill would modify provisions governing ARB hearings. A protest hearing for a property owner not represented by an agent would have to be set for a time and date certain. If the hearing did not begin within two hours of the time set for the hearing, the appraisal review board would postpone the hearing upon request.

Upon a property owner's request, an appraisal review board would schedule same-day hearings on protests for up to 20 designated properties.

The properties would have to be designated in the same notice of protest. A property owner could file no more than one such request per year.

Appraisal proceedings. A property owner submitting evidence of a property appraisal would not be subject to rules governing licensed property appraisers. Evidence and other testimony offered at an appraisal review board hearing would not be admissible in an appeal unless it met certain conditions specified in the bill.

The bill would affirm that a property owner who submitted an affidavit to the appraisal board would not waive the right to appear in person. The appraisal review board could consider the affidavit only if the owner did not appear at the protest hearing in person.

If a tax collector did not respond within 90 days to an application for an overpayment or erroneous payment, the application would be presumed denied. Upon being denied the claim, the taxpayer could file suit in district court to seek payment of the refund. A taxpayer who prevailed would be awarded court costs and reasonable attorney's fees.

An appraisal review board with panels could consider the type of property subject to protest; otherwise, panel assignments would be random. A taxing unit could charge electronic filing fees associated with collecting delinquent taxes.

Other provisions. An appraisal district or review board could not make decisions on the membership of a panel based on a member's previous voting record. Property owners who appealed a protest and had to pay taxes due while the appeal was pending could pay the taxes imposed on the property in the preceding year, if this was lower than certain other amounts.

A person would have to apply to receive certain allocations identified in state law. The application would have to be re-submitted annually. The bill would create other procedures governing allocation applications.

The bill would repeal provisions entitling a property owner to expedited arbitration.

Effective date. This 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, 2013. Certain provisions would take effect January 1, 2014.

SUPPORTERS SAY:

CSHB 585 would improve the transparency and accountability of ARB processes and would make procedures relating to protests and appeals more efficient, effective, and responsive. The bill would make changes to combat the widespread perception of bias and lack of responsiveness of ARBs and appraisal districts. Improving the fairness of the appraisal appeal process additionally would save taxpayer funds by reducing the proportion of cases that end up in court.

Appointments of ARB members. CSHB 585 would take a decisive measure to underline the independence and impartiality of ARBs in the 35 counties covered by the bill. Empowering local administrative district judges to appoint ARB members would break the chain of perceived accountability of ARB members — who are supposed to be providing property owners with a fair and impartial hearing — to appraisal district boards and hence to appraisal districts. It is common for one who is appointed to a certain task to feel beholden to whosoever made the appointment.

Local administrative district judges are naturally fair and impartial arbiters of disputes, which make them excellent candidates to choose ARB members. Of equal importance, the judges are completely separate and independent of county appraisal districts. There would be no justifiable perception of bias in ARB appointments made by a judge.

Harris and Fort Bend counties both have piloted granting local administrative district judges the task of appointing ARB members and have returned with favorable reports. The processes in both counties have been well implemented and have been met with a positive response among residents.

Penalties for communication. CSHB 585 simply would extend to the new process ex parte provisions in existing law that prohibit a member on an appraisal district or ARB board from communicating with the chief appraiser on matters relating to the appraisal of property. While the penalties in the code may be stiff, they are judiciously enforced. Adding the penalties creates a bright line around prohibited behavior that institutions can internalize into their rules and processes.

Multiple property protests. CSHB 585 would allow a property owner or someone representing an owner to combine similar properties owned by the same plaintiff into one single lawsuit. This measure would provide for judicial economy and not significantly change current practices. In general, a property owner who currently wanted to protest the value of many properties would negotiate these properties synchronously so they would not have to be individually litigated. CSHB 585 would codify this practice and increase the efficiency of the protest process.

Comptroller actions. The bill would expand the comptroller's authority to include development of model procedural requirements and processes that ARBs would be required to follow. This measure would bring increased uniformity to hearing procedures statewide. In addition, it would require the comptroller to develop procedures for taxpayers to register complaints about the system. The complaints would be published in a report by the comptroller. Making complaints transparent would motivate ARBs to improve their processes and give them guidance on how best to do so.

Other provisions. CSHB 585 would make a variety of other changes that would improve the fairness and efficiency of property appraisal appeals. For example, it would require the scheduling of an ARB hearing for a taxpayer not represented by an agent for a time certain. If a hearing for a property owner was not held within two hours of the scheduled time, the property owner may request a postponement.

In addition, under the bill, property owners wishing to file protests on multiple properties would be able to schedule the hearing for up to 20 properties on a single day, thereby increasing convenience and ease for property owners.

OPPONENTS SAY:

CSHB 585 would make some unfortunate revisions to processes governing ARB appointments, property appeals, and other processes.

Appointments of ARB members. Moving the authority to appoint ARB members from appraisal district boards to local administrative district judges would create more problems than it would solve. Interviewing and choosing applicants for county review boards is far afield from the normal responsibilities of a judge. Local administrative district judges do not necessarily possess any specialized knowledge about appraisal districts or specifically property appraisal in general.

Further, this would impose a significant burden on local administrative district judges without providing any additional resources to offset the expanded duties. Some counties, such as Travis County, routinely receive more than 200 applicants for ARB positions. It takes significant resources to sort through and conduct interviews for this number of applicants. There is no guarantee that local administrative district judges in the 35 most populous counties in the state would have the time, expertise, or inclination to assume this responsibility.

Multiple property appeals. CSHB 585 could greatly strengthen the ability of property lawyers to profit from the property appraisal appeals process. Allowing property owners or their representatives to combine properties in large suits would open the door for lawyers to assemble all sorts of loosely related properties into single suits and litigate them to the maximum potential gain. For example, under the bill, a suit could assemble eight pharmacies that had very little in common other than they were located in the same county. This would encourage more litigation, generally of commercial properties, as it would decrease the expense and increase the convenience of appealing property appraisals.

It is important to remember that ultimately county taxpayers pay the price of increased litigation.

Criminal penalties. The bill would create a stiff penalty of a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) for "communications" between the local administrative law judge and other parties regarding the appointment of ARB members. This would contribute to the over criminalization that is rampant in state statutory and administrative law. Even if the intent is valid, it is disproportionately harsh to penalize someone with possible jail time for "communications" on a particular matter.

Other provisions. The bill would make other procedural changes that could interfere with and hamper appraisal district functions. For example, enhancing property owners' ability to postpone a hearing could create issues for districts that are under pressure to certify the property rolls by certain deadlines.

SUBJECT: Investment and use of the Texas preservation trust fund

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 5 ayes — Guillen, Kuempel, Larson, Nevárez, Smith

0 nays

2 absent — Dukes, Aycock

WITNESSES: For — (*Registered, but did not testify*: Bill Hammond, Texas Association of Business; August Harris, Texas Historical Commission)

Against — None

On — Mark Wolfe, Texas Historical Commission (*Registered, but did not testify*: Lynn Ward, Texas Historical Commission)

BACKGROUND: Texas Preservation Trust proceeds may be used to pay for the operations of the Historical Commission and the acquisition, survey, restoration, or preservation of state historic property and designated landmarks.

SB1, Art. 22, enacted by the 82nd Legislature in its first called session in 2011, allowed the preservation trust fund to be used for the operating expenses of the Historical Commission and required the Comptroller of Public Accounts and the Historical Commission to enter into a memorandum that allowed for the transfer of the trust fund from the Texas Treasury Safekeeping Trust Company to the treasury so loss of assets due to asset sales would be minimized. As of March 31, 2013, the Texas preservation trust had about $8.23 million in assets.

DIGEST: HB 3651 would prohibit the use of the funds from the Texas Preservation Trust Fund from being used for operating expenses of the Texas Historical Commission.

HB 3651 would require the comptroller to manage the assets of the trust fund in accordance with a legal investment standard known as the prudent investor rule. Amounts distributed would be determined by the comptroller in a manner intended to provide a stable and predictable

stream of distributions that would retain the purchasing power of the account investments. If the purchasing power of account investments was not preserved for any 10-year period, the comptroller could not increase annual distributions from the account until the purchasing power of the investments was restored.

An annual distribution made by the comptroller could not exceed 7 percent of the average net fair market value of the investment assets. Expenses of managing the account would be paid from the trust fund account. On request, the comptroller would be required to fully disclose all details concerning the investments of the trust fund.

HB 3651 would be effective on September 1, 2013.

SUPPORTERS SAY:

HB 3651 would protect the Texas Preservation Trust by prohibiting the use of the fund for the operational expenses of the Texas Historical Commission, freeing distributions to be used for historic preservation efforts. Both the House and Senate appropriations bills would fund the Historical Commission's operating expenses out of general revenue and not the Texas preservation trust. The bill would restore the management of the preservation trust fund to the Texas Treasury Safekeeping Trust Company, allowing the preservation trust to earn a higher rate of return.

The preservation trust was originally established to support historic preservation, but the 82nd Legislature in a supplemental appropriations bill (SB 1, Art. 22, 82nd Legislature, 1st Called Session) instructed the comptroller and the Historical Commission to wind down the trust, and use trust funds to support the operating expenses of the Historical Commission. HB 3651 would restore the preservation trust to its original purpose, allowing the agency to use trust proceeds on historic preservation projects.

The Legislative Budget Board reported a $5.1 million general revenue cost to the bill for fiscal 2014-15 to cover the Historical Commission's operating costs that would no longer be funded out of the preservation trust fund. As part of the effort to restore the preservation trust fund to its original purpose, and the larger policy and fiscal efforts to use dedicated funds for their original purposes, the House and Senate appropriations bills both would allocate $5.1 million from general revenue for the commission's operating expenses in fiscal 2014-15.

OPPONENTS SAY:

The state should continue to use the Texas preservation trust fund for operating expenses of the Historical Commission. Using the Texas preservation trust fund for agency operating expenses would negate the need to spend general revenue funds for the Historical Commission's operating expenses. There is no reason for the state to maintain a trust fund for the Historical Commission when taxpayers could use tax relief now.

NOTES:

According to the LBB fiscal note, HB 3651 would have a cost to general revenue of about $5.1 million during the 2014-15 biennium.

SUBJECT: Requiring a statewide plan to reallocate mental health services

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Kolkhorst, Naishtat, Coleman, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

2 absent — Collier, Cortez

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Daniel Burkeen, Limestone County; Leon Evans, The Center for Health Care Services; Donna Klaeger, Burnet County; Kathryn Lewis, Disability Rights Texas; A.J. Louderback, Jackson County and the Sheriffs Association of Texas; Dennis Wilson, Limestone County, Sheriff's Assoc. of Texas; (*Registered, but did not testify*: Sherry Bailey, The Center for Health Care Services; Joe Garcia, University Health System – Bexar County; Marilyn Hartman; Harry Holmes, Harris County Healthcare Alliance; Greg Jensen, Lone Star Circle of Care; Patti Jones, Lubbock County; Gregg Knaupe, Seton Healthcare Family; Katharine Ligon, Center for Public Policy Priorities; Diane Lowrance, Behavioral Health Center of Nueces County; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County; Laura Nicholes, Texas Association of Counties; John Smith, The Center for Health Care Services; Stacy Wilson, Texas Hospital Association; Eric Woomer, Federation of Texas Psychiatry; Geral Yezak, Robertston County)

Against — None

On — Nancy Hohengarten; Lee Johnson, Texas Council of Community Centers; Mike Maples, DSHS; Pete McGraw, Hogg Foundation for Mental Health; Lee Spiller, Citizens Commission on Human Rights; Gyl Switzer, Mental Health America of Texas

BACKGROUND: Health and Safety Code, sec. 533.034, allows the Department of State Health Services to coordinate and contract with local agencies, community centers, and other entities to provide community-based mental health and

mental retardation services.

