HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 15, 2013
83rd Legislature, Number 74
The House convenes at 10 a.m.

Twenty-one bills and one joint resolution 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.

The House will consider a Congratulatory and Memorial Calendar today.

Bill Callegari
Chairman
83(R) – 74

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, May 15, 2013
83rd Legislature, Number 74

SUBJECT: Continuing the Texas Higher Education Coordinating Board

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 5 ayes — Branch, Patrick, Alonzo, Howard, Raney

3 nays — Clardy, Darby, Murphy

1 absent — Martinez

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

WITNESSES: For — (*Registered, but did not testify:* George Torres, Texas Guaranteed Student Loan Corp.)

Against — None

On — Sarah Kirkle, Sunset Advisory Commission; (*Registered, but did not testify:* Raymund Paredes, Texas Higher Education Coordinating Board)

BACKGROUND: The Legislature created the Texas Higher Education Coordinating Board in 1965. According the Sunset Advisory Commission, the board develops and monitors the long-range strategic plan for higher education. It collects, analyzes, and distributes information on higher education. It reviews and approves degree programs and the construction of major facilities at public institutions of higher education. The board administers state financial aid programs and distributes related funds to institutions of higher education. It also administers state and federal grant programs to support higher education goals.

The agency's governing board consists of nine public members appointed by the governor. They serve staggered six-year terms and the chair is chosen by the governor. The commissioner of higher education is appointed by the agency's board. The agency employed 274 people in fiscal 2011.

In fiscal 2012, the board's operating budget was $756.6 million. The

vast majority of the funds — 96 percent — passed through to institutions for grants and student financial aid, while the remainder, $32 million, funded the board's operations. About 89 percent of the board's total budget was general revenue.

DIGEST:

CSSB 215 would continue the Texas Higher Education Coordinating Board, change the makeup of its governing board, revise its responsibilities, and alter or eliminate certain programs under its purview.

Changes to the agency's board. CSSB 215 would make changes to the governing board's membership and to its responsibilities.

One-third of members would be experienced in higher-education governance or administration. The bill would require that at least one-third of members of the agency's board possess experience in the field of higher education governance or administration so that the board included experience from both general academic teaching institutions and public junior colleges or public technical institutes. Prior experience of the governing board of a private or public institution of higher education would qualify.

Public comment. CSSB 215 would require the agency's board to provide opportunities for public comment at each of its meetings.

Advisory committees. The bill would require the board's advisory committees to report their recommendations directly to the board, rather than to agency staff. The board could adopt rules about advisory committee size, qualifications for membership, and compliance with open meetings requirements.

Negotiating rule making. CSSB 215 would require the board to engage in negotiated rule making when developing any rule, policy, or procedure if the board determined an issue would be controversial and self-initiated the process or if negotiated rulemaking was requested by at least half of the affected institutions and they agreed to share in the costs.

Long-term planning requirements. The bill would require the board to develop a long-range master plan for higher education. The plan would:

- establish long-term, measurable goals and provide strategies for implementing those goals;

- assess the higher education needs of each region of the state;
- provide for regular evaluation and revision of the plan, as the board considered necessary, to ensure the relevance of goals and strategies;
- take into account input from stakeholders and the general public; and
- take into account the resources of private or independent institutions of higher education.

The board would deliver and report to the governor, the lieutenant governor, the speaker, and the higher education committees of the Senate and House by December 1 of each even-numbered year. The report would cover the state's progress in meeting the goals established in the long-term plan.

Certificate and degree programs. CSSB 15 would remove the board's authority to order the elimination or consolidation of low-producing certificate or degree programs (those that produce a low number of degrees or certificates) and instead would require the board to recommend action to the governing board of the institution.

If an institution's governing board did not accept a recommendation by the agency's board to close or consolidate a low-producing degree program, the institution would identify the programs recommended for consolidation or elimination on its next legislative appropriations request.

The bill would base a low-producing program review on the number of degrees or certificates awarded by a program, not the graduation rate.

Board approval of academic programs. A new degree or certificate program would only be created with the specific prior approval of the board. Before beginning preliminary planning of such a program, an institution would have to notify the board. As part of the approval process, the board would review each proposed program to ensure that it:

- was needed by the state and local community and would not unnecessarily duplicate programs offered by other institutions;
- had adequate funding;
- had the necessary faculty and other resources to ensure student success; and
- met academic standards.

The board would review the number of degrees or certificates awarded by these new programs at least every four years. It would review each new program every 10 years using the same criteria it would for a new program.

Compliance monitoring. CSSB 15 would direct the agency's board to adopt rules to establish an agency-wide, risk-based compliance monitoring function for funds allocated by the board, including student financial aid, academic support grants, and any other grants, to ensure that those funds were distributed in accordance with applicable law and board rules. The board also would monitor data used by the board for financial and policy decisions, as supplied by institutions of higher education, to ensure the data were reported accurately. The bill would stipulate certain criteria to be used when establishing the risk-based compliance monitoring.

If the board's monitoring processes determined that funds awarded by the board to an institution of higher education or independent or private institution had been misused or misallocated by the institution, the board would have to present its determination to the institution and provide an opportunity for a response. The board would report its conclusion and the institution's response to the governor and the Legislative Budget Board.

If the board's monitoring process determined that funds awarded by the board to an institution of higher education had included errors in the institution's data reported for formula funding, the board would calculate a revised appropriations amount for the applicable fiscal year. The information would be sent to the governor, Legislative Budget Board, and comptroller for consideration as the basis for budget execution or other appropriate action.

The board could partner with internal audit offices at institutions of higher education and the state auditor.

B-On-Time loan program. The bill would remove two-year universities from eligibility for the B-On-Time loan program.

CSSB 215 would specify that graduation requirements for the program included total amount of time or credit hours spent at any institution, not just an institution eligible for funding under the program.

Texas Guaranteed Student Loan Corp. The Texas Guaranteed Student Loan Corp. would change to a nonprofit corporation under Business Organizations Code, ch. 22 from a public nonprofit corporation created by general law on or immediately after September 1, 2013. Student loan borrower information collected, assembled, or maintained by the corporation would be confidential and not subject to public disclosure.

Some of the financial education functions of the corporation would be transferred to the board.

Loan default prevention program. CSSB 215 would direct the board to create a student loan default prevention and financial aid literacy pilot program to be implemented by January 1, 2014. The program would be designed to ensure that students were informed consumers with regard to all aspects of student financial aid, including:

- the consequences of borrowing to finance a student's education;
- the financial consequences of a student's academic and career choices; and
- strategies for avoiding student loan delinquency and default.

The board would select at least one general academic teaching institution, public junior college, private or independent institution of higher education, and career school or college to participate in the program. SB 215 would establish criteria for selecting institutions to participate in the program, including a default rate of more than 20 percent or a default rate growing at a faster percentage than those of other post-secondary institutions. The board would establish rules to implement the program. By January 1 of each year, the board and each participating institution would submit a report on the pilot program to the governor, lieutenant governor, and the speaker. The pilot program would expire on December 31, 2020.

Articulation agreements. The bill would require public junior colleges that offered a B.A. program to enter into articulation agreements for the first five years of the program with one or more general academic teaching institutions.

Consolidation of two programs. CSSB 215 would fold the Advanced Technology Program into the Norman Hackerman Advanced Research Program.

Eliminating certain programs. The bill would eliminate 19 unnecessary and unfunded programs and 4 unnecessary reports.

Next sunset review. CSSB 215 would continue the coordinating board until 2025.

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

SUPPORTERS SAY:

CSSB 215 would continue the Texas Higher Education Coordinating Board for another 12 years and make needed changes to the makeup of the board, its rule-making authority, and oversight powers. The bill also would eliminate unnecessary and unfunded programs and reports.

Negotiated rule making. CSSB 215 would provide for negotiated rule-making between the board and institutions of higher education if the board determined that the development of a rule would be controversial or if at least one-half of the affected institutions requested negotiated rulemaking and agreed to share the costs. CSSB 215's approach would allow for negotiated rulemaking when appropriate. The vast majority of the board's rulemaking should be approached through normal procedures and the bill would not hamper the board's ability to make rules in a timely manner.

Program review and approval. CSSB 215 would preserve local control while safeguarding taxpayer and institutional resources by removing the board's ability to close low-performing degree programs. It still would review them and advise the governing board of institutions if a program should be closed.

The bill also would clarify the criteria the board would use when evaluating new programs. Current law does not list criteria for evaluating programs nor does it distinguish between different types of review.

The state needs the board to review and approve programs to prevent institutions from expending resources planning for unnecessary or redundant new programs and the bill would properly preserve these valuable functions.

Board membership. CSSB 215 would require that one third of the members of the agency's governing board had experience with higher education to allow the board to better direct policy. Currently, due to a

lack of prior experience, the board is heavily reliant on agency staff as its source of expertise. The bill would count prior service on an institution's governing board as qualifying in order to expand the pool beyond individuals who had worked in academia. The bill only would require one third of the board to have this experience. The governor still would have wide discretion to appoint the remaining two-thirds of the board.

It would not be appropriate to open up the requirement that one-third of the board members have higher-education experience to those with pre-school-to-grade-16 experience because that would be too broad. It would be better to seek those with higher education experience because that is the direct knowledge deficiency the board most urgently needs to address.

Changes to the Texas Guaranteed Student Loan Corp. CSSB 215 would transform the Texas Guaranteed Student Loan Corp. from a public non-profit corporation into a private non-profit. This change would allow it to make a one-time gift to the state of $250 million to be used for higher education purposes, such as a foundation to reimburse institutions of higher education for their Hazelwood tuition exemption costs.

CSSB 215 would give the student loan corporation new purpose. The student loan corporation, which previously administered the state's portion of the Federal Education Loan Program, has been adrift since the federal government ended the program. Transforming the corporation into a private, nonprofit entity would allow it to pursue additional contracts and become a regional, if not nationwide entity providing higher-education financial aid and other assistance. The bill would preserve the corporation's status as the guarantor agency for the state under the federal Higher Education Act.

B-On-Time. CSSB 215 would remove public two-year institutions from B-On-Time eligibility because their underuse does not justify the administrative burden. These students should be directed to Texas Equal Opportunity Grants, which are better designed to meet the needs of two-year institution students, as it allows them to enroll part-time.

OPPONENTS SAY:

CSSB 215 would not do enough to protect local control and promote competition between institutions of higher education.

Negotiated rule making. CSSB 215 should follow the Senate engrossed version of the bill by requiring the board to engage institutions of higher

education in negotiated rulemaking whenever it is required to consult or cooperate with institutions in the development of a policy, procedure, or rule. The board has strayed from a data gathering and advisory agency to become a regulatory body. The Senate version of the bill, by requiring negotiated rulemaking, would ensure institutions of higher education had sufficient input into the rules that regulate them.

Program review and approval. CSSB 215 would grant the board too much power over the programs institutions of higher education offer or would hope to offer. Institutions should be allowed to decide on their own which programs they offer. Market competition for students, top faculty, and research funding would naturally direct administrations to create productive programs and shutter those that under perform.

OTHER OPPONENTS SAY:

CSSB 215 should allow any board candidate's pre-school-to-grade-16 professional experience to qualify as appropriate experience for board membership. Higher education is not a stand-alone part of the education process; it is only part of the education pipeline. While the bill's requirement that a third of the board members have higher-education experience would deepen the board's knowledge base, it is too narrow a requirement. Preschool-16 experience would add necessary and beneficial breadth as well.

NOTES:

The Legislative Budget Board estimated that SB 215 would have a negative impact of $665,734 to general revenue for fiscal 2014-1015. This would be to fund four full-time-equivalent employees for a proposed new compliance monitoring function.

The House companion bill, HB 2507 by Anchia, was left pending in the House Higher Education Committee on April 3.

The committee substitute to SB 215 differs from the Senate engrossed version in several ways. The committee substitute would:

- prohibit the board from ordering the consolidation or elimination of a degree or certificate program;
- base a review of a low-producing program on the number of degrees or certificates awarded, not on the program's graduation rate;
- require the board to engage in negotiated rulemaking with affected institutions under certain conditions;

- change the Texas Guaranteed Student Loan Corporation from a public nonprofit organization to a private nonprofit organization;
- make several changes to the compliance monitoring function;
- include total amount of time or credit hours spent at any institution when determining graduation requirements for the B-On-Time Program;
- create the Student Loan Default Prevention and Financial Aid Literacy Pilot Program;
- fold the Advanced Technology Program into the Norman Hackerman Advanced Research Program;
- require the board to consider the resources of private higher education institutions in long-range plans for the state; and
- replace language excluding private institutions with language that would include them, where appropriate.

SUBJECT: Constitutional amendment providing term limits for certain state offices

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 7 ayes — Cook, Giddings, Frullo, Harless, Hilderbran, Huberty, Smithee

3 nays — Craddick, Farrar, Geren

3 absent — Menéndez, Oliveira, Sylvester Turner

SENATE VOTE: On final passage, March 19 — 27-4 (Birdwell, Estes, Hegar, Williams)

WITNESSES: (*On House companion resolution, HJR 42*)
For — George Seay, Texans for Term Limits; Tom "Smitty" Smith, Public Citizen; (*Registered, but did not testify:* Chris Howe)

Against — (*Registered, but did not testify:* Ken Hodges, Texas Farm Bureau)

BACKGROUND: Texas Constitution, art. 4, sec. 1 provides for the following officers constituting the executive department of the state:

- governor;
- lieutenant governor;
- secretary of state;
- comptroller;
- commissioner of the General Land Office; and
- attorney general.

DIGEST: SJR 13 would limit to two consecutive terms a person holding an office listed in art. 4, sec. 1, or any other state office normally filled by the voters in a statewide election, other than a statewide judicial officer. The resolution would not limit a person's eligibility to serve nonconsecutive terms.

