**HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES**
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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Friday, May 3, 2013
83rd Legislature, Number 65
The House convenes at 10 a.m.
Part One

Forty-three bills are on the daily calendar for second-reading consideration today. The bills on the General State Calendar analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Five postponed bills — HB 832 Giddings et al., HB 1308 by Darby, HB 3158 by Zerwas, et al., HB 1087 Giddings, et al., and HB 416 by Hilderbran — 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.

Bill Callegari
Chairman
83(R) – 65

# HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Friday, May 3, 2013
83rd Legislature, Number 65
Part One

SUBJECT: Enhanced financial report for local public entities

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 23 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, Giddings, Gonzales, Howard, Hughes, S. King, Longoria, Muñoz, Orr, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

4 absent — S. Davis, Dukes, Márquez, McClendon

WITNESSES: For — Alan Hugley, City of Red Oak; James Quintero, Texas Public Policy Foundation; Oscar Rodriguez, Texas Assn of Broadcasters; Peggy Venable, Americans for Prosperity; Duke Burge, Midlothian ISD; Scott Niven, Red Oak ISD; and 4 others (*Registered, but did not testify*: Kathy Barber, NFIB/Texas; Konni Burton, Tea Party Caucus Advisory Committee; Brent Connett, Texas Conservative Coalition; Dr Rosemary Edwards, Travis County Republican Party; John Horton, Young Conservatives of Texas; Dustin Matocha, Texans for Fiscal Responsibility; Naomi Narvaiz, San Marcos Area Republican Texans Group; Charley Wilkison, Combined Law Enforcement Associations of Texas, and 4 others

Against — Jim Allison, County Judges and Commissioners Association of Texas; Mark Burroughs, City of Denton; Clayton Chandler, City of Mansfield; Lisa Clark, Texas Association of Builders; Howard Cohen, Schwartz, Page & Harding L.L.P.; James Hernandez, Harris County and Harris County Toll Road Authority; Brad Lancaster, Fast Growth School Coalition and Lake Travis ISD; Donald Lee, Texas Conference of Urban Counties; Bill Longley, Texas Municipal League; David Maxwell, Assoc of Water Board Directors; Peter Phillis, City of Mansfield, Texas; Micki Rundell, City of Georgetown; Danny Scarth, City of Fort Worth; Terry Simpson, San Patricio County; Joy Streater, County District Clerks Assn.; Byron Underwood, Texas Assoc. of Counties; Ed Van Eenoo, City of Austin; James Wilcox, Texas Association of School Boards, Texas Association of School Administrators, and Texas School Alliance, and 1 other (*Registered, but did not testify*: David D Anderson, Arlington ISD Board of Trustees; Steve Bresnen, North Harris County Regional

Water Authority; Snapper Carr, Andrews County; Mindy Ellmer, Tarrant Regional Water District; Wayne Halbert, Texas Irrigation Council; Angela Hale, City of McKinney; Roger Hord, West Houston Association; Mark Israelson, City of Plano; Jerry James, City of Victoria; Kassandra Kell, City of Irving; Jennifer May, City of Sugar Land; Ken McCraw, Texas Association of Community Schools; Mark Mendez, Tarrant County Commissioners Court; Seth Mitchell, Bexar County Commissioners Court; Terrell Palmer, First Southwest Company; TJ Patterson, City of Fort Worth; Dean Robbins, Texas Water Conservation Association; Karen Rue, Fast Growth School Coalition; Susie Shields, San Antonio Mobility Coalition; Jim Short, Fort Bend County; Jim Short, Houston Real Estate Council; Michelle Smith, Fast Growth School Coalition; Bob Stout, Newland Communities Texas, The Woodlands Development Co.; Frank Sturzl, City of Abilene; Paul Sugg, Texas Association of Counties; Tom Tagliabue, City of Corpus Christi)

On — Susan Combs, Tom Currah and Chance Sampson, Comptroller of Public Accounts; Donnis Baggett, Texas Press Association; Susan Combs, Texas Comptroller of Public Accounts; Deece Eckstein, Travis County Commissioners Court; Shane Fitzgerald, Freedom of Information Foundation of Texas; Robert Kline, Bond Review Board; Stephanie Leibe, Office of the Attorney General; Maureen Milligan, Teaching Hospitals of Texas; Heather Rosas, Texas Bond Review Board (*Registered, but did not testify*: Lita Gonzalez and Beth Hallmark, Comptroller of Public Accounts; Charles Bailey, Texas Hospital Association; Keith Ingram, Texas Secretary of State, Elections Division; Gary Johnstone, Texas Higher Education Coordinating Board; David Lancaster, Texas Society of Architects; Rob Latsha, Bond Review Board)

DIGEST:

CSHB 14 would require public entities — including counties, municipalities, school and junior college districts, and other special districts — to post financial, voter, public hearing, and other information on a website.

**Website requirement**. A political subdivision would have to maintain a website to comply with the bill's requirements. For counties or municipalities with a population less than 2,000 that did not maintain a website as of January 1, 2013, notice could be posted on a website where the entity controlled the content of the posting, such as a social media site, provided the information easily could be found by an online search.

County assessor-collectors would have to maintain or contract to maintain a website. If the assessor-collector served a county with a population less than 2,000 and did not maintain a website, it could post the information on a site in which the assessor-collector controlled the content of the posting, including a social media site.

A special district would be required to maintain a website or, if it did not have a website, would have to post the information on a site in which the district controlled the content of the posting, including a social media site.

**Certificates of obligation.** A governing body could not authorize a certificate of obligation for payment of a contractual obligation if a bond proposition for the same purpose was submitted within the last three years and failed to be approved. A governing body could authorize a certificate otherwise prohibited in a case of public calamity, to protect public health, for unforeseen damages to property, or to comply with a state or federal law for which the entity had been officially notified of noncompliance.

A notice of a plan to issue a certificate of obligation would have to be posted continuously on the issuer's website for at least 45 days, as opposed to 30 days under current law, before the date tentatively set to hear an ordinance authorizing the issuance. The bill would expand the content of notice requirements for certificates of obligation.

**Public hearing.** A political subdivision would have to conduct a public hearing prior to holding an election to authorize the issuance of bonds. Between 15 and 30 days before a hearing, a local government would take action to ensure that the notice was provided by:

- publication in at least one newspaper of general circulation;
- included in a newsletter mailed or delivered to each registered voter; or
- mailed to each registered voter in the political subdivision.

In addition, the notice would have to be posted on the political subdivision's website. The bill would impose requirements for a public hearing and associated documentation.

**Voter information.** A voter information document would have to be prepared for each proposition under consideration. The document would

contain specific information about the political subdivision's debt status, the cost of the proposed debt, the entity's property tax debt rate, the property tax debt levy per residence, and other information necessary to explain the figures in the document. A good faith estimate in a voter information document would not be a breach of contract with voters if the estimate was later found to be incorrect.

A political subdivision would have to post a sample of the ballot printed for a bond election on its website. The secretary of state would determine the form of a voter information document.

**Financial report.** A political subdivision would prepare an annual financial report that included specific financial and debt information. Alternatively, a subdivision could provide the required information to the comptroller, who would post it on the comptroller's website. The political subdivision would post a link to the location of the report on the comptroller's website.

An institution of higher education would have to ensure that its most recent financial report was posted on its website no later than November 30th of each year. The report would have to show the aggregate outstanding debt of a university system and the outstanding debt for each education institution.

**Comprehensive review.** Special districts would be required to conduct a comprehensive review. Any special district issuing debt after September 1, 2013, would have to conduct a comprehensive review within three years of issuing debt. Self-evaluation reports would have to include specific elements regarding the district's authority, assessments it imposes, revenue collected, and outstanding debt. The self-evaluation report would be posted on the district's website. The special district would have to conduct a public hearing to hear from persons interested in the self-evaluation report.

**State responsibilities.** The comptroller would publish the sales and use tax rate for every political subdivision that imposed such a tax, and the tax rate information reported by counties.

The Bond Review Board would enter into one or more contracts to procure services to collect and maintain information related to public indebtedness. It would require the Bond Review Board to publish a report

on local securities each year and it would revise the required content of the Bond Review Board's biennial debt statistics report.

The bill would require the attorney general to collect information on all local securities.

**School facilities data.** To provide information to the public on facilities and taxpayer value, a school district or open-enrollment charter school would have to:

- report data elements specified by rule to Texas Education Agency through an approved data management system; and
- provide a direct link on the district or schools website to the Texas Student Data System through which the facilities information relevant to the specific district or school could be readily accessed.

The education commissioner would adopt rules necessary to implement the reporting system and ensure that the system contained the appropriate data elements. Open-enrollment charter schools would have to ensure that an annual financial report was posted on their website online.

The rules would be based on the recommendations of the taxpayer and school facilities usage advisory committee, which the bill would establish. The committee would consist of nine members, including the comptroller and education commissioner, who would jointly appoint the other members. The committee would submit a report not later than December 31, 2014, with recommendations on the data that should be considered in evaluating a school's usage and taxpayer value with regard to school facility construction and renovation.

The Texas Higher Education Coordinating Board would require each junior college district to report building construction costs and related information for determining the average cost per square foot for the region of the state and the average cost per full-time student for each junior college district. The report would have to be posted on each entity's website.

**Effective date.** The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 14, the Texas Transparency Act, would take great strides toward improving fiscal transparency among public bodies in the state. While the

state has a low share of tax-supported debt, Texas has the second-highest local debt per capita ratio among the 10 most populous states. According to the Bond Review Board, about 83 percent of the state's total debt is local debt. Last decade, local entities more than doubled their debt load to $7,500 per capita.

While much of this debt is well justified and necessary, it is incumbent on the Legislature to ensure that Texans are able to make informed choices about how much debt to assume and for what purposes. CSHB 14 is primarily a response to citizen concerns about debt in the state and the availability of accessible information on that debt.

**Reporting.** CSHB 14 would require all local governments to post online each year revenue and expenditure information, including key information on the bodies' long-term obligations. This would allow Texans to easily find and review financial information for their school district, county, municipality, etc. Currently, some of this information is available and some is not; all of it is scattered in various places that make it very difficult for the lay person to locate, assemble, and make sense of.

In recognition that some smaller entities may not have existing webpages — though many do — the bill would allow municipalities with a population of less than 2,000 and all special purpose districts without a webpage to make use of free social media resources, such as Facebook, Scribd, and Dropbox to post reports. These resources are free, easy to use, and available to anyone with an Internet connection.

The potential cost of this to public entities has been a subject of significant misinformation. Estimates that place the cost of a website at up to $65,000 are based on hiring a dedicated web employee or contracting out to a specialized web firm. That estimate simply is not grounded in the requirements in the bill, which allow small political entities to access free and readily available online resources. Given various packages available, the actual annual cost should be as little as $100 to $300 for web hosting. There is no requirement in the bill that the website be adorned with all the latest and greatest bells and whistles; only that it be searchable, available to the public, and capable of storing modestly sized documents.

There are many, very affordable options for web hosting that meet these criteria. In addition, the comptroller has already made a web template to assist entities in posting this information available online.

**Voter information.** CSHB 14 would require local entities to make available key information on the entity's debt status and the cost of the proposed debt prior to an election for a new bond issuance. This would ensure that local entities provide the information necessary for voters to make informed decisions.

Voters are routinely asked to approve large bond packages that commit public entities, and hence taxpayers and ratepayers, to paying debt service for decades. Yet the voters who are so often asked to pledge their taxes to the payment of debt service are seldom provided the information necessary to make informed decisions about their money. Relatively small bond issuances, completed with frequency, can amount to an unsupportable debt burden. This is hard for voters to keep in check, since, all too often, they have no real way of knowing an entity's current debt status and the financial implications of the proposal on the table. The requirements of CSHB 14 would provide this necessary context.

Arguments that the information could be misleading underestimate voters' ability to look at comparative information and draw their own conclusions. If there is a reason that a particular local entity has a higher debt load than similar entities, then that reason naturally becomes part of the discussion on whether additional bond revenue is necessary. Voters are perfectly capable of taking into account unique circumstances when making judgments. The data required would provide a starting point for a more salient discussion.

**Certificates of obligation.** CSHB 14 would limit the issuance of debt commonly completed through certificates of obligation (COs) without voter approval. COs now account for 16.6 percent of all debt issued by entities with this authority. CSHB 14 would put an end to some of the worst practices by prohibiting local entities from issuing a CO to pay for capital projects that voters recently rejected. The bill also would improve taxpayers' ability to keep COs debt in check by extending voters' ability to organize and collect petitions necessary to force an election on a CO.

OPPONENTS SAY:

CSHB 14 would impose sweeping requirements upon local entities without providing them with any additional resources to comply with the expanded requirements. It also could interfere significantly with local entities' ability to finance capital improvements that are necessary to meet demands from the rapid growth of population and commerce in the state.

**Reporting.** CSHB 14 would place an undue burden on thousands of local entities to comply with extensive reporting requirements and create and maintain websites within their existing resources. The cost of creating and maintaining a website can be expansive. The Texas Association of Counties estimated it cost $5,000 to $65,000 to establish a website, in addition to annual maintenance costs between $500 and $10,000.

