

**Steering Committee:**  
Bill Callegari, Chairman  
Alma Allen, Vice Chairman

Rafael Anchia  
Drew Darby  
Joe Deshotel

Joe Farias  
Harvey Hilderbran

Donna Howard  
Susan King  
George Lavender

Tryon Lewis  
J.M. Lozano

Eddie Lucio III  
Diane Patrick  
Joe Pickett

---

# HOUSE RESEARCH ORGANIZATION

## daily floor report

Tuesday, May 7, 2013  
83rd Legislature, Number 68  
The House convenes at 10 a.m.  
Part Three

Sixty-nine bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills on the Major State, Constitutional Amendments, and General State calendars analyzed or digested in Part Three of today's *Daily Floor Report* are listed on the following page.

Seven postponed bills — HB 3463 by Bohac, HB 3427 by Lavender, HB 3808 by Farney, et al., HB 613 by Orr and Larson, HB 953 by Button, et al., HB 887 by Lucio, et al., and HB 620 by Eiland, et al. — are on the supplemental calendar for second-reading consideration today. The analyses are available on the HRO website at [www.hro.house.state.tx.us/BillAnalysis.aspx](http://www.hro.house.state.tx.us/BillAnalysis.aspx).



Bill Callegari  
Chairman  
83(R) – 68

## HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, May 7, 2013

83rd Legislature, Number 68

Part Three

HB 743 by R. Miller	Regulating school-based child-care facilities	141
HB 3005 by Burkett	Use of unemployment compensation funds for reemployment activities	144
HB 1352 by Callegari	Exempting sellers of electric signs from needing a license	146
HB 3593 by Burnam	Guidelines for determining that a voter is deceased	149
HB 581 by Howard	Waiving sovereign immunity in some employment cases involving nurses	152
HB 586 by Workman	Waiving sovereign immunity for certain claims related to state contracts	155
HB 2765 by Branch	Creating the Texas Competitive Knowledge Fund	158
HB 2690 by Elkins	Allowing peace officers to tow vehicles being sold by unlicensed sellers	161
HB 2500 by Bohac	Appraisal method of ad valorem taxes for solar energy property	163
HB 2145 by Hilderbran	Broadcaster payments of franchise taxes	166
HB 12 by Flynn	Gifts made to a state agency for a state employee salary supplement	168
HB 3669 by Naishtat	Recusal of a statutory probate judge or other judge hearing probate matters	170
HB 3316 by Keffer	Trust account or bond for construction retainage on certain projects	173
HB 3065 by Menéndez	Reimbursement of primary election costs directly to an election officer	177
HB 16 by Flynn	Requiring a state agency to post the results of certain audits on its website	179
HB 1468 by Sheets	Relating to confidential employer-insurance carrier communications	180
HB 3227 by Coleman	Requiring coverage of eating disorders in group health benefit plans	184
HB 3475 by Paddie	Prohibiting the comptroller from posting hotel tax receipt data online	186
HB 2163 by Eiland	Assessing insurers for insurer examinations	188
HB 2996 by T. King	Regulating the land application of Class B sludge	190
HB 1340 by Rose	Allowing children to consent to their own immunization in some cases	194
HB 382 by Burnam	Prohibiting certain settlement conditions in cases involving the state	196
HB 1843 by Branch	Limiting automatic admissions to higher education institutions	198
HB 2972 by K. King	Exempting baled cotton from insurance premium taxes	200
HB 1382 by Simpson	Regulation of food samples at farms and farmers' markets	201
HB 1853 by Ratliff	Behavior-related plans for students in special education programs	204

- SUBJECT:** Regulating school-based child-care facilities
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 5 ayes — Raymond, Fallon, Sanford, Scott Turner, Zerwas  
2 nays — Naishtat, Rose  
1 absent — Klick  
1 present not voting — N. Gonzalez
- WITNESSES:** For — David Fincher, National Child Care Coalition; Wendy Frederick; Lonnie Hutson and Trung Nguyen, Kids R Kids Private Preschools; Jim Smith; (*Registered, but did not testify:* Darold Frederick, We4freds, Inc.; Eileen Garcia, Texans Care for Children; Gary Hadley, Kids R Kids Carrolton; Madeline Nguyen, Kids R Kids Private Preschools; Judith Parken, League of Women Voters of Texas; Brenda Schultz, Texas Licensed Child Care Association; and 26 others)  
  
Against — Charles Evans, Texas Association of Non-Public Schools; Margaret McGettrick, Texas Catholic Conference; (*Registered, but did not testify:* Savannah Gonzales, Archdiocese of Galveston-Houston; Casey McCreary, Texas Association of School Administrators; Bill McGee, Hill Country Christian School of Austin and Texas Association of Non-Public Schools; Julie Shields, Texas Association of School Boards; and eight others)  
  
On — Michele Adams, Department of Family and Protective Services; (*Registered, but did not testify:* Howard Morrison, Texas Education Agency)
- BACKGROUND:** Human Resources Code, sec. 42.041(a) requires that a child-care facility obtain a license from the Department of Family and Protective Services (DFPS).  
  
Sec. 42.041(b)(7) exempts a before-school or after-school program operated directly by an educational facility accredited by the Texas Education Agency (TEA), the Southern Association of Colleges and

Schools, or an accreditation body that is a member of the Texas Private School Accreditation Commission. It also exempts a before-school or after-school program operated by an outside entity under contract with the educational facility if one of these accreditation bodies has approved the program's curriculum.

**DIGEST:** CSHB 743 would modify the license requirements for before-school and after-school programs by:

- removing the DFPS license exemption from a program operated by an outside entity under contract with an educational facility;
- adding a license exemption for private educational facilities directly operating before-school or after-school programs; and
- adding a license exemption for a before-school or after-school, child care or other extended day activity directly operated by a public school without charge.

DFPS would increase the license fee to each child-care facility by increasing to \$2 from \$1 the amount charged for each child the facility is permitted to serve.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 743 would improve the safety of children in before- and after-school programs. Currently children in daycare programs at school are not regulated by either TEA or DFPS, which creates a gap of unregulated care. For example, the workers do not necessarily have to undergo background checks, and the staff-to-child ratio may be indeterminate. Children need to be in facilities that meet a minimum level of care, and DFPS licensing would ensure they received that.

Critics' concerns about increased costs to facilities and families are overstated. While costs might increase to some degree, this would be justified by the improved safety of children in the state. Moreover, public schools would have the option of avoiding the DFPS licensing process by no longer charging a fee. If the fee provided relatively little total revenue in the first place, the programs might continue to be financially sustainable without it.

CSHB 743 would boost state revenue. According to the Legislative Budget Board, the modest increase in licensing fees would generate a

positive impact of \$763,434 in fiscal 2014-15.

**OPPONENTS  
SAY:**

CSHB 743 would restrict low-income children from accessing before- and after-school public day care programs, pushing many of them into less safe, less stable arrangements for large parts of the day.

If schools that are currently licensed by TEA have to meet additional state requirements, such as by reconfiguring playgrounds and bathrooms, in all likelihood many districts would no longer allow these programs on their campuses. In those that did, the discounted fees many programs use to meet the needs of their communities would not cover the cost of retrofitting buildings and hiring staff. Along with the increased license fees, these costs would become a substantial barrier to program access, and the families using the public school's day care program, who already cannot afford private child care, would be forced to seek out lower-quality after-school programs or informal child supervision.

CSHB 743 is a dangerous misapplication of an agencies' rulemaking authority. There is no reason that TEA's standards, which are sufficient during the day, are insufficient in the morning or afternoon. Texas public schools are not for-profit entities, while DFPS' standards are more suited to private contexts.

**NOTES:**

According to the fiscal note, the bill would result in a positive impact of about \$762,000 to general revenue related funds in fiscal 2014-15. This would result from the difference in the amount collected under the increased DFPS licensing fees and the expenses the department would incur in the process of licensing additional before- and after-school programs.

**SUBJECT:** Use of unemployment compensation funds for reemployment activities

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

**VOTE:** 5 ayes — J. Davis, Bell, Isaac, Murphy, Workman  
3 nays — Y. Davis, Perez, E. Rodriguez  
1 absent — Vo

**WITNESSES:** For — (*Registered, but did not testify*: Ellen Arnold, Goodwill Industries of Central Texas, Texas Association of Goodwills)  
  
Against — Rick Levy, Texas AFL-CIO; (*Registered, but did not testify*: Michael Cunningham, Texas State Building & Construction Trades Council)  
  
On — Larry Temple, Texas Workforce Commission; (*Registered, but did not testify*: Luis Macias, Texas Workforce Commission)

**BACKGROUND:** Labor Code, sec. 203.025 allows the Texas Workforce Commission (TWC) to requisition funds from the state’s account in the federal unemployment trust fund for the payment of certain unemployment benefits, such as to assist the state in covering unemployment benefit payments for a reasonable period of time.

**DIGEST:** HB 3005 would amend Labor Code, sec. 203.025 to enable the Texas Workforce Commission to enter into an agreement with the U.S. Secretary of Labor that would provide for the use of money from the state’s account in the federal unemployment trust fund to conduct projects related to reemploying unemployed individuals.  
  
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 3005 would allow TWC to waive certain provisions of state law in order to use dollars in the unemployment trust fund so that Texans could

take part in reemployment projects authorized by the U.S. Secretary of Labor. In 2012, the U.S. Congress enacted HR 3630, which authorized the Secretary of Labor to waive sections of federal law prohibiting states from using their money in the unemployment compensation trust fund for reemployment projects, so long as the costs of the unemployment trust fund did not increase. HB 3005 is needed because state law does not currently provide for the Texas Workforce Commission to participate in these reemployment projects.

Similar initiatives have been successful in Texas. For example, in 2009 TWC administered the Texas Back to Work program, which assisted more than 4,000 employers in hiring well-qualified Texans. Despite the program's success, it ended in 2012. HB 3005 would enable TWC to submit applications for innovative projects based on the Texas Back to Work model.

Any programs that were funded would be subject to Department of Labor oversight and would have to meet its guidelines during the administration of the program. Also, the Department of Labor would require not only that a program be cost neutral but that it provide cost savings to the state.

**OPPONENTS  
SAY:**

Employers pay unemployment insurance taxes to fund the unemployment compensation trust fund. The bill would allow the TWC, without legislative oversight, to divert trust fund dollars to fund experimental programs. The Legislature would not have a say in what programs TWC chose to implement. In addition, before allowing programs like this, the state should make sure there is enough money in the trust fund to protect the interest of employers.

