HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, May 17, 2013
83rd Legislature, Number 76
The House convenes at 9 a.m.
Part One

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

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

Bill Callegari
Chairman
83(R) – 76

HOUSE RESEARCH ORGANIZATION
Daily Floor Report
Friday, May 17, 2013
83rd Legislature, Number 76
Part One

HOUSE
RESEARCH
ORGANIZATION bill analysis 5/17/2013

SB 1458
Duncan, et al.
(Callegari, et al.)

SUBJECT: TRS contributions and benefits

COMMITTEE: Pensions — favorable, without amendment

VOTE: 6 ayes — Callegari, Alonzo, Branch, Frullo, P. King, Stephenson

0 nays

1 absent — Gutierrez

SENATE VOTE: On final passage, May 8 — 30-0

WITNESSES: (*On House companion bill, HB 1884)*
For — (*Registered, but did not testify:* Ann Hettinger)

Against — Ann Fickel, Texas Classroom Teachers Association; Ted Melina Raab, Texas AFT; Josh Sanderson, Association of Texas Professional Educators; (*Registered, but did not testify:* Rene Lara, Texas AFL-CIO)

On — Beaman Floyd, Texas Association of School Administrators; John Grey, Texas State Teachers Association; Brian Guthrie, TRS; Tim Lee, Texas Retired Teachers Association; (*Registered, but did not testify:* Christopher Hanson, Pension Review Board; Betsey Jones and Brian Guthrie, TRS)

DIGEST: SB 1458 would make numerous changes to the Teacher Retirement System of Texas (TRS), including:

- raising the contribution rates for members and requiring a new contribution from most school districts;
- increasing the minimum retirement age to 62 for teachers who were not vested in TRS as of September 1, 2014;
- authorizing a 3 percent cost-of-living increase for those who have been retired for 15 years or more; and
- changing benefits related to the health insurance plans for some future retirees.

Contribution rates. SB 1458 would phase in an increase in contribution rates for TRS members from 6.4 percent of the member's annual compensation to 6.7 percent in fiscal 2015, 7.2 percent in fiscal 2016, and 7.7 percent in fiscal 2017.

After September 1, 2017, member contribution rates of 7.7 percent would drop to correspond with any decrease in the state's contribution rate. If the state decreased its contribution rate 0.10 percent, the rate of members' contributions would also decrease 0.10 percent.

Beginning in fiscal 2015, school districts that do not contribute to Social Security for their employees would make monthly TRS contributions equal to 1.5 percent of members' compensation. The district contribution could be reduced if the state compensation dropped.

The bill would decrease from 5 percent to 2 percent the annual interest on money in each member's individual account that is used to compute the amount paid when an employee withdraws accumulated funds in lieu of receiving a retirement annuity.

Pension benefit structure. The bill would maintain the current retirement age of 60 for those who are vested by having worked for at least five years prior to September 1, 2014.

For those who are not vested as of September 1, 2014 or who are hired after that date, the bill would:

- adjust the age to retire with full benefits from 60 to 62 if the member's age and amount of service credit in TRS equals 80; and
- provide for a 5 percent per year annuity reduction for those choosing to retire prior to age 62.

Benefit enhancement. SB 1458 would authorize a 3 percent cost-of-living adjustment for TRS members who retired on or before August 31, 1999. The adjustment could not exceed $100 per month.

Retiree health care. TRS-Care is the health plan for retirees of the TRS system. It consists of three levels of coverage, with TRS-Care 1 providing basic catastrophic coverage, with higher deductibles than TRS-Care 2 and TRS-Care 3. Under SB 1458, TRS members who retire before the age of 62 would only be eligible to participate in TRS-Care 1. Once a member reaches the age of 62, the member would be eligible for the other two plans.

The bill would exempt members from the retiree health care changes whose age and service credit equals 70 or who have 25 years of service as of August 31, 2014.

The bill would repeal a section of the Insurance Code requiring TRS to offer health plans substantially equal to those offered by the Employees Retirement System of Texas. This repeal would take effect September 1, 2013.

The bill's provisions on member contribution rates would take effect September 1, 2013, and the remainder of the bill would take effect September 1, 2014.

SUPPORTERS SAY:

SB 1458 would make revisions to TRS contributions and benefits to ensure the long-term soundness of the pension plan and to allow 102,000 older retirees to receive their first cost-of-living (COLA) increase since 2001. The average COLA would be $42 per month, an increase that would especially help the majority of retired teachers who do not receive Social Security benefits.

The bill would move the TRS retirement fund from possible future insolvency to a system that could pay off its liabilities within 29 to 30 years, which would meet the statutory bar of being actuarially sound. It also would put the fund in a better position when new Governmental Accounting Standards Board rules take effect in 2014.

The bill passed with a unanimous vote out of the Senate and with the approval of active and retired teacher groups. The changes for which some are now calling could delay the goals of SB 1458 to create an actuarially sound fund and deliver the COLA.

Contribution rates. The bill would create a new revenue source from a 1.5 percent contribution from public schools that do not pay Social Security taxes for their employees. It is appropriate to require the vast majority of districts that do not contribute to Social Security to pay into TRS. These districts save about $1.5 billion a year by not paying Social Security taxes on their employees, so it is reasonable to have them contribute a smaller amount than they would pay into Social Security to strengthen the TRS fund. The school districts' contributions also could be covered by an increase in funding through the school finance formulas in SB 1.

The combined state and district contribution would bring the total employer contribution to 8.3 percent, which would be higher than employee contributions. The bill would provide an incentive for the state to maintain appropriate contribution levels by linking state, member, and school district rates so that if the state rate was reduced, the member and district rates would be reduced by an equivalent percentage.

Many teachers understand that the pension fund must be strengthened to ensure it is able to meet its future obligations. They are willing to pay higher contributions to maintain a defined benefit plan.

The bill would maintain current retirement eligibility for members who are vested in TRS. Those not vested — an estimated 190,000 — would only have to work two years more, to age 62, to receive full benefits. The average age of TRS retirees in 2012 was 61.

Retiree health care. The bill would make necessary changes to TRS-Care for retirees to help stabilize the health care fund. Without any changes, the TRS-Care fund will face a negative balance of $1 billion in fiscal 2017.

Early retirement is a major factor in rising health costs. Retirees who are younger than 65 and not eligible for Medicare cost TRS-Care six times more than Medicare-eligible retirees. SB 1458 would not make changes for current retirees and active members who meet the rule of 70 or have 25 years of service as of August 31, 2014. TRS-Care 1, the catastrophic plan, would still be available to early retirees.

Next session, major reform of TRS-Care will be necessary, but right now, SB 1458 is a step in the right direction.

OPPONENTS SAY:

Although significant improvements were made on the Senate floor to SB 1458, some substantial concerns remain. The bill would provide a COLA to less than one-third of all retirees, leaving the rest without any immediate relief from the rising cost of living that has eroded the purchasing power of TRS pensions by more than 25 percent since the last COLA in 2001.

It would be better to give all retirees a "13th check" supplemental payment.

The bill would cut pension and health-care benefits that teachers and other employees working in schools today have earned. The bill should be amended to grandfather in all current employees to ensure no one loses benefits they've already worked to earn.

The goal of ensuring actuarial soundness could be achieved without imposing disproportionate sacrifices on retirees and school employees. The Legislature has underfunded TRS for years and should be putting substantially more money in the pension system now.

Contribution rates. SB 1458 would place the largest burden on active members who would see contributions increase by an estimated $189.8 million just in fiscal year 2015, according to the fiscal note. Texas teachers already are paid below the national average and the increased bite out of their take-home pay would hurt the lowest-paid educators the most.

School districts still dealing with the 2011 budget cuts would be required to pay 1.5 percent of their payroll into TRS. Some districts say the contribution requirement could eat into any pay raises they were planning for the next school year.

Retiree health care. The bill would place a hardship on certain employees who retire early by making them ineligible for the two most affordable and comprehensive insurance plans. The only plan open to them carries high deductibles for medical and prescription drug expenses. If retired teachers cannot afford to visit the doctor and buy their prescription drugs, their health could be affected.

NOTES:

The Legislative Budget Board (LBB) said the estimated cost to local school districts of the 1.5 percent contributions for each TRS member salary would be about $330 million per year.

In its actuarial analysis, LBB said the state contribution rate must be 6.8 percent for fiscal 2014-15 for the fund to become actuarially sound within 29 years as required by statute. The analysis assumes that the state contribution rate would be 6.4 percent for fiscal 2014 and 6.8 percent for fiscal 2015 and that a rider to a supplemental appropriations bill would allow TRS to keep the settle up money at the end of fiscal 2013 and apply it toward the fiscal 2014 state contribution rate, thereby increasing the total state rate to 6.8 percent for fiscal 2014 and thereafter.

The actuarial review states that SB 1458 would change the amortization period of TRS from infinite to a finite period under 30 years as of the February 28, 2013 valuation.

SJR 54
Hinojosa
(Guerra)

SUBJECT:	Repealing provision authorizing hospital district in Hidalgo County
COMMITTEE:	County Affairs — favorable, without amendment
VOTE:	8 ayes — Coleman, Farias, M. González, Hernandez Luna, Kolkhorst, Krause, Simpson, Stickland 0 nays 1 absent — Hunter
SENATE VOTE:	On final passage, May 1 — 31-0
WITNESSES:	(*On House companion, HJR 147:*) For — Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Paul Bollinger, Doctors Hospital at Renaissance; Don McBeath, Texas Organization of Rural & Community Hospitals; Terry Simpson, San Patricio County) Against — None
BACKGROUND:	Tex. Const., Art. 9, sec. 7 authorizes the creation of a hospital district in Hidalgo County. The constitution authorizes a maximum tax rate of 10 cents per $100 valuation of taxable property for the hospital district.
DIGEST:	SJR 54 would repeal Texas Const., Art. 9, sec. 7. The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment repealing Section 7, Article IX, Texas Constitution, which relates to the creation of a hospital district in Hidalgo County."
SUPPORTERS SAY:	SJR 54 would allow Hidalgo County to rid itself of a more than 50-year-old provision in the state's constitution that limits its ability to create and operate a sustainable hospital district. Hidalgo is the largest county in Texas without a hospital district and the only one in the state required to have a maximum tax rate of 10 cents per $100 property valuation for a

hospital district. Although this low tax rate might have seemed sensible when it was passed by the 56th Legislature in 1959, it hampers the ability of Hidalgo County to form a sorely needed hospital district that would be solvent.

Other Texas counties have shown the ability to operate successful hospital districts with tax rates that range on average between 20 and 40 cents per $100 property valuation. SJR 54 would allow Hidalgo County, with voter approval, to have a district that could serve a community with a high rate of uninsured residents, boost affordable health care, and strengthen the region's ability to draw federal funds to pay for emergency care for the poor. A community that can offer health care to uninsured residents before they reach the emergency room has an important responsibility to property taxpayers to keep health care costs low.

SJR 54 would afford Hidalgo County the same taxing rate range that other counties enjoy for their hospital districts. If SJR 54 were passed and approved by voters, the formation of a hospital district in Hidalgo County and the district's tax rate still would require approval from the county's voters during an election.

OPPONENTS SAY:

SJR 54 likely would lead to an increase in taxes for Hidalgo County property owners. The new tax rate for a hospital district in Hidalgo County could be set as high as 75 cents per $100 property valuation.

NOTES:

SJR 54 is identical to the House companion joint resolution, HJR 147 by Guerra, which passed the House on May 1. HJR 147 was reported favorably by the Senate Intergovernmental Relations Committee on May 14 and scheduled for the May 16 Intent Calendar.

According to the fiscal note for SJR 54, the cost to publish the proposed constitutional amendment would be $108,921.

SUBJECT: Creating a new university in South Texas within the UT System

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 7 ayes — Branch, Alonzo, Darby, Howard, Martinez, Murphy, Raney

0 nays

2 absent — Patrick, Clardy

SENATE VOTE: On final passage, March 13 — 30-1 (Schwertner)

WITNESSES: (*On companion bill, HB 1000:)*
For — Chris Boswell, City of Harlingen; Rep. Terry Canales; (*Registered, but did not testify*: Ramon Garcia; Ramiro Garza, City of Edinburg; Gloria Leal, Mexican American Bar Association of Texas; Israel Rocha, Doctors Hospital at Renaissance; Nelson Salinas, Texas Association of Business)

Against — None

On — Francisco Cigarroa, University of Texas System; John Fitzpatrick, Educate Texas, Communities Foundation of Texas; Juliet V. Garcia, University of Texas at Brownsville; Robert Nelsen, University of Texas-Pan American; (*Registered, but did not testify*: Macgregor Stephenson, Texas Higher Education Coordinating Board)

DIGEST: SB 24 would create a new university in South Texas within the University of Texas System. It would provide for the UT System to abolish two universities: the University of Texas at Brownsville and the University of Texas-Pan American. The new university would include a medical school, a Center for Border Economic and Enterprise Development and a Texas Academy for Mathematics and Science. If more than two-thirds of each chamber were to pass the bill, the new university would be eligible for appropriations from the Permanent University Fund (PUF).

Creation of a new university. The new university would be a general academic teaching institution under the governance of the Board of Regents of the University of Texas System. The UT board of regents would name the new university.