This cost is due to language in the bill that applies to all local entities except special districts and municipalities with a population less than 5,000 that did not have a website already and requires those entities to "maintain" their own website. This is different than having a site wherein an entity could "control the content." Maintaining a website is a technical enterprise that requires technical expertise that local entities would have to hire or contract. In addition, local entities that have a website become subject to other legal requirements.

The bill also would impose onerous annual financial reporting that must be done on a yearly basis. Many local entities do not have the staff resources to take on additional reporting. In addition, many cities do not have any debt to speak of, but would still have to do the report.

**Voter information.** In addition to the administrative burden, it is not clear that the information requirements would increase the public's ability to make informed judgment. Bonds and finances are a very complicated subject and each capital project is subject to a unique set of factors. A simple apples-to-apples comparison of construction costs, for example, is dangerous, as it does not account for those unique factors.

Providing voter information prior to a bond election could put local entities in a difficult position, as they are not allowed to take a position.

**Certificates of obligation.** Many local entities have been using COs recently because the interest rate on COs is actually lower than corresponding rates for revenue bonds, as the CO is pledged with the entity's full faith and credit. Increasing the ease with which residents may petition to force an election for a CO could defeat the purpose of a very important mechanism for financing urgent projects.

A portion of qualified voters can petition to force an election to a CO. Expanding the notice period from 30 to 45 days would increase the

likelihood of a petition challenge. If an election is forced, then the entity would have to wait to hold a special election on approved election days in May or November. This could create a significant delay in attaining funds for an urgent project.

NOTES:

The Legislative Budget Board estimates the bill would have a negative impact to general revenue funds of $915,314 for fiscal 2014-15. The cost would stem from a Bond Review Board increase of four full-time-equivalent employees and other expenses necessary to meet requirements in the bill.

As part of the Local Government Impact section of the LBB fiscal note, the Texas Association of Counties estimates it costs $5,000 and $65,000 to establish a website with annual maintenance costs between $500 and $10,000.

The Association of Water Board Directors estimated the cost to satisfy the requirement for special districts to hold public hearings would range from $17,250 to $29,250.

SUBJECT: RRC hearings to make a common carrier determination

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

WITNESSES: For — Rita Beving, Public Citizen; Phil Gamble, Gas Processors Association; James Mann, Texas Pipeline Association; (*Registered, but did not testify*: Marty Allday, Enbridge Energy; George Allen, Texas Apartment Association; Anne Billingsley, ONEOK, Inc.; Jay Brown, Valero Energy Corporation; David Cagnolatti, Phillps66; Thure Cannon, Texas Pipeline Association; Brent Connett, Texas Conservative Coalition; Tricia Davis, Texas Royalty Council; Liza Firmin, Access Midstream Partners; Kinnan Golemon, Shell Oil Company; Hugo Gutierrez, Marathon Oil; Clint Hackney, OneOK, Inc.; Lisa Kaufman, Texas Civil Justice League; Kelly McBeth; Crosstex Energy; Bill Oswald, Koch Companies; Steve Perry, Chevron USA; Cory Pomeroy, Texas Oil and Gas Association; Cyrus Reed, Lone Star Chapter - Sierra Club; Grant Ruckel, Energy Transfer; Tyler Rudd, West Texas Gas; Lindsay Sander, Markwest Energy; Ben Sebree, Enterprise Products, LLC; Justin Stegall, Enbridge Energy; Sara Tays, Exxon Mobil; Julie Williams, Chevron USA; Shayne Woodard)

Against — Bill Peacock, Texas Public Policy Foundation

On — Norman Garza, Jr., Texas Farm Bureau; Colin Lineberry, Railroad Commission; Milton Rister, Railroad Commission; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; (*Registered, but did not testify*: Mary (“Polly”) Ross McDonald, Railroad Commission; Bill Stevens, Texas Alliance of Energy Producers)

BACKGROUND: Natural Resources Code, sec. 111.002 defines a common carrier, in part, as someone who owns, operates, or manages a pipeline in the state for the transportation of crude petroleum to or for the public for hire.

DIGEST: CSHB 2748 would make a permit issued by the Railroad Commission of Texas (RRC) the conclusive determination of common carrier status for judicial proceedings. Permits without the common carrier status would

have to state that the RRC did not make the determination when issuing the permit.

Pipeline operators seeking a determination of common carrier status would have to submit an application to the RRC including the necessary information to determine if the person qualified. The RRC could charge an application fee of up to $2,500 and would have to notify the applicant that the application had been received and include notice of a proposed hearing date, which would be held between 35 and 56 days after the commission sent the notice.

Once the applicant received the notice, the applicant would publish the application notice in a newspaper in each of the counties through which the pipeline might run for two consecutive weeks, notify the clerk of each potentially affected county, post text of the application online, and file proof of meeting these requirements with the RRC.

The application notice would have to include:

- the proposed time, date, location, and contact for the application hearing;
- the point of origin and destination of the pipeline;
- a list of each county and municipality through which the pipeline could run;
- the Internet address where the application was posted;
- the procedure to protest the application; and
- a statement that the hearing's purpose was to determine whether the applicant was a common carrier.

A protest could be filed with the commission within 21 days of the last required newspaper publication day by:

- a person who owned land in a county through which part of the pipeline could be run;
- a county or municipality through which any part of the pipeline could run; or
- a commission staff member.

The commission would have to designate a hearings examiner to perform administrative reviews and conduct hearings on applications. The examiner could conduct a review without a hearing if the RRC did not

receive a protest within the designated time period, commission staff found that there were no disputed issues of fact or law in the application, and the examiner determined that a hearing was unnecessary.

If a hearing were determined necessary, the examiner would have to hold a hearing as specified in the notice 21 days after the final day of publication and notify each person who filed a protest. The purpose of the hearing would be to determine whether the applicant qualified for common carrier status, not to determine the pipeline route.

The RRC could approve an application and issue a common carrier permit to the applicant if it determined after the hearing or administrative review that the applicant qualified.

For an application reviewed without a hearing, the examiner would have to issue a recommendation no later than 40 days after the final date of notice publication, and the commission would have to approve or deny the application.

For an application for which there was a hearing, the examiner would have to issue a decision proposal with findings of fact and conclusions of law no later than 40 days after the hearing ended, and the commission would have approve or deny the application.

The commission order would have to include a statement of facts found in the hearing and legal conclusions that supported the decision. The commission could adopt or modify the findings.

The commission could extend deadlines for good cause and adopt the rules necessary to implement the common carrier determination process. A person could appeal a commission order under the judicial review process.

CSHB 2748 would take effect September 1, 2013, and would apply to a permit application filed on or after that date.

SUPPORTERS SAY:

CSHB 2748 would improve the determination of pipelines' common carrier status by increasing transparency, providing regulatory consistency and efficiency, protecting landowners, and contributing to the development of the state's natural resources as Texas' network of oil and gas pipelines expands.

The bill would give pipeline operators seeking common carrier status a simpler and more transparent way to get a timely determination. Currently, a pipeline operator seeking common carrier status must go through several hearings in multiple courts. The process set out in CSHB 2748 would give the decision-making authority to the RRC and require a timely response, which ultimately would help operators invest confidently in vital energy infrastructure.

CSHB 2748 would require public notifications that would give interested parties sufficient time to register any protest early in the application process before a determination was made. It also would allow landowners to oppose a pipeline's bid to receive common carrier status without hiring a lawyer, before a newly permitted common carrier could assert eminent domain authority. The RRC has extensive experience supervising similar hearings and would be the proper agency to oversee this critical determination that involves pipeline operators, landowners, and county and municipal governments.

Concerns that the bill would give the RRC's determination too much authority and should have stricter requirements to receive common carrier status should recognize that the RRC's determination would not preempt judicial review that allows an affected party to appeal. In addition, the Natural Resources Code already has specific requirements for common carrier status, which the RRC would be required to factor into its conclusions.

As Texas' oil and gas industry grows, the state must expand its pipelines to keep Texas the number-one energy producing state in the country, and CSHB 2748 would improve the determination process for all parties that would be affected by a pipeline's common carrier status.

OPPONENTS SAY:

CSHB 2748 would place too much authority with the RRC's conclusive determination, making it more difficult for landowners to appeal the process once common carrier status was affirmed.

The bill should include the clear, measurable standard that a pipeline would have to carry a third-party product to be eligible to receive common carrier status.

SUBJECT: Requiring Internet video access for boards of higher education systems

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Branch, Patrick, Clardy, Darby, Howard, Murphy, Raney

0 nays

2 absent — Alonzo, Martinez

WITNESSES: For — (*Registered, but did not testify:* Donnis Baggett, Texas Press Association; Ashley Chadwick, Freedom of Information Foundation of Texas; Nelson Salinas, Texas Association of Business; Michael Schneider, Texas Association of Broadcasters; Justin Yancy, Texas Business Leadership Council)

Against — None

On — Steven Collins and Kristy Orr, University of Texas System; Kent Hance, Texas Tech University System; (Registered, but did not testify: James Crowson, Office of Attorney General)

BACKGROUND: Government Code, sec. 551.128 authorizes a governmental body to broadcast an open meeting over the Internet. A governmental body that broadcasts a meeting over the Internet is required to establish an Internet site from which it provides access and must provide notice of the meeting.

DIGEST: CSHB 31 would require the governing board of a general academic teaching institution or university system to broadcast on the Internet all of its open meetings. The board would have to comply with existing notification requirements under Government Code, ch. 551 and would make available on its website a written agenda and related documents. The bill also would require the board to record the broadcast and make it available in an archive on its website. The bill would provide for some exemptions that would include an act of God, force majeure, and causes not reasonably within the board's control.

The bill would take effect September 1, 2013, and would apply only to board meetings set by notice on or after January 1, 2014.

SUPPORTERS SAY:

CSHB 31 would increase the transparency and accountability of the governing boards that guide Texas' public universities. Connecting citizens to the decision-making processes that determine how the state's higher education institutions function serves a valuable public interest. Online viewers could watch up-to-the-minute proceedings at boards of regents meetings, where policy decisions are made that affect the lives of students, parents, and educators. Higher education funding accounts for about 12 percent of all state expenditures, and tracking decisions that affect how taxpayer money is used also is important.

Implementing the technology necessary to broadcast meetings over the Internet would not present a significant fiscal implication, according to the Legislative Budget Board. In fact, The University of Texas Board of Regents and the Texas A&M University System Board of Regents already live video stream their meetings. The bill would offer reasonable exemptions for boards that failed to broadcast in certain circumstances.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Banning the sale of shark fins and creating penalties

COMMITTEE: Culture, Recreation and Tourism — committee substitute recommended

VOTE: 6 ayes — Guillen, Dukes, Aycock, Kuempel, Larson, Nevárez

0 nays

1 absent — Smith

WITNESSES: For — Anna Clark, Shark Stewards; Katie Jarl, Humane Society of the US; David Mcguire; Shark Stewards; Bruce Melton, Eloy Javier Mondragon; Marisol Ramirez; Anne Rogers; (*Registered, but did not testify*: Joy Benson, Brad Boney; Elizabeth Carey, ASPCA; Heather Carpenter, Humane Society of the United States; Kelley Dwyer; Ashira Edelheit Rice; Nathaniel Edelheit-Rice; Melissa Gaskill; Mark Hall; Kelly Hanes, Austin Humane Society; Jessica Johnson, ASPCA; Luke Metzger, Environment Texas; Gretchen Meyer; Joey Park, Coastal Conservation Association Texas; Billy Phenix, Coastal Conservation Association; Jonathan Rice; Naomi Rice; Yaira Robinson, Texas Interfaith Center for Public Policy; Melissa Smith, ASPCA; Robert "Skip" Trimble, Texas Humane Legislation Network; Scheleen Walker, Sierra Club Lone Star Chapter)

Against — Jeanette Moll, Texas Public Policy Foundation (*Registered, but did not testify:* Monica Kache)

On — Brandi Reeder, Texas Parks and Wildlife Department

BACKGROUND: Parks and Wildlife Code, sec. 66.216 lists the conditions under which a person may or may not possess certain finfish with the head or tail of the fish removed.

DIGEST: **Ban on sale and possession of shark fins with intent to sell**. The bill would add Parks and Wildlife Code, sec. 66.2161 (Sale or Purchase of Shark Fins) to prohibit a person from buying, selling, offering to buy or sale, possessing for the purpose of sale, transporting, or shipping for the purpose of sale, bartering, or exchanging a shark fin. With the exception of shark fins caught outside the state and transported through the state on a

common carrier to a point outside the state, the prohibition would apply, regardless of where a shark was taken or caught, to the possession or transportation of a shark fin with the intent to sell the fin and to the sale or purchase of a shark fin.

**Possession of Headed or Tailed Fish.** CSHB 852 would modify the existing prohibition on the possession of headless or tailless saltwater finfish. The bill would allow the head of a shark to be removed, but not the tail.

**Penalties.** Under CSHB 852, a person who violated Parks and Wildlife, sec. 66.2161 or a regulation adopted under that section would commit a class B Parks and Wildlife Code misdemeanor (up to 180 days in jail and/or a fine from $200 to $2,000).