- SUBJECT:** Exempting sellers of electric signs from needing a license
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 9 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles, Price, S. Thompson
- 0 nays
- WITNESSES:** For — Glenn Dodd; Karen Fordyce; De Humphries; Catherine Monson, Fastsigns International; Vikrant Reddy, Texas Public Policy Foundation; Kurtis Strand, S&S Signs and Specialties (*Registered, but did not testify*: Tom Baker; Kevin Brightwell, Stephanie Brooks, Ron Felt, Mark Glenn, Lana Hogue, Mike Hogue, Fastsigns; Brianna Brooks; Chris Brooks; Martha Dodd; Philip Dodd; Luis Escobar; Chris Fluhman; Bill Hammond, Texas Association of Business; Chris Howe; Annie Mahoney, Texas Conservative Coalition; Ed Mayle; Peter McDonough; William Stockley; Tina Strand; Shon Swanner; Ronald West; Rick Wilson)
- Against — Paul Ingle, Design Center Signs; John Lewis, Texas Sign Association; Lonnie Stabler, Texas Sign Association; (*Registered, but did not testify*: Renea Beasley, Independent Electrical Contractors of Texas; Michael Grimes, Texas Business Advertising Alliance; Rani Huffaker, State Sign; Chad Jones, Southwest Signs of San Antonio; Andy Leffler, Custom Sign Solutions; Sammy Morris; Jeffrey Palmer, Precision Roofing Inc.; Arthur Sitterle, Comet Signs, San Antonio and Houston; Leona Stabler, Texas Sign Association; Daniel Tessier; Tony Thomas, Daktronics; Lydell Toye)
- On — William Kuntz, Texas Department of Licensing and Regulation
- BACKGROUND:** Occupations Code, ch. 1305 regulates electricians. Secs. 1305.159 and 1305.160 require electrical contractors and electrical sign contractors to be licensed under chapter 1305.
- DIGEST:** The bill would exempt from ch. 1305 of the Occupations Code people who sold or offered to sell signs requiring electrical work or electrical sign work, if the person did not perform or offer to perform the sign work

themselves and if they used only an electrical contractor under sec. 1305.159 or an electrical sign contractor under sec. 1305.160.

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:**

Current law regarding electric signage is bad for consumers and hurts competition in the electric sign industry. Sign companies who do not employ a licensed master electrician or a master electrical sign contractor on their staffs must direct their customers elsewhere for electric signage. Employing a licensed electrician is a significant cost to these sign companies, who only occasionally may need electric sign work performed.

Because a master electrician or a master sign electrician must assign his or her license exclusively to a single company, in practical terms sign companies are unable to hire these much-in-demand electrician license holders for seasonal or part-time work. The cost of hiring a licensed electrician full-time not only includes the base salary of the electrician but also the benefits and insurance accorded to any full-time employee.

This bill would not change the fact that signs requiring electrical work to construct or install would be performed by a licensed electrical contractor or electrical sign contractor. The bill would ensure safety was preserved by having fully licensed professionals complete the technical aspects of the work while allowing these sign companies to give consumers a comprehensive sign service.

Under CSHB 1352, a customer would not have to work with multiple companies to have all their signage needs met. Sign companies would enjoy the same ability to subcontract that exists in most other industries, which may take advantage of specialized contract labor to deliver goods to consumers at a reasonable price.

**OPPONENTS  
SAY:**

The bill raises questions about safety, as it would authorize an unlicensed person to sell an electrical sign. In spite of supporters concerns, sign companies are at liberty to hire licensed master electricians or electrical sign contractors part-time or seasonally; there is no need to hire them full-time. There are several thousand master electricians and master sign electricians, many of whom do not have their licenses assigned to a company and who would be available for hire. The status quo is perfectly

acceptable, with sign companies sending consumers looking for sign work to a licensed electrical contractor who can perform any design, installation, and construction of electric signage.

- SUBJECT:** Guidelines for determining that a voter is deceased
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 6 ayes — Morrison, Miles, Johnson, R. Miller, Simmons, Wu  
1 nay — Klick
- WITNESSES:** For — Sondra Haltom, Empower the Vote Texas; Dee Lopez, Travis County Tax Office; Glen Maxey, Texas Democratic Party; (*Registered but did not testify*: Yannis Banks, Texas NAACP; Lydia Camarillo, Southwest Voter Registration Education Project; Bruce Elfant; Patricia Gonzales, William C Velasquez Institute; Karolina Lyznik, Mexican American Legal Defense and Education Fund; Ted Melina Raab, Texas American Federation of Teachers; Joanne Richards, League of Women Voters of Texas; David Weinberg, Texas League of Conservation Voters)  
  
Against — B R “Skipper” Wallace, Republican County Chairs Association; (*Registered but did not testify*: Erin Anderson, True the Vote Now; Marsha Fishman)  
  
On —(*Registered, but did not testify*: Keith Ingram, Texas Secretary of State, Elections Division)
- BACKGROUND:** Under Election Code, sec. 16.033, if a voter registrar has reason to believe that a voter is no longer eligible for registration, the registrar must deliver written notice to inform the voter that the person’s registration status is being investigated. The voter’s registration is subject to cancellation if the registrar does not receive an appropriate reply before the 30th day after the notice was mailed.  
  
Under Election Code, sec. 18.068, the secretary of state must compare the statewide computerized voter registration list to certain vital statistics lists every quarter for the purpose of removing ineligible voters from the voter registration list.
- DIGEST:** CSHB 3593 would require voter registrars to use a form for providing written notice under Election Code, sec. 16.033, if the secretary of state had adopted or recommended such a form. A reply would need to be

received by the 60th day after the date the notice was mailed.

Under CSHB 3593, in comparing the information on the voter registration list with the information on the vital statistics lists, the following exactly matching combinations would be considered a weak match:

- first name, last name, and date of birth;
- first name, last name, full social security number;
- date of birth and full social security number;
- last name, date of birth and last four digits of social security number; or
- last name and full social security number.

An exact match of any of these criteria with additional information determined by the secretary of state rule also would be a weak match. The secretary of state would not be able to determine that a voter was deceased based on a weak match.

The secretary of state would be allowed to inform the county of a weakly matched voter's residence that a weak match existed. Upon receiving this information, the county would be required to investigate whether the voter was the individual who was deceased. If the county determined that the voter was alive or if the voter appeared to vote in person, the county would be required to request that the voter provide any information required for a voter registration application, but the voter would not be required to provide the information.

A weak match could not be the sole basis on which to cancel a voter registration or to require the voter to provide additional information to prevent cancellation of the person's registration.

A strong match would only be met by an exact match of the voter's last name, full social security number, and date of birth, except that the secretary of state would be able to require more matching information to determine a strong match. The secretary of state would be allowed to determine that a voter was deceased based on a strong match.

The secretary of state would be allowed to obtain information from other state agency databases when determining whether a voter was deceased.

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 3593 would fight voter fraud and protect Texans' right to vote. The secretary of state fulfills its duty to ensure the accuracy of voter rolls in large part by comparing the current voter rolls to the Social Security Administration's death master list and other vital statistics lists to ascertain whether registered voters are deceased and should be removed from the registration list. The bill would give the secretary of state access to any state agency database it could utilize to help match voters.

During this 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. Current law provides limited guidance for what criteria the secretary of state should use in matching death records to voter registration records. Lack of guidance has resulted in election officials mistakenly purging thousands of eligible voters from the voter rolls in the months leading up to the November 2012 election. The bill would aim to ensure that deceased people were removed from the rolls while those who were eligible to vote remained registered.

The bill would ensure that the Legislature took responsibility for the process of voter roll maintenance. Controversy in the past about the voter roll maintenance process has been unfairly blamed on the secretary of state's office, when the Legislature should be the entity taking ultimate responsibility for ensuring voter rolls are well maintained.

The bill would not take flexibility away from the secretary of state. It would establish the current standards used by the secretary as a baseline to clarify that the responsibility for standards lies with the Legislature, while ensuring that the secretary of state had the flexibility it needed to match information as accurately and efficiently as possible.

**OPPONENTS  
SAY:**

CSHB 3593 would place too many restrictions on the secretary of state's office and impede the matching process. Voter registration and determination of a voter's ineligibility is an evolving process. The current matching process may not always be the most efficient process, and the secretary of state needs the flexibility to be able to determine and execute the most efficient matching process without requiring a change in the law to do so.

- SUBJECT:** Waiving sovereign immunity in some employment cases involving nurses
- 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 — Stacey Cropley, Texas Nurses Association; Elizabeth Sjoberg, Texas Hospital Association; (*Registered, but did not testify:* Dennis Borel, Coalition of Texans with Disabilities; Trish Conradt, Coalition for Nurses in Advanced Practice; Bryan Sperry, Children’s Hospital Association of Texas; James Willmann, Nursing Legislative Agenda Coalition)
- Against — John Dahill, Texas Conference of Urban Counties; (*Registered, but did not testify:* Mark Mendez, Tarrant County; David Reagan, Texas Municipal League Intergovernmental Risk Pool; Paul Sugg, Texas Association of Counties)
- BACKGROUND:** Occupations Code, ch. 301, is the Nursing Practice Act. It prohibits a person from disciplining, discriminating against, or retaliating against a nurse who has engaged in certain patient advocacy activities, such as reporting patient care concerns.
- Government Code, ch. 554, protects a public employee who in good faith reports a violation of law by a governmental entity or another public employee to an appropriate law enforcement authority (commonly known as whistleblower statutes), provides adjudication procedures, and establishes the types of relief available to a public employee.
- DIGEST:** CSHB 581 would waive the sovereign immunity from suit and liability of hospitals operated by state and local government entities if an employed nurse alleged a disciplinary, discriminatory, or retaliatory action after engaging in certain patient advocacy activities, such as reporting patient care concerns, requesting a nursing peer review, or refusing to engage in certain conduct. This would allow a nurse to maintain a lawsuit in state

court in order to seek relief, and any relief in these cases would be in addition to any other remedies available to a public employee under state or federal law.

The bill would adopt the following provisions from Texas' whistleblower statutes:

- the type of relief and amount of damages available to a public employee;
- the time during which a public employee could seek relief; and
- the requirement that a public employee use the grievance or appeal procedures of the state and local government entities before suing for relief.

The bill also would adopt several definitions from the Government Code and the Health and Safety Code.

A lawsuit against a state entity would have to be filed in Travis County District Court or a county in which all or part of relevant acts or omissions occurred. A lawsuit against a local entity would have to be brought in a district court in a county in which the relevant acts or omissions occurred.

This bill would take effect September 1, 2013, and would apply to actions commenced on or after that date.

**SUPPORTERS  
SAY:**

CSHB 581 would protect nurses employed by a state or local government entity and afford them the same rights as nurses employed at a private hospital. All licensed nurses are required to report potentially unsafe conditions, but a publicly employed nurse has no legal recourse if retaliated against after engaging in certain patient advocacy actions, such as making an internal report or requesting a nursing peer review. Currently, publicly employed nurses must use whistleblower statutes to report violations of the law to an external law enforcement agency in order for sovereign immunity to be waived, which allows the employer — a state or local government entity — to be sued for retaliation.

The bill would allow a publicly employed nurse to sue the state or local government entity for retaliatory actions following internal reports in order to recover limited damages, such as lost wages. This protection would encourage nurses to report potentially unsafe conditions, enhancing public safety and patient care, while incentivizing hospitals to efficiently and

effectively resolve any internal reports or disputes.

The bill would waive sovereign immunity in very limited situations because a nurse would need solid evidence of an alleged retaliatory action in order to support a lawsuit. This evidentiary burden would protect against excessive and frivolous lawsuits.

OPPONENTS  
SAY:

CSHB 581 would waive sovereign immunity in too many situations. A licensed nurse is required to engage in certain patient advocacy actions, but these actions are often based on subjective assessments and are not clear violations of the law. A state or local hospital might take a number of different steps to rectify the situation, some which could be interpreted as retaliatory actions. This bill would allow sovereign immunity to be waived if a nurse decided to file a lawsuit against his or her public employer based on subjective assessments of a situation.