The university would include:

- an academic campus in Cameron County;
- an academic campus in Hidalgo County;
- an academic center in Starr County;
- the facilities currently operated by the Lower Rio Grande Valley Regional Academic Health Center (RAHC); and
- the medical school and other programs authorized for a University of Texas Health Science Center-South Texas by SB 98 by Lucio (81st Legislature, regular session).

The UT board of regents would equitably allocate the primary facilities and operations of the university among Cameron, Hidalgo, and Starr counties. The new medical school's medical and research programs would have a substantial presence in Hidalgo and Cameron counties.

The new university could award bachelor's, master's, doctoral, and medical degrees. The university would not be allowed to create a department, school, or degree program without the prior approval of the Texas Higher Education Coordinating Board except for those previously approved for UT-Pan American or UT-Brownsville or authorized by law.

Abolishing UT-Pan American and UT-Brownsville. SB 24 would abolish the University of Texas-Pan American and the University of Texas at Brownsville. The UT board of regents would determine the actual date to abolish the schools and would establish procedures to wind up each institution's remaining business.

The new university would hire as many of the faculty and staff of the abolished schools as was practical. A student already admitted to or enrolled in one of the abolished schools would be entitled to admission to the new university.

Participation in the PUF. If passed with a two-thirds vote of each chamber of the Legislature, SB 24 would allow the new university to receive funding from the PUF.

Medical school advisory group. SB 24 would create a temporary medical school advisory group that would assist the UT board of regents in designing and establishing the new university's medical school. The advisory group would help with site selection, design, and development of the medical school and would solicit input from stakeholder groups. The UT board regents would select the advisory group members. The group would be dissolved once it reported findings to the UT board of regents and the regents determined the purposes of the group had been achieved.

Center for Border Economic and Enterprise Development. SB 24 would allow the new university to run a Center for Border Economic and Enterprise Development to

- develop an economic database concerning the Texas-Mexico border;
- perform economic development planning and research;
- provide technical assistance to industrial and governmental entities and groups; and
- help coordinate economic and enterprise development planning activities of state agencies to ensure that the needs of the border region were part of a comprehensive state economic development plan.

The center would cooperate fully with similar programs at Texas A&M International University, the University of Texas at El Paso, and other academic institutions.

Texas Academy of Mathematics and Science. SB 24 would allow the new university to run a math- and science-focused high school. The academy would provide gifted juniors and seniors a university-level curriculum for college credit. The academy would also offer the necessary courses for the students to graduate under the advanced high school program. Regular class sizes would be limited to a 30-to-1 student-teacher ratio. The ratio could be higher in limited cases, such as if a class were combined with a university class of more than 30 students.

The funding a Texas school district receives from the Texas Education Agency (TEA) would be reduced to account for students attending the academy instead of its own high schools. TEA would distribute these funds to the academy to support the education of those students.

Except for the funding mentioned above, the academy would not be subject to oversight by the TEA or the provisions of the Education Code.

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

SUPPORTERS SAY:

SB 24 would consolidate UT-Brownsville, UT-Pan American, and the Regional Academic Health Center into a single institution, make the institution eligible for a superior method of funding, and attach a new medical school. This reorganization would create efficiencies and bring educational and economic opportunities to the Rio Grande Valley that do not now exist there. A new comprehensive research university is necessary to address the needs of the rapidly growing Valley population, which is already educationally and medically underserved.

The new university would be an economic engine in its own right and, by training students, would lay the groundwork for other businesses and industries to flourish. It would give South Texans needed educational opportunities to fill and create the high-paying jobs of tomorrow. The medical school would attract additional health care providers to a medically underserved region.

If passed by a two-thirds vote in each chamber, SB 24 would make the new university eligible for support from the Permanent University Fund (PUF) and less reliant on state general revenue. The PUF is an endowment fund that supports certain universities in the University of Texas and Texas A&M University systems through investments made with state oil and gas royalties. Moving support for the university to the PUF from the general revenue-funded Higher Education Fund (HEF) would free tens of millions dollars for other HEF-supported institutions.

Universities already supported by the PUF have not objected to the new university being added, as the value of the PUF has grown dramatically because of record income from its oil and gas holdings. Although the percentage share of the pie would be reduced, the value of each slice has grown so significantly that already-participating universities still would see increases in the value of their shares. The university’s PUF share would come from the UT system’s share, leaving the Texas A&M system’s share unaffected.

The new university's increased size and budget would bring it closer to emerging research university status, eventually allowing it to compete for additional UT system and state matching funds. The university initially would have about 28,000 students, research expenditures of more than $11 million, and an endowment of $70.5 million.

SB 24 would lead to savings on overhead and administration that could be spent on expansion, research, or new programs. Initial studies predict that consolidating the existing universities could save $6 million in administrative costs. According to the Legislative Budget Board, SB 24 would not have a significant fiscal impact on the state budget.

The medical school attached to the new university would not disrupt the medical education system in Texas. The medical school is already authorized by statute and would be developed even without SB 24. The Higher Education Coordinating Board already has accounted for it and incorporated it into its plans for higher education in Texas. Sufficient residency slots would be available for graduates of the medical school. At least 150 new residency slots are expected to be created in the Rio Grande Valley region as a result of local efforts and existing demand.

While Texas Southmost College District currently has a partnership agreement with UT-Brownsville to transition students to the university, SB 24 should not stipulate a relationship between the new university and the district beyond current agreements. This would allow the relationship between the new university and the college district to develop as the not-yet-appointed leaders of the university see fit.

SB 24 would give the new university statutory authority to administer the existing Center for Border Economic and Enterprise Development and the Texas Academy of Mathematics and Science so they could be continued at the new university.

OPPONENTS SAY:

There is no need to create a new comprehensive four-year university in the Rio Grande Valley. With UT-Pan American, UT-Brownsville, Texas A&M Kingsville, Texas Southmost College, and Texas State Technical College Harlingen, ample opportunities are available for higher education in the region.

SB 24 would not adequately address the shortage of doctors in Texas. A lack of residency slots could encourage recent graduates to study in other states, and the bill would not statutorily require the creation of new residency slots that its medical school graduates would need. About 70 percent of doctors practice medicine where they completed their residency, so Texas could waste a fortune to educate doctors only to have them leave Texas for their medical residencies and end up practicing elsewhere.

The bill should require the new university to more fully cooperate with Texas Southmost College, in much the same way that the University of Texas at Austin and Austin Community College cooperate, allowing easy transfer of credits and agreements on degree plans, among other things. This would allow residents in the Rio Grande Valley area the most efficient use of their local higher-education opportunities.

NOTES:

HB 1000 by Oliveira, the companion bill, was passed by the House on March 20. The Senate Higher Education Committee recommended a committee substitute on May 9, which was passed by the Senate on May 16.

According to the fiscal note, the first year of the new university's medical school would cost $1.9 million in general revenue based on an entering class of 50 students. The fiscal note forecasts a cost of $7.7 million in general revenue once the medical school was fully enrolled with 200 students.

SUBJECT: Relating to certain public works contracting requirements

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, April 11 — 31 - 0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB* 3830:)
For — Daniel Biles and Tom Tagliabue, City of Corpus Christi; (*Registered, but did not testify*: Michael Vasquez, Texas Conference of Urban Counties)

Against — None

On — Perry Fowler, BAR Constructors, Boyer Construction, Bryan Construction, CSA Construction, LEM Construction, Matous Construction, Pepper Lawson Waterworks; Brian Sledge, CDM Smith

BACKGROUND: Government Code, sec. 2267.354 will entitle local government entities with a population of more than 500,000 to use the alternative project delivery method of design-build for up to six public construction contracts per year beginning on September 1, 2013. A municipally owned water utility with a separate governing board appointed by a municipality with a population of more than 500,000 will be able to enter two projects per year, also beginning on September 1, 2013. After September 1, 2015, entities between 100,000 and 500,000 in population may enter into up to four design-build projects per year.

Government code, sec. 2267.301 defines "design-build" as a method of project delivery that allows a governmental entity to contract with a single company to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Local Government Code, sec. 252.048 enables the governing body of a municipality to approve an order making changes to a contract if a change in plans or specifications becomes necessary after contract performance has begun. In cities with populations of 500,000 or more, a city may delegate the authority to approve a change order not exceeding $100,000 to an administrative official.

DIGEST:

CSSB 1430 would push the start date up by two years, to September 1, 2013, for government entities with populations between 100,000 and 500,000 to be able to perform up to four design-build projects per year. Government entities with populations of more than 500,000 still would be permitted to annually perform up to six design-build projects beginning on September 1, 2013.

The bill would amend Local Government Code, sec. 252.048 so that a city with a population of 300,000 or more could delegate to an administrative official the approval of a change order less than $100,000.

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

SUPPORTERS SAY:

In 2011, the Legislature passed HB 628, which authorized alternative project delivery methods and consolidated them into one chapter of the law. It also expanded the types of entities eligible to use alternative project delivery methods to entities such as hospital districts.

Alternative delivery methods are being used across the state to lower project costs and increase efficiency in completing construction projects. The bill would modestly accelerate the phase-in process for mid-size cities. It would not allow more design-build projects than under current law beginning in 2015. Under the bill, mid-size cities such as Corpus Christi or Arlington, which now have experience with alternative delivery methods, could solicit four design-build contracts per fiscal year.

The fact that Texas companies are not being awarded design-build contracts is a temporary market condition because Texas companies have not traditionally used alternative project delivery methods. As Texas companies bid more and become more experienced with these methods, the marketplace will even out. While Texas companies may not be winning initial bids, many of these companies, such as engineering firms, are being awarded subcontracts.

OPPONENTS SAY: With respect to moving up the dates to allow more design-build projects, this has not been a process that has included many Texas companies. For example, the vast majority of design-build water construction projects built in Texas have gone to out-of-state firms. The bill would do little to provide more opportunity to Texas companies.

NOTES: The committee substitute differs from the Senate bill in that it would leave the upper population bracket for government entities entering into contracts at 500,000, rather than changing it to 300,000, and would accelerate by two years, to September 1, 2013, the start date for when smaller municipalities could perform up to four design-build projects in a fiscal year.

SUBJECT: Providing electric bill payment assistance for veterans burned in combat

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

2 absent — Menéndez, Oliveira

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

WITNESSES: *(On House companion bill, HB 2391)*
For — (*Registered, but did not testify:* Wendell Bell, Texas Public Power Association; Eric Craven, Texas Electric Cooperatives; John W Fainter, Jr.; The Association of Electric Companies of Texas, Inc.; Robert Flores, American G.I. Forum of Texas; Patrick Reinhart, El Paso Electric Co.; Ned Ross, Direct Energy)

Against — None

On — (*Registered, but did not testify:* Bryan Kelly, Public Utility Commission of Texas; Kyle Mitchell, Texas Veterans Commission)

DIGEST: SB 981 would allow all Texas electric utilities, including municipally owned utilities and electric cooperatives, to establish a bill payment assistance program for military veterans who had a significantly decreased ability to regulate body temperature as a result of severe burns received in combat.

All electric providers could recover costs associated with the program.

The bill also would require the Public Utility Commission (PUC) to compile a list of bill payment assistance programs for burned veterans and publish the list on the PUC's website.

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:

Military veterans who have returned from combat with severe burns have trouble regulating their internal temperature, putting them at greater risk than most people of overheating — a threat with potentially deadly consequences. Because their bodies easily overheat and take long to cool, burned vets often stay inside, with the thermostat set at no more than 70 degrees, resulting in electricity bills much larger than a typical household.

A similar bill payment assistance program was created last session that only applied to CPS Energy, a municipally owned utility serving San Antonio and the surrounding areas. This bill would be permissive, giving other municipally owned utilities, electric cooperatives, and electric utilities across the state the authority to develop a bill payment assistance program for veterans severely burned in combat.

OPPONENTS SAY:

While the bill would be permissive, it would promote the creation of an entitlement program with no guidance on income eligibility. It is unnecessary to establish a separate program for veterans burned in combat when utility discount programs are already available to those in need. Most municipally owned utilities or electric cooperatives already offer bill payment assistance, and the low-income discount program funded by the System Benefit Fund is available to those in areas of competition. An electric provider that chose to establish a program would incur costs that would likely be passed on to other ratepayers.

SUBJECT: Prohibiting certain practices of beer manufacturers

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles

0 nays

2 absent — Price, S. Thompson

SENATE VOTE: On final passage, March 25 — 31-0

WITNESSES: *(On House companion bill, HB 1538)*
For — Rick Donley, The Beer Alliance of Texas; (*Registered, but did not testify:* Doug Davis, Tom Spilman, and Keith Strama, Wholesale Beer Distributors of Texas; Jim Dow, Texas Craft Brewers Guild; Jim Grace, Anheuser-Busch; Alan Gray and Ralph Townes, Licensed Beverage Distributors; JP Urrabazo, The Beer Alliance of Texas)

Against — (*Registered, but did not testify:* Robert Hunt; Leslie Pardue, Miller Coors; Dustin Matocha, Texans for Fiscal Responsibility)

On — (*Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)

DIGEST: SB 639 would prohibit beer manufacturers from adjusting the price at which beer was sold to a distributor based on the price at which the distributor then resold the beer to a retailer. Manufacturers would be free to adjust price, but only if the adjustment were based on factors other than an increase in the distributor's resale price.

The bill also would prohibit manufacturers from accepting payment for territorial rights agreements.

Statutory prohibitions on certain practices would not prevent manufacturers or distributors from entering into ordinary business contracts, including agreements about allowances, rebates, refunds, services, capacity, advertising funds, promotional funds, or sports marketing funds. Nothing in the code would prohibit contractual agreements between members of the same tier with the same licenses and permits.

SB 639 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, but only if SB 515, SB 516, SB 517, and SB 518 were enacted by the 83rd Legislature. If any of these bills were not enacted, SB 639 would have no effect.

SUPPORTERS SAY:

SB 639 would maintain the integrity of the three-tier system of alcohol regulation in which manufacturers, wholesalers and distributors, and retailers are kept formally, legally separate. This regulatory framework is important to the state and to the industry, as it guarantees the state's ability to exercise oversight over the alcohol industry and collect taxes while providing large and small manufacturers access to multiple markets.

The bill would prohibit the practice of reach-back pricing, in which a manufacturer charges the distributor more for product in response to changes in the prices distributors charge to retailers. This unfair practice has been prohibited already by the Texas Alcoholic Beverage Commission (TABC) in a Marketing Practices Bulletin issued June 3, 2010. This bill would codify the existing prohibition in law. Distributors cannot maintain the independence necessary to uphold the three-tier system of alcohol regulation if they come under pressure from manufacturers in this way. The bill also would protect the independence of distributors by prohibiting manufacturers from selling off their territorial rights.

SB 639 would not prohibit practices that are part of the ordinary functioning of the alcohol beverage industry. The bill would allow manufacturers and distributors to enter into contracts on a number of common interests — for example, an agreement on how a product should be advertised and how much each party would pay. Nor would the bill prohibit contracts and agreements between members of the same tier.

Tying SB 639 to the enactment of four additional craft-beer bills would ensure that the entire coalition of stakeholders remained engaged and supportive of the entire bill package.

OPPONENTS

The bill would effectively coerce manufacturers into giving away an

SAY:

extremely valuable commodity — territorial rights — to distributors, who then would be at liberty to sell these rights to other distributors at a profit. Manufacturers have a justified interest in how their products are marketed to the general public and ought to have some way to provide input on pricing. This bill would take away an important tool used by manufacturers to create promotional price agreements with retailers.

SB 639 would be impossible to enforce and would place TABC in a difficult position. Neither distributors nor manufacturers have an interest in disclosing to regulators when confidential agreements or contracts violated these laws because each party has a close, dependent relationship with the other and would not be eager to jeopardize it. The bill would place no limitations on the types of contractual agreements the manufacturers and distributors could otherwise enter into, which could result in manufacturers continuing reach-back pricing and the sale of territorial rights through a back-door contract.

The bill also would be detrimental to retailers and consumers. It would allow distributors to increase profit margins and pass on the price increase to retailers, who in turn would have to raise prices for consumers. Retailers no longer could bargain directly with the manufacturer about pricing and would be subject to the distributors alone. SB 639 would remove an important check in the three-tier system ensuring that no single tier grew too powerful.

NOTES:

SB 639 would not take effect unless the Legislature also enacted the following bills, which also are set on today's General State Calendar for second-reading consideration:

- SB 515 by Eltife, et al., which would allow brewpubs to sell to retailers, wholesalers, distributors, and any qualified person outside of Texas;
- SB 516 by Eltife, et al., which would establish a brewer's self-distribution permit;
- SB 517 by Eltife, et al., which would establish a manufacturer's self-distribution permit; and
- SB 518 by Eltife, et al., which would allow brewers and manufacturers to sell directly to consumers.

The House companion bill, HB 1538 by Geren, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.

SUBJECT: Allowing brewpubs to sell to retailers, wholesalers, and distributors

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles

0 nays

2 absent — Price, S. Thompson

SENATE VOTE: On final passage, March 25 — 31-0

WITNESSES: *(On House companion bill, HB 1763)*
For — Scott Metzger and Brock Wagner, Texas Craft Brewers Guild; Leslie Sprague, Open the Taps; (*Registered, but did not testify:* Doug Davis, Tom Spilman, and Keith Strama, Wholesale Beer Distributors of Texas; Adam Debower, Austin Beerworks; Rick Donley and JP Urrabazo, The Beer Alliance of Texas; Jim Dow, Vickie Jones, Davis Tucker, and Charles Vallhonrat, Texas Craft Brewers Guild; Rick Engel; Courtney Forsell; Glen Garey, Texas Restaurant Association; Jim Grace, Anheuser-Busch; Michael Graham; Alan Gray, Marc Hoskins, and Ralph Townes, Licensed Beverage Distributors; Mike Hamilton, Beer Alliance; Rhett Keisler and Grant Wood, Revolver Brewing; Dustin Matocha, Texans for Fiscal Responsibility; Alfred Nemecek, Black Star Coop Brewpub; Walt Powell, Flix Brewhouse; Tim Schauer, Open the Taps)

Against — None

On — (*Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)

BACKGROUND: Alcoholic Beverage Code, ch. 74 governs the licensing of brewpubs, defined as locations where malt liquor, ale, and beer may be manufactured and sold or offered without charge on-premises, as well as food.

Alcoholic Beverage Code, ch. 20 allows a general class B wholesaler's permit holder to sell malt and vinous liquors to retailers and authorized wholesalers, qualified persons outside the state, and holders of private club registration permits.

Alcoholic Beverage Code, ch. 64 allows a general distributor's license holder to distribute or sell beer in the unbroken original packages to:

- general, branch, or local distributors;
- distributor permitees,
- private club registration permitees,
- authorized outlets on military establishments; or
- qualified persons outside the state.

Alcoholic Beverage Code, sec. 102.51 allows a distributor to have a written agreement with a beer manufacturer specifying where each brand of the manufacturer's beer may be sold. Sec. 102.81 applies such territorial restriction agreements to ale and malt liquor.

A U.S. Supreme Court Ruling, *Granholm v. Heald, 544 US 460 (2005)*, holds that the Interstate Commerce Clause prohibits state-level alcoholic beverage licensing laws from discriminating against out-of-state alcoholic beverage producers. The decision still allows a state to maintain a three-tier system of alcohol distribution, which separates the production, distribution, and manufacturing aspects of the alcoholic beverage industry.

DIGEST:

SB 515 would raise the total malt liquor, ale, or beer production limit for a brewpub license holder from 5,000 barrels to 10,000 barrels annually, and no longer would require those brewpubs to be established, operated, or maintained by a Texas license holder.

The bill would allow a brewpub license holder to sell malt and vinous liquors to a holder of a class B wholesaler's permit and beer to general distributor's license holders.

SB 515 also would allow brewpub license holders to make sales to the same retailers or qualified persons to which a general class B permit holder or a general distributor's license holder may sell. Brewpubs would be subject to the same authority and requirements as holders of a general class B wholesaler's permit or general distributor's license.

Each licensed brewpub could sell no more than 1,000 barrels annually, and all brewpubs operated by the same license holder could not exceed 2,500 barrels annually.

Brewpubs also would be able to sell to distributor's license holders and class B wholesaler's permit holders. Brewpub license holders would be subject to Alcoholic Beverage Code sections 102.51 and 102.81, governing territorial restriction agreements.

By the 15th day of each month, a brewpub license holder would be required to file a report with the Texas Alcoholic Beverage Commission (TABC) containing information on sales made to retailers during the preceding calendar month. TABC would adopt rules on the content and submission of these reports and could model these requirements on the information reported monthly to the comptroller by brewers, manufacturers, wholesalers, and distributors.

SB 515 would add brewpubs to the definition of "manufacturer" in other chapters of the Alcoholic Beverage Code.

The bill would repeal Alcoholic Beverage Code, sec. 74.01(f), which currently prohibits brewpubs from selling alcoholic beverages for resale.

SB 515 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, but only if SB 516, SB 517, SB 518, and SB 639 were enacted by the 83rd Legislature. If any of these bills were not enacted, SB 515 would have no effect.

SUPPORTERS SAY:

SB 515 would create an avenue for the growth of brewpubs in Texas. While brewpubs may currently sell their product to consumers on-premises, they may not sell to distributors, wholesalers, or retailers, which prevents brewpubs from distributing their products more widely. The bill would eliminate barriers to brewpub growth in two key ways — first, by raising the cap of annual production for a brewpub license holder to 10,000 barrels from 5,000; and second, by allowing brewpubs to sell their products to distributors, wholesalers, and retailers.

Encouraging brewpub growth would create new jobs and expand the variety and quality of beer, malt liquor, and ale available to Texas consumers. The bill also would level the playing field in the market. While Texans currently may purchase beers produced by out-of-state brewpubs with ease in the nearest grocery store, they must travel to the domestic brewpub itself if they wish to buy Texas-made beer for personal consumption. By placing Texas brewpubs on equal footing with out-of-state competitors, SB 515 would help domestic brewpubs build consumer loyalty to their products across the state, not just in the immediate area.

The bill recognizes the importance of the three-tier system and would preserve it. SB 515 would honor *Granholm v. Heald*, which affirms the state's right to maintain a three-tier system, and the bill would not dismantle the current system of distribution for alcoholic beverages and the accompanying regulatory structures. It would lift the requirements of the three-tier system only for a very small portion of the overall alcoholic beverage market, which would further the state's interest in providing avenues for economic development by fostering room for brewpubs to grow, a principle which is also in harmony with the Supreme Court ruling.

Tying SB 515 to the enactment of four additional craft-beer bills would ensure that the entire coalition of stakeholders remained engaged and supportive of the entire bill package.

OPPONENTS SAY:

By expanding the allowances made to brewpubs, the bill would erode the state's three-tier system regulating alcoholic beverages. The three-tier system formally separates the producers of alcoholic beverages, the intermediate distributors and wholesalers who resell the alcoholic beverages, and the retailers who deliver the alcoholic beverage to the ultimate consumer. Maintaining this system is important for regulatory oversight of the alcoholic beverage industry, and allows the state to collect taxes and exert control over a consumer product with important social consequences.

Brewpubs undermine the system by both manufacturing and retailing their own products. Under SB 515, brewpubs would undermine the three-tier system even further by expanding into self-distribution. Not only that, the bill would pave the way for more brewpubs to cross the three tiers by raising the cap of barrels produced from 5,000 to 10,000.

NOTES:

SB 515 would not take effect unless the Legislature also enacted the following bills, which also are set on today's General State Calendar for second-reading consideration:

- SB 516 by Eltife, et al., which would establish a brewer's self-distribution permit;

- SB 517 by Eltife, et al., which would establish a manufacturer's self-distribution permit;
- SB 518 by Eltife, et al., which would allow brewers and manufacturers to sell directly to consumers; and
- SB 639 by Carona, et al., which would prohibit beer manufacturers from requiring reach-back pricing and territorial agreements in agreements with distributors.

The House companion bill, HB 1763 by Smith, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.

HOUSE
RESEARCH
ORGANIZATION bill analysis 5/17/2013

SB 516
Eltife, et al.
(Smith, et al.)

SUBJECT: Establishing a brewer’s self-distribution permit

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles

0 nays

2 absent — Price, S. Thompson

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

WITNESSES: *(On House companion bill, HB 1764)*
For — Scott Metzger and Brock Wagner, Texas Craft Brewers Guild; Leslie Sprague, Open the Taps; (*Registered, but did not testify:* Doug Davis, Tom Spilman, and Keith Strama, Wholesale Beer Distributors of Texas; Adam Debower, Austin Beerworks; Rick Donley and JP Urrabazo, The Beer Alliance of Texas; Jim Dow, Vickie Jones, Davis Tucker, and Charles Vallhonrat, Texas Craft Brewers Guild; Rick Engel; Courtney Forsell; Jim Grace, Anheuser-Busch; Michael Graham; Alan Gray, Marc Hoskins, and Ralph Townes, Licensed Beverage Distributors; Mike Hamilton, Beer Alliance; Rhett Keisler and Grant Wood, Revolver Brewing; Alfred Nemecek, Black Star Coop Brewpub; Walt Powell, Flix Brewhouse; Tim Schauer, Open the Taps)

Against — None

On — (*Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)

BACKGROUND: Alcoholic Beverage Code, ch. 12 allows a holder of a brewer’s permit to:

- manufacture ale and malt liquor;
- import ale and malt liquor from a nonresident brewer’s permitee;
- sell ale and malt liquor to wholesale permit holders;
- dispense ale and malt liquor for on-premises consumption; and
- conduct on-premises samplings of ale or malt liquor.

Under Alcoholic Beverage Code, sec. 12.05, a brewer's permit holder whose production of ale, along with other on-site production of beer, does not exceed 75,000 barrels annually may sell ale to the same entities as a class B wholesaler's permit holder, and has the same authority and is subject to the same requirements as a class B permit holder with regard to such a sale.

Alcoholic Beverage Code, ch. 13 requires an out-of-state brewer to obtain a nonresident brewer's permit before that brewer can sell ale or malt liquor in Texas.

Alcoholic Beverage Code, ch. 20 allows a general class B wholesaler's permit holder to sell malt and vinous liquors to retailers and authorized wholesalers, qualified persons outside the state, and holders of private club registration permits.

A U.S. Supreme Court Ruling, *Granholm v. Heald, 544 US 460 (2005),* holds that the Interstate Commerce Clause prohibits state-level alcoholic beverage licensing laws from discriminating against out-of-state alcoholic beverage producers. The decision still allows a state to maintain a three-tier system of alcohol distribution, which separates the production, distribution, and manufacturing aspects of the alcoholic beverage industry.

DIGEST:

SB 516 would establish a brewer's self-distribution permit and allow the permit to be issued only to brewer's permit holders and nonresident brewer's permit holders. A brewer's self-distribution permit would enable a brewer whose annual production of ale — together with other on-site production of beer under a different license — did not exceed 125,000 barrels to sell to the same entities as could a general class B wholesaler's permit holder.

Such a brewer would have the same authority and be subject to the same requirements as a general class B wholesaler's permit holder. The combined sale of ale and beer produced on-site under a different license for self-distribution could not exceed 40,000 barrels annually for a holder of a brewer's self-distribution permit. This permit would only cover ale sold from a brewery in this state. The annual fee for a brewer's self-distribution permit would be $250.

By the 15th day of each month, a brewer's self-distribution permit holder would file a report to the Texas Alcoholic Beverage Commission (TABC) with information on sales made during the preceding calendar month. TABC would adopt rules on the content and submission of these reports and could model these requirements on the information reported monthly to the comptroller by brewers, manufacturers, wholesalers, and distributors.

The bill would apply Tax Code, subch. I-1, which details how brewers, manufacturers, wholesalers, and distributors should report sales information to the comptroller, to holders of a brewer's self-distribution permit.

The bill would repeal Alcoholic Beverage Code, sec. 12.05, which currently allows brewer's permit holders to sell to the same people as can a class B wholesaler's permit holder, if the brewer does not sell more than 75,000 barrels of ale annually.

SB 516 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, but only if SB 515, SB 517, SB 518, and SB 639 were also enacted by the 83rd Legislature. If any of these bills were not enacted, SB 516 would have no effect.

SUPPORTERS SAY:

SB 516 would develop small breweries in the state of Texas, help them add more employees, and increase the volume they could sell directly. The annual production cap for self-distribution would increase from 75,000 barrels of combined ale and beer for a brewer to 125,000, which would allow growing breweries to continue to sell to retailers, authorized wholesalers, qualified out-of-state entities, and private club permitees as their production volumes increased. The bill would give breweries some flexibility and a wider potential client base for their products for a longer time as they transitioned into maturity in a very competitive market.

The bill would help bring the state in compliance with *Granholm v. Heald*, which holds that states may not discriminate against out-of-state producers of alcoholic beverages or favor in-state producers of alcoholic beverages under the Interstate Commerce Clause. In this spirit, both resident brewer's permit holders and nonresident brewer's permit holders could apply for a brewer's self-distribution permit. Also, the bill would repeal Alcoholic Beverage Code sec. 12.05, which currently allows only those brewer's permit holders who manufacture a total of 75,000 barrels of ale and beer in the state of Texas to self-distribute. These changes would help the state avoid lawsuits challenging the constitutionality of its alcohol regulations.

The bill would not dismantle the three-tier structure. The Legislature has already authorized limited exceptions to this system, allowing breweries selling fewer than 75,000 barrels to self-distribute and wineries to manufacture, distribute, and sell their products. These limited exceptions are justified to promote the growth of small companies contributing to the vitality and variety of the market. The breweries would only be able to distribute 40,000 barrels annually, and this self-distribution permit would be cut off once the breweries reached full maturity and began producing more than 125,000 barrels.

The bill would not lower the amount small breweries may self-distribute today because none of these breweries currently produces — let alone distributes — 40,000 barrels of ale or malt liquor. Instead, the bill would ensure that breweries had enough room to grow once they began producing more than 75,000 barrels annually, which is the current limitation for self-distributing breweries.

The bill would include complete reporting requirements for the brewers who self-distribute. This is important, because tax collection is normally conducted at the distributor or wholesaler tier of the three-tier system, a step that would be bypassed under SB 516.

Tying SB 516 to the enactment of four additional craft-beer bills would ensure that the entire coalition of stakeholders remained engaged and supportive of the entire bill package.

OPPONENTS SAY:

By expanding the production cap for these small brewers to qualify to self-distribute, the bill would contribute to the erosion of the three-tier system. This system formally separates producers, distributors and wholesalers, and retailers of alcoholic beverages. Maintaining this system is important for regulatory oversight of the alcoholic beverage industry, and allows the state to collect taxes and exert control over a consumer product with important social consequences. This bill would expand the small brewers' ability to straddle two tiers of the three-tier system, both manufacturing and distributing their products.

OTHER OPPONENTS

The bill would increase the fees paid by brewers to the state by adding a new $250 permit that self-distributing brewers would need to obtain.

SAY:

In addition, the bill could have the effect of reducing the amount breweries could self-distribute. Current law enables brewers whose ale and beer production is no more than 75,000 barrels combined to distribute the whole of their production, while the bill would cap the amount breweries could sell under this self-distribution permit at 40,000 barrels annually.

NOTES:

SB 516 would not take effect unless the Legislature also enacted the following bills, which also are set on today's General State Calendar for second-reading consideration:

- SB 515 by Eltife, et al., which would allow brewpubs to sell to retailers, wholesalers, distributors, and any qualified person outside of Texas;
- SB 517 by Eltife, et al., which would establish a manufacturer's self-distribution permit;
- SB 518 by Eltife, et al., which would allow brewers and manufacturers to sell directly to consumers; and
- SB 639 by Carona, et al., which would prohibit beer manufacturers from requiring reach-back pricing and territorial agreements in contracts with distributors.

According to the fiscal note, SB 516 would contribute $40,500 to the general revenue fund every other year, due to the new $250 brewer's self-distribution permit fee, which brewers would obtain and renew on a two-year cycle.

The House companion bill, HB 1764 by Smith, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.

SUBJECT: Establishing a manufacturer's self-distribution permit

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles

0 nays

2 absent — Price, S. Thompson

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

WITNESSES: *(On House companion bill, HB 1765:)*
For — Scott Metzger and Brock Wagner, Texas Craft Brewers Guild; Leslie Sprague, Open the Taps; (*Registered, but did not testify:* Doug Davis, Tom Spilman, and Keith Strama, Wholesale Beer Distributors of Texas; Adam Debower, Austin Beerworks; Rick Donley and JP Urrabazo, The Beer Alliance of Texas; Jim Dow, Vickie Jones, Davis Tucker, and Charles Vallhonrat, Texas Craft Brewers Guild; Rick Engel; Courtney Forsell; Jim Grace, Anheuser-Busch; Michael Graham; Alan Gray, Marc Hoskins, and Ralph Townes, Licensed Beverage Distributors; Mike Hamilton, Beer Alliance; Rhett Keisler and Grant Wood, Revolver Brewing; Alfred Nemecek, Black Star Coop Brewpub; Walt Powell, Flix Brewhouse; Tim Schauer, Open the Taps)

Against — None

On — (*Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)

BACKGROUND: Alcoholic Beverage Code ch. 62 allows a holder of a manufacturer's license to:

- manufacture or brew beer;
- distribute or sell beer to holders of distributor's licenses or qualified persons outside the state;
- dispense beer for on-premises consumption;

- bottle and can beer brewed in Texas or out of state for resale in Texas; and
- conduct beer samplings at a retailer's premises.

Alcoholic Beverage Code, sec. 62.12 allows manufacturers whose annual production of beer in Texas does not exceed 75,000 barrels to sell to the same entities as a general distributor's license holder. This manufacturer has the same authority and is subject to the same requirements as a general distributor's license holder with regard to such a sale.

Alcoholic Beverage Code, ch. 63 requires out-of-state manufacturers to hold a nonresident manufacturer's license to transport beer into the state only to holders of importer's licenses.

Alcoholic Beverage Code, ch. 64 allows a general distributor's license holder to distribute or sell beer in the unbroken original packages to:

- general, branch, or local distributors;
- distributor permitees,
- private club registration permitees,
- authorized outlets on military establishments; or
- qualified persons outside the state.

A U.S. Supreme Court Ruling, *Granholm v. Heald, 544 U.S. 460 (2005)*, holds that the Interstate Commerce Clause prohibits state-level alcoholic beverage licensing laws from discriminating against out-of-state alcoholic beverage producers. The decision still allows a state to maintain a three-tier system of alcohol distribution, which separates the production, distribution, and manufacturing aspects of the alcoholic beverage industry.

DIGEST: SB 517 would establish a manufacturer's self-distribution license and allow the license to be issued only to manufacturer's license holders and nonresident manufacturer's license holders.

A manufacturer's self-distribution permit would enable a brewer whose annual production of beer — together with other on-site production of ale under a different permit — did not exceed 125,000 barrels to sell to the same entities as could a general distributor's license holder. The manufacturer would have the same authority and be subject to the same requirements as a general distributor's license holder. The combined sale of beer and ale produced on-site under a different permit for self-distribution could not exceed 40,000 barrels annually for a holder of a brewer's self-distribution permit. This permit would only cover beer sold from a manufacturing facility in this state.

The annual fee for a manufacturer's self-distribution license would be $250.

By the 15th day of each month, a manufacturer's self-distribution permit holder would file a report to the Texas Alcoholic Beverage Commission (TABC) with information on sales made during the preceding calendar month. TABC would adopt rules on the content and submission of these reports and could model these requirements on the information reported monthly to the comptroller by brewers, manufacturers, wholesalers, and distributors.

The bill would apply Tax Code subch. I-1, which details how brewers, manufacturers, wholesalers, and distributors report sales information to the comptroller, to holders of manufacturer's self-distribution permits.

The bill would repeal Alcoholic Beverage Code, sec. 62.12, which currently permits a manufacturer's license holder to sell to the same entities as can a general distributor's license holder, if the manufacturer does not produce more than 75,000 barrels of beer annually.

SB 517 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, but only if SB 515, SB 516, SB 518, and SB 639 were also enacted by the 83rd Legislature. If any of these bills were not enacted, SB 517 would have no effect.

SUPPORTERS SAY:

This bill would develop small manufacturers in the state of Texas, help them add more employees, and increase the volume they could sell directly. The annual production cap for self-distribution would increase from 75,000 barrels of beer for a manufacturer to 125,000, allowing growing manufacturers to continue to sell to other distributors, permitees or licensees authorized to sell to ultimate consumers, private club permitees, military outlets, and qualified out-of-state persons as their production volume increased. This bill would give manufacturers some flexibility and a wider potential client base for their products for a longer time as they transitioned into maturity in a very competitive market.

SB 517 would help bring the state into compliance with *Granholm v. Heald*, which holds that states may not discriminate against out-of-state producers of alcoholic beverages or favor in-state producers of alcoholic beverages under the Interstate Commerce Clause. Both resident manufacturer's license holders and nonresident manufacturer's license holders would be able to apply for a manufacturer's self-distribution permit. Also, the bill would repeal Alcoholic Beverage Code sec. 62.12, which allows only those manufacturer's licensees who manufacture a total of 75,000 barrels of beer in Texas to self-distribute. These changes would help the state avoid lawsuits challenging the constitutionality of its alcohol regulations.

The bill would not dismantle the three-tier structure. The Legislature has already authorized limited exceptions to the three-tier system, letting manufacturers selling fewer than 75,000 barrels to self-distribute and wineries to manufacture, distribute, and sell their products. These limited exceptions are justified to promote the growth of these small companies, which contribute to the vitality and variety of the market. The manufacturers would only be able to distribute 40,000 barrels annually, and this self-distribution permit would be cut off once the manufacturers reached full maturity and began producing more than 125,000 barrels.

SB 517 would not lower the amount manufacturers may self-distribute today because none of these manufacturers currently produces — let alone distributes — 40,000 barrels of beer. Instead, the bill would ensure that manufacturers had enough room to grow once they began producing more than 75,000 barrels annually, which is the current limitation for self-distributing manufacturers.

The bill would include complete reporting requirements for the manufacturers who self-distribute. This is important because tax collection is normally conducted at the distributor or wholesaler tier of the three-tier system, a step that would be bypassed under SB 517.

Tying SB 517 to the enactment of four additional craft-beer bills would ensure that the entire coalition of stakeholders remained engaged and supportive of the entire bill package.

OPPONENTS SAY:

By expanding the production cap for these manufacturers to qualify to self-distribute, the bill would contribute to the erosion of the three-tier system. This system formally separates producers, distributors and wholesalers, and retailers of alcoholic beverages. Maintaining this system is important for regulatory oversight of the alcoholic beverage industry, and allows the state to collect taxes and exert control over a consumer product with important social consequences. The bill would expand the manufacturers' ability to straddle two tiers of the three-tier system by both manufacturing and distributing their products.

OTHER OPPONENTS SAY:

The bill would increase the fees paid by manufacturers to the state by adding a new $250 permit that self-distributing manufacturers would need to obtain.

In addition, the bill could have the effect of reducing the amount manufacturers could self-distribute. Current law enables manufacturers whose beer production is no more than 75,000 barrels combined to distribute the whole of their production, while the bill would cap the amount manufacturers could sell under this self-distribution permit at 40,000 barrels annually.

NOTES:

SB 517 would not take effect unless the Legislature also enacted the following bills, which also are set on today's General State Calendar for second-reading consideration:

- SB 515 by Eltife, et al., which would allow brewpubs to sell to retailers, wholesalers, distributors, and any qualified person outside of Texas;
- SB 516 by Eltife, et al., which would establish a brewer's self-distribution permit;
- SB 518 by Eltife, et al., which would allow brewers and manufacturers to sell directly to consumers; and
- SB 639 by Carona, et al., which would prohibit beer manufacturers from requiring reach-back pricing and territorial agreements in contracts with distributors.

According to the fiscal note, SB 517 would contribute $17,250 to the General Revenue Fund every other year, due to the new $250 manufacturer's self-distribution permit fee, which manufacturers would obtain and renew on a two-year cycle.

The House companion bill, HB 1765 by Smith, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.

SUBJECT: Allowing brewers and manufacturers to sell for on-premises consumption

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez

0 nays

3 absent — Miles, Price, S. Thompson

SENATE VOTE: On final passage, March 25 — 31-0

WITNESSES: *(On House companion bill, HB 1766:)*
For — Scott Metzger and Brock Wagner, Texas Craft Brewers Guild; Leslie Sprague, Open the Taps; (*Registered, but did not testify:* Doug Davis, Tom Spilman, and Keith Strama, Wholesale Beer Distributors of Texas; Adam Debower, Austin Beerworks; Rick Donley and JP Urrabazo, The Beer Alliance of Texas; Jim Dow, Vickie Jones, Davis Tucker, and Charles Vallhonrat, Texas Craft Brewers Guild; Rick Engel; Courtney Forsell; Jim Grace, Anheuser-Busch; Michael Graham; Alan Gray, Marc Hoskins, and Ralph Townes, Licensed Beverage Distributors; Mike Hamilton, Beer Alliance; Rhett Keisler and Grant Wood, Revolver Brewing; Dustin Matocha, Texans for Fiscal Responsibility; Alfred Nemecek, Black Star Coop Brewpub; Walt Powell, Flix Brewhouse; Tim Schauer, Open the Taps)

Against — None

On — (*Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)

BACKGROUND: Alcoholic Beverage Code, ch. 12 allows a holder of a brewer’s permit to:

- manufacture ale and malt liquor;
- import ale and malt liquor from a nonresident brewer’s permitee;
- sell ale and malt liquor to wholesale permit holders;
- dispense ale and malt liquor for on-premises consumption; and

- conduct on-premises samplings of ale or malt liquor.

Alcoholic Beverage Code, ch. 62 allows a holder of a manufacturer's license to:

- manufacture or brew beer;
- distribute or sell beer to holders of distributor's licenses or qualified persons outside the state;
- dispense beer for on-premises consumption;
- bottle and can beer brewed in Texas or out-of-state for resale in Texas; and
- conduct beer samplings at a retailer's premises.

A U.S. Supreme Court Ruling, *Granholm v. Heald, 544 U.S. 460 (2005)*, holds that the Interstate Commerce Clause prohibits state-level alcoholic beverage licensing laws from discriminating against out-of-state alcoholic beverage producers. The decision still allows a state to maintain a three-tier system of alcohol distribution, which separates the production, distribution, and manufacturing aspects of the alcoholic beverage industry.

DIGEST:

SB 518 would allow holders of a brewer's permit and/or a manufacturer's license, whose combined annual production of ale and beer did not exceed 225,0000 barrels, to sell ale or beer to a consumer for the purposes of responsible consumption on-premises. The combined amount of ale and beer sold directly to consumers could not exceed 5,000 barrels annually.

Beer, ale, or malt liquor could be consumed on the premises of such a permit or license holder from 8 a.m. to midnight on any day but Sunday, when such beverages could be consumed from 10 a.m. to midnight.

SB 518 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, but only if SB 515, SB 516, SB 517, and SB 639 were enacted by the 83rd Legislature. If any of these bills were not enacted, SB 518 would have no effect.

SUPPORTERS SAY:

SB 518 would enable small breweries and manufacturers to sell directly to consumers for on-premises consumption, providing these companies with an opportunity to enhance the experience of their customers. Far from encouraging irresponsible consumption, this would cater to those discerning consumers interested in sampling a variety of quality Texas beer, ale, or malt liquor. Current law allows brewers to dispense ale and malt liquor for on-premises consumption, but not to charge for it. If brewers or manufacturers decide to offer their product to customers who visit the brewery for a tour, they must give it away. Charging for the ale or malt liquor consumed on their premises could allow breweries to invest in more staff or expanded tour opportunities for visitors.

The bill would limit the ability to sell directly to consumers to brewers and manufacturers who produce fewer than 225,000 barrels a year, and would allow the sale of only 5,000 barrels directly to consumers. This would keep direct sale to consumers from becoming the primary focus of such businesses, which would allay concerns that these businesses might develop into tied houses.

The Legislature already has authorized limited exceptions to the three-tier system, giving Texas wineries a dispensation to manufacture and sell wine to ultimate consumers on the same premises. SB 518 would allow manufacturers and brewers to offer the same experience to malt beverage connoisseurs that wine enthusiasts currently enjoy. The bill also acknowledges the importance of the three-tier system by referring to the Supreme Court decision *Granholm v. Heald* in its legislative intent.

The hours during which brewers and manufacturers could sell directly to consumers would be clearly established in the bill, ensuring that these retailers could not stay open later than others.

Tying SB 518 to the enactment of four additional craft-beer bills would ensure that the entire coalition of stakeholders remained engaged and supportive of the entire bill package.

OPPONENTS SAY:

Brewers already have been granted the ability to dispense ale and malt liquor for on-premises consumption. This should be enough to satisfy those consumers who visit the breweries and manufacturers and want to sample the products without crossing the strict separation between manufacturers and retailers of alcoholic beverages.

The bill would weaken the three-tier system of alcohol regulation in which manufacturers, distributors and wholesalers, and retailers are formally separated. The state should work to maintain the three tiers because this system is important for regulatory oversight of the alcoholic beverage industry, allowing the state to collect taxes and exert control over a consumer product with important social consequences. The bill would lead to the rise of tied houses in which manufacturers sell products directly to consumers, which are currently prohibited by law because they lead to excessive stimulation of demand for alcohol.

NOTES:

SB 518 would not take effect unless the Legislature also enacted the following bills, which also are set on today's General State Calendar for second-reading consideration:

- SB 515 by Eltife, et al., which would allow brewpubs to sell to retailers, wholesalers, distributors, and any qualified person outside of Texas;
- SB 516 by Eltife, et al., which would establish a brewer's self-distribution permit;
- SB 517 by Eltife, et al., which would establish a manufacturer's self-distribution permit; and
- SB 639 by Carona, et al., which would prohibit beer manufacturers from requiring reach-back pricing and territorial agreements in contracts with distributors.

The House companion bill, HB 1766 by Smith, et al., was left pending in the Licensing and Administrative Procedures Committee on March 19.

SUBJECT: Changes to the Major Events Trust Fund and the Events Trust Fund

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 6 ayes — J. Davis, Bell, Isaac, Murphy, E. Rodriguez, Workman

0 nays

3 absent — Vo, Y. Davis, Perez

SENATE VOTE: On final passage, April 25 — 28-0

WITNESSES: (*On House companion bill, HB 3182*)
For — Brandon Aghamalian, Cities of Fort Worth, Irving, Galveston, Corpus Christi and Frisco EDS; (*Registered, but did not testify*: TJ Patterson, City of Fort Worth)

Against — (*Registered, but did not testify*; Jim Short, National Cutting Horse Association; Frank Sturzl, City of Arlington)

On — Susan Blackwood, San Antonio Sports; Phillip Jones, Dallas Convention and Visitors Bureau; Matthew Payne, Austin Sports Commission; John Rolfe, Greater Houston Convention and Visitors Bureau; Michael Sawaya, City of San Antonio; Steve Sexton, Circuit of The Americas; Chris Shields, San Antonio Sports; (*Registered, but did not testify*: Robert Wood, Comptroller of Public Accounts)

BACKGROUND: Vernon's Texas Civil Statutes (VTCS), art. 5190.14, sec. 5A enables the comptroller to make disbursements from the Major Events Trust Fund prior to a major event in order to attract and secure such an event. The disbursement must equal the projected amount of local tax revenues expected to be generated by the event. Money appropriated by the state may be used for this purpose.

Events eligible to be funded through the Major Events Trust Fund are specified in sec. 5A(a)(4). These include the Super Bowl, the National Basketball Association All-Star Game, a National Collegiate Athletic

Association Bowl Championship Series game, and other events. To be eligible for funding, a specified event must meet the following requirements:

- a site selection organization selects a site located in Texas for the event after considering, through a competitive process, at least one site not located in Texas;
- a site selection organization selects a site located in Texas as the sole site for the event; and
- the event is not held more than once a year.

VTCS, art. 5190.14, sec. 5C governs events eligible for funding from a separate fund called the Events Trust Fund. Under this section, events must have undergone a multi-state site selection process in order to be eligible for funding.

DIGEST:

CSSB 1678 would make changes to the Major Events Trust Fund and the Events Trust Fund related to an event's eligibility for funding, as well as the requirements for the comptroller in administering each program.

Major Events Trust Fund. The bill would amend sec. 5A to require that an eligible event to be funded through the Major Events Trust Fund meet at least one of the following requirements:

- a site-selection organization selected a site located in Texas for the event to be held one time — or one time each year for an event scheduled under contract to be held each year for a period of years — after considering, through a competitive process, at least one site not located in Texas;
- a site-selection organization selected a site located in Texas as the sole site for the event or the sole site for the event in a region composed of Texas and one or more adjoining states;
- the event was not held more than once a year; or
- the event was projected to result in an incremental increase in state and local tax revenues of at least $1 million.

The bill would repeal four subsections of sec. 5A that currently allow the comptroller to fund an event in advance through appropriations made to the Major Events Trust Fund for that purpose.

Events Trust Fund. The bill would prohibit disbursements from the

Events Trust Fund to be made toward constructing certain events facilities or performing routine maintenance on a facility.

The bill would limit to no more than 10 during any 12-month period the number of requests an endorsing municipality or county could submit for funding through the Events Trust Fund for an event estimated to generate less than $200,000 in incremental tax revenue.

Additionally, the comptroller could adopt a model events support contract for use in administering the Events Trust Fund.

Clawback provisions. After the conclusion of an event funded by either trust fund, the comptroller would have to compare information on the actual attendance figures with the estimated attendance numbers projected for the event. The number of people — including out-of-state visitors — who were expected to attend the event would be compared to the number who actually attended. If the actual attendance numbers were significantly lower than the projection, the comptroller could make proportional reductions in the disbursement amount to the entity endorsing the event. The comptroller by rule would define what was considered to be "significantly lower" attendance.

Studies. Not later than 10 months after an event was funded by the Major Events Trust Fund, the comptroller would conduct a study on the economic impact of the event in its market area. The study would be posted on the comptroller's website, along with the following information:

- the amount of incremental increase in tax receipts resulting from the event, including the information the comptroller relied upon to make this determination;
- documentation from the organization that performed the site selection for the event;
- information the comptroller relied upon in projecting out-of-state attendance to the event; and
- documentation submitted by the endorsing entity during the request for funding.

The comptroller also would be required to conduct a study for the Events Trust Fund examining the economic impact of events that qualify for funding and whether such events likely would be held in Texas without funding. The study would be presented to the lieutenant governor, the speaker of the House, and key legislators by January 1, 2015.

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, and would only apply to requests for funding submitted on or after that date.

SUPPORTERS SAY:

SB 1678 would help ensure that the Major Events Trust Fund was used to attract events that were competitively bid with other states and that would not have occurred here without the incentives provided by the state. To help guarantee that funds for an event were used for purposes consistent with the law, the bill would require more oversight from the comptroller in the operations of both funds.

New reporting requirements would make public key information about events that received funding, including the amount of any incremental increase in tax receipts resulting from an event. In addition, the bill would include a clawback provision through which the comptroller could reduce the amount disbursed to the endorsing entity if the actual attendance numbers turned out to be significantly lower than projected for an event receiving money from either fund.

The state auditor is already able to audit this program. Conceptually, when an event is approved, a subaccount is created for the revenues from that event. If the Senate version's audit requirement were implemented, the payment for the audit could not be distributed across all of the accounts. Additionally, the requirement in the Senate version to examine the efficiency and effectiveness of funding events is vague.

OPPONENTS SAY:

The Major Events Trust Fund program has been a success and does not require revision. The original conception of the program was to reallocate tax revenues from the state to local taxing jurisdictions for the purposes of supporting major events. Before this program was authorized, local communities had to spend a lot of money to bring events to their communities through the bid process, investments in facilities, and actually holding the events. However, the primary benefactor of those events was the state, which received revenue from the sales tax and other sources. The Major Events Trust Fund program has helped restore some of the benefit to the local communities.

OTHER

The Senate-engrossed version of SB 1678 would have done a better job of

OPPONENTS SAY:

ensuring that the Major Events Trust Fund was used only to attract profitable events that would not have occurred in Texas without incentives provided by the state. Under CSSB 1678, an eligible event would have to meet only one of four requirements under sec. 5A, including merely being held not more than once per year. The Senate-engrossed version, by contrast, would have required that an event meet all four requirements to be eligible for funding, including a projection that the event would result in an incremental increase in state and local tax revenues of at least $1 million.

The bill should require an immediate audit of the Major Events Trust Fund. All of the expenditures, as well as the procedures and processes associated with this program, should be examined by the state auditor. This would bring needed transparency to the program.

SUBJECT: Funding and operating TxDOT travel and information centers

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Pickett, Riddle

0 nays — None

1 absent — Y. Davis

SENATE VOTE: On final passage, April 18 — 31-0 on the Local and Uncontested Calendar

WITNESSES: (*On companion bill, HB 3423*)
For — None

Against — None

On — (*Registered, but did not testify*: John Barton, TxDOT; Meredith Melecki, Legislative Budget Board; Margo Richards, TxDOT)

BACKGROUND: Local Government Code, ch. 391 governs regional planning commissions, whose purpose is to encourage and permit local governmental units to join and cooperate to improve the health, safety, and general welfare of their residents and plan for future development of communities and regions.

Transportation Code, sec. 204.009 allows the Texas Department of Transportation to sell promotional items, such as calendars, books, prints, caps, light clothing, or other items approved by the commission that advertise the resources of the state. Proceeds from the sale of the items are deposited to the credit of the state highway fund for the department's use in its travel and information operations.

DIGEST: SB 1017 would allow the Texas Department of Transportation (TxDOT) to contract with a local government or regional planning commission to operate a travel information center in the local government's boundaries. TxDOT could issue a request for proposals to private or nonprofit entities for the operation of a travel information center.

TxDOT could sell commercial advertising space at a travel information center if the advertising was not visible from the main highway. It would sell the advertising at a level about sufficient to cover the cost of its travel and information operations, so long as those activities did not decrease the amount of available federal highway funding.

SB 1017 would allow TxDOT to enter into an agreement for the acknowledgment of donations so long as the acknowledgment did not contain descriptions of the donor's products or other company information. Any proceeds from advertising or acknowledgments would be deposited into an account dedicated to the operation of TxDOT's travel and information operations.

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.

NOTES: The House companion bill, HB 3423 was left pending in the Transportation Committee on April 16.

SUBJECT: Transfer of alcoholic beverages for manufacturing purposes

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

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

0 nays

SENATE VOTE: On final passage, March 13 — 31-0, on the Local and Uncontested Calendar

WITNESSES: (*On companion bill, HB 2041:*)
For —Joshua Holland (Texas Distilled Spirits Association; (*Registered, but did not testify:* Kathy Barber, NFIB/Texas; Alan Gray, Licensed Beverage Distributors; Austin Keith; Lance Lively, Texas Package Stores Association; Scott Metzger, Texas Craft Brewers Guild; Mark Shilling, Revolution Spirits Inc.; Ralph Townes, Licensed Beverage Distributors)

Against — None

On — (*Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverage Commission)

DIGEST: SB 652 would allow the holder of a brewer's permit, distiller's and rectifier's permit, winery permit, wine bottler's permit, or manufacturer's license to transfer in bulk an alcoholic beverage produced by the permittee or licensee to any other such permittee or licensee. The transported alcohol would have to be used by the recipient only for manufacturing purposes and the transfer would have to be permitted by federal law.

The bill also would allow distillers to purchase distilled spirits from other distillers for manufacturing or rectification purposes only.

The bill would take effect September 1, 2013.

SUPPORTERS SB 652 specifically would allow manufacturers of wine, beer, and distilled

SAY: spirits to transfer bulk product among each other for manufacturing purposes within the state. Current law is ambiguous on this point, and some Texas distillers have received conflicting information on what products they are allowed to purchase for production and manufacturing purposes. Distillers have asked for clarification in statute because they often use beer to produce distilled spirits and would like clear statutory authorization to buy alcoholic products in bulk.

The bill also would allow distillers to purchase distilled spirits from other in-state distillers for manufacturing purposes. State law already allows them to purchase distilled spirits from out-of-state distillers.

The bill would be limited as a result of federal law, which prohibits breweries and wineries from using other types of alcohol in manufacturing. Federal law does, however, allow distilleries to use malt beverages in production. As a result of these federal restrictions, the bill essentially would legalize only the transfer from breweries to distilleries and distilleries to each other.

The restrictions on distillers that SB 652 would lift are anachronisms from when there were no distilleries in Texas. It has only been during the past few decades that the industry has developed in Texas. SB 652 would allow the industry to continue to grow.

OPPONENTS SAY: No apparent opposition

NOTES: The House companion bill, HB 2041 by Guillen, was reported favorably by the Licensing and Administrative Procedures Committee on March 26.

SUBJECT: Reversing the Foundation School Program payment deferral

COMMITTEE: Appropriations — favorable, without amendment

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

0 nays

3 absent — S. Davis, Dukes, McClendon

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

WITNESSES: No public hearing

BACKGROUND: Education Code, sec. 42.259, establishes the schedule of Foundation School Program (FSP) payments to school districts. Under the schedule, installment payments must be made to certain school districts by the end of the fiscal year, generally August 25.

The 82nd Legislature, in its first called session, enacted SB 1 by Duncan, which had a positive fiscal impact of $7.3 billion in general revenue funds for fiscal 2012-13.

One of the measures SB 1 deployed to increase revenue for the biennium was to amend Education Code, sec. 42.259, to defer FSP payments to certain school districts scheduled for August of fiscal 2013 to no earlier than September 5 of the following fiscal year. The payments deferred were:

- 15 percent of the yearly entitlement for category 2 school districts (those having a wealth-per-student ratio of at least one-half of the statewide average); and
- 20 percent of the yearly entitlement for category 3 school districts (those having a wealth-per-student ratio more than the statewide average).

The Legislative Budget Board estimated, at the time and given funding levels approved in the General Appropriations Act for fiscal 2012-13, the deferrals would result in a one-time savings of $2.3 billion in fiscal 2013.

DIGEST: SB 758 would reverse provisions the Legislature enacted in 2011 that deferred Foundation School Program payments to certain districts to September from August 25. The bill would restore the August 25 deadline in general, but would set the date to make the payments to no later than August 30 for fiscal 2013.

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 on the 91st day after the last day of the legislative session.

NOTES: The Legislative Budget Board estimates that the bill would result in a cost of $1.75 billion to general revenue funds through one additional monthly Foundation School Program payment in fiscal 2013.

SUBJECT: Prohibiting HOAs from restricting drought-resistant landscaping

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 9 ayes — Ritter, Johnson, Ashby, D. Bonnen, Keffer, T. King, Larson, Lucio, D. Miller

0 nays

2 absent — Callegari, Martinez Fischer

SENATE VOTE: On final passage, March 18 — 30-0

WITNESSES: *(On House companion bill, HB 449)*
For — David Foster, Clean Water Action; Myron Hess, National Wildlife Federation; Luke Metzger, Environment Texas; Jennifer Walker, Sierra Club, Lone Star Chapter; Susan Wright, Texas Association of Builders; Susan Wright, Texas Community Association Advocates; (*Registered, but did not testify:* Leonardo Coelho, Travis County; Heather Cooke and John Hrncir, City of Austin; Randy Erben, The Home Depot; Stephanie Gibson, Scotts Miracle Gro Co. and Texas Retailers Association; Karen Guz, San Antonio Water System; Billy Howe, Texas Farm Bureau; Shanna Igo, Texas Municipal League; Chloe Lieberknecht, The Nature Conservancy; Michael Myers, U.S. Green Building Council Texas Chapters; Stewart Snider, League of Women Voters of Texas; Kathy Trizna, Native Plant Society of Texas; David Weinberg, Texas League of Conservation Voters; C. E. Williams, Panhandle Groundwater Conservation District)

Against — (*Registered, but did not testify:* Jim Reaves, Texas Nursery & Landscape Association)

(On House companion substitute bill, CSHB 449:)
For — Myron Hess, National Wildlife Federation; Susan Wright, Texas Association of Builders and Texas Community Association Advocates

DIGEST: SB 198 would prohibit a property owners' association from restricting a property owner from using drought-resistant landscaping or water-conserving natural turf.

This would not prohibit a property owners' association from requiring an owner to submit a detailed description or plan for review and approval to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the subdivision.

A property owners' association could not unreasonably deny or withhold approval of a proposed landscape installation or unreasonably determine that the proposed installation was aesthetically incompatible with other landscaping in the subdivision.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 198 would remove a barrier that prevents some property owners from reducing their water use by protecting a homeowner's right to install a drought-resistant landscape or water-conserving turf. According to the Texas Water Development Board (TWDB), municipal water demand is the fastest-growing sector among all water user categories in the state. Outdoor irrigation is one of the major drivers of municipal demand. Despite some progress, the covenants and restrictions imposed by many property owners' associations or homeowners' associations (HOAs) continue to present a barrier for homeowners who wish to transition to a drought-resistant and less water intensive landscape and lawn.

Under SB 198, HOAs would retain the ability to establish guidelines for revisions to landscapes and require that proposed revisions go before their architecture control committees for approval, as long as these guidelines did not ban or unreasonably restrict drought resistant landscaping.

OPPONENTS SAY:

Although SB 198 would be a step in the right direction regarding the use of drought-resistant or water conserving landscaping, HOAs should not have the ability to reject plans designed by professional landscapers or homeowners. While the bill would provide some safeguards to prevent a property owners' association from unreasonably denying approval of a proposed landscape installation, the association still would make the final determination, allowing subjective opinion to remain a barrier.

HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/17/2013 | SB 1364 Schwertner (Murphy)

SUBJECT: Use federal income taxes in certain electric utility's rate making

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 7 ayes — Cook, Giddings, Farrar, Frullo, Harless, Huberty, Sylvester Turner

2 nays — Geren, Smithee

4 absent — Craddick, Hilderbran, Menéndez, Oliveira

SENATE VOTE: On final passage, April 23 — 24-7 (Davis, Fraser, Garcia, Hegar, Hinojosa, Rodriguez, Watson)

WITNESSES: (*On companion bill, HB 711*)
For — Patrick Cowlishaw, Texas-New Mexico Power Company; John W. Fainter Jr., Association of Electric Companies of Texas, Inc.; John Reed, Association of Electric Companies of Texas, Inc.; Scott Rozzell, CenterPoint Energy; (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition; Robert Gee, Texas-New Mexico Power Co.; Dale Peddy, Entergy; Patrick Reinhart, El Paso Electric Co.; Damon Withrow, Xcel Energy)

Against — Chris Brewster, Oncor Cities Steering Committee; Connie Cannady, Oncor Steering Committee of Cities; Nikolaus Fehrenbach, City of Dallas; Randolph (Randy) Moravec, Texas Coalition for Affordable Power; Phillip Oldham, Texas Association of Manufacturers; Jack Pous, City of Houston; Tom "Smitty" Smith, Public Citizen; (*Registered, but did not testify*: Alfred (Freddie) Herrera, Alliance of Xcel Municipalities, Cities Advocating Reasonable Deregulation; Andrew Ryle, Public Citizen)

On — Darryl Tietjen, Public Utility Commission; (*Registered, but did not testify*: Brian Lloyd, Public Utility Commission)

BACKGROUND: Utilities Code, ch. 36 gives the Public Utility Commission (PUC) the authority to consider electric utility rate cases and defines the elements that an electric utility can seek to recover costs as part of its rates. Cost elements include items such as operating and maintenance costs, depreciation, and taxes, including federal income taxes, among many other elements.

Sec. 36.051 provides that the PUC in establishing an electric utility's rates, shall establish the utility's overall revenue at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.

Sec. 36.060 provides that the PUC compute an electric utility's federal income taxes, for ratemaking purposes, as though a consolidated tax return had been filed and the utility realized its fair share of the saving resulting from that return if the utility is a member of an affiliated group of companies eligible to file a consolidated federal tax return and it is advantageous for the utility to do so.

A consolidated federal tax return is generally defined as a unified tax filing by a corporation that owns 80 percent of the common stock of its affiliate companies.

In 1999, the Texas Legislature passed SB 7 to deregulate and open to competition the state's retail electricity market, effective 2002. This applies only to investor-owned utilities (IOUs) within the ERCOT (Electric Reliability Council of Texas) region. The rates charged by electricity transmission and distribution providers remain regulated throughout Texas, as do those of retail electric utilities operating in Texas outside of ERCOT. Retail electricity operations owned by municipalities and member-owned electric cooperatives are not subject to PUC regulation.

DIGEST:

SB 1364 would amend Utilities Code, sec. 36.060 (Consolidated Income Tax Returns) to provide that if an expense were allowed to be included in utility rates or an investment were included in the electric utility rate base, the related income tax benefit would have to be included in the computation of income tax expense to reduce the rates. If an expense were not allowed to be included in the utility rates or an investment not included in the utility rate base, the related income tax benefit could not be included in the computation of the income tax expense to reduce the rates. The income tax expense would be computed using the statutory income tax rates.

The bill would strike the following language from Utilities Code, sec. 36.060(a): “Unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns, an electric utility’s income taxes shall be computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from that return, if: the utility is a member of an affiliated group eligible to file a consolidated income tax return; and it is advantageous to the utility to do so.”

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Fix the ratemaking system. SB 1364 would fix a simple problem. The PUC’s interpretation of current law allows the agency to set rates for electric transmission and distribution companies and investor-owned retail electric utilities operating in Texas outside of ERCOT partially based on the performance of utilities’ non-Texas businesses. The PUC considers the tax implications of a company’s affiliate corporations and the tax adjustments that corporation may make to minimize taxes. For example, a company filing a consolidated federal tax return can offset the profits from one its affiliates with the losses from another. The adjustment to rates is referred to as the consolidated tax saving adjustment, which results in the comingling of non-utility tax benefits to reduce utility rates.

Separate Texas utilities from other parts of a corporation. SB 1364 would “fence off” the utility’s revenues and expenses from other affiliates to limit the potential tax impacts from businesses that have nothing to do with the provision of electric service in Texas, much less electric rates.

Other states’ regulation. Texas is one of only five states that require a utility company to file for consolidated adjustment. While the law applies to electric utilities, it does not apply to other regulated entities in the state, such as natural gas utilities regulated by the Railroad Commission.

Effects on economic competition. The bill would ensure that true economic costs were reflected in a utility’s rates and end the confusion about what factors are included in Texas’ electric rates. Doing so would send a signal to Wall Street and the investment community that the PUC was not going to try to reach outside of Texas to an affiliated company to try to pull in a tax benefit earned by that affiliated company for the benefit of Texas ratepayers. Texas businesses want a level field and a stable regulatory environment, not subject to overreaching claims of the PUC during its ratemaking processes. SB 1364 would make Texas utilities more attractive to investors by ensuring that a utility could retain the anticipated tax benefits.

Effects on ratepayers. The bill would not result in a rate increase just by being passed. It would only affect utilities that seek new rates. While it could increase rates, the effects would be minimal. For example, if SB 1364 had been in place in 2011 when CenterPoint Energy, an electric transmission and distribution utility serving the Houston metropolitan area, came in for a rate case, it would have increased the average residential electric bill by about 18 cents per month. It would not have affected the customers of Oncor Electric Delivery, a transmission company serving much of North Texas, during its last rate hearing in 2009. That's because the PUC ruled Oncor was not a member of an affiliated group and was ineligible to file a consolidated tax return.

The Legislative Budget Board's fiscal note states that the bill would have "no fiscal implication to units of local government."

Saving ratepayers money by removing consultants, attorneys, and accountants from tax deliberations. The legislation, by clarifying existing statutes, would remove one of the most contentious and complex issues from rate cases. Debating those issues involves attorneys, accountants, and experts witnesses. Under current statute, the cost of fighting over this arcane issue is passed back to ratepayers.

Phantom taxes. The bill would not affect taxes paid to the state or federal government. The bill merely would affect how federal income taxes were treated in ratemaking. There is no such thing as phantom taxes. While a company may not pay a federal tax in a particular year, due to accounting procedures such as accelerated depreciation for large investments that are available to businesses under the federal tax code, taxes are eventually paid. The federal government extends similar tax treatment to individuals, letting them defer taxes through accounts such as individual retirement accounts (IRAs). Electric utilities should not be penalized for using common and legal tax and accounting principles.

OPPONENTS SAY:

Fix the rate-making system. Texas' electric utility rate-setting system is not broken. Consideration of the consolidated tax saving adjustment is extraordinarily complex, and the PUC rate-making system handles the adjustment through testimony presented to a State Office of

Administrative Hearings' (SOAH) administrative law judge who considers the evidence presented by all sides in a ratemaking. The PUC attributes the consolidated affiliated tax savings that can be apportioned to Texas in rate making. The state does not try to claim a corporation's entire tax savings, due to events like an affiliate's underperforming investment offsetting income, for the benefit of Texas ratepayers. The state does try to determine how that underperforming asset affects Texas ratepayers.

Separate Texas utilities from other parts of a corporation. It is impossible to entirely "fence off" a Texas electric utility from the tax consequences experienced by its corporate parents. For example, if the corporate parent makes a series of bad investments and those investments lead to higher borrowing costs, when the Texas utility seeks to borrow funds for its operations, it will do so at a higher cost. Thus, Texas ratepayers cannot be truly "fenced offed" from poor or risky corporate decision-making.

Other states' regulation. Rate making is extraordinarily complex, and no two states set electric utility rates the same. While Texas happens to consider the tax implications of affiliates, other states may consider other factors in setting rates that Texas does not consider. Texas should not claim to be unique, then back away from that claim when it serves the limited purpose of a few corporate interests.

Effects on economic competition. The bill could potentially raise electric utility rates for Texas businesses for the sole benefit of electric utilities. The bill could make Texas unattractive to businesses considering locating in the state.

Effects on ratepayers. Supporters of the bill minimize the cost to residential ratepayers, but any resulting rates increases would be repeated year after year, taking money out of the pocket of average Texans and putting it into the ledgers of Wall Street firms and California trusts.

Finally, large users of electricity — such as cities, school districts, and manufacturing firms — could see a sizable increase in their electric rates if the bill were implemented.

Saving ratepayers money by removing consultants, attorneys, and accounts from tax deliberations. While nobody likes paying for consultants and attorneys to fight rate cases, they do serve a purpose, presenting to an impartial SOAH judge evidence that should be considered during rate making, thus keeping rate increases to a minimum.

Phantom taxes. Current law allows some electric utilities to include taxes as part of their rate-making structure that may, in effect, never be paid to the federal government. For example, Oncor Electric Delivery, a transmission company serving much of North Texas, collected more than $500 million from ratepayers for federal income taxes, but the taxes were never paid.

NOTES: The House companion bill, HB 711, was reported favorably without amendment by the House State Affairs Committee on April 17.

SUBJECT: Preventing Medicaid fraud, waste, and abuse

COMMITTEE: Public Health — committee substitute recommended

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

0 nays

2 absent — Coleman, Guerra

SENATE VOTE: On final passage, April 15 — 30-0

WITNESSES: For — Steven Feist, Logisticare; David Marsh, CARTS (*Registered, but did not testify*: Jess Calvert, Texas Dental Association; Kate Carroll, Acadian Ambulance, Inc; Donna Chatham, Association of Rural Communities in Texas; Brent Connett, Texas Conservative Coalition; Trish Conradt, Coalition for Nurses in Advanced Practice; Scott Gilmore, Texas Transit Association; Omega Hawkins, STAR Transit; Jeff Heckler Sparton Transit – Lubbock, Texoma Area Paratransit Services; Marina Hench, Texas Association for Home Care and Hospice; John McBeth, Brazos Transit District; David Mintz, Texas Academy of General Dentistry; Asbel Montes, Acadian Ambulance Service; Lyle Nelson, CARTS; Stephen Raines, Preferred Care Partners; Jim Rudd, Texas Society of Oral Maxillofacial Surgeons; Tyler Rudd, Texas Academy of Pediatric Dentistry; Nelson Salinas, Texas Association of Business; Lee Spiller, Citizens Commission on Human Rights; Kevin Trimble, Flower Mound Fire Dept; Dudley Wait, City of Schertz EMS; Carole Warlick, Hill Country Transit/Texas Transit Association; Matthew Zavadsky, MedStar EMS, Dallas Fire Rescue)

Against — David Arjona, Javier Camacho, Leticia Galvan, Bernice Garza, Mario Garza, Angela Hernandez, Noel Martinez, Iliana Pena, and Ofilia Zarate, Advocates for Patient Access; TC Betancourt; Mateo Diaz; (*Registered, but did not testify*: Ramon Galvan, Eduardo Matos, Juan Navarro, and Maria Saldivar, Advocates for Patient Access)

On — Brent Byler, Lefleur Transportation (*Registered, but did not testify*:

Kay Ghahremani, Chris Traylor, and Douglas Wilson, HHSC; Derek Jakovich and Rachel Samsel, Department of State Health Services; Mari Robinson, Texas Medical Board; Raymond Winter, Office of the Attorney General)

DIGEST:

SB 8 would implement Medicaid fraud detection measures, marketing limitations, a managed transportation delivery model, regulations on emergency medical transportation providers, and program exclusions on fraudulent providers, and would establish legislative intent regarding the Medicaid program.

Fraud detection. *Data analysis unit.* SB 8 would require that the executive commissioner of the Health and Human Services Commission establish a data analysis unit to improve contract management and detect trends and anomalies related to service utilization, providers, payment methodologies, and compliance with Medicaid and Children's Health Insurance Program (CHIP) contracts. Each quarter, the unit would be required to update the governor and appropriate legislative officials on its activities and findings.

Prior authorization and utilization review. The bill would require HHSC to periodically review the Medicaid prior authorization and utilization review processes with both fee-for-service and managed care delivery models to determine any needed modification to reduce authorizations of unnecessary and inappropriate services. HHSC would monitor these processes for anomalies and review any process earlier than scheduled should an anomaly be found.

Office of Inspector General. SB 8 would specify that the HHSC's Office of Inspector General (OIG) was responsible for the detection, investigation, and prevention of fraud, waste, and abuse in the provision and delivery of all health and human services in the state. The OIG's authority would include but not be limited to Medicaid or any other health and human services program wholly or partly federally funded.

Program review. As soon as practicable after the effective date of the bill, HHSC would cooperate with DSHS and the Texas Medical Board to conduct a thorough review of the laws and policies related to the use of nonemergency services by ambulance providers under the Medicaid medical assistance program, the licensure of nonemergency transportation providers, and the delegation of health care services by physicians to qualified EMS personnel. The agencies would be required to solicit stakeholder input and would report their findings and recommendations by January 1, 2014.

Marketing. SB 8 would prohibit a Medicaid or CHIP provider, including a managed care organization (MCO), from engaging in any marketing activity or dissemination of information that was intended to influence a Medicaid or CHIP client's choice of provider, was directed at them solely due to their enrollment in Medicaid or CHIP, and involved unsolicited personal contact.

Nothing in the bill would prohibit a Medicaid or CHIP provider from engaging in marketing activities that involved general dissemination of information, such as by television, radio, or newspaper advertisements. Providers would also be allowed to provide appointment reminders, distribute health materials, communicate about the type of services they offered, coordinate patient care, and educate about available long-term services and supports.

The bill would establish a process using rules adopted by the HHSC executive commissioner for providers to submit proposed marketing activities for review and approval or denial by HHSC.

Medical transportation services. *Managed transportation organizations.* SB 8 would require HHSC to provide nonemergency transportation services under the Medicaid medical transportation program through a regional managed transportation delivery model. The managed transportation organizations (MTOs) in the model could be rural or urban transit districts, public transportation providers, local private transportation providers, regional contracted brokers, or other HHSC-approved entities.

The MTOs would operate using a capitated (or flat-fee) rate system, assume financial responsibility under a full-risk model, operate a call center, and use fixed routes when appropriate and available. HHSC would initiate a competitive bidding process to select the MTOs. MTOs participating in the medical transportation program would attempt to contract with providers that were considered significant traditional providers, met HHSC's minimum quality and efficiency measures, and accepted the prevailing contract rate of the MTO.

MTOs would be allowed to own, operate, and maintain a fleet of vehicles or contract with an entity that did the same. HHSC would be allowed to delay implementing the managed transportation delivery model in the Dallas/Fort Worth and Houston/Beaumont areas where full-risk transportation pilot programs are operating.

Memorandum of understanding. SB 8 would require HHSC to enter into a memorandum of understanding with the Texas Department of Motor Vehicles and the Department of Public Safety to obtain the vehicle registration and driver's license information of a provider of medical transportation services (MTS) to ensure the safe and efficient provision of nonemergency transportation services under Medicaid's medical transportation program.

HHSC would establish a process for contracted MTS providers, including those in a managed transportation model, to request and obtain this registration and license information to ensure a subcontractor met applicable safety and efficiency standards.

Emergency medical services. SB 8 would expand the criteria that an applicant to be an emergency medical services (EMS) provider had to satisfy to receive a license from the Department of State Health Services. Applicants would be required to possess sufficient professional experience and qualifications to provide emergency medical services and could not have been previously excluded from participation in the state Medicaid program.

The applicant also would be required to hold a letter of approval from the governing body of the city or county where the applicant was located and was applying to provide emergency services. The governing body would only issue a letter of approval if they determined that another licensed EMS provider would not interfere with or adversely affect the provision of EMS services, would remedy an existing provider shortage, and would not cause an oversupply of EMS providers.

The bill would prohibit DSHS from issuing new EMS provider licenses between September 1, 2013 and February 28, 2015. This would not apply to a volunteer provider organization or in counties with small or isolated populations.

The bill would establish financial security criteria that non-government operated EMS provider applicants would be required to satisfy, including a letter of credit, a surety bond, and the name and contact information of the provider's administrator of record.

SB 8 would prohibit EMS providers from stationing EMS vehicles in a city or county outside the one in which they received a letter of approval for two years after their initial license was issued. This requirement would not apply to volunteer provider organizations or to an EMS provider that received a contract from another city or county, responded to an emergency in connection with an existing mutual aid agreement, or provided services during a statewide emergency or disaster.

SB 8 would prohibit an administrator of record from being employed by another private for-profit EMS provider, and would require they meet the qualifications for an emergency medical technician or other health care professional licensed by the Department of State Health Services (DSHS). They would also be required to submit to a criminal background check.

The bill would require an administrator of record complete an HHSC-administered education course including information about the laws and DSHS rules that affect EMS providers. They would be required to complete eight hours of continuing education per year following their initial approval.

The HHSC commissioner could suspend, revoke, or deny an EMS provider license on the grounds that the provider's administrator of record or employee had been convicted of or been placed on deferred adjudication for an offense directly related to their official duties, various criminal offenses listed in the bill, or Medicare or Medicaid fraud, including being excluded from the Medicaid program or having a payment hold placed on the provider's Medicaid reimbursement.

Providers. SB 8 would require the HHSC executive commissioner to revoke a medical provider's Medicaid enrollment if the person had been excluded from participation in any state or federally funded health care program after being found liable or being convicted for an act of financial misconduct in a state or federally funded health care program. Their participation would also be revoked for a criminal conviction from bodily injury to a person age 65 or older, a disabled individual, or a child. HHSC could reinstate a provider's enrollment if it had good cause to do so.

The bill would specify that a non-physician provider's period of ineligibility to participate in the Medicaid program would begin on the date a judgment of liability against them was initially entered by the trial court, rather than the date on which the determination of liability became final after any appeals. Physicians, physician organizations, and nonprofit health corporations would become ineligible the date the determination of liability became final.

Authorized adults. The bill's intent language would declare that a rule or policy adopted by HHSC to require the presence of a parent, guardian or authorized adult during certain Medicaid-funded services would be conclusively presumed to be a valid exercise of HHSC's authority. This would not apply to a rule that was void, a misdemeanor, or a felony at the time it was decided or that violated a federal law or waiver.

Effective date. SB 8 would take effect September 1, 2013. The bill would require the HHSC executive commissioner establish the data analysis unit as soon as practicable following this date. It would also require the managed transportation model be effective by September 1, 2014.

If any state agency were to determine that a provision of this bill required a federal waiver or authorization, the affected agency would be required to request it and could delay implementing that provision until it was granted.

SUPPORTERS SAY:

SB 8 would be a necessary action taken to detect and prevent Medicaid fraud, waste, and abuse and save state taxpayers millions of dollars. The bill contains numerous provisions to better ensure Medicaid tax dollars are used only on legitimate services without impeding health care providers' ability to operate. By preventing fraud, waste, and abuse, more of the state's limited resources would be available for the people who truly need them.

SB 8 would establish a data analysis center to detect fraud that would otherwise go undetected, clarify the OIG's authority to investigate fraud, and implement numerous studies of Medicaid programs considered high risk for fraud and abuse, as well as conduct ongoing reviews of HHSC's current utilization review and prior authorization safeguards.

The bill would implement a managed transportation delivery model to bring the savings of a capitated system to nonemergency medical transportation services. It would create managed transportation organizations that would compete for regional contracts, creating incentives for a more coordinated program that could reduce costs while maintaining quality of service. The managed care model also ensures that numerous authorizations occur before the services are provided, preventing the over-provision of services.

SB 8 would prevent improper soliciting of children and parents for Medicaid services. It would also implement exceptions for educational materials and general advertising, so that providers could continue to operate without being pressured to create a need for services where none existed. The bill would also ensure that bad actors ineligible for Medicaid and other taxpayer reimbursement in other states remained ineligible here.

SB 8 would properly regulate EMS providers to ensure their financial integrity and decrease the use of emergency services for nonemergency needs.

Finally, SB 8 would clarify that it was the Legislature's intent that HHSC's rule requiring parents or guardians accompany children to Medicaid-funded medical treatments or when using the Medicaid transportation program was "a valid exercise of the commission's authority." Following HHSC's determination in March 2012 that a provider would not be reimbursed for services provided without the presence of a parent or guardian, a lawsuit was filed in May 2012 to stop the enforcement of this determination. As a result of the lawsuit, a state district court issued a temporary injunction against HHSC, preventing the agency from denying transportation services to unaccompanied children and from placing payment holds on providers treating unaccompanied children.

Allowing unaccompanied children to use Medicaid transportation and health care services has been linked to unnecessary treatments, overzealous solicitation, and fraud. SB 8 would provide a clear statement to the courts that the Legislature endorses HHSC's policy.

OPPONENTS SAY:

SB 8 would maintain the state's current climate of intimidation toward Medicaid providers and would limit patients' access to care.

The Office of Inspector General and sensationalist reports of Medicaid fraud have overstated the amount of waste in the Medicaid system. The expansion of managed care has substantially reduced the standard for what is considered excess treatment, and oftentimes providers are investigated and harassed for minor errors. Texas faces a shortage of health care providers willing to accept Medicaid, and this bill would exacerbate an already urgent problem. Pursuing Medicaid abuse is not an efficient or equitable alternative to adequately funding the program. In the long-run, the deficit of quality health care services will be far more expensive than any marginal savings this bill could provide.

SB 8 would amount to an end-run around the legal system. In March 2013, the Third Court of Appeals upheld a district court ruling that stopped HHSC from denying Medicaid transportation services and Medicaid-funded treatment to unaccompanied children. By inserting intent, SB 8 would allow HHSC to deny payments to providers and discontinue transportation services if a child was unaccompanied. This could mean that thousands of children would be denied critical services necessary for their long-term health and self-sufficiency. For example, in the Rio Grande Valley, thousands of blind and disabled children would find it extremely difficult to obtain the treatment they need because their parents were unable to attend every therapy or treatment session for their children. The policy is self-defeating: Without being able to take advantage of medical treatment for which they otherwise would qualify these children would be at risk for being less sufficient and more dependent on state services in the years ahead.

Moreover, the bill's marketing limitations would be overly onerous and would prevent legitimate distribution of educational material to communities.

SB 8 would also cause a significant decrease in the quality of transportation services should the state begin using MTOs, which would be incentivized above all to decrease costs at the expense of service and even safety.

NOTES: The Legislative Budget Board estimates SB 8 would have a positive fiscal impact of about $14.7 million in fiscal 2014-15 by identifying and decreasing Medicaid fraud and more efficiently operating its medical transportation program.

SUBJECT: Integration of behavioral and physical health services into managed care

COMMITTEE: Public Health — committee substitute recommended

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

0 nays

1 absent — Coleman

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

WITNESSES: For — Danette Castle, Texas Council of Community Centers; Anna Gray, Texas Catalyst for Empowerment; David Hedgcock, Providence Service Corp.; Greg Jensen, Lone Star Circle of Care; Dan Johnson, Pathways; Janet Paleo, Texas Council of Community Centers; (*Registered, but did not testify:* Chase Bearden, Coalition of Texans with Disabilities; Brent Connett, Texas Conservative Coalition; Susan Garnett, MHMR of Tarrant County; Leah Gonzalez, The National Association of Social Workers Texas Chapter; Marshall Kenderdine, Texas Pediatric Society; Katharine Ligon, Center for Public Policy Priorities; Michelle Romero, Texas Medical Association; Nelson Salinas, Texas Association of Business; Gyl Switzer, Mental Health America of Texas)

Against — (*Registered, but did not testify:* Lee Spiller, Citizens Commission on Human Rights)

On — Greg Hansch, National Alliance on Mental Illness Texas; (*Registered, but did not testify:* Meagan Longley, Hogg Foundation for Mental Health; Mike Maples, Department of State Health Services; Monica Thyssen, HHSC; Clayton Travis, Texans Care for Children)

BACKGROUND: Under a managed health care system, managed care organizations contract with providers and hospitals to form a network. The state pays the managed care organization an established monthly amount, rather than paying each provider for each individual service, as in the fee-for-service model. The managed care organization then sets rates and distributes reimbursements to providers.

The NorthSTAR Program is a publicly funded managed care approach to the delivery for mental health and chemical dependency services to eligible residents in seven North Texas counties.

DIGEST:

CSSB 58 would require HHSC to integrate behavioral health services — including targeted case management and psychiatric rehabilitation services — and physical health services for eligible persons into Medicaid managed care. Behavioral health services would be defined as mental health and substance abuse disorder services not including those provided through the NorthSTAR demonstration project.

Integration requirements. As part of integration, HHSC would ensure:

- an appropriate assessment tool was used to authorize services;
- providers were well qualified and able to provide an appropriate array of services;
- appropriate performance and quality outcomes were measured;
- two legally compliant health home pilot programs were established in two health service areas, representing two distinct regions of the state, for persons who were diagnosed with a serious mental illness and at least one other chronic health condition; and
- all behavioral health services provided were based on an approach to treatment where the expected outcome was recovery.

A managed care organization that contracted with HHSC would develop a network of public and private providers of behavioral health services and ensure that adults with serious mental illness and children with serious emotional disturbances had access to a comprehensive array of services.

HHSC would request from a federal agency any waivers necessary to implement the provisions in the bill.

Behavioral health integration advisory committee. HHSC and the Department of State Health Services would establish a behavioral health integration advisory committee. The committee would seek input from the behavioral health community and issue formal recommendations. Its membership would include:

- individuals with behavioral health conditions who were current or former recipients of publicly funded behavioral health services;
- representatives of managed care organizations with expertise in offering behavioral health services; and
- public and private providers of behavioral health services.

HHSC would provide administrative support to the advisory committee. The agency would establish the committee no later than September 1, 2013, and it would be set to expire four years from that date.

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

SUPPORTERS SAY:

CSSB 58 would make inroads into bridging the artificial divide in the treatment of behavioral and physical health. Improving the integration of behavioral and physical health services would expand consumer choice of providers, economize health service delivery, and recognize a growing consensus among medical practitioners and scholars that many behavioral health issues have biological origins.

Under current practice, most mental health services are provided through the managed care model. Targeted case management and psychiatric rehabilitation, however, are still provided on a fee-for-service basis. CSSB 58 would carve targeted case management and psychiatric rehabilitation into managed care, which would complete the integration of mental health and physical health services under the managed care model. The bill would not apply to the NorthSTAR service area.

Under the bill, HHSC would take a variety of measures to integrate behavioral and physical health care, including rules development, seeking a federal waiver amendment, amending contracts, and other means. The behavioral health integration advisory committee and the establishment of two health home pilots for individuals with a mental health condition and a chronic disease also would advance a more holistic approach to behavioral health issues.

The bill would grant HHSC enough flexibility to structure the integration in ways that created efficiencies while ensuring that those with mental illness had access to a comprehensive array of services that included public and private providers. The bill also would have a positive fiscal impact of $1.1 million for fiscal 2014-15, as the state would gain cost certainty under a managed care model and an increase in insurance premium tax revenue.

OPPONENTS SAY: While it would be important to integrate physical medicine into mental health centers, doing this the other way around would open the door to broadened mental health screening of patients who were not presenting with mental health concerns. This could lead to an increase in misdiagnoses and improper or unnecessary referrals.

NOTES: The Legislative Budget Board estimates CSSB 58 would have a positive impact to general revenue funds of about $1.1 million for the 2014-15 biennium and $5.2 million for fiscal 2016-17.

SUBJECT: Penalty for the offense of tampering with certain school records

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

2 absent — Hughes, Toth

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

WITNESSES: (*On House companion bill HB 206:*)
For — (*Registered, but did not testify:* Donnis Baggett, Texas Press Association; Arif Panju, Freedom of Information Foundation of Texas)

Against — None

BACKGROUND: Penal Code, sec. 37.10 creates an offense if a person:

- knowingly makes a false entry in, or false alteration of, a government record;
- makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
- intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
- possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully or knowledge that it was obtained unlawfully; or
- makes, presents, or uses a governmental record with knowledge of its falsity.

This offense is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if it is shown at trial that the governmental record was a public school record, report, or state-mandated assessment instrument, except that if the offense is committed with the intent to defraud or harm another it is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

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

DIGEST: SB 124 would make it a third-degree felony to violate Penal Code, sec. 37.10 if the governmental record was shown at trial to be data reported for a school district or open-enrollment charter school to the Texas Education Agency through PEIMS under a law or rule requiring that reporting. If the offense was committed with the intent to defraud or harm another it would be a second-degree felony.

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

HOUSE RESEARCH ORGANIZATION bill analysis | 5/17/2013 | SB 147 Deuell (Smithee)

SUBJECT: Allowable amount of outstanding liability of a mortgage guaranty insurer

COMMITTEE: Insurance — favorable, without amendment

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, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1136)*
For — Burnie Burner, Mortgage Insurance Companies of America (*Registered, but did not testify*: Daniel Gonzalez, Texas Association of Realtors; Chelsey Thomas, Texas Association of Realtors)

Against — None

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

BACKGROUND: Insurance Code, sec. 3502.158 limits the coverage for mortgage guaranty insurance providers. It requires mortgage guarantee insurers to either: limit the insurer's coverage, net of reinsurance, to a maximum of 25 percent of the entire indebtedness to the insured or pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

DIGEST: SB 147 would repeal the Insurance Code, sec. 3502.158.

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 147 would repeal a statute that does not serve its intended purpose but instead creates the need for unnecessary administrative and regulatory requirements for both insurers and the Texas Department of Insurance (TDI), which ultimately makes it more difficult to regulate the risk of the mortgage insurance industry.

The intention of Insurance Code, sec. 3502.158 is to require mortgage insurers to purchase additional reinsurance and thereby lower the default risk associated with an individual insurer. Most insurers have responded to the law by restructuring their companies and spreading risk to subsidiaries instead. By doing so, companies have complied with the law but have not actually reduced their financial risk. The more complex company structure makes it harder for TDI to assess the genuine risk associated with a company and increases reporting requirements for the companies. Repealing this section of the code would increase transparency and reduce administrative requirements for companies and regulators.

OPPONENTS SAY:

The Legislature should adjust the existing regulation to include more sophisticated language that would encourage mortgage insurers to limit exposure rather than throwing out the regulation altogether. The Insurance Code has a loophole that needs to be closed, not a regulatory framework that should be removed.

NOTES:

The companion bill, HB 1136 by Smithee, was left pending in the House Insurance Committee on April 23.