A person who had previously violated Parks and Wildlife, sec. 66.2161 or a regulation adopted under that section and had been convicted within five years before the trial date of the most recent violation would be punished for a class A Parks and Wildlife Code misdemeanor (up to one year in jail and/or $500 to $4,000).

**Disposal**. HB 852 would require a game warden or other peace officer to seize and hold the shark fin as evidence. TPWD would be required to destroy the shark fin on the final ruling of a court, regardless of provisions Parks and Wildlife Code, sec. 12.109 that require seafood to be sold at auction.

**Scientific Research**. CSHB 852 would allow TPWD to issue permits for the possession, transport, sale, or purchase of shark fins for scientific research.

**Definitions**. The bill would define shark by species of the subclass Elasmobranchii. Shark fin would be the fresh and uncooked, or cooked, frozen, dried, or otherwise processed, fin or tail of a shark.

CSHB 852 would take effect July 1, 2014, and would apply only to an offense committed on or after that date.

SUPPORTERS SAY:

Texas should join the national and international effort to end to shark finning and the sale and possession of shark fins with intent to sell. Shark finning is the practice of catching a shark, cutting off its fin and tail, and

throwing the live shark back into the water. The shark dies of shock, blood loss, predation, or the inability to the move. Worldwide, an estimated 73 million sharks are killed per year for their fins. Many of the shark fins are sold to China for use in shark fin soup. CSHB 852 would end shark finning in Texas waters, while protecting the rights of anglers to catch sharks for recreational purposes and commercial fishermen to catch sharks for the sale of shark meat.

The Gulf of Mexico's shark fishery, due to shark finning and low reproductive rates, is not a sustainable fishery. A reduction in the size of the shark fishery in the Gulf of Mexico could have wider ecological effects, including disease outbreaks in prey species.

While current federal law banning shark finning controls shark handling practices, it does not restrict the number of sharks killed or the possession of shark fins. CSHB 852 would fill a gap by banning the sale of shark fins or the possession of shark fins with the intent to sell. The ban would include the sale of shark-fin products, such as shark-fin soup. CSHB 852 would end the trade of shark fins within the state and stop the export of shark fins to other countries.

The committee substitute would address the concern of recreational fishermen who were concerned that they would be banned from catching sharks. The substitute was modified to ensure that sharks could still be caught by anglers and the heads of sharks removed, a practice that is necessary to preserve shark meat.

Texas is one of the nation’s leaders in coastal conservation and should join with other coastal states, such as California, Hawaii, and Washington, to ban the sale and trade of shark fins and end the cruel practice of shark finning.

OPPONENTS SAY:

CSHB 852 is addressing a problem that does not occur in Texas waters, and shark finning is outlawed by federal law. The bill would have the effect of criminalizing the use of the whole carcasses of sharks by disallowing the use of tail and fins. There is no biological basis for the bill, and it would not help rebuild the population of any species. The bill would not be effective in ending the shark-fin trade; it simply would drive the trade underground.

There are already limits on the number of sharks that can be caught per

boat per day. The bill was developed without the input of commercial fishermen and charter operators and outside the normal mechanism of establishing fishery guidelines through fisheries management councils.

OTHER OPPONENTS SAY:

CSHB 852 is just one more example of the over criminalization in Texas law. Individuals engaged in the practice of possessing or selling shark fines may deserve a civil fine, but not jail time.

SUBJECT: Enhancing the penalty for failure to stop after an accident involving death

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Moody, Schaefer

0 nays

2 absent — Leach, Toth

WITNESSES: For — Jackson Busenbark; Bart Griffin; Bill Lewis, Mothers Against Drunk Driving; Troy Officer, Austin Police Department; Carol Paar Thompson; Sharon White; (*Registered, but did not testify:* Jessica Anderson, Houston Police Department; Donald Baker, Austin Police Department; John Chancellor, Texas Police Chiefs Association; David Courreges; Lon Craft, Texas Municipal Police Association; Daniel Earnest, San Antonio Police Officers Association; Bill Elkin, Houston Police Retired Officers Association; Brian Eppes, Tarrant County District Attorney's Office; James Jones, San Antonio Police Department; Steven Tays, Bexar County Criminal District Attorney's Office; Gary Tittle, Dallas Police Department; Justin Wood, Harris County District Attorney's Office)

Against — None

On — Ron Joy, Texas Department of Public Safety

BACKGROUND: Transportation Code, sec. 550.021 directs drivers involved in an accident resulting in injury or death to immediately stop or return to the scene of the accident and remain at the scene until they have discharged their duties to:

- provide identifying and insurer information to other parties in the accident; and
- provide reasonable assistance, including arranging for transportation to medical treatment if necessary or upon request.

If the accident results in serious bodily injury or death, then failure to remain at the scene, provide information, or render aid is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

Under Penal Code, sec. 49.08, a person commits the offense of intoxication manslaughter if that person, as a result of intoxication, kills someone by accident or mistake while:

- operating a motor vehicle in a public place;
- operating an aircraft or watercraft; or
- operating or assembling an amusement ride.

This offense is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

DIGEST:

HB 72 would increase the penalty for failure to stop and render aid in an accident resulting in the death of a person to a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

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

SUPPORTERS SAY:

HB 72 would reduce the incentive for drunk drivers to flee the scene of an accident. Currently, drunk driving offenses involving death carry heavier penalties than the law against fleeing the scene of an accident. Making the punishment for failing to stop and render aid in the event of a death equivalent to the penalty for intoxication manslaughter would remove that incentive. Matching the penalties for these two offenses would remove the current situation in which people are rewarded for fleeing the scene of a crime. This bill would encourage people to do the right thing by complying with the law.

The bill would assist in successful prosecution of crimes, such as a recent Austin case in which a woman who hit and killed a pedestrian was convicted only of criminally negligent homicide and sentenced to 180 days in jail. People who flee from these kinds of accidents often do so because they seek to hide their blood alcohol content. Encouraging people to stay at the scene of the crime would help law enforcement gather evidence if the perpetrator was intoxicated.

The bill could save lives and mitigate the harm caused by accidents. By incentivizing people to stop and render aid, the bill would shorten the time in which medical personnel were called to the scene of an accident. In some cases, those hit in a hit-and-run weren't found for several hours. If the perpetrators had stopped and rendered reasonable aid, including calling

medical personnel, lives could have been saved and the severity of injuries could have been mitigated.

Concerns that HB 72 would increase the burden on Texas' criminal justice system are unfounded. According to the Legislative Budget Board, HB 72 would have no significant fiscal implication to the Texas Department of Criminal Justice nor any aspect of the state budget. The bill would not increase the minimum sentence for this offense, only the upper limit, so it would not send more people to prison, merely lengthen sentences of those who would already be convicted.

OPPONENTS SAY:

Penalty enhancement would not deter a person from fleeing an accident scene, particularly someone whose judgment was clouded by alcohol. The choice to flee an accident is usually spurred by panic rather than a cost-benefit analysis of the different penalties that might result. People typically flee accident scenes because they do not have insurance, are worried about other legal entanglements, or because they are intoxicated and fear prosecution as a drunk driver. Further, even offenders who are capable of weighing the consequences might flee in hopes of avoiding detection and thus avoiding costly insurance payouts and potential civil liability.

Increasing the penalty range would not guarantee a favorable verdict in these cases. Juries must decide cases based on the facts before them, and merely providing an opportunity to increase the sentence for some crimes would not change the way cases are tried or affect conclusions the juries may come to in these cases.

Texans cannot afford to enhance the penalty for a crime that already is severely punished. HB 72 would burden the criminal justice system by sending more people who flee accident scenes to prison.

SUBJECT: Providing a $1 million total revenue exemption for the franchise tax

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Ritter, Strama

0 nays

1 absent — Martinez Fischer

WITNESSES: For —Talmadge Heflin, Texas Public Policy Foundation; Ralph Marcantonio and Will Newton, NFIB/Texas; (*Registered, but did not testify:* George Allen, Texas Apartment Association; Brent Connett, Texas Conservative Coalition; Les Findeisen, Texas Motor Transportation Association; Matt Geske, Metro 8 Chambers of Commerce; Daniel Gonzalez, Texas Association of Realtors; Angela Hale, McKinney Chamber of Commerce; Bill Hammond, Texas Association of Business; Ron Hinkle, Texas Travel Industry Association and Texas Association of Campground Owners; Lance Lively, Texas Package Stores Association; Scott Norman, Texas Association of Builders; Richard Perez, Metro 8 Chambers of Commerce; Oscar Rodriguez, Texas Association of Broadcasters; Dan Shelley, Plumbing Heating Cooling Contractors; Chris Shields, Greater San Antonio Chamber of Commerce)

Against —Eileen Garcia, Texas Forward; (*Registered, but did not testify:* Dick Lavine, Center for Public Policy Priorities; Ted Melina Raab, Texas AFT)

On — (*Registered, but did not testify:* Teresa Bostick and Ed Warren, Comptroller of Public Accounts)

BACKGROUND: Businesses with revenue less than $1 million currently are exempt from the franchise tax. This exemption will be lowered on January 1, 2014 to cover only those with less than $600,000 in revenue.

DIGEST: HB 213 would repeal a provision that otherwise would sunset the $1 million small business franchise tax exemption on December 31, 2013. The bill would repeal provisions in session law governing the current

exemption, which is set at $600,000.

It also would repeal statutory language that establishes tax discounts for various levels of total revenue below $1 million. Current law grants the following discounts to entities with the corresponding total revenue:

- 80 percent for a total revenue between $300,000 and $400,000;
- 60 percent for a total revenue between $400,000 and $500,000;
- 40 percent for a total revenue between $500,000 and $700,000; and
- 20 percent for total revenue between $700,000 and $900,000.

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:

HB 213 indefinitely would extend the $1 million small business franchise tax exemption to small businesses that would be significantly impacted by a tax hike. The 81st Legislature in 2009 first temporarily adopted the $1 million exemption limit, which it raised from an original exemption of $300,000, and the 82nd Legislature in 2011 extended it through the fiscal 2012-13 biennium. Now that the state is in a fiscally stable position, the time is nigh to finally end the ad-hoc extensions of the small business tax exemption and set the $1 million limit in statute.

A failure to extend the $1 million exemption would be dangerous and counterproductive. Small business growth has been and continues to be a vital component of economic recovery, primarily through the generation of jobs. Small businesses also contribute directly to state coffers by paying property and sales taxes. Failing to extend the exemption would deal a major blow to small businesses that are still emerging from the recession economy. Subjecting small businesses to a higher burden would be counterproductive to goals of low unemployment, diverse economic growth, and diffused opportunity.

OPPONENTS SAY:

HB 213 would have significant, indirect impact on general revenue funds by reducing franchise tax funds flowing to the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. It would decrease taxes collected for public schools by about $164 million for fiscal 2014-15 and beyond, according to the Legislative Budget Board. Because revenue in the Property Tax Relief Fund is dedicated to public education, any reduction of revenue in the fund

must be offset with general revenue funds.

The Legislature should not contemplate measures that reduce funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce revenue coming in to the state that is not absolutely necessary should be tabled.

Continuing the $1 million exemption would be problematic because it would create a sheer tax cliff at that amount: make $999,999 and pay no taxes; make $1,000,001 and pay the full percentage owed. A staggered approach with discounts for various ranges of revenue, as exists on paper in current law, would be preferable over a dollar-value cliff.

OTHER OPPONENTS SAY:

HB 213 would continue the state's piecemeal approach to the seemingly endless issues that plague the franchise tax. Under the current tax, many businesses are taxed on expenses that should be exempt, others pay unequal rates for similar activities, and still others have to pay taxes for years in which they actually report a net loss of income. The Legislature should embrace comprehensive reform or elimination of the deeply flawed franchise tax and move toward enduring solutions to its various problems.

NOTES:

The Legislative Budget Board estimates HB 213 would result in a reduction of about $164 million to the Property Tax Relief Fund. Any loss to this fund must be made up with an equal amount of general revenue to fund the Foundation School Program.

SUBJECT: Allowing civil suits for racketeering related to human trafficking

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Lewis, Farrar, Farney, Hernandez Luna, K. King, Raymond, S. Thompson

0 nays

2 absent — Gooden, Hunter

WITNESSES: For — Dennis Mark, Redeemed Ministries; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference of Bishops; Lon Craft, Texas Municipal Police Association; Chris Kaiser, Texas Association Against Sexual Assault; Jason Sabo, Children at Risk; Barbara Waldon, Refuge of Light; Patricia Macy)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify:* Geoff Barr, Office of the Texas Attorney General)

BACKGROUND: Penal Code ch. 20A makes the trafficking of persons a crime with penalties for specific offenses being first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) or second-degree felonies (two to 20 years in prison and an optional fine of up to $10,000).

DIGEST: HB 3241 would authorize the attorney general to bring civil lawsuits against persons or enterprises for racketeering related to human trafficking and would allow the attorney general to seek civil penalties, costs, attorney's fees, and injunctive relief in these cases. Enterprises would be defined as legal entities, groups of associated individuals, or a combination of entities and individuals.