Sovereign immunity should be waived only for clear violations of the law because it provides important protections for government entities and the taxpayers they represent. Minor adjustments in sovereign immunity protections could have significant public fiscal consequences. Excessive and abundant suits against a governmental entity could impair the body's ability to function and carry out its obligations to provide services to citizens. Any legislation that would entail an erosion of a public entity's sovereign immunity should be authorized only if absolutely necessary. It is important to protect public employers from facing excessive litigation.

- SUBJECT:** Waiving sovereign immunity for certain claims related to state contracts
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, S. Thompson  
0 nays  
2 absent — Hernandez Luna, Raymond
- WITNESSES:** For — Robert Cave, SureTec; Todd Hewitt; Tom Kader, SEDACO Inc.; Andrew Koebel; Corbin Van Arsdale, AGC-Texas Building Branch; Marc Young; (*Registering, but not testifying:* Jon Fisher, Associated Builders and Contractors of Texas; David Lancaster, Texas Society of Architects; Russel Lenz, Associated General Contractors of Texas, Highway, Heavy, Utilities and Industrial Branch; David A. Marwitz, Texas Surety Federation; Peyton McKnight, American Council of Engineering Companies of Texas; Jim Sewell; Michael White, Texas Construction Association)  
  
Against — (*Registered, but did not testify:* T.J. Patterson, City of Fort Worth)  
  
On — David Mattax, Office of the Attorney General; Renee Rusch and Tom Walston, State Office of Administrative Hearings; (*Registered, but did not testify:* Brad Parker, TTLA)
- BACKGROUND:** Title 5 of the Civil Practice and Remedies Code addresses governmental liability. Ch. 2260 of the Government Code applies to the resolution of certain contract claims against the state. Sec. 2260.002 excludes from the chapter personal injury or wrongful death claims arising from contract breaches and contracts executed or awarded before August 30, 1999.
- DIGEST:** CSHB 586 would add chapter 114 to Title 5 of the Civil Practice and Remedies Code governing lawsuit claims that stemmed from the breach of a written contract for engineering, architectural, or construction services with a state agency. The bill would not apply to an employment contract between a state agency and an employee of that agency. Under the bill, a state agency that was legally authorized to enter into contracts for these

services and did so would waive sovereign immunity to suit for breach of express provisions of the contract.

The bill would limit awards to:

- the balance due and owed by the state agency under contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration if the contract expressly provided for such compensation;
- the amount owed for written change orders or additional work required to carry out the contract;
- reasonable and necessary attorney's fees based on an hourly rate that were equitable and just if the contract expressly provided for such recovery; and
- interest at the rate specified by the contract or, if a rate was not specified, the rate for postjudgment interest as allowed by state law if the interest rate or price differential was not in the contract, up to 10 percent.

Damages could not include consequential damages, exemplary damages, or damages for unabsorbed home-office overhead. The bill would not waive a defense or a limitation on damages available to a party to the contract, except the bar to a suit based on sovereign immunity. CSHB 586 would not waive sovereign immunity to suit in federal court or sovereign immunity to suits based on negligence, fraud, tortious interference with a contract, or any other tort.

Unless the procedures conflicted with provisions in the bill, contractual adjudication procedures, including requirements for serving notices, alternative dispute resolution proceedings, or arbitration proceedings would be enforceable under CSHB 586. The bill would allow suits to be filed in a district court in a county where the events or omissions underlying the claim occurred or in a county in which the principal office of the state agency was located.

Under the bill, satisfaction and payment of a judgment would depend on legislative appropriation of funds as allowed by law. The bill would not allow property of the state or any agency, department, or office of the state to be used as a creditors' remedy to satisfy a judgment under the bill.

Ch. 2260 of Government Code would not apply to claims for breach of

contract covered by the new ch. 114 created by the bill.

Ch. 114 of Government Code created by the bill would apply only to a claim from a contract executed on or after September 1, 2013. Nothing in the act would be intended to create, rescind, expand, or limit any waiver of sovereign immunity to suit applicable to any contract executed before September 1, 2013.

The bill would take effect on September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 586 would ensure fairness and accountability in state contracts for engineering, architectural design, or construction services. No other governmental entity in Texas has the same power of sovereign immunity that current law grants to state agencies. Some state agencies have used sovereign immunity to take advantage of businesses under state contracts. CSHB 586 would reduce this potential for abuse.

Under current law, the State Office of Administrative Hearings can only provide relief for damages up to \$250,000. Claims with damages above \$250,000 must ask the Legislature to appropriate funds for payment of the remainder of the claim. Often claims with damages below \$250,000 have to be settled for less because the state agency lacks appropriated funds to sufficiently settle the claim.

The precedent has already been set for removing sovereign immunity for other governmental entities such as counties, municipalities, and school districts. Setting that precedent has not resulted in abuse. To the contrary, if sovereign immunity were removed, state agencies would be much more willing to settle a claim before it could rise to the level of a suit. Contractors with governmental entities would provide better pricing if they know that sovereign immunity on certain claims does not exist, which would ultimately save the state money instead of costing the state more.

The bill would not incur any costs to the state and does not have a fiscal note.

**OPPONENTS  
SAY:**

The immunity of the state should not be waived any further than it already has been. CSHB 586 would set a precedent for waiving sovereign immunity for all state contracts and could open the floodgates to unnecessary suits against state agencies.

- SUBJECT:** Creating the Texas Competitive Knowledge Fund
- COMMITTEE:** Higher Education — committee substitute recommended
- VOTE:** 9 ayes — Branch, Patrick, Alonzo, Clardy, Darby, Howard, Martinez, Murphy, Raney  
0 nays
- WITNESSES:** For — (*Registered, but did not testify:* Wendy Reilly, TechAmerica); Nelson Salinas, Texas Association of Business)  
Against — None  
On — Pedro Reyes, The University of Texas System
- DIGEST:** HB 2765 would establish eligibility criteria and formulas for appropriations from the Texas Competitive Knowledge Fund. The fund would provide additional funds to eligible research universities and emerging research universities to support faculty efforts in instruction and research. The fund would consist of money appropriated by the legislature to eligible institutions.
- The bill would establish two tiers of research institutions and grant them different levels of appropriations. The first tier would consist of those research universities that made average annual research expenditures of at least \$450 million. The second tier would consist of those emerging research institutions that made average annual research expenditures of at least \$50 million.
- At least 50 percent of the fund would be appropriated to the first-tier institutions with the remainder divided amongst the second tier. The appropriations would be based on the proportion of institutions average annual total research expenditures for the three fiscal years prior to the biennium in which the institution received money from the fund.
- For the first state fiscal biennium in which an eligible institution would receive an appropriation from the fund, its other general revenue appropriations would be reduced by an amount not to exceed the lesser of

\$5 million for the biennium or the amount of the institution's appropriation from the fund for the biennium. No institution would receive less from the fund than its contribution to it.

HB 2765 also would require the Texas Higher Education Coordinating Board to conduct a study of the appropriate definitions and categories of research expenditures to be used in determining an institution's eligibility for and distribution from the fund. The study would be due by December 1, 2014.

The bill would take effect on September 1, 2013.

**SUPPORTERS  
SAY:**

HB 2765 would incentivize and reward excellence at emerging and mature national research institutions by codifying the requirements and structure of the Competitive Knowledge Fund. Codifying the rules associated with fund participation would ensure clarity and fairness for potential entrants and increase transparency in the appropriations process.

The bill would mirror the appropriations formula for the fund found in CSSB 1. Placing that model into statute would protect the interests of all existing parties and provide fairness and transparency for future fund entrants.

The eligibility criteria in the bill would mean membership in the tiers was liquid. But current research expenditures would place UT-Austin and Texas A&M University in the first tier. The second tier would consist of The University of Houston, UT - Dallas, Texas Tech University, UT - Arlington, UT - El Paso, and UT - San Antonio.

The bill would not create a new authorization for appropriations because the fund already exists and the Legislature has already funded it over several biennia.

It is appropriate to reserve at least half the fund for the first tier because the Competitive Knowledge Fund is the only source of supplemental funds the first tier institutions have for faculty instruction and research. The second tier institutions all have access to other incentive funds as emerging research institutions.

**OPPONENTS  
SAY:**

HB 2765 would take away the Appropriations Committee's discretion to fund university research excellence through the Texas Competitive

Knowledge Research University Development Fund and place it in statute. There is no need to remove the Legislature's ability to shift budget priorities from session to session as changing economic conditions and policy shifts dictate.

The bill would invite future appropriations and expenditures of state funds. The Legislative Budget Board's fiscal note shows a negative fiscal impact of \$23.7 million.

The bill should not reserve at least half of the fund for the first tier research institutions. If the second-tier institutions are ever to achieve their full potential as research universities, they will need to receive a larger share of this fund.

- SUBJECT:** Allowing peace officers to tow vehicles being sold by unlicensed sellers
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 6 ayes — Smith, Kuempel, Gooden, Gutierrez, Miles, Price  
0 nays  
3 absent — Geren, Guillen, S. Thompson
- WITNESSES:** For — Byron Riley; (*Registered, but did not testify:* Lon Craft, TMPA; Robert Blankenship; Mark Fish; Phillip Lathrop; Ron McGuire)  
Against — None  
On — (*Registered, but did not testify:* William Harbeson, Texas Department of Motor Vehicles)
- BACKGROUND:** Under Transportation Code, sec. 503.021 persons may not be in business as an automobile dealer, either directly or indirectly, including by consignment, without a dealer general distinguishing number in one of the categories described by sec. 503.029(a)(6) for each location from which the person conducts business as a dealer. Sec. 503.209 requires applicants and renewals for the dealer numbers to provide information to the Texas Department of Motor Vehicles and to specify the type of dealer they are proposing to be.
- DIGEST:** CSHB 2690 would authorize peace officers to tow certain vehicles being offered for sale by persons engaged in business as an automobile dealer in violation of Transportation Code sec. 503.021's requirement to have a dealer number. Peace officers could tow these vehicles from the location where they were being offered for sale and stored to a vehicle storage facility, if the conditions in CSHB 2690 were met.
- Peace officers could tow vehicles only if:
- the officer had a reasonable suspicion that the vehicle was being offered for sale by person operating in violation of Transportation Code, sec. 503.021;

- the officer had complied with notice requirements in the bill; and
- The notice was attached at least two hours before the vehicle was towed.

Before towing a vehicle, officers would have to attach a conspicuous notice to the front windshield or another conspicuous part of the vehicle if there was no front windshield. The notice would have to state:

- the make and model of the vehicle, license plate number, and vehicle identification number;
- the date and time that the notice was affixed;
- that the vehicle was being offered for sale in violation of Transportation Code sec. 503.021;
- that the vehicle would be towed and stored at the owner's expense; and
- contact information of the vehicle storage facility.

Once the notice was attached, peace officers could prevent the vehicle from being removed by someone unless the person provided evidence of ownership or authorization from the owner to sell the vehicle.

Peace officers would have 48 hours after the tow to mail a written notice to the last known address of the vehicle's registered owner and lien holders. If the owner was a resident of another jurisdiction, the notice would have to be sent to the agency responsible for vehicle titles and registration in that jurisdiction. The bill would enumerate what would have to be in the notice, including the vehicle's identifying information; the date and time that it was towed; that the vehicle was being towed at the owner's expense; and the contact information for vehicle storage facility.