The resolution would not prohibit a person from continuing to serve in an office as a holdover until a successor was qualified. A term served when a person was appointed for the remainder of a term to fill a vacancy would

not count against their eligibility for subsequent terms.

The resolution would add a temporary grandfathering provision, expiring February 1, 2031, to specify that a term of office beginning before January 1, 2014 would not be counted in determining a person's eligibility under the resolution.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment limiting to two the number of consecutive terms for which a person may be elected or appointed to hold the office of governor, lieutenant governor, secretary of state, comptroller of public accounts, commissioner of the General Land Office, attorney general, commissioner of agriculture, or railroad commissioner."

SUPPORTERS SAY:

SJR 13 would encourage new perspectives and fresh ideas in government. Currently, the offices affected by this bill have no term limits, and an individual may serve in these offices for an unlimited amount of time without any hiatus. The resolution would provide for greater turnover in Texas's major executive branch positions, allowing new energy and new candidates to bring their talents to these positions and to state government.

The resolution would make races for elective offices more fair by tempering the overwhelming power of incumbency in a campaign. Many times, voters re-elect the same officials for years at a time because the effect of incumbency and name recognition eliminates competitiveness in a race. Voters who vote in races with longstanding incumbents would benefit from the opportunity to consider new candidates and have a healthier, more substantive policy debate.

The resolution would not unnecessarily erase institutional knowledge because it would not impose a lifetime ban. After a break, a person with institutional knowledge could run again for an office that person previously held. In addition, the benefits provided by term limits and new elected officials would outweigh such concerns.

The resolution would apply only to the offices specified because the benefits provided by term limits and turnover would be most effective in executive offices. To the extent institutional knowledge is a benefit, state representatives and the judiciary benefit more from it than do executive officers. Also, state representatives and senators are part-time employees

who tend naturally to turn over their positions without mandated term limits.

OPPONENTS SAY:

SJR 13 inappropriately would take the decision of whom to elect out of the voters' hands. Texas voters have shown in the voting booth that they want certain state officers to remain in office for longer than two terms. Turnover can happen naturally. Voters may choose to elect a different official when they are no longer happy with someone's service. Imposing term limits would take this right away from the voters and force turnover even when the public might not want a change.

Public officials benefit from the institutional knowledge that comes with experience and a reasonable tenure. Forcing turnover in the offices affected by the bill would enforce erasure of this institutional knowledge and waste time and resources on training and building that knowledge with each new officeholder.

OTHER OPPONENTS SAY:

SJR 13 should include term limits for state judicial officeholders and state representatives and senators. The benefits of fresh energy and new ideas provided by term limits would apply to all branches and elected officials in state government, not just to the executive offices.

NOTES:

According to the fiscal note, the cost to the state of publishing the resolution would be $108,921.

The House companion resolution, HJR 42 by Larson, was reported favorably as substituted by the House State Affairs Committee on March 21.

SUBJECT: Abolishing the Texas Health Insurance Pool

COMMITTEE: Insurance — committee substitute recommended

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

1 nay — Eiland

SENATE VOTE: On final passage, April 9 — 31-0

WITNESSES: (*On House companion bill, HB 2791:*)
For — (*Registered, but did not testify:* Nora Belcher, Texas e-Health Alliance; Jennifer Cawley, Texas Association of Life and Health Insurers; Marisa Finley, Scott & White Center for Healthcare Policy; David Gonzales, Texas Association of Health Plans; John Hawkins, Texas Hospital Association; Patricia Kolodzey, Texas Medical Association; Katharine Ligon, Center for Public Policy Priorities; Kandice Sanaie, Texas Association of Business)

Against — (*Registered, but did not testify:* Freddy Warner, Memorial Hermann Health System)

On — Steven Browning, Texas Health Insurance Pool; Betty DeLargy, Texas Health Insurance Pool; Gary Stankowski; (*Registered, but did not testify:* Doug Danzeiser, Texas Department of Insurance; Tony Gilman, Texas Health Services Authority)

BACKGROUND: In 1997, the 75th Legislature made operational the Texas Health Insurance Pool to sell health insurance policies to individuals unable to get private coverage due to pre-existing health conditions. The "pool," as it is known, began offering coverage in 1998, and enrolled more than 23,000 Texans as of April 2013.

Insurance Code, sec. 1506.105 prohibits pool premiums from exceeding twice the standard risk rate, which is the average private market rate charged to a healthy individual for the same coverage. In practice, the pool's premiums are set at roughly this amount. In 2011, the pool began

using portions of insurers' late claims payment penalties to fund sliding scale premium reductions for enrollees with incomes below 300 percent of the federal poverty level, or about $34,000 for an individual. As of May 2012, about 3,500 pool enrollees were receiving premium subsidies.

Beginning January 1, 2014, the federal Patient Protection and Affordable Care Act (ACA) will require most individuals either obtain health insurance or pay a tax penalty. Individuals purchasing insurance in a health benefit exchange, an online marketplace of private, government regulated health insurance plans, will not be denied coverage or charged more based on their health status.

DIGEST:

CSSB 1367 would abolish the Texas Health Insurance Pool.

Dissolution. CSSB 1367 would specify that if insurance coverage in Texas' health benefit exchange becomes effective on January 1, 2014, as planned, the Texas Health Insurance Pool would issue policies no later than December 31, 2013, and would terminate its policies' coverage as of January 1.

Should the exchange be delayed, the pool would continue to issue coverage until the exchange was operational, and would terminate its policies when the commissioner of insurance determined the pool's enrollees could be expected to have obtained guaranteed issue coverage.

The bill would require that as soon as practicable, the pool's board of directors develop and submit to the commissioner of insurance for approval a plan for dissolving the board and the pool after the pool's obligations to issue and maintain health benefit coverage were to terminate.

The board's plan would also transfer to the commissioner and the Texas Department of Insurance (TDI) any assets, authority, accumulated rights, and continuing obligations of the board and the pool.

CSSB 1367 would allow the commissioner by rule to delay dissolving the Texas Health Insurance Pool and collecting and distributing its funds if the guaranteed issue of health benefit coverage, such as through the state's health benefit exchange, were delayed, or if the commissioner determined the health benefit coverage expected to be available on a guaranteed issue basis was not reasonably available to individuals eligible for pool

coverage immediately prior to this bill's enactment.

Assets. CSSB 1367 would transfer to TDI any fund or asset of the Texas Health Insurance Pool upon its dissolution and would grant TDI the authority to recover pool overpayments or other amounts, including subrogation amounts, that the pool would have been authorized to recover had it not been dissolved. Any funds collected by TDI during the dissolution process would be deposited in the Texas Treasury Safekeeping Trust Co.

The bill would extend the pool's authority to collect premium assessments on its health benefit plan issuers until the insurance commissioner determined all of the pool's financial obligations had been met. After making this determination, the commissioner either would issue a final assessment or refund any surplus monies not designated for premium assistance on a pro rata or otherwise equitable basis to the health benefit plan issuers.

CSSB 1367 would distribute $5 million from any surplus premium assistance funds to the Texas Health Services Authority (THSA). Remaining monies would support the Healthy Texas program until December 31, 2013, after which they would be used for any commissioner-authorized purpose to improve uninsured Texans' health insurance access. Any funds payable to THSA or the Healthy Texas program would be subject to audit.

Effective date. Effective January 1, 2014, CSSB 1367 would repeal statutes requiring that employers, health benefit plan issuers, HMOs, and others provide notice of potential eligibility for pool coverage to individuals as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). It would also repeal limits on the amount of gross premium receipts that could be paid toward administrative costs and fees.

Effective September 1, 2015, the bill would repeal ch. 1506, Insurance Code, governing the Texas Health Insurance Pool.

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:

CSSB 1367 would dissolve the Texas Health Insurance Pool in an orderly manner after it was no longer needed. It is anticipated that nearly all pool enrollees would purchase coverage in the new health benefit exchange between the start of its open enrollment period, October 1, 2013, and the date its policies became effective, January 1, 2014. The exchange is expected to offer guaranteed issue plans that have more coverage options and increased benefits, such as maternity coverage, and that are more affordable than those available in the pool.

CSSB 1367 would wind down the pool in a responsible manner, allowing the board of directors to customize a plan to dissolve the pool and transferring to TDI any needed authority to collect payments and assets and to meet residual obligations, such as unpaid claims. The three-month period for pool enrollees to purchase insurance in the exchange and avoid a gap in coverage is brief, but the pool has already conducted outreach to notify its members of this likelihood and would continue to do so. Should the exchange not be functional on January 1, the commissioner of insurance would retain the ability to continue coverage of those insured through the pool.

The bill would fairly return any insurer overpayment upon the termination of the pool and would distribute funds collected from previously assessed penalties to improve health care quality and access to care.

OPPONENTS SAY:

CSSB 1367 would not adequately ensure Texas Health Insurance Pool enrollees did not face a gap in their coverage should the Affordable Care Act's health benefit exchanges not be fully functional. The bill would be premature and should not be enacted until there is more certainty about the implementation of the Affordable Care Act's many provisions.

NOTES:

The House companion bill, HB 2791 by Smithee, was left pending in the House Insurance Committee on April 23.

CSSB 1367 differs from the Senate-passed version by more specifically defining the allocation of any remaining premium support funds from the pool.

SUBJECT: Authorizing the formation of pure captive insurance companies

COMMITTEE: Insurance — committee substitute recommended

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

0 nays

SENATE VOTE: On final passage, April 16 — 29-0

WITNESSES: (*On companion bill, HB 2788:*)
For — Bob Digneo, AT&T Texas; Richard Marshall, R&Q Quest Management Services USA; Michael Mead, M.R. Mead & Co.; (*Registered, but did not testify:* John Marlow, ACE Group; Neftali Partida, Phillips 66; Kandice Sanaie, Texas Association of Business)

Against — None

On — (*Registered, but did not testify:* Kevin Brady, Texas Department of Insurance; Karen Snyder, State Comptroller's Office)

BACKGROUND: A captive insurance company insures the risks of its owners. A pure captive insurance company insures only its owner and its owner's affiliates. Under the pure captive model, the policyholder owns the insurer, making the insurer captive to the policyholder. A segregated captive insurance company creates separate and independent accounts, each of which insures the risks of its parent and affiliates.

Typically, pure captive insurance companies are owned by very large corporations and function as a form of self-insurance. Although there are some differences, the regulation of a pure captive is similar in many ways to the regulation of a traditional insurance carrier. Current law does not permit the formation of domestic captive insurance carriers in Texas.

DIGEST: CSSB 734 would add ch. 964 to the Insurance Code to permit the formation of a pure domestic captive insurance carrier in Texas. The chapter would define the forms of business organization under which a

pure captive could operate, the minimum requirements for its board of directors, and the features of the captive's certificate of formation.

The bill would require that a pure domestic captive insurance company apply for a certificate of authority from the Texas Department of Insurance (TDI). A captive would be required to have significant operations in Texas, hold at least one meeting of its board of directors in Texas each year, and maintain its principal office and records in Texas. The bill would outline the application and approval procedures for a domestic certificate of authority. It also would allow, with commissioner of insurance approval, a foreign captive to transfer its domicile to Texas.

By adding ch. 964, the bill would authorize a captive insurance company to insure only the operational risks of the company's affiliates and would define which types of insurance policies the captive could issue. It would permit the captive to provide reinsurance to an insurer covering the captive's affiliates, such as an affiliate's employee benefit plan, liability insurance, or workers' compensation insurance, and would require the captive to provide notice to the commissioner of insurance of any reinsurance it provided.

CSSB 734 would establish a tax rate of one-half of 1 percent on a captive's taxable premium receipts and other forms of revenue from written insurance policies in a calendar year. A captive's taxable receipts would not be deducted for premiums paid for reinsurance. The annual minimum tax for a captive would be $7,500 and the annual maximum would be $200,000. A captive would not be subject to other taxes or fees, including the franchise tax, except for insurance maintenance taxes on the direct premiums on individual lines of business written by the captive.

The bill would require a captive to maintain reserves sufficient to pay all losses for which it could be liable, plus any expenses from the settlement of those losses. A captive would be required to maintain capital and surplus of at least $250,000, or a higher amount as determined by the commissioner of insurance. The insurer would use generally accepted accounting principles.

The bill would detail a captive insurance company's requirements for submitting an annual report. A captive would be able to make loans to its affiliates with the prior approval of the commissioner, who could prohibit any loan or investment that threatened the solvency of the company. The

captive would not be allowed to participate in any insolvency funds or pools in Texas.

CSSB 734 would permit the commissioner of insurance to revoke or suspend the captive's certificate of authority for various infractions and would require that the captive receive notice of the disciplinary action and an opportunity for a hearing.

The general confidentiality of information provided by applicants and captives would be established by the bill, along with entities permitted to access the information when acting in an official capacity.

The bill would require that a captive register with the commissioner before receiving captive management services.

The commissioner by rule could establish standards to ensure an affiliated company was able to exercise control of the risk management function of a controlled unaffiliated business to be insured by the captive insurance company.

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. As soon as practicable after this date, but by January 1, 2014, the commissioner of insurance would be required to adopt rules necessary to implement the provisions of the bill.

SUPPORTERS SAY:

CSSB 734 would create a healthier business climate for corporations that have or would like to have a domestic captive insurance company. When a Texas-based corporation must form its captive in another state, it incurs additional expenses and administrative burdens. For example, other states often require captives to engage locally based management companies, hold a minimum number of board meetings within their jurisdiction each year, and appoint a local resident to the board.

Allowing domestic captives to form in Texas would attract new business to the state and would help retain existing Texas companies. In addition to lowered taxes for redomesticated firms, the bill would attract high paying jobs, including attorneys, accountants, actuaries, and their support personnel. It would also result in new revenue for the state through the insurance premium tax.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The companion bill, HB 2788 by Smithee, was left pending in the House Insurance Committee following a public hearing on April 9.

CSSB 734 differs from the Senate-passed version in that the committee substitute would apply only to pure captive insurance companies and not to segregated captive insurance companies.

SUBJECT: State Board of Education oversight of CSCOPE

COMMITTEE: Public Education — favorable, without amendment

VOTE: 6 ayes — Aycock, J. Davis, Farney, Huberty, K. King, Ratliff

3 nays — Allen, Deshotel, J. Rodriguez

2 absent — Dutton, Villarreal

SENATE VOTE: On final passage, April 15, 2013 — 29-1 (Zaffirini)

WITNESSES: For — Dorothy Dundas; Neal Frey; Barry Haenisch, Texas Association of Community Schools; Bob Hall; Stanley Hartzler; Ann Hettinger, Concerned Women for American; Jonathan Saenz, Texas Values; Peggy Venable, Americans for Prosperity-Texas; (*Registered, but did not testify:* Gary Bennett and Lukas Moffett, Center for the Preservation of American Ideals; MerryLynn Gerstenschlager, Texas Eagle Forum; Dustin Matocha, Texans for Fiscal Responsibility; Kia Mutranowski, Michelle Smith, and Cecilia Wood, Concerned Women for America; Sharon Russell, ICaucus; and 33 others)

Against — Katherine Miller, Texas Freedom Network; Randy Willis, Granger ISD; (*Registered, but did not testify:* David D. Anderson, Texas School Alliance; Yannis Banks, Texas NAACP; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Kay Forth, American Civil Liberties Union)

On — Monty Exter, The Association of Texas Professional Educators; (*Registered, but did not testify:* David Anderson, Texas Education Agency; Jerry Maze, ESC 12/CSCOPE; Mike Motheral, Sundown ISD; Terry Smith, Education Service Centers)

BACKGROUND: CSCOPE is an online curriculum management system developed and owned by the Texas Education Service Center Curriculum Collaborative, a consortium of the 20 Education Service Centers (ESC) in the state organized as a 501(c) (3). The CSCOPE system includes a curriculum framework for grades K-12 in all foundational academic subject areas

aligned to the Texas Essential Knowledge and Skills (TEKS).

Initial CSCOPE development began during the 2005-06 school year, with the 2006-07 school year designated as the first year of implementation. In 2006-07, there were 182 active CSCOPE districts in Texas. As of September 25, 2012, there are 875 active CSCOPE districts. This equates to about 70 percent of districts in Texas and about 35 percent of students.

Education Code, sec. 31.022, requires the State Board of Education (SBOE) to adopt a review and adoption cycle for instructional materials for elementary grade levels, including prekindergarten, and secondary grade levels, for each subject in the required curriculum.

DIGEST:

SB 1406 would require instructional materials developed by a regional ESC, acting alone or in collaboration with other ESCs, to be subject to the review and adoption process for instructional materials outlined in Education Code, sec. 31.022.

SUPPORTERS SAY:

CSCOPE is an online system of lesson plans that was developed by the regional ESCs with no oversight, transparency, or accountability. SB 1406 would not remove CSCOPE from districts that are using it but simply would bring the lesson plans under the same vetting process by the elected SBOE that is used for textbooks and instructional materials.

CSCOPE content was developed without parental input. In fact, parents have had to fight to learn the content of CSCOPE because teachers had been required to sign a contract not to disclose the content. This conflicts with Education Code, sec. 26.006, which assures parents the right to review teaching materials, instructional materials, and other teaching aids.

If local districts need online lesson plans, they could use the services of the Texas Virtual School Network or other online curriculum approved by the Texas Education Agency, rather than CSCOPE.

CSCOPE has supplied lesson plans that are flawed, incorrect, and raise concerns about promoting socialist, anti-American, and anti-Christian values. Some teachers say it limits their flexibility and creativity. CSCOPE is supposed to be customizable by local districts, but some teachers say they are required to use it verbatim.

Another concern is that the ESC collaborative used public funds to

develop a product and then turned around and sold it to Texas schools. This means Texans' tax dollars are being spent twice for CSCOPE.

Although CSCOPE officials recently have made a good faith effort to make their work more transparent, the requirement for SBOE review needs to be codified. CSCOPE officials have revised a user agreement to reassure teachers that they may share instructional materials with parents and in late March began a joint review of the social studies materials with the SBOE. However, the bill would ensure the transparency and public hearings provided by the SBOE's review process. In the past, the SBOE process has prevented textbook publishers from removing lessons about religious holidays such as Christmas and Rosh Hashanah and about famous Americans such as Neil Armstrong and General Patton.

CSCOPE should remove itself from supplying lesson plans to school districts and return to its original mission of supplying a management tool for teachers to keep on pace to teach the TEKS as required.

OPPONENTS SAY:

SB 1406 could remove an important tool that helps school districts meet the expectations of ever-changing TEKS, of a more rigorous state testing and accountability system, and of efforts to improve student performance, all while faced with shrinking financial resources.

CSCOPE was developed by teachers and retired teachers to meet the needs of many school districts that cannot afford their own curriculum development staff. One superintendent testified that it would cost his small school district more than $950,000 to develop lesson plans to cover 1,342 TEKS for grades 3-11.

The bill would be a gross infringement on local authority. Parents have every right to raise issues about the way lessons are being taught, but those matters should be taken before local school boards and district officials. The bill would establish two classes of school districts, allowing those that can afford to develop their own lesson plans to be free from SBOE review.

An advantage of CSCOPE is that it can be updated every year in response to feedback from districts. That adaptability would be difficult to achieve under the cumbersome and lengthy SBOE textbook review process. Provisions in Education Code, sec. 31.022 state that the SBOE is not required to review and adopt instructional materials for all grade levels in a single year and require the SBOE to organize a cycle for reviewing not

more than one-fourth of the instructional materials for subjects in the foundation curriculum each biennium.

It is inappropriate to review CSCOPE to see whether it supports or conflicts with specific political ideologies or religious beliefs. Students should be given the tools to evaluate the vast array of information and viewpoints that they will encounter in their future. Supporters of SB 1406 have criticized CSCOPE as pro-Islam but state education standards require students to study the central ideas of the world's major religions. And the SBOE has come under scrutiny in the past for its partisan debates over textbook language on topics such as evolution, environmental regulation, social studies, and sex education.

The SBOE has appointed a committee to review the curriculum, beginning with social studies content. That process should be allowed to work before it is codified.

OTHER OPPONENTS SAY:

SB 1406 would fail to address the fundamental problem of the TEKS. They are far too voluminous and require the sort of framework provided by CSCOPE. For a typical core subject in high school, more than 60 standards must be taught in fewer than 148 days.

The SBOE should be reviewing the TEKS and reducing the massive amount of material that students are expected to learn.

SUBJECT: Providing for oversight of specialty court programs

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

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

0 nays

2 absent — Hernandez Luna, Raymond

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

WITNESSES: For — Dib Waldrip, Texas Criminal Justice Advisory Council; (*Registered, but did not testify:* Lee Johnson, Texas Council of Community Centers; Travis Leete, Texas Criminal Justice Coalition; Jason Sabo, Children at Risk)

Against — None

On — David Slayton, Office of Court Administration; (*Registered, but did not testify:* Christopher Burnett, Office of the Governor)

BACKGROUND: Specialty courts are established within existing courts and provide programs for certain defendants, such as veterans or those with drug addictions or mental health issues. These courts integrate mental health and addiction treatment with alternative penalties to address underlying problems that cause criminal behavior in an attempt to reduce recidivism.

Under Government Code, sec. 509.007, a community supervision and corrections department must submit a community justice plan to the Texas Department of Criminal Justice's community justice assistance division to receive state aid. This plan must include information about the goals, practices, and programs of the department and must be submitted once in every biennium.

A defendant who has successfully completed a drug court program is eligible under certain circumstances for an order of nondisclosure for records relating to the offense for which the person entered the program.

The court must enter an order of nondisclosure if the defendant:

- has not been previously convicted of a felony; and
- has not been convicted of any other felony offense before the second anniversary of his or her successful completion of the drug court program.

Code of Criminal Procedure, art. 42.12, sec. 3g enumerates certain serious and violent crimes and prevents persons convicted of these crimes from receiving judge-ordered community supervision. These offenses are often referred to as "3(g) offenses."

Government Code, sec. 772.0061 creates and governs the Specialty Court Advisory Council. The council evaluates applications for grant funding for specialty courts and makes funding recommendations to the criminal justice division of the governor's office. The council has seven members, including three members with experience as judges of specialty courts and four members of the public.

DIGEST:

SB 462 would restructure specialty court programs. It would bring the existing specialty court programs under one statute, provide uniform oversight, make amendments to the existing programs, and change the composition and duties of the Specialty Court Advisory Council.

Structure. CSSB 462 would create a new subtitle under Title 2 of the Government Code, Subtitle K, relating to specialty courts. The following court programs would be moved from their current positions in other codes to the newly created Subtitle K:

- family drug court program under Family Code, ch. 264;
- drug court program under Health and Safety Code, ch. 469;
- veterans court program under Health and Safety Code, ch. 617; and
- mental health court program under Health and Safety Code, ch. 616.

The current oversight requirements in each of these programs would be repealed. Necessary conforming amendments would be made throughout each affected code.

Oversight. CSSB 462 would define specialty courts as courts established under Subtitle K or former law and would provide for oversight of these

courts. It would allow the lieutenant governor and speaker of the House to assign appropriate legislative committee duties relating to oversight of specialty courts. The state auditor would perform audits at the request of these legislative committees to determine eligibility of specialty courts for federal grant funds.

Specialty court programs could not operate until the judge, magistrate, or coordinator had provided to the governor's criminal justice division:

- written notice of the program;
- any resolution or official declaration under which the program was established; and
- a copy of the community justice plan that incorporated duties related to supervision required under the program.

The court program would then need to receive written verification of compliance with these requirements to resume operation.

A specialty court program would be required to comply with all approved programmatic best practices recommended by the Specialty Courts Advisory Council and to report to the governor's criminal justice division any information required regarding the performance of the program.

Any court out of compliance with the oversight requirements under the bill would not be eligible to receive state or federal grant funds administered by any state agency.

Services provided by a community supervision and corrections department to a specialty court program would need to be included in that department's community justice plan.

Conforming amendments would be made to ensure compliance with oversight requirements.

Drug court program. The bill would amend the drug court program to require a court to issue an order of nondisclosure for a defendant who had not previously been convicted of a 3g offense or a sexually violent offense and who had not been convicted of any felony for two years after successful completion of the program.

Veterans court program. The bill would allow commissioners courts

participating in a regional veterans court program to retain certain fees as if they had established their own veterans court programs.

Specialty Courts Advisory Council. The Specialty Courts Advisory Council would be required to make best practices recommendations to the courts under Subtitle K. The membership of the council would increase from seven to nine and would include:

- one member with experience as a family drug court judge;
- one member with experience as drug court judge;
- one member with experience as a veterans court judge;
- one member with experience as a mental health court judge; and
- five members of the public.

Members of the council would not receive compensation for their service on the council but would receive reimbursement for actual and necessary expenses incurred in performing council functions.

The governor would be required to promptly appoint two additional members to the Specialty Court Advisory Council, one judge with specialty court experience and one member of the public.

Fees and costs. The bill would require fees to be collected by the specialty courts affected as follows:

- for drug court programs, a fee not to exceed $1,000;
- for the veterans court program, a reasonable fee not to exceed $1,000; and
- for alcohol or substance testing, counseling, and treatment, under a veterans court program or drug court program, the amount necessary to cover those costs.

The bill would also require courts to collect a program fee for first offender prostitution prevention programs. This fee would be a reasonable amount not to exceed $1,000, including:

- counseling and services fee in an amount necessary to cover the costs of counseling and services;
- a victim services fee in an amount equal to 10 percent of the total fee; and
- a law enforcement training fee in an amount equal to 5 percent of

the total fee.

Effective date and application. The changes to nondisclosure of offenses under the drug court program would apply only to offenses committed on or after the effective date.

The bill would prevail in any conflict with another act of the 83rd Legislature.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 462 would provide uniform statutory structure and necessary oversight to the disjointed specialty court program. Specialty courts have been successful where implemented and have reduced recidivism and lowered costs to the state. However, because there are no uniform oversight provisions and no requirement for registration, it is unknown how many specialty courts are operating in the state or how many are working as expected. CSSB 462 would provide consistency across programs, a better understanding of how criminal indicators were affected by specialty courts, and improved access to relevant statutes. The costs incurred by this oversight would be necessary to ensure effective justice and would reduce costs to the state in the long run.

The bill would solve problems caused by the current local control scheme by requiring specialty court programs to comply with adopted statewide best practices. Currently, programs identifying themselves as specialty courts may not comply with best practices and may be operating in an ineffective manner. Some specialty courts are pet projects of local judges and are vulnerable when there is judicial turnover. Incorporating the specialty court plans into community justice plans would ensure that the programs were institutionalized in local jurisdictions and maintained effective operations. By changing the membership of the Specialty Court Advisory Council, the bill would improve input from members of the community and specialty court stakeholders, which would mitigate potential problems caused by the shift in the local control scheme.

The bill would expand the ability of drug court programs to order nondisclosure of records to individuals convicted of certain felony offenses, providing an additional incentive for participants to enroll in rigorous treatment programs and complete the program. This would help

with problems encountered by offenders during reintegration and reentry, such as barriers to employment and housing.

OPPONENTS SAY:

CSSB 462 would be implemented at a great cost to taxpayers, with consequences that would be difficult to predict or quantify. The bill would cost Texans about $2.5 million every year and has a $4.8 million fiscal note for the 2014-2015 biennium. The Legislative Budget Board was unable to approximate the amount that would be offset by the new fee created in the bill. Vague promises of revenues would not be a justifiable reason to approve the costs incurred by the bill. Because there is currently no oversight or reporting from specialty courts, it is not known whether they operate correctly or what effect they have on communities and the state budget. The state should not be putting its resources into instituting a costly, complicated maintenance scheme with no guarantees of a positive outcome.

CSSB 462 would impose statewide standards on programs intended to meet local needs. Specialty courts are programs instituted by judges and courts to meet the specific needs of a jurisdiction. These programs have had broad latitude to determine what solutions work best for each court and each community. By imposing statewide standards and requiring specialty courts to follow best practices, the bill would negate the important local control enjoyed by these programs.

The bill would expand the availability of orders of nondisclosure for certain persons charged with felonies. By increasing the number of people who qualified for non-disclosure, the bill would inhibit access by the public to important criminal court records. Employers and other interested parties should be able to access information about arrests and criminal charges, and by expanding the province of orders of nondisclosure the bill unfairly would restrict this access and weaken transparency.

NOTES:

The committee substitute differs from the Senate version of the bill by adding an oversight requirement relating to community justice plans.

SUBJECT: Revising the state's low-income housing plan and annual report

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 7 ayes — Dutton, Alvarado, Anchia, Elkins, Leach, J. Rodriguez, Sanford

0 nays

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

WITNESSES: No public hearing

BACKGROUND: The Texas Department of Housing and Community Affairs is the state's lead agency responsible for affordable housing. The department is required annually to provide a comprehensive report that provides an overview of statewide housing needs and a resource allocation plan to meet those needs.

DIGEST: SB 109 would add veterans, farmworkers, youth who were aging out of foster care, and the elderly to the list of people the Texas Department of Housing and Community Affairs would include in its estimate and analysis for the department's annual low-income housing plan. The bill also would add the size of these populations and their different housing needs to the analysis for the plan. The study would include data showing the number and location of residential foreclosures in the state.

The bill also would include in the department's annual low-income housing report the progress of meeting goals established with respect to the populations analyzed for the report and recommendations to improve coordination of department services to those populations.

SB 109 would repeal Property Code, sec. 51.0022, which is a foreclosure notification process used by the department.

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 109 would improve the annual study that helps the state in assisting individuals and families to obtain affordable housing. Adding veterans, farmworkers, youth who were aging out of foster care, and the elderly to those addressed by the Department of Housing and Community Affairs would help the state be more efficient with its mandate.

These new demographics can show the need for specific services and would be a timely sharpening of the department's analysis. From 2007 to 2011, more than 1.5 million older Americans lost their homes as a result of the mortgage crisis, according to the AARP. Providing the department with a measure that offered insight into this cohort and three others, including a new wave of veterans borne by the wars in Iraq and Afghanistan, would be an important tool to help ensure state revenues were efficiently expended. The data are easily available and would come at no cost to the state.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Listing residential property insurance deductibles in dollar amounts

COMMITTEE: Insurance — committee substitute recommended

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

1 nay — Taylor

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

WITNESSES: (*On House companion bill, HB 1400)*
For — Ware Wendell, Texas Watch; (*Registered, but did not testify:* Daniel Gonzalez, Texas Association of Realtors; Lee Loftis, Independent Insurance Agents of Texas; Chelsey Thomas, Texas Association of Realtors)

Against — Paul Martin, National Association of Mutual Insurance Companies; (*Registered, but did not testify:* Beaman Floyd, Texas Association for Affordable Insurance Solutions; Joe Woods, Property Casualty Insurers Association of America)

On — (*Registered, but did not testify:* Marilyn Hamilton, Texas Department of Insurance; Jay Thompson, Association of Fire and Casualty Companies in Texas)

BACKGROUND: Insurance Code, ch. 2301 regulates insurance forms to ensure they are not unjust, unfair, inequitable, misleading, or deceptive.

DIGEST: CSSB 112 would amend ch. 2301 of the Insurance Code to require that a residential property insurance policy form include a declarations page that lists each type of deductible under the policy and its exact dollar amount.

If a residential property policy or an endorsement to the policy were to contain a provision that could change the dollar amount of a deductible, either the declarations page or a written disclosure would be required to clearly identify the applicable policy provision or endorsement and explain how any change in the deductible would be determined.

The bill would specify that the list of each type of deductible in the policy, or the identification of each applicable policy provision or endorsement that could change the deductible, may be provided on a page separate from the declarations page.

The bill would be effective September 1, 2013. It would apply to policies delivered, issued for delivery, or renewed on or after January 1, 2014.

SUPPORTERS SAY:

CSSB 112 would be a simple reform to help homeowners know what they are buying when they purchase an insurance policy. Currently, some residential insurance policies list the deductible as a percentage, which can be unclear and misleading for policyholders who assume that, like a health insurance policy, it applies to the claim amount, when it actually refers to the value of the home, condominium, or apartment.

Listing the deductible in dollar terms would allow consumers to make more informed and responsible decisions and would give them an increased ability to compare policies and shop the insurance market, fostering competition.

Since many insurance policies' declarations pages already state deductibles in dollar amounts, the bill would be an extension of industry best practices and would not impose any noticeable administrative or financial burdens on insurers.

OPPONENTS SAY:

CSSB 112 would unnecessarily micromanage the insurance industry. The difference between listing the deductible as a percentage or a fixed dollar amount is insubstantial and should be left to consumers to interpret and the market to accommodate. The bill would require innumerable forms be redesigned, and could set a precedent for further government modifications to the declarations page.

NOTES:

CSSB 112 differs from the Senate bill in that it would allow either the list of each type of deductible, or the list of policy provisions or endorsements, be provided apart from the declarations page, rather than be provided as a separate page made up of both.

The companion bill, HB 1400 by Smithee, was left pending in the House Insurance Committee on April 23.

SUBJECT: Regulation and investigation of state hospitals

COMMITTEE: Human Services — favorable, without amendment

VOTE: 9 ayes — Raymond, N. Gonzalez, Fallon, Klick, Naishtat, Rose, Sanford, Scott Turner, Zerwas

0 nays

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

WITNESSES: For — (*Registered, but did not testify:* Miryam Bujanda, Methodist Healthcare Ministries; Melissa Davis, National Association of Social Workers, Texas Chapter; Heather Fazio, Texans for Accountable Government; Kelley Shannon, Freedom of Information Foundation of Texas; Lee Spiller, Citizens Commission on Human Rights; Gyl Switzer, Mental Health America of Texas)

Against — (*Registered, but did not testify:* Kathy Hebert, North Texas Citizens Lobby)

On — (*Registered, but did not testify:* Andy Abrams, Texas Health and Human Services Commission Office of Inspector General; Beth Engelking, Department of Family and Protective Services; Peggy Perry, Department of State Health Services; Darrel Spinks, Texas State Board of Examiners of Psychologists)

BACKGROUND: All direct care employees of state hospitals who are currently hired by the Department of State Health Services (DSHS) undergo two weeks of training.

The Texas Health and Human Services Commission - Office of Inspector General (HHSC-OIG) works to prevent, detect, and pursue fraud, waste and abuse in the Texas Health and Human Services system, including conducting investigations of allegations of fraud, waste, and abuse.

Health and Safety Code, sec. 552.011 defines "patient" to mean a person admitted to a state hospital under the management and control of the

Texas Department of Mental Health and Mental Retardation.

DIGEST:

SB 152 would regulate state hospitals and their employees, add abuse and neglect reporting requirements, and allow the Health and Human Services Commission's Office of Inspector General to investigate an alleged criminal offense involving a state hospital patient.

The bill would change the statutory definition of "patient" to mean an individual who was receiving voluntary or involuntary mental health services at a state hospital and would add community services operated by the El Paso Psychiatric Center to the list of facilities operated by the Department of Aging and Disability Services and DSHS.

Regulation and training of state hospital employees. SB 152 would require the executive commissioner of the Health and Human Services Commission (HHSC) to:

- adopt a policy requiring a state hospital employee to report to the superintendent of the state hospital their knowledge or reasonable suspicion that another employee was illegally using or influenced by a controlled substance; and
- adopt rules requiring a state hospital to provide annual employee refresher training courses, unless the Department of State Health Services (DSHS) determined in good faith and with good reason that a particular employee's performance would not be adversely affected in the absence of such refresher training.

The bill would require DSHS to:

- provide state hospital employees with competency training and a course of instruction on the general duties of a state hospital employee, to include training on providing care for individuals with mental illness;
- evaluate the employee for competency post-training;
- provide direct care employees performing without direct supervision with additional training and instructional information, such as training on implementation of the interdisciplinary treatment program for each patient for whom the employee would provide care;
- provide all direct care employees additional training as necessary in accordance with the specialized needs of the population served; and

- develop risk assessment protocols for state hospital employees to use in identifying and assessing possible cases of abuse or neglect.

Investigations. The bill would require the inspector general to:

- employ and commission peace officers to assist state or local law enforcement in investigating an alleged criminal offense involving a state hospital patient;
- prepare an annual status report including certain information on conducted investigations, aggregated and disaggregated by individual state hospital;
- submit the annual status report to certain state officials and agencies;
- prepare a summary report, without personally identifiable information, for each investigation conducted with the assistance of the inspector general; and
- deliver the summary report to certain state officials, state agencies, and the alleged victim or the alleged victim's legally authorized representative.

Disclosure of investigation information. The annual status report would be public information, subject to law governing public information disclosure provisions.

All information and materials compiled by the inspector general for an investigation could be released to the inspector general or the inspector general's employees or agents involved in the investigation, and could be disclosed to the Department of Family and Protective Services, the Office of the Attorney General, the state auditor's office, and law enforcement agencies. Otherwise, information and materials compiled in connection with an investigation would be confidential, not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release. Summary reports regarding an investigation would be subject to public information disclosure requirements as governed by law.

Retaliation related to an investigation. DSHS or a state hospital could not retaliate against one of its employees or any other person who had cooperated in good faith with the inspector general under the provisions of the bill.

Reporting abuse or neglect. The bill would require DSHS to develop an

information management, reporting, and tracking system for each state hospital to provide the department with information necessary to monitor serious allegations of abuse, neglect, or exploitation.

A person or professional would have to make a report if they had cause to believe that an adult was a victim of abuse or neglect as a child and that disclosure of that information was necessary to protect the health and safety of a child or an elderly or disabled person. The person or professional would have to report to a law enforcement agency, the Department of Family or Protective Services, the state agency that regulated the facility in which the alleged abuse or neglect occurred, or another appropriate agency. The bill would add an employee or member of a board that licensed or certified a professional to the list of individuals — whose personal communications may otherwise be privileged — to make a report regarding abuse or neglect.

Criminal history information. Under the bill, DSHS would be entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation, or any other criminal justice agency for persons working or volunteering at a state hospital, including:

- an applicant for employment at a state hospital;
- an employee of a state hospital;
- a contractor or potential contractor who provided goods or services to DSHS at a state hospital;
- a contractor's employees or those applying to work with a contractor; and
- a volunteer or those applying to volunteer with a state hospital who would be in direct contact with a state hospital patient.

Under the bill, DSHS could release criminal history records to the person who was the subject of the criminal history. The bill would not prohibit DSHS from obtaining and using criminal history record information as provided by other law.

Deadlines and effective date. The bill would require the executive commissioner of HHSC to adopt rules necessary to implement Subchapter C, Chapter 552, Health and Safety Code, governing state hospital employee training and regulation, by December 1, 2013.

DSHS would have to develop the state hospital employee training required by Section 552.052, Health and Safety Code, as added by the bill, by January 1, 2014. DSHS would have to ensure that each state hospital employee received training specified by the bill by September 1, 2014.

The HHSC Office of Inspector General would begin employing and commissioning peace officers to investigate an alleged criminal offenses involving a state hospital patient as required by Section 552.101, Health and Safety Code, as added by the bill, by May 1, 2014.

If a state agency determined that a waiver or authorization from a federal agency was necessary to implement a provision of the bill, the state agency could delay implementing that provision until the federal agency granted the waiver or authorization.

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 152 would add needed protection for patients at state hospitals by increasing oversight, employee training, and abuse and neglect reporting requirements. The small fiscal note would be a small price to pay for meeting the state's responsibility to ensure the safety and best possible care for vulnerable patients at state hospitals. The bill is necessary to prevent future abuse and misconduct by state hospital direct care providers.

The bill would increase the quality of care for patients at state hospitals by requiring state hospital employees to undergo thorough competency training and additional specialized training on care for patients with mental illness and other diagnoses. The bill would ensure direct care providers were able to provide the best quality of care by requiring state hospital employees to undergo background checks and to report cases of an employee using an illegal controlled substance.

The bill would also strengthen investigations into alleged criminal offenses committed by an employee of a state hospital by allowing the HHSC-OIG to commission peace officers to assist with investigations by local and state law enforcement. The reports required of the investigator general would increase transparency for state hospital operations.

Adding professionals to the state's employee misconduct registry is not necessary, as they are already regulated by their licensing boards and by DSHS.

OPPONENTS SAY:

The bill would increase costs to the state for criminal history background checks and drug testing that would invade the privacy of state hospital direct care providers.

OTHER OPPONENTS SAY:

The bill could be strengthened by adding a provision requiring state hospital employees who seriously harm patients be added to the state's employee misconduct registry or by creating a central database of reportable misconduct and related investigations. As evidenced by recent abuse cases, the state board licensing system is not enough to screen out bad actors.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $782,740 to general revenue related funds through the biennium ending August 31, 2015. The money would pay to implement random drug testing, background checks, and hire four Investigator VI employees at HHSC-OIG.

SUBJECT: Venue for prosecution of certain computer crimes

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Carter, Leach, Moody, Schaefer, Toth

2 nays — Burnam, Canales

1 absent — Hughes

SENATE VOTE: On final passage, March 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1083*)
For — William Pursley, Austin Police Department; (*Registered, but did not testify:* Donald Baker, Austin Police Department; Mark Clark, Houston Police Union; Lon Craft, Texas Municipal Police Association; Brian Eppes, Tarrant County District Attorney's Office; Frederick Frazier, Dallas Police Association; Chris Jones, Combined Law Enforcement Associations of Texas; James Jones, San Antonio Police Department; Annie Mahoney, Texas Conservative Coalition; Donald McKinney, Houston Police Department; Washington Moscoso and Jimmy Rodriguez, San Antonio Police Officers Association; Andew Romero, Austin Police Association; Steven Tays, Bexar County Criminal District Attorney's Office; Garry Tittle, Dallas Police Department; Justin Wood, Harris County District Attorney's Office)

Against — (*Registered, but did not testify:* Chris Howe)

BACKGROUND: Under Code of Criminal Procedure, art. 13.25, computer crimes may be prosecuted in:

- the county of the principal place of business of the owner or lessee of a computer, computer network, or computer system involved in the offense;
- any county in which a defendant had control or possession of any proceeds of the offense or any materials used in furthering of the offense; or
- any county from which, to which, or through which access to a

computer, computer network, computer program, or computer system was made in a computer crime, regardless of the means of communication.

DIGEST:

SB 222 would add any county in which a victim of the offense resided to the available venues for prosecution of computer crimes under Code of Criminal Procedure, art. 13.25.

The bill would take effect September 1, 2013, and would apply only to a criminal case in which the indictment, information, or complaint was presented to the court on or after that date.

SUPPORTERS SAY:

SB 222 would bring the venue rules for certain computer crimes into the 21st century and allow prosecutors to enforce the law using rules that acknowledge the nature of the Internet and modern computer crime. Modern technology creates situations in which a person can be victimized and feel all the effects of certain computer crimes in a location remote from where the offender acted in violation of the law. This creates situations such as a recent case involving a woman who was impersonated online by an offender who harassed her and posted sexually explicit information about her online but could not be prosecuted because he lived in Ohio and his behavior did not violate Ohio law. SB 222 would close this loophole and allow for better protection of victims and more efficient prosecution and punishment of crime.

SB 222 would be an appropriate measure to ensure that crimes that victimized Texans could be prosecuted in Texas. When victims report crimes that harm them, the state should have the ability to prosecute these offenses in the jurisdiction where the person was victimized. This bill would modernize venue laws to address the reality of modern computer crimes.

OPPONENTS SAY:

SB 222 inappropriately would expand jurisdiction and change venue laws to prosecute computer crimes. Although computer crimes can be complicated, the current statutes provide sufficient guidance to determine where venue is appropriate.

The bill could have a negative effect on defendants, who have the right to be prosecuted and held accountable according to the laws in the jurisdiction where the crime is alleged to have occurred. By expanding jurisdiction for these crimes to counties in which criminal activity did not

take place, the bill would jeopardize these rights.

NOTES: The companion bill, HB 1083 by Dukes, was left pending by the House Committee on Criminal Jurisprudence on April 23.

SUBJECT: Authorizing electronic requests for attorney general opinions

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

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

0 nays

1 absent — Taylor

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

WITNESSES: (*On House companion bill, HB 1390*:)
For — (*Registered, but did not testify*: Ashley Chadwick, Freedom of Information Foundation of Texas; Seth Mitchell, Bexar County Commissioners Court; Michael Schneider, Texas Association of Broadcasters; Ed Sterling, Texas Press Association)

Against — None

On — (*Registered, but did not testify*: Jason Boatright, Office of the Attorney General)

BACKGROUND: Government Code, sec. 402.042 requires requests for a legal opinion from the attorney general be made in writing and sent through certified or registered mail. Such requests may only be made by authorized requestors, such as the governor or the head of a state agency or board.

The Office of the Attorney General (OAG) and the person requesting the opinion may seek to waive the requirement to use certified or registered mail.

DIGEST: HB 1390 would allow requestors of attorney general opinions to ask for an opinion by sending an e-mail to an e-mail address designated by the attorney general. Requestors still could submit requests by certified or registered mail.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

Authorized requestors should be allowed to submit requests for an attorney general opinion electronically without the attorney general's office having to approve a request for a waiver. As a matter of course, the OAG accepts electronic requests for an opinion but sends the requestor a waiver form to fill out before processing these requests. Modernizing the process would do away with this unnecessary step and lessen the administrative burden on the OAG. Requestors still would have the option of submitting requests by certified or registered mail.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The identical companion bill, HB 1390 by Harper-Brown, was passed by the House by 149-0 on April 4 and has been referred to the Senate Committee on Jurisprudence.

SUBJECT: Combining two home loan programs into Homes for Texas Heroes

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 7 ayes — Dutton, Alvarado, Anchia, Elkins, Leach, J. Rodriguez, Sanford

0 nays

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1029)*
For — (*Registered, but did not testify:* Steve Bresnen and Mike Higgins, Texas State Association of Fire Fighters; Ramiro Canales, Texas Association of School Administrators; Monty Exter, The Association of Texas Professional Educators; Daniel Gonzalez and Chelsey Thomas, Texas Association of Realtors; Dwight Harris, Texas AFT; Chris Jones, Combined Law Enforcement Associations of Texas; Joyce McDonald, Frameworks Community Development Corporation; Scott Norman, Texas Association of Builders; Deena Perkins, Texas Association of Community Development Corporations; Charley Wilkison, Austin Police Association, Travis County Sheriff's Officers Association, Combined Law Enforcement Associations of Texas)

Against — None

On — David Long and Paige Omohundro, Texas State Affordable Housing Corporation

BACKGROUND: Government Code, sec. 2306.562, which details the Professional Educators Home Loan Program, expired September 1, 2012. The Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program is set to expire September 1, 2014.

The Texas State Affordable Housing Corporation (TSAHC) receives 10 percent of the state ceiling for qualified mortgage bonds to administer both programs. Until the Professional Educators Home Loan Program expired, TSAHC reserved 45.5 percent of its bond allowance for the Fire Fighter,

Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program and 54.5 percent for the Professional Educators Home Loan Program.

Through the two programs, TSAHC offers mortgage loans with a 30-year fixed interest rate (3.75 percent as of April 2013) and provides down payment and closing cost assistance grants equal to 5 percent of the loan amount for first-time homebuyers. To be eligible, participants must be Texas residents with an income up to 115 percent of area median family income, adjusted for family size, or the maximum amount permitted by Section 143(f), Internal Revenue Code of 1986, whichever is greater.

Members of the following professions are eligible for the "Homes for Heroes" program: fire fighters, corrections officers, county jailers, public security officers, peace officers, and emergency medical services personnel. The Professional Educators Home Loan Program served members of the following professions: classroom teachers, teacher's aides, school librarians, school counselors, school nurses, and allied health or professional nursing program undergraduate or graduate faculty members.

DIGEST:

SB 286 would add professions previously included under the Professional Educators Home Loan Program to the Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program under one formal name: the Homes for Texas Heroes Home Loan Program.

The bill would allow all eligible borrowers under the combined program to access the same pool of mortgage bonds. The following professions would be eligible for the combined program: fire fighters, corrections officers, county jailers, public security officers, peace officers, emergency medical services personnel, and professional educators, including classroom teachers, teacher's aides, librarians, counselors, school nurses and allied health or professional nursing program undergraduate or graduate faculty members.

SB 286 would repeal sections of the Government Code providing for two separate loan programs.

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 286 would ensure that the state's heroes, from fire fighters to classroom teachers, could afford a home by continuing two professional low-interest home loan programs together as the combined Homes for Texas Heroes program. The bill is necessary because compensation for public servants often does not equate with the service they provide to their communities. A combined Homes for Texas Heroes program would give underserved communities an additional tool for recruiting and retaining qualified public servants.

The two home loan programs did not receive state appropriations when separate. Likewise, the combined Homes for Texas Heroes program would not receive state appropriations. The bonds issued to fund the program are not general obligation bonds. Instead, they use mortgage-backed securities as collateral, and the bonds are paid back as borrowers pay off their mortgages.

Combining the two programs would allow TSAHC to operate more efficiently by reducing bond application fees, attorney fees, and closing costs associated with running two programs instead of one. Combining the programs would not alter how the original programs functioned or who could enroll.

A combined Homes for Texas Heroes program would streamline marketing and improve effectiveness of program outreach while making the formal name "Homes for Texas Heroes" easier for realtors, lenders, and borrowers to remember. TSAHC has referred to the Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program as "Homes for Texas Heroes" for years. SB 286 would allow the agency to formally use the name for all loans covered by the combined program.

SB 286 would not disrupt TSAHC's ability to divide funds between certain professions within the program as necessary. The agency has been able to meet demand for the program under the state ceiling for bond allowance and has not had issues with abuse or misuse of the program by public servants.

OPPONENTS SAY:

SB 286 would not resolve the fact that the two home loan programs did not have a job tenure requirement for eligibility. There remains a risk that loan dollars would be spent on individuals who entered public service only

to take advantage of a low-interest loan and then left their jobs shortly thereafter. Any continuation of the program should include a statutory safeguard against such abuse.

NOTES:

The identical companion bill, HB 1029 by G. Bonnen, passed the House unanimously April 24 on third reading. It was referred to the Senate Committee on Intergovernmental Relations on May 7. The HRO bill analysis of HB 1029 appears in the Tuesday, April 23 *Daily Floor Report*, Number 57.

SUBJECT: Confidential youth records for certain dismissals, deferred dispositions

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Hughes

SENATE VOTE: On final passage, March 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 3058)*
For — Marc Levin, Texas Public Policy Foundation Center for Effective Justice; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Cathy Dewitt, Texas Association of Business; Kristin Etter and David Gonzalez, Texas Criminal Defense Lawyers Association; Kay Forth, American Civil Liberties Union of Texas; Andrea Marsh, Texas Fair Defense Project; Lauren Rose, Texans Care For Children; Michael Vitris, Texas Appleseed)

Against — None

On — (*Registered, but did not testify:* Becky Kerbow (Justices of the Peace and Constable Association of Texas)

BACKGROUND: Under Code of Criminal Procedure (CCP), art. 45.0217(a), justice and municipal court records, files, and information relating to children who are convicted of and have satisfied the judgment for fine-only misdemeanor offenses, other than traffic offenses, are confidential. Such records, including those held by law enforcement, may not be disclosed to the public. CCP, art. 45.0217(b) makes this otherwise confidential information available only to judges and court staff, criminal justice agencies, the Department of Public Safety, attorneys involved in the case, the child, and the child's parent or guardian.

Under CCP, art. 44.2811, which governs appeals, these records also are

confidential, as well as records in cases in which a child is convicted and then the case is affirmed. Family Code, sec. 58.00711 makes confidential these same records in the state juvenile justice information system.

Under deferred disposition a judge puts off the determination of guilt while the youth works on meeting the requirements of the court. This can result in the case being dismissed.

DIGEST:

SB 394 would make confidential all records, files, and information in justice and municipal courts relating to a child who received a dismissal after a deferred disposition for a fine-only misdemeanor, other than a traffic offense. The same confidentiality requirements would be applied to juvenile justice information system records of these non-traffic, fine-only misdemeanors when cases were dismissed after a deferred disposition.

The bill would take effect September 1, 2013, and would apply only to the disclosure of records or files on or after that date, regardless of when the offense was committed.

SUPPORTERS SAY:

SB 394 is necessary to address an oversight in current law that makes the criminal court records of some juveniles convicted of fine-only misdemeanors confidential but does not include the same confidentiality for those who have had their cases dismissed after a deferred disposition.

In 2011, the 82nd Legislature revised the law dealing with access to the criminal records of juveniles to give them greater protection and more confidentiality. The revisions included making confidential the records of juveniles who were convicted by justice and municipal courts of fine-only misdemeanors, such as truancy and disorderly conduct, and who completed the terms of their sentence. However, due to an oversight, the revisions did not make confidential the records of juveniles who had charges dismissed after a deferred disposition.

SB 394 would address this issue by extending to youths who have these type of cases dismissed after a deferred disposition the same confidentiality protections given to those who were convicted and had satisfied their judgments. Youths who have avoided being found guilty by successfully meeting the courts' requirements should have the same confidentiality as those who have been found guilty in these types of cases.

Keeping these records confidential would be consistent with the state's broad policy on juvenile records. Confidentiality in these cases would treat these juveniles equitably, ensuring that their information was protected and that they had the opportunity to move forward without a public record after involvement with the courts.

SB 394 would enact an August 2012 recommendation of the Texas Judicial Council.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The House companion bill, HB 3058 by Herrero, was left pending in the House Criminal Jurisprudence Committee on April 23.

HB 528 by Sylvester Turner, which would make confidential the court records relating to children who were charged with, found not guilty of, had charges dismissed for, or were granted deferred disposition for non-traffic, fine-only misdemeanors, was passed by the House on April 23. It has been referred to the Senate Jurisprudence Committee.

SUBJECT: Discharging children's fines and court costs through alternative methods

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Toth

1 nay — Schaefer

1 absent — Hughes

SENATE VOTE: On final passage, March 27 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3059*:)
For — (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Kay Forth, American Civil Liberties Union of Texas; Andrea Marsh, Texas Fair Defense Project; Lauren Rose, Texans Care For Children; Michael Vitris, Texas Appleseed)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 45.0492, applies to a defendant younger than age 17 who is assessed a fine or court costs for a class C misdemeanor (maximum fine of $500) that occurred on the grounds of a primary or secondary school at which the defendant was enrolled at the time of the offense. A judge may require such a defendant to discharge these fines or costs by performing community service or attending a tutoring program.

Art. 45.049 authorizes a judge to require a defendant who fails to pay previously assessed fines or costs, or who is determined by the court to have insufficient resources to pay the fine or costs, to discharge all or part of the fine or costs by performing community service.

Articles 45.0491 and 43.091 allow a court to waive payment of a fine or cost for an indigent defendant who defaults in payment and for whom alternative methods of discharging the fine or cost would impose an undue hardship.

DIGEST:

SB 395 would allow a judge to permit a child defendant, at least 10 years old and younger than age 17, to discharge fines and court costs associated with a class C misdemeanor conviction by electing to perform community service or receive tutoring. The child's decision would have to be made in writing and signed by his or her parent, guardian, or managing conservator.

The bill also would permit a court to waive a child defendant's class C misdemeanor fines or court costs if the child defaulted on the payment and discharging the costs through community service or tutoring would impose an undue hardship on the defendant.

The provision in current law requiring that the offense have occurred on the grounds of the defendant's school would not apply to the performance of community service, receipt of tutoring, or discharge of fines or costs under SB 395.

The bill would take effect September 1, 2013, and would apply only to a sentencing proceeding that began on or after that date.

SUPPORTERS SAY:

SB 395 would promote youth accountability by giving judges the discretion to allow juveniles to choose a more productive sentence that involved helping the community rather than paying a fine. Currently, a child tried in juvenile court is not required to pay fines, regardless of the severity of the offense. However, a child tried for a class C misdemeanor in a criminal court can be assessed a fine of $500 plus court costs, expenses that could weigh heavily on students and their families.

If a child fails to appear in court or if the child's parents cannot afford the fine, a capias pro fine can be issued for them when they turn 17 years old. Having this unpaid fine could hurt a child's ability to attend college, secure loans, or gain employment. On the other hand, if the child's family had the means to pay the fine, the young defendant could avoid the crime's consequences, along with a potentially valuable lesson.

This bill would formalize the process that gives judges the ability to allow a child defendant and his or her parents to elect whether to pay the fine, perform community service, or receive tutoring, which would promote more positive outcomes for at-risk youth.

OPPONENTS SAY:

SB 395 would allow a young defendant to avoid the actual consequences of his or her crime. Requiring a juvenile to find employment in order to pay the fine could be a more productive consequence than receiving tutoring, performing community service, or simply having the fine waived.

NOTES:

The companion bill, HB 3059 by Herrero, was left pending in the House Criminal Jurisprudence Committee on April 23.

SUBJECT: Regulations on elevators, escalators, and related equipment

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Smith, Kuempel, Geren, Guillen, Miles, S. Thompson

0 nays

3 absent — Gooden, Gutierrez, Price

SENATE VOTE: On final passage, March 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 2188:*)
For — (*Registered, but did not testify:* David Mintz, Texas Apartment Association; Neftali Partida, Texas Building Owners and Managers Association)

Against — Micheal Lord; (*Registered, but did not testify:* Neal Sorrels)

On — William Kuntz, Texas Department of Licensing and Regulation

BACKGROUND: Health and Safety Code, ch. 754 regulates elevators, escalators, and related equipment, including their installation, operation and inspection. "Equipment" refers to elevators, escalators, chairlifts, platform lifts, or other automated machines used to move people.

The Commission of Licensing and Regulation by rule provides for the registration of elevator inspectors and contractors in Texas. ASME, formerly known as the American Society of Mechanical Engineers, currently oversees the certification process for elevator inspectors, designated as QEI-1 certified inspectors.

Under sec. 754.023, the executive director of the Texas Department of Licensing and Regulation (TDLR) by emergency order can act to shut down an elevator or related equipment if:

- the department determines that an emergency exists requiring

immediate action to protect the public safety; or

- the equipment has not had an annual inspection in more than two years and the building owner receives notice that the equipment must be inspected.

Sixty days following the issuance of notice, TDLR can give notice of the department's intent to disconnect power or lock down the elevator equipment by emergency order within seven days. If an emergency order to disconnect power or lock out equipment is issued, the building owner or manager may have the power reconnected or the equipment unlocked only if:

- a registered inspector, contractor or department representative verifies that the threat has been mitigated; and
- the building owner reimburses the department for all expenses related to the disconnection of power or lockout.

DIGEST:

CSSB 673 would authorize the Commission of Licensing and Regulation to adopt rules for:

- the certification of elevator inspectors;
- the registration of elevator contractors;
- the procedures for issuing and displaying a certificate of compliance;
- liability insurance, which would have to be written by a state-authorized insurer or an eligible surplus lines insurer;
- maintenance control programs, maintenance, repair, parts manuals, and product-specific inspection, testing, and maintenance procedures;
- reporting accidents and related conditions to TDLR; and
- testing elevator-related equipment.

The bill would repeal the following sections of Health and Safety Code, cha. 754:

- subchapter A, which governs elevator safety device requirements;
- sec. 754.0171 (d) and (e), which currently requires contractors to submit initial and subsequent quarterly reports on elevator repair and maintenance work to TDLR;
- sec. 754.022, which currently requires TDLR to send notices to

building owners who have not complied with elevator inspection requirements;

- sec. 754.024, which currently makes a building owner's failure to remedy a notice of noncompliance within 61 days a class C misdemeanor; and
- sec. 754.023, which currently governs investigation, registration proceedings, injunction, and emergency orders, all of which would be replaced by new provisions in CSSB 673.

The commission could require inspection reports, other documents, and fees to be filed according to TDLR specifications, including electronically.

New requirements for inspectors. The bill would add the term "inspector," meaning someone who inspects equipment and witnesses tests specified in standards issued by ASME and the American Society of Civil Engineers. The term "registered elevator inspector" would replace a reference to ASME code, "QEI-1 certified inspector," throughout ch. 754.

Inspectors would be certified according to the rules of the commission rather than ASME and would have to comply with any commission-established continuing education requirements. The executive director could set a fee for reviewing and approving continuing education providers and courses for elevator inspectors.

Inspectors would not be able to inspect equipment if the inspector or the inspector's employer had a financial or personal conflict of interest or if there was an appearance of impropriety with regard to the inspection.

TDLR's standard guidelines for license expiration and renewal, as well as license reciprocity, also would apply for licensed inspectors under ch. 754.

Exemptions. The bill would exempt from the requirements of ch. 754 equipment located in a federally owned and operated building or equipment located in an industrial facility, grain silo, radio antenna, bridge tower, underground facility, or dam, to which access was limited primarily to employees.

Certificates of compliance and noncompliance delays. The bill would eliminate language specifying the information that the certificate of compliance would contain. TDLR, instead of the commission, would stipulate the format and information that would be required to appear in

inspection reports, certificates of compliance, and other documents.

The executive director of TDLR would be able to grant a delay for compliance with the commission's codes and adopted standards regarding an elevator or related equipment if the executive director determined that passenger or worker safety were not seriously threatened, rather than if compliance was not readily achievable under the Americans with Disabilities Act. The period of noncompliance could not exceed three years, except as otherwise determined by the executive director.

Equipment inspection. TDLR would be able to conduct an inspection or investigation of equipment if the executive director believed the equipment on the property posed an imminent and significant danger or that an accident involving equipment had occurred. TDLR would be granted access to any area otherwise shut off to the general public to conduct its investigation or inspection.

A registered elevator inspector would issue an inspection report no later than five days after days after the date of inspection, rather than the 10 days under current law.

The commission would be able to require a re-inspection or recertification if the equipment had been altered, if the equipment posed a significant threat to passenger and work safety, or if an annual inspection report indicated that an existing violation had continued longer than permitted in a delay granted by the executive director.

Duties of owners. The bill would define "owner" as a person, company, corporation, authority, commission or other entity that held title to a building with elevators, escalators, or other equipment located within.

The owner of a property containing elevator equipment would have to file the required inspection report and all fees within 30 days of the inspection, rather than within the 60 days allowed under current law.

The bill would eliminate language specifying the manner and place in which owners must display the equipment inspection certificate, requiring instead that they display it in a publicly visible area as defined by commission rule.

Owners would be required to ensure that their equipment was maintained

in compliance with the commission's adopted standards and codes. Owners would report each accident to TDLR within one day rather than within the 72 hours allowed under current law.

Elevator advisory board. The nine-member elevator advisory board would meet when TDLR's executive director or the presiding officer of the Commission of Licensing and Regulation called a meeting, rather than twice a calendar year. The board would be charged with additional duties relating to recommendations for the maintenance and testing of equipment.

Removing a registration. The commission or executive director of TDLR could deny, suspend, or revoke a registration and assess an administrative penalty against a person who:

- obtained a registration by fraud;
- falsified a report to the executive director; or
- violated statute or rules relating to elevators and related equipment.

A person whose registration was denied, suspended or revoked could appeal under the Administrative Procedure Act.

Civil actions. In addition to administrative penalties, the attorney general or the executive director of TDLR could take preemptive action to prevent or restrain a violation by filing for injunctive relief. Additionally, the attorney general or executive director could file an action to collect a civil penalty of up to $5,000 per day for each violation. These actions would have to be filed in a Travis County district court, and the attorney general and TDLR could recover reasonable expenses incurred in filing these actions.

Emergency orders. The executive director of TDLR could issue an emergency order if the director determined that immediate action to protect the public health and safety was necessary. An emergency order could require a building owner to lock out or disconnect power to the equipment if the department decided passengers and workers were in imminent and significant danger or an annual inspection had not been performed in more than two years. The equipment would only be reconnected after a registered elevator inspector, contractor, or department representative verified in writing that the threat had been mitigated, at which point the executive director or designee would issue written

permission to reconnect or unlock the equipment and notify the owner.

The Commission of Licensing and Regulation would adopt rules to implement CSSB 673 by January 1, 2014.

The bill would take effect September 1, 2013, and would apply only to offenses committed on or after that date or inspections initiated on or after January 1, 2014.

SUPPORTERS SAY:

CSSB 673 would strengthen TDLR's oversight of elevator safety. The bill represents the culmination of a wide-ranging review of the regulatory statute governing elevators and related equipment. This review was spurred by two events — the recent death of a woman who fell from an elevator that had been negligently maintained in San Antonio's Crockett Hotel and the phasing out of ASME's elevator inspector program.

CSSB 673 would enable the department to request important documentation, including parts manuals and other product-specific information, while streamlining the access of such documentation by allowing the department to request that it be submitted electronically.

The bill also would tighten a number of safety-related deadlines, requiring inspectors to issue inspection reports five days after the inspection date and owners to submit incident reports to TDLR within one day of the incident.

CSSB 673 would add teeth to the enforcement actions the state could take against violators of elevator-related regulations, which would help ensure that elevators were properly maintained in light of the recent tragedy at the Crockett Hotel. The executive director of TDLR could still issue emergency orders to shut off an elevator after two years without an inspection, but the director no longer would be required to issue multiple notices to the owner that the equipment would be shut down. In addition, the attorney general or executive director would have the power to sue for injunctive relief and the assessment of a stiff monetary penalty, which further would deter negligent owners from failing to maintain their equipment.

Many of the changes proposed in CSSB 673 reflect the discontinuation of the ASME elevator inspector certification program, which granted inspectors the QEI-1 certification. The bill therefore would remove

references to QEI-1 elevator inspectors and authorize the commission to develop a new elevator inspector certification program to ensure that elevators in Texas still would be subject to regular inspection. The commission would receive rulemaking authority to provide for the certification of elevator inspectors, and TDLR's standard licensing guidelines would apply to these certifications.

CSSB 673 would make a number of changes to statute that more accurately reflect the status quo. It would add an exemption for federal buildings to ch. 754. The bill also would repeal subchapter A, which currently requires the installation of certain safety devices because the safety devices in question (door restrictors) were required to have been installed on all elevators by December 1, 2011.

OPPONENTS SAY:

The bill is too vague and would give the commission too much power to issue administrative rules without sufficient guidance in statute. A better version of this bill would have allowed the Legislature to decide on the specifics of the elevator inspector certification program, rather than granting the commission so much rulemaking authority.

Current statute requires building owners to defray the costs of a disconnection of power or a lockout of the equipment should the executive director of TDLR take such action via emergency order. The bill no longer would require the building owners to reimburse the department, which would be unfair considering that the lack of elevator maintenance by building owners creates situations that give rise to the need for a power disconnection or lockout.

NOTES:

CSSB 673 differs from the Senate-engrossed version in that the committee substitute would:

- lengthen from 15 days to 30 days after the inspection the date by which the owner would be required to submit the inspection report to the executive director of TDLR; and
- add specifications to the general liability insurance which contractors would be required to carry, and require that the policy be written by an insurer authorized in this state or an eligible surplus lines insurer.

The companion bill, HB 2188 by Smith, was left pending in the House Licensing and Administrative Procedures Committee on March 26.

SUBJECT: Energy and water management reporting by state agencies

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 7 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner, Vo

0 nays

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

WITNESSES: For — (*Registered, but did not testify*: Myron Hess, National Wildlife Federation; Chloe Lieberknecht, The Nature Conservancy; Cyrus Reed, Lone Star Chapter, Sierra Club; David Weinberg, Texas League of Conservation Voters; Kaiba White, Public Citizen)

Against — None

On — Patrick Moore, Legislative Budget Board

BACKGROUND: The Legislative Budget Board's (LBB's) *Texas State Government Effectiveness and Efficiency* report (GEER) recommends that the state update energy and water reporting requirements. This recommendation closely follows the requirements of Executive Order RP-49, issued by Gov. Rick Perry in 2005 and Texas Government Code, ch. 447.009, which governs energy and water management planning.

Executive Order RP-49 requires each state agency to develop a plan for conserving energy and to set a percentage goal for reducing use of electricity, gasoline, and natural gas. The order requires state agencies to submit the energy conservation plan to the LBB and the Office of the Governor.

Texas Government Code, ch. 447.009 requires that a state agency or an institution of higher education develop a long-range plan for the delivery of reliable, cost-effective utility services for the state agency or institution. It also requires the state energy conservation office to assist each agency

or institution in preparing comprehensive energy and water management plans.

DIGEST:

CSSB 700 would require the state energy conservation office to develop a template for state agencies and institutions of higher education to use in creating energy and water management plans. State agencies and institutions would be required to set percentage goals for reducing their use of energy and water and to include those goals in their comprehensive energy and water management plans. The agency or institution would have to update the plan annually, instead of biennially.

The state energy conservation office, not later than December 1 immediately preceding each regular legislative session, would be required to submit to the governor and the LBB a report on the status and effectiveness of utility management and conservation efforts at agencies and institutions. The report would include information from each agency and institution. The state energy conservation office would be required to post the report on its website.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 700 would clarify and streamline existing reporting requirements but would not require new reports or the gathering of additional data.

Reports generated as a result of executive order RP-49 currently are due quarterly. The Government Code requires agencies and institutions to develop plans and update them every two years. The executive order and the requirements of the Government Code are similar but not identical. For example, the Government Code does not require a report on the use of gasoline and natural gas, whereas the executive order does. State agency reporting of resource efficiency required by under the Government Code decreased after the executive order was issued.

CSSB 700 would ensure that reporting was uniform and covered water, energy use, and conservation measures.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The House committee substitute would use the word “energy” in lieu of words “electricity, gasoline and natural gas” used in the Senate bill to

describe the elements required to be included in an agency's or institution's plan.

Two House companion bills, HB 1182 by Kacal and HB 2674 by Ashby, were referred to the Government Efficiency and Reform Committee. HB 1182 was scheduled to be heard in a public hearing on April 15, but the committee considered SB 700 in its place.

SUBJECT: Separate statutory framework for timeshare associations

COMMITTEE: Business and Industry — favorable, without amendment

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

0 nays

SENATE VOTE: On final passage, April 18 — 31-0

WITNESSES: (*On House companion bill, HB 2944)*
For — Stephany Madsen, American Resort Development Association; (*Registered, but did not testify:* Buster Brown and Jennifer Emerson, American Resort Development Association; Robert Floyd and Galt Graydon, Silverleaf Resorts; Daniel Gonzalez, Texas Association of Realtors; Mark Lehman, Texas Association of Realtors)

Against — None

On — (*Registered, but did not testify:* Beverly Rabenberg, Real Estate Commission)

BACKGROUND: Property Code, ch. 221, the Texas Timeshare Act, requires an instrument to be filed declaring and describing any timeshare in the state. Under the chapter, any person offering a timeshare interest is required to register with the Texas Real Estate Commission, which is empowered to adopt rules and take action against any developer in violation of the law.

Property Code, ch. 202, governs restrictive covenants established and enforced by homeowners associations (HOAs). The chapter restricts HOAs from adopting or enforcing certain types of restrictive covenants. Property Code, ch 207, governs the disclosure of certain information by property associations.

DIGEST: SB 1372 would create the Texas Timeshare Owners' Association Act, Property Code ch. 221, subch. I, which would govern timeshare associations and prevail over any conflicting or inconsistent legal provisions applicable to a timeshare owners' association.

Applicability. The bill would apply to a timeshare plan and associated property regardless of when the plan was created. The bill would apply to a timeshare plan created before September 1, 2013, unless the timeshare instrument was amended before that date to provide for an exclusion.

The bill would remove timeshare associations from the requirements of Property Code ch. 202 and ch. 207, relating to property owners' associations. It also would exempt timeshares from state laws that require the provision of certain information upon the purchase of a home — specifically, the seller's disclosure and notice that a unit was subject to membership in a property owners' association. Rules governing declarant control in a condominium would not apply to a timeshare.

Administration. A timeshare owners' association could be governed by a board of directors, which could act on behalf of the association. The board could not act on behalf of the association to:

- amend the project instrument;
- terminate the timeshare plan;
- elect or remove board members; or
- determine the qualifications, powers, duties, or terms of office of board members.

Subject to the timeshare instrument, the board could appoint a member for the unexpired portion of the preceding board member's term.

Board procedures. The bill would establish processes for election and removal of board members, minimum quorum requirements, and voting. Under the bill:

- boards would have to include at least three members;
- members could be removed by a vote of two-thirds of the voting rights of people entitled to vote; and
- a quorum would be at least 10 percent of the voting interests of owners who were not delinquent in assessments.

If a quorum was not present at an association meeting to elect board members, the meeting would have to be reconvened within 90 days for the same purpose.

Developer control. A timeshare instrument could provide for a period of developer control of an association during which the developer or a designee could appoint and remove board members and other association officers. A period of control would expire by whichever came earlier:

- the 120th day after the date when 95 percent of the timeshare interests were conveyed to owners from the developer; or
- five years after the developer ceased to offer timeshare interests for sale in the ordinary course of business.

A timeshare instrument that provided for a shorter developer control period would take precedence.

During the period of developer control, the developer could determine all matters governing the association, including the occurrence of special or regular meetings of the members and the notice requirements and rules for those meetings.

A developer voluntarily could surrender the right to appoint and remove board members and officers during the period of control. A surrender instrument could retain for the developer veto rights of association decisions for the remainder of the designated control period.

Provisions governing the developer control period would apply to a timeshare plan created before September 1, 2013, only if the developer and an association agreed to the provisions.

Voting. The bill would place requirements on when and how long a proxy vote would be valid and would allow voting by mail.

If only one of multiple owners of a timeshare interest was present at an association meeting, that owner could cast all votes allocated to that timeshare interest. If more than one of the multiple owners were present, the votes allocated to that timeshare interest could be cast only in accordance with the agreement of a majority of the timeshare interest held by the multiple owners, unless the timeshare instrument expressly provided otherwise.

Open meetings. Following the period of developer control, all association and board meetings would be open to all members. Board members could meet in a closed session to consider specific matters listed in the bill.

An association meeting would have to be held each year after the developer control period. Special meetings could be called by a majority of the board, the president, or at the request of owners with at least 25 percent of the votes allocated to timeshare interests in the association. Unless a timeshare instrument stated otherwise, the association would mail notice of a meeting in a prescribed timeframe.

Associations would have to maintain a complete and current list of names and addresses of all timeshare owners. Except as otherwise authorized in law, an association could not provide an owner's name or other personally identifiable information to another owner without prior approval.

The bill would, with certain limits, require an association to mail materials to property owners upon request, provided the requestor provided sufficient payment for related costs.

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

SUPPORTERS SAY:

SB 1372 would ensure that timeshare associations were not improperly subject to laws designed for residential homeowners' associations (HOAs).

The bill would establish a separate statutory structure for timeshare associations necessary to resolve lingering questions about the applicability of HOA laws brought about by sweeping legislation enacted in 2011. While timeshares have generally fallen outside of the scope of statutes governing HOAs, various changes made in 2011 have blurred this distinction. Some lawyers versed in timeshare law have expressed concern that, without a separate statute for timeshare associations, timeshare associations could fall under some of the new laws governing HOAs.

Timeshare associations are distinct from traditional HOAs in a number of respects, including the following:

- they are subject to the Texas Timeshare Act, which imposes requirements for detailed disclosures about the timeshare at the time of purchase and an annual timeshare fee and expense statement;
- each timeshare may be "owned" by as many as 52 owners, who each own the rights to a particular week of the year;

- timeshares cannot be used as primary homes under governing documents;
- timeshare assessment fees cover items not generally covered by HOAs, such as housekeeping costs and upkeep for unit furnishings; and
- timeshare owners tend to be less involved or interested in association proceedings, as they only use the unit on a temporary basis.

Laws designed for traditional HOAs do not squarely transfer to timeshare associations and may be detrimental to association operations. Timeshare associations have unique operations, in particular since most timeshare owners cannot be physically present for association meetings and tend to take little interest in association affairs, provided the property is adequately maintained and assessments remain reasonable.

SB 1372 would provide a legal tidying-up of statutes governing timeshares to house them all under the Texas Timeshare Act (Property Code, ch. 221) and in so doing create a basic but robust set of protections for timeshare owners. The bill would outline requirements for associations affairs in various areas, such as voting, open meetings, board proceedings, and the expiration of developer control. The limitations imposed would ensure that associations achieve basic standards while allowing for variation in specific practices across associations. The requirements would dovetail with the existing regulatory structures for timeshares, which includes registration with the Texas Real Estate Commission, to create a strong, unified statutory framework for timeshares and timeshare associations.

It would be a mistake to impose onto timeshare associations the more restrictive standards that apply to traditional HOAs. Governance of traditional HOAs has evolved in response to specific complaints in various HOAs around the state. Timeshares, being structured and operated differently from HOAs, have not been subject to the same controversies or problems. Applying HOA standards to timeshares, such as laws that prohibit associations from adopting instruments conditioning voting on being current in paying assessments, would needlessly restrict timeshares from adopting provisions that suit their particular purposes.

With the timeshare governing statutes clearly housed in a separate statute, the Legislature could return in future sessions to make any incremental changes necessary. The best approach at this juncture would be to adopt a

basic framework that would not place undue burdens on timeshare associations nor needlessly supersede association-level governing instruments that have proven adequate for all parties involved.

OPPONENTS SAY:

SB 1372 could use stronger protections for owners with a timeshare interest. There are several specific provisions in the bill that could leave open the door to bad practices, as has been the case with residential HOAs.

Developer control. SB 1372 would take a positive step in limiting developer control to 95 percent of units sold to owners *or* five years after units were offered in the ordinary course of business. However, the bill unfortunately would condition its board elections, open meetings, notice, and other provisions on the expiration of the developer control period, which could be up to five years. Five years would be a long time for timeshare owners to go without any representation in association proceedings.

Voting. Instead of establishing minimal standards for who may vote, SB 1372 would allow any "additional limitations" on the right to vote in timeshare instruments. Such limitations could include restrictions on the right to vote due to delinquencies on assessments or other fines. Similarly, the bill would define a quorum as 10 percent of voting interests of owners who are not delinquent on assessments. All property owners should have the right to vote and participate in board proceedings, irrespective of whether they are current on all dues.

Language in the bill governing proxy voting is unusual and potentially problematic. The bill would allow proxy voting for up to 25 months after when the proxy is executed, which is a longer timeframe than in other statutes governing the subject, and would provide that a proxy could state that it was "coupled with an interest and is irrevocable." This language is unusual and potentially conflicts with other language requiring a proxy to state the date of termination.

Notice. The notice requirements for timeshare association meetings in the bill could be strengthened. Language in the bill would require notice to include "date, time, and place of the meeting," but would not include the meeting agenda as a requirement. Providing notice of a meeting without an agenda would be of limited value to timeshare owners.

In addition, a provision in the bill states that the "failure of an owner to

receive actual notice of a board meeting does not affect the validity of any action taken at that meeting.” This provision would have the effect of significantly reducing owners’ recourse in the event that an association did not provide adequate notice of a meeting.

NOTES:

The House companion bill, HB 2944 by P. King, was left pending in the House Business and Industry Committee on April 16.

SUBJECT: Education commissioner's subpoena and investigative authority

COMMITTEE: Public Education — Favorable, without amendment

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

0 nays

1 absent — Villarreal

SENATE VOTE: On final passage, April 3, 2013 — 31–0

WITNESSES: (*On House companion bill, HB 210:)*
For — (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Lindsay Gustafson, Texas Classroom Teachers Association; Julie Shields, Texas Association of School Boards)

Against — None

On — (*Registered, but did not testify:* David Anderson, Texas Education Agency)

BACKGROUND: The Public Education Information Management System (PEIMS) encompasses all data requested and received by the Texas Education Agency (TEA) about public education, including student demographic and academic performance, personnel, financial, and organizational information.

Education Code, sec. 39.057 authorizes the commissioner of education to initiate special investigations related to factors affecting a school district's accreditation status.

DIGEST: SB 123 would require the commissioner of education to authorize special accreditation investigations in response to a complaint alleging the reporting of inaccurate data through PEIMS or through other reports required by state or federal law, rule, or court order and used by TEA to make a determination related to public school accountability.

The bill also would authorize the commissioner to issue a subpoena for witnesses or evidence related to a statistical analysis indicating violations of testing laws.

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

SUPPORTERS SAY:

SB 123 would broaden the authority of the commissioner of education to investigate allegations of inaccurate student data reported to PEIMS. This would allow the commissioner to move quickly on complaints about data manipulation and obtain evidence.

The bill is one response to the cheating scandal in which some students were pushed out of El Paso Independent School District schools, others were prevented from enrolling, and grade levels were manipulated to keep students from taking the tests that count toward state and federal accountability. TEA officials have said limits on their subpoena authority contributed to their failure to catch the cheating scheme when it was first alleged.

OPPONENTS SAY:

SB 123 is unnecessary because the commissioner of education already has broad authority to initiate special accreditation investigations and issue subpoenas related to those investigations.

NOTES:

The House companion bill, HB 210, was placed on the House calendar for May 8, but not considered.

SUBJECT: Access to juror information for successor counsel in certain cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Hughes

SENATE VOTE: On final passage, March 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3061:*)
For — (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; Kristen Etter, Texas Criminal Defense Lawyers Association; Travis Leete, Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project; Matt Simpson, American Civil Liberties Union of Texas)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 35.29 prohibits disclosure of a juror's personal information collected by the court or by a prosecuting attorney during the jury selection process. The information is confidential and may not be disclosed by the court, prosecutor, defense counsel, or court personnel. Under an exception to this rule, the information may be disclosed on application by a party in the trial or on application by a bona fide member of the news media, on a showing of good cause.

DIGEST: HB 3061 would allow defense counsel representing someone in a death penalty case to disclose juror information, without an application to the court or a showing of good cause, to a successor counsel who was filing a writ of habeas corpus in the case.

The bill would take effect September 1, 2013.

SUPPORTERS SB 270 would allow post-conviction counsel in a habeas proceeding of a

SAY: capital case to access juror information directly from the trial counsel, reducing the time and resources currently wasted in pursuit of this information. Currently, post-conviction counsel must apply to the trial court for access to information and spend time and resources traveling to these courts to provide a showing of good cause at a hearing. Juror information is the only part of the case record that does not transfer to successor counsel automatically. Courts do not refuse to provide this information, including the original juror questionnaires and information collected during voir dire, because the post-conviction counsel must investigate the original trial proceedings in order to provide effective and zealous counsel to their clients.

Post-conviction representation in these cases usually is provided by the State Office of Capital Writs, so this process unnecessarily wastes the state's limited resources. SB 270 would streamline this process, reducing waste and allowing for more efficient and effective representation.

OPPONENTS SAY: No apparent opposition.

NOTES: The House companion bill, HB 3061 by Herrero, was placed on the House General State Calendar for May 9, but was not considered. The HRO digest of HB 3061 appears in Part 3 of the Thursday, May 9 *Daily Floor Report*, Number 70.

SUBJECT: Application for a writ of habeas corpus based on scientific evidence

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Hughes

SENATE VOTE: On final passage, March 25 — 28-3 (Birdwell, Nelson, Patrick)

WITNESSES: (*On House companion bill, HB 967:*)
For — Jeff Blackburn, Scott Henson, and Gary Udashen, Innocence Project of Texas; (*Registered but did not testify*: Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; Kristin Etter, Texas Criminal Defense Lawyers Association; Kay Forth, American Civil Liberties Union of Texas; Andrea Marsh, Texas Fair Defense Project)

Against — None

On — Justin Wood, Harris County District Attorney's Office

BACKGROUND: Code of Criminal Procedure, ch. 11 outlines procedures for filing applications for writs of habeas corpus. Art. 11.07 governs procedures for applying for a writ in a felony conviction where the death penalty was not imposed. Art. 11.071 governs procedures for applying for a writ in death penalty cases, and Art. 11.072 establishes procedures for writs in felony and misdemeanor cases in which the person was ordered into community supervision (probation).

DIGEST: SB 344 would authorize courts to grant relief on applications for writs of habeas corpus that, subject to criteria in the bill, contained specific facts indicating that:

- relevant scientific evidence was currently available and was not available at the time of the conviction because the evidence was

not ascertainable through reasonable diligence at the time of the trial; and

- the scientific evidence would be admissible under Texas Rules of Evidence at a trial held on the date of the application.

In addition, the court would have to find that if the scientific evidence had been presented at trial, on a preponderance of the evidence the person would not have been convicted.

The bill would apply to relevant scientific evidence that was not available to be offered by a convicted person at trial or that contradicted scientific evidence relied on by the state at trial.

A court, in deciding whether relevant scientific evidence was not ascertainable through the exercise of reasonable diligence on or before a specific date, would have to consider whether the scientific knowledge or method on which the relevant scientific evidence was based had changed since the trial date for an original application or since the date of a previously considered application for subsequent ones.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 344 would create a legal avenue for innocent defendants convicted based on false and discredited forensic testimony to seek relief under Texas' habeas corpus statute. The bill would establish a legal mechanism similar to Code of Criminal Procedure, ch. 64, which established grounds for post-conviction DNA testing.

The question of how to deal with convictions based on false and discredited forensic testimony has arisen more frequently as the forensic sciences in recent years have undergone extensive review, leading to correction and updating in various fields and sometimes discrediting certain forms of forensic testimony. Rather than establish additional chapters for arson, dog-scent lineups, and every discredited forensic method, SB 344 would establish a single standard for when this scenario arises.

Recent case law and judicial opinion have identified weaknesses in the current habeas corpus statute, noting issues that include the absence of statutory grounds upon which to grant relief, the speed of changing science that serves as the foundation of a conviction, and technical

testimony that may change with scientific discovery. In one case, recanted testimony by a medical examiner established the basis of the state's case with respect to the cause and manner of death, without which it would not have obtained a conviction. The Texas Court of Criminal Appeals voted against granting a new trial, with the majority finding no path to habeas relief under current law. The question was raised as to how the criminal justice system should address scenarios in which scientific experts sincerely thought something was true at the time they testified, but the science and the experts' understanding and opinions had changed.

The Timothy Cole Advisory Panel on Wrongful Convictions endorsed similar legislation, saying it would provide meaningful access to the courts to those with claims of actual innocence following a conviction based on science that had since been falsified. Creation of a dedicated writ and procedure would allow those with claims to be heard without opening all convictions up to scrutiny.

Opponents overstate the potential for the bill to flood the courts with appeals. The bill would include several well defined criteria that would have to be met in order for a court to grant relief. In addition, the Innocence Project of Texas sent letters to more than 1,000 inmates serving in the Texas Department of Criminal Justice for the offense of arson and received 175 replies, with only about 30 of those meriting further investigation.

While some claim that the bill contains vague language, courts routinely make a determination as to what constitutes "relevant scientific evidence," which is a term of art used in the rules of evidence, and this would be no different.

SB 344 would fill a gap in habeas corpus law, ensure that the law kept pace with science, and provide a path for relief where false and discredited forensics may have caused the false conviction of an innocent person.

OPPONENTS SAY:

SB 344 could open the door for many unfounded applications for writ of habeas corpus relief that would overwhelm the courts with appeals every time a new scientific advancement was made.

The bill's language is too vague. The term "relevant scientific language" is too open to interpretation for what could trigger an appeal.

NOTES: The companion bill, HB 967 by Sylvester Turner, was left pending in the House Criminal Jurisprudence Committee on April 23.

SUBJECT: Protective orders for victims of sexual, stalking, and trafficking offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Hughes

SENATE VOTE: On final passage, April 25 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On companion bill, HB 1292:*)
For — Carlos Salinas, Alliance for Texas Families; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Bobby Gutierrez and Kirsha Haverlah, Justice of Peace and Constables Association; Ann Hettinger, Concerned Women For America; Marshall Kenderdine, Texas Pediatric Society; Erlinda Kindel, Catholic Advocacy Day; Diana Martinez, TexProtects, The Texas Association for the Protection of Children; Jason Sabo, Children at Risk; Aaron Setliff, The Texas Council on Family Violence; Corinne Smith, North Texas Citizens Lobby; Glenn Stockard, Texas Association Against Sexual Assault; and 24 individuals

Against — None

BACKGROUND: Code of Criminal Procedure (CCP), ch. 7A covers protective orders for certain victims of sex trafficking, sexual assault, and stalking.

Art. 7A.01 authorizes victims of specific offenses, parents or guardians of these victims, and prosecutors to file applications for protective orders. Two similar, but not identical, sections were added in 2011 by the 82nd Legislature that list the types of offenses for which the protective orders may be issued. One section was added through the enactment of SB 250 by Zaffirini and one through SB 24 by Van de Putte, et al. Together, the sections allow applications for protective orders to be filed for continuous sexual abuse of a young child, indecency with a child, sexual assault,

aggravated sexual assault, stalking, and sex trafficking.

CCP, art. 7A.01(b) establishes the venue for the filing of applications for these protective orders. Applications may be filed in the county in which the applicant lives or the county in which the alleged offender lives.

The CCP also contains two articles labeled 7A.03, both added in 2011 by the 82nd Legislature. One section was added by SB 250 and the other by HB 649 by Gallego. Both sections establish the findings that courts must make when determining whether to issue the protective orders.

The two sections are similar, but not identical. The section from SB 250 requires courts to find whether there are reasonable grounds to believe that the applicant was a victim of sexual assault or stalking. The section from HB 649 requires courts to find whether there are reasonable grounds to believe that the applicant was a victim of sexual assault.

DIGEST:

SB 357 would merge and reenact the two sections of CCP art. 7A.03 that were enacted by the 82nd Legislature in SB 250 and HB 649, resulting in one section requiring courts to make certain findings when determining whether to issue a protective order under CCP, ch. 7A.

The bill would add victims of trafficking and sexual abuse to the types of victims for which the court could make findings when considering an application for a protective order under CCP, ch. 7A. SB 357 would require judges to find whether there were reasonable grounds to believe that an applicant for a protective order was a victim of sexual assault or abuse, stalking, or trafficking.

SB 357 would expand the venues in which victims of sexual assault, stalking, and trafficking could apply for protective orders. The bill would allow them to be filed in any county in which an element of the alleged offense occurred or any court with jurisdiction over family violence protective orders under Family Code, title 4 if the same parties were involved.

The bill would take effect September 1, 2013, and would apply only to protective orders issued on or after that date.

SUPPORTERS SAY:

SB 357 would harmonize sections of CCP, ch. 7A dealing with applications for protective orders for victims of continuous sexual abuse of

a young child, indecency with a child, sexual assault, aggravated sexual assault, stalking, and sex trafficking after more than one bill amended the law in 2011.

Two of these bills, taken together, amended art. 7A.03, which requires courts considering this type of protective order to find whether there are reasonable grounds to believe the applicant was a victim of sexual assault or stalking. However, other sections of ch. 7A allow protective orders to be issued for other offenses, and neither version of sec. 7A.03 added in 2011 provides for a finding that an applicant was a victim relating to those offenses.

SB 257 would clear up confusion over these sections by adding trafficking and sexual abuse to the list of findings judges could make in these situations. This would make it clear that findings could be made for all the crimes for which victims can apply for protective orders.

The bill also would give victims of sexual assault, stalking, and trafficking additional options for filing applications for protective orders. Current law allows them to be filed only in the county in which either the victim or the alleged perpetrator lives, which can raise safety concerns with these types of crimes. The bill would expand the venues so that applications could be filed where the offense occurred or in a court with jurisdiction over a previously issued order relating to family violence.

This would be consistent with SB 129 by Nelson, which would allow the same option for family violence protective orders and was approved by the House on the May 14 Local, Consent, and Resolutions calendar.

OPPONENTS SAY:

No apparent opposition.

NOTES:

An identical provision relating to the findings that could be made when considering protective order applications was included in HB 8 by S. Thompson, et al., which was passed by the House on April 17 and referred to the Senate Criminal Justice Committee.

The companion bill, HB 1292 by Anchia, was placed on the May 9 House General State Calendar but not considered.

SUBJECT: Informing a non-citizen of the immigration consequences of a guilty plea

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Burnam, Canales, Hughes, Leach, Moody, Toth

1 nay — Schaefer

1 absent — Carter

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

WITNESSES: *(On House companion bill, HB 823:)*
For — John Vasquez, State Bar of Texas; Alberto Garcia; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Luis Figueroa, Mexican American Legal Defense and Educational Fund (MALDEF); Travis Leete, Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project; Allen Place, Texas Criminal Defense Lawyers Association; Chris Howe)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 15.17(a) provides a list of items of which a magistrate must inform an arrested person, including the accusation against the person and the person's right to legal counsel.

Art. 26 requires an arraignment in all felony cases after indictment and all misdemeanor cases punishable by imprisonment.

Art. 26.13(a)(4) requires that before accepting a plea of guilty or a plea of no contest in an arraignment for felony or misdemeanor charges that would result in jail time, the court must inform the defendant that if the defendant is not a citizen of the United States, a plea of guilty or no contest may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.

DIGEST: SB 361 would amend Code of Criminal Procedure, Art. 15.17 by adding a requirement for a magistrate to inform an arrestee that, if the person was

not a citizen of the United States, a plea of guilty or nolo contendere could affect the person's immigration or residency status and could result in deportation, exclusion from admission to this country, or denial of naturalization.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

In criminal cases involving non-citizen defendants, deportation is a possible consequence for a defendant who pleads guilty or no contest to secure a reduced penalty for the charges, including circumstances involving relatively minor charges such as shoplifting.

Current law does not require uniform instruction to accused persons in misdemeanor cases. While some courts in Texas are creating their own instructions, others are not giving instructions of any kind to those accused of misdemeanor offenses. However, some accused of misdemeanor offenses in Texas may be subject to immigration law consequences at the entering of a plea before a magistrate.

SB 361 would provide all magistrates in Texas with uniform instructions for informing those accused of criminal offenses about possible immigration law consequences of conviction. While there is not a constitutional requirement for a magistrate to instruct an arrested person of these consequences, judges are ethically bound to ensure that defendants are aware of the immigration consequences of criminal pleas and convictions. Uniform instructions would assist magistrates throughout the state, further the administration of justice within the court system, and maintain the integrity and fairness of the judicial process.

In *Padilla v. Kentucky (2010)*, the U.S. Supreme Court emphasized the obligation of counsel to notify non-citizen defendants of possible immigration consequences. Relying on defense lawyers to provide the instruction would not guarantee that instruction was given consistently. An arrested person may not have an opportunity to meet with counsel before going before a magistrate and could enter a guilty plea without receiving the appropriate counsel. Judges have a responsibility to make some effort to address the immigration consequences of a plea or conviction.

The bill would require a best practice that would not be a cost to the state or place an undue burden on the magistrates. It simply would be a sentence added to the instructions given by a magistrate.

OPPONENTS SAY:

The state does not have a constitutional requirement for a magistrate to inform an arrested person of collateral consequences, such as the impact of a guilty plea on immigration status. SB 361inappropriately would elevate this immigration admonishment when there are other serious collateral consequence in law that would deserve equal protection, such as a dishonorable discharge from the military.

OTHER OPPONENTS SAY:

If this bill went into effect, a failure to make a proper warning could result in overturned convictions. Notifying defendants of possible immigration consequences should remain the obligation of legal counsel.

NOTES:

The House companion bill, HB 823 by Anchia, was left pending in the House Committee on Criminal Jurisprudence on March 12.