Persons or enterprises would commit racketeering if, for financial gain, they committed a human trafficking offense under Penal Code ch. 20A and the offense or any element of it occurred in more than one Texas

county or was facilitated by U.S. mail, e-mail, telephone, facsimile, or wireless communication from one Texas county to another. The state would bear the burden of proof by a preponderance of the evidence for proceedings under the bill.

Courts would be able to issue appropriate orders to prevent, restrain, and remedy racketeering. After a final determination of liability, courts could issue appropriate orders. These could include payments to the state equal to the gain acquired through racketeering or the amount that the person was liable for under the bill and payments to the state for civil penalties up to $250,000 for each separate act of racketeering. The bill would outline criteria that courts would have to consider in determining the amount of damages that could be ordered. HB 3241 would establish the criteria under which persons, enterprises, and financial institutions could be held liable based on the conduct of another.

The bill would establish special procedures for expediting the placement of placing racketeering cases on the court dockets and would require proceedings to be filed within seven years of a racketeering offense.

The attorney general would have to notify the local prosecutor within a reasonable amount of time before initiating a suit or on initiating an investigation on racketeering. Local prosecutors would be authorized to notify the attorney general of related, pending criminal investigations or prosecutions. The attorney general would be required to coordinate and cooperate with prosecutors to ensure that a suit under HB 3241 would not interfere with a criminal investigation or prosecution.

Prosecutors would be able to request that the attorney general abate a racketeering suit if they determined that the suit would interfere with a criminal investigation or prosecution. If requested, the attorney general would have to abate the suit. The attorney general could ask a district court for permission to proceed with a suit and would have to notify prosecutors of the request. Courts could hold hearings on the request, and the attorney general would have to prove by a preponderance of the evidence that abatement would unduly burden the suit.

HB 3241 would establish the priority for distribution of awards for racketeering suits. After costs, including attorney's fees and court costs, 80 percent of an award would go to the state and 20 percent would be paid pro rata to law enforcement agencies that assisted in the suit. The first $10

million, after costs, paid to the state each year would have to go to the crime victims' compensation fund.

Remedies in the bill could not be assessed against proceeds, contraband, or other property that law enforcement authorities had previously asserted jurisdiction over under the Penal Code, ch. 59 provisions dealing with the forfeiture of contraband.

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. It would apply only to civil suits based on offenses committed on or after that date.

SUPPORTERS SAY:

HB 3241 would give the state another tool to continue its efforts to combat the horrific crime of human trafficking. Texas has been identified as a hub for international human trafficking, and in response the state has enacted numerous laws to combat these crimes, including laws to punish traffickers, protect victims, and establish the state's Human Trafficking Prevention Task Force.

HB 3241 would continue these efforts by allowing civil lawsuits against those who commit human trafficking. Human trafficking can be a complex, organized enterprise, and establishing a civil cause of action would allow the state to go after the assets of those who exploit children, women, and men. These civil suits would work both as a punishment and a deterrent.

A civil cause of action crafted specifically to deal with human trafficking would allow the state to get at these enterprises from all angles and with one action, instead of the more singular approach allowed under various current laws. For example, while current law governing nuisance abatement suits might allow civil action against one particular property and contraband forfeiture laws might allow authorities to go after specific property used in trafficking, HB 3241 would allow the attorney general to attack traffickers' income, property, and other assets.

Allowing civil suits in cases in which perhaps no criminal conviction had yet occurred would broaden the reach of the state to combat trafficking. These cases would have to be decided by a court and proved by the state by a preponderance of the evidence, ensuring fair treatment for plaintiffs.

HB 3241 would allow suits only when trafficking occurred across county lines and only by the attorney general. This appropriately would place the attorney general in a trans-jurisdictional role with these civil suits while local authorities continued to handle crimes that occurred in one county. Allowing prosecutors to file civil suits could blur lines between criminal and civil actions in these trafficking cases.

The bill would allow enforcement actions, remedies, and orders typically used in other types of civil suits, including fines, penalties, damages, attaching property, and other orders. The bill would carefully carve out liability so only those involved in the crime of trafficking could be held liable.

The bill would respect the role of law enforcement authorities to handle criminal offenses related to human trafficking and ensure that a civil suit would not interfere with these cases. It would establish procedures for notification, cooperation, and coordination between the attorney general and local prosecutors. It would require the attorney general to abate a suit upon request of a prosecutor. The author plans to offer a floor amendment that would address concerns about the attorney general overriding the abatement decisions of prosecutors.

The bill would ensure that assets awarded in a case were fairly distributed, with a portion going to the state and a portion to local law enforcement authorities who assisted in the suit. Of the state funds, the first $10 million would go to the crime victims' compensation fund so that victims of trafficking could benefit.

OPPONENTS SAY:

Current law may be broad enough to allow authorities to go after the assets of human traffickers. For example, Code of Criminal Procedure, ch. 59 defines contraband as any property used in the commission of certain felonies.

HB 3241 should include authority for local prosecutors to file civil racketeering suits, especially since some have expertise in this area. Some local prosecutors have both criminal and civil jurisdiction and, just like the attorney general, they should be given all possible tools to combat human trafficking.

OTHER OPPONENTS

The attorney general should not be able to override the abatement of suits with court orders. Criminal investigations should take precedence over

SAY: these civil cases.

NOTES: Rep. Thompson plans to offer an amendment which would eliminate the authority for the attorney general to request and for courts to grant permission for civil suits to proceed after a prosecutor had requested abatement. The amendment also would add local prosecutors to the list with law enforcement agencies of those who would receive a portion of the 20 percent of proceeds awarded to the state under a suit.

SUBJECT: Requiring licenses for deaf and hard of hearing interpreters

COMMITTEE: Human Services — committee substitute recommended

VOTE: 5 ayes — Raymond, N. Gonzalez, Naishtat, Rose, Zerwas

4 nays — Fallon, Klick, Sanford, Scott Turner

WITNESSES: For — Joseph Berra, Texas Civil Rights Project; Billy Collins; Larry Evans, Texas Association of the Deaf; Amber Farrelly; Heather Hughes, Deaf Action Center; David Myers, Texas Association for the Deaf; Erma Webb, Texas Society of Interpreters for the Deaf; (*Registered, but did not testify:* Stacy Landry, Travis County Services for the Deaf and Hard of Hearing)

Against — Benna Timperlake; (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition)

On — Lori Breslow, Department of Assistive and Rehabilitative Services; (*Registered, but did not testify:* David Hagerla, Department of Assistive and Rehabilitative Services)

BACKGROUND: Human Resources Code, sec. 81 establishes for persons who are deaf or hard of hearing an optional interpreter certification and registry program, among other services.

DIGEST: CSHB 2072 would require that a person obtain a license to practice as an interpreter for persons who were deaf or hard of hearing. The Department of Assistive and Rehabilitative Services (DARS) would develop guidelines and requirements governing the licensure and qualifications of practicing interpreters.

The licensure program established by CSHB 2072 would:

- permit interpreters with licenses from other jurisdictions to obtain a similar license in Texas without an exam;
- apply equally to court interpreters; and
- transfer some rule-making authority to the executive commissioner of the Health and Human Services Commission (HHSC).

The bill would not apply to religious or family settings, emergencies, video relay interpreting, supervised trainees, infrequent interpreters with out-of-state licenses, or to or others exempted by DARS.

In replacing the current certification option with a licensing requirement, the interpreter program would remain substantially similar in its provisions to appoint a seven-member advisory board to administer the program; develop guidelines to determine interpreter qualifications, examination procedures, and license renewal; require fees for exams, license renewal, and publications; allow licenses to be valid for five years; assist in interpreter training and continuing education; adopt rules for determining denial, suspension, and revocation of licenses; and issue provisional licenses.

Persons would not be required to hold licenses until September 1, 2014. CSHB 2072 would allow DARS to issue licenses without exams to those holding valid certifications on the bill's effective date. The bill would require the executive commissioner of HHSC, in consultation with DARS, to adopt implementing rules by September 1, 2014.

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 2072 would protect and improve the lives of the deaf and hard of hearing population by requiring licenses to ensure that interpreters were skilled professionals. Because the current certification program is voluntary, unqualified individuals can be hired to provide this necessary service to a vulnerable population. While opponents express concern that the new license requirements could cause a shortage of interpreters, the bigger problem is that the poor quality of many interpreters can be particularly dangerous in legal and medical situations. New technologies also are allowing skilled interpreters to remotely provide services to the deaf and hard of hearing. The bill would help allow for the deaf and hard of hearing population to interact more fully in society, including in the job market.

Deaf and hard of hearing individuals are often given only the option of accepting an unqualified interpreter or not receiving services. The lack of a required licensing program also prevents providers and consumers from

determining an interpreter's qualifications and submitting feedback on his or her performance. These conditions may explain why interpreter quality has not improved on its own. Professionalizing interpreting would attract more people to the industry.

CSHB 2072 would be a common sense extension of DARS' current regulatory authority. The bill would not necessarily appropriate funds, and were it to do so the Legislative Budget Board estimates the cost to the state would be only $98,000 over the biennium.

OPPONENTS SAY:

CSHB 2072 would unnecessarily expand government and could lead to a shortage of interpreters. Licensing requirements and fees raise barriers to entering this job market. While this might increase licensed interpreters' wages, it ultimately would decrease the number of practicing interpreters, limiting the deaf and hard of hearing community's access to these services.

The current interpreter certification program is sufficient to provide quality services to the deaf and hard of hearing population. Although the desire for improved services is understandable, there is no compelling state interest that justifies intervention to this extent. The bill would create numerous exemptions to the licensing requirement, which suggests that a new state law is likely not justified. The free market would be a better option to correct for any problems in the current program.

CSHB 2072 not only would create a new program with a new set of regulations, but the Legislative Budget Board estimates it would cost the state $98,000 over the biennium.

SUBJECT: Permitting life settlement contracts to fund long-term medical care

COMMITTEE: Human Services — committee substitute recommended

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

1 absent — Sanford

WITNESSES: For — (*Registered, but did not testify:* Leticia Caballero, Texas Health Care Association; Gail Harmon, Texas Assisted Living Association; Chris Orestis, Life Care Funding; Stephen Raines, Preferred Care Partners; Mark Vane, Gardere Wynne Sewell LLP)

Against — Jennifer Cawley, Texas Association of Life and Health Insurers; Brenda Nation, American Council of Life Insurers; (*Registered, but did not testify:* Miles Mathews, ING Insurance Holdings, Guardian Life Insurance Co.)

On — (*Registered, but did not testify:* Dee Church, Health and Human Services Commission; Jan Graeber, Texas Department of Insurance)

BACKGROUND: Eligibility for Medicaid nursing home services includes a requirement that the applicant's assets not exceed $2,000 for an individual and $3,000 for a married couple. Certain assets, such as an applicant's home, are excluded from these limits. If the face value of an applicant’s life insurance policy is $1,500 or less, its cash value is excluded as an asset. If its face value exceeds $1,500, its cash value is considered an asset.

DIGEST: CSHB 2383 would allow an owner of a life insurance policy with a face value of more than $10,000 to enter into a life settlement contract for the policy’s market value. The proceeds of the contract would be held in a state or federally insured account and would be available to the owner to purchase the long-term medical care services of their choice.

The life settlement contract's value would not be considered an asset in determining eligibility for Medicaid. Until the life settlement contract's proceeds were exhausted, no state or federal funds could be used to purchase long-term medical care services for the owner.

The Health and Human Services Commission (HHSC) would be required to provide notice to any Medicaid applicant of their option to enter into a life settlement contract.

The life settlement contract would require up to $5,000 be reserved for funeral expenses and would transfer any unpaid balance to a deceased owner's estate. A contracting entity would be required to maintain a surety bond, errors and omissions insurance, or a deposit valued at $500,000.

The bill would limit claims by the owner or the owner's estate against the life settlement contract to the net value of the policy after any benefits paid.

CSHB 2383 would authorize the HHSC commissioner to adopt rules necessary to implement these provisions, including requirements that Medicaid payments for long-term care services begin the day following the exhaustion of proceeds to buy long-term medical care services.

The bill's provisions modifying Medicaid eligibility would apply beginning January 1, 2014. Any agency needing a federal waiver to implement a provision in the bill would be authorized to request the waiver and delay implementing that provision until it was granted.

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 2383 would generate significant, recurring savings in Medicaid. Currently, a Medicaid applicant for nursing home care must surrender the person's life insurance policy for a fraction of its market value. The bill would allow potential Medicaid applicants to receive long-term care services using the value of their life insurance policies before relying on Medicaid, directly replacing funds that would have otherwise been spent by the state. Florida State University's Center for Economic Forecasting and Analysis projects a similar program there would create $150 million in annual savings.

The bill would improve elderly adults' quality of life by delaying their entry into Medicaid and giving them more flexibility to choose the long-term medical services they find most convenient and beneficial. These

individuals would also benefit from the bill's consumer protections.

Despite some critics' claims to the contrary, because the bill would only allow settlement contract proceeds to be spent on long-term medical care services, there is no risk that individuals would quickly exhaust their settlement amounts and be reliant on Medicaid sooner than at present.

OPPONENTS SAY:

CSHB 2383 would amount to an unnecessary government program. Individuals can already enter into life settlement contracts on their own. The bill extends the government's reach into the economy instead of allowing individuals to determine on their own how to utilize their assets through the free market.