The bill would take effect September 1, 2013.

- SUBJECT:** Appraisal method of ad valorem taxes for solar energy property
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, Gonzalez, Ritter, Strama
- 0 nays
- 1 absent — Martinez Fischer
- WITNESSES:** For — Maura Yates, SunEdison; (*Registered, but did not testify:* George Christian, Texas Taxpayers and Research Association; Daniel Gonzalez, Texas Association of Realtors; Matthew Heartner, Public Citizen; Chris Hughes, Solar Energy Industries Association; Sara Kemptner, NRG Energy; Colin Meehan, Environmental Defense Fund; Luke Metzger, Environment Texas; Cyrus Reed, Lone Star Chapter - Sierra Club; Susan Ross TRIEA; David Weinberg, Texas League of Conservation Voters)
- Against — None
- BACKGROUND:** Tax Code, sec. 11.27(c)(1) defines a solar energy device as an apparatus designed or adapted to convert the radiant energy from the sun into thermal, mechanical, or electrical energy; to store the converted energy, either in the form to which it was originally converted or another form; or to distribute radiant or converted radiant solar energy.
- DIGEST:** CSHB 2500 would direct the chief appraiser of an appraisal district to use the cost method of appraisal to determine the market value of a solar energy property. The appraiser would use cost data obtained from generally accepted sources, make an appropriate adjustment for physical, functional, or economic obsolescence, and calculate the property's depreciated value using a maximum useful life of 10 years.
- The appraiser could not determine in any tax year the depreciated value to be less than 20 percent of the value computed after making appropriate adjustments for obsolescence and other justifiable factors to the value determined by using cost data from generally accepted sources.

The bill would take effect January 1, 2014, and would apply to solar energy property constructed after January 1, 2014.

**SUPPORTERS  
SAY:**

CSHB 2500 would clarify the methodology used to assess ad valorem taxes on solar energy property, which would remove ambiguity that keeps investors from putting money into projects that currently have an unclear estimated tax bill. The bill would seek only to provide guidance to chief appraisers — it would not create an incentive nor propose an abatement.

Texas is geographically ideal for solar projects, but the state needs to clarify the Tax Code regarding solar energy property to give investors the ability to plan for property taxes associated with such a facility. The bill would remove the ambiguity surrounding property assessment for new solar projects and pave the way for the growth of a young industry in Texas.

Industrial-scale solar projects are relatively new in Texas, and the technology they employ is rapidly changing. In order to encourage further development, the Tax Code must include a tailored assessment method to account for technological changes, which adjust the value of the property as technical efficiency improves.

As Texas' demand for electricity and scarce water resources increases, the state must act quickly and efficiently to employ a variety of generation methods, including energy from solar sources. Solar electricity projects can be built in only 12 months. They produce electricity during peak demand times and use no water to generate electricity. Solar can help meet Texas' resource adequacy needs now.

Concerns about the potential fiscal impact to local communities fail to recognize that clarity in assessing utility-scale solar projects could attract and increase new solar development in Texas and even enhance the local tax base for school districts.

**OPPONENTS  
SAY:**

While directing local authorities to appraise solar energy properties at below-market value would create a tax advantage for property owners, it is not clear that the benefits of such a proposal would outweigh the costs. According to the Legislative Budget Board, the bill would have a negative impact on local property taxes, which pay for schools. In addition,

incoming businesses and their employees would require more local services.

NOTES:

According to the fiscal note, the bill would create an unspecified cost to the state through the operation of the school finance formulas in response to the calculation of depreciated solar energy property values.

**SUBJECT:** Broadcaster payments of franchise taxes

**COMMITTEE:** Ways and Means — committee substitute recommended

**VOTE:** 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, Gonzalez, Ritter  
0 nays  
1 absent — Martinez Fischer  
1 present, not voting — Strama

**WITNESSES:** For — Robert Vonick, The Walt Disney Company and the Motion Picture Association of America; (*Registered, but did not testify:* Angela Miele and Jody Richardson, Motion Picture Association of America, Oscar Rodriguez, Texas Association of Broadcasters)  
  
Against - None  
  
On — (*Registered, but did not testify:* Teresa Bostick and Ed Warren, Comptroller of Public Accounts)

**DIGEST:** CSHB 2145 would amend Tax Code, sec. 171.106 to provide that a broadcaster's apportionment of receipts from a broadcast or other distribution of film programming was based on the legal domicile of the broadcaster's customer. The subsection would apply only to receipts that were licensing income from distributing film programming.  
  
CSHB 2145 would define broadcaster as a taxable entity, not including a cable service provider or a direct broadcast satellite that was a television station, a television network, a cable television network, or a television distribution company. Customer would be defined as person (company), including a licensee, that had a direct connection or contractual relationship with the broadcaster under which the broadcaster derived revenue. The bill would define film programming as all or part of a live or recorded performance, event, or production intended to be distributed for visual and auditory perception by an audience. Programming would be defined to include news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

The bill would take effect on January 1, 2015.

**SUPPORTERS  
SAY:**

The bill would provide clarity to the broadcast industry for franchise tax purposes by providing that the franchise tax should be based on where the broadcaster's customers (such as cable companies) are incorporated, and not where content is actually viewed (at homes and businesses). This parallels other state laws dealing with the conveyance of intellectual property. Film and other forms of broadcasts are conveyances of intellectual property.

**OPPONENTS  
SAY:**

The true intersection of the transaction for franchise tax purpose should be at the place of the ultimate consumer – the residential or business subscriber to a cable television or a satellite network. The LBB fiscal note states that the cost to the state over the biennium will be \$2.9 million beginning in 2015. The fiscal 2016-17 biennium cost is estimated to be \$5.8 million.

- SUBJECT:** Gifts made to a state agency for a state employee salary supplement
- COMMITTEE:** Transparency in State Agency Operations, Select — favorable, without amendment
- VOTE:** 5 ayes — Flynn, Larson, Martinez Fischer, Perry, Price  
0 nays  
3 absent — Alvarado, N. Gonzalez, Johnson
- WITNESSES:** For — (*Registered, but did not testify*: Donnis Baggett, Texas Press Association)  
Against — None  
On — (*Registered, but did not testify*: Tom Currah, Comptroller of Public Accounts; John Keel, Texas State Auditor's Office)
- BACKGROUND:** Government Code, ch. 659 prohibits state employees whose position falls under the state position classification plan or whose exempt position is funded by the general appropriations act from receiving a salary supplement from any source. Government Code, sec. 654.012 exempts certain state employees from the state position classification plan, such as professors at public higher education institutions.
- DIGEST:** HB 12 would amend Government Code, ch. 659 to require state agencies to post on their websites certain information regarding salary supplements to agency employees from outside private donations.  
The bill would prohibit a state agency from accepting a gift, grant, or donation to be used as a salary supplement for an employee unless the donor provided the agency with the methodology used for determining the salary supplement. The donor also would have to post on his or her personal website the specific information regarding the donation.  
The state auditor would have to adopt a schedule and format for reporting the information regarding donations made for salary supplements.

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 12 would improve transparency in state agency policies. Donations made to supplement a state employee's income should be treated as a public record, just as the actual state salary dollar amount is a public record. In ensuring transparency, the bill would help protect a state agency from any improper outside influence. Posting this information on a state agency's website would make sure it was accessible to any resident of the state.

**OPPONENTS  
SAY:**

Requiring an individual making a donation toward a state employee's salary supplement to post certain information and methodology on a personal website would result in a huge imposition on donors. These donors might not be willing to donate.

This especially would affect public universities. Institutions of higher education rely on private sources to fund excellent education and research programming. Without private funds for endowments, it would be difficult to recruit and retain the very best faculty at the state's universities.

SUBJECT: Recusal of a statutory probate judge or other judge hearing probate matters

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

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

0 nays

2 absent — Hernandez Luna, Hunter

WITNESSES: For — Pat Ferchill; Guy Herman, Probate Court of Travis County; Lin  
Morrisett

Against — Michael Easton; Susan C. Norman

BACKGROUND: According to the Office of Court Administration, statutory probate courts  
are a type of county court at law with jurisdiction over probate,  
guardianship, and mental-health matters. They are led by the presiding  
statutory probate court judge.

Among other duties, presiding judges of administrative judicial districts  
rule on most issues surrounding the recusal and disqualification of  
statutory probate court judges.

DIGEST: HB 3669 would conform the recusal statutes of statutory probate judges  
and other judges who hear probate matters to the newly amended Texas  
Rules of Civil Procedure, 18A and 18B, which govern the recusal of other  
judges in civil matters.

**Assignment powers of the presiding judge of the statutory probate  
courts.** The bill would vest the presiding judge of the statutory probate  
courts with the power to hear or rule on a referred motion of recusal or  
disqualification or assign a judge to hear and rule on a referred motion of  
recusal or disqualification. The presiding judge of the statutory probate  
courts also would be allowed to assign a presiding judge of the  
administrative judicial region to hear and rule on a referred motion of  
recusal or disqualification with the consent of the presiding judge of the  
administrative judicial region. The presiding judge would not be allowed

to assign a judge of a statutory probate court served by the judge who was the subject of the motion or recusal or disqualification.

If the presiding judge of the statutory probate courts were the subject of an order of recusal or disqualification, the chief justice of the Supreme Court would assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court to hear the case.

**Fees and enjoinders.** HB 3669 would allow a judge who heard a motion for recusal or disqualification, after notice and a hearing, to:

- award attorney's fees and expenses if the motion was groundless and filed in bad faith to harass or was brought for unnecessary delay and without sufficient cause; and
- enjoin the movant from filing other recusal motions in the case without the prior written consent of the presiding judge of the statutory probate courts.

**Self-recusal.** If a judge recused himself or herself and the judge served a statutory probate court located in a county with only one statutory probate court, the judge would ask the presiding statutory probate judge to assign a replacement. If the recusing judge served a county with more than one statutory probate court, the judge would ask the clerk of the statutory probate courts to randomly assign a replacement from the other statutory probate court judges.

**County judge recusal.** HB 3669 would allow visiting judges to be assigned for probate, guardianship, and mental health matters when a county judge was recused.

**Conforming amendments.** The bill would remove several references in the code to presiding judges of administrative judicial regions. The bill would transfer much of their decision-making power regarding recusals and disqualifications of probate judges to the presiding statutory probate court judge.

**Effective date.** The bill would take effect on September 1, 2013. The changes in recusal and disqualification law would apply only to a motion for recusal or disqualification made on or after the effective date.

SUPPORTERS

HB 3669 more closely conforms the recusal and disqualifications of

**SAY:** statutory probate judges to standard recusal rules for civil judges found in the Texas Rules for Civil Procedure, 18A and 18B. These rules reflect current best practices for impartiality and efficiency.

The bill also would largely remove presiding judges of judicial administrative regions from the probate judge recusal and disqualification process. The bill would do this because there have been too many costly delays in waiting for the overworked administrative judges to decide recusal matters and make replacement appointments. The bill would increase judicial efficiency by directing the presiding judge of the statutory probate courts to largely decide these recusal matters.

The bill would allow the presiding judge of the statutory probate courts to award attorney's fees against vexatious recusal motions and enjoin further motions where appropriate. This would prevent abuse of the recusal system and help reserve it only for instances when it was truly appropriate.