DIGEST: CSHB 205 would require the Department of State Health Services (department) to develop a plan to reallocate state mental health services.

Allocation plan. The department, in conjunction with the Health and Human Services Commission (HHSC), would have to develop a plan to ensure the appropriate and timely provision of mental health services to individuals voluntarily or by a civil or criminal court order receiving those services. The plan would apply to secure and non-secure outpatient or community-based facilities providing residential care options and mental health services (outpatient) and state hospitals (inpatient). The department would have to plan for the proper and separate allocation of outpatient and inpatient services for two groups of patients:

- patients who were voluntarily or by civil court order receiving outpatient or inpatient treatment or who were admitted to a state hospital for an emergency detention; and
- patients who were ordered by a criminal court to obtain outpatient or inpatient treatment to attain competency to stand trial or who were acquitted by reason of insanity and ordered to receive inpatient treatment.

The department's plan would have to determine:

- the different needs of the two groups of patients;
- the minimum number of state hospital beds needed to adequately to serve the two groups of patients;
- a statewide plan for the allocation of funds; and
- how to develop the accessibility and availability of outpatient and inpatient services based on the success of local contracts, without adversely impacting local service areas.

The department would have to make every effort to coordinate and contract with local outpatient and inpatient providers to ensure sufficient and appropriately located mental health services to the two groups of patients. While the plan is being developed and implemented, the department could not penalize a local mental health authority for noncompliance.

The department would have to develop and implement a procedure to

inform certain criminal courts of the various commitment options, including jail diversion and community-based options.

Advisory panel. The department would have to establish a 15-member advisory panel to assist with the development of the plan and meet at least monthly with the panel. The bill would specify the various agencies and organizations to be represented on the advisory panel. The department and advisory panel would need to consider, among other things, how frequently services are used, local needs and demands for inpatient and outpatient services, public input, and the differences between the two groups of patients with regard to various factors.

Time line. The department would have to update the plan biennially. The department, with the advisory panel, would need to develop an initial version of the plan by December 31, 2013. By August 31, 2014, the department would have to identify standards and methodologies and begin implementing the plan. By December 1, 2014 the department would have to submit a report to the Legislature and governor that includes the initial version of the plan, implementation status, and impact on services. By May 1, 2014 the HHSC executive commissioner would need to adopt any rules needed to implement the department's plan or inform courts of commitment options.

This 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, 2013.

SUPPORTERS SAY:

CSHB 205 would provide the state with a much-needed strategic plan for inpatient and outpatient mental health services. The current allocation of services is inefficient and unbalanced. In particular, the state hospitals do not have enough beds for the increasing number of defendants who are criminally committed for competency restoration. This influx of patients delays treatment for other individuals with mental health issues, resulting in more arrests and hospitalizations. A statewide plan that provided adequate access to state hospital beds and more outpatient options would streamline the treatment process and help keep patients out of courts, jails, and emergency rooms.

The short time line would reflect the urgency of the situation. The misallocation of services, especially the state hospital bed shortage, needs to be quickly addressed. Moreover, the state needs an immediate plan for

federal and state funds. Texas already is receiving federal funds from the Medicaid 1115 waiver and the state will likely appropriate a significant amount of general revenue funds for mental health services in the next biennium. While the department likely will be developing a long-term plan for these funds, it is critical that the state quickly develop and implement a short-range plan to use these funds efficiently.

OPPONENTS SAY:

CSHB 205 would not allow enough time to develop or oversee a statewide plan. This would be a large, complex project involving a substantial amount of state and federal funds. It is a concern that the department would have the authority implement a statewide plan before the Legislature reconvenes next session, especially when the department also likely would be developing a 10-year plan for mental health services. By requiring implementation to begin in 2014, this bill would not allow for adequate legislative oversight.

OTHER OPPONENTS SAY:

The statewide plan also should include an in-depth examination of how courts are committing defendants for competency restoration and the collateral consequences of recurring commitments.

NOTES:

The bill could have a negative fiscal impact if the allocation plan required additional state hospital beds or outpatient mental health services, according to the Legislative Budget Board. For example, if the department recommended increasing the number of state hospital beds to the national average, it could cost the state about $137.5 million per year in general revenue. By reducing incarceration, the bill could produce cost savings of about $4.5 million per year, according to one estimate.

SUBJECT: Restoring certain rights to a criminal defendant convicted in Texas

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Herrero, Burnam, Canales, Schaefer, Toth

3 nays — Carter, Leach, Moody

1 absent — Hughes

WITNESSES: For — Yannis Banks, Texas NAACP; Terri Been; Chris Howe; Travis Leete and Ana Yanez Correa, Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project; Matt Simpson, American Civil Liberties Union of Texas)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 48.05 allows a person convicted of an offense to submit an application for restoration of any civil rights forfeited under Texas laws because of the conviction. This application may be made only by an individual convicted of a federal offense or an offense under the laws of another country, other than offense involving:

- violence or the threat of violence;
- drugs; or
- firearms.

Offenses under the laws of another country involving firearms are excepted only if the elements of the offense are substantially similar to the elements of an offense that is a felony under Texas law. If the offense was not substantially similar to a Texas felony, the person may still apply for restoration of rights.

An applicant may not apply for restoration of the person's rights under art. 48.05 unless:

- they have completed the sentence for the offense;
- the conviction of a federal offense occurred three or more years before the application, or the conviction of an offense under the

laws of another country occurred two or more years before the date of the application; and
- the individual has not been convicted at any other time of an offense under the laws of Texas, another state, or the United States.

After submission of the application, the entity to which the application is submitted must review the application and must recommend to the governor whether or not to restore the person's civil rights. The governor then may grant or deny the restoration.

DIGEST:

CSHB 439 would allow a person who was convicted of an offense under Texas law to apply for restoration of the person's civil rights under Code of Criminal Procedure, art. 48.05 unless the offense:

- required registration as a sex offender under Code of Criminal Procedure, ch. 62; or
- involved drugs.

Under the bill, the time that would have to elapse after conviction before a person could apply for restoration would be three years for all eligible offenses.

The bill would take effect September 1, 2013, and would apply to a defendant who was convicted before, on, or after that date.

SUPPORTERS SAY:

CSHB 439 would correct an inconsistency in the law and afford the same rights and opportunities to all Texans who have had their rights restricted because of a criminal conviction. Current law allows restoration of rights only for people who were convicted under federal law or the law of another country, and it is unfair to Texans that this opportunity is provided to people who have committed crimes elsewhere, but not to those who have committed crimes within Texas. People who break Texas laws are equally capable of rehabilitation and deserving of the opportunity to restore their full civil rights as are those who break the laws of other jurisdictions.

The bill would allow for more successful reintegration and help those who had been convicted of a felony to be better civic participants. Having the opportunity to hold public office, administer an estate, or serve on a jury allows people who have completed their punishment feel less stigmatized and more included, which in turn helps keep them from re-offending. By

allowing Texans who have been convicted of crimes in the state to have these rights restored, the bill would lower barriers to successful re-entry. It would send a message that the state benefits from the involvement of people who have completed the punishment for their crimes and desire to become active, engaged members of the community again.

CSHB 439 would not threaten public safety or the safety of victims of violent crimes. Under the bill, the review procedure for these applications would remain the same. All parties reviewing the application could recommend against restoration of rights, and the governor still would have the final say in granting or denying this restoration. This multiple-part review provides sufficient protection to ensure that only persons whose rights should and could safely be fully restored would be successful with their applications.

To further ensure the protection of public safety, the bill could be amended to prevent a person convicted in Texas of a crime involving violence, the threat of violence, or a firearms crime punishable as a felony from seeking restoration of civil rights in this state.

OPPONENTS SAY:

CSHB 439 could threaten public safety by allowing for the restoration of rights to dangerous felons. The bill would apply to any offense except for a few narrowly carved out cases, which would not fully ensure the protection of the victims of violent crimes. For example, under CSHB 439, a person convicted of a family violence offense might be able regain the person's firearms rights, which could be dangerous or threatening to that person's previous victims. The bill's exceptions for offenses that would prevent a felon convicted in Texas from seeking restoration of civil rights should mirror the exceptions in current law, which prevent felons convicted under federal or foreign law of violent and firearm-related crimes from seeking restoration of rights in this state.

NOTES:

The author intends to introduce a floor amendment that would prevent a felon convicted in Texas of a crime involving firearms, violence, or the threat of violence from seeking restoration of rights.

SUBJECT: Preventing the accrual of postjudgment interest on certain damages

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Lewis, Farrar, Farney, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

1 absent — Gooden

WITNESSES: For — George Christian, Texas Civil Justice League; (*Registered, but did not testify*: Dan Finch, Texas Medical Association; Mike Hull, Texans for Lawsuit Reform and Texas Alliance for Patient Access; Dan Worthington, Texas Association of Defense Counsel)

Against — None

On — Brad Parker; Texas Trial Lawyers Association

DIGEST: CSHB 658 would prevent the accrual of postjudgment interest on an unpaid balance of damages subject to Medicare subrogation until the defendant had received a recovery demand letter from the Center for Medicare and Medicaid Services (CMS) or a designated contractor.

Postjudgment interest would not begin to accrue until 31 days after the defendant received the recovery demand letter. Postjudgment interest could accrue if a defendant appealed the award and on any portion of the award not subject Medicare subrogation.

The bill would take effect September 1, 2013, and would apply only to an award of damages made on or after that date.

SUPPORTERS SAY: CSHB 658 would help ensure fairness for defendants in cases in which the federal government has certain subrogation rights. In such cases, defendants cannot pay their damages balance until they receive a recovery demand letter from the Center for Medicare and Medicaid Services (CMS). This can take a long time, resulting in a higher balance. It is unfair for postjudgment interest to accrue when the defendant has no control over

when the defendant can first submit a payment. By tolling the accrual of postjudgment interest until a recovery demand letter was received, the bill would prevent defendants from paying more because of third-party delays.

Although the Affordable Care Act (ACA) attempted to address this problem on a federal level, this bill would create state law to further guarantee that defendants were not unfairly burdened when the payment schedule was beyond their control.

OPPONENTS SAY:

CSHB 658 would be unnecessary, as the ACA made changes to the CMS recovery demand letter process in order to avoid delays, so it is unlikely that this will continue to be a problem for defendants.