There is no guarantee that CSHB 2383 will save the state money. The Legislative Budget Board has indicated the fiscal impact is indeterminate, and there is a risk the bill would push individuals into Medicaid even sooner than at present.

SUBJECT: Disclosure of personal information for election-related purposes

COMMITTEE: Elections — committee substitute recommended

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

0 nays

WITNESSES: For — Erin Anderson, True the Vote NOW; Ed Johnson, Harris County Clerk's Office; Glen Maxey, Texas Democratic Party; B R "Skipper" Wallace, Republican County Chairs Association; (*Registered, but did not testify:* Cheryl Johnson and Sheryl Swift, Galveston County Tax Office; Morgan Little, Texas Coalition of Veterans Organizations)

Against — (*Registered, but did not testify:* Cornelius English, Jr., United Transportation Union; James Gaston, Texas AFL-CIO)

On — Keith Ingram, Texas Secretary of State, Elections Division; (*Registered, but did not testify:* Wroe Jackson, Office of the Secretary of State; Michael Terry, Texas Department of Public Safety)

BACKGROUND: Transportation Code, sec. 521.044 governs the use or disclosure of a person's Social Security number as provided on a driver's license application. The number may be used only by the Texas Department of Public Safety (DPS) or disclosed only for certain purposes related to child support, unclaimed property, and the U.S. Selective Service. DPS must disclose the Social Security number to these entities upon their request.

Transportation Code, sec. 730.007 lists circumstances in which personal information obtained in connection with a motor vehicle record may be disclosed. Under this section only an individual's name and address, date of birth, and driver's license number may be disclosed. However, the statute specifies that it does not prohibit the disclosure of a person's photographic image to:

- a law enforcement agency or a criminal justice agency for an official purpose; or
- an agency of Texas investigating an alleged violation of a state or federal law in certain circumstances.

Transportation Code, sec. 730.005 lists several matters in which personal information obtained in connection with a motor vehicle record must be disclosed, including certain matters relating to motor vehicles and child support enforcement.

DIGEST:

CSHB 2512 would add the secretary of state to the list of entities to which a person's:

- Social Security number could be disclosed by DPS under Transportation Code, sec. 521.044; and
- photographic image was not prohibited from disclosure under Transportation Code, sec. 730.007.

This information could only be disclosed for the purpose of voter registration or the administration of elections.

In addition, the bill would add voter registration and the administration of elections to the matters for which personal information would be required to be disclosed under Transportation Code, sec. 730.005

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 2512 would help the Secretary of State's Office fulfill its duty to maintain the accuracy of the voter registration list. This is accomplished in large part by comparing the current voter rolls to the Social Security Administration's death master list to ascertain whether registered voters are deceased and should be removed from the rolls.

During the matching process the Secretary of State often is unable to make a strong match because only one or two criteria or partial numbers can be matched. People who registered to vote before 1993 would not have been required to submit certain identifying information, such as Social Security numbers, on their voter registrations, but this information would have been gathered by DPS if they had applied for a driver's license or ID certificate. Allowing the secretary of state access to identifying information via DPS would strengthen the required matches and improve accuracy in verifying the voter rolls.

The bill would not erode privacy or collect unnecessary information. The Secretary of State's Office is required to maintain the accuracy of the voter rolls and does not currently have all the necessary tools at its disposal. Under the committee substitute, DPS would not be required to use its image verification system to help the secretary of state, so concerns about abuse of photographic images would be alleviated. Adding the secretary of state to the list of state agencies with access to personal information maintained by DPS would not threaten the security or privacy of this information any more than was necessary for the agency to successfully fulfill its duties.

OPPONENTS SAY:

CSHB 2512 would compromise privacy by unnecessarily disseminating personal information. The potential for damage caused by identity theft and fraudulent use of Social Security numbers is greater than ever and these numbers should be collected and distributed as infrequently as possible to protect citizens and prevent fraud.

The bill unnecessarily would allow DPS to disclose a person's photographic image to the secretary of state. Exceptions allowing the disclosure of a photographic image are currently limited to law enforcement and criminal investigation purposes. The exception for the Secretary of State's office would be a departure from the existing exceptions and would erode privacy by unnecessarily expanding the types of situations in which DPS could disclose a photographic image. The Secretary of State's Office has no use for photographic images in the voter registration and election administration process and should be prohibited from accessing them, as are most agencies.

SUBJECT: Service of citation in an expedited judicial foreclosure proceeding

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

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

0 nays

1 absent — Hernandez Luna

WITNESSES: For — G. Tommy Bastian, Barrett Daffin Frappier Turner Engel LLP; Brian Engel

Against — (*Registered, but did not testify:* Celeste Embrey, Texas Bankers Association; John Fleming, Texas Mortgage Bankers Association)

BACKGROUND: Texas Rules of Civil Procedure, Rule 736, establishes the expedited order for a mortgage foreclosure proceeding. For service of notice to be considered complete, the rule requires the court clerk to issue a separate citation to each named respondent and one additional citation for the occupant of the property sought to be foreclosed. The clerk must serve each citation by both first class mail and certified mail.

The rules generally outline available methods of delivering notice that may be used unless otherwise specified by rule. Acceptable methods of delivering notice to a party to be served include mail, fax, courier, process server, and notice to the Texas secretary of state if the person to be served is outside of Texas. Rules address individuals who specifically avoid receiving service.

DIGEST: CSHB 2978 would add Civil Practice and Remedies Code, sec. 17.031 to require service of notice to be considered complete when a respondent in an expedited order for a mortgage foreclosure proceeding received a citation via mail, according to Rule 736, or in any other manner provided for petitions under the Texas Rules of Civil Procedure.

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 2978 would make the foreclosure process more efficient and workable in Texas. Rule 736 governs a type of mortgage foreclosure proceeding and requires that service of process be conducted through mail. While the rule does not require return of the certified mail receipt, many courts, citing constitutional concerns for due process, have held that service through certified mail is not complete until the delivery receipt has been returned to the court. This last step often causes long delays that can indefinitely stall an expedited foreclosure under Rule 736 because individuals being foreclosed upon commonly do not respond to certified mail or are difficult to locate with a physical mailing address.

No one benefits from a drawn-out foreclosure. Delays increase costs for all parties involved, and owners of foreclosed property are denied the ability to move on with their personal and financial lives. Property taxes go uncollected, and property values in the neighboring area fall.

CSHB 2978 would give courts the flexibility needed to move their foreclosure dockets forward in proceedings and allow the cases to be heard on their merits instead of stalling out on procedural matters. By allowing a court to use any method of citation offered by the Texas Rules of Civil Procedure, the due process rights of the parties to be served would enjoy the same protections as in any other civil lawsuit.

It is important to make changes to service of citation via legislation rather than through Supreme Court rulemaking because the Supreme Court historically has taken much too long to adopt these changes. Further, the bill, by moving through the legislative process, would receive just as much vetting, if not more, than if the proposal moved through the rulemaking process used by the court.

OPPONENTS SAY:

CSHB 2978 would be the wrong vehicle for changing the service of citation in expedited judicial foreclosure proceedings. Instead, interested parties should petition the Supreme Court, which drafted and approved Rule 736, to amend it. Texas Constitution, Art. 16, sec. 50(r) directs the court to promulgate rules of civil procedure for expedited foreclosure proceedings. It does not direct the Legislature to do so. CSHB 2978 would directly conflict with this constitutional article by preventing the Supreme Court from amending Rule 736 in a way that would conflict with the bill.

SUBJECT: Expanding online courses and distance-learning options

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, J. Davis, Deshotel, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

1 nay — Allen

1 absent — Dutton

WITNESSES: For — Bruce Friend, International Association for Online Learning; James Golsan, Texas Public Policy Foundation; Heather Staker, Innosight Institute; Chris White; (*Registered, but did not testify:* Courtney Boswell, Adam Jones, and Michelle Wittenburg, Texans for Education Reform; Brent Connett, Texas Conservative Coalition; Andrew Erben, Texas Institute for Education Reform; Darrick Eugene, Tutors with Computers; Jeremy Newman, Texas Home School Coalition; Wendy Reilly, TechAmerica; Nelson Salinas, Texas Association of Business; Eliza Vielma, Americans for Prosperity; Justin Yancy, Texas Business Leadership Council)

Against — David Anthony, Raise Your Hand Texas; Ted Melina Raab, Texas AFT; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Amy Beneski, Texas Association of School Administrators and Texas Association of School Boards; Portia Bosse, Texas State Teachers Association; Monty Exter, Association of Texas Professional Educators; Julie Haney, Coalition for Public Schools; Ken McCraw, Texas Association of Community Schools; Bob Popinski, Texas School Alliance; Chandra Villanueva, Center for Public Policy Priorities)

On — (*Registered, but did not testify:* David Anderson, Lisa Dawn-Fisher, Anita Givens, and Monica Martinez, Texas Education Agency)

BACKGROUND: Online courses are offered to public school students through two main programs. The Houston and Texarkana ISDs and one charter school offer full-time online programs to students in grades 3-12. The Texas Virtual School Network (www.txvsn.org) offers about 75 unique online high school courses. The network is operated by Education Service Center

(ESC) Region 10, in collaboration with the Harris County Department of Education and Texas Education Agency (TEA).

Current law allows districts, open-enrollment charter schools, and institutions of higher education to contract with the virtual school network to develop online courses.

DIGEST:

CSHB 1926 would change provisions in the Education Code to expand online and distance-learning courses to Texas public school students. It would allow nonprofit organizations and private companies to develop courses, require TEA to provide information about online courses and distance-learning on its website, and change the conditions under which a district or charter school could deny a student's request to enroll in an online course.

**Requests to enroll.** The bill would eliminate language that allows a district to deny a student's or parent's request to enroll in an online course if it can demonstrate that the course is not as rigorous as the same course provided in a traditional classroom setting or if an online course could negatively affect the student's performance on a state standardized test.

Districts would gain authority to deny enrollment for courses that were inconsistent with a student's requirements for college admission or earning an industry certification or if the district offered a substantially similar course.

Districts offering distance-learning courses could charge students who opted to enroll in courses after their home districts declined to pay. Districts also could decline to pay for more than three year-long electronic courses for a student during any school year, although students could pay for additional courses.

CSHB 1926 would allow school districts that provide distance-learning courses to inform other districts through the TEA website of the availability of the course, including the number of positions available for student enrollment. TEA could adopt rules governing student enrollment and course pricing, although districts would determine the price for their courses.

**Course providers.** The bill would allow online courses to be provided by nonprofits, private entities, or a corporation that provides an electronic

professional development course through the Virtual School Network. Those entities would be eligible if they complied with all applicable federal and state anti-discrimination laws, possessed prior successful experience, and demonstrated financial solvency. Course providers would be required to apply for course renewal on the 10th anniversary of the previous approval or when the state curriculum changed.

The bill would make conforming changes to reflect the broader list of course providers.

CSHB 1926 would make changes so that charter schools were treated the same as school districts in determining their eligibility to act as course providers.

The bill would authorize the Virtual School Network to enter into a reciprocity agreement with one or more states to facilitate expedited approval for courses aligned with Texas curriculum standards.

**Costs and prohibitions.** CSHB 1926 would require the education commissioner to negotiate an agreement with each eligible course provider governing the costs of each course, which could not exceed current statutory limits of $400 per course or $4,800 for a full-time student.

Course providers would be prohibited from promising or providing equipment or anything of value to a student or a student's parent as an inducement for the student to enroll in an online course.

The bill would add requirements to "informed choice" reports describing online courses. Each course report would include information about:

- the entity that developed and provided the course;
- the course completion rate;
- aggregate student performance on state-mandated tests administered to students who completed the course provider's courses; and
- other information determined by the education commissioner.

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, and would apply beginning with the 2013-2014 school year.

SUPPORTERS SAY:

CSHB 1926 would allow school children across Texas to have equal educational opportunities. For example, some school districts do not offer four years of a specific foreign language a student may need in order to apply to a select college or university. The bill would expand use of the state virtual school network so that students could obtain the education that best suited them, regardless of which school district they attended.

Online courses can allow students to move at a quicker pace than they could through the traditional classroom. A trauma surgeon testified about how the expansion of distance-learning would help the gifted and talented students who work with him on research projects during the summer. If those students could take more of their courses online, he said, they could continue their research year-round instead of being required to return to school in the fall.

CSHB 1926 would allow for-profit companies to provide courses, but it is not a voucher bill and it is not a vendor bill. It would limit the number of online courses a student could take and a district would have to pay for and would prohibit companies from offering laptops or other equipment as an inducement for students to sign up.

The bill would expand opportunities for districts and charter schools to develop their own online and distance-learning courses. To the extent that students from other districts enrolled, a district could gain revenue from its electronic course offerings.

OPPONENTS SAY:

A classroom setting offers the best opportunities for student learning. It is fine for a student to supplement the classroom with online courses, but Texas should move cautiously in encouraging students to conduct their studies online.

OTHER OPPONENTS SAY:

CSHB 1926 should require nonprofits and private companies to partner with school districts to ensure their online classes were of a high quality. Otherwise, tax dollars could be wasted on courses with little in the way of quality control.

SUBJECT: Extending and revising the Texas Economic Development Act

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

3 absent — Otto, Martinez Fischer, Ritter

WITNESSES: For — Bob Adair, Phillips 66; Richard A. Bennett, Texas Assn of Manufacturers; Dale Craymer, Texas Taxpayers and Research Association; Dale Cummings, Cummings Westlake LLC; Steve Hazlewood, Dow Chemical; James LeBas, TxOGA, AECT, Texas Chemical Council; (*Registered, but did not testify:* Brandon Aghamalian, City of Corpus Christi; Elizabeth Castro, LyondellBasell; Robert Flores, Texas Association of Mexican-American Chambers of Commerce; Deborah Giles, SHI Government Solutions; Bill Hammond, Texas Association of Business; Patrick Hogan, Texas Technology Consortium; Max Jones, The Metro 8 Chambers of Commerce; Julie Klumpyan, Valero; Warren Mayberry, DuPont; Mike Meroney, Huntsman Corp., Sherwin Alumina Co., and BASF Corp.; Julie Moore, Occidental Petroleum Corporation; Steve Perry, Chevron USA; Dave Porter and Drew Scheberle, Greater Austin Chamber of Commerce; Wendy Reilly, TechAmerica; Carlton Schwab, Texas Economic Development Council; Ben Sebree, Enterprise Products, LLC; Fred Shannon, Hewlett Packard; Sara Tays, Exxon Mobil Corporation; Jon Weist, Arlington Chamber of Commerce; Trisha Windham, Dallas Regional Chamber; Geoff Wurzel, TechNet)

Against — Dick Lavine, Center for Public Policy Priorities; Greg Poole; (*Registered, but did not testify:* Ted Melina Raab, Texas AFT)

On — Daniel Casey, Moak, Casey & Associates; Jeffrey Clark, The Wind Coalition; Billy Hamilton, American Wind Energy Association, Raise Your Hand Texas; Kevin O'Hanlon; Robert Webb, Texas Renewable Energy Industries Association; Robert Wood, Comptroller of Texas (*Registered, but did not testify*: Dominic Giarratani, Texas Association of School Boards)

BACKGROUND:

In 2001, the 77th Legislature enacted HB 1200 by Brimer, known as the Texas Economic Development Act. The act authorized school districts to negotiate reductions on the appraised value of property for maintenance and operation (M&O) in exchange for businesses locating a manufacturing, research and development, or renewable energy electric generation facility in the district. Districts negotiating their appraised values through such agreements are held harmless by the state for purposes of state education aid. Under Tax Code sec. 313.007, the Economic Development Act expires December 31, 2014.

DIGEST:

CSHB 3390 would revise provisions governing the Texas Economic Development Act (Chapter 313 of the Tax Code) and extend the expiration date from December 31, 2014 to December 31, 2024. The extension of sections of the Tax Code govern the limits on appraised value of certain property used to create jobs and the limits on appraised value in certain rural school districts. The bill would repeal subchapter D, which governs school tax credits.

The bill also would extend the qualifying time period to 10 years from eight years following an application approval. A deferral of qualifying time period could not exceed six years. The bill would repeal provisions that require companies pay wages that are 110 percent of the county's average weekly wage for manufacturing jobs, reports on compliance with energy-related agreements and other agreements.

**Qualifications.** CSHB 3390 would add to the definition of "qualified investment" an existing building that was expanded as part of a discrete project that increased productive capacity of an existing property.

The definition of "qualified job" would be amended to be a permanent, full-time job that:

- included coverage by a group health benefit plan that complied with the Patient Protection and Affordable Care Act; and
- paid at least 110 percent of the county average weekly wage for all jobs in the county where the job was located, but no longer the county average wage for manufacturing jobs.

**Certificate of limitation.** The comptroller could not issue a certificate for a limitation on appraised value without determining that:

- the project proposed by the applicant would likely generate tax revenue within 20 years in an amount sufficient to offset the school district maintenance and operations property tax revenue lost as a result of the agreement; and
- the limitation on appraised value was a significant consideration in determining whether to invest capital and construct the project in this state.

The comptroller would be instructed to strictly interpret the criteria and selection criteria and issue certificates for limitations on appraised value only for those applications for property tax benefit that create high-paying jobs, provide a net benefit to the state over the long-term, and advance the state's economic development goals.

**Texas Priority Project.** A Texas Priority Project would be eligible for a limitation on appraised value under Chapter 313. A Texas Priority Project would be defined as a project on which the applicant has committed to spend or allocate a qualified investment of at least $1 billion.

**Procedures.** Within 90 days of receiving a copy of the application, the comptroller would issue a certificate for a limitation on appraised value of the property and provide the certificate to the governing body of the school district or provide a written explanation of the comptroller's decision not to issue a certificate. A district board could request that the comptroller submit a recommendation as to whether the new jobs creation requirement should be reduced or waived and, if reduced, the number of new jobs that would be required.

The bill would delete a requirement for a school district board to conduct a public hearing and receive a vote of at least two-thirds prior to approving an application. The comptroller would submit a biennial assessment of the Economic Development Act agreements that included specific metrics.

**Economic impact evaluation.** An economic impact evaluation additionally would have to include:

- the comptroller's determination whether to issue a certificate for the limitation on appraised value of the property and, if requested, the comptroller's recommendation regarding waiver or reduction of the new jobs requirement; and

- the industry standard for the number of employees reasonably necessary for the operation of the facility described.

An impact evaluation would not have to include:

- the number of new facilities built or expanded in the region during the preceding two years that were eligible for a limitation;
- the effect of the applicant's proposal on the number or size of the district's instructional facilities; or
- the projected future tax credits if the applicant also applied for school tax credits.

**Strategic investment area.** The bill would broaden provisions in Subchapter C applying to certain rural school districts to also apply to strategic investment areas. It would define "strategic investment area" as:

- a county with unemployment above the state average and per capita income below the state average;
- an area that was a federally designated urban enterprise community or an urban enhanced enterprise community; or
- a designated defense economic readjustment zone.

The comptroller would determine areas that qualified as strategic investment areas and publish a list and map of the designated areas.

**Effective date.** The bill would take effect January 1, 2014.

SUPPORTERS SAY:

CSHB 3390 would extend and improve the Texas Economic Development Act, which has proved to be a great engine of economic development for the state. CSHB 3390 would improve the state's ability to deliver these benefits in several key ways, including:

- securing the program for the near future with a 10-year extension of the sunset clause;
- adding measures to ensure that the incentives were ultimately a good deal for Texans by requiring that the comptroller make a judgment that the value of the project would exceed its cost; and
- extending the qualifying benefit period from eight years to 10 years to increase the maximum potential benefit of the incentives.

The local tax revenue that school districts forgo as a result of Chapter 313

projects has been more than offset by economic contributions made as a result of the credit.

According to the comptroller, owners of Chapter 313 projects have invested about $42.2 billion in Texas through 2011 and have projected a $62.4 billion investment over the lifetime of the project agreements. Of the total investment associated with 128 agreements, 57 percent of the investments are in manufacturing and 26 percent are in renewable energy. The remaining 17 percent are in research and development, clean coal, advanced clean energy, electric power generation, and nuclear electric power generation.

Chapter 313 has been a significant factor in the state's ability to draw industry leaders in renewable energy and other sectors to locate in Texas.

There is stiff competition nationally and internationally for industries and purposes included under chapter 313. The economic development tax abatements, along with other incentives, allow the state to maintain competitiveness and remain a leading location for businesses to relocate.

OPPONENTS SAY:

CSHB 3390 would extend and expand chapter 313 without significant increases in oversight. Existing abatement agreements established under chapter 313 will cost the state an estimated $4.2 billion in lost property taxes and tax credits over the life of these agreements.

The proposed chapter 313 expansions would reduce property taxes paid by companies to school districts by an additional $4.4 billion over the course of newly authorized agreements, which would increase the state cost of funding school-finance formulas by the same amount. In addition, the cost per job created by chapter 313, at roughly $350,000, is inordinately high.

The shortcomings of chapter 313 have been well documented by multiple sources. CSHB 3390 would not take clear steps to address these problems. Further, the bill would extend the program for 10 years to Dec. 31, 2024, and make all changes effective on Jan. 1, 2014. Since its inception in 2001, chapter 313 has never been extended for more than six years at a time. Most recently, the program was extended in 2007 to expire in 2011. The program has the potential to have such a massive impact on state revenue it would be dangerous to extend it for such a duration.

CSHB 3390 would weaken wage standards for all agreements to the

county average wage overall, which is generally much less than the wage for manufacturing jobs. Weakening wage requirements reduces the benefit to Texans working through the economic development program but preserves the benefit for benefactors.

The bill would add manufacturing plant expansions to qualified investments under chapter 313. This would be little more than a tax giveaway since plant expansions in industries in the state are very likely to occur irrespective of the added incentive. Companies expand all the time through the natural course of business; there is little sense in incentivizing this inevitable expansion, especially at the taxpayer's expense.

OTHER OPPONENTS SAY:

CSHB 3390 would amend qualification requirements to include coverage by a group health benefit plan that complied with the Patient Protection and Affordable Care Act (ACA). This specific provision is unnecessary as it enshrines the ACA in state law, where it does not belong, and replaces existing requirements, which are sufficient.

NOTES:

The Legislative Budget Board has estimated that the bill could result in a negative impact of $430,000 in general revenue funds for fiscal 2014-15.

The fiscal note estimates that the state would incur cost under the Foundation School Program corresponding to local maintenance and operations revenue losses. The LBB estimates costs of $29.5 million beginning in fiscal 2017, $45.4 million in fiscal 2018, and $267 million in fiscal 2023.

SUBJECT: Abolishing certain health programs and councils

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 5 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Vo

0 nays

1 absent — Scott Turner

WITNESSES: **(On committee substitute considered in public hearing, March 11)**
For — (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition)

Against — (*Registered, but did not testify*: Alfred Sepulveda)

On — Tony German, Texas Ambulatory Surgery Center Society; Ken Levine, Sunset Commission; John Rutledge, Texas Council on Cardiovascular Disease and Stroke, American Heart Association, American Stroke Association; Elizabeth Sjoberg, Texas Hospital Association; James Willmann, Texas Nurses Association; (*Registered, but did not testify:* Nick Dauster and Nagla Elerian, Texas Department of State Health Services; David Teuscher, Texas Medical Association)

DIGEST: CSHB 595 would repeal certain chapters of and abolish certain programs established in the Health and Safety Code:

- ch. 38, governing the control and eradication of lice infestation in minors;
- ch. 46, governing tertiary medical care;
- ch. 83, governing exposure to Agent Orange and an assistance program for affected veterans;
- ch. 86, governing breast cancer and lung cancer prevention and control efforts;
- ch. 90, governing osteoporosis prevention and control efforts;
- ch. 91, governing the Prostate Cancer Education Program; and
- ch. 112, governing the Border Health Foundation.

The bill also would repeal Government Code, sec. 533.005(a-1). This would allow Medicaid managed care organizations and pharmacy benefit managers to continue using the state's preferred drug plan and state formulary.

On September 1, 2013, the bill would transfer all property, as well as all contracts, leases, rights, and obligations, belonging to the breast cancer advisory council, the Office of Rural Health breast cancer screening advisory committee, the lung cancer advisory council, and the Border Health Foundation to the Department of State Health Services. On the same date, the bill would abolish the tertiary care account and transfer remaining money to the general revenue fund.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 595 would improve government efficiency and save the state about $24.5 million through 2015 by removing parts of statute that govern councils, task forces, and programs that have not met for a long time or have nothing to produce. It would solely remove references in statute to programs that have already served their purpose.

Health and Human Services Code, ch. 83, for example, governs physician reporting of exposure to Agent Orange, which has not been a major public health issue since the early 1990s. The lung cancer and breast cancer reports described in ch. 86 have already been written and distributed, and the advisory councils have fulfilled their purposes. The prostate cancer education program is no longer funded independently, and the Border Health Foundation never fulfilled its function because it lacked funding from other nonprofit foundations.

The bill was developed in consultation with the Department of State Health Services and the Health and Human Services Commission to ensure that the chapters repealed would not affect any currently functioning programs. The tertiary medical care account and programs repealed by CSHB 595 have been replaced in other sections of statute. The bill would remove only redundant references to them in the Health and Safety Code. Any savings realized would not negatively impact the state's relevant public health programs.

By maintaining use of the current Texas Medicaid vendor drug program, CSHB 595 would allow the state to balance cost savings with patient

protection. Continuing the program would ensure that the patient received the lowest cost, most effective drug while making the prescribing process easier for physicians. Without CSHB 595, the Medicaid managed care organizations could use their own preferred drug lists after August 31, 2013, which could negatively affect cost and quality of care.

OPPONENTS SAY:

CSHB 595 inappropriately would remove certain programs that are still important for public health. Many of the councils and programs eliminated by CSHB 595 have not met or operated because they lacked funding through state appropriations, not because they were not necessary. Prostate cancer prevention, breast cancer prevention, osteoporosis prevention, eradication of lice in children, and the health of Texans living along the border remain timely, important health issues that the Legislature should both address and fund.

By repealing entire chapters of Health and Safety Code, the bill also would unnecessarily eliminate cost-free provisions, such as the requirement added last session to notify women undergoing mammogram screening of the issues with dense breast tissue.

While CSHB 595 would save the state money in the short term, the long term costs associated with deteriorating public health far outweigh the minimal savings the bill would realize. CSHB 595 would represent a reckless approach to improving government efficiency.

Allowing managed care organizations to set their own drug lists would keep prescription costs low while improving patient choice among plans with different formularies.

NOTES:

According to the Legislative Budget Board, CSHB 595 would have a positive impact of about $24.5 million through the biennium ending August 31, 2015.

CSHB 595 was originally scheduled on the April 29 general state calendar for second-reading consideration. It was recommitted to the Government Efficiency and Reform Committee on April 26 and reported from that committee at a formal meeting on April 29.

SUBJECT: Requiring notice when a bail bond surety is in default

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Schaefer, Toth

0 nays

2 absent — Leach, Moody

WITNESSES: For — Scott Walstad, Professional Bondsmen of Texas; (*Registered, but did not testify:* Ken Good; John McCluskey; Don McFarlin and Joe Valenzuela, Professional Bondsmen of Texas)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 17.11 governs sureties for bail bonds. Under sec. 2, a surety, such as a professional bail bond agent that is in default on a bail bond is disqualified to sign as a surety on any other bail bond. The clerk of the court is required give notice in writing of a default to the sheriff, chief of police, or other peace officer but not to provide notice to the bail bond agent, which would hasten payment of bail bonds in default and enable bail bond agents to continue to act as sureties.

DIGEST: HB 1562 would require the clerk of a court where a surety was in default on a bail bond for an offense other than a class C misdemeanor (maximum fine of $500) to send notice of the default by certified mail to the last known address of the surety.

The bill would take effect September 1, 2013, and would apply only to a bail bond that was executed on or after that date.

SUBJECT: Amending the offenses of harassment and stalking

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Moody, Schaefer

0 nays

2 absent — Leach, Toth

WITNESSES: For — Patricia Baca, El Paso District Attorney's Office; Carlos Salinas, Alliance for Texas Families; Aaron Setliff, The Texas Council on Family Violence (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Kirsha Haverlah; Leslie Pool)

Against — None

BACKGROUND: Penal Code, sec. 42.07 defines harassment as a person committing certain acts with the intent to harass, annoy, alarm, abuse, torment, or embarrass another person. Two of the acts include initiating obscene communication or threatening in a certain alarming manner by telephone, in writing, or by electronic communication.

Penal Code, sec. 42.07 includes as one of the criteria of stalking that the actor knowingly engages in certain behavior that the actor knows or reasonably believes the other person will regard as threatening.

DIGEST: HB 1606 would remove the intent to "annoy," "alarm," or "embarrass" as conditions sufficient to constitute harassment. It also would remove repeated electronic or telephone communications that were reasonably likely to annoy, alarm, embarrass, or offend as sufficient conditions to constitute harassment. It would remove the condition that certain types of harassment be initiated by telephone, in writing, or electronic communication.

HB 1606 would add that repeated harassment would constitute stalking. The bill would change the criteria requiring that a stalking offense be perpetrated by an actor that reasonably "believed" the victim would be threatened to an actor that reasonably "should know" the victim would feel

threatened, in ways defined by the code.

HB 1606 would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1606 would sensibly clean up the stalking and harassment statutes to better define the offenses and make them easier to prosecute. Currently, prosecuting stalking is difficult because a prosecutor must "get inside of the head" of the stalker to show that the stalker believed that his or her actions constituted a threat. Proving what a defendant believed can be problematic. A common defense to this standard is claiming the stalker simply had misguided affection.

The bill instead would require that the defendant reasonably should have known that his or her actions constituted a threat, which is a more standard criterion and easier to define. HB 1606 would also elevate repeated harassment to the more serious crime of stalking because repeated harassment can be just as dangerous as stalking.

In current statutes, harassment depends on the offender making the communication by telephone, in writing, or by electronic communication. HB 1606 sensibly removes this condition because harassment can happen through many different types of communication besides the three listed in law.

HB 1606 would clean up the harassment definition by removing the intentions to annoy, alarm, and embarrass as conditions for harassment. These actions are vague and have undergone repeated litigation. The law is tough enough without these unclear actions.

OPPONENTS SAY:

Removing the intentions to annoy, alarm, and embarrass as conditions for harassment is unnecessary and could weaken the harassment law by covering fewer instances of possible harassment. The Court of Criminal Appeals already has accepted the constitutionality of including these actions in statute as sufficient conditions for harassment, so there is no need to remove them from the law.

SUBJECT: Requiring the licensure of registered veterinarian technicians

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 7 ayes — T. King, Anderson, M. González, Kacal, Kleinschmidt, Springer, White

0 nays

WITNESSES: For — Elizabeth Choate and Tracy Colvin, Texas Veterinary Medical Association; Cynthia Dittmar and James Sessum, Texas Association of Registered Veterinary Technicians; *(Registered, but did not testify:* Ashley Chadwick, Freedom of Information Foundation of Texas; Sandra Nunn, Texas Association of Registered Veterinary Technicians; Darren Turley, Texas Association of Dairymen; Bob Turner, Texas Poultry Federation; Andrea Walker, Texas Veterinary Medical Association; Rick Hardcastle; Randy Lee*)*

Against — *(Registered, but did not testify:* Dustin Matocha, Texans for Fiscal Responsibility*)*

On — Nicole Oria, Texas State Board of Veterinary Medical Examiners; *(Registered, but did not testify:* Ina Franz, Texas State Board of Veterinary Medical Examiners*)*

BACKGROUND: Currently, 38 states license veterinary technicians. In Texas, technicians are not licensed through the state, but "registered" through Texas Veterinary Medical Association (TVMA) as registered veterinary technicians. To become a registered veterinary technician a person must have an associate's degree from an accredited veterinary technology school and pass the veterinary technology national exam.

DIGEST: CSHB 1621 would amend the Occupations Code relating to the regulation and practice of veterinary medicine by requiring the Texas State Board of Veterinary Medical Examiners (TSBVME), by rule, to license and regulate veterinary technicians.

The TSBVME could appoint advisory committees and require the development of a jurisprudence examination for licensed veterinary

technicians.

The bill would establish qualifications for a licensed veterinary technician, and require a licensed veterinary technician employed in a veterinary hospital to display their license.

The bill would enable the TSBVME to investigate complaints received, deny licenses, and take disciplinary action against veterinary technicians.

Decisions relating to the diagnosis, treatment, management, and future disposition of an animal patient would be made by a supervising veterinarian who would determine the appropriate level of supervision and protocol for a task delegated to a licensed veterinary technician, certified veterinary assistant, or veterinary assistant, giving consideration to the person's level of training and experience. The bill would allow a supervising veterinarian to delegate greater responsibility to a licensed veterinary technician than to a certified veterinary assistant or a veterinary assistant.

The bill would establish a scope of practice for the duties performed by veterinary technicians, certified veterinary assistants, and veterinary assistants under the supervision of a veterinarian. The bill also would provide grounds for denial of a license and disciplinary action.

The TSBVME would be required to issue a veterinary technician license by September 1, 2014 and to adopt rules, procedures, fees, and the jurisprudence examination by June 1, 2014.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Changing the credential for veterinary technicians from a registration to a license would improve the perception of a veterinary technician as an educated and skilled professional and by extension improve the perception of the practice of veterinary medicine. Many veterinarians view technician licensure as part of the natural progression of the profession, but rather than being licensed through the state, veterinary technicians are registered through the Texas Veterinary Medical Association.

Currently, 38 other states award a license for similar qualifications as required by the association. By establishing a licensure for veterinary technicians, CSHB 1621 also would increase the incentive to seek a higher

level of education and broaden the appeal of entering the profession, thus increasing the pool of educated employees.

The bill would define allowed duties for both credentialed veterinary technicians and veterinary assistants to know exactly what duties they could and could not perform and help prevent misrepresentation of education and credentialing both to the public and to employers.

Currently, TVMA is unable to investigate and evaluate complaints against technicians. CSHB 1621 would allow for action to be taken if a veterinary technician acted unethically or illegally.

OPPONENTS SAY:

Because the Texas State Board of Veterinary Medical Examiners (TSBVME) is statutorily required to cover the cost of its operations with fee-generated revenue, the agency would have to assess additional fees to cover the costs associated with implementing the bill.

SUBJECT: Monitoring certain sex offenders on probation, parole use of Internet

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Parker, White, Allen, Riddle, J.D. Sheffield, Toth

0 nays

1 absent — Rose

WITNESSES: For — Robert Rosenbusch, RemoteCOM; Laura Hunt; (*Registered, but did not testify:* Steven Tays, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office)

Against — (*Registered, but did not testify:* G B Wardian)

On — (*Registered, but did not testify:* Stuart Jenkins, Carey Welebob, Texas Department of Criminal Justice)

BACKGROUND: Code of Criminal Procedure, art. 42.12, sec. 13G requires courts that grant community supervision (probation) to certain sex offenders to prohibit the offenders from using the Internet to:

- access obscene material;
- access commercial social networking sites;
- to have certain types of sexual communications; and
- to communicate with juveniles.

These prohibitions apply to certain sex offenders who have been assigned a risk level of three (high) by the state's risk assessment review committee.

Government Code, sec. 508.1861 requires parole panels releasing certain sex offenders on parole or mandatory supervision to apply the same prohibitions as a condition of parole.

DIGEST: CSHB 1645 would require courts and parole panels that must impose restrictions on certain sex offenders' use of the Internet to require the probationers and parolees to submit to regular inspection or monitoring of each electronic device they use to access the Internet.

The bill would expand the type of offenders who fall under the requirement that courts prohibit certain types of Internet use to include offenders assigned a numeric risk level of 2 (moderate).

The bill would take effect September 1, 2013. It would apply to persons placed on community supervision or parole on or after September 1, 2009. Courts and parole panels would have to modify conditions of community supervision or parole to comply with CSHB 1645.

SUPPORTERS SAY:

CSHB 1645 is needed to improve the state's monitoring of sex offenders out in the community on probation and parole. Better monitoring would increase public safety and help deter the offenders from committing another offense.

While current law requires courts and parole panels to restrict the Internet use of certain sex offenders, monitoring whether this restriction is followed can be time-consuming and difficult for probation and parole officers who often have large caseloads. In some cases, officers might examine offenders' computers to see what sites they have visited or sometimes require offenders to pay for content-control software. These methods can be time-consuming, burdensome, and result in uneven oversight from one offender to another. In addition, getting information about an offender's Internet use after the fact can come too late to prevent offenders from planning or committing another offense.

CSHB 1645 would make the state's oversight of sex offenders on parole and probation more effective and efficient by requiring offenders to submit to regular inspection or monitoring. To accomplish this, parole and probation officers would be able to use new software tools that allow remote access and real-time monitoring of computers and other devices. These tools would allow officers to know if sex offenders were violating the terms of their probation or parole by accessing pornography sites, having sexual communications, or other acts. Just knowing that this type of software is monitoring Internet use could deter offenders from violating the Internet prohibitions or committing another offense.

Putting this requirement in the statute is the best approach so it would be uniformly applied to all probationers and parolees who fall under the state's rules for restricted Internet use and so offenders would know they had to submit to monitoring. The statute would ensure that all offenders

were monitored and that Texans throughout the state were kept safe.

CSHB 1645 would not cost the state or local departments. Offenders could be required to pay any costs for monitoring software.

The bill would expand the requirement that Internet access be restricted to include offenders at risk level 2 (moderate) to better protect Texans. These offenders are potentially at risk to reoffend and warrant the same scrutiny and restrictions currently applied to level 3 offenders.

While CSHB 1645 would place more offenders under the Internet uses restrictions, the type of monitoring that the bill would allow would make the whole system more efficient. This would allow any increase in the number of offenders monitored to be handled with current resources.

OPPONENTS SAY:

Current law already would allow the type of monitoring contemplated by CSHB 1645. Provisions requiring sex offenders to be prohibited from certain Internet uses, combined with the authority of probation and parole officers to oversee offenders, is broad enough to allow regular inspection and monitoring.

Expanding the type of offenders who would fall under the mandatory restrictions on Internet use and monitoring could increase the workload of probation and parole officers. This increase could be difficult to absorb without additional resources.

SUBJECT: Modifying regulations for a master mixed-use property owners association

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman

0 nays

WITNESSES: For — Rick Bidne and Albert Zapanta, Las Colinas Association; (*Registered, but did not testify:* Judd Austin, Texas Community Advocates; Chuck Bailey, Las Colinas Association; Robert Burton; Kassandra Kell, City of Irving; Worth Ross, Texas Community Associations Advocates)

Against — None

BACKGROUND: Property Code, ch. 215 regulates a master mixed-use property owners association that, among other things, governs at least 6,000 acres of deed-restricted property with at least 10 incorporated residential and property owners associations and at least 3,400 platted residential and 400 platted commercial properties (Las Colinas).