HB 3669 would not result in abuse of recusal statutes by statutory probate court judges. The Supreme Court of Texas, the Commission on Judicial Conduct, and other oversight bodies and officials would continue to monitor judges to prevent such abuse.

**OPPONENTS  
SAY:**

There are too few statutory probate court judges in Texas to allow them to police themselves for recusals and disqualifications. The current recusal system is largely determined by the presiding judges of administrative judicial districts. These judges are removed enough from the small and insular world of probate to ensure proper and even-handed hearings of recusal motions

SUBJECT: Trust account or bond for construction retainage on certain projects

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 4 ayes — Oliveira, E. Rodriguez, Walle, Workman

2 nays — Orr, Villalba

1 absent — Bohac

WITNESSES: For — Chris Elsberry; Andrew Harman; Dennis Lewis; Richard Skipper; Fred Wilshusen, Texas Construction Association; (*Registered but did not testify*: Brian E. Chester; Brent Connett, Texas Conservative Coalition; Jon Fisher, Associated Builders and Contractors of Texas; Todd Hewitt; John Hinson; Nancy Jones, Plumbing Heating Cooling Contractors; Michael White, Texas Construction Association)

Against — Brad Greenblum, International Council of Shopping Centers; Mark Witte, Houston Real Estate Council; (*Registered but did not testify*: Mary Calcote, Real Estate Council of San Antonio; Daniel Gonzalez, Texas Association of Realtors; David Mintz, Texas Apartment Association; Gardner Pate, Texas Building Owners and Managers Association; Jim Short, Houston Real Estate Council; Bob Stout, The Woodlands Development Company and Newland Communities Texas; Chelsey Thomas, Texas Association of Realtors)

On — Michael Chatron, AGC Texas Building Branch

BACKGROUND: Property Code, sec. 53.101(a) requires a property owner to retain 10 percent the contract price of the work to the owner or 10 percent of the value of the work under which a lien may be claimed by contractors, subcontractors, laborers, and materialmen.

Property Code, sec. 53.001(11) defines “retainage” as an amount representing part of a contract payment that is not required to be paid to the claimant within the month following the month in which labor is performed, material is furnished, or specially fabricated material is delivered.

DIGEST:

CSHB 3316 would require a property owner who took a construction loan or financing agreement secured by a lien to deposit retainage payments for a contractor in a construction trust fund account (construction trust) at the time of payment to the contractor.

The funds would be held in a construction trust fund account for the contractor and would be used first to meet the owner's obligations legally provided to the contractor. Any funds remaining after the obligation to the contractor was satisfied could be used for other construction payments or owner costs. Funds in the construction trust would not be subject to seizure or offset by the financial institution or other creditor to the owner.

A property owner would have to create a construction trust that would be identified as such, and the owner would have to keep the account records and deposit amounts by project and provide a copy of the statement from the financial institution if the beneficiary requested it.

The provisions in CSHB 3316 would not apply to a property owner that took out a construction loan or financing agreement to pay for the construction, remodeling, or repair of a single-family residential house or duplex or related land development. The bill would not apply to an owner improving property if the value of the improvement was \$500,000 or less.

The property owner could obtain a bond instead of establishing a construction trust that met the same financial obligations as the construction trust and was in a penal sum equal to at least 10 percent of the value of the total of the original contract amount and normal and usual extras up to 15 percent of the original contract.

The bond would be dependent on the prompt payment for retainage for all labor, subcontracts, and materials furnished to accomplish the work agreed upon in the contract and would be for the purpose of protection and use of each claimant due a payment. The bond could not be subject to any obligation other than payment to the contractor. If the property owner took out a bond in lieu of a construction trust, the owner would have to provide proof of the bond.

If the property owner did not provide proof of the trust or bond, the contractor could suspend contractually required performance.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 3316 would correct a deficiency in lien law relating to retainage on construction projects, ensure that developers followed current Texas law, and ensure that contractors were paid for work they completed.

Current law already requires a construction project owner to retain 10 percent from each monthly payment of the contract price to be paid to the general contractor after project completion, but if the owner has financial problems that cause the lender to foreclose on the property, often the retainage is not there and the general contractor and subcontractor are not paid. CSHB 3316 would prevent this problem by requiring the retainage to be deposited in a separate bank account or requiring the purchase of a bond to pay retainage. The bill would ensure that the owners simply obey the law by safeguarding the funds that they are legally required to set aside for payment to contractors.

Current law regarding retainage allows the developer to essentially finance 10 percent of a project with money owed to the contractors, which could lead the lender to underfund the project. Requiring retainage funds to be set aside would keep all interested parties honest, reflect the true cost of a construction project, and put the borrowing risk squarely where it belongs.

Fears that the bill would increase the cost of borrowing and construction are exaggerated. Stakeholders have suggested that the current equity requirements are in the 25 percent to 35 percent range, and the bill would pose a maximum potential increase of 10 percent. A bond in lieu of setting aside funds in a construction trust would probably be in the 1 percent to 1.5 percent range.

Critics should recognize that problems recovering retainage are well documented in testimony and can cost a contractor hundreds of thousands of dollars on a single large project. If it were not an issue, there would not be so many contractors asking for a statutory requirement to ensure they receive the payments rightfully owed to them.

The bill would not create burdensome regulation, only a mechanism to ensure developers complied with the law that many are currently violating. The administrative requirements are quite simple and only require the developer to prove the retainage is being set aside with a statement.

**OPPONENTS**

CSHB 3316 would increase the cost of development, create needless

SAY: regulation and administrative burden for a problem that is not widespread, and shift more risk to the developers.

Large commercial property development already requires a substantial equity investment on a project, and this bill would only increase that amount. Some estimates could push the equity investment to over 50 percent, not only making construction more expensive but making it harder to do at all. Lower investment in major construction would mean fewer construction jobs and less economic development in the state.

The bill would require developers to open separate trust accounts, creating new accounting and compliance policies for something that contractors cannot prove is a substantial problem. Foreclosures certainly have been higher during the economic decline over the past few years, but the state should not create burdensome administrative requirements for a temporary and rare problem. Moreover, there is nothing that currently prevents a subcontractor for asking that this provision be put in a contract. The problem should be addressed between the interested parties, not by creating new laws.

The bill simply would create a special benefit to contractors and remove any risk associated with doing business from the contractor and place it all on the lender and developer. Risk is inherent in construction projects and that extends to all actors in the marketplace.

**SUBJECT:** Reimbursement of primary election costs directly to an election officer

**COMMITTEE:** Elections — committee substitute recommended

**VOTE:** 6 ayes — Morrison, Miles, Johnson, R. Miller, Simmons, Wu  
1 nay — Klick

**WITNESSES:** For — Jacquelyn Callanen, Bexar County, Texas Association of Election Administrators Legislative Chair; (*Registered, but did not testify:* Ken Clark, Galveston County Commissioners Chair; Dana DeBeauvoir, County and District Clerks Legislative Committee; Cathy Sisk, Harris County; Michael Vasquez, Texas Conference of Urban Counties)  
  
Against — (*Registered, but did not testify:* Rosemary Edwards, Texas Republican County Chairman’s Association; Chris Howe; Eric Opiela, Karnes County Republican Party, Texas Republican County Chairman’s Association)  
  
On — (*Registered, but did not testify:* Keith Ingram, Texas Secretary of State, Elections Division)

**BACKGROUND:** Election Code, sec. 173.0832 allows the secretary of state, on request of a county election officer who conducts a primary election under an election services contract, to provide payment of expenses directly to the officer who incurs the expense. This is available only for a county election officer of a county with a population of 100,000 or more.

**DIGEST:** CSHB 3065 would remove the county size requirements in Election Code, sec. 173.0832.  
  
The bill would take effect September 1, 2013.

**SUPPORTERS SAY:** CSHB 3065 would give counties more options and ensure that the same law applied statewide. Currently, the law allows for county election officers to request reimbursement directly only if their county has a population of 100,000 or more. This is a particularly useful option when an election administrator finds that a party is not being diligent with the

money allocated for primaries and has trouble recovering the costs. The bill would allow election officers from all counties to take advantage of this option. This would remove the current middleman and streamline the reimbursement process. The bill would be permissive, and county parties not wishing to take advantage of this option would not be required to do so. Many counties would remain unaffected by this bill unless a problem arose.

The bill would not cause partisan conflicts or materially affect the process of reimbursement. The money recovered still would be going to the same officers as it currently does. The bill would merely remove the middleman in the process.

**OPPONENTS  
SAY:**

CSHB 3065 would require the secretary of state to reimburse party officers directly for costs incurred in a primary election. Political primaries should be the financial responsibility of the parties holding them, and requiring direct reimbursement to election officers could cause partisan conflicts.

- SUBJECT:** Requiring a state agency to post the results of certain audits on its website
- COMMITTEE:** Transparency in State Agency Operations, Select — favorable, without amendment
- VOTE:** 5 ayes — Flynn, Larson, Martinez Fischer, Perry, Price  
0 nays  
3 absent — Alvarado, N. Gonzalez, Johnson
- WITNESSES:** For — *(Registered, but did not testify:* Donnis Baggett, Texas Press Association)  
Against — None  
On — John Keel, Texas State Auditor's Office; *(Registered, but did not testify:* Tom Currah, Comptroller of Public Accounts)
- BACKGROUND:** Government Code, ch. 2102 establishes guidelines related to the internal audits of state agencies. In addition to internal audits, a state agency must review its functions, activities, and processes by conducting a formal risk assessment.
- DIGEST:** HB 16 would amend Government Code, ch. 2102 by adding the requirement for a state agency to post on its website an audit of the agency, including an internal audit and a risk assessment report. This would be done at the direction of the state auditor and also would apply to the state's higher education institutions.  
  
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.

- SUBJECT:** Relating to confidential employer-insurance carrier communications
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 5 ayes — Oliveira, Bohac, Orr, Villalba, Workman  
2 nays — E. Rodriguez, Walle
- WITNESSES:** For — Cathy Dewitt, Texas Association of Business; Sam McMurry, Texas Self Insurance Association; William Weldon, The Travelers Companies Inc.; (*Registered, but did not testify:* Lee Ann Alexander, Liberty Mutual Insurance; Kathy Barber, NFIB of Texas; Pam Beachley, Texas Cotton Ginners' Trust; Albert Betts, Association of Fire and Casualty Companies of Texas; Pamela Bratton, Society of Human Resource Management Texas State Council; Brent Connett, Texas Conservative Coalition; Jeff Dodson, The Boeing Co.; Jon Fisher, Associated Builders and Contractors of Texas; Michael Johnson, American Airlines; Lee Loftis, Independent Insurance Agents of Texas; John Marlow, ACE Group; Matt Matthews, Texas Association of Staffing; David Mintz, Texas Apartment Association; Lucinda Saxon, American Association of Independent Claims Professionals; Emily Somerville, Apollo Group; Joe Woods, Property Casualty Insurers Association of America)
- Against — John A Davis, Texas Trial Lawyers Association; Fabiola Flores, Texas Workers Advocates; Rick Levy, Texas AFL-CIO; Brad McClellan; Alan Tysinger; (*Registered, but did not testify:* Jason Byrd, Texas Trial Lawyers Association; Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Emily Timm, Workers Defense Project)
- On — (*Registered, but did not testify:* Rob Bordelon, TDI Division of Workers Compensation; Amy Lee, Texas Department of Insurance; Brian White, Office of Injured Employee Counsel)
- BACKGROUND:** The Texas Supreme Court ruled in *In re: XL Specialty Insurance Company, et al.* that attorney-client privilege does not protect communications between the workers compensation insurer's lawyer and the covered employer.

Labor Code, Subtitle A, is the Texas Workers' Compensation Act.

Labor Code, sec. 409.011 (b) (1)-(5) describes the employer's rights under the Texas Workers' Compensation Act. This includes the employer's right to communication from the Division of Workers' Compensation within the Texas Department of Insurance (TDI) explaining the employer's right to be present and give evidence at administrative hearings of an employee's claim, the right to report suspected fraud, the right to contest the worker's injury compensability, and the right to receive notice of a claim settlement proposal or an administrative or judicial proceeding relating to the claim's resolution. Labor Code, sec. 415.002 (b) states an employer has a right to freely discuss a claim with a carrier, assist in an investigation and evaluation of a claim, or attend a proceeding of the division and participate at the proceeding.

Labor Code, sec. 415.002 (a) (6) imposes an administrative penalty on the insurance carrier or its representative if the carrier allows a non-self-insured employer to dictate methods and terms on which a claim is handled and settled.

**DIGEST:**

CSHB 1468 would amend the section of the Texas Workers Compensation Act governing what information may be provided to the employer and the employer's rights. The bill would extend the right for the insurance coverer and the covered employer to have confidential communications not subject to disclosure. The carrier could refuse to disclose or prevent another person from disclosing these communications.

Covered employer includes the employer's attorneys, consultants, sureties, indemnitors, employees, third-party administrators, and other agents.

The communication subject to confidentiality would include mental impressions, conclusions, opinions, claims-handling strategies, litigation strategies, legal theories regarding the claim, claim statute, claim reserves, or proprietary business practices.

The communications between the covered employee and the insurance carrier would be made confidential in furtherance of the employer's rights as outlined in Labor Code sec. 409.011 (b) (1)-(5) and Labor Code sec. 415.002 (b).

The bill would not apply to communications offered as evidence in a judicial proceeding between the carrier and the covered employee, communications made to the insurance carrier in violation of Labor Code sec. 415.002 (a) (6), or public records subject to open access requirements. These confidential communications would not affect the requirement for both parties to exchange medical reports, expert witness reports, medical records, and other information. Nor would they affect the right of the commissioner of Insurance to obtain information for the purpose of monitoring compliance with the law or reviewing the performance of carriers.

The bill would apply only to communications between an insurance carrier and a covered employee occurring on or after the effective date of the bill.

The bill would take effect on September 1, 2013.

**SUPPORTERS  
SAY:**

This bill would extend confidentiality protections to communications between the employer holding the workers' compensation policy and the insurance company. This reverses the court's ruling in *In re: XL Specialty Insurance Company, et al.* that this communication is subject to discovery. This is an important protection because insurance companies and employers need to be able to have unfettered discussion about the factual basis of workers' compensation claims.

The committee substitute would make an important distinction in specifying that this information was "confidential" and not "privileged." Confidential communications may therefore still be subject to court review, unlike privileged information, while still allowing a degree of cooperation and discussion between the covered employer and the insurer. This bill would therefore not imply that the relationship between the covered employer and the insurance company's lawyer was the same as a client-attorney relationship, or even that their interests were perfectly aligned. The bill simply would extend the protection of "confidentiality" to these communications.

Covered employers and insurance companies could have a need to discuss a claim confidentially if the facts of the claim touched on proprietary business information.

**OPPONENTS  
SAY:**

Insurer-employer communication ought to be subject to discovery like any other information, and it is unfair to the other party in the lawsuit that

these communications are secret. Extending a form of privilege to the employer-insurer relationship is inappropriate, as recognized by the *In re: XL Specialty Insurance Company, et al.* decision. An insurer's lawyer is obligated to represent the interests of the insurer, not those of the covered employer, and inasmuch as those interests may diverge, this type of confidentiality should not be applied to the relationship.

What exactly covered employers and insurance companies would need to discuss confidentially is unclear. The law prohibits an insurance company from allowing a covered employer to dictate the strategy used to settle the workers compensation claim. Insurance companies are no longer subject to bad faith lawsuits from employees, in the wake of the Texas Supreme Court decision in *Texas Mutual Insurance Company v. Ruttiger*, and therefore would not need to share information with employers to construct a defense for those lawsuits.

If the law did pass, an insurance company could deny a claim on the basis of confidential information from the employer, which would undermine the workers' compensation system's transparency and could make the employer liable to litigation from the denied worker.

- SUBJECT:** Requiring coverage of eating disorders in group health benefit plans
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 7 ayes — Smithee, Eiland, G. Bonnen, Morrison, Muñoz, Taylor, C. Turner
- 0 nays
- 2 absent — Creighton, Sheets
- WITNESSES:** For — Carolyn Dower, Neda; Lindsay Ewan, Texas Childrens’ Hospital; Theresa Fassihi, Mental Health American of Greater Houston and Houston Eating Disorder Specialists; Mara Gittess, Houston Eating Disorder Specialists; Hawley Poinsett, Texas Academy of Nutrition and Dietetics; Clayton Travis, Texans Care for Children and nine individuals; (*Registered, but did not testify*: Lily Houseman, Texas AFL-CIO; Patricia Kolodezy, Texas Medical Association; Marcia Laviage, Texas Psychological Association; Katharine Ligon, Center for Public Policy Priorities; John Stuart, National Association of Social Workers Texas Chapter; Gyl Switzer, Mental Health America of Texas; Neathery Thurmond, Austin Foundation for Eating Disorders; and 14 individuals)
- Against — (*Registered, but did not testify*: Kathy Barber, NFIB/Texas; Kandice Sanaie, Texas Association of Business)
- On — Doug Danzeiser, Texas Department of Insurance
- BACKGROUND:** Insurance Code, ch. 1355, requires group health benefit plans to provide a certain amount of coverage for specified serious mental illnesses.
- DIGEST:** HB 3227 would include anorexia nervosa, bulimia nervosa, and other eating disorders within the definition of “serious mental illness” for the purpose of group health benefit plan coverage.
- The Sunset Advisory Commission would have to determine the extent to which enrollees were using eating disorder coverage and the impact of this coverage on the cost of group health benefit plans by September 1, 2016, and would report the findings to the Legislature by January 1, 2017. The

Texas Department of Insurance and other state agencies would need to cooperate with the commission to review these coverage changes.

The bill would apply to group health benefit plans that were delivered, issued, or renewed on or after January 1, 2014.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

HB 3227 would increase access to treatment for individuals with eating disorders. According to one estimate, nearly 11 million Americans suffer from these life-threatening illnesses. Although treatment for these disorders is often successful, few individuals receive the necessary medical and mental health services. By requiring coverage for eating disorders, this bill would recognize the seriousness of these illnesses and enable affected individuals to obtain treatment.

By complementing Affordable Care Act provisions, this bill would not require group health benefit plans to defray the cost of providing benefits that exceed the essential benefits package established by the federal government. Moreover, this bill would minimally impact small businesses because it likely would apply only to the health benefit plans of large employers.

**OPPONENTS  
SAY:**

HB 3227 would be an expensive government mandate. By requiring coverage for eating disorders, the bill could increase costs to employers, raise insurance premiums and co-pays, and reduce wages. Ultimately, a new mandate could add to the growing number of uninsured individuals in Texas. Moreover, the health care insurance market is undergoing substantial changes due to the Affordable Care Act, and new mandates should be considered only after this market has stabilized.

- SUBJECT:** Prohibiting the comptroller from posting hotel tax receipt data online
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama  
0 nays  
2 absent — Martinez Fischer, Ritter
- WITNESSES:** *(On introduced version)*
- For — Roxana Gonzalez; Michelle Jones; Nayana Nancy Patel; Paul Patel; Vinod Patel; *(Registered; but did not testify:* Vinesh Desai; Harshad Patel; Kevin Patel; Paresh Patel; Prakash Patel; Pravinkumar Patel; Sonny Patel; Tarun Patel)
- Against — Michael Amezquita, Bexar Appraisal District; Joseph Woller, Foundation Appraisers Coalition of Texas; Albert Love; Bruce Walker *(Registered, but did not testify:* Ashley Chadwick, Freedom of Information Foundation of Texas; Katherine Doggett, Integra Realty Resources Houston; David Englund, Austin Chapter of the Appraisal Institute; Seth Mitchell, Bexar County Commissioners Court; Jim Robinson, Texas Association of Appraisal Districts Legislative Committee; Steve Scurlock, Independent Bankers Association of Texas; Paul Hornsby; Todd Walker; Jay Weir)
- On — Marya Crigler, Travis Central Appraisal District; Donald Dillard, Comptroller of Texas
- BACKGROUND:** Tax Code, ch. 156, imposes a 6 percent tax on hotel occupancy to be remitted to the comptroller along with a report stating the total amount of the payments made for rooms at the person’s hotel, the amount of tax collected during the preceding reporting period, and other information the comptroller requires. The records submitted from hotels are public information and are available for viewing on the comptroller's website.
- DIGEST:** CSHB 3475 would prohibit the comptroller from publishing a report that revealed the gross or taxable receipts of a hotel that remitted hotel

occupancy taxes under Tax Code, ch. 156. The gross or taxable receipts data would be subject to laws governing public information. The comptroller would establish procedures to enable electronic exchange of information with another state agency upon request.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 3475 would protect the privacy of hotel operators who remit hotel tax reports to the comptroller. Currently, the comptroller collects and assembles all hotel tax receipts and posts them in an online database, where they may be searched by location. The online database includes fields for taxpayer number, hotel name, address, capacity, receipts, and taxable receipts.

The bill would prohibit the comptroller from continuing to post the receipts online without interfering with appraisers and the public's ability to access the information through open records requests. The practice of posting the receipt data online is unfair to the hotels that file the reports, since similar data is not posted for entities that report other taxes to the state (e.g. franchise taxes, sales and use taxes). The only other tax report that comes close to divulging this level of information is the mixed beverage receipt tax, and that is still much more general than hotel taxes. There is no reason that the hotel industry's information should be singled out and made broadly available in such a detailed format.

**OPPONENTS  
SAY:**

CSHB 3475 could hamper the ability of appraisers and appraisal districts to reliably assess a property's market value. There are three main methods that appraisers use for commercial property, and one of these relies on the income of the establishment. Appraisers and appraisal districts routinely consult the hotel tax receipt information to determine how much those properties are generating from their operations. Restricting the availability of this information could hamper these efforts.

**SUBJECT:** Assessing insurers for insurer examinations

**COMMITTEE:** Insurance — favorable, without amendment

**VOTE:** 8 ayes — Smithee, Eiland, G. Bonnen, Creighton, Muñoz, Sheets, Taylor, C. Turner

0 nays

1 absent — Morrison

**WITNESSES:** For — None

Against — Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify:* Wayne Faircloth)

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

**BACKGROUND:** Insurance Code, sec. 401.151 requires that a domestic insurer be financially audited by TDI at least once every five years. The insurer is required to pay the expenses directly attributable to the examination, as well as an annual assessment toward the ongoing examination program.

Sec. 401.152 requires that an insurer not organized under the laws of Texas pay the Texas Department of Insurance (TDI) for the salary and expenses of each examiner and for other TDI expenses related to the audit.

**DIGEST:** HB 2163 would require that TDI impose on insurers not organized in Texas an annual assessment sufficient to meet all expenses relating to their examination program in a manner similarly calculated to the annual assessment on insurers organized in Texas.

The bill would take effect September 1, 2013.

**SUPPORTERS SAY:** HB 2163 would boost Texas' insurance industry and economy by assessing domestic and out-of-state insurers equally.

Leveling the assessment playing field would mean fewer carriers would have a disincentive to domicile in Texas. TDI notes in its *Biennial Report to the 83rd Legislature* that Texas consumers and businesses paid more than \$106 billion in insurance premiums last year, making Texas the 12th-largest insurance market in the world. But in relation to the size of the state's insurance market, Texas is home to an average number of insurance companies. Texas is also average in terms of the number of large insurers writing \$500 million or more in annual premiums.

The bill would help increase competition, support economic growth in Texas, and enhance TDI's ability to influence regulatory developments at the national level.

OPPONENTS  
SAY:

HB 2163 would be a *de facto* act of protectionism to keep Texas insurance companies protected from outside competition. The insurance market is currently in flux due to the Affordable Care Act and other regulatory changes, and the bill would be poorly timed.

- SUBJECT:** Regulating the land application of Class B sludge
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 7 ayes — Harless, Isaac, Kacal, Lewis, E. Thompson, C. Turner, Villalba  
2 nays — Márquez, Reynolds
- WITNESSES:** For — Buddy Garcia, Partners Dewatering; Carter Mayfield, Beneficial Land Management LLC; Jess Mayfield, Beneficial Land Management, LLC.; Stephen Minick, Texas Association of Business; (*Registered, but did not testify*: Chuck Bailey, Vic Hilderbran; Tyson Sowell, Texas Campaign for the Environment; Bob Turner)
- Against — Eric Allmon; Dwayne Clarke, Southwaste Services; Andrew Dobbs, Texas Campaign for the Environment; John Hall; Jerry James, City of Victoria; Robin Schneider, Texas Campaign for the Environment; Jeff Thompson, Texas Permitted Liquid Waste Processors and Liquid Environmental Solutions; (*Registered but did not testify*: Rita Beving; Tim Brown, Central Texas Groundwater Conservation District; Hector Gonzalez, El Paso Water Utility; Stacy Guidry, Central Texas Zero Waste Alliance; Myron Hess, National Wildlife Federation; Steve Kosub, San Antonio Water System; Luke Metzger, Environment Texas; Cyrus Reed, Lone Star Chapter, Sierra Club; Brenda Terry; John Terry; David Weinberg, Texas League of Conservation Voters; Kaiba White, Public Citizen)
- On — David Galindo, Texas Commission on Environmental Quality
- BACKGROUND:** Health and Safety Code, sec. 361.121 requires that “Class B sludge” cannot be applied to land without a permit from the Texas Commission on Environmental Quality (TCEQ), that certain notices must be issued, that permits are subject to contested cases, and the permit holder must meet certain insurance requirements.
- Class B sludge is the product of municipal wastewater treatment. Class B sewage sludge is a classification of sewage sludge based on the levels of disease-causing organisms. Class A sewage sludge has been treated to reduce pathogens and its attractiveness to vectors to a greater extent than

is achieved in Class B sewage sludge.

Government Code, sec. 2006.001 defines a small business corporation, partnership, or sole proprietorship that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts.

**DIGEST:**

**Land application by registration.** CSHB 2295 would remove the requirement that a person receive a permit from TCEQ to land apply Class B sludge and require that they receive a registration from TCEQ to do so. The bill would make conforming changes throughout Health and Safety Code, sec. 361.121.

**Grease and grit trap waste.** CSHB 2296 would add an alternative definition to the current definition of Class B sludge to include Class B sludge that has combined and processed with grease trap waste, grit trap waste, or septage within the boundaries of wastewater treatment facility, and meet the existing Class B pathogen reduction requirement and certain vector attraction reduction requirements.

**Notice and hearing requirements.** CSHB 2295 would remove the requirement that an individual wishing to apply class B sludge to land must follow the notice and hearing requirements of Water Code, ch. 5. The bill would strike language requiring that notices be sent to landowners within a one-quarter mile radius of the land application site.

**Insurance requirements.** CSHB 2295 would provide that the small business applying class B sludge would be exempt from having to maintain commercial liability insurance and environmental impairment insurance.

The bill would take effect on September 1, 2013.

**SUPPORTERS  
SAY:**

**Land application by registration.** Registration is a much quicker and significantly cheaper process than permitting. Switching to a registration process instead of a permitting does not weaken TCEQ rules related to the environmental safety of Class B sludge.

**Grease and grit trap waste.** Only grease and grit trap waste that has been mixed with Class B sludge and meets stringent pathogen and new vector

attraction reduction requirements can be applied to land. TCEQ, through its rulemaking process and under federal guidelines for pathogen and vector reduction, would adopt new rules for sludge application ensuring that the use of Class B sludge mixed with grease and grit trap waste was no more environmentally harmful than Class B sludge without grease and grit trap waste.

Class B sludge waste from grease and grit traps have a high concentration of water and could benefit dry soils.

**Notice and hearing requirements.** HB 2996 would replace the permit requirement with TCEQ's established registration process. Although opponents may argue that such a change undermines public participation, in fact, registration would require substantial notification requirements and allows for public participation through public meetings if the public requests the meetings.

HB 2296 would subject Class B sludge registration application to the notice requirements in commission rules for registrations. Notices must be mailed to adjacent property and elected public officials. The public would be provided the opportunity to request a public meeting. In the age of social networking, neighborhood and community list serves, and readily available information on the governmental and private websites, opponents' arguments that communities would not receive adequate notice are out of step with the reality of today's interconnected world.

**Insurance requirements.** The current insurance requirements for small businesses requesting to apply Class B sludge to land is excessive, far outstripping the ability of companies to afford the cost. The insurance requirements for Class B sludge application far exceed the dangers that the sludge imposes on the environment or human health. CSHB 2996 would remove an insurance requirement that is disproportional to the risk.

No other area regulated by TCEQ — petroleum storage tanks, landfills, industrial and hazard waste operators — are required to have this kind of insurance.

The state has ample remedies under its enforcement authority to address risk, including site restrictions, buffer zones, groundwater evaluations, and nutrient management plans, thus ensuring that Class B sludge could be applied a minimal risk.

OPPONENTS  
SAY:

**Land application by registration.** CSHB 2993, by providing for registration, weakens environmental protections. The registration process significantly reduces the public right to seek redress for a poorly written permit, or a permit that is technically flawed. The state should be concerned about environmental protection, not the expediency of authorizing companies to apply Class B sludge.

**Grease and grit trap waste.** Grease and grit trap waste contain high levels of hydrocarbons and heavy metals. The material is currently dewatered and put in landfills. That practice should continue. Grease takes significantly longer to break down in the environment. Instead of benefitting soil, one of the purported purposes of sludge application, Class B sludge containing grease will clog porous soil and potential kill plants.

**Notice and hearing requirements.** CSHB 2993 would significantly weaken the public right to participate in decisions about whether to apply Class B sludge to particular areas. For example, CSHB 2993 deprives the public of contested case hearings. Parties directly affected by a poor permitting decision by TCEQ would be unable to confront the applicant and TCEQ over a flawed permit before an unbiased administrative law judge. A public meeting is not a substitute for a contested case hearing before an administrative law judge.

**Insurance requirements.** CSHB 2993 would remove important insurance requirements. Companies engaged in any commercial enterprise that involves the disposal of a waste product should at minimum maintain some liability insurance.

If a permit is poorly written and surface water or ground water is contaminated by Class B sludge, TCEQ would have to seek redress from the company. Unfortunately, a small business may not have the financial ability to remedy the environmental contamination and could easily be forced out of business by cleanup costs, thus leaving the state with the cost of environmental restoration.

- SUBJECT:** Allowing children to consent to their own immunization in some cases
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 10 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler
- 1 nay — Laubenberg
- WITNESSES:** For — Marilyn Doyle; Donna Persaud, Parkland Health and Hospital System; Susan Spalding, Dallas County Hospital District; Jill Strachan-Batson, Parkland Health and Hospital Systems; (*Registered, but did not testify*: Jennifer Allmon, The Texas Catholic Conference and The Roman Catholic Bishops of Texas; Michael Hill, Texas Association of Local Health Officials; Jason Sabo, The Immunization Partnership; Josette Saxton, Texans Care for Children; Dusty Warden, Immunize El Paso)
- Against — (*Registered, but did not testify*: Lauren Dewitt; Leena Dillingham; Barbara Harless; Paul Hastings, Texas Home School Coalition; Amy Hedtke; Chris Howe; Carol Leonard; Sharon Power; Rebecca Rex, Parents Requesting Open Vaccine Education; Ken Stanford II)
- On — (*Registered, but did not testify*: Saroj Rai, DSHS)
- BACKGROUND:** Family Code, ch. 32, governs consent to treatment of a child by a non-parent or child, including who may consent to immunizations of the child.
- DIGEST:** HB 1340 would allow a child 14 years of age or older to consent to the child's own immunization if the health care provider had on file a valid medical treatment consent form from a parent, managing conservator, guardian, or other authorized consenter. A child's consent would need to be written, signed, and given to the health care provider administering the treatment. Even if the child consented, the provider could not administer the vaccine if the person actual knowledge that a parent or other authorized consenter had expressly refused consent for the immunization.
- A child would have to provide the health care provider with sufficient and accurate health history about himself and, if necessary, his family to allow the provider to adequately assess the risks and benefits of the

immunization and determine whether to administer it.

A child's consent that met all requirements could not be later challenged on the grounds that, as a minor, the child could not validly consent to medical care. Unless they were negligent, a health care provider or facility would not be liable for the immunization of a child whose consent met all requirements. This bill would control if it conflicted with Family Code, sec. 32.003, governing consent to medical treatment.

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 1340 would improve immunization rates, especially among vulnerable populations. In addition to a general medical consent form, current law requires a separate consent form at the time an immunization is administered, which can be difficult to obtain if a teenager is homeless or incarcerated. It also can be challenging to obtain independent consent for immunizations if a parent is working or not engaged with the child's medical care. By allowing minors to consent to immunizations in certain situations, this bill would remove barriers and improve health outcomes.

This bill would not circumvent established immunization consent procedures because it would require a general medical consent form to be on file with the health care provider. If a parent wanted to ensure that a child was not immunized without additional consent, the parent could note this on the general medical consent form or provide this in writing to the health care provider.

**OPPONENTS  
SAY:**

HB 1340 could evade parental consent procedures for immunizations. Some parents who sign a general medical consent form are opposed to immunizations or want to provide consent on a case-by-case basis. By allowing teenagers to consent to immunizations, this bill could result in some teenagers being immunized against their parents' will. Moreover, this bill would encompass too many types of immunizations. If anything, the bill should allow teenagers to provide consent only for immunizations required to attend school.

**NOTES:**

The bill's author plans to offer a floor amendment to limit applicability to youth who are in a juvenile justice facility.

**SUBJECT:** Prohibiting certain settlement conditions in cases involving the state

**COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended

**VOTE:** 7 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, S. Thompson  
0 nays  
2 absent — Hernandez Luna, Raymond

**WITNESSES:** For — Donnis Baggett, Texas Press Association; Fred Lewis; Jason Smith; Tom "Smitty" Smith, Public citizen; Doug Swanson, Dallas Morning News and Freedom of Information Foundation of Texas (*Registered, but did not testify*: Ashley Chadwick, Freedom of Information Foundation of Texas; Carol Geiger, Public Citizen; Michael Schneider, Texas Association of Broadcasters; Stewart Snider, League of Women Voters of Texas)  
  
Against — None

**BACKGROUND:** Civil Practice and Remedies Code, 101.001, defines “governmental unit” as the state, government agencies, political subdivisions, emergency service organizations, and other institutions, agencies, or organs of the government.

**DIGEST:** CSHB 382 would prohibit the attorney general or other attorney representing the state from entering into a settlement agreement for more than \$30,000 that, as a condition of the settlement, prohibited the plaintiff from disclosing facts, allegations, evidence, or other matters to any person, including a journalist or member of the media. A settlement agreement violating this requirement would be void and unenforceable, but it would not affect information that was privileged or confidential under a different law.  
  
The bill would apply to settlements for causes of action that accrued on or after September 1, 2013.  
  
This bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 382 would be a “good government” bill that would increase transparency. Every year, government attorneys use hundreds of thousands of state funds to settle cases. However, due to confidentiality clauses in settlement agreements, the public knows very little about how this money is spent. This bill would ensure that taxpayer dollars were not being used to muffle legitimate criticism of government agencies or hide wrongdoing by public officials.

**OPPONENTS  
SAY:**

CSHB 382 would impede the legal parties’ ability freely to negotiate the terms of a settlement agreement. By eliminating confidentiality clauses in certain situations, this bill could make cases harder to settle, forcing expensive litigation that could cost more taxpayer dollars. Moreover, employers value these clauses because they can prevent disgruntled employees from hurting their reputations or lashing out at former coworkers.

- SUBJECT:** Limiting automatic admissions to higher education institutions
- COMMITTEE:** Higher Education — favorable, without amendment
- VOTE:** 7 ayes — Branch, Patrick, Clardy, Darby, Howard, Murphy, Raney  
0 nays  
2 absent — Alonzo, Martinez
- WITNESSES:** For — (*Registered, but did not testify:* JJ Baskin; Daniel Becka, Texas Exes; Robert Howden, Texans for Higher Education; Zack Jamail; Michael Morton, Invest in Texas; Michael Vitris)  
  
Against — Marianna Anaya; Yannis Banks, Texas NAACP; Karolina Lyznik, MALDEF; Samantha Robles; (*Registered, but did not testify:* Sonya Rose Hernandez)  
  
On — William Powers, The University of Texas at Austin; (*Registered, but did not testify:* Kedra Ishop, The University of Texas at Austin)
- BACKGROUND:** Under Education Code, secs. 51.801-51.809, with certain exceptions, each general academic teaching institution must admit a Texas applicant for admission to the institution as an undergraduate student if the applicant graduated with a grade point average in the top 10 percent of the student's high school graduating class.
- DIGEST:** HB 1843 would extend an exemption to the admissions rule that allows The University of Texas at Austin to cap its incoming freshman class enrollment at 75 percent of students automatically admitted through the top 10 percent program. The bill would move the sunset date of the exemption from the 2015-16 academic year to the 2017-18 academic year.  
  
The bill also would repeal a part of the Education Code that prevents an institution of higher education from admitting students under the top 10 percent rule if a court order, applicable to the institution, prevents it from considering an applicant's race or ethnicity as a factor in undergraduate admissions.

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 1843 would put off the debate on extending UT's partial exemption from the top 10 percent rule until the next legislative session. This would grant the Legislature time to consider the expected ruling in the *Fischer* case by the Supreme Court of the United States. The case challenges the constitutionally, under the Fourteenth Amendment's Equal Protection Clause, of UT - Austin's use of race as a factor in undergraduate admissions decisions.

While it is hoped that the Supreme Court affirms the 5th Appellate Circuit's decision upholding current state law and policy, the outcome is uncertain and the ruling may come too late for the Legislature to consider a response this session. HB 1843 would grant state policy makers the time needed to weigh the resulting decision.

HB 1843 is not an attempt to reverse or repeal the progress made in UT admissions through the top 10 percent rule. The bill would put off the decision because no meaningful discussion or decision can be made on the issue before the Supreme Court rules on *Fischer*. The bill is intended to preserve the status quo and grant UT - Austin and state policy makers the most flexibility possible regardless of what the Supreme Court decides.

**OPPONENTS  
SAY:**

By moving the date when UT - Austin's partial exemption from the top 10 percent rule would expire, the Legislature is putting off an important debate about minority admissions at the state's flagship university. The partial exemption from the top 10 percent rule should be allowed to expire in order to maximize minority enrollment. Any backtracking on the use of this effective tool for admitting minorities is unacceptable because there is no guarantee the Legislature would restore minority admission mechanisms in the future.

**SUBJECT:** Exempting baled cotton from insurance premium taxes

**COMMITTEE:** Ways and Means — committee substitute recommended

**VOTE:** 7 ayes — Hilderbran, Otto, Bohac, Button, N. Gonzalez, Ritter, Strama  
0 nays  
2 absent — Eiland, Martinez Fischer

**WITNESSES:** For — Adina Christian, Ryan LLC; (*Registered, but did not testify:*  
Stephanie Gibson, Ryan and Company)  
Against — None

**BACKGROUND:** Insurance Code, sec. 225.004 provides that surplus lines insurance premiums are taxed at a rate of 4.85 percent of the gross premiums.  
  
When surplus lines insurance is written to cover baled cotton intended for export, surplus lines tax is due from customers and is collected by insurance agents in the same way sales tax is collected by sellers. This tax is added to the cost of the cotton and makes Texas cotton less competitive in international markets.

**DIGEST:** HB 2972 would amend Insurance Code, sec. 225.004 by exempting premiums on stored or in-transit for export baled cotton from the surplus lines insurance premium taxes.  
  
The bill would take effect January 1, 2014, and would affect tax liability occurring on or after that date.

- SUBJECT:** Regulation of food samples at farms and farmers' markets
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 5 ayes — T. King, Anderson, Kleinschmidt, Springer, White  
1 nay — Kacal  
1 absent — M. González
- WITNESSES:** For — Judith McGeary, Farm and Ranch Freedom Alliance; Suzanne Santos, Sustainable Food Center; (*Registered, but did not testify:* Susan Beckwith, Texas Organic Farmers and Gardeners Association; Katie Malaspina, Texans Care for Children; Peter McCarthy, Texas Health Freedom Coalition; James Wygant, Farm and Ranch Freedom Alliance; Jarrod Atkinson; Teresa Beckmeyer; Patrick Fitzsimons; Carla Jenkins; Kelley Masters; Susanna Simpson; Roxanna Smock; Clint Stutts)  
  
Against — (*Registered, but did not testify:* Shanna Igo, Texas Municipal League; Stephanie Johns, City of San Antonio; TJ Patterson, City of Fort Worth)  
  
On — (*Registered, but did not testify:* Troy Alexander, Texas Medical Association; Adam Buuck, Texas Department of State Health Services, State Meat Inspection Program; Cheryl Wilson, Department of State Services)
- DIGEST:** CSHB 1382 would amend Health and Safety Code, ch. 437 to regulate food samples at farms and farmers' markets. References to "food" available at farmers' markets would go beyond "produce" to include poultry, fish, livestock and associated products, planting seed, or a product made from the above items.
- Sanitary conditions for sampling.** The bill would make adjustments to existing standards for sanitary conditions by removing certain requirements, including that produce samples be kept in approved, clean, and covered containers and that cutting surfaces meet standards approved by local or state enforcement agencies.

CSHB 1382 would allow a person preparing produce samples on-site to observe proper hand washing techniques immediately before preparing samples instead of wearing gloves. Under the bill, utensil and hand-washing water would not have to be disposed of in a facility connected to the public sewer system or in a manner approved by local or state enforcement agencies.

The bill also would require a person selling or providing samples of meat to comply with Health and Safety Code, ch. 433 of the regarding meat and poultry inspection.

**Cooking demonstrations.** The bill would prohibit a unit of local or state government from requiring a farmers' market to pay a permit fee for conducting a cooking demonstration or providing samples of food if the demonstration or provision of samples was conducted for a bona fide educational purpose. The bill also would make various adjustments to existing sanitary condition standards when providing samples at a farmers' market and provide guidance on the regulation of cooking demonstrations at farmers' markets.

A farmers' market could host cooking demonstrations if it had an establishment operator with a valid certification supervising the demonstration, regardless of whether the demonstrator provided a sample of food. The market also would have to comply with the requirements and rules of a temporary food establishment. Any food provided would have to be a sample of food and not a full serving, and food samples would have to be disposed of within two hours after beginning the demonstration.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 1382 would regulate farmers' markets in a way that reflected the service they provide. Under current law, farmers' markets across Texas are strapped with inappropriately burdensome regulation that is better suited to a grocery store, which operates on a daily basis in a consistent and controlled environment. By contrast, farmers' markets are typically held once or twice a week for only a few hours, often outside in an empty lot.

The bill would change this one-size-fits-all policy and apply common-sense but flexible health and safety regulations better suited to the operators, vendors and consumers sampling and selling food at a farmers'

market. The bill would not alter who could enforce the rules or significantly change the safety standards. It simply would make the requirements more practical for the environment in which the food was being sampled and sold.

CSHB 1382 also would add a provision allowing for certain cooking demonstrations for educational purposes. This would give vendors at a farmers' market the ability to offer supervised demonstrations designed to inform customers on proper cooking techniques for food being sold. This would lead to a better-informed customer.

Farmers' markets are all about choice. This bill would allow more Texans the opportunity to make informed decisions about the food they prepare and consume.

**OPPONENTS  
SAY:**

While the bill would tailor health and safety regulations to better suit the practical needs of farmers' markets, it does not contain enough protections to ensure food safety and public health.

- SUBJECT:** Behavior-related plans for students in special education programs
- 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 — (*Registered, but did not testify:* Holly Eaton, Texas Classroom Teachers Association; Monty Exter, The Association of Texas Professional Educators; Janna Lilly, Texas Council of Administrators of Special Education; Ted Melina Raab, Texas-American Federation of Teachers; Jeff Miller, Disability Rights Texas; Jorge Renaud, Texas Criminal Justice Coalition; Don Rogers, Texas Rural Education Association; Rona Statman, The ARC of Texas; Columba Wilson)
- Against — None
- On — (*Registered, but did not testify:* David Anderson and Gene Lenz, Texas Education Agency; Steve Swanson)
- BACKGROUND:** Under state and federal law, a school district is required to establish an admission, review, and dismissal (ARD) committee to develop an individualized education program (IEP) for each child served by the district's special education program.
- DIGEST:** CSHB 1853 would permit a student's ARD committee to determine that a behavior improvement plan or a behavior intervention plan was appropriate for a student for whom the committee had developed an IEP.
- If the committee made that determination, the behavior-related plan would be included as part of the student's IEP and provided to each teacher with responsibility for educating the student.
- 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

HB 1853  
House Research Organization  
page 2

September 1, 2013, and would apply beginning with the 2013-14 school year.