SUBJECT: Revising performance and payment security requirements for CDAs

COMMITTEE: Transportation — committee substitute recommended

VOTE: 11 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Pickett, Riddle

0 nays

WITNESSES: For — Howard Cowan, Texas Surety Federation; (*Registered, but did not testify:* Michael Chatron (AGC Texas Building Branch); Terri Hall (Texas TURF); Tara Snowden (Zachry Corporation); Michael White (Texas Construction Association)

Against — None

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

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

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

DIGEST: CSHB 1134 would amend the performance and payment security

requirements for a CDA between a private entity and TxDOT, an RTA, or an RMA, as provided by Transportation Code, sec. 223.205, sec. 366.404, or sec. 370.308.

The bill no longer would allow TxDOT, an RTA, or an RMA to determine other forms of security to be suitable as alternative forms. The bill would require an irrevocable letter of credit to be from a bank acceptable to TxDOT, the RTA, or the RMA that had an office in the state and a performance and payment bond to be issued by a corporate surety authorized to issue bonds in Texas.

The bill would not allow TxDOT, an RTA, or an RMA to set the amount of security if the certain sufficient value was impracticable unless the contract amount exceeded $250 million in construction costs. TxDOT, an RTA, or an RMA could require an additional amount of security that they deemed acceptable in addition to the security of $250 million or greater. The bill would prohibit a security from covering the portion of the CDA that included only design or planning services, the performance of preliminary studies, or the acquisition of real property.

The bill would take effect September 1, 2013, and would apply only to a CDA for which a best-value proposer was selected on or after the effective date.

SUPPORTERS SAY:

CSHB 1134 would protect Texas taxpayers, ensuring that the roads funded by their tax dollars were completed. The bill also would protect a construction project's suppliers and laborers, which often work for small or midsize subcontractor businesses that depend on the project's payment security if the general contractor defaults. The current language regulating alternative securities is vague and gives state regulators such broad and subjective authority that the entities directly involved in a CDA may unintentionally under-secure a project, leaving the state, taxpayers, and subcontractors exposed to risk.

CSHB 1134 would remove this ambiguity from statute and allow use of only the most secure methods of protection available for these projects. Performance and payment bonds, the traditional means of securing construction projects, have served the state and the nation well for more than 100 years. Such bonds are a highly liquid and readily accessible form of security, as are cashier's checks, U.S. notes or bonds, and irrevocable letters of credit from a bank located in the state.

These options provide a reliable, ready source of funding if a contractor defaults. All of these options, but only these options, would remain available for securing CDA projects under CSHB 1134, prudently balancing the needs for flexibility and security in establishing construction contracts. The state needs to ensure it is properly protected for these contracts since it is ultimately the taxpayer who is on the hook.

OPPONENTS SAY:

CSHB 1134 would limit the ability of TxDOT, an RTA, or an RMA to assist a CDA construction business by negotiating suitable alternative securities on its behalf. These tolling entities prefer the flexibility of being able to mix surety bonds with other forms of security, such as parent guarantees from well capitalized firms, and this bill would limit their discretion in being able to do so. The bill's added restrictions on alternative securities would limit flexibility in establishing CDAs and could slow the urgently needed construction of roads around the state.

By significantly restricting agency and authority discretion in finding suitable alternative securities, the bill would use a sledgehammer to address a concern that could be resolved with a sculptor's chisel. Under current law, TxDOT, RTAs, and RMAs have to prescribe, by rule, requirements for alternative forms of security. The rulemaking processes of these entities are always open to public and stakeholder input. Each of these entities has an open comment period during their public meetings in which the public or stakeholders can propose suggested revisions to the rules, and these groups are also welcome to submit electronic or written comments on proposed rules or suggested changes. If stakeholders feel the agency and authority rules on alternative securities are too lax in some regard, they should help fine-tune those rules, rather than statutorily marginalizing them, as CSHB 1134 would do.

CSHB 1134 could prohibit small and mid-size construction businesses from entering into a CDA for a large project because they would be unlikely to have the equity or resources needed to provide the new $250 million minimum security. These businesses have a better opportunity to enter into such construction contracts under current law, which gives TxDOT, an RTA, or an RMA greater discretion to lower the required amount of security and mix it with alternative forms of security that may be more accessible to smaller firms.

SUBJECT: Classifying investor-owned water utilities, transfer ratemaking to PUC

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio, Martinez Fischer, D. Miller

0 nays

2 absent — Johnson, Keffer

WITNESSES: **(On original bill)**
For — David Frederick, Texans Against Monopolies Excessive Rates; Jack Millikan, Kerrville Community Action Group; Larry Westfall, Kerrville South Community Action Group; *(Registered, but did not testify:* Jim Boyle, City of Blue Mound, Texas; Leonardo Coelho, Travis County; Chloe Lieberknecht, The Nature Conservancy

Against — Charles Profilet, Southwest Water Co.; Melanie Oldham

On — Tom Hunter and Brian Lloyd, Public Utility Commission of Texas

(on committee substitute)
For — Art Smith, Country Bend Homeowners Association; *(Registered, but did not testify:* Brandon Aghamalian, City of Pflugerville; Joshua Houston, Texas Impact; Chloe Lieberknecht, The Nature Conservancy; Jerry Valdez, Texas Alliance of Water Providers; David Weinberg, Texas League of Conservation Voters*)*

Against — Charles Profilet, Southwest Water Co.

On — Tom Hunter, Public Utility Commission of Texas; (*Registered, but did not testify*: Sheri Givens, Office of Public Utility Counsel)

BACKGROUND: The Public Utility Commission of Texas (PUC) was established in 1975 to oversee the operations of electric, water, and telecommunications utilities. In 1986, the Legislature transferred responsibility for water utility regulation to the Texas Water Commission, now the Texas Commission on Environmental Quality (TCEQ).

The state exercises original rate-setting jurisdiction over investor-owned utilities (IOUs) serving customers in unincorporated areas of the state and within cities if the city surrenders its jurisdiction to the TCEQ. IOUs are typically monopolies in the areas they serve. IOUs are required to obtain a certificate of convenience and necessity (CCN) certifying their service area, in most cases making them the sole provider in the area. The CCN grants the IOU the exclusive right to provide water or wastewater within the area and the obligation to provide service that is safe, adequate, efficient, and reasonable.

When proposing to change its rates, an IOU must file an application with the TCEQ or other regulatory authority having original jurisdiction. The IOU may begin charging customers the requested new rate within 60 days of providing notice to customers and may continue charging the proposed rates while the case proceeds through the hearing process. Refunds plus interest may be required if the proposed rates are not granted. Customers have 90 days from the effective date to protest the proposed rates. If the lesser of 1,000 or 10 percent of the customers protest or the TCEQ staff has concerns with the proposed rate change, the matter is referred to the State Office of Administrative Hearings (SOAH) and a preliminary hearing is scheduled. Otherwise, the rates are approved administratively.

DIGEST:

CSHB 1307 would transfer responsibilities for regulating water and wastewater rates and services, as well as certificates of convenience and necessity (CCNs), to the Public Utility Commission (PUC) from the Texas Commission on Environmental Quality (TCEQ). The bill also would establish certain classes of investor-owned utilities (IOUs) based on the number of connections and provide timelines within each of these classes to update the rate-making process. Finally, CSHB 1307 would give the Office of Public Utility Counsel (OPUC) authority to intervene in water rate cases on behalf of residential and small commercial customers.

Transfer water and wastewater rate regulation. Starting September 1, 2014, the PUC would assume responsibility from the TCEQ for rate-making and other economic regulation, such as the issuance of certificated of convenience and necessity, for water and wastewater. The agencies would be required to enter into a memorandum of understanding (MOU) guiding the transfer by August 1, 2014, and rules to implement CSHB 1307 by September 1, 2015. The MOU would detail the applicable powers and duties transferred under the bill and would establish a detailed plan for

transferring resources to PUC from TCEQ related to economic regulation of water and sewer service.

The TCEQ would continue regulating water and sewer utilities to ensure safe drinking water and environmental protection. The TCEQ and the PUC would establish a transition team to ensure a smooth transfer of the ratemaking and CCN functions from TCEQ to PUC as well as to establish guidelines to ensure agency cooperation in meeting federal drinking water standards, maintaining adequate water supplies, meeting established design criteria for wastewater treatment plants, demonstrating the economic feasibility of regionalization, and serving economically distressed communities. The transition team would provide monthly updates to the executive directors of the TCEQ and the PUC and would provide a final report by September 1, 2014.

Beginning September 1, 2013, the TCEQ could propose rules, forms, policies, and procedures related to water and wastewater authority. Any TCEQ rules, forms, policies, and procedures would remain in effect until it was replaced or amended by the PUC.

Office of Public Utility Counsel (OPUC). CSHB 1307 would allow the OPUC to represent the interests of residential and small commercial consumers regarding water and wastewater rates and services beginning September 1, 2013.

Under the bill, OPUC would:

- assess the effect of utility rate changes and other regulatory actions on residential consumers in Texas;
- advocate a position determined to be most advantageous to a substantial number of residential consumers;
- be entitled to the same access as a party, other than PUC staff, to records gathered by the PUC; and
- be entitled to discovery of any non-privileged matter that was relevant to the subject matter of a proceeding or petition before PUC.

OPUC could:

- appear or intervene on behalf of a residential consumer or small business consumer;

- initiate or intervene in a judicial proceeding that involved an action taken by an administrative agency in certain circumstances;
- represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail services that were unresolved before the PUC;
- recommend legislation that it determined would serve the interests of residential and small commercial consumers; and
- conduct consumer outreach and education programs for residential and small commercial consumers.

The bill would not affect a duty the office was required to perform under other law. The PUC's authority would not be limited to represent residential or small commercial consumers nor would it preclude the appearance of other parties on their behalf.

Utility classification. Three classes of investor-owned water utilities would be created based on the utilities' number of taps or connections, and the bill would set up a rate structure for each class.

1. *Class A utilities* (10,000 connections or more) would send a statement of intent to change rates to each ratepayer at least 35 days before the effective date of the proposed change. The utility would then file an application for a rate change detailing its costs, rate schedules, and written testimony explaining the need for the requested rate increase. The PUC would be required to make a final rate determination within 185 days from the statement of intent.

   The PUC could establish interim rates or bond rates to be in effect during the suspension period. If the PUC did not establish interim rates or bond rates, the rates in effect when the application for a rate change was filed would continue in effect.

2. *Class B utilities* (500 to 10,000 connections) would send a statement of intent to change rates to each ratepayer at least 35 days before the effective date of the proposed change. The utility would then file an application for a rate change detailing its costs and rate schedules. The application would be less burdensome and complex than was required for a class A utility and would not require written testimony explaining the need for the requested rate increase. If an application became contested, the matter would be referred to a hearing that could be informal, and written testimony could be provided. The PUC would be

required to make a final rate determination within 240 days from the statement of intent.

3. *Class C utilities* (fewer than 500 connections) would be allowed the option to request an annual rate adjustment based on a predetermined index not to exceed a 5 percent increase. Adjustments could go into effect without a hearing 30 days after proper notice to customers if the adjustment was equal to or lower than the PUC's established water utility index for that year. If the adjustment was greater than the established index, the rate application would follow the class B process. A class C utility would be allowed only one adjustment every year and no more than four total adjustments between class B rate proceedings.

