HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 21, 2013
83rd Legislature, Number 78
The House convenes at 10 a.m.
Part One

Sixty bills are on the daily calendar for second-reading consideration today. The bills on the Major State and General State calendars analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

Today is the last day for the House to consider Senate bills and joint resolutions, other than local and consent, on second reading on a daily or supplemental calendar.

Bill Callegari
Chairman
83(R) – 78

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 21, 2013
83rd Legislature, Number 78
Part One

SUBJECT: Sunset review of Office of Fire Fighters' Pension Commissioner

COMMITTEE: Pensions — favorable, without amendment

VOTE: 5 ayes — Callegari, Alonzo, Branch, Frullo, Stephenson

0 nays

2 absent — Gutierrez, P. King

SENATE VOTE: On final passage, May 14 — 29-2 (Hinojosa, Whitmire)

WITNESSES: *(On House companion bill, HB 3148:)*
For — (*Registered, but did not testify:* Scott Kerwood, Texas Fire Chiefs Association)

Against — Heidle Baskin, Irving Firemen's Relief & Retirement Fund; Kenneth Gold, Denton Firemen's Relief & Retirement Fund; Rodney Goodman, Abilene Firemen's Relief and Retirement Fund; Javier Gutierrez and Manuel Vargas, McAllen's Relief and Retirement Fund; Alva Littlejohn, Lubbock Fire Pension Fund; David Stacy, Midland Firemen's Relief and Retirement Fund; (*Registered, but did not testify:* Danny Benson and Michael Tucker, Denton Firefighters Association; Baker Bryant and Eddie Chrane, Abilene Firemen's Relief and Retirement Fund; David Crow, Arlington Professional Fire Fighter's Association; Mike Higgins, Texas State Association of Fire Fighters; Quentin Huser and Jerry Sutton, TLFFRA; Juan Loya; Roberto Martinez; Derek Oswald, Denton Firemen's Relief & Retirement Fund; Baldomero Ozuna; Tim Rabroker, Killeen Firefighters Relief & Retirement)

On — Mark Fenlaw and Maxie Patterson, TESRS Board of Trustees; Christopher Hanson, Pension Review Board; Sean Shurtleff, Sunset Advisory Commission; Ana Tinsley and Sherri Walker, Fire Fighters' Pension Commissioner; (*Registered, but did not testify:* Scott Kerwood, Texas Fire Chiefs Association; Joe Walraven, Sunset Advisory Commission)

BACKGROUND:

Created in 1937, the Office of Fire Fighters' Pension Commissioner performs two basic activities: monitoring and assisting 122 individual local pension plans organized under the Texas Local Fire Fighters' Retirement Act (TLFFRA) and administering a separate statewide system for more than 200 volunteer departments, known as the Texas Emergency Services Retirement System (TESRS).

The office monitors systems operating under TLFFRA in the following ways:

- requires annual reporting from local fire department pension systems and reviews pension benefits;
- decides pension member appeals of benefit decisions by local pension boards;
- provides technical assistance and legal interpretations of statute and other aspects of systems; and
- conducts training for local board trustees through its annual TLFFRA educational conference and peer review workshop.

The office also administers TESRS, created in 1977 to provide retirement as well as death and disability benefits to volunteer firefighters and emergency services personnel.

The commissioner is appointed by the governor with the consent of the Senate for a four-year term. The commissioner sets policy and manages the office's efforts to assist certain paid and volunteer fire departments under TLFFRA. The commissioner also serves as the administrator of TESRS, while a separate governor-appointed board of trustees sets policy for the system and manages the fund's assets.

The office employs nine staff, with four working on TLFFRA and five on administration of TESRS. The office operated on a budget in fiscal 2011 of about $683,000, with about $486,000 spent on TESRS and about $197,000 for TLFFRA assistance.

The office is subject to the Sunset Act and will be abolished September 1, 2013, unless continued by the Legislature.

DIGEST:

SB 220 would abolish the Office of Fire Fighters' Pension Commissioner and require the State Pension Review Board (PRB) to provide assistance to local TLFFRA plans. It would make changes to the process for hearing

appeals from members of both plans and would require TESRS to conduct actuarial audits to better guide decisions about the state's contribution to the fund.

TLFFRA plans. The PRB would be required to provide technical assistance, training, and information to trustees of local TLFFRA plans, and if possible, to designate a person to perform these duties, targeting the needs of small-to-medium-sized plans.

It would require appeals under TLFFRA to go through the PRB before being referred to the State Office of Administrative Hearings (SOAH) to decide the case.

TESRS system. The bill would continue the nine-member governing board and would set aside one of five positions held by pension system members for a retiree.

The bill would require the TESRS board to hire an executive director to oversee benefits distribution and collect revenue from the governing bodies of participating departments. Appeals under TESRS would be submitted to SOAH, with the TESRS board making the final decision, and allowing for judicial review.

The TESRS board, instead of the commissioner, would be responsible for recovering any fraudulently acquired benefits. Biennial certification of the fund's actuarial soundness would have to include analysis of the number of years to amortize the unfunded liability, assuming no state contribution and assuming the maximum state contribution. An audit would be required every five years.

The bill would require the board to notify the Legislature and PRB if there were a significant change to the actuarial valuation of the pension system's assets or liabilities or any change to members' contributions and benefits.

SB 220 would require the TESRS board to adopt a clear policy on contract management and oversight. It would apply standard, across-the-board Sunset recommendations regarding complaints, conflicts of interest, public participation, and board member training.

The TESRS board would be subject to Sunset review every 12 years.

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 220 would implement recommendations of the Sunset Commission review, which found that the special treatment the office provides to local TLFFRA plans is outdated and that needed oversight and assistance can be provided without having a separate office.

The review also found that the state continues to need the statewide TESRS system but a separate governor-appointed commissioner was not needed to administer that system.

The office's role in TLFFRA has diminished over time due to legislative changes and the growing independence of these systems. When the state stopped providing financial assistance to these systems in 1988, it removed the primary reason for commissioner oversight. The TLFFRA statute provides a framework for these systems that offers safeguards for their long-term operation.

Understandably, many TLFFRA systems want to keep the commissioner's office because of the assistance provided. However, the systems could receive similar assistance through a dedicated staff person at the PRB.

The commissioner's role in TLFFRA appeals is not necessary to settle local pension disputes. SOAH already hears these cases and could continue to do so without the involvement of the commissioner.

Since 2002, the state has paid $12.8 million in TESRS contributions and administrative costs, mostly to cover investment losses. SB 220 would provide greater oversight, verification, and reporting on the fund to ensure the Legislature had accurate and timely information needed to make funding decisions.

The bill would save $173,838 in fiscal 2014-15 by eliminating some positions, according to the Legislative Budget Board.

OPPONENTS SAY:

For the past 75 years, the Fire Fighter's Pension Commissioner has protected firefighters, cities, and the state regarding local firefighter pension systems. SB 220 would unravel this protection and create substantial problems for small volunteer firefighter plans.

The stakes are high for these plans, the cities that sponsor them, and ultimately the state. A poorly run plan could bankrupt a small city and possibly require the state to step in. The independent appointment of the commissioner is a healthy check and balance for the state regarding the operation of both the systems in TLFFRA and TESRS, all of which are managed locally by firefighters.

Representatives of several pension funds testified about the valuable assistance and attention they receive from the commissioner. Without the office, they could have to hire lawyers and financial experts to answer their questions. The firefighters expressed concern that they would not get the same attention at PRB, where they would be the "little fish in a big pond."

PRB has never administered a pension plan. The commissioner daily administers TESRS and uses that expertise to advise TLFFRA. It is managerially efficient and fiscally responsible to keep firefighter pension services together under one agency.

The bill would require PRB to dedicate one employee to assisting TLFFRA plans, if funds are available. The commissioner now has four employees assisting these plans.

For appeals regarding TLFFRA benefit issues, the bill would make PRB merely a conduit to have the case sent to SOAH. Currently, SOAH decisions are reviewed by the commissioner. At least one of the SOAH decisions was found to be in error and the commissioner was able to step in and have the error corrected.

NOTES:

SB 220 would result in savings of about $173,000 in general revenue and a reduction of 3.5 FTE positions in each year of fiscal 2014-15, according to the Legislative Budget Board. Total savings would be offset by the estimated cost of the PRB designating a staff person to provide training and technical assistance to local firefighter plans.

The bill would continue the duties and responsibilities of TESRS for the cost of about $500,000 and five FTE positions per year. It would require additional actuarial services, including an actuarial audit every five years at an estimated cost to the pension fund of about $100,000 over the next five years.

The House companion bill, HB 3148 by Anchia, was reported favorably as substituted by the House Pensions Committee on April 22.

SUBJECT: Enhanced financial reporting for local public entities

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 22 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Carter, Crownover, Darby, S. Davis, Giddings, Gonzales, Howard, Hughes, Longoria, McClendon, Otto, Patrick, Perry, Price, Raney, Ratliff, Zerwas

0 nays

5 absent — Dukes, S. King, Márquez, Muñoz, Orr

SENATE VOTE: On final passage, May 9 — 29-1 (Zaffirini)

WITNESSES: ***(On introduced version of House companion bill, HB 14)***
For — Alan Hugley, City of Red Oak; James Quintero, Texas Public Policy Foundation; Oscar Rodriguez, Texas Assn of Broadcasters; Peggy Venable, Americans for Prosperity; Duke Burge, Midlothian ISD; Scott Niven, Red Oak ISD; and four others; (*Registered, but did not testify*: Kathy Barber, NFIB/Texas; Konni Burton, Tea Party Caucus Advisory Committee; Brent Connett, Texas Conservative Coalition; Dr Rosemary Edwards, Travis County Republican Party; John Horton, Young Conservatives of Texas; Dustin Matocha, Texans for Fiscal Responsibility; Naomi Narvaiz, San Marcos Area Republican Texans Group; Charley Wilkison, Combined Law Enforcement Associations of Texas, and four individuals

Against — Jim Allison, County Judges and Commissioners Association of Texas; Mark Burroughs, City of Denton; Clayton Chandler, City of Mansfield; Lisa Clark, Texas Association of Builders; Howard Cohen, Schwartz, Page & Harding L.L.P.; James Hernandez, Harris County and Harris County Toll Road Authority; Brad Lancaster, Fast Growth School Coalition and Lake Travis ISD; Donald Lee, Texas Conference of Urban Counties; Bill Longley, Texas Municipal League; David Maxwell, Assoc of Water Board Directors; Peter Phillis, City of Mansfield, Texas; Micki Rundell, City of Georgetown; Danny Scarth, City of Fort Worth; Terry Simpson, San Patricio County; Joy Streater, County District Clerks Assn.; Byron Underwood, Texas Assoc. of Counties; Ed Van Eenoo, City of

Austin; James Wilcox, Texas Association of School Boards, Texas Association of School Administrators, and Texas School Alliance, and 1 other; (*Registered, but did not testify*: David D Anderson, Arlington ISD Board of Trustees; Steve Bresnen, North Harris County Regional Water Authority; Snapper Carr, Andrews County; Mindy Ellmer, Tarrant Regional Water District; Wayne Halbert, Texas Irrigation Council; Angela Hale, City of McKinney; Roger Hord, West Houston Association; Mark Israelson, City of Plano; Jerry James, City of Victoria; Kassandra Kell, City of Irving; Jennifer May, City of Sugar Land; Ken McCraw, Texas Association of Community Schools; Mark Mendez, Tarrant County Commissioners Court; Seth Mitchell, Bexar County Commissioners Court; Terrell Palmer, First Southwest Company; TJ Patterson, City of Fort Worth; Dean Robbins, Texas Water Conservation Association; Karen Rue, Fast Growth School Coalition; Susie Shields, San Antonio Mobility Coalition; Jim Short, Fort Bend County; Jim Short, Houston Real Estate Council; Michelle Smith, Fast Growth School Coalition; Bob Stout, Newland Communities Texas, The Woodlands Development Co.; Frank Sturzl, City of Abilene; Paul Sugg, Texas Association of Counties; Tom Tagliabue, City of Corpus Christi)

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

DIGEST:

CSHB 14 would require most public entities — including counties, municipalities, school and junior college districts, higher education institutions, and other special districts — to post financial, voter, public hearing, and other information in a publicly accessible electronic format.

Website requirement. A political subdivision with at least 250 registered voters would have to maintain a website to comply with the bill's requirements. For counties or municipalities with a population less than

2,000 that did not maintain a website as of January 1, 2013, notice could be posted on a website where the entity controlled the content of the posting, such as a social media site, provided the information easily could be found by an online search. The bill would provide alternative means of compliance with the website requirements for certain special districts and small counties and municipalities.

Special districts. After September 1, 2014, a political subdivision that had at least 250 registered voters and was classified as a district under Water Code, sec. 49.001(1), could electronically submit required information to the executive director of the Texas Commission on Environmental Quality to be posted on the commission's website on a web page dedicated to the political subdivision, so long as the site was:

- easily located by searching the name of the district; or
- linked or automatically opened from a web address maintained by the district that could be easily located by searching the district's name.

The web address would not be considered a website for the purpose of other law.

Small counties and municipalities. Counties with a population of 10,200 or less (86 counties) and municipalities with a population of 5,000 or less could electronically submit required information to the comptroller to be posted on the comptroller's Internet website, so long as the site was:

- easily located by searching the name of the county or municipality; or
- linked or automatically opened from a web address maintained by the county or municipality and that could be easily located by searching the name of the county or municipality.

The web address would not be considered a website for the purpose of other law.

Higher education. An institution of higher education would have to maintain a website to comply with the bill's annual financial reporting requirement. Each junior college district would have to maintain a website to comply with construction cost reporting requirements.

Annual financial report. A political subdivision — except a special district as defined by Water Code, sec. 49.001(1) — would prepare an annual financial report that included specific financial and debt information. An annual financial report would have to be available for inspection by any person, and a political subdivision with more than 250 registered voters would post the financial report on the subdivision's website, subject to the limitations on this requirement in the bill. Alternatively, a subdivision could provide the required information to the comptroller, who would post it on the comptroller's website. The political subdivision would post a link to the location of the report on the comptroller's website.

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

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

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

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

Voter information. A voter information document would have to be prepared for each bond proposition under consideration. The document would contain specific information about the political subdivision's debt status, the cost of the proposed debt, the entity's property tax debt rate, the property tax debt levy per residence with a taxable value of $100,000, and other specific information listed in the bill. A good faith estimate in a voter information document would not be a breach of contract with voters if the estimate was later found to be incorrect.

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

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

A notice of a plan to issue a certificate of obligation would have to be posted continuously on the issuer's website for at least 30 days, the same requirement for prior publication that is in current law, before the date tentatively set to hear an ordinance authorizing the issuance. A county or municipality with a population of less than 2,000 could post the plan on a site in which the entity controlled the content of the posting, such as a social media site, provided the information easily could be found by an online search.

The bill would expand the content of notice requirements for certificates of obligation.

Comprehensive self-evaluation. Special districts would be required to conduct a comprehensive review at least every six years. Any special district issuing debt after September 1, 2013, would have to conduct a comprehensive review within three years of issuing debt.

Self-evaluation reports would have to include specific elements regarding the district's authority, assessments it imposes, revenue collected, and outstanding debt. The self-evaluation report would be posted on the district's website, subject to the limitations on this requirement in the bill for special districts. The special district would have to make the report available for requests for public information and would have to conduct a public hearing to hear from persons interested in the self-evaluation report.

State responsibilities. The comptroller would publish the sales and use tax rate for every political subdivision that imposed such a tax and the tax

rate information reported by counties.

Under the bill, the attorney general, who currently must certify that a public security was issued in accordance with the law, would have to send information collected on local securities to the Bond Review Board. The bond finance office and the attorney general would maintain a noncompliance list of issuers that did not provide the information as required. The attorney general could not approve a local security submitted by an issuer that was included on the noncompliance list.

The Bond Review Board would enter into one or more contracts to procure services to collect and maintain information related to public indebtedness.

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

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

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

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

The Texas Higher Education Coordinating Board would require each junior college district to report building construction costs and related

information for determining the average cost per square foot for the region of the state and the average cost per full-time student for each junior college district. The report would have to be posted on each entity's website.

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

SUPPORTERS SAY:

SB 14 would take strides toward improving fiscal transparency among public bodies in the state. While the state has a low share of tax-supported debt, Texas has the second-highest local debt per capita ratio among the 10 most populous states. According to the Bond Review Board, about 83 percent of the state's total debt is local debt. Last decade, local entities more than doubled their debt load to $7,500 per capita.

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

The current version of SB 14 is the result of an impressive effort among the bill's supporters to work with stakeholders to preserve the intent of increased transparency while making the requirements on local entities reasonable. As a result of the hard work that supporters invested in the bill, stakeholders' concerns have largely been allayed and many who opposed HB 14, the House companion bill that died on the House floor due to a point of order, have withdrawn their opposition to SB 14.

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

Significant changes were made to the bill in the Senate to ensure that small public entities would not be unduly burdened by the reporting and web posting requirement. In recognition that some smaller entities may not have existing web pages — though many do — SB 14 would exempt political subdivisions with fewer than 250 registered voters from website

posting requirements and would carve a path for special districts and small counties and municipalities to easily comply with the requirements.

To address concerns about smaller entities, the bill would provide an option to send documents electronically to TCEQ or the comptroller, as applicable, purchase a domain (available for a modest fee from a variety of distributors) and then set up the domain to automatically redirect to the documents on the state site. This would be feasible with minimal cost for the entity and would give the public an option for finding the materials with a simple web search.

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

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

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

Certificates of obligation. SB 14 would limit the issuance of debt commonly completed through certificates of obligation (COs) without voter approval. COs now account for 16.6 percent of all debt issued by entities with this authority. SB 14 would put an end to some evasive

practices by prohibiting local entities from issuing a CO to pay for capital projects that voters recently rejected. The bill would improve taxpayers' ability to act as an effective check on spending by arming them with the resources necessary to make informed decisions.

OPPONENTS SAY:

While changes in the Senate to SB 14 made significant improvements over previous iterations, the bill would persist in imposing additional requirements upon local entities without providing them with any additional resources to comply with the expanded requirements. The bill would create additional administrative burdens for local entities without necessarily adding value for taxpayers.

Reporting. SB 14 would place additional requirements on thousands of local entities to comply with reporting and posting requirements. The bill also would impose time-intensive annual financial reporting that would have to be done on a yearly basis as well as costly self-evaluation reports for special districts every six years. Many local entities would be hard pressed to take on additional reporting with existing limited staff resources. In addition, many cities with minimal or nonexistent debt loads would be tasked to complete the report without a clear advantage to taxpayers.

Overall, the reporting requirements in the bill would provide a solution for a non-existent problem. There is no documentation of a lack of transparency in fiscal matters on a local level. The extra reporting would create additional costs and yet would provide little added value.

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

Providing voter information prior to a bond election could put local entities in a difficult position, as they are not allowed to take a position on any propositions in front of voters.

OTHER OPPONENTS SAY:

Website maintenance requirements for local entities that issue COs differ from those for other requirements in the bill. The bill would not provide a separate path to link a domain to a public site for small counties and

municipalities that propose the issuance of certificates of obligation.

NOTES:

Amendment. The author plans to offer some amendments, one of which would conform web maintenance requirements for local entities that issued a certificate of obligation to make them equivalent to other requirements in the bill.

Fiscal note. The Legislative Budget Board estimates SB 14 would have a negative impact on general revenue of $915,314 for fiscal 2014-15, and $790,740 in fiscal 2016-17. The cost would stem from a Bond Review Board increase of four full-time-equivalent employees and other expenses necessary to meet requirements in the bill.

Companion bill. The House companion bill, HB 14 by Pitts, died on the House floor due to a sustained point of order on May 3.

SUBJECT: Establishing the Texas Achievement School District

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Aycock, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff

2 nays — Allen, J. Rodriguez

1 absent — Villarreal

SENATE VOTE: On final passage, May 1 — 26-5 (Deuell, Garcia, Nichols, Rodriguez, Seliger)

WITNESSES: No public hearing

DIGEST: CSSB 1718 would add a new subchapter to Education Code, ch. 11 to create the Texas Achievement School District (ASD) to educate students attending certain low-performing campuses. The program would be limited to school districts with at least 20,000 students enrolled. The ASD would be limited to five campuses during fiscal 2014-15 and five during fiscal 2016-17. It would be "sunsetted" on September 1, 2025.

Criteria. After a campus has been identified as unacceptable for two consecutive school years, the education commissioner would determine whether a school district has instituted meaningful change, including reconstituting the staff or leadership. If there has been progress, the commissioner could wait another school year and reevaluate the campus.

If there has not been meaningful change, the commissioner could:

- order the reconstitution of the campus;
- order the removal of the campus to the ASD;
- approve a plan by the school board to operate the campus as an open-enrollment charter school for up to two school years, after which the campus would be transferred to the ASD if it was still rated as unacceptable; or
- require the district to contract for appropriate technical assistance.

The commissioner would be required to give considerable weight to recommendations from parents of the students enrolled at the failing school.

The affected students could choose to attend another school within the district. Students attending other schools in the district could choose to attend the campus transferred to the ASD if it could enroll more students.

A campus could change its name only on agreement of the prior system and the ASD. A diploma issued would be required to bear the name of the prior system.

The bill would allow campuses to be returned to the prior system on recommendation of the ASD superintendent and commissioner after the campus achieved an acceptable level of performance. The commission would have to include provisions for continuing programs that helped boost student academic achievement and for the employment status of all persons who were not previously employed by the prior system.

If a school operated by the ASD had failed to achieve acceptable performance, the commissioner would be required to return it to the prior system or close the school.

The bill would include a temporary provision that would expire September 1, 2016, allowing the commissioner to refrain from taking action against a campus based on performance for the 2014-15 school year and preceding school years.

Operations. The commissioner would select the superintendent of the ASD and employ central administrative staff, who could be employees of the Texas Education Agency. The district would not have taxing authority but could seek and expend federal and grant funding.

The ASD could operate each campus or contract with a charter school operator that:

- had been rated exemplary or recognized for three of the preceding five years;
- had documented success in school interventions; and
- had demonstrated success in educating similar student populations

to the population enrolled at the transferred campus.

The performance of a campus under the ASD could not be used to determine the prior school district's rating under the state accountability system.

Open meetings and records laws that apply to districts would apply to the ASD.

Funding. The ASD would be entitled to receive funding under the Foundation School Program equal to the amount per student in weighted average daily attendance without a tier one local share. Funding formula adjustments would be based on the adjustments for the prior system. The ASD would be entitled to receive enrichment funding under the guaranteed yield program based on the actual amount for the prior system.

The bill would add a temporary provision, set to expire September 1, 2015, to require the commissioner to apply the same adjustment factor to calculate the ASD's regular program allotment as for the prior system.

The ASD would report its student attendance and receive funding in the same manner as any other district. The prior district could not count the attendance of those students who were transferred to the ASD.

CSSB 1718 would entitle the ASD to use any school buildings and facilities used by the campus before it was placed in the ASD. The ASD would be responsible for routine maintenance and repairs.

The ASD could require the prior system to provide student transportation, food service, or student assessment for special education eligibility, although the ASD would be required to reimburse the prior system.

Teachers. Unlike rules governing most charter schools, a teacher employed by the ASD would need to be certified in the subject the teacher teaches.

The ASD superintendent would decide which teachers to retain, but would have to give priority consideration to certified teachers who held comparable positions in the prior system. A teacher could choose to remain with the prior system, which would retain and reassign the teacher consistent with contractual obligations.

For the purpose of determining any benefit or right requiring continuous service, the prior system would be required to grant a leave of absence to a person who was employed when the campus was removed. The prior system is not required to provide benefits during such leave.

The bill's provisions would apply beginning with the 2014-15 school year. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 1718 would give the education commissioner another option to deal with failing schools so those students could have an opportunity to get a quality education. It would create a statewide Achievement School District that could operate up to 10 campuses or assign the operation to a proven charter school provider.

Many low-performing schools are located in predominantly minority and economically distressed neighborhoods. It is not a coincidence that for African American and Hispanic students, the dropout rate is more than one-third.

Recovery school districts have shown the promise of improvement in states such as Tennessee and Louisiana and they should be tried in Texas.

Although parents could no longer take their concerns to the local school board, the campus would have a principal. Parents also could contact the legislators for the district where the school is located and the education commissioner.

The bill would provide choice for students in failing schools that would not involve the use of vouchers. All Texas students deserve a public school system that prepares them for postsecondary studies and careers.

The bill would affect 58 districts with enrollment of more than 20,000 students to avoid transferring control of a small district's only high school, for example. Currently, 20 campuses would be eligible for transfer to the ASD, due to two or more years of academically unacceptable ratings.

Students and their parents would have the option to attend the campus under the ASD or choose to attend another school within the regular

district.

State money would follow the student, but the prior district would keep local tax dollars. Students still would have available transportation services, food services, and student assessments for special education as required under the prior system.

The bill would protect teachers by allowing them to remain employed by the prior system or be given priority consideration for employment in a comparable position by the superintendent of ASD.

OPPONENTS SAY:

CSSB 1718 would authorize the education commissioner to take over neighborhood schools rated low-performing for two consecutive years and turn them over to Austin bureaucrats and private charter school operators. The state takeover of local schools would require no inquiry into the reasons for the schools low ratings or whether it had received adequate funding and support needed to succeed academically.

In the process, students, teachers, and parents could lose safeguards of educational quality and fair treatment that they now have under the Education Code. Parents would not be able to go to their local elected school board with concerns.

The idea was borrowed from New Orleans where the school system was devastated after Hurricane Katrina. Despite inflated claims of success for the Louisiana model, the charter-dominated recovery district ranks dead last in educational quality among that state's 70 school districts.

The notion that neighborhood schools would be improved by eliminating state standards such as class-size limits, teacher contract rights, and policies against grade inflation is wrong. Rather than lower state quality standards, legislators should provide funding for smaller class sizes and other resources to help students succeed.

The bill would appear to depart from existing state funding formulas by flowing funding to ASD campuses based on student characteristics in the district left behind rather than on the characteristics of students who actually choose to attend the ASD.

NOTES:

Compared to the engrossed version, the House committee substitute would:

- limit ASD provisions to districts with enrollment of 20,000 students;
- limit ASD transfers to 10 campuses;
- apply Sunset review provisions; and
- allow other options for districts to address low-performing schools.

SUBJECT: Requirements to practice orthotics and prosthetics

COMMITTEE: Public Health — favorable, without amendment

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 13 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify:* Snapper Carr, Texas Association of Orthotists and Prothetists; Dan Finch, Texas Medical Association; Jared Howell, Baylor College of Medicine)

Against — None

On — (*Registered, but did not testify:* David Olvera, Texas Board of Orthotics and Prosthetics)

BACKGROUND: Occupations Code, sec. 605.002, defines an orthosis as a custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of a neuromuscular or musculoskeletal disease, injury, or deformity. Orthotics is the science and practice of measuring, designing, fitting, or servicing an orthosis.

The Occupations Code defines a prosthesis as a custom-fabricated or custom-fitted medical device used to replace a missing limb, appendage, or other external human body part that is not surgically implanted. The term includes an artificial limb, hand, or foot, but not an artificial eye, ear, finger, toe, dental appliance, or any cosmetic device. Prosthetics is the science and practice of measuring, designing, fitting, or servicing a prosthesis.

DIGEST: SB 141 would amend the requirements to receive a license to practice orthotics and prosthetics from the Texas Board of Orthotics and

Prosthetics (TBOP).

The bill would add the holding of a graduate degree in orthotics and prosthetics from an accredited education or practitioner program to the current requirement that a licensed orthotist or prosthetist hold either a bachelor's degree in orthotics and prosthetics or, if a separate subject, a certificate from an accredited practitioner education program.

SB 141 would amend the clinical residency requirement for a license by replacing the provision that an applicant complete at least 1,900 hours of professional clinical residency with a requirement that the applicant complete a professional clinical residency that met TBOP's standards, which at minimum would have to meet the standards set by the National Commission on Orthotic and Prosthetic Education.

The bill would add the completion of a graduate degree in orthotics and prosthetics from an accredited education or practitioner program to the current requirement that an individual working toward fulfilling the requirements for a license be issued a student registration certificate if the person held either a bachelor's degree in orthotics and prosthetics or, if a separate subject, a certificate from an accredited practitioner education program.

TBOP also could issue a student registration certificate to a student currently enrolled in an accredited Texas graduate program in orthotics and prosthetics that incorporates a professional clinical residency and who submitted to TBOP a written certification from their graduate program that they had completed the academic prerequisites to enter a professional clinical residency.

The bill would direct TBOP to adopt rules to implement the bill's changes by December 1, 2013.

SB 141 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply only to applications for a license or student registration certificate submitted to TBOP on or after January 1, 2014.

SUBJECT: Revising the boundaries of the Cibolo Creek Municipal Authority

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez, Sanford

0 nays

1 absent — Anchia

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

WITNESSES: (*On companion bill, HB 2617)*
For — Clint Ellis, Cibolo Creek Municipal Authority

Against — None

BACKGROUND: The Cibolo Creek Municipal Authority (CCMA) was created in 1971 to provide regional wastewater services for the area northeast of San Antonio, including the communities of Schertz, Cibolo, Selma, Randolph Air Force Base, and portions of Live Oak, San Antonio, and Universal City.

DIGEST: SB 1771 would expand the boundaries of the CCMA service area within the cities of Schertz and Cibolo and in the Green Valley Special Utility District. The bill also would remove some land currently in the City of Schertz and the San Antonio Water Systems service area. The bill would include a statement that the legal notice of the intention to change the boundaries had been published publicly and furnished to all required entities.

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

SUBJECT: Regulating registered radiologist assistants, establishing penalties

COMMITTEE: Public Health — favorable, without amendment

VOTE: 7 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, Laubenberg

3 nays — S. King, J.D. Sheffield, Zedler

1 absent — Coleman

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

WITNESSES: For — Ray Kirk, Texas Radiological Society and American College of Radiology; Victoria Sanders, American Society of Radiologic Technologist, Texas Society of Radiologic Technologists, Society of Radiology Physicians; (*Registered, but did not testify*: Marisa Finely, Scott & White Healthcare; Kristin Lemery, West Houston Radiology Associates; Bhwana Oberoi, Texas Society of Radiology Practitioner Assistants; Alexander Sardina, Advanced Diagnostics; Rajiv Thakur, Advanced Diagnostics; Ted Wen, Texas Radiology Associated; Darren Whitehurst, Texas Medical Association; and seven individuals)

Against — None

On — Mari Robinson, Texas Medical Board

BACKGROUND: Occupations Code, ch. 601, governs medical radiologic technicians, but does not currently include registered radiologist assistants.

DIGEST: CSSB 1079 would establish a regulatory framework for the registration and oversight of advanced-level medical radiologic technologists (registered radiologist assistants).

Definitions. The bill would define "registered radiologist assistant" as a person who performs patient care, patient management, clinical imaging, and interventional procedures under the supervision of a radiologist.

Board powers and duties. The bill would require the Texas Medical Board to establish qualifications, examination requirements, and minimum education standards, among other things, for registered radiologist assistants. The bill would authorize the board to accept fees, gifts, grants, or donations under the bill's provisions.

Advisory committee. The president of the board would appoint the five members of the radiologist assistant advisory committee. The bill would specify the composition of the committee and would contain a temporary provision expiring December 31, 2018, specifying certain eligibility requirements for members.

Public participation and information. The board would have to develop and implement policies that provide the public with opportunities to appear before the board and speak on issues relating to registered radiologist assistants. The executive director of the board would have to establish a plan to allow non-English speakers to access these programs and services. The board would have to develop and make available to the public and state agencies information about the board's functions and complaint procedures related to registered radiologist assistants.

Complaints and investigations. The board by rule would have to establish methods by which consumers could report complaints about registered radiologist assistants and the board would have to maintain a file on each written complaint. The bill also would detail when the board would have to provide individuals with information about written complaints, complaint investigation and resolution procedures, and the status of investigations.

The board would have to provide a registration holder who was the subject of a formal complaint with all information that would be offered as evidence at the contested hearing. The bill would also specify a timeframe, exceptions to the rule, and that providing the information would not constitute a waiver of privilege or confidentiality. SB 1079 would provide procedures for giving health-care entities information about complaints and investigations.

Confidentiality and disclosure. Certain information would be privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than certain board members, employees, or agents. This information would include complaints, adverse

reports, and investigation files, among other things.

In some situations, investigative information could be disclosed to certain licensing authorities or peer review committees. Information indicating a possible crime would have to be reported to the proper law enforcement agency. The bill would provide additional procedures related to disclosing information to law enforcement agencies.

Immunity and reporting requirements. Certain committees and individuals would have to report a registered radiologist assistant to the board if it was believed that the assistant posed a continuing threat to the public welfare by practicing as a registered radiologist assistant. Mandated reporters would include medical peer review committees and physicians, among others. This duty to report could not be nullified in a contract. A person who, without malice, assisted the board in this way would be immune from civil liability. Certain reporting and confidentiaty requirements would apply to medical peer review committees regarding a registered radiologist assistant.

Registration and renewal. The bill would provide registration and renewal procedures for registered radiologist assistants.

Registration. On September 1, 2014, a person would need to be registered in order practice as a registered radiologist assistant in Texas. Without proper registration, a person could not use a title or designation indicating or implying that they were a registered radiologist assistant. The bill would specify eligibility and application requirements, including eligibility requirements and license expiration dates for out-of-state applicants. There would be a temporary provision expiring September 1, 2020, which would provide procedures, eligibility requirements, and renewal provisions for transitional registration. The board would have to set and collect reasonable and necessary fees to cover the costs of enforcing and administering the bill without using any other board funds. The bill would specify fee collection procedures.

Renewal. The board would have to issue a registered radiologist assistant registration to anyone who met the bill's requirements. The board by rule would have to provide for the annual renewal of a registration and could adopt a system under which registrations expired on various dates during the year. SB 1079 would provide renewal fee procedures, notice of renewal requirements, and a registration renewal process. The renewal

process would include ways to renew an expired license, but would prohibit a registration from being renewed if it had been expired for a year or longer.

Information. The registration holder would have to provide the board with certain information, such as a mailing address, and update the information within the specified timeframe, if needed.

Scope of practice. The board would be required to adopt rules to determine the scope of practice of registered radiologist assistants, and they would have to consider guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the American Registry of Radiologic Technologists. A registered radiologist assistant could practice in any place authorized by a delegating radiologist, including a clinic, hospital, or health care center, among others.

Functions and standards. A registered radiologist assistant and the assistant's delegating radiologist would have to meet certain requirements related to the assistant's scope of duty. This would include identifying their scope of function, delegating appropriate medical tasks, defining the nature of delegation, and establishing evaluation procedures.

Supervision. The board by rule would have to establish guidelines for "general supervision," "direct supervision," and "personal supervision" as those terms were defined by the bill. A supervising radiologist would have to determine what level of supervision to provide a registered radiologist assistant based the assistant's technical ability, the procedure, and the patient's history and clinical presentation, among other things. A registered radiologist assistant could not interpret an image, make a diagnosis, or prescribe a medication or therapy.

Disciplinary actions. If the board determined that an applicant or registration holder committed a prohibited act, the board could take certain disciplinary actions. This would include denying or revoking a person's registration, requiring participation in an education or counseling program, probation, and public reprimand, among other things. The board could temporarily stop enforcement to place a person on probation, but would retain the right to enforce the original order. The board could also restore or reissue a registration, or remove any disciplinary or corrective measures.

A three-member board disciplinary panel could decide to temporarily suspend a registration if it determined that the registered radiologist assistant's continued practice would threaten the public welfare. The bill would include situations in which a registration could be temporarily suspended without notice to the license holder and provide procedures for telephonic meetings.

Prohibited conduct. The bill would establish certain acts that would constitute fraud or misrepresentation and authorize the board to take action against the applicant or registration holder who committed those acts. The board could take action against an applicant or registration holder for certain violations of law, such as a felony conviction, and for conduct indicating a lack of fitness. Conduct indicating a lack of fitness would include being adjudicated mentally incompetent, acts indicating professional incompetence or unprofessional conduct, and sexual abuse or exploitation, among other things.

The bill would specify that certain documents would be considered conclusive evidence of some actions and that certain acts would not constitute state action. The board would have to suspend the registration of a registered radiologist assistant who was serving a prison term in state or federal penitentiary during their period of incarceration.

Subpoenas. The executive director of the board, the director's designee, or the secretary-treasurer of the board could issue a subpoena or a subpoena duces tecum (subpoena for production of evidence) to conduct an investigation or a contested case hearing for certain acts of misconduct, violations of law, or the provision of health care. A subpoena or a subpoena duces tecum could also be issued for the purposes of determining whether to issue, deny, suspend, restrict, or revoke a registration. If a person failed to timely comply with a subpoena (or subpoena duces tecum), it would be grounds for disciplinary action by the board or a regulatory agency with jurisdiction over the person, and denial of a registration application.

Proceedings. In disciplinary investigations or proceedings, the board would have to protect the identity of each patient whose medical records were examined and used in public proceedings unless the patient testified or submitted a written release for their identity or records. The rules for proceedings adopted by the board from the Government Code could not conflict with rules adopted by the State Office of Administrative Hearings.

Administrative penalty. The board by order could impose an administrative penalty against a registered radiologist assistant who violated the bill's laws, rules, or orders. The penalty could not exceed $5,000. Each day a violation continued to occur would be considered a separate violation. The board would have to consider a number of factors when determining the penalty amount. These factors would include the severity of patient harm, concealment of the conduct, any intentional misconduct, and the person's failure to implement remedial measures, among other things. The board by rule would have to prescribe the procedures by which it could impose an administrative penalty and the bill would provide procedures for giving notice of these penalties.

Rules. The executive commissioner of the Health and Human Services Commission by rule would have to identify procedures that could only be performed by a practitioner, medical radiologic technologist, or a registered radiologist assistant. When developing the rules, the executive commissioner could consider whether a radiologic procedure would be performed by registered nurse, a licensed physician, or a registered radiologist assistant. By January 1, 2014 the Texas Medical Board would have to adopt rules and procedures to implement the bill.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1079 would alleviate health-care workforce shortages. Currently, Texas trains many radiologist assistants who leave for out-of-state jobs due to the lack of state registration and regulation. By establishing a regulatory framework that would enable the state to register and regulate this profession, the bill would encourage these highly skilled health-care professionals to practice in Texas.

The bill would not establish overly burdensome regulations. By establishing eligibility criteria, registration requirements, and disciplinary procedures, the bill would adequately protect patients and ensure that radiologist assistants were high-quality professionals.

OPPONENTS SAY:

SB 1079 would establish a burdensome and unnecessary regulatory scheme. Texas places onerous occupational licensing and registration requirements on its workforce, a practice that can inhibit economic growth and restrict employment. By requiring that radiologist assistants meet certain requirements in order to obtain state registration, the bill could prevent the employment of an otherwise qualified individual.

SUBJECT: State retirement contributions for certain junior-college employees

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 1 — 31-0

WITNESSES: No public hearing

DIGEST: SB 1812 would implement a formula to determine the state's share of the benefits and retirement contributions in the Teachers Retirement System, Optional Retirement Program, and Employees Retirement System for certain employees of public junior college employees.

The state's share of these payments would be determined by the number of employees in each of three different classes:

- The state would pay half of the employer's share of retirement contributions for employees who otherwise were eligible for membership in these programs and were instructional or administrative employees whose salaries may be fully paid from funds appropriated under the General Appropriations Act, regardless of whether such salaries actually were paid from appropriated funds.

- The state would pay none of the employer's share of retirement contributions for employees who were not instructional or administrative employees but otherwise were eligible for membership in in these programs.

- The state would pay none of the employer's share of the contributions for employees who were not otherwise eligible.

The number of qualified employees for whom the state would cover have of the employer contribution would not be adjusted in a proportