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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 14, 2013
83rd Legislature, Number 73
The House convenes at 10 a.m.

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

Bill Callegari
Chairman
83(R) – 73

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 14, 2013
83rd Legislature, Number 73

SUBJECT: Continuing the Texas Board of Professional Engineers

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Miles, Price, S. Thompson

0 nays

2 absent — Guillen, Gutierrez

SENATE VOTE: On final passage, March 26 — 31-0

WITNESSES: *(On House companion bill, HB 1676:)*
For — (*Registered, but did not testify:* Joe Luke, The Structural Engineers Association of Texas; Jennifer McEwan, Texas Society of Professional Engineers; Steve Stagner, American Council of Engineering Companies of Texas)

Against — None

On — James Randall; (*Registered, but did not testify:* Lance Kinney, Texas Board of Professional Engineers; Steven Ogle and Joe Walraven, Sunset Advisory Commission)

BACKGROUND: The Texas Board of Professional Engineers licenses professional engineers, certifies engineers-in-training, registers engineering firms, and investigates complaints of illegal or incompetent practice by licensed and unlicensed persons, taking disciplinary action when necessary.

The nine-member, governor-appointed board includes six engineers and three public members. The board had 29 employees in fiscal 2011. As of that year, the board had licensed a total of 55,407 professional engineers, had certified a total of 13,154 engineers-in-training, and had registered a total of 8,927 firms.

As a self-directed, semi-independent agency, the board funds itself through licensing fees instead of receiving legislative appropriations. In

fiscal 2011, the board collected $7.4 million in professional fees, $3.2 million in licensing and other fees, $51,000 in administrative penalties and $1.4 million in exam fees. The board spent $2.8 million on operating expenses, taken from the administrative penalties and licensing fees, and sent $7.8 million to the general revenue fund, a portion of which is deposited in the Foundation School Fund.

The board last underwent Sunset review in 2002-03. Unless continued, the board's authority will expire September 1, 2013.

Occupations Code, sec. 1001.206 (a) requires an increase of $200 in the fee for a license renewal or issuance of a reciprocal license for engineers.

DIGEST:

SB 204 would continue the Texas Board of Professional Engineers (TBPE) until September 1, 2025.

TBPE, or a panel composed of three board members, would be required to temporarily suspend the license, certificate, or registration of a person if the board or panel determined that the person's continued practice constituted an imminent threat to the public welfare.

The board could suspend a license, certificate, or registration without a hearing so long as action was taken to initiate proceedings for a State Office of Administrative Hearings (SOAH) hearing at the same time as the suspension and if a hearing was held as soon as practicable. SOAH would be required to hold the hearing within 14 days following the date of the temporary suspension to determine if there was probable cause for the board's determination. A final hearing would be held no later than 61 days after the suspension.

The board would be allowed to issue a cease-and-desist order to a person not licensed, certified, or registered by the board who was violating a statute or rule relating to the practice of engineering.

SB 204 would increase the board's maximum administrative penalty amount from $3,000 to $5,000 per violation.

The board would adopt policies and guidelines for the exam procedure, including exam admission, administration, and national exam requirements. It would post online policies for the board's exam procedures or those of any national organization selected by the board to

administer an exam. The exam no longer would have to be an eight-hour written examination.

SB 204 would require the board to obtain criminal background checks for all applicants for initial or renewed licensure. Applicants would be required to submit a complete and legible set of fingerprints to the board or the Department of Public Safety (DPS) for the purpose of conducting criminal history checks. The board could contract with DPS to administer a criminal history check and authorize DPS to collect the costs incurred in performing this check from the applicant. Applicants for renewed certification would not have to submit their fingerprints if they already had done so for initial or renewed licensure. The criminal history background check requirement would apply only to applications for licenses or renewals filed on or after January 1, 2014.

The bill would require that the $200 fee increase required by Occupations Code sec. 1001.206(a) be collected at the time of license issuance or renewal.

The board would adopt rules to implement the changes made by SB 204 by December 1, 2013.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 204 appropriately would authorize TBPE to continue in its current form as an independent agency until 2025. Because of its self-directed, semi-independent (SDSI) agency status, any reorganization in which the board's functions were absorbed by another agency would cost the state at least $373,900 in the board's annual remittance to general revenue, which is required under the SDSI Act.

SB 204 would make a number of changes to bring the board in line with standard practice for licensing followed by other state agencies. Other agencies require applicants for licensure to submit fingerprints for background checks, are able to issue administrative penalties of $5,000, and are authorized to issue cease-and-desist orders or to temporarily suspend licenses. The board should have access to these more effective enforcement actions to sanction engineers whose offenses were sufficiently grave to merit summary suspension or to discipline license holders who committed a series of less serious violations.

By changing the exam requirements, the bill would give the board the flexibility needed to continue administering these exams. At present, applicants for the professional engineering license must take three exams, two of which are administered by the National Council of Examiners for Engineering & Surveying (NCEES). Some of these tests will switch to a computer-based format in the near future. Removing the statutory requirement that tests be eight-hour written exams would give the board the flexibility to continue to rely on NCEES tests after they no longer were administered in hard-copy form.

The board already has the statutory authority to run background checks on license holders. However, the current system does not allow DPS to search for out-of-state infractions and does not allow for a thorough check on engineers originally from other states. Background checks using fingerprints enable a more accurate identification of the person in question and a more thorough check of law enforcement records. Thirty-six other agencies already require license holders to submit fingerprints for background checks, and SB 204 would allow TBPE to use this more stringent method of checking for criminal histories among the engineers it licenses.

Collecting the professional fee at the time of license issuance or renewal is only fair. At present, an applicant who submits the professional fee to the board might never receive a license if he or she failed the licensing examinations. SB 204 would tie the professional fee to the actual granting of the license, a reasonable change that would stop the board from placing an undue financial burden on applicants.

OPPONENTS SAY:

The functions of the TBPE should be absorbed into the Texas Department of Licensing and Regulation (TDLR). TDLR has a good track record of administering licensing programs, reducing license holders' costs, and eliminating duplication among its licensing programs, which promotes efficiency.

The board should not have the authority to summarily suspend an engineer's license without first conducting a hearing. This is a serious step that should require the safeguards of due process before the board could take the drastic step of immediate suspension.

At present, about 80 percent of the board's renewals occur online. Requiring renewal applicants to submit fingerprints would make this

streamlined renewal process more difficult for both the board and for the license holders, some of whom have held licenses for decades and have not committed a crime. Submitting fingerprints would be intrusive and unnecessary because the current method of performing background checks works well.

NOTES:

SB 204 would have a negative impact of $88,000 to general revenue related funds in fiscal 2014-15, according to the LBB's fiscal note, due to the board no longer collecting the $200 professional fee from applicants who did not pass the examination or receive a license. Because one-quarter of this fee is deposited to Foundation School Fund, with the rest flowing to general revenue, $22,000 of this total would represent a loss to the Foundation School Fund.

The House companion bill, HB 1676 by Price, was left pending in the House Licensing and Administrative Procedures Committee after a March 26 hearing.

SUBJECT: Relating to the continuation of the Texas Facilities Commission

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Hilderbran, Huberty, Smithee, Sylvester Turner

0 nays

2 absent — Menéndez, Oliveira

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: (*On House companion bill, HB 2107*:)
For — David Lancaster, Texas Society of Architects

Against — None

On — Terry Keel, Texas Facilities Commission; Christian Ninaud, Sunset Commission; (*Registered, but did not testify*: Shyra Darr, Michael Lacy, and John Raff, Texas Facilities Commission; Mark Wolfe, Texas Historical Commission)

BACKGROUND: According to Government Code, ch. 2152, the Texas Facilities Commission (TFC) is governed by a commission of seven public members, with five of the members appointed by the governor and two appointed by the lieutenant governor. Of the five gubernatorial appointees, two are nominated by the speaker of the House.

Government Code, ch. 2165 directs TFC to manage the state's public buildings, grounds, and property. As the provider of centralized project management for state agency construction and repair projects, TFC currently oversees about 100 projects with a total value of $316 million. Thirty-five of these projects have to do with deferred maintenance needs, such as repairs to ensure the safety of facilities. TFC estimates that the state's deferred maintenance needs across all facilities total about $403 million.

In 2011, the 82nd Legislature passed the Public and Private Facilities and Infrastructure Act (P3 Act), which put in place Government Code, ch. 2267 permitting governmental entities to enter into comprehensive agreements with private parties. As a means for developing new state facilities and performing maintenance of existing infrastructure, private industry was given the ability to submit proposals for development on government-owned land.

The P3 Act also created the Partnership Advisory Commission (PAC) under Government Code, ch. 2268 to review and comment on a public-private partnership (P3) proposal before an agency negotiates and finalizes a contract. Government entities are required to submit copies of public-private proposals to the PAC before negotiating a comprehensive agreement.

Since passage of the P3 Act, TFC has received unsolicited proposals for nine locations, with combined project costs of $824 million. As of January 2013, the commission had voted to move one project proposal forward to the conceptual evaluation phase.

DIGEST:

SB 211 would require the Texas Facilities Commission to create a long-term master plan for the Capitol Complex, change the way it administers public-private partnerships on state property, and make general changes to the public-private partnership review process affecting all state agencies.

CAPITOL COMPLEX

Capitol Complex Master Plan. The bill would require the TFC to prepare a master plan for the Capitol Complex. Minimum requirements for the plan would include:

- a summary of previous plans for the complex;
- an articulation of a strategic vision and long-term goals for the complex;
- an analysis of the state property and buildings within the complex and determination of the extent the state satisfied its space needs through this property;
- specific proposals for state property in the complex, which would include use of the property for public sector purposes;
- an analysis of and recommendations for building design guidelines to ensure appropriate quality on any future construction or

remodeling projects;

- an analysis of and recommendations for the infrastructure needs of the complex;
- an analysis of and recommendations for financing options of projects identified in the plan;
- time frames for implementing components of the plan;
- consideration of other options for meeting state space needs outside of the complex; and
- other relevant information to the complex.

TFC would be required to submit the initial master plan to the governor, lieutenant governor, speaker of the House, comptroller, and the Legislative Budget Board (LBB) by July 1, 2014, with subsequent updated reports coming on the same date every even-numbered year. TFC also would have to ensure that the master plan for the complex did not conflict with its master facilities plan for state agencies.

SB 221 generally would require TFC to seek input on the Capitol Complex Master Plan from the GLO, the State Preservation Board (SPB), and the Texas Historical Commission. Specific provisions would require a review by the SPB and GLO. TFC would have to submit the proposed plan to the SPB and GLO for review and comment at least 90 days before a public meeting on the initial master plan. If the public meeting was to discuss an update to the master plan, TFC would have to submit the proposed update to the SPB and GLO at least 60 days in advance.

The bill would authorize the State Preservation Board to disapprove the Capitol Complex Master Plan or an updated plan if the board determined the plan was not in the best interests of the state or complex. The SPB also would have the option to instead submit written comments to TFC with recommended modifications.

The bill would require that any changes to SPB's plan for the Capitol and Capitol grounds conform to TFC's master plan for the complex. It also would exempt the complex from the state properties the GLO is required to evaluate for sale, lease, or other use recommendations.

After the proposed master plan was reviewed by the SPB but before TFC finally approved the plan, the proposed plan would have to be submitted to the Partnership Advisory Commission (PAC) for review and comment. The PAC would have to hold a vote in a public hearing on the plan, which

could include submitting recommended modifications to TFC.

The bill would also prevent the TFC from entering into a sale or lease of property within the Capitol Complex. TFC would be able to continue current leases, such as the lease of state parking garages.

P3s in the Capitol Complex. Public-private partnership (P3) proposals for the Capitol Complex would be subject to certain requirements. The State Preservation Board would have the authority to vote to disapprove final proposals.

The bill would require that only solicited P3 proposals would be allowed for the complex. Additionally, P3 proposals in the complex would be required to be submitted to the SPB. The SPB would have the authority to vote to disapprove final proposals. No P3 proposal could be approved before September 1, 2015.

A separate provision would make the statute on public-private facilities, Government Code, sec. 2267.003 not apply to the Capitol Complex.

SB 221 states that if SB 894 by Whitmire or similar legislation relating to the Capitol Complex became law, certain provisions in SB 221 would have no effect.

P3s GENERALLY

Reviewing public-private partnership proposals. The bill would result in additional requirements for TFC at the various stages of planning and implementing P3 projects. At a minimum, the criteria for the initial review of substantially complete P3 proposals would have to include:

- whether the qualifying project met a public need;
- the extent to which the project aligned with the TFC's objectives and any applicable TFC plans, such as the master plan for the Capitol Complex;
- the technical and legal feasibility of the project;
- whether the private entity or person submitting the proposal had adequate qualifications, experience, and financial capacity;
- the existence of potentially unacceptable risks to the state; and
- whether another kind of project would be feasible and better meet the state's goals.

Agency staff would be required to conduct an initial review of each qualifying project proposal and provide a summary of the review to the commission. The summary would include analysis and recommendations.

As a means of comparing the entire project cost of the P3 project versus a traditional public sector project, the bill would require the use of a value for money analysis in evaluating a project proposal. This kind of analysis would be used to identify specific risks shared between the state and the private partner and subject these risks to negotiation in the contract. This analysis would also be used to determine if the project would be in the best long-term financial interest of the state and provide tangible public benefit to the state. The bill would allow TFC staff to use other methods of analysis if a specific project warranted this decision.

Changes would be made to the oversight committee review process, which follows initial review by the staff. TFC guidelines would have to require the oversight committee for each project to report to the commission with its evaluation of the project along with its documentation. The oversight committee's evaluation of a proposal along with accompanying documents would have to be posted on TFC's website. All confidential information, such as a company's financial records, would be redacted.

The bill would make changes to the documentation required for the part of the review process involving the Partnership Advisory Commission. The TFC would have to hold an initial public hearing on a project proposal before the TFC submitted a copy of that proposal to the PAC. The TFC would post a copy of the qualifying project proposal on its website before the public hearing. All confidential information would be redacted.

Following the hearing, TFC would have to modify the proposal as the agency determined was appropriate based on public comments. TFC would include all public comments from the initial hearing in the documents submitted for the PAC's review.

In reviewing qualifying P3 projects, TFC’s guidelines would have to specify what kind of professional expertise was necessary to protect the state’s interest in implementing the project. In order to cover the costs of reviewing qualifying project proposals, the bill specifically would authorize TFC to charge a fee. TFC would have to develop a fee schedule to at a minimum cover its costs for processing, reviewing, and evaluating

the proposals. Money from fees could be used to contract with or hire persons with the professional expertise required for evaluating a project proposal.

Other public-private partnership oversight. In reviewing P3 proposals, TFC would be required to include the comptroller's Contract Advisory Team, which assists agencies with contract management. TFC would have to submit documentation of modifications made during its review of the proposal to the Contract Advisory Team at least 60 days before a scheduled vote by the commission on the project. Documentation would include a final draft of the contract, the qualifying project proposal, and any interim agreements that had been executed.

The Contract Advisory Team would have to review this documentation and provide its recommendations in writing to the TFC. The recommendations would have to emphasize contract management best practices. TFC staff would then prepare responses to the Contract Advisory Team's recommendations and submit the recommendations and responses to the commission.

Broadly applicable P3 changes. The bill would require any government entity considering a P3 proposal to utilize certain review guidelines. Before considering a P3 proposal, the government entity would have to submit a copy of its guidelines to the PAC for approval. Once the government entity approved a proposal, the entity would have to seek out other potential bidders before selecting a contractor. A best value determination based on factors, such as overall quality, would be required in selecting the contractor. Provisions would also prevent conflict of interest situations where a P3 developer was related to or a former employee of the state contracting entity.

PAC membership. The composition of the PAC would be altered to consist of five members. The chair of the House Appropriations Committee, one state representative, the chair of the Senate Finance Committee, one senator, and one public member appointed by the governor would serve on the PAC. The PAC would have to vote to approve or disapprove a P3 proposal submitted for its review. Administrative support for the PAC would have to be provided by the SPB.

OTHER PROVISIONS

Soliciting public input. TFC would have to adopt by rule a comprehensive process for planning and developing state property in its inventory. TFC would have to include in this comprehensive process clear steps and specific time frames for obtaining input from the public, interested parties, and state agencies during the planning and development process. The process would require specific schedules for ensuring the commission was updated on planning and development efforts.

The comprehensive process would require a policy ensuring that before the commission made a decision regarding state property, interested parties had the chance to review and comment on TFC's plans. TFC's process would have to conform to existing confidentiality policies in state law.

Conflict-of-interest provisions. The bill would prohibit an agency employee from working for another person when the outside work duties related to that employee's review, development, and implementation of a qualifying project. To determine whether outside employment would result in a conflict of interest, TFC would request information on outside employment from each of its employees. If an employee's duties did not relate to a qualifying project and none of the agency's policies were violated, an agency employee could perform outside work.

Compliance with local zoning regulations. The bill would require P3 proposals to conform to local zoning regulations. A special board would be established for reviewing a proposal, when a rezoning request based on the proposal had been denied by a municipality. The review board could override a municipality's decision if the rezoning denial was determined to be detrimental to the state's interest.

Reporting. Required TFC reports would not be discontinued, but reporting requirements would be altered. Due dates of various reports would be aligned. Also, recipients of the master facilities plan and other agency reports would be made consistent to include the governor, lieutenant governor, speaker of the House, the Legislative Budget Board, and comptroller. Third, in compliance with recent changes in law, TFC's reports to the Legislature would have to be submitted electronically.

Other provisions. The bill would require TFC to provide facilities

maintenance services for the Texas School for the Blind and Texas School for the Deaf. This would include facilities construction or facilities reconfiguration. Also, the bill would add standard Sunset Commission provisions governing the development of policies encouraging negotiated rulemaking and alternative dispute resolution procedures.

SB 211 would continue TFC until September 1, 2021.

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:

SB 211 would improve state management of its facilities, by among other things, requiring the Texas Facilities Commission (TFC) to develop a long-range master plan for the Capitol Complex and improve its review and implementation of public-private partnerships (P3s).

Capitol complex master plan. By providing the State Preservation Board a substantial role in the Capitol Complex planning process, the bill would bring valuable expertise to the process and ensure a more coordinated approach to planning the its future development.

By requiring the General Land Office to review and comment on the proposed master plan, the bill would provide GLO a clear role in the Capitol Complex planning process, which would bring additional expertise and coordination to the process.

Soliciting public input. In adopting, by rule, a process for planning the development of state-owned facilities with input from the public and stakeholders, the Texas Facilities Commission would promote constructive participation that provided critical perspectives necessary to balance competing needs. Such an approach also would be clear and provide specific timeframes for obtaining this important input.

Reviewing public-private partnership proposals. The bill would result in additional safeguards for the state at the various stages of planning and implementing public-private partnership projects. Given the concerns of various stakeholders that TFC moved too quickly in implementing the P3 program, a more deliberate approach would be warranted. At the same time, the bill would not foreclose implementation of public-private partnership projects. Such projects likely would result in significant

financial benefits to the state over the coming years.

The bill also would ensure that TFC used the professional expertise necessary to effectively protect the state's interest when considering and implementing a P3 project. Specifically authorizing TFC to charge fees to developers for reviewing P3 proposals would offset costs for the state in reviewing these proposals.

Other public-private partnership oversight. The comptroller's Contract Advisory Team would be well positioned to offer review and comment to TFC on P3 proposals. Staff at the comptroller's office, which already assists the Public Advisory Commission with P3 proposals, would be able to share information with Contract Advisory Team. The Contract Advisory Team would benefit from this expertise in its review.

TFC's current outside employment policies are not adequate to fully protect the state when working on large real estate and development projects, such as the proposed public-private partnerships. By requiring TFC to obtain information on outside employment from all of its employees, the agency would be able to determine whether any potential conflict of interest existed between employees' duties and their outside employment.

P3s in the Capitol Complex. SB 894 by Whitmire, which is referenced in this bill, would prohibit P3s in the Capitol Complex. The Capitol Complex belongs to all Texans, and their elected officials should have a direct say in how it is developed for future generations. The Legislature should specifically authorize a public-private partnership project, if any, that is worthy for this invaluable state land.

Broadly applicable P3 changes. The bill would require the Partnership Advisory Commission to vote on P3 proposals, including proposals for the Capitol Complex. Members of the PAC, which includes legislators, should have this opportunity to weigh in on P3 projects.

OPPONENTS SAY:

Capitol complex master plan. In addition to the General Land Office's input on a proposed master plan, the Texas Historical Commission (THC) should be included at this stage of the planning process. This would enable THC to provide guidance on any potential effects of proposed development on the state's historical resources or on historic properties outside of the state's ownership but adjacent to the Capitol Complex. This

would also be consistent with existing requirements that the THC review bids and qualifications for major repair of any state structure deemed a Texas Historic Landmark.

Soliciting public input. The bill's requirement that TFC obtain more public input throughout its planning and development process would prove unnecessary. Existing laws require public hearings, which provide adequate opportunities for public and stakeholder input. Open meeting and public information laws, for example, ensure opportunities for public input. The public and interested parties have ample opportunity to review and comment on the commission's plans.

Reviewing public-private partnership proposals. TFC should not be required to have its P3 guidelines specify what kinds of professional expertise would be necessary to review a P3 proposal. The P3 guidelines instruct private entities in submitting proposals. The scope of work for the necessary advisors or consultants is drafted specific to each proposal or qualifying project and follows TFC's internal policies and statutory purchasing requirements.

Other public-private partnership oversight. The comptroller's Contract Advisory Team would not be qualified to review and comment on a P3 contract. The Contract Advisory Team reviews and comments on large contracts for goods and services, not real estate contracts such as a comprehensive agreement for P3 projects. Review and comment by the Office of the Attorney General would be more appropriate.

Specifically directing TFC to obtain information on the outside employment of its employees would be inappropriate. The P3 Act is a state law applicable to nearly all state agencies as well as multiple levels of local governments. If attention were to be directed toward an undefined conflict of interest related to the project, it should be addressed as a state policy matter applicable and directed to all state agencies and political subdivisions. Furthermore, TFC already takes steps to ensure that its employees are aware of the agency's ethics and conflict-of-interest policies.

NOTES:

According to the LBB, SB 211 would have a negative impact on general revenue funds of $95,000 in fiscal 2014-15. These costs would be associated with the State Preservation Board providing administrative support for the Partnership Advisory Commission.

HB 2107 by Dutton, the companion bill was reported favorably by the House State Affairs Committee on March 27.

SB 894 by Whitmire, a related bill preventing the Texas Facilities Commission from leasing or selling Capitol Complex property and prohibiting the use of public-private partnerships within the Capitol Complex, passed the Senate by 30-0 on April 4 and was reported favorably as substituted, by the House State Affairs Committee on April 26.

SB 507 by Watson, a related bill requiring only solicited P3 proposals to be allowed for the Capitol Complex and instituting a two-year moratorium on P3 projects within the complex, passed the Senate by 30-0 on April 4 and was reported favorably as substituted, by the House Economic and Small Business Development Committee on May 8.

HB 3436 by Cook, a related bill preventing a government entity from taking formal action on a public-private partnership proposal before September 1, 2013, passed the House by 142-0 on May 3 and has been referred to the Senate Committee on Economic Development.

SUBJECT: Continuing and managing the state employee charitable campaign

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Hilderbran, Huberty, Smithee, Sylvester Turner

0 nays

2 absent — Menéndez, Oliveira

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: (*On House companion, HB 2510:*)
For — (*Registered, but did not testify:* David Power, Public Citizen)

Against — None

On — Joseph Reed, Sunset Advisory Commission; (*Registered, but did not testify:* Roxanne Jones, State Employee Charitable Campaign)

BACKGROUND: In 1993, the 73rd Legislature created the annual State Employee Charitable Campaign, which allows state employees to contribute to eligible charitable organizations through automatic payroll deductions.

The State Policy Committee (SPC) manages the campaign and is responsible for ensuring the eligibility of participating statewide charities. The SPC is made up of 13 state employees, of whom seven are appointed by the governor and three each are appointed by the lieutenant governor and the comptroller. Committee members receive neither compensation nor reimbursement for expenses. A State Advisory Committee advises the SPC and the comptroller on adopting rules and procedures for the management of the campaign.

The SPC hires a charity operating statewide as the State Campaign Manager to administer the campaign and approve its plan, budget, and the charities that are eligible to participate. The manager also establishes local campaign areas and appoints a state employee as the chair of each local

employee committee. The presiding officer of each local employee committee recruits from five to 10 state employees to serve on the committee, who represent different levels of employee classifications. These local committees oversee local campaigns and hire charities as local campaign managers to run campaigns, approve plans and budgets, and determine which charities can participate.

The State Employee Charitable Campaign does not receive a state appropriation. Campaign costs are covered by a percentage of donations made by state employees, capped in statute at 10 percent. In 2011, the SECC used about $876,000 to fund campaign administration costs.

Government Code, sec. 659.140 makes the State Employee Charitable Campaign policy committee subject to the Texas Sunset Act. Unless continued, the committee's authority will expire September 1, 2013, along with Government Code, ch. 659, subch. I, which governs charitable contributions for state officers and employees.

DIGEST:

SB 217 would continue indefinitely the State Employee Charitable Campaign (SECC) and remove the campaign from future Sunset reviews by repealing Government Code, sec. 659.140.

The bill would place the SECC under the guidance of the State Policy Committee (SPC), restructure the composition and terms of the SPC and the State Advisory Committee (SAC), require the comptroller to provide administrative support to the SPC, and require that a participating charity spend no more than 25 percent of its annual revenue on administrative and fund-raising expenses.

Oversight and duties. The bill would require the SPC to establish the organization and structure of the campaign at the state and local levels, which would include establishing local campaign areas. SB 217 also would require the SPC to develop the campaign's strategy and to ensure that donations were appropriately distributed by any charitable organization, fund, or federation that received money from the campaign.

The SPC would be required to contract with a state campaign manager to administer the campaign. Together, the SPC and campaign manager annually would review and approve a plan and budget for the campaign and post online a summary of the campaign's costs and its performance. The summary would include data about state employee participation, the

amount of donations pledged and collected, the amount received by each charitable organization, the cost of administering the campaign, and the balance of any surplus account maintained by the campaign.

SB 217 also would require the SPC to develop guidelines for the evaluation of charity applications and to make those guidelines public.

Eligibility of charities to participate. SB 217 would require that any charity or federation participating in the SECC spend no more than 25 percent of its annual revenue on administrative and fund-raising expenses.

Administrative support: The comptroller would be required to provide the SPC administrative support, including assistance in :

- developing and overseeing contracts;
- developing the campaign's budget; and
- any other administrative function the SPC determined was necessary.

Upon the SPC's request, the comptroller would be required to audit a local campaign manager appointed by the SPC or the distributions of money received from the campaign by a participating charity.

Composition of the SPC. The bill would reduce the size of the SPC to nine members from 13. It would lower to two members from four the number of state employees appointed to the committee by the governor and reduce to one from three the number of retired employees the governor would appoint to the panel. The lieutenant governor and comptroller each would be required to appoint three members to the committee. The bill would require that appointees to the SPC come from institutions of higher education and a range of small, medium, and large state agencies.

Terms of the SPC members. SB 217 would require that all members of the SPC serve staggered two-year terms that expire September 1, and that all terms for current SPC members expire September 1, 2013.

By September 2, 2013, the governor would appoint one state employee and one state retiree to the SPC, and the lieutenant governor and comptroller each would appoint one person to the panel. The terms for these four members of the SPC would expire September 1, 2014.

Also by September 2, 2013, the governor would appoint one state employee and the lieutenant governor and comptroller each would appoint two members to the panel. The terms for these five members of the SPC would expire September 1, 2015.

The bill would set grounds for removal of a member of the SPC if certain requirements and qualifications were not met.

SPC member training. A member appointed to the SPC could not vote, deliberate, or be counted for attendance at a meeting without completing a training program that provided the panelist with information about the:

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

Changing the role of the SAC. SB 217 would require the SAC to provide input to the SPC from participating charitable organizations. It also would remove from the SAC any oversight or review of plans, budgets, and materials used by local campaign managers.

Removing requirements for local employee committees and local campaign managers. The bill would eliminate requirements that specify the use of local employee committees and local campaign managers to help administer the campaign. The SPC could establish local employee committees to assist in evaluating charities that had applied to participate in the program for a local area. The SPC also would be allowed to appoint a local campaign manager, who could charge a fee for services.

Effective date. The bill would take effect September 1, 2013. The comptroller would be required to adopt rules to implement SB 217 by December 31, 2013. Any changes made by the SPC to the operation of the SECC would apply beginning January 1, 2014.

SUPPORTERS SAY:

SB 271 would provide the leadership structure and statutory direction necessary for the SECC to function effectively and efficiently.

Currently, no single entity is tasked with determining strategy, setting budgets, and providing proper oversight to ensure that money donated by state employees for charity is properly used. The bill would give these responsibilities to the campaign's SPC and make clear its role in making decisions and operating the program at the state and local levels. This would increase the efficiency of a campaign that currently has a decentralized structure and suffers from inconsistent policies for determining which charities can participate.

It also would allow the campaign the proper oversight to enable retirees to also direct money to a charity they preferred. Moving away from this structure would not harm the campaign's ability to gather local feedback and input about the campaign and the charities to which it distributes money because the bill would provide a mechanism to harness valuable assistance through the formation of local committees and managers.

The bill also would ensure that appointees to the SPC came from higher education institutions and a range of agencies from which the campaign draws membership. Additionally, it would stagger and define term limits to protect against long-standing vacancies that can delay key decisions or make it difficult to reach a quorum.

Finally, the bill would level the playing field for charities participating in the campaign by excluding those with excessively high administrative expenses. This would ensure that donations to eligible charities were being used for the purpose intended by the state employee making the contribution.

OPPONENTS SAY:

SB 271 would eliminate many worthy charities from eligibility in the state campaign simply because their administrative costs exceeded 25 percent of annual revenue. This requirement would punish a charity that typically runs lean but saw its costs rise briefly due to unforeseen circumstances. Instead, the campaign should provide information about the administrative costs of each participating charity, which would allow employees to make a choice about whether to donate to a particular organization.

OTHER OPPONENTS SAY:

Removing local employee committees and local managers from some of the campaign's decision-making processes could have a detrimental effect on employee participation and giving. State employees who serve in these roles promote participation within their workplaces.

NOTES: On March 27, the House State Affairs Committee recommended a committee substitute of the companion bill, HB 2510 by Anchia, following a public hearing.

SUBJECT: Reporting attempted child abductions, noting habitual runaways in reports

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

SENATE VOTE: On final passage, April 4 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 1677)*
For — David Boatright, National Center for Missing and Exploited Children; (*Registered, but did not testify:* Ellen Arnold, Texas PTA; Tony Privett, City of Lubbock; Jason Sabo, Children at Risk; Todd, Dallas Fraternal Order of Police)

Against — None

On — (*Registered, but did not testify:* Susan Burroughs and Frank Malinak, Texas Department of Public Safety; Kim Vickers, Texas Commission on Law Enforcement Officer Standards and Education)

BACKGROUND: Code of Criminal Procedure, art. 63.002 establishes the missing children and missing persons information clearinghouse within the Department of Public Safety (DPS). Under art. 63.009, within two hours of receiving a report of a missing child, law enforcement authorities must report the incident to the DPS clearinghouse and, if applicable, to the national crime information center.

DIGEST: CSSB 742 would expand the DPS missing children and missing persons clearinghouse to include information on attempted child abductions, would require local law enforcement agencies to include in missing children's reports certain information about children who had run away multiple times, and would authorize law enforcement training and education about missing and exploited children.

Reports of child abductions. Within eight hours of receiving a report of an attempted child abduction, local law enforcement agencies would have to provide information on the abduction to the clearinghouse. The definition of attempted child abduction would not include attempted abductions by relatives.

Local law enforcement authorities would have to make the report through the Texas Law Enforcement Telecommunications System. The DPS report forms for missing children and missing persons would have to be in a format that allowed a seamless transfer of information to the national crime information center.

The DPS would be authorized to award grants to certain nonprofit organizations to assist DPS in its duties relating to missing or exploited children, including its duties relating to the clearinghouse. This would apply to nonprofits that provided programs and information concerning child safety and Internet safety and the prevention of child abductions and child sexual exploitation.

Information on certain runaways. DPS would have to adopt rules for local law enforcement agencies to include certain information in the currently required missing child reports about children:

- reported missing four or more times in two years before the incident being reported; or
- in foster care or under the conservatorship of the Department of Family and Protective Services and reported missing at least two times in two years before the incident being reported.

The rules would have to require local law enforcement agencies making missing child reports about these two type of children to note that the child was endangered and include information about the previous times the child was missing. If it is later discovered that a missing child met these criteria, that information would have to be promptly added by the local law enforcement agency to the entry.

Law enforcement officer training. CSSB 742 would require that intermediate and advanced proficiency certificates for law enforcement officers include education and training on missing and exploited children. The Texas Commission on Law Enforcement Officer Standards and Education would have to establish a program of at least four hours. The

program would have to include instruction on reporting attempted child abductions to the DPS clearinghouse, instruction on investigating the use of the Internet to commit crimes against children, and a review of the Penal Code provisions on kidnapping, unlawful restraint, and smuggling of persons. This training would be available for certificates issued on or after January 1, 2015.

The bill would take effect September 1, 2013, and would apply to reports of attempted child abductions reported on or after January 1, 2014.

SUPPORTERS SAY:

CSSB 742 would help gather information on the attempted abduction of children and habitual runaways and would authorize specific training in these issues for law enforcement officers so that children could be better protected. In 2011, almost 50,000 Texas children were reported missing. The state should do all it can to prevent that number from growing.

While DPS currently runs a clearinghouse as a central repository for information about missing children, the clearinghouse does not include information on attempted child abductions or certain information about habitual runaways. These children are at a high risk for sexual exploitation, and keeping statistics on these cases could help the state better understand how to address the issue.

CSSB 742 would fill this gap in the current system by creating a statewide, uniform requirement to report attempted child abductions and certain information about habitual runaways. The bill would not create a new system of reporting but would tie this requirement to the current system for filing information about missing children. These requirements would not burden local law enforcement authorities or DPS because they could be worked into the current reports on missing children filed with law enforcement data centers and sent to the DPS clearinghouse.

The bill would use a targeted definition of attempted child abductions that captured those children being preyed upon by strangers. The bill would reference the Penal Code definition of abduct so that all law enforcement authorities worked under the same definition and would exclude attempted abductions by relatives. Allowing eight hours for a report on an attempted abduction would allow law enforcement authorities time to weed out false reports. Reports also could later be modified if they were found to be false.

The provisions for reporting information on habitual runaways would not

increase the demands on law enforcement agencies, which already have to report missing children. If agencies received additional information required by the bill, they could easily add it when they are routinely modifying their report as the case is worked.

The bill would use national data on the patterns of high-risk children to set the thresholds for flagging these cases as habitual runaways and gathering additional information. This would ensure that the captured data identified those children most in danger of exploitation and that resources could be used accordingly.

The bill would ensure that advanced training for law enforcement officers included information on missing and exploited children. This type of training and education could help officers prevent and respond to child abductions and runaways.

CSSB 742 would establish the framework for DPS to contract in the future with nonprofit organizations involved in programs and education relating to missing and exploited children, if it became feasible. The bill would make no appropriation for this purpose but could allow the agency to leverage resources in the future to address this issue.

OPPONENTS SAY:

It would be best if CSSB 742 provided a specific definition of child abduction so that all law enforcement agencies used the same one and so that the system was used to track only those that fell into the category of concern. Also, allowing reports to be made only after an investigation could help agencies weed out false reports and reduce over-reporting.

OTHER OPPONENTS SAY:

It might be better to adjust the threshold for requiring information on certain runaways. Waiting to flag children as habitual runaways until the fifth or third time they ran away could come too late to identify those truly at risk for exploitation.

NOTES:

The committee added to the Senate version the requirement for DPS report forms to be in a format that allowed a seamless transfer of information to the national crime information center.

SUBJECT: Creating the veteran entrepreneur program

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

VOTE: 7 ayes — Menéndez, R. Sheffield, Collier, Farias, Frank, R. Miller, Moody

1 nay — Schaefer

1 absent — Zedler

SENATE VOTE: On final passage, April 18, 29-1 (Patrick)

WITNESSES: No public hearing

DIGEST: SB 1476 would require the Texas Veterans Commission to establish and implement the Veteran Entrepreneur Program to foster and promote entrepreneurship and business ownership for those who served in the U.S. Army, Navy, Air Force, Marines, Coast Guard, or the Texas National Guard. The commission's executive director would be required to appoint a person to coordinate the program, which would use commission facilities when funding was available. The commission would be required to adopt rules for the program by January 1, 2014.

The program would assist veteran entrepreneurs and business owners by:

- performing outreach to improve their awareness of available federal and state benefits and services;
- assessing their need for benefits and services;
- reviewing and researching programs, projects, and initiatives designed to address their needs;
- periodically evaluating the effectiveness of the commission's assistance efforts and making recommendations to the commission's executive director for improving these efforts;
- incorporating their issues into the commission's plans for assistance in securing benefits and services;
- advocating for them and working to increase public awareness about their needs;

- recommending legislative initiatives and policies at the local, state, and federal levels to address their issues;
- collaborating with federal, state, and private agencies that provide veterans assistance to allow them to make use of those services;
- monitoring and researching issues that affect their interests;
- providing information about opportunities for them in the commission's collaborative network of businesses and organizations;
- providing guidance to them through conferences, seminars, and training workshops with federal, state, and private agencies; and
- promoting events and activities that recognize or honor them.

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:

SB 1476 would provide entrepreneurs and businesspeople in the veterans' community with the resources necessary to launch or grow a successful business and forge a pathway to employment so critical for those leaving military service. It also would boost the state's workforce and tax revenues.

Establishing the Veteran Entrepreneur Program would help connect former service members to funding sources that could aid their endeavors, as well as to mentors and educational programs that could offer insight into how best to start or cultivate a business. It would help the Texas Veterans Commission address the challenges faced by veteran-owned businesses. Similar programs have proven successful in Florida and California.

Promoting entrepreneurship through SB 1476 would help veterans enter the workforce in a way that honored their service to the country while making use of their unique skills. It also would help address high unemployment among veterans. The U.S. Bureau of Labor Statistics reported an unemployment rate of 9.9 percent in March 2013 for veterans who had served on active duty at any time since September 2001. The national jobless rate for the same period was 7.7 percent.

There is great demand for these kinds of resources. Military veterans owned 2.4 million businesses in 2007, which accounted for 9 percent of all businesses nationwide, according to the U.S. Small Business

Administration (SBA). The SBA reports that about 20 percent of veterans are looking to start, purchase, or partner in a small business start-up. The Texas Veterans Commission's efforts this past year to reach out to veteran entrepreneurs generated interest, with more than one thousand people moving toward a business start-up. Although the federal government offers help to small business owners, this bill would focus on the challenges veterans face in Texas.

Providing the necessary resources for veterans to create or expand their businesses also would create more jobs. More people with jobs would buy more homes and property, adding to the tax bases of communities throughout Texas. The state also would collect more business tax revenue from the economic development the bill would help unlock. These gains would outweigh any additional funding required to provide these resources.

OPPONENTS SAY:

SB 1476 is unnecessary because it would spend hundreds of thousands of state dollars for assistance that already is offered by the federal government. The U.S. Department of Veterans Affairs offers help to veteran-owned and service-disabled, veteran-owned small businesses.

NOTES:

According to the Legislative Budget Board, the Veteran Entrepreneur Program would have a negative impact of $437,118 in general revenue related funds through fiscal 2014-15, due to salaries and operating costs associated with the new program.

SUBJECT: Repealing provisions relating to refrigerants and refrigerant substitutes

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 8 ayes — Smith, Kuempel, Geren, Guillen, Gutierrez, Miles, Price, S. Thompson

0 nays

1 absent — Gooden

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

WITNESSES: For — (*Registered, but did not testify:* David Mintz, Texas Apartment Association; Dan Shelley, Plumbing Heating Cooling Contractors)

Against — None

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

BACKGROUND: Occupations Code, ch. 1302, subch. H governs the sale and use of refrigerants. It requires purchasers, sellers, or users of refrigerants in the state to comply with the Clean Air Act, and requires that a person purchasing refrigerant have a license or a TDLR-issued certificate to purchase refrigerant.

Sec. 1302.355 requires that a purchaser provide to the seller evidence of compliance with the applicable license or registration requirement. Sec. 1302.452(b) allows municipal air conditioning or refrigeration inspectors to issue citations to a person violating section 1302.355 (a).

Sec. 1302.356 prohibits a person from selling a flammable refrigerant or refrigerant substitute containing liquid petroleum product for use in automotive, commercial, or residential air conditioning systems or from using these substances in any system relating to aircraft. Under sec. 1302.453, the purchase of such a refrigerant is a class C misdemeanor

(maximum fine of $500). A person who purchases such a refrigerant for use in a motor vehicle in a manner authorized by the Environmental Protection Agency is excepted from prosecution.

Occupations Code, sec. 1302.002 (16) defines "refrigerant" as a class I or class II substance listed in 42 U.S.C. sec. 7671a, which includes substances that have an ozone depletion potential of 0.2 or greater and substances that reasonably may be anticipated to harm the stratospheric ozone layer.

DIGEST:

SB 383 would repeal Occupations Code, ch. 1302, subch. H, governing the sale and use of refrigerants.

It would eliminate language from sec. 1302.453(a) that currently makes certain purchases of refrigerants or equipment containing refrigerants without the applicable license or registration an offense, and would repeal Occupations Code, sec. 1302.453(b), removing the exception from prosecution for the purchase of refrigerants.

The bill would repeal sec. 1302.452(b), removing the provision that currently allows a municipal inspector to issue a citation to a purchaser who attempts to purchase refrigerants without a license or certificate from TDLR.

The bill also would repeal the definition of "refrigerants" in Occupations Code, sec. 1302.002(16).

The Texas Commission of Licensing and Regulation would adopt rules necessary to implement the bill by May 1, 2014.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 383 would eliminate provisions in Texas law that are redundant in light of federal regulations. Currently, refrigerant purchasers must have both a Texas license and a license issued by the Environmental Protection Agency (EPA) in order to buy such a chemical. In order to obtain the Texas license, applicants first must be certified by the EPA to handle refrigerants. SB 383 would require that these purchasers complied only with the federal rules and not the state requirements, saving TDLR time

and the license holders money.

The EPA is best equipped to issue rulings on the sale and use of refrigerants because it has more scientific expertise invested in determining which refrigerants and refrigerant substitutes pose a threat and which do not. The EPA also carries out enforcement actions against violators of regulations governing the sale of refrigerants, once again making redundant the enforcement actions in Occupations Code, ch. 1302.

OPPONENTS SAY:

Texas should not dismantle its separate licensing procedures for sellers of refrigerant. Current law gives the state more flexibility should legislators in the future direct TDLR to go further than the rules and guidelines set in place by the EPA on the sale of refrigerants.

SUBJECT: Prohibiting cash purchases of plastic bulk merchandise containers

COMMITTEE: Environmental Regulation — favorable, without amendments

VOTE: 6 ayes — Harless, Márquez, Lewis, Reynolds, C. Turner, Villalba

1 nay — E. Thompson

2 absent — Isaac, Kacal

SENATE VOTE: On final passage, April 11 — 30 - 1 (Fraser)

WITNESSES: (*On House companion bill, HB 1910:*)
For — Allen Fischer, Bimbo Bakeries Inc. and Texas Retailers Association; Ronnie Volkening, Texas Retailers Association; (*Registered, but did not testify:* Mary Calcote, Pepsico; Doug DuBois, Jr., Texas Food & Fuel Association; Brenda Eschberger and Sara Kemptner, Texas Beverage Association; Glen Garey, Texas Restaurant Association; Stephanie Gibson, Texas Retailers Association; Jim Reaves, Texas Nursery & Landscape Association; Gary Tittle, Dallas Police Department)

Against — Dana Ambs, Texans for Accountable Government; (*Registered, but did not testify:* Karen Hadden, Sustainable Energy and Economic Development (SEED) Coalition; Amy Driscol; Mel Mason; Michele Simpson)

BACKGROUND: Business and Commerce Code, ch. 204 requires a person in the business of recycling, shredding, or destroying plastic containers to record the following information before purchasing five or more containers from the same seller:

- the seller's proof of ownership;
- the seller's name, address, and telephone number;
- the buyer's name and address;
- a description of the containers and the number to be sold; and
- the transaction date.

Plastic container buyers must verify the identity of each seller using a

driver's license or other government-issued form of photo identification. The buyer must retain a record of this transaction for one year. A violation of the requirement to gather and record transaction information is subject to a civil penalty of $10,000 per violation. Falsely documenting a transaction to skirt the provisions of the statute is punishable by a civil penalty of $30,000 for each violation.

The attorney general or appropriate prosecuting attorney may investigate an alleged violation, sue to collect the civil penalty, and recover reasonable expenses associated with recovering a civil penalty.

Plastic container buyers who violate these conditions commit a class C misdemeanor, punishable by a fine of up to $350, if the containers are valued less than $1,000, or up to $700, if the containers are valued $1,000 or more. For second offenses, the fine can be double the maximum amount of the fine for the first offense.

DIGEST:

SB 875 would require a person in the business of recycling, shredding, or destroying plastic bulk merchandise containers either to verify the seller's identity via a government-issued document with a photograph or identify the seller as a representative acting on behalf of a corporation, business, government, or government subdivision or agency before purchasing five or more containers.

If the seller did not represent a corporation, business, or government entity, the purchaser could not pay the seller in cash and would have to record the payment method for any transaction involving one or more plastic bulk merchandise containers. This record would have to be attached to the purchaser's other records for the seller.

A person who violated these provisions would be liable for a civil penalty of up to $10,000 for each violation. Each cash transaction would be considered a separate violation. In determining the amount of the penalty, the court would have to consider the amount necessary to deter future violations.

The bill would permit the attorney general or an appropriate prosecuting attorney to inspect the sales records kept by purchasers of plastic bulk merchandise containers.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 875 would deter the theft of plastic bulk containers by prohibiting certain individuals from receiving cash payments for these items and would add new record keeping requirements. This would close a loophole in current law and provide consequences forceful enough to deter criminals. Plastic bulk merchandise containers used to transport milk and other beverages have been a target for theft because they can be sold to a recycler for cash. A cash transaction spares the seller and the buyer from documenting the sale, which hampers law enforcement investigations since there is no proof of wrongdoing.

Retailers have little room to store these crates, so the expectation that retailers should store them elsewhere to prevent their theft is unrealistic.

OPPONENTS SAY:

SB 875 would create an undue burden on recycling businesses. Current law provides stringent identification and recording requirements, which ensure that businesses do their due diligence to purchase only legally obtained crates. The problem would not be solved by adding more regulation to business.

If the theft of plastic food and beverage containers is a problem serious enough to warrant legislation, retailers should find a better way to store these crates between deliveries from their distributors. Retailers "store" these crates on outside loading and unloading docks, which are accessible to the public and afford little security to deter theft. Retailers should take responsibility for protecting their property instead of placing the burden on other people and entities.

NOTES:

The House companion, HB 1910 by Smith, was left pending in the House Committee on Environmental Regulation after a public hearing on March 26.

SUBJECT: Changing how certain health care professionals prescribe drugs or devices

COMMITTEE: Public Health — committee substitute recommended

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

0 nays

2 absent — Coleman, Laubenberg

SENATE VOTE: On final passage, March 13, 2013 — 31-0

WITNESSES: For — Gary Floyd, Texas Medical Association, Texas Pediatric Society, and Texas Academy of Family Physicians; Jean Gisler, Coalition for Nurses in Advanced Practice, Texas Nurse Practitioners, and Texas Nurses Association; Maureen Milligan, Teaching Hospitals of Texas; Todd Pickard, Texas Academy of Physician Assistants; (*Registered, but did not testify*: Amy Aaron, Tx Association of Neonatal Nurse Practitioners; Allen Beinke, Baptist Health System; Lara Boyet, Texas Nurse Practitioners; Jose E. Camacho, Texas Association of Community Health Centers; Jaime Capelo, Texas Academy of Physician Assistants; Brent Connett, Texas Conservative Coalition; Trish Conradt, Coalition for Nurses in Advanced Practice; Kevin Cooper, Texas Nurse Practitioners; Amanda Fredriksen, AARP; Melissa Gardner, Texans Care for Children; Suzanne Grantham, Psychiatric Advanced Practice Nurses of Texas; Michael Hazel, Texas Nurse Practitioners; Nelda Hunter, Harden Healthcare; Kathy Hutto, Greater Texas Chapter of National Association of Pediatric Nurse Practitioners; Kaden Norton, Texas Association of Benefit Administrators; Karen Reagan, Walgreen Company; Priscila Reid, Texas Nurse Practitioners; Kandice Sanaie, Texas Association of Business; Elizabeth Sjoberg, Texas Hospital Association; Andrew Smith, University Health System; Sandra Tallbear, Consortium of Texas Certified Nurse Midwives; Maxcine Tomlinson, Texas New Mexico Hospice Organization; David Williams, Texas Nurse Practitioner; James Willmann, Texas Nurses Association; Chris Yanas, Teaching Hospitals of Texas)

Against — (*Registered, but did not testify*: Angela Clark, Texas Clinical

Nurse Specialists; Krista Crockett, Texas Pain Society)

On — (*Registered, but did not testify*: Mari Robinson, Texas Medical Board; Scott Schalchlin, Texas Department of Aging and Disability Services; Katherine Thomas, Texas Board of Nursing; Rudy Villarreal, HHSC; Jolene Zych, Texas Board of Nursing)

BACKGROUND:

Under the Occupations Code, a physician may delegate the carrying out or signing of a prescription drug order for Schedule III, IV, V, and dangerous drugs. A physician may delegate to four advanced practice nurses or physician assistants. Advanced practice nurses and physician assistants must practice within 75 miles of the supervising physician. Physicians must supervise by being on-site at least 10 percent of operating hours and reviewing at least 10 percent of patient charts. The Texas Medical Board can waive or modify any of the requirements, but a physician may not be allowed to supervise more than six advanced practice nurses or physician assistants. There are separate procedures for prescribing at sites serving medically underserved populations.

Health and Safety Code, ch. 481 is the Texas Controlled Substances Act that establishes different categories ("schedules") of controlled substances.

DIGEST:

CSSB 406 would change how physicians delegate prescriptive authority to advanced practice registered nurses (APRNs) and physician assistants (PAs). It would allow APRNs and PAs to prescribe or order drugs and devices, including certain controlled substances, under a physician's supervision.

Definitions. CSSB 406 would define the following terms: device, health professional shortage area, hospital, medication order, nonprescription drug, physician group practice, practice serving a medically underserved population, prescribe or order a drug or device, prescription drug, and prescriptive authority agreement.

The bill would refer to an advanced practice *registered* nurse, replacing references to an advanced practice nurse. It would refer to the commissioner of the Department of State Health Services, replacing the commissioner of public health. It would amend the definition of practitioner.