Effective date. This bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1307 would help ensure fairness for water utility customers by, among other things, giving the Office of Public Utility Counsel standing to intervene and represent the interests of residential and small commercial consumers in water rate cases. The bill also would end the current practice of allowing the utilities to charge proposed rates while the case proceeds through the hearing process.

Water utilities also would benefit under the bill, which would establish three classes of investor-owned utilities and would provide time lines to guide the ratemaking process. This would give utilities more certainty on the time line for obtaining a final rate determination and give the smallest IOUs a mechanism to keep up with rising costs without going through a costly rate proceeding.

Investor-owned utilities have been the subject of study for multiple interims in both the House and Senate, as well as the Sunset Advisory Commission. It is clear that Texas' regulatory practices have not kept up with the changes in the industry and business models for water systems. They no longer serve the best interests of utilities or customers. The state must protect the public from the potential for monopoly abuse and foster public trust. Current rules create contentious and adversarial rate proceedings where customers in unincorporated areas have no ability to recover rate expenses. The need for reform is past due when one considers changing industry practices, the rising costs of water infrastructure, and the challenges of extended droughts.

Transfer of water and wastewater rate regulation to PUC. While the ownership of some of the state's largest IOUs has changed and the financial structures and accounting has grown increasing complex, the laws and TCEQ's staff and resources have not kept pace. TCEQ is not adequately equipped with the mission, resources, or rules necessary to protect the public against the potential for monopoly abuse of an IOU.

In contrast, the PUC's structure and expertise are focused on fair and efficient rate-related regulation. The PUC's mission is to protect customers, foster competition, and promote high-quality infrastructure, while TCEQ's mission is to protect the state's public health and natural resources. It would be seamless to transfer water and wastewater utility rate regulation to the PUC because the agency regulates the state's electric and telecommunications utilities, implements respective legislation, and offers customer assistance in resolving complaints. Transferring these functions to PUC would take advantage of PUC's regulatory focus and processes and allow TCEQ to better focus on its core mission of ensuring environmental quality. Many of the class A utilities doing business in Texas operate in other states that have a separate regulatory structure for environmental and economic regulation, similar to what is being proposed in this bill.

Those concerned that the PUC process would increase rate case expenses, ultimately costing the customers more, should compare what is spent now on a case that can drag on indefinitely to a case that may require more paperwork but would be resolved in 185 days. The intent of CSHB 1307 would certainly not be to raise costs. If the implementation of this bill resulted in higher costs for rate cases, those issues could be addressed in the future with the addition of streamlined mechanisms for all utility classes.

Utility classification and rate setting. CSHB 1307 would modernize the rate setting process and move away from the "one-size-fits-all" approach employed by TCEQ. Current law and TCEQ's rules were designed for small, stand-alone systems. However, throughout the past decade an increasing number of small, privately owned public water and wastewater utility systems have been acquired by national corporations and investment funds. While the ownership of water utilities has evolved, the state's role in regulating the rates customers pay has not.

The bill would update the rate-making process by distinguishing between classes of IOUs based on the number of connections. The bill also would provide timelines within each of these classes to update the rate-making process. This would give utilities more certainty on how long it would take to obtain a final rate determination and give the smallest IOUs a mechanism to keep up with rising costs without going through a costly rate proceeding.

Because contested rate cases take from one-and-a-half to three years to complete at the TCEQ, IOUs are allowed to begin charging customers the requested increased rates within 60 days of providing the notice of the new rates to consumers. This has harmed consumers who lack the resources needed to disprove a utility's request for a larger-than-justified increase. CSHB 1307 would correct this by no longer allowing utilities to charge a proposed rate increase until the increase had been finally approved. The only way for a utility to begin charging its new rate before the final determination would be if the PUC established an interim rate or bonded rate. These would be rare allowances in PUC rate making, and require evidence of financial hardship at the utility. Not allowing utilities to charge a proposed rate increase until it had been finally approved would discourage the activity of inflating rates before settling with customers in mediation.

While there could be some value in streamlining the rate-making process with the use of periodic rate adjustments, it would allow an opportunity for a utility to bypass the traditional rate-making process.

Office of Public Utility Counsel (OPUC). Many IOUs are located in rural, unincorporated areas and it has become increasingly common for the largest IOUs to seek annual rate increases and charge double or triple the rates charged by a nearby member-owned or municipally owned utility system. This pattern of recurring and dramatically escalating rate increases has led to many dissatisfied customers and negatively impacted property values.

A fully litigated rate case can take several years to resolve and customers face the prospect of paying their own costs plus the costs the utility incurred during the process through a surcharge on their bill. The majority of rate cases result in a settlement in large part because customers simply lack the resources to participate in the process. The Legislature created a

process for the Office of Public Utility Counsel (OPUC) to represent customers in gas and electric utility rate cases, but there is no equivalent advocate for water utility customers. The TCEQ's Office of Public Interest Counsel does not have the statutory authority to adequately represent individuals in rate cases. Because there is no state agency representing the exclusive interest of the water utility customers, customers' only protection is organizing the community to petition for protest, raising funds, and pooling resources to hire private attorneys, accountants, rate experts, and engineers and undertaking a long and expensive contested rate case. Ratepayers in unincorporated areas have no means to recover costs, while IOUs can recover their costs through customer assessments.

The bill would give OPUC authority to intervene and represent residential and small commercial customers in water rate cases. This would result in a process that is fair and balanced for water and sewer utilities and their customers.

OPPONENTS SAY:

Transfer of water and wastewater rate regulation. Moving water utility regulation to the Public Utility Commission (PUC) from the Texas Commission on Environmental Quality (TCEQ) would not result in cost savings, better governance, or relief to ratepayers. In fact, because the economic aspects of regulation cannot clearly be separated from the environmental aspects, CSHB 1307 would complicate regulating water and sewage service in Texas.

Rate setting in water utility matters is highly prescriptive, with many issues — including cost recovery — stipulated in state law. Moving to the PUC the economic regulation of the state's retail water utilities, many of which are substantially smaller than large telecommunications and electric utilities, would not address consumer concerns about water rates.

Texas has an advantage in that the same regulators who review and establish water rates also regulate the quality of service to customers, establish minimum operational and capacity requirements, and ensure environmental compliance for the IOUs. The TCEQ is in a unique position to ensure that capital investments are prudent investments.

The classification system under CSHB 1307 would place a more intense and expensive rate case process on the largest water utilities that have, typically, invested the most capital in the state. This could create a disincentive for utilities to continue to invest in the infrastructure

necessary to serve their rate base and provide adequate service. It also could increase the cost of purchasing water systems, making it less likely that under-performing systems would be purchased and brought up to standard.

If rate-making jurisdiction is transferred to PUC, then PUC rate filing requirements for electric utilities should be adapted for water and sewer utilities. The PUC rate application filing requirements are more extensive than at the TCEQ and would require a greater expenditure at the outset because the PUC requires expert written testimony submitted with the application. At the TCEQ, written testimony is deferred until hearing dates at the State Office of Administrative Hearings (SOAH) are scheduled. Since most cases settle prior to hearing, the costly expense of providing written testimony is not often realized. CSHB 1307 would ensure an upfront cost that would only have been incurred in the event of a contested case hearing. Rate case expenses could be significantly higher than what is seen today.

Also, while the PUC offers a shorter timeframe for a final rate determination, the PUC discovery rules allow for unlimited levels of discovery, the costs of which would be significant.

OTHER OPPONENTS SAY:

The rate-setting process under CSHB 1307 should by modified to better manage significantly larger rate case expenses by including periodic rate adjustments by utilities based on changes in a utility's invested capital. This would provide for consumer protection and give utilities the same adjustment mechanism Texas electric and gas utilities already have. The periodic rate adjustment mechanism would encourage streamlined rate-making by allowing for adjustments to customer charges for approved and spent capital investments, without the requirement of a costly and time-consuming full-scale rate case. Extending the time between future base rate filings would allow utilities to continue to invest capital in needy systems and reduce rate-case expenses that customers ultimately must pay in their rates. It also would reduce the "sticker shock" to customers after a rate case that may reflect 4 to 5 years of capital improvements by allowing for rates to be raised a little at a time, rather than all at once.

Periodic rate adjustments would not bypass the traditional rate-making process. To the contrary, periodic rate adjustments would be handled through an agency process that included a reconciliation or "true-up" at the next general rate application.

NOTES:

According to the Legislative Budget Board's fiscal note, CSHB 1307 would result in no financial impact through the biennium ending in 2015. However, implementation of CSHB 1307 would require the transfer of general revenue dedicated water resource management account funds from TCEQ to the PUC and to OPUC.

Transfer of water and wastewater rate regulation. Transferring responsibilities for regulating water and wastewater rates and services, as well as certificates of convenience and necessity (CCNs) from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission (PUC), would result in the transfer of $1.4 million in general revenue dedicated water resource management account funds and 20 full-time-equivalent employees (FTEs) from the TCEQ to the PUC beginning in fiscal 2015.

Also, to implement the modified rate-making process beginning in fiscal 2016, the PUC would require $1.1 million per year in general revenue dedicated water resource management account funds and 12 FTEs, with total salary of $762,000. Additional expenses would include $30,480 in other personnel costs, $33,528 in rent-machine costs, and estimated benefit costs of $226,619 per year.

A transfer of $184,000 in general revenue dedicated water resource management account funds to the PUC from the TCEQ beginning in fiscal 2015 also would be necessary to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility case hearings.

Office of Public Utility Counsel (OPUC). A contingency rider included in the House version of SB 1 would provide the OPUC $499,680 in annual appropriations from the TCEQ and five FTEs for representation of customers in water utility proceedings. According to the OPUC, this would provide the agency with enough resources to fully litigate 3 to 5 cases per year beginning in fiscal 2014. Funds would include $330,000 in annual salary costs, $150,000 in professional services, $2,500 in travel costs, and $17,180 in other operating expenses. The LBB fiscal note would include estimated benefit costs of $98,142 each year not included in the contingency rider.

SUBJECT: Allowing a state agency to develop a wellness incentive program

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Coleman, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

2 nays — Collier, Laubenberg

0 absent

WITNESSES: For — Lindsay Vogtsberger, Cerner Corporation; (*Registered, but did not testify:* Melody Chatelle, United Ways of Texas)

Against — None

On — (*Registered, but did not testify:* Troy Alexander, Texas Medical Association; Brett Spencer, Department of State Health Services)

DIGEST: HB 2020 would allow a state agency to:

- develop a wellness program designed to increase productivity and capacity and reduce health insurance costs; or
- provide financial incentives for participation in a wellness program;
- offer on-site clinic or pharmacy services'
- and adopt additional wellness policies, as determined by the agency.

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, 2013.

SUPPORTERS SAY: HB 2020 would be a purely permissive bill that would allow state agencies to improve employee wellness and curb increasing health care costs by choosing to implement a wellness program with financial incentives. Other employers have shown that wellness incentive programs reduce health care costs, improve employee wellness, and increase employee

productivity. As health care costs continue to rise, the state cannot afford not to implement a similar program.

The bill would act on an interim analysis from the Employees Retirement System of Texas recommending that state agencies implement a wellness program with financial incentives. Financial incentives under the bill could include a point-based rewards system for regular check-ups that would lower an employee's health insurance premium. The bill would not be specific to any one vendor, but would allow a state agency to choose a vendor through the regular competitive bidding process.

By offering clinics and pharmacies on-site, state agencies could improve employee productivity and health by reducing the time an employee had to take off from work to access medical care. On-site clinics would help encourage a culture of health in the workplace and make it easier for employees to access preventive care.

OPPONENTS SAY:

Private practices, pharmacies, and urgent-care clinics already exist close to all state agencies. Allowing a state agency to offer an on-site clinic would not necessarily improve patient access to care and could discourage patients from seeing the primary care provider who knew their medical history best.

The bill also could negatively affect the quality of patient care by not requiring clinics to adhere to Texas Medical Practice Act standards, such as physician-led care.

SUBJECT: Changing the definition of air conditioning and refrigeration contracting

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 9 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles, Price, S.Thompson

0 nays

WITNESSES: For — Michael Jewell, AT&T; Vikrant Reddy, Texas Public Policy Foundation (*Registered, but did not testify:* Jon Fisher, Associated Builders and Contractors of Texas; Frank Lacey, Comverge, Inc.; Annie Mahoney, Texas Conservative Coalition; Colin Meehan, Environmental Defense Fund; Dan Shelley, Plumbing Heating Cooling Contractors)

Against — Mike Creamer; Todd McAlister, Texas Air Conditioning Contractors Association; (*Registered, but did not testify:* Dan Shelley, Plumbing Heating Cooling Contractors)

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

BACKGROUND: Occupations Code, ch. 1302 regulates and licenses air conditioning and refrigeration contractors.

DIGEST: CSHB 2294 would specify that the definition of "air conditioning and refrigeration contracting" in Occupations Code, sec. 1302.002(2) did not include the installation, repair, replacement, or modification of a thermostat or other temperature control interface.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 2294 would pave the way for companies offering smart home installation services to connect home thermostats with a remotely accessible control system without needing a licensed air conditioning and refrigeration contractor to do the work. Smart home systems help reduce energy use and bills by enabling consumers to change the settings on their thermostats and other household appliances using their smart phones or

other electronic communication devices.

Current law can be interpreted to mean that someone who installs and works on thermostats is required to hold an air conditioning and refrigeration contracting license. The bill would amend the Occupations Code to specify that thermostat installation was not included under this definition, making it clear that companies offering smart home services could send a single technician to change the thermostat and make associated changes in a home, rather than also requiring an air conditioning and refrigeration contractor to change the thermostat. This would lower the price of these smart home systems and shorten the installation period, making the services more attractive to consumers.

Obtaining an air conditioning and refrigeration contracting license is an onerous process requiring many months of practice and passing an exam. Therefore, requiring smart home technicians to have a license before connecting a thermostat to a smart home system is impractical.

OPPONENTS SAY:

Thermostats are complicated pieces of machinery intimately connected to the rest of the air conditioning or refrigeration unit. Changing the thermostat without a full understanding of the entire system could cause serious damage costing many thousands of dollars, resulting in serious discomfort for the homeowner and possibly voiding the warranty of the air conditioning unit. The bill at least should indemnify homeowners who used the services of a smart home installation technician if the air conditioning or refrigeration unit sustained damage in the course of installation.

The bill also should define the term “temperature control interface,” which can mean anything from a simple mechanical wall attachment to a complicated digital device.

SUBJECT: Use of a state credit card for agency purchases

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 6 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Scott Turner, Vo

0 nays

1 absent — Taylor

WITNESSES: For — Mary Lewis, Citibank, NA; (*Registered, but did not testify*: David Cox, Citibank, NA; Annie Mahoney, Texas Conservative Coalition)

Against — None

BACKGROUND: Government Code, ch. 403.023 permits the comptroller to adopt rules relating to the use of credit or charge cards by state agencies in their purchases.

Under ch. 660.021, the comptroller must adopt rules for effective and efficient administration of travel by state officers and employees, including administering travel provisions of the General Appropriations Act.

The central travel office within the comptroller's Travel Division must monitor travel by state employees and agencies. As part of Government Code, ch. 2171, the central travel office must also provide travel-related services, which could include support functions such as negotiating contracts with credit card companies that provide travel services.

DIGEST: CSHB 2962 would set requirements for the use of a state credit card for purchases by state agencies in the executive branch.

The bill would amend Government Code, sec. 2171.0521 to require that an agency in the executive branch use a credit or charge card to purchase all travel services, unless the comptroller's office found another method of payment to be more advantageous. State agency employees would be

prohibited from using a personal credit or charge card to purchase agency travel services. These requirements would not apply to higher education institutions or the office of the governor.

The comptroller would be required to adopt rules along the criteria described above with regard to the effective and efficient administration of travel by state officers and employees under Government Code, sec. 660.021. The requirements specified above also would apply to any rules adopted by the comptroller under Government Code, ch. 403 related to the use of credit or charge cards for state agency purchases.

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, 2013.

SUPPORTERS SAY:

The bill would create a legal requirement for state agencies to use a commercial credit card program for all state purchases, which would provide a rebate directly to the state. It is currently permissive to use the state credit card, and frequently state employees use their personal credit cards and go through a reimbursement procedure. This bill would reduce agency costs by providing a more streamlined payment process.

Use of the state credit card makes the reporting of state expenses more transparent and efficient. The program protects and provides insurance against fraud and abuse. In addition, more transactions on the state card would result in additional revenue for the state. Texas ranks 42nd out of 47 states with credit card programs in terms of the percentage of state expenditures made through the state credit card program. If Texas' use of the state credit card program rose to the national average, annual rebates to the state would rise from $12 million to $15 million.

Costs for agencies would not increase. The bill would enable an agency to reduce its reimbursements and associated paperwork, which would free up employee time to administer the state credit card program. While the Health and Human Services Commission (HHSC) anticipates some costs as a result of the bill, this projection represents an outlier and would not be representative of state agencies generally. The comptroller's office reports in the fiscal note that the cost to implement HB 2962 would be insignificant at best.

OPPONENTS

The bill could result in increased costs and operational challenges for state

SAY: agencies. This could apply especially to agencies with large numbers of employees engaging in work-related travel. HHSC anticipates it would have to hire 10 additional employees to oversee the use of state credit cards, which would cost $1.3 million during fiscal 2014-15. Other agencies could experience operational complexities related to ensuring employees had state credit cards for individual purchases while engaging in work travel.

NOTES: According to the fiscal note, the bill would have an indeterminate cost to the state, but the cost is expected to be insignificant, depending on determinations made by the comptroller. The Legislative Budget Board notes that HHSC anticipates an all-funds cost increase of $1.3 million in fiscal 2014-15, including staff costs.

SUBJECT: Regulating insurance holding company systems

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Morrison, Muñoz, Taylor, C. Turner

0 nays

2 absent — Creighton, Sheets

WITNESSES: For — Ted Kennedy, AIG; (*Registered, but did not testify:* Allan Akens, Texas Funeral Directors Association; Fred Bosse, American Insurance Association; Jennifer Cawley, Texas Association of Life and Health Insurers; Lloyd W. Graham; James May; Brenda Nation, American Council of Life Insurers)

Against — None

On — (*Registered, but did not testify:* Kevin Brady, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 823.006 describes an insurance holding company system as being composed of two or more affiliates, at least one of which is an insurer. Ch. 823 provides guidance to the insurance commissioner and the Texas Department of Insurance (TDI) in their oversight of insurance company solvency and regulates the relationships and transactions between insurance companies and their affiliates or subsidiaries.

In 2011, the Legislature adopted SB 1431 by Carona, which amended ch. 823 to align it to the National Association of Insurance Commissioners' (NAIC) Insurance Holding Company System Model Act. The NAIC has revised the Model Act since SB 1431 was enacted.

DIGEST: **Confidentiality.** CSHB 3460 would require the insurance commissioner to keep confidential the information obtained from an insurer's registration, a disclaimer of affiliation, a transaction made within an insurance holding company system, an investigation of an insurer's

financial condition or the legality of their conduct, or an enterprise risk report.

The bill would allow the commissioner to disclose this information to state, federal, or international regulatory agencies, provided he or she verified the agencies' legal authority to maintain the information's confidentiality prior to its release.

Transactions. CSHB 3460 would modify the insurance transactions subject to insurer notification requirements and could be disapproved by the insurance commissioner. Regarding sales, purchases, loans, or investments with any entity in the insurer's holding company system:

- nonlife insurers would become subject to the requirements if a transaction was at least the lesser of 3 percent of the insurer's admitted assets or 25 percent of the insurer's surplus as regards policyholders; and
- life insurers would be subject to the requirements if the transaction was at least 3 percent of the insurer's admitted assets on December 31 of the preceding year.

A loan made to an entity that was not an affiliate of the insurer to invest in, buy assets of, or extend credit to an affiliate, would be subject to insurer notification requirements. It could be disapproved in these cases:

- for nonlife insurers if the transaction was at least the lesser of 3 percent of the insurer's admitted assets of 25 percent of the insurer's surplus as regards policyholders as of December 31 of the preceding year; and
- for life insurers if the transaction was at least 3 percent of the insurer's admitted assets as of December 31 of the preceding year.

Effective date. This 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, 2013.

SUPPORTERS SAY:

CSHB 3460 would increase economic growth, insurance competition, and Texas' regulatory influence on the national level by attracting an increased number of insurance companies to the state.

Texas' current standards for transactions and confidentiality are not

aligned with the NAIC's Insurance Holding Company System Model Act, which is being adopted by an increasing number of states. This discrepancy makes Texas' regulatory environment regarding which transactions are subject to commissioner disapproval relatively more restrictive than other states. The bill would also strengthen the confidentiality requirements governing insurer information, giving companies more confidence in doing business in the state.

The bill also would discourage the possibility of national regulations being adopted to regulate insurance holding companies. Aligning Texas' standards with other states' would best balance companies' interest in uniform regulatory requirements with the state's interest in maintaining its jurisdiction over Texas' unique insurance market. It would also be an extension of TDI's current activities.

Because it is based on model legislation approved by the NAIC, CSHB 3460 would strike a balance between improving the regulatory environment for insurance companies while protecting consumers' and investors' interests.

OPPONENTS SAY:

CSHB 3460 would increase the role of government. The bill would increase the regulatory powers of the commissioner of insurance and impose new mandates on the insurance market, which would violate free market economic principles and be economically inefficient.

SUBJECT: Qualifying disabled veterans as HUB contractors

COMMITTEE: Defense and Veterans' Affairs — favorable, without amendment

VOTE: 9 ayes — Menéndez, Sheffield, Collier, Farias, Frank, Miller, Moody, Schaefer, Zedler

0 nays

WITNESSES: For — James Brennan, Texas Coalition of Veterans Organizations; Philip Lindner, National Guard Association of Texas; (*Registered, but did not testify:* James Cunningham, Texas Coalition of Veterans Organizations and Military Officers Association of America; Brian East, Disability Rights Texas; Deborah Giles and Patrick Hogan, Texas Technology Consortium; Carlos Higgins, Austin Military Officers Association; Morgan Little and John Miterko, Texas Coalition of Veterans Organizations)

Against — Peter Aguirre; Karen Box, Southwest Minority Supplier Development Council; Carmen Garcia, MBE Institute for Public Policy; Margo Posey, Dallas Fort Worth Minority Supplier Development Council, Houston Minority Supplier Development, Austin and San Antonio Southwest Minority Council; Jim Wyatt, Texas Association of African Chambers Commerce

On — Thomas Palladino, Texas Veterans Commission

BACKGROUND: To participate in the state's historically underutilized business (HUB) contracting program as defined by Government Code 2161.001 (3), at least 51 percent of a business must be owned by one or more economically disadvantaged persons. An economically disadvantaged person is defined as someone who is economically disadvantaged as a result of discrimination caused by that person's identification as a member of a certain group, including African Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans.

DIGEST: HB 194 would allow service-disabled veterans to participate in the state's HUB contracting program. The bill also would require the state comptroller, for reporting purposes, to add service-disabled veterans as

defined by federal statute to the categories of groups included in the program.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Adding service-disabled veterans to the historically underutilized business contracting program would provide economic opportunities to a highly skilled group of individuals who have honored their country through military service. Their inclusion would strengthen the visibility and sustainability of the HUB program in ways that benefit the state as well as other contractors.

By expanding the definition of a HUB owner, the bill would allow service-disabled veterans greater access to contracts with the state and other public entities. States such as California and Florida have allowed service-disabled veterans this kind of access to state procurement programs.

Enlarging the pool of available vendors could help drive down state contracting costs. At the same time, the state would benefit from the excellent training and skills these veterans would bring to their duties.

The program would incentivize entrepreneurism for veterans, who, as a group, have a higher-than-average unemployment rate. HB 194 would allow disabled veterans to join other groups of individuals who have sometimes suffered the effects of discriminatory practices. In addition, service-disabled veterans would spur attention in the media and boost support for a program some participants say does not receive a sustainable level of contracts.

Nearly 17,000 businesses were classified as Texas-certified HUBs in fiscal 2012, according to a report by the Texas Comptroller of Public Accounts. The U.S. Small Business Administration estimates that about 1,000 businesses are owned by service-disabled veterans in Texas, so adding this group would not greatly impact the HUB program.

OPPONENTS SAY:

Widening the definition of what qualifies as a historically underutilized business, as proposed by HB 194, would dilute an important program that ensures that businesses owned by minorities and women have a fair chance of procuring contracts with government agencies and public entities. Instead, lawmakers should seek to establish a similar but separate

job procurement program tailored to serving businesses owned by service-disabled veterans.

The HUB program in Texas is struggling to meet its goals of increasing the number of contracts available to underutilized businesses and growing the number of jobs provided by those operations. The state's spending with HUBs dropped by $88.3 million in fiscal 2012, when HUB-related state expenditures comprised 13.8 percent of total expenditures, according to a study by the Texas Comptroller of Public Accounts. Enlarging the pool of businesses that could procure contracts through the HUB program when expenditures are shrinking would not make sense and would harm businesses for which the program was created.

Much like Veterans Administration hospitals are tailored to provide health care to the military and former service members, a separate program should promote contract procurement in a way that suits service-disabled veterans and honors the commitment they made to their country.

SUBJECT: Removing intoxication exclusions in accident and health insurance policies

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Morrison, Muñoz, Taylor, C. Turner

0 nays

2 absent — Creighton, Sheets

WITNESSES: For — Jennifer Gilley, Texas Association of Substance Abuse Program; (*Registered, but did not testify*: Charles Bailey, Texas Hospital Association)

Against — (*Registered, but did not testify*: Brenda Nation, American Council of Life insurers)

On — (*Registered, but did not testify*: Doug Danzeiser, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 1201.227 states that an individual accident and health insurance policy must contain the following provision if the policy addresses the subject matter of the provision: "Intoxicants and Narcotics: The insurer is not liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless the narcotic is administered on the advice of a physician."

DIGEST: CSHB 3105 would repeal Insurance Code, sec. 1201.227.

The change required by the bill would apply only to an individual accident and health insurance policy that was delivered, issued for delivery, or renewed on or after January 1, 2014.

This bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 3105 would benefit both the public and health care providers.

Current law, by providing an accident and health insurance exclusion related to the use of drugs or alcohol, keeps individuals who are intoxicated from seeking treatment for medical conditions.

The intoxicants and narcotics exclusions were developed 66 years ago as part of national model legislation. At that time, policy makers and the scientific community did not have an advanced understanding of substance abuse and treatment. The same group that initially developed the recommended exclusion, the National Association of Insurance Commissioners, reversed its recommendation in 2001 and recommends that the exclusion be abolished. Fifteen states, including California, Colorado, and Ohio, have abolished the exclusion.

Health care providers who treat these individuals often do not get reimbursed for treatment by insurance because of the intoxication exclusion. Health care providers also may not document intoxication-related disorders or illnesses in medical records as a way of protecting their desire to get reimbursed for services provided and protecting patients who should not be stigmatized because of a chemical dependency issue.

CSHB 3105 would encourage emergency room physicians to perform drug and alcohol testing and follow up on those tests with screening, brief intervention and referral to treatment protocols (SBIRT). A study by University of Texas Southwestern Medical Center found that patients were 48 percent less likely to be readmitted to the hospital when a physician used the SBIRT methods. One six-month study of SBIRT in six states showed a 68 percent reduction in illicit drug use, a 39 percent reduction in heavy alcohol use, and fewer reported arrests.

The bill would remove a barrier between physician and patients. If the exclusion for intoxicants and narcotics were removed, the bill could result in a more open dialogue between emergency room physicians and patients. Doctors could freely talk to the patient about drug and alcohol abuse and steer them toward substance abuse treatments. Encouraging individuals to seek and undergo treatments would serve a larger public health interest by reducing the number of intoxicated individuals and the damage they cause to others' lives and property.

OPPONENTS SAY:

CSHB 3105, as written, contains policy implications that could be unclear with respect to whether the bill would result in a repeal of the intoxicants and narcotics exemption in insurance policies or merely repeal the

required notice of the intoxicants and narcotics exemption in policies.

The first interpretation holds that CSHB 3105 would effectively create a mandate because it would remove the intoxication and narcotics exclusion in individual health plans. This would result in an increase in the cost of health insurance in Texas because accident and health insurance companies would be forced to pay for services for individuals who engaged in irresponsible behavior. Insurance companies' costs would increase, and the companies would pass those costs on to consumers in the form of higher premiums. Mandates drive up prices, push out competition, and leave unaffordable policies that reflect policymaker desires, rather than consumer interest.

Another interpretation is that the insurers could continue not to be held liable for losses resulting from intoxicated policyholders. Companies simply would no longer be required to include the exemption provision language that Texas currently requires in policies.

OTHER OPPONENTS SAY:

As written, CSHB 3105 would include disability income insurance. Disability income insurance is included in the accident and health insurance definition of the Insurance Code. The bill should be modified to remove disability income insurance from its provisions. Otherwise, insurance rates for disability income insurance could rise substantially.

SUBJECT: Establishing Medicaid managed-care pilot programs

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, N. Gonzalez, Fallon, Klick, Rose, Sanford, Scott Turner, Zerwas

0 nays

1 absent — Naishtat

WITNESSES: For — Tim Kirby, Methodist Health System; Peter Roberts, Children's Medical Center Dallas; (*Registered, but did not testify:* Marina Hench, Texas Association for Home Care and Hospice; Carrie Kroll, Texas Hospital Association; Annie Mahoney, Texas Conservative Coalition; Kristi Morison, Texas Counseling Association; Michelle Romero, Texas Medical Association)

Against — None

On — (*Registered, but did not testify:* Gary Jessee, Texas Health and Human Services Commission; Rudy Villarreal, Texas Health and Human Services Commission)

BACKGROUND: More than 75 percent of Texas' Medicaid and Children's Health Insurance Program (CHIP) recipients receive health care services through health maintenance organizations (HMOs) that have contracted with the Health and Human Services Commission (HHSC) to operate as managed care organizations (MCOs). MCOs contract with hospitals and health-care providers to offer services based on a capped rate for each client rather than for each service delivered.

In 2011, the enactment of SB 7 by Nelson by the 82nd Legislature authorized the health care collaborative (HCC) model of provider-owned networks partnering with HMOs to deliver health services. SB 7 did not allow HHSC to implement HCCs within the existing Medicaid and CHIP managed-care program.

DIGEST:

CSHB 3158 would require HHSC to establish pilot programs of HCC-HMO partnerships in the Dallas Medicaid Service Delivery Area (SDA) to test one or more service-delivery models, unless the commission determined the program would not be cost-effective and feasible.

The pilot programs would be implemented by September 1, 2015 and would each last at least three years. At least one would be conducted by the Children's Medical Center, a not-for-profit pediatric facility.

When a pilot program concluded, CSHB 3158 would require that HHSC evaluate the program, including the feasibility of expanding its implementation statewide. If it determined the program likely would result in the effective provision of medical services, HHSC would submit a report to the governor and the Legislature with its recommendations by December 31, 2018.

CSHB 3158 would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3158 would allow HHSC to explore improved models for delivering health care in the Medicaid and CHIP programs. HCC pilot programs would likely increase patient access to health care through telemedicine, school-based clinics, and many other innovative programs not yet proposed. HCCs also would encourage payment and delivery reforms to improve coordinated care, reduce emergency room visits, track and manage utilization trends, and encourage pay-for-performance.

Dallas' Medicaid managed care market is the least competitive SDA in Texas, and HCCs would increase competition and innovation in both traditional HMOs and the HCC-HMO pilot programs. Savings and improvements discovered in the pilot programs likely would be expanded statewide, eventually resulting in substantial savings and improved health outcomes. Even program failures would provide lessons in delivering health care more efficiently.

OPPONENTS SAY:

CSHB 3158 would privilege the Dallas Service Delivery Area and Children's Medical Center over other service areas and providers in the state. It also would prioritize untested pilot programs over traditional HMO managed care. An influx of HCCs would prevent other traditional HMOs from entering the Dallas market and ultimately could limit competition.

SUBJECT: Temporarily suspending review of public-private partnerships

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

VOTE: 6 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Scott Turner, Vo

0 nays

1 absent — Taylor

WITNESSES: None

BACKGROUND: In 2011, the 82nd Legislature passed the Public and Private Facilities and Infrastructure Act, which allowed governmental entities to enter into comprehensive agreements with private parties. As part of the act, Government Code, sec. 2267.053 enables private industry to submit proposals for development on government-owned land.

DIGEST: HB 3436 would amend Government Code, ch. 2267 to prevent a government entity from taking any formal action on a public-private partnership proposal prior to September 1, 2013. This provision would expire on September 2, 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 on the 91st day after the end of the legislative session.

SUPPORTERS SAY: The bill would give the Legislature the opportunity to assess the use of public-private partnerships in Texas and make necessary changes to the so-called P3 Act and address the Texas Facilities Commission's role. The TFC would not be required to end its P3 program but would be provided with sufficient time to implement a successful program.

In Sunset Commission hearings, questions arose regarding P3 proposals for the Capitol complex and the importance of the Legislature taking this property seriously. Projects at the complex should be done with the aim of standing the test of time. Putting a Sunset recommendation in statute

makes the policy mandatory, rather than a permissive management recommendation. The bill would temporarily slow the P3 program and allow it to resume in the future.

OPPONENTS SAY:

The bill would have the same effect as the approach already being taken by the TFC. In response to the Sunset Commission's management recommendation, TFC has stopped the review of public-private partnership proposals until after September 1, 2013. The effect of this has been to delay the review of P3s, such as the proposed Texas Science and Technology Museum.

SUBJECT: Halving the gross receipts tax on mixed beverages, adding a sales tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

2 absent — Martinez Fischer, Ritter

WITNESSES: For — Bob Borochoff, Anthony Duncan, and Richie Jackson, Texas Restaurant Association; John Gessner, Front Burner Restaurants; (*Registered, but did not testify:* Kevan Fenderson and John Kroll, Brinker Intl.; Adam Goldman, Darden; Mike Hamilton, and Scott Plowman, Texas Restaurant Association; Scott Joslove, Texas Hotel and Lodging Association)

Against — Michael Klein, Texas Bar and Nightclub Alliance; (*Registered, but did not testify:* Doug Davis and Tom Spilman, Wholesale Beer Distributors of Texas; Jennifer Houlihan and James Moody, Austin Music People; Afshin Mohammadzadeh; Houman Mosharraf; Amir Rostami, The Aquarium, Texas Bar and Night Club Alliance)

On — Jason Smith, Texas Craft Brewers Guild; (*Registered, but did not testify*: Donald Dillard, Comptroller; Steve Greinert, TABC)

BACKGROUND: Tax Code, sec. 183.021 places a 14 percent tax on the gross receipts of a permit holder received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises.

DIGEST: CSHB 3572 would change the way mixed beverages are taxed in Texas.

Gross-receipts tax. The bill would lower the gross-receipts tax on the permit holder's sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises from 14 percent to 7 percent.

The bill would apply existing statutory provisions relating to security requirements, audit frequency, and credits and refunds for bad debts to the mixed beverage gross receipts tax.

Sales tax. HB 3572 would impose an 8.25 percent sales tax on mixed beverages sold, prepared, or served by a business permitted to sell mixed beverages and on the ice and each non-alcoholic beverage sold, prepared, or served by a permit holder for the purpose of being mixed with an alcoholic beverage and consumed on the premises.

The bill would exclude existing statutory rules applicable to the general sales tax on the sale of taxable items regarding reimbursement for the collection of sales tax and the discount for prepayment of sales taxes. Further, a sale to a permit holder of an item that would be taxable under the mixed beverage sales tax would not be eligible for an exemption from the tax as a sale for resale under Tax Code, sec. 151.302.

The bill also would make conforming changes in the Tax Code.

CSHB 3572 would take effect on January 1, 2014. The bill would not affect tax liability accrued before the effective date.

SUPPORTERS SAY:

CSHB 3572 would promote transparency and equity in alcohol taxes. The bill would offset the opaque 14 percent gross-receipts tax on alcoholic mixed beverages with a more transparent sales tax. Under a gross-receipts tax, the permit holder must pay the tax and cannot pass it on to the consumer. This means permit holders must build it into the cost they will charge consumers. State law and regulations promulgated by the comptroller have gone back and forth on how permit holders can explain the gross-receipts tax to their customers. This has been difficult on consumers and permit holders alike.

Sales taxes are much more transparent. It is much easier for a consumer to determine the impact of a sales tax because it appears in a receipt and because consumers know it applies to the entire stated cost.

The bill would bring equity as well. Currently, permit holders who have a mixed beverage permit must pay a 14 percent gross-receipts tax on all sales of mixed beverages, beer, and wine. But permit holders who have a beer and wine permit only charge sales tax on their sales of beer and wine.

It does not make sense to tax the same beverages differently and CSHB 3572 would be a significant step toward tax equity.

Any increased tax on the customer would be outweighed by improvements in transparency and equity, which are defining characteristics of good tax policy. In addition, the bill would raise significant revenue. According to the fiscal note, the bill would raise $21.3 million for the state and would raise $6.1 million for cities and counties in fiscal 2014-15.

OPPONENTS SAY:

CSHB 3572 would be anti-taxpayer because it would place an additional tax on mixed beverages. Under current law, there is a 14 percent gross-receipts tax. The bill would replace it with a 7 percent gross- receipts tax and an 8.25 percent sales tax. Consumers would see an increase in what they paid because permit holders would not likely reduce the sales price of mixed beverages even when the tax they would pay, the gross-receipts tax, was cut in half.

NOTES:

According to the fiscal note, the tax changes in CSHB 3572 would result in an increase to the state of $21.3 million in general revenue related funds in fiscal 2014-15. Cities and counties would be estimated to gain a combined $6.1 million over the same period.

SUBJECT: Increasing EMS provider licensing requirements

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Coleman, Collier, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Cortez

WITNESSES: For — None

Against — Kate Carroll, Acadian Ambulance; Stephen Diamond, Metrocare; Loretta Young (*Registered, but did not testify:* Fidel Baldazo; John Brian, Odyssey EMS; Rachel Harracksingh; Ryan Matthews; Manuel Ramon; Cynthia Ramon; Jaime Rios)

On — Kenneth Jones, Coastal EMS; Darryl Quigley, Texas Lifeline Corp; Dudley Wait, Texas Ambulance Association (*Registered, but did not testify:* Derek Jakovich, Texas Department of State Health Services)

BACKGROUND: Emergency medical service providers are required to obtain a license under Health and Safety Code, sec. 773.0571. The license is issued by the Department of State Health Services and is valid for two years.

DIGEST: CSHB 3556 would increase the requirements for obtaining or renewing an emergency medical services provider license by requiring a letter of credit, a surety bond, and an administrator of record. Providers operated directly by a governmental entity would be exempt. The bill would give the commissioner of health the authority to suspend, revoke, or deny a license if a provider's employee or representative has been convicted of or placed on deferred adjudication community supervision or deferred disposition for an offense directly related to the duties and responsibilities of the provider, Medicaid or Medicare fraud, or other offenses listed in the bill.

Letter of credit. CSHB 3556 would require an applicant for an emergency medical services provider license to provide the Department of State Health Services (DSHS) a letter of credit in the amount of $100,000

for the initial license and for the renewal of the license on its second anniversary. This amount would be reduced to $75,000 on the fourth anniversary, $50,000 on the sixth anniversary, and $25,000 on the eighth anniversary and each subsequent renewal.

Surety bond. The bill would require the applicant to provide DSHS with a surety bond in the amount of $50,000 for the initial license and for the renewal of the license on its second anniversary. The amount would be reduced to $25,000 on the fourth anniversary and $10,000 on the sixth anniversary and each subsequent renewal.

Administrator of record. The bill would require an applicant to have an administrator of record who could not be employed or compensated by another private for-profit emergency medical services provider. The administrator also must meet the qualifications required for a state issued health care professional license and undergo a criminal background check. A new administrator of record could be required to complete an education course that included information on laws and rules that affect providers. The administrator would be required to complete at least eight hours of continuing education annually.

Moratorium. The bill would prevent DSHS from issuing new emergency medical services provider licenses from September 1, 2013 until February 28, 2015. This moratorium would not apply to licenses issued to a municipality, county, emergency services district, hospital, volunteer provider, or provider applying to provide services in response to 9-1-1 calls and located in a county with a population of 50,000 or less.

Report to the Legislature. DSHS would be required to electronically report to the Legislature the number of licenses issued, denied, suspended or revoked, applications received, and complaints and occurrences of fraud. DSHS would also report the status of any coordination effort with the Texas Medical Board.

CSHB 3556 would take effect September 1, 2013.

SUPPORTERS SAY:

By strengthening the emergency medical services (EMS) licensing process, CSHB 3556 would reduce the number of fraudulent EMS providers. Currently, obtaining an EMS provider license is relatively easy, which allows fraudulent providers to open short-term EMS firms. These businesses sometimes fail to meet basic regulations or overcharge for

services to make a quick profit. If the state begins an investigation of the firm, the owner can simply shut the firm and begin a new one through a friend or relative. Fraudulent firms not only waste taxpayer money, but also unfairly compete with honest providers and give the EMS profession a bad reputation.

The bill would reduce the number of fraudulent firms by increasing the requirements for licensing and requiring that each firm have its own administrator of record. The requirement for a line of credit and surety bond would not be high enough to harm legitimate EMS providers, but would deter fraudulent providers from setting up shell companies and short-term firms. The amount of the line of credit and surety bond would decrease over time as a company established its legitimacy. Requiring a line of credit and surety bond is common practice before granting many types of licenses. Requiring an administrator of record would help the state hold each firm accountable. The administrator would be required to undergo a background check and complete related education courses to help ensure that he or she was informed of current EMS laws and rules.

CSHB 3556 would help clean up the growing fraud and abuse problem perpetrated by some EMS providers. The EMS industry acknowledges these growing problems and is asking the state to regulate the industry to level the field and restore the reputation of EMS providers.

OPPONENTS SAY:

CSHB 3556 would not combat Medicaid and Medicare fraud but would increase the cost and requirements of being an EMS provider. This could hurt small providers in particular. Requiring EMS providers to have a $100,000 line of credit and $50,000 surety bond could increase costs for an industry that runs on slim margins and struggles with diminishing Medicaid payments. Also, the bill contains no language that describes under what conditions the surety bond would be forfeited. Bond companies could be reluctant to grant such a surety bond that potentially hedged against a crime. The difficulty and cost of securing a line of credit and surety bond could be detrimental to small providers.

Requiring an administrator of record would do little to combat fraud. The administrator of record could be any employee in the company and probably would not be the owner, who is often the person responsible for the fraud. This would place the accountability for the company and education mandates on the wrong person. EMS companies intending to commit fraud could bypass the obstacles placed by the bill relatively

easily.

Preventing EMS fraud is a noble goal, but the bill would do little to combat existing fraud while increasing the cost of business and potentially harming small providers. This could harm the health transportation network. Many areas of Texas depend on smaller providers to transport people in need of assistance, particularly during a time of a natural disaster. If the increased costs pushed providers out of business, it could put the health transportation network at risk.

SUBJECT: Syringe exchange and disease-control pilot program for certain counties

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 5 ayes — Coleman, Farias, M. González, Hernandez Luna, Hunter

1 nay — Stickland

3 absent — Kolkhorst, Krause, Simpson

WITNESSES: For — Randall Ellis, Legacy Community Health Services; Daniel "Neel" Lane; (*Registered, but did not testify:* Velda Clinton; Marisa Finley, Scott & White Center for Healthcare Policy; Janse Maxwell; Joe McAdams, AIDS Services Of Austin; Seth Mitchell, Bexar County Commissioners Court; Diane Rodriguez; Andrew Smith, University Health System; Linda Townsend, CHRISTUS Health; James Willmann, Texas Nurses Association; Chris Yanas, Teaching Hospitals of Texas)

Against — None

BACKGROUND: The Texas Controlled Substances Act, (Health and Safety Code, ch. 481) defines the types of drugs regulated in Texas and sets forth the limitations on their use. Sec. 481.125 prohibits the possession of drug paraphernalia, including syringes, for illegal use of a controlled substance or the distribution of such paraphernalia with the knowledge that the person receiving it will use it for illegal purposes.

Syringe-exchange programs provide injection-drug users with free, sterile syringes in exchange for used syringes, which are surrendered to the program and then discarded. The 80th Legislature in 2007 authorized a syringe-exchange pilot program in Bexar County (Government Code, sec. 531.0972) as part of the enactment of SB 10 by Nelson. Ultimately, the program in Bexar County was halted and an opinion by the attorney general (GA-0622) maintained that participants of any such program could have been subject to prosecution under the Texas Controlled Substances Act and could have faced criminal charges under other Texas or federal statutes.

DIGEST: CSHB 3238 would authorize certain entities to establish disease-control

pilot programs that could provide for the anonymous exchange of used syringes for an equal number of new syringes. The bill also would create exceptions to prosecution for people working and participating in such programs.

Disease-control pilot programs. The bill would add Health and Safety Code, ch. 81, subch. J to allow disease-control programs in Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb counties. A local county, hospital district or a contractor organization could establish a disease-control program that would:

- provide for the anonymous exchange of used syringes for an equal number of new syringes;
- assist participants (recipients of clean syringes) in obtaining health care and other physical and mental health-related services, including substance-abuse treatment and blood-borne disease testing; and
- offer education on the transmission and prevention of communicable diseases, including HIV, hepatitis B, and hepatitis C.

A wholesale drug or device distributor could distribute syringes to a disease-control pilot program. New syringes made available through the program could be part of a "safe kit," which also could include alcohol swabs, cotton swabs, a condom, and a tourniquet. The authority running the pilot program could charge participants a fee for each new syringe used in the program not to exceed 150 percent of the cost of the syringe. Only employees and volunteers could access and distribute new syringes and safe kits to participants. The program also would follow established syringe storage and disposal procedures.

An authority operating a disease-control pilot program annually would provide the Department of State Health Services (DSHS) with information on:

- the effectiveness of the program;
- the program's impact on reducing the spread of communicable diseases, including HIV, hepatitis B and hepatitis C; and
- the program's effect on injection-drug use in the area served by the county or hospital district.

A county or hospital district could use public money or solicit or accept gifts, grants, or donations to fund the pilot program. The statutory

authorization for the disease-control programs would expire September 1, 2023.

Exceptions to prosecution. The bill would create exceptions to prosecution for offenses related to possession or delivery of drug paraphernalia in Health and Safety Code, sec. 481.125 for a person who:

- manufactured syringes to be used by a disease-control pilot program;
- dispensed or delivered a syringe for a medical purpose, including the exchange of hypodermic needles under a disease-control pilot program; or
- used, possessed, or delivered a syringe as a participant in, or a volunteer or employee of, a disease-control pilot program.

The bill would take effect September 1, 2013. The exceptions to prosecution for drug paraphernalia offenses established by this bill would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 3238 would provide seven large counties across the state the option of creating disease-control programs that would help stem the transmission of HIV, hepatitis C, and other diseases, while lowering health costs to the state and providing a possible avenue to connect drug abusers with effective treatment programs.

Reducing the spread of blood-borne diseases with one-for-one needle exchanges would benefit public health and safety in many of Texas' communities. Drug users can infect themselves with contaminated needles and spread diseases to family members, including their sexual partners and children. Law enforcement officers and health care workers also can be infected by contaminated needles hidden by drug abusers who fear prosecution.

Needle exchanges limit the instances in which people are exposed to dirty needles, which is key to reducing the transmission of HIV and other diseases. Nearly 70,000 people in Texas are known to have HIV, and it is estimated that about 17,000 more have the disease but are not aware of their status, according to a report by the DSHS HIV/STD program, which also found that about 7 percent of new HIV diagnoses are due to injection-drug use. The program in CSHB 3238 would be valuable in the fight against these devastating, communicable diseases in Texas, where the sharing of contaminated needles is the primary means of transmission of

hepatitis C.

Needle exchanges do not encourage the use of illegal drugs. In fact, they often extend the reach of treatment programs and provide brief but important counseling to drug abusers. This outreach is critical in addressing the difficult reality that a user grappling with addiction will not abstain from injecting illicit drugs simply because a sterile needle is not available. The programs authorized under the bill would offer compassion to drug abusers without sanctioning their illegal activities or soft-selling to the public the harmful effects of addiction. Nor would such programs tacitly condone or promote drug use among children as some critics contend.

No community authorized under the bill would be required to establish a disease-control pilot. The bill simply would allow the seven counties to establish harm-reduction programs to address the needs of community members. Because the programs would work with local governments, communities would be properly involved and informed about how and where the exchanges would operate.

CSHB 3238 also would serve an important responsibility to taxpayers by reducing health-care costs to the state. The health costs for users who contract illnesses, such as HIV and hepatitis, and cannot work shift to the Texas taxpayer. The combined Medicaid cost to Texas for HIV/AIDS was more than $183 million in fiscal 2009, according to a study by the Kaiser Family Foundation. Taxpayers pay the unreimbursed health costs for indigent care incurred by public hospitals.

Finally, the bill would provide program workers, volunteers, and participants much-needed exceptions to prosecution under the state's drug paraphernalia laws, which would be key to allowing the needle-exchange, disease-prevention, and outreach efforts to succeed this time. The pilot programs would be staffed by paid employees and volunteers from churches and nonprofits who wanted to be help improve their communities. People who choose work that improves public safety while lifting up their neighbors who are battling drug addiction should not have to worry about being pursued by law enforcement. These exceptions would not create new legal standards or burdens for prosecutors, and providing them would be vital to the success of the new pilot programs.

OPPONENTS

Needle-exchange programs are ineffective in stopping the spread of

SAY: disease, do not address the root issue of drug addiction, send a dangerous signal to adolescents that using illegal drugs is acceptable, and siphon public money away from more effective public health and drug rehabilitation programs.

Despite the good intentions behind them, programs such as those in CSHB 3238 are not supported by the federal government because they do not yield the kind of success that compensates for the harmful message they send in tolerating, or even condoning, drug use. The state should not in any way support or encourage illegal behavior, let alone contribute to the supply of equipment required for substance abuse, including needles, cotton swabs, and even tourniquets. Instead, the state should focus its efforts on supporting programs that help people abstain from drugs altogether.

Neighborhoods in which exchanges operate could experience an increase in the number of dirty, discarded needles on their streets. This could pose a problem, especially for children playing in public spaces. It would be unfair to impose this added risk upon some neighborhoods in which an exchange was located to host a program that is not proven to work. Additionally, the ready supply of needles in locations near exchanges could attract local drug dealers to those areas and increase rates of crime.

OTHER OPPONENTS SAY: The provisions in CSHB 3238 that would give exceptions to prosecution to workers and participants in needle exchange programs are flawed. Possessing a hypodermic syringe can represent an initial phase of breaking drug paraphernalia laws. There should be a better mechanism for distinguishing whether someone who had a needle was simply part of the pilot program or whether they should face criminal charges for abusing or distributing drugs.

The bill would create an unintentional but harmful consequence for the state's criminal courts system. It would force upon courts an additional mechanism that prosecutors in all drug paraphernalia cases would have to allege in their charging instruments and disprove beyond a reasonable doubt. This would abruptly and unfairly add an onerous new legal burden for court officers tasked with prosecuting people who commit drug offenses.

SUBJECT: Authorized charges and terms for certain consumer loans

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Villarreal, Flynn, Anderson, Burkett, Longoria, Phillips

1 nay — Laubenberg

WITNESSES: For — Deidre Gwin and Phil Hitz, Springleaf Financial Services; William Moore, Texas Consumer Finance Association; (*Registered, but did not testify*: David Bell, Carl Galant, and Robert Howden, Texas Consumer Finance Association; Gerald Fierro; Deborah Polan, Springleaf Financial Services; Steve Scurlock, Independent Bankers Association of Texas)

Against — None

On — Leslie Pettijohn, Office of Consumer Credit Commissioner

DIGEST: CSHB 2315 would prevent a consumer lender from compounding interest under the finance code's acceptable interest computation methods for non-real estate loans.

Under the bill, an administrative fee would not be considered interest. The finance commission could prescribe a reasonable maximum administrative fee for a non-real estate loan contract that could exceed the current maximum amount allowable for a given loan size.

For loans under subchapter F, which prescribes alternate charges for certain consumer loans, CSHB 2315 would allow the finance commission to prescribe a reasonable maximum acquisition fee on loans that could exceed the maximum amount allowable for a given cash advance size and would state that an acquisition charge under subchapter F would not be considered interest.

CSHB 2315 would allow subchapter F loans to be calculated using the true daily earnings method or schedule installment earnings method that did not exceed the equivalent rate or effective return of the installment account handling charge for the original scheduled term of the loan.

The bill would not allow the acquisition charge, installment account handling charges, default charges, deferment charges, or return check fees to be included in the principal balance of a loan contract. Interest could accrue on the principal balance at the rate provided in the loan contract until the final payment date or demand for payment in full.

CSHB 2315 would require a payment to be applied to a small consumer loan borrowers account in the following order, or in a method more favorable to the borrower:

- the straight-line allocation of the acquisition charge using the original scheduled loan term;
- default charges provided in subchapter E of Finance Code sec. 342;
- authorized return check fees;
- other charges authorized in subchapter F;
- accrued interest authorized under alternative interest charge computation methods; and
- principal.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2315 would allow the Office of the Consumer Credit Commissioner (OCCC) to update allowable fees, modernize interest calculation methods on consumer loans, and clarify lending standards for both lenders and consumers.

Finance Code, ch. 342 allows a regulated, licensed lender to charge an effective interest rate higher than 10 percent and sets out the rates for non-real estate loans in Subchapters E and F, including an annual administrative fee. CSHB 2315 would give the OCCC the authority to adjust the fee to a reasonable amount that would reflect the true cost to the lender while looking out for consumers. The bill would also make it clear that these fees were not considered interest on the loans. These changes would add flexibility and promote competition among lenders.

CSHB 2315 would modernize the lending standards for non-real estate loans by clarifying the interest calculation methods available to Subchapter F lenders. Most of these lenders use the pre-computed, monthly interest method, although the Finance Code allows them to use other methods — the true-daily earnings and scheduled installment earnings methods. The bill would clarify the use of these methods, which

would provide guidance and options to both lenders and consumers.

OPPONENTS SAY:

CSHB 2315 would give the government too much influence over banks' lending standards, which are better determined by the free market.