Property Code, ch. 209 is the Texas Residential Property Owners Protection Act, which governs the rights of residential property owners and regulates homeowners associations. Property Code, sec. 209.007 applies to how owners may pursue a hearing before a homeowners association board and mechanisms for alternative dispute resolution; sec. 209.008 describes how attorney's fees are collected by the property owners association; sec. 209.011 describes how owners may redeem the property after a foreclosure by a property owners association on a lien; sec. 209.012 states that a property owners association may not amend a dedicatory instrument to get an easement without consent of the owner.

DIGEST: The bill would allow the master mixed-use property owners association to amend by a simple majority of the voters any declaration and supplementary declaration, including amendments, modifications or corrections.

Property Code, secs. 209.007, 209.008, 209.011, and 209.012 no longer

would apply to single-family residential properties in a master mixed-use property owners association, nor would any portion of Property Code, ch. 209, the Texas Residential Property Owners Act, apply to ch. 215, which regulates a master mixed-use property owners association.

CSHB 1824 would apply a number of provisions to a master mixed-use property owners association, including who, how, and when the association's records could be examined and released and the legal recourse for the owner if the request for records were denied.

The bill also outlines how the property owners association would notify a property owner of a violation and how the property owner could ameliorate the violation, such as requesting a board hearing, before enforcement action was taken.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1824 would clarify legislation enacted by the 82nd Legislature in 2011, which created chapter 215 of the Property Code and related to the powers and duties of a master mixed-use property owners association. A master mixed-use property association, notably the one governing the 31,000-acre Las Colinas, is unique because it incorporates both commercial and residential property owners. The statute governing such an association needs to carefully balance the needs and rights of both types of property owners. CSHB 1824 would modify ch. 215 in this spirit, recognizing that provisions governing residential homeowners associations may not be appropriate for this type of property owners association.

CSHB 1824 would modify the method for voting on changes to dedicatory instruments — the documents that set forth the rules and policies for the planned development — to a simple majority of votes cast. The association currently allocates votes based on property values, which empowers commercial property owners over the residential property owners. These commercial property owners may be scattered throughout the United States and have a low rate of voter turnout, making the passage of amendments, modifications, or corrections almost impossible. The bill would empower local residents to make changes when needed.

The additions to code in the bill also would add a needed consistency and transparency to these types of property owners associations. It would set in

place a process for owners to request association records and for the association to issue notice before taking enforcement actions.

OPPONENTS SAY:

The bill would remove protections from residential homeowners living in an area governed by a master mixed-use property owners association that they would otherwise have under a traditional homeowners association. One protection that would no longer apply to these residential homeowners is Property Code, sec. 209.012, which protects HOA members from an association granting itself an easement through or over an owner's lot.

OTHER OPPONENTS SAY:

By changing the method of voting on an amendment in the association's rules to a simple majority, CSHB 1824 would diminish the voting power of commercial property owners. This would be inconsistent with the previous methods, which allocated voting power based on property values, a more reasonable voting procedure for an organization mainly dedicated to preserving property values.

SUBJECT: Developing a model contract for low-risk state procurements

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: For — (*Registered, but did not testify*: Annie Mahoney, Texas Conservative Coalition)

Against — None

BACKGROUND: Under Government Code, ch. 2262, subch. C, the contract advisory team is established assist agencies with their contracting practices. The contract advisory team provides recommendations to the Comptroller of Public Accounts regarding its development of the contract management guide.

Sec. 2262.051 requires the comptroller to develop and maintain a contract management guide for state agency use. It must include model provisions for state agency contracts, such as the maximum contract periods under which a new competitive solicitation is not necessary. Agency staff must adhere to the rules and requirements for procurement, even with minor, low-risk contracts.

DIGEST: HB 2873 would amend Government Code, sec. 2262.051 to require the contract advisory team to identify the types of contracts that pose a low risk of loss to the state. The team then would have to develop a model contract management process for use with these low-risk procurements.

The model contract management process developed by the contract advisory team would have to be included in the comptroller's contract management guide for state agencies. The comptroller would include in the guide recommendations on the appropriate use of the model.

The bill would take effect on September 1, 2013.

SUBJECT: Authorizing TDI to disapprove health insurance rate changes

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, Sheets, Taylor, C. Turner

0 nays

WITNESSES: For — Simone Nichols-Segers, National Multiple Sclerosis Society; Stacey Pogue, Center for Public Policy Priorities; Clayton Travis, Texans Care for Children; (*Registered, but did not testify:* Miryam Bujanda, Methodist Healthcare Ministries of South Texas, Inc; Doris Dwyer; Laura Guerra-Cardus, Children's Defense Fund - Texas; Blake Hutson, Consumers Union; Patricia Kolodzey, Texas Medical Association; Susan Milam, National Association of Social Workers/Texas Chapter; Bee Moorhead, Texas Impact; Gyl Switzer, Mental Health America of Texas)

Against — None

On — Katrina Daniel, Texas Department of Insurance; David Gonzales, Texas Association of Health Plans; Jay Thompson, Texas Association of Life and Health Insurers

DIGEST: HB 2782 would require the commissioner of insurance develop a process to review a health benefit plan's rate change and to disapprove a rate change that was excessive, inadequate, or unfairly discriminatory.

A rate would be:

- excessive if it was likely to produce a long-term profit that was unreasonably high in relation to the health benefit plan coverage;
- inadequate if it was insufficient to sustain projected losses and if the continued use of the rate either endangered the solvency of the issuer or substantially lessened market competition; and
- discriminatory if it was not based on sound actuarial principles; was not reasonably related to expected losses; was based on unreasonable administrative expenses; or was based on the race, creed, color, ethnicity, or national origin of an individual or group.

HB 2782 would establish criteria used by the commissioner to determine whether a rate change was actuarially sound. It would also allow the commissioner to disapprove a rate if its required filing was incomplete.

The bill would require the commissioner to create a method for a health benefit plan issuer to dispute a rate change disapproval. If a rate was disapproved, the health benefit plan issuer would be allowed to continue using the disapproved rate pending its appeal. During this process, the insurer would be required to deposit in escrow any premiums it collected that exceeded its previous rate. The commissioner would be required to adopt rules governing premium reimbursements should a rate disapproval be upheld.

HB 2782 would require the commissioner to seek all available federal funding to cover the cost to the department of reviewing rates and resolving rate disputes.

The bill would take effect September 1, 2013, and would apply to rates in health benefit plans issued or renewed on or after January 1, 2014.

SUPPORTERS SAY:

HB 2782 would protect consumers and employers from excessive health insurance rate increases. The Texas Department of Insurance (TDI) currently has the authority to review certain health benefit plan rate increases for reasonableness but cannot disapprove a rate it finds to be unreasonable. At the same time, TDI has the authority to deny excessive rate increases for numerous other types of insurance. Extending this authority to health insurance, one of the largest expenses for individuals and employers, would ensure that insurance companies' rates were actuarially sound.

Studies show that the 37 states with the authority to deny excessive rate increases are better positioned to negotiate reductions in filed rates. Nationwide, rate review activity has reduced average rate increases 2.8 percentage points, while in Texas the average rate increase was reduced by only 0.1 percentage point. In Colorado, the insurance regulator attributes $32 million of annual consumer savings to the authority to deny excessive rate hikes.

HB 2782 would save TDI money by directing it to apply for available federal funds to conduct health insurance rate review instead of using

money from its operating budget. Lowered health insurance rates would also save consumers money and increase business investment.

OPPONENTS SAY:

HB 2782 would create uncertainty in the health insurance market and hurt health benefit plan issuers by allowing the commissioner to disapprove rates already in use. The bill's proposed escrow accounts have not been used in TDI's rate review process for any other type of insurance and would place an unnecessary administrative burden on insurance companies.

SUBJECT: Creating the public school educator excellence innovation program

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

1 absent — Dutton

WITNESSES: For — Erika Beltran, Katie Brattain, Brittany Evans, Stacey Hodge, Julie Robinson, and Michael Scott, Teaching Trust; Susanna Crafton, Stand for Children Texas; Grace Van Voorhis; (*Registered, but did not testify:* Melva V. Cardenas, Texas Association of School Personnel Administrators; Andrew Erben, Texas Institute for Education Reform; Lloyd W. Graham, La Porte ISD; Patricia V. Hayes, Stand for Children Texas; David Maddox, Kids First; Nelson Salinas, Texas Association of Business; Howell Wright, Texas Association of Mid-Size Schools, Texas Association of Community Schools; and five individuals)

Against — None

On — Priscilla Aquino-Garza and John Fitzpatrick, Educate Texas; Ted Melina Raab, Texas AFT; Sandra West, Science Teachers Association of Texas; (*Registered, but did not testify:* David Anderson, Texas Education Agency)

BACKGROUND: The 79th Legislature in 2006 created the Educator Excellence Awards Program to provide grants to school districts.

The law requires a school district to use at least 60 percent of grant funds to directly award classroom teachers and principals who effectively improve student achievement as determined by meaningful, objective measures. Remaining funds may be used for mentoring and to provide financial incentives for teachers who work in hard-to-staff schools and subject areas.

DIGEST: CSHB 1751 would amend Education Code, ch. 21, subch. O to establish

the purpose and requirements for the renamed Educator Excellence Innovation Program. The bill would repeal Education Code, sec. 21.705, which specifies how districts may use grant funds awarded under the program.

The program would be designed to systemically transform educator quality and effectiveness through innovative school district-level policies, including hiring, evaluation, professional development, and compensation. The goal would be to improve student learning and academic performance, especially in districts where a majority of campuses serve a student population that is at least 50 percent educationally disadvantaged.

The bill would require the Texas Education Agency (TEA) to award grants on a competitive basis, giving weight to plans that comprehensively and innovatively addressed educator quality and effectiveness.

It would eliminate requirements that funds be distributed using a formula based on average daily attendance.

The bill would allow districts to use grant funds to:

- implement and administer a high-quality mentoring program for teachers in the first three years of classroom work using mentors who are experienced, trained, and preferably teach in the same subject and school;
- implement a teacher evaluation system using multiple measures that include classroom observation, degree of student educational growth and learning, and self-evaluation;
- restructure the school day or year for professional development, to the extent allowed by law; and
- establish an alternative teacher compensation or retention system.

Districts could ask the education commissioner for flexibility from statutory provisions relating to educator appraisals and incentives, staff development, and the minimum salary schedule. A majority of the school board and a majority of teachers and other staff members at affected campuses would be required to vote for the waiver request.

CSHB 1751 also would make changes to educator excellence plans developed by district-level committees and submitted to TEA. Those plans no longer would require approval by a majority of teachers at the affected

campus nor evidence of significant teacher involvement. Districts would not be required to provide notice to teachers and principals about criteria and formulas for distributing monetary awards.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. It would apply beginning with the 2014-2015 school year.

SUPPORTERS SAY:

CSHB 1751 would improve student learning and academic progress by transforming educator quality and effectiveness through mentoring, professional development, and teacher pay incentives.

Research consistently shows that teacher quality is directly linked to student achievement. It also is true that students in economically disadvantaged schools are least likely to have effective teachers in their classrooms.

The bill would encourage districts to think innovatively about how to develop the best teachers. Districts could seek a waiver from state laws governing the minimum salary schedule, teacher evaluations, and professional development, but only if a majority of the school board and educators voted their approval.

Grants would be awarded on a competitive basis, and districts would need to be creative and innovative in their plans. It would be a local decision how to spend the money, and districts could decline to use it for merit pay or bonuses if they thought such initiatives would be divisive.

Student test scores are only one of several factors that could be considered in evaluating teachers. The bill also would require classroom observations and self-evaluations to provide a broad overview of how well a teacher was doing.

Eliminating the minimum salary schedule, which dictates pay based on years in the classroom, and adopting a more rigorous, annual teacher evaluation system were among recommendations in a December 2012 report by the Texas Teaching Commission, launched by Educate Texas, a nonprofit funded by the Bill and Melinda Gates Foundation and the Communities Foundation of Texas. CSHB 1751 would give districts a means to adopt some of those recommendations.

The District Awards for Teaching Excellence (DATE), established by the Legislature in 2006, were intended to encourage districts to develop strategic compensation plans to encourage teachers to work in hard-to-staff schools and subject areas. Since 2006, about 516 districts have been awarded DATE funds.

Critics say DATE-funded educator stipends of $1,000 to $3,000 were not sufficiently large to drive fundamental improvements in teaching or student learning. CSHB 1751 would allow more significant pay incentives to reward the most effective educators.

Additionally, as the state has lowered its funding for DATE, districts have mainly used the money to draw down federal funds for teacher incentives.

OPPONENTS SAY:

CSHB 1751 would allow districts to seek a waiver from the education commissioner to make major changes in teacher pay and evaluations. Texas ranks among the bottom states in average teacher pay, and the minimum salary schedule keeps experienced teachers in the classroom.

Although the bill would require a majority of educators to approve a waiver request, it would be better to require a supermajority vote such as two-thirds.

Giving large bonus or pay increases to a few teachers could result in resentment and less collegiality on a campus. A better environment is created when all educators are able share in a school's success.

The bill also would allow teacher evaluations to be based partly on growth in student learning, which could lead to teacher pay being linked to student scores on state standardized tests. Linking teacher pay to test scores is a bad idea that would only raise the high-stakes nature of testing, which has been widely criticized by legislators this session.