Authority to delegate. A physician could delegate to an APRN or PA the prescribing or ordering of drugs and devices, including nonprescription drugs and Schedule II controlled substances. A physician could only delegate prescription authority for Schedule II drugs if the patient was in hospice, admitted to a hospital for emergency care, or admitted to a hospital for a stay intended to be longer than 24 hours. The bill would replace site-based delegation with practice-based delegation procedures.

To the extent allowed by federal law, APRNs and PAs acting under adequate physician supervision would be authorized to order and prescribe durable medical equipment and supplies under a state-run medical assistance program (e.g. Medicaid). A physician involved in the state-run pilot program that provided on-site health services to state employees would have to delegate prescriptive authority to an APRN or PA.

Prescriptive authority agreements. Physician delegation to APRNs and PAs would require a prescriptive authority agreement.

Limits. A physician could enter into agreements with up to seven APRNs or PAs. This cap would not apply to medically underserved areas or facility-based practices at hospitals, unless the physician were delegating in a freestanding clinic or center. The Texas Medical Board would have to allow a facility-based physician to delegate at more than one hospital or two long-term care facilities, if all requirements were met. The number of PAs a physician could supervise could not be less than the number of PAs to whom a physician could delegate prescription or ordering authority.

Requirements. A prescriptive authority agreement would require the parties disclose any disciplinary actions. The APRN or PA would need to hold an active license, be in good standing in the state, and not be prohibited from executing an agreement. The Texas Board of Nursing would need to authorize an APRN's ability to prescribe or order drugs and devices.

Agreements would need to meet minimum requirements and include certain information, but could contain other agreed-to provisions. Among other things, the agreements would need to describe a quality assurance and improvement plan that had procedures for chart review and periodic in-person meetings. The bill would set certain requirements for the in-person meetings and specify how often the meetings had to occur. It would also establish requirements for supervision by alternate physicians.

Although the agreements would not have to describe the exact steps for specific conditions, diseases, or symptoms, the bill would establish other technical requirements regarding contract provisions, annual review, notification of investigations, and retention of copies. The agreements should promote the ability of an APRN or PA to exercise professional judgment and would need to be liberally construed to allow these professionals to safely and effectively utilize their skills.

The Texas Medical Board could adopt additional rules, but could not impose more requirements than established by the bill.

Investigations. The Texas Medical Board, Texas Board of Nursing, and Physician Assistant Board would have to jointly develop a process to exchange license-holder information, as well as notice of investigations and final adverse disciplinary decisions related to agreements. If any of the boards received a notice of investigation, that board could open their own investigation against one of their license holders who was part of the same agreement. If the Texas Medical Board received a notice of investigation, the board (or representative) could conduct a site inspection and audit. The inspection would have to be at a reasonable time, after reasonable notice, and would need to minimize disruptions to patient care.

Board requirements. The Texas Medical Board would need to maintain online a public, searchable list of physicians, APRNs, and PAs who had entered into agreements and would have to work with the other boards to maintain a publicly available list of individuals prohibited from entering into agreements.

The Texas Board of Nursing would have to adopt rules to license a registered nurse as an APRN and establish ways to train and approve APRNs to prescribe and order drugs and devices. The board would have to create a system to issue prescription authorization numbers and renew licenses.

The bill would contain a temporary provision expiring January 1, 2015, requiring the Texas Medical Board, the Texas Board of Nursing, and the Physician Assistant Board to jointly develop responses to frequently asked questions about the agreements by January 1, 2014.

The three boards would have to jointly perform the functions and duties

related to agreements and adopt the rules necessary to implement the bill by November 1, 2013.

Provider contracts. The executive commissioner of the Health and Human Services Commission (HHSC) would need to adopt rules that require managed care organizations and entities part of a state-run medical assistance program (e.g. Medicaid, Children's Health Insurance Program or CHIP) to make APRNs and PAs available as primary care providers. The organization or entity would need to treat APRNs and PAs the same as primary care physicians for the purposes of selecting and assigning primary care providers and creating the provider directory. Managed care organizations would also need to treat APRNs and PAs the same physicians when including them as primary care providers in the provider network.

Additional changes. The bill would make additional conforming amendments. It would repeal a number of provisions, including the requirements that:

- APRNs and PAs practice within 75 miles of the supervising physician;
- physicians be on-site at least 10 percent of operating hours and review at least 10 percent of patient charts; and
- the Texas Medical Board not authorize a physician to supervise more than six APRNs or PAs.

It would also repeal separate procedures for prescribing at sites serving certain medically underserved populations. The amount of time an APRN or PA had practiced under a physician's delegated prescriptive authority would have to include any applicable time before the bill's effective date.

The bill would take effect November 1, 2013.

SUPPORTERS SAY:

CSSB 406 would help alleviate health care workforce shortages by streamlining physician delegation procedures. Currently, the requirements for delegating prescriptive authority to advanced practice nurses and physician assistants are administratively burdensome and complex. Although these are highly trained health care professionals capable of independently making medical decisions, they are required to work under onerous, site-based supervision requirements. These requirements waste time and resources.

By removing site-based restrictions, this bill would give health care providers the flexibility to determine the delegation arrangement that best suited their unique needs. This would allow physicians, APRNs, and PAs to effectively use their training and skills to increase efficiency, promote uniformity, and improve patient care.

The bill would not increase the risk that schedule II controlled substances (e.g., oxycodone, morphine) would be abused because it would only allow an APRN or PA to prescribe these medications in hospitals or hospices. Although the bill would not establish detailed prescription procedures, it would limit the prescriptive authority to settings that had very strict policies already in place.

OPPONENTS SAY:

CSSB 406 could increase the risk that certain controlled substances would be inappropriately prescribed. Schedule II controlled substances are powerful drugs that are easily abused and cause an increasing number of overdose deaths. Although the bill would only allow an APRN or PA to prescribe these medications in certain settings, expanding the number of health care professionals who could order these medications necessarily increases the risk of abuse. Moreover, the bill would not establish adequate education or oversight requirements to justify the expansion of prescriptive authority.

OTHER OPPONENTS SAY:

CSSB 406 should go further to address how APRNs are regulated. Although physician assistants are licensed by a board specific to their profession, APRNs are regulated by the Texas Board of Nursing. APRNs should be managed by a separate board.

SUBJECT: Adding the 79th Judicial District to Professional Prosecutors Act

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

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

0 nays

2 absent — Hernandez Luna, Raymond

SENATE VOTE: On final passage, March 27 — 30 - 0

WITNESSES: (*On House companion bill, HB 1278*)
For — Carlos Omar Garcia, 79th Judicial District Attorney's office

Against — None

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

BACKGROUND: The Professional Prosecutors Act, Government Code, ch. 46, ties the salary of elected prosecutors covered by the act to the salary of a Texas district judge, which is $125,000. Elected prosecutors outside of the act make 80 percent of a district judge's salary, or $100,000.

The 79th Judicial District covers Brooks and Jim Wells counties.

DIGEST: SB 479 would add the 79th Judicial District to the list of jurisdictions covered by the Professional Prosecutors Act.

The bill would become effective September 1, 2013.

SUPPORTERS SAY: The 79th Judicial District should be added to the Professional Prosecutors Act because the workload of the elected prosecutor for Brooks and Jim Wells counties has grown to the point that the increase is salary is needed to ensure the prosecutor devotes all of his or her efforts to representing the state. The act enhances the quality of public prosecution in Texas by requiring certain felony prosecutors to give up their private practices in

exchange for receiving a salary matching that of a district judge, which is $125,000.

The 79th Judicial District has seen an increase in population and an increase in crime that comes with it. The 79th Judicial District, which runs along U.S. Highway 281, has experienced an increase in transient and border-related crime, particularly in narcotics trafficking. The state should invest in more prosecutorial resources to stem criminals apprehended in the district to keep them from moving north or south along the highway to other parts of the state. Raising the salary of the prosecutor to the level of the district judge would provide incentive for that person to devote his or her energies full time to protecting the public and allow the office to more quickly clear a backlog of pending cases.

Historically, the Legislature has added felony prosecutor offices into the act when the prosecutor has requested it. The exception was when the 82nd Legislature did not move two prosecutors into the act because of a lack of funding for spending increases. Since the state has seen a dramatic increase in revenue, the state can afford to add the 79th Judicial District to the professional prosecutor act, especially with corresponding benefits to law and order.

OPPONENTS SAY:

The Legislature should be careful about making long-term funding commitments when it comes to criminal justice matters that may have only a local impact.

NOTES:

According to the fiscal note, SB 479 would cost the state an additional $28,394 in general revenue related funds in the 2014-15 biennium.

The identical companion bill, HB 1278 by Lozano, was passed by the House by a vote of 142-5-2 on April 23. It was referred to the Senate Jurisprudence Committee on May 7.

CSSB 1 includes a rider in article 11 that would raise the annual salary of state district court judges by 10 percent to $137,500.

SUBJECT: Requiring employee vaccine policies in child-care facilities

COMMITTEE: Public Health — favorable, without amendment

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

1 nay — S. King

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

WITNESSES: For — Anna Dragsbaek, The Immunization Partnership; Joe Martinec, March of Dimes; Jason Terk, Texas Pediatric Society, Texas Medical Association, Texas Academy of Family Physicians; (*Registered, but did not testify:* Nora Belcher, Texas e-Health Alliance; Melody Chatelle, United Ways of Texas; Brent Connett, Texas Conservative Coalition; Teresa Devine, Blue Cross and Blue Shield of Texas; Kathy Eckstein, Children's Hospital Association of Texas; Melissa Gardner, Texans Care for Children; Harry Holmes, Harris County Healthcare Alliance; Tere Holmes, Texas Licensed Child Care Association; Dennis Scharp, North Texas Citizen's Lobby; Rebekah Schroeder, Texas Children's Hospital; Steven Shelton, Texas Public Health Coalition; Ronald Woodruff, North Texas Citizen's Lobby)

Against — None

On — Wesley Hodgson, Department of State Health Services; (*Registered, but did not testify:* Michele Adams, Department of Family and Protective Services)

DIGEST: SB 64 would require each child-care facility licensed by the Department of State Health Services (DSHS) to develop and implement a policy to protect the children in its care from the vaccine-preventable diseases specified by the Centers for Disease Control and Prevention.

The policy would require that each child-care facility employee receive the vaccines specified by the facility based on the risk presented by the employee's routine and direct exposure to children. The policy would

include procedures for verifying and maintaining a record of each employee's compliance and the authorized disciplinary actions against employees who failed to comply.

The vaccine-preventable diseases policy would include procedures to determine any exemptions from required vaccines resulting from an employee's medical condition. Any exempt employee would follow alternate procedures, such as wearing gloves and a mask, based on the exposure and risk the employee presented to children in the facility's care. The policy would prohibit retaliatory action against an employee exempt from the required vaccines and would specify that the use of alternate medical equipment would not be considered retaliatory action.

SB 64 would allow the vaccine-preventable diseases policy to include procedures to exempt employees based on reasons of conscience, including a religious belief. It would not apply to child-care facilities that provided care in the home of the facility director, owner, or operator.

By June 1, 2014, the executive commissioner of the Health and Human Services Commission would be required to adopt rules to implement the bill's provisions. Child-care facilities would be required to have their policies in effect beginning September 1, 2014.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 64 would reduce the spread of infectious disease among children in child-care facilities who cannot — or have not — been vaccinated themselves. For example, flu-related complications hospitalize about 20,000 children under age five each year, but children under six months of age cannot receive a flu vaccine. In 2012, more than 1,750 children were diagnosed with pertussis, including five deaths in children younger than three months old, but children cannot receive their first pertussis vaccine until two months of age.

Even among children old enough to receive the standard series of vaccine immunizations, only 71 percent of children between 19 and 35 months old have done so. Because children in child-care facilities are at an increased risk of exposure due to their less-developed immune systems and close contact with other children and facility employees, requiring vaccine policies at child-care facilities would be a prudent safeguard.

The bill would allow parents and guardians to make more informed decisions when choosing a child-care facility. Although vaccine policies would vary by facility, caretakers could inquire directly about each one's comprehensiveness, whereas currently facilities that do not require any minimum level of employee vaccination cannot always provide clear information.

SB 64 would give each facility the ability to tailor its vaccine-prevention policy to the facility's size, age group, and risk factors, instead of receiving a one-size-fits-all mandate from the government. Beyond the minor requirement of adopting the policy, the bill would not impose any new costs on child-care facilities. Facilities could maintain the flexibility of not requiring any vaccines or, if they chose, of assisting their employees in purchasing the required vaccines either directly or through the company's insurance plan. In either case, the long-term savings from preventing hospitalizations and disease outbreaks would be greater than the cost of prevention.

OPPONENTS SAY:

SB 64 would be an unnecessary and unfunded government mandate. Although the bill would not determine which vaccines would be required for child-care facilities, it would result in most facilities either paying for new vaccines, passing the costs on to consumers, or making employees pay for them out-of-pocket, which could be very expensive. If SB 64 increased costs, it would reduce access to child-care facilities, and each facility, regardless of its level of implementation, would face the administrative burdens of developing and monitoring this new policy.

Current public health needs do not justify governmental intervention. Parents bear primary responsibility for vaccinating their children, and this responsibility should not be forced, even indirectly, onto the facility, its employees, or other parents through increased fees. The free market allows parents seeking child-care facilities with certain vaccine standards the freedom to do so, which signals their demand to the facilities.

This bill is a good example of the law of diminishing returns. Since past legislation and medical advances have reduced the rates of illness due to vaccine-preventable diseases, each additional measure has had increasingly little effect.

OTHER OPPONENTS

SB 64's lack of standardization would be inefficient and ineffective. The bill would cause each individual facility to develop and administer its own

SAY: policy instead of implementing a single standard developed by DSHS using industry best practices for adoption by all licensed child-care facilities. The bill's lack of uniformity also would undermine its ability to prevent a disease outbreak because it would not require any facility to increase its required vaccinations, and the concept of "community-immunity" depends on a critical portion of a community being immunized against a disease.

NOTES: The House companion bill, HB 1150 by Zerwas, was referred to the House Public Health Committee on February 25.

SUBJECT: Death benefits to Department of Public Safety support staff

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

VOTE: 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

SENATE VOTE: On final passage, March 27 — 30-0

WITNESSES: *(On House companion, HB 364)*
For — Gary Chandler, DPSOA; (*Registered, but did not testify*: Lon Craft, TMPA; Deborah Ingersoll, Texas State Troopers Association; Clay Taylor, DPSOA)

Against — None

On — (*Registered, but did not testify*: Robin Hardaway, ERS; Skylor Hearn, Texas Department of Public Safety)

BACKGROUND: Government Code, ch. 615 governs financial assistance to the survivors of certain state employees who died as a result of personal injuries sustained in the line of duty.

DIGEST: SB 396 would add the survivors of certain Department of Public Safety (DPS) employees who died due to injuries sustained in the line of duty to the list of survivors that could receive payment assistance. The benefit would extend to the eligible survivor of a DPS employee who:

- was deployed in the field in direct support of a law enforcement operation, including patrol, investigation, search and rescue, crime scene, on-site communications, or special operations; and
- received a special assignment in support of operations relating to organized crime, criminal interdiction, border security, counterterrorism, intelligence, traffic enforcement, emergency management, regulatory services, or special investigations.

The bill would take effect September 1, 2013, and would apply to eligibility, payment, and benefits related to a death that occurred on or after that date.

SUPPORTERS SAY:

SB 396 would extend the state's public safety death benefit to non-commissioned employees who had been deployed in the field in direct support of a law enforcement operation. Under current law, survivors of eligible DPS officers who die as a result of an injury sustained in the line of duty receive a one-time $250,000 benefit. Employees working in this support function become an extension of law enforcement and should receive the same death benefits as their commissioned counterparts operating in a similar capacity. While the odds of death are low for employees who perform these functions — with only one in the past 75 years of DPS history who would have qualified under the proposed language — the risk exists, and the surviving dependents of such employees should be eligible for financial assistance should the worst happen.

OPPONENTS SAY:

SB 396 would accelerate a trend that has resulted in the inclusion of ever more beneficiaries to the state payroll. The state should be careful about expanding expensive benefits to employees, especially when the private alternative of life insurance is available.

NOTES:

The House companion bill, HB 364 by Martinez, was left pending in the Homeland Security and Public Safety Committee after being considered in a public hearing on April 3.

SUBJECT: Establishing the Texas Fast Start Program

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

VOTE: 8 ayes — J. Davis, Vo, Bell, Y. Davis, Isaac, Murphy, E. Rodriguez, Workman

0 nays

1 absent — Perez

SENATE VOTE: On final passage, March 26 — 31 - 0

WITNESSES: (*On House companion bill, HB 834*)
For — Jon Engel; Dale LaFleur, Total PAR; David Lindsay, NCCER; Marinell Music, BASF; (*Registered, but did not testify:* Joe Arnold, Texas Association of Manufacturers; Kathy Barber, NFIB/Texas; Steve Hazlewood, The Dow Chemical Co.; Leslie Helmcamp, Center for Public Policy Priorities; Steven Johnson, Texas Association of Community Colleges; Mike Meroney, Huntsman Corporation & Sherwin Alumina Co.; Carlton Schwab, Texas Economic Development Council; Stephanie Simpson, Texas Association of Manufacturers; Michael White, Texas Construction Association; Daniel Womack, Texas Chemical Council)

Against — None

On — Brenda Hellyer, Texas Assoc. of Community Colleges; Mike Reeser, Texas State Technical College System; Larry Temple, Texas Workforce Commission; (*Registered, but did not testify:* Garry Tomerlin, Texas Higher Education Coordinating Board)

DIGEST: SB 441 would require the Texas Workforce Commission (TWC), in partnership with the Texas Higher Education Coordinating Board (THECB), to establish and administer the Texas Fast Start Program, a career and technical education program designed to help students earn postsecondary certificates and degrees and quickly enter the workforce.

The program would identify and develop methods to support competency-based, rapid-deployment education delivery models for public junior colleges, public state colleges (Lamar State colleges in Orange and Port Arthur and the Lamar Institute of Technology) and public technical institutes (Lamar Institute of Technology and the Texas State Technical College System). The models would be designed to assist students in maximizing academic or workforce education program credit to expedite their entry into the workforce.

TWC would be required to work collaboratively with THECB and the colleges and institutes to create the program and establish models. The colleges and institutes could use the models in developing or expanding a Fast Start program that would:

- focus on the current and future needs of Texas employers;
- enable students to obtain postsecondary certificates and degrees at an accelerated pace in high-demand fields or occupations, as identified by local employers;
- incorporate competency-based learning techniques;
- feature a variety of access channels designed to maximize job preparedness for groups such as veterans, high school graduates, and those seeking retraining; and
- be designed for rapid deployment statewide.

Through the collaboration, TWC could award grants to expand existing or develop new programs. Grants would be used only to:

- support a course or program that prepared students for career employment in fields or occupations that were identified as high-demand by local employers;
- finance the initial costs of developing a Fast Start program, including the costs of building or renovating facilities, buying equipment, and other associated expenses;
- finance the development or expansion of a Fast Start program leading to a postsecondary certificate or degree; or
- offer a new or expanded dual credit Fast Start program jointly with a public high school.

TWC and THECB could adopt rules to administer the program. They would administer the program using money appropriated for that purpose, money received from federal or other sources, or money from holding

accounts that could be used by TWC for skills development.

SB 441 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:

SB 441 would establish the Texas Fast Start Program to promote rapid delivery of workforce education and development. Demand for skilled workers continues to grow as the Texas economy flourishes. Most of the fastest-growing job sectors will require workers with some postsecondary education, many in the form of skills certification. Community colleges, public technical institutes, and others play a vital role in training workers in the state. The bill seeks to help those institutions in training students by requiring the Texas Workforce Commission and the Texas Higher Education Coordinating Board to work collaboratively with institutes of higher education in establishing this new program.

The Fast Start program would fill a gap in workforce education by training workers more quickly and in the skills local industries most need. It would take a competency-based approach, allowing students to advance through classes as they mastered skills, rather than requiring an arbitrary number of hours in classrooms or labs. This would allow students to move more rapidly through training and into paying jobs. Many students and unemployed workers do not have the time, resources, or interest to sink into longer, calendar-based programs, which leads many to drop out or avoid the programs altogether. A growing number of people need skills training or upgrading but cannot afford to go to school full time for up to two years.

For employers, rapid technological changes have reshaped the types of skills they need their employees to have. The Fast Start program would allow a faster and more flexible response to these changes.

Concerns that SB 441 would not be adequately prescriptive, especially regarding input on program development, are off target. The bill intentionally was drafted broadly so the program could be adaptable and to avoid affecting existing workforce programs at some of the larger community colleges. It would be more appropriate to have details, such as incorporating support services and regional planning, handled during rulemaking.

OPPONENTS SAY:

The Texas Fast Start Program under SB 441 should provide for support services, such as child care, which often present the biggest barrier to unemployed and underemployed workers seeking further skills and training.

Also, because regional planning is a critical factor in successful workforce development, the bill should require that Fast Start providers work not only with colleges and institutes but also with nonprofit organizations and other entities in their regions. Such entities could include business and industry, workforce development and community-based organizations, school districts, and adult education programs. Input from these groups in all aspects of program development, including student recruitment and selection, would help reduce barriers and promote successful completion of the Fast Start program.

NOTES:

HB 834 by J. Davis, the identical companion, passed the House by 146-0 on April 11 and was referred to the Senate Committee on Economic Development on May 7.

SUBJECT: Universal Service Fund payments to certain telephone companies

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 9 ayes — Cook, Giddings, Farrar, Frullo, Geren, Harless, Huberty, Smithee, Sylvester Turner

0 nays

4 absent — Craddick, Hilderbran, Menéndez, Oliveira

SENATE VOTE: On final passage, April 17, 2013 — 30-1 (Fraser nay)

WITNESSES: For — (*Registered, but did not testify*: Jose Camacho, Texas Telephone Association; Byron Campbell and Drew Campbell, TW Telecom; Donna Chatham, Association of Rural Communities in Texas; Velma Cruz, Sprint; Robert Digneo, AT&T; David Eichler and Eric Glenn, Windstream Communications; Rob Eissler, Consolidated Communications; Daniel Gibson, Texas Statewide Telephone Cooperative, Inc.; Rick Hardcastle, Texas Statewide Telephone Co-Ops; Sheri Hicks, TEXALTEL; Helen Knaggs, Small Rural USF Coalition; Richard Lawson, Verizon; Stephen Minick, Texas Association of Business; Scott Stringer, CenturyLink; Catherine Webking, Texas Rural Cooperative CLECs; Shayne Woodard, Big Bend Telephone Company)

Against — None

On — (*Registered, but did not testify*: Pam Whittington and Joseph Younger, Public Utility Commission of Texas)

BACKGROUND: The Utilities Code directs the Public Utility Commission (PUC) to regulate phone companies based on their rates of return. It provides a framework for deregulation where the market establishes rates, and it creates incentive-based regulation for companies that do not wish to be deregulated but desire flexibility to make certain investments and business decisions not available under ch. 53.

Utilities Code, sec. 56.022 provides funding for the Universal Service

Fund (USF) through a statewide uniform charge in the form of a 4.3 percent fee payable by consumers on landlines and wireless services through telecommunications providers. The PUC determines the uniform charge rates and the services to which it applies.

Utilities Code, sec. 56.021 governs the USF which requires telecommunications companies to charge a universal service fee to help finance or reimburse providers for programs such as:

- providing telephone service at reasonable rates to high-cost rural areas across the state;
- reducing the cost of specialized telephone equipment and services for deaf, blind, or speech-impaired individuals; and
- providing "lifeline" services or discounts on telephone installation and monthly service for eligible low-income customers.

The USF has two plans to assist local phone companies in providing service in high-cost rural areas — the Texas High Cost Universal Service Plan and the Small and Rural Incumbent Local Exchange Company Universal Service Plan, both established in 1999. They provide assistance to local telephone companies that provide lines in high cost of service areas based on the number of high-cost lines a provider serves. The funds differ in that the Texas High Cost Universal Service Plan supports larger companies.

The state's two largest telephone companies — AT&T and Verizon — have entered into agreements with the Public Utility Commission (PUC) to forgo, as part of a deregulation process, USF payments by January 1, 2017, by which time the companies will be deregulated under Utilities Code, ch. 65 and PUC final order.

An incumbent local exchange carrier (ILEC), sometimes called a "legacy carrier," is a telecommunications provider that historically had been regulated in the Texas market. Each ILEC holds a certificate of convenience and necessity (CCN), which requires it to provide service to all areas of an exchange.

A competitive local exchange carrier (CLEC) is a nonincumbent company operating in an exchange providing competition ILECs.

DIGEST:

CSSB 583 would provide for a reduction in universal service high-cost program support for large and medium-sized local exchange carriers, with limitations and the right to appeal reductions in cases of demonstrated need. The bill would provide continued support for smaller telecommunication companies for four years.

ILECs receiving Texas High Cost Universal Service Plan payments. The bill would establish a graduated reduction schedule for an ILEC or cooperative serving more than 31,000 access lines on September 1, 2013 — other than AT&T and Verizon — and participating in the Texas High Cost Universal Service Plan. The reductions would be based on funds received from the Texas High Cost Universal Service Plan on December 31, 2016. The funds would be reduced by:

- 75 percent on January 1, 2017, from December 31, 2016 levels;
- 50 percent on January 1, 2018, from December 31, 2016 levels; and
- 25 percent on January 1, 2019, from December 31, 2016 levels.

Demonstrated need for continued support from the Texas High Cost Universal Service Plan. The bill would require the PUC to develop rules, criteria and standards for an ILEC or cooperative to demonstrate that the company had a financial need for continued support for residential lines from Texas High Cost Universal Service Program.

The amount the PUC could provide would be capped so as not to exceed:

- 100 percent of the amount of support that the company or cooperative would be eligible to receive on December 31, 2016, if the petition was filed before January 1, 2016;
- 75 percent of the amount of support that the company or cooperative would be eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2016, and before January 1, 2017;
- 50 percent of the amount of support the company or cooperative was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2017, and before January 1, 2018; or
- 25 percent of the amount of support that the company or cooperative was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2018, and before January 1, 2019.

A company would be eligible to file only one petition. Determinations of continued need would be made through contested case hearings. The PUC would be required to make a determination within 330 days of the petition filing. Until the commission issued its final order, a company would be entitled to receive the total amount of support the company or cooperative was eligible to receive on the date the company or cooperative filed the petition. After the PUC had issued its final order, the company would be eligible for continued support at the level established by the PUC within the caps described above.

ILECs receiving payments through the Small and Rural Incumbent Local Exchange Company Universal Service Plan. The bill would establish a graduated reduction schedule for an ILEC or a cooperative participating in incentive regulation or an infrastructure plan that served more than 31,000 access lines on September 1, 2013 and participated in the small and rural ILEC's universal service plan. The reductions would be based on the funds that would be received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan on December 31, 2017. The funds would be reduced by:

- 75 percent on January 1, 2018 from December 31, 2017 levels;
- 50 percent on January 1, 2019 from December 31, 2017 levels; and
- 25 percent on January 1, 2020 from December 31, 2017 levels.

Demonstrated need for continued support for companies receiving payments from the Small and Rural Incumbent Local Exchange Company Universal Service Plan. Carriers and cooperatives would have similar rights of appeal under PUC-developed rules and contested cases as companies seeking continued support from the Texas High Cost Universal Service Plan (see above), except that the cap would be imposed one year later. The amount the PUC could provide would be capped so as not to exceed:

- 100 percent of the amount of support that the company or cooperative would be eligible to receive on December 31, 2017, if the petition was filed before January 1, 2017;
- 75 percent of the amount of support that the company or cooperative would be eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2017, and before January 1, 2018;
- 50 percent of the amount of support the company or cooperative

was eligible to receive on December 31, 2017, if the petition is filed on or after January 1, 2018, and before January 1, 2019; or

- 25 percent of the amount of support that the carrier or cooperative was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2019, and before January 1, 2020.

Deadline for rulemaking to demonstrate need for continued payments from either plan. The PUC would be required to start the rulemaking process by January 1, 2014, and adopt rules by December 1, 2014.

Support for small carriers (31,000 access lines or fewer). Small or rural ILECs, unless they were participating in incentive deregulation or an infrastructure plan, would be entitled to USF support that was adjusted based initially on the support received on January 1, 2013, and then adjusted by a percentage change of the consumer price index.

CLEC support. The bill would provide that if an ILEC or cooperative became ineligible for support from the Texas High Cost Universal Service Program, a CLEC would be eligible to continue to receive support for 24 months after the local exchange provided or cooperatives ceased to receive support. The support would be provided at the same level in effect for that competitive exchange as of the date the carrier or cooperative ceased to receive funding in that exchange. If the competitor was a cooperative or an affiliate of a cooperative, the competitor would continue to receive support until December 31, 2017, at which point support would cease.

Make-whole provisions. The PUC would be required to adopt rules to protect USF payments in certain circumstances for an ILEC or cooperative that served 31,000 or fewer access lines and, as of June 1, 2013, had opted not to participate in incentive deregulation or an infrastructure plan. Circumstances could include a significant drop in assistance from the federal government universal service fund.

Determination of need contested case authority. The bill would grant the commission authority to conduct rate case hearings to determine high-cost support.

Existing dockets. CSSB 583 would provide that nothing in Utilities Code, sec 56.023, as amended by the bill, would affect a company's obligations under PUC Docket No. 40521 (final order regarding AT&T, Verizon, and other large companies) and PUC Docket No. 41097 (current rate

rebalancing procedures for smaller companies).

Limitations on PUC authority. The bill would prohibit the PUC from reducing USF support beyond the reductions specified in CSSB 583.

Information requests, confidential business information, and nondisclosure. A telecommunications provider would be required to file with the commission the provider's annual earnings report:

- if the provider was not a local exchange company participating in a total reduction support plan or had decided to opt out of receiving universal service fund payments;
- served more than 31,000 lines; and
- received support from the Texas High Cost Universal Service Plan.

The report would be confidential and not be subject to public disclosure.

Effective date. This bill would take effect June 1, 2013, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the Legislature (August 26, 2013, if the Legislature adjourned sine die on May 27).

SUPPORTERS SAY:

CSSB 583 would allow the Texas Universal Service Fund to continue to support various programs, including providing financial support to telecommunications companies of various sizes in rural or high-cost areas, while gradually reducing the amount of support certain companies received unless they demonstrated need. The approach in the bill eventually would lead to lower USF costs, while maintaining support for high-cost rural areas, as the state's population continues to trend more urban and suburban.

CSSB 583 would reduce the USF by nearly $100 million by 2017, and ensure that the need by certain companies for any funding beyond 2017 was demonstrated to the PUC. Because the fund is paid by consumers who use wireless and line phone services, getting the fund to the right size is critical.

The bill would provide guidance to the PUC and telecommunication companies and provide certainty to companies regarding the USF. Its provisions have been agreed to by large, medium, and small telephone companies and cable providers. For the state's two largest companies —

AT&T and Verizon — which already have agreed to receive zero USF support as part of the companies' efforts to deregulate, the bill would maintain the plan that they agreed to with the PUC.

For medium-sized phone companies, the bill would maintain the reductions in funding that were agreed to in a settlement at the PUC last year. The bill would look beyond that four-year settlement. Beginning in 2017, funding for these companies would be based on a showing at the PUC of their financial need for continuing to receive USF support.

For very small companies, serving 31,000 lines or fewer, SB 583 would maintain their funding and allow increases based on inflation. Depending on the overall receipts of USF fees coming into the state, the bill could result in a lower costs to consumers.

For competitive local exchanges that receive high-cost funding today in service areas of larger incumbent companies in which they compete, the bill would provide security of several more years of funding, even if the local exchanges eventually received no USF funding under the bill.

OPPONENTS SAY:

The bill could result in a slight increase in costs to consumers of medium-sized phone companies as USF support was decreased. The gradual reductions in USF support should be calibrated so that no consumer would be disproportionately affected.

NOTES:

The Senate-passed version of CSSB 583 differs from the House committee substitute in that if an ILEC or cooperative had become ineligible for the Texas High Cost Universal Service Program under the Senate version, a CLEC would have been eligible to continue to receive support for a period of 48 months, rather than the 24 months provided in the House committee substitute. Under the House committee substitute, a CLEC that was a cooperative would be entitled to receive monthly per-line USF support from the date the ILEC stopped receiving support through December 31, 2017.

The committee substitute does not contain a provision in the Senate version that would have required a standing committee of the Senate with primary jurisdiction over telecommunications to conduct an interim study regarding CLECs.

SUBJECT: Alternative response system for investigations of child abuse or neglect

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Raymond, N. Gonzalez, Klick, Naishtat, Rose, Sanford, Scott Turner

0 nays

2 absent — Fallon, Zerwas

SENATE VOTE: On final passage, April 4 — 30 - 0

WITNESSES: For — (*Registered, but did not testify:* Katherine Barillas, One Voice Texas; Stephanie LeBleu, Texas CASA; Madeline McClure, TexProtects, the Texas Association for the Protection of Children; Lauren Rose, Texans Care for Children; Aaron Setliff, The Texas Council on Family Violence; Glenn Stockard, Texas Association Against Sexual Assault; Donna Wood)

Against — None

On — (*Registered, but did not testify:* Elizabeth Kromrei, Department of Family and Protective Services)

BACKGROUND: Family Code, sec. 261.3015 authorizes the Department of Family and Protective Services (DFPS) to use a flexible response system to screen out less serious cases of abuse and neglect if the department determines, after contacting a professional or other credible source, that the child's safety can be assured without further investigation.

The department may administratively close the less serious cases without providing services or making a referral to another entity for assistance. A case is considered to be a less serious case of abuse or neglect if the circumstances of the case do not indicate an immediate risk of abuse or neglect that could result in the death of or serious harm to the child in the report.

The Family Code also authorizes DFPS to implement the flexible response

system as a pilot program in a single department service region. The results from the pilot study could be used to determine the method by which to implement the system statewide.

DIGEST:

SB 423 would expand the DFPS flexible response system to allow the department to investigate and respond to cases of abuse and neglect using an alternative response for reports that did not:

- allege sexual abuse of a child;
- allege abuse or neglect that caused a child's death; or
- did not indicate a risk of serious physical injury or immediate serious harm to a child.

An alternative response would include:

- a safety assessment of the child who was the subject of the report;
- an assessment of the child's family; and
- identification, in collaboration with the child's family, of any necessary and appropriate service or support to reduce the risk of future harm to the child.

An alternative response could not include a formal determination by DFPS of whether the alleged abuse or neglect occurred. DFPS would consider the child's safety as the primary concern when classifying a reported case of abuse or neglect under the flexible response system.

The bill would allow DFPS to implement the alternative response system in one or more of the department's administrative regions to determine the best method for implementing the system statewide.

The bill would allow the department to administratively close a reported case of abuse or neglect without completing the investigation or alternative response and without providing services or making a referral to another entity for assistance if DFPS determined through a professional or other credible source that the child's safety could be assured without further investigation, response, services, or assistance.

The bill would require the executive commissioner of the Health and Human Services Commission to adopt rules necessary to implement the bill by December 1, 2013.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 423 would authorize DFPS Child Protective Services to create an alternative response system for low-risk cases with no immediate danger to a child. The current flexible response system allows DFPS to administratively close less serious cases but does not authorize the department to work with a family reported to DFPS to identify ways to strengthen family functioning going forward.

By creating an alternative response system, the bill could prevent children from entering or re-entering the foster care system and would lower caseworker turnover. For qualifying cases, the bill would give DFPS the flexibility to take a more supportive approach with families that could be kept together through education, counseling, and other community services. By creating a less adversarial track, the bill would help parents be more open and engaged and would allow caseworkers to focus their efforts and resources to strengthen family functioning.

The bill would implement interim recommendations and would further the goal of not continuing business as usual but rethinking the system to deliver better outcomes for children. The fiscal note is a one-time expense for implementation and the agency included the fiscal note as an exceptional item in their budget.

DFPS has a stringent, effective system for determining action on reports of abuse and neglect. This bill would not change the agency's obligation to be involved in these cases; it simply would give the agency another way to provide support for families at potential risk.

OPPONENTS SAY:

The bill would cost the state too much to implement the alternative response system, which may not have better results than the current flexible response system. The bill could also negatively affect children by administratively closing abuse and neglect cases without resolving issues that could result in future harm.

NOTES:

The bill has a negative fiscal impact of $1.5 million through the biennium ending August 31, 2015, reported the Legislative Budget Board. According to DFPS, implementing the bill would require substantive changes to the department's automated casework system to create an additional stage of service for the alternative investigation track. The agency has requested exceptional item funding for the 2014-15 biennium

for this project.

SB 423 is identical to the House companion bill, HB 1679 by Raymond, which was referred to the House Human Services Committee on March 4 with no subsequent action.

SUBJECT: Repealing tax prepayments and funds transfers for fiscal 2014

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 24 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, Giddings, Gonzales, Howard, Hughes, S. King, Longoria, Márquez, Muñoz, Orr, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

3 absent — S. Davis, Dukes, McClendon

SENATE VOTE: On final passage, March 5 — 30-0

WITNESSES: *(On House companion bill, HB 1062)*
For — (*Registered, but did not testify:* Doug DuBois, Jr., Texas Food and Fuel Association)

Against — None

On — (*Registered, but did not testify:* Bryant Lomax, Texas Comptroller of Public Accounts)

BACKGROUND: The 82nd Legislature, in its first-called session in 2011, enacted SB 1 by Duncan, requiring a business that collected sales tax to make a prepayment of taxes due in September 2013, and authorizing other certain funds transfers. The prepayment was set at 25 percent of the amount of taxes due in August 2013, which would be counted as a credit on sales taxes due in September 2013.

DIGEST: **Tax prepayments.** SB 559 would repeal statutory provisions added in 2011 that required a prepayment of limited sales, use, and excise taxes, and taxes collected for motor fuels and various alcoholic beverages.

Fund transfers. The bill would repeal Tax Code sec. 162.503(b) and sec. 162.504(b), enacted in 2011, which required the comptroller to delay to September 2013 allocating gasoline and diesel tax revenue to the

Available School Fund and the State Highway Fund (Fund 6) for July and August of that year.

In addition, the bill would repeal Government Code, sec. 466.355(c), which requires the comptroller each August to estimate the amount to be transferred to the Foundation School Fund on or before September 15, and transfer the estimated amount to the Fund before August 25.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, only the section repealing Government Code, sec. 466.355(c), would take effect on September 1, 2013.

SUPPORTERS SAY:

SB 559 would undo now unnecessary accounting measures that the 82nd Legislature in 2011 enacted to balance the state budget in light of a severe estimated shortfall. Reversing the measures would improve transparency and reduce administrative costs.

The accounting measures, which the Legislature has turned to in the past, were successful in allowing the state to budget more funds for schools and health care for fiscal 2012-13. However, the comptroller in January, 2013, released a Biennial Revenue Estimate with an $8.8 billion estimated positive ending balance for fiscal 2013. The substantial ending balance meant that, even after appropriating supplemental funds for emergency needs in fiscal 2012-13, there is sufficient revenue without the prepayments and fund transfers.

Tax prepayments. To make more revenue available for the 2012-13 biennium, the Legislature enacted various tax prepayments, or speed-ups, designed to shift to fiscal 2013 revenue that otherwise would be collected in 2014. The speed-ups required a 25 percent prepayment of September 2013 sales tax, motor fuels taxes and alcoholic beverages taxes no later than August 31, 2013, where the payments would be credited to fiscal 2013 and therefore the preceding biennium.

SB 559 provides the statutory authorization necessary to prevent the prepayment requirement from taking effect. Enacting legislation that precluded the early payments in a timely fashion would relieve the comptroller from having to begin taking the necessary steps to ensure that taxpayers were adequately notified of the prepayment requirement.

Funds transfers. SB 559 would repeal a requirement that the comptroller delay allocating gas and diesel taxes destined for the Available School Fund and Fund 6 until September 2013. Since these funds are first collected in the general revenue account, holding off on the transfer to other accounts gives the appearance of more general revenue being available for fiscal 2013. The bill would eliminate the unnecessary and misleading delay in transfer.

SB 559 also would repeal a lottery payment transfer speed-up provision that the 77th Legislature enacted in 2001. The measure required the comptroller to estimate funds going to the Foundation School Fund from the state lottery account and make the transfer early, on August 25. The provision resulted in a $65 million increase in revenue available for certification for fiscal 2002; reversing it would have a negative fiscal impact of $96.4 million for fiscal 2013. While it would have a negative fiscal impact for fiscal 2013, eliminating the lottery speed-up would enhance honesty and transparency in budgeting — priorities that have taken a front seat in the 83rd legislative session.

OPPONENTS SAY:

While the majority of SB 559 would just shift revenue from fiscal 2014 to the year prior, the repeal of the 2001 lottery transfer speed-up would have a cost of $96.4 million to the Foundation School Fund for fiscal 2013. The added cost ultimately would mean that less general revenue would be available for pressing state priorities.

NOTES:

The Legislative Budget Board estimates SB 559 would result in a negative fiscal impact of $864.3 million in general revenue funds for fiscal 2012-13 and a positive fiscal impact of $767.9 million in general revenue funds for the fiscal 2014-15 biennium. The LBB estimates the measure also would result in a one-time loss to the Foundation School Fund of $96.4 million for fiscal 2013.

The House companion bill, HB 1062 by Pitts, was left pending in the House Appropriations Committee on February 25.

SUBJECT: Requirements of certain deregulated telecommunication companies

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Giddings, Farrar, Frullo, Geren, Harless, Huberty, Smithee, Sylvester Turner

0 nays

4 absent — Craddick, Hilderbran, Menéndez, Oliveira

SENATE VOTE: On final passage, March 13, 2013 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Robert Digneo, AT&T; Richard Lawson, Verizon; Annie Mahoney, Texas Conservative Coalition; Lucas Meyers, Texas Cable Association; Stephen Minick, Texas Association of Business; Bill Peacock, Texas Public Policy Foundation)

Against — None

On — (*Registered, but did not testify*: Sheri Hicks, TEXALTEL; Pam Whittington, Public Utility Commission)

BACKGROUND: The state's two largest telecommunications companies — AT&T and Verizon — have agreed to no longer draw high cost Universal Service Fund payments after January 1, 2017. Other companies, such as competitive local exchange carriers (CLECs) are operating in competition with established carriers. Some companies, called transitioning companies, are regulated in some telephone exchanges and not in others.

An incumbent local exchange carrier (ILEC), sometimes called a "legacy carrier," is a telecommunication provider that historically had been regulated in the Texas market. Each ILEC holds a certificate of convenience and necessity (CCN), which requires it to provide service to all areas of an exchange.

The term "tariff" as used in telecommunications regulation, means filed, legally binding documents approved by the PUC that define rates, terms

and conditions for regulated companies. Tariffs guide regulated communications, while contracts between consumers and providers guide the rates and terms in a deregulated market.

DIGEST:

SB 259 would provide guidance to a company in the Texas telecommunications market after the company had become deregulated.

Deregulated companies. SB 259 would amend Utilities Code, sec. 65.102 to place the requirements for deregulated companies (wireline incumbents whose entire market areas are deemed competitive by the PUC) under one section in the code.

The consolidated section would include consumer safeguards, wholesale rules, video franchise rules, and administrative oversight.

Consumer safeguards consolidated under sec. 65.102 would include:

- 9-1-1 requirements;
- consumer protection rules, including those that regulate billing, slamming/cramming, and use of credit history/credit scores;
- lifeline phone service for low-income customers;
- Universal Service Fund access;
- requirements that prevent pricing from being "anticompetitive, unreasonably preferential, prejudicial, discriminatory, or predatory";
- wireless no-publish requirements;
- private property owners' rights and responsibilities; and
- Automatic Dial Announcing Device (ADAD) notifications and requirements.

Wholesale rules consolidated under sec. 65.102 would include wholesale regulations and resale provisions.

Video franchise rules consolidated under sec. 65.102 would include state-issued cable and video franchise rules and broadcaster safeguard rules.

Administrative provisions consolidated under sec. 65.102 would include:

- enforcement and penalties;
- judicial review;

- rules for transfer of certificates, contract approval, and prohibitions against interfering with another telecom utility;
- administrative fees;
- explicit certification authority; and
- explicit complaint authority.

Tariffing. SB 259 would prohibit the PUC from requiring a CLEC to obtain advance approval for its rates and services.

The PUC would be prohibited from requiring a deregulated company or transitioning company to obtain approval for a filing with the commission or to post on the company's website provisions that added, modified, withdrew, or grandfathered:

- nonbasic retail service or the service's rates, terms, or conditions; or
- in a deregulated market, a basic network service or the service's terms, rates, and conditions.

Notice of changes to rates and tariffs between ILECs and CLECs. An ILEC would be required to continue to provide resellers of retail services the notice of rate changes or withdrawal of services.

Treatment of CLECs if an ILEC was deregulated. SB 259 would prohibit a nondominant telecommunications utility (CLEC) from having a regulatory burden exceeding that of:

- the current ILEC provider;
- a large, deregulated entity, such as AT&T and Verizon; or
- a deregulated ILEC of any size that served in the same area as the CLEC.

Conforming changes and effective date. The bill would make conforming and formatting changes to various sections of the Utilities Code to reflect the effect of changes made by SB 529.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 259 would provide clarity regarding the PUC's authority with respect to nondominant carriers (CLECs), deregulated companies, and companies

transitioning from being regulated to becoming deregulated. It also would provide assurances as to how these entities would be treated by the PUC. It would maintain important consumer protections.

The bill would reduce the PUC's authority over such carriers and provide them additional flexibility with respect to pricing of residential services. During the transition from regulated utilities to deregulated utilities, the state's regulatory framework underwent similar changes designed to provide clarity in guiding utilities through that process.

SB 259 is an agreed-upon bill, resulting from negotiations with various-sized telephone companies, cable-operators, consumer groups and state agencies. It has been thoroughly reviewed and vetted by attorneys at state agencies and private companies.

The bill would keep intact consumer safeguards and would not affect the role of the PUC in connection with wholesale agreements between phone companies. It would not change the law with regard to video and cable services offered by telecommunication and cable providers, and would provide the PUC with all necessary continuing administrative oversight.

The list of requirements for deregulated companies are reasonable and would include removing uniform pricing for a "deregulated company," removing the perfunctory tariff/price list change approval process, and adding a wholesale noticing provision. In addition, a CLEC serving the same market as a deregulated ILEC would receive the same regulatory treatment.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Renewing 99-year lease of certain state property to the City of Austin

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Menéndez, Oliveira, Sylvester Turner

0 nays

3 absent — Hilderbran, Huberty, Smithee

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: (*On House companion bill, HB 2604)*
For — Molly Alexander, Downtown Austin Alliance; Sara Hensley, City of Austin; Julian Read, Preservation Austin; (*Registered, but did not testify:* Charles Betts, Downtown Austin Alliance; John Donisi; Julia Fitch, Texas Downtown Association; Kim McKnight, Preservation Austin; Joanne Richards; Colin Wallis, Austin Parks Foundation)

Against — None

On — (*Registered, but did not testify:* LaNell Aston, General Land Office; Terry Keel, Texas Facilities Commission)

BACKGROUND: The 33rd Legislature in 1913 enacted HB 215, granting the city of Austin the right to establish, operate, and maintain a municipal auditorium and market square between 4th and 5th streets and Guadalupe and San Antonio street (Republic Square Park). In 1917, the Legislature amended the provision to grant a 99-year lease to the city of Austin. Under the grant, the land would revert back to the state if the city of Austin did not use it as provided under the lease.

DIGEST: CSSB 1023 would grant a 99-year lease starting on August 15, 2016, to the city of Austin for three tracts of state-owned land: Republic Square Park, Wooldridge Park, and Brush Park. The Legislature could, by a concurrent resolution, terminate the lease, in part or in whole, at any time and for any reason.

The city of Austin only could use the tracts as municipal parks for conducting theatres, operas, concerts, lectures, fairs, shows, and public exhibitions or for buying or selling produce. The city could construct, operate, and maintain public amenities on the described tracts.

The bill would take effect August 15, 2016.

SUPPORTERS SAY:

CSSB 1023 would address a unique situation concerning the fate of three public squares in Austin. The bill would extend and improve an almost 175-year arrangement between the city of Austin and the state of Texas, whereby the former has been maintaining and operating public squares owned by the latter.

The tracts in question, Republic Square Park, Wooldridge Square Park, and Brush Square Park were platted as three of four public squares when Austin was declared capital of the Republic of Texas. While there is no formal lease for the city to operate Wooldridge and Brush Park, the 35th Legislature in 1917 leased Republic Square Park to the city of Austin for 99 years. A fourth square was sold and became the First Baptist church.

The squares have special historical significance for the city of Austin and the state. Brush Square Park is the site of the O'Henry Museum, historic fire station #1 and the Austin Fire Museum, and the transplanted home of Alamo survivor Susanna Dickinson. Wooldridge Park has a storied history, including distinction as the site where Lyndon Baines Johnson announced his run for U.S. Senate in 1948. And Republic Square has, since its designation in 1840, been a place for the convergence of ideas and people.

Legal questions throughout the years have affirmed the unique standing and importance of the squares. For example, an attorney general opinion from 1948 (V-741) concluded that two of the tracts in question were not part of the Public School Fund but rather were wholly within the province of the Legislature and could thus not be sold through the same channels as other public state land.

The city of Austin has and continues to invest significant resources into maintenance and operation of the squares. The city has budgeted $1.2 million for the Republic Square Master Plan and improvements and has designated other improvements for Wooldridge and Brush Square,

financed partially from voter-approved bond funding.

SB 1023 would allow the city of Austin to continue in its beneficial role as steward of the public squares while granting the state the flexibility to cancel the arrangement if the need arose. Allowing the state to cancel the contract if necessary would be a critical precondition to entering into such a long-term agreement. There is no telling what may happen over the next 100 years, and the state needs to retain the option to modify agreements of such duration if necessary.

OPPONENTS SAY:

Instead of making decisions involving the disposition of individual parcels of land, it would be preferable for the Legislature to place the plots in question under the land and facility review processes of the Texas Facilities Commission. The Facilities Commission is accustomed to making recommendations for specific actions and working out long-term ground leases and other arrangements for specific parcels of state-owned land and would be well equipped to work out an agreement with the city of Austin and implement the agreement administratively.

OTHER OPPONENTS SAY:

The House substitute added language stating that the Legislature could "terminate the lease, or a portion thereof, at any time for any reason." Given that the city of Austin is in the process of making significant investments in improving the public squares, the Legislature should be restricted to terminating the lease only for just cause.

NOTES:

The House committee substitute added language allowing the Legislature, by a concurrence of both houses, to terminate the lease with the city, in whole or in part, at any time for any reason.

The House companion bill, HB 2604 by Naishtat, was left pending in the House State Affairs Committee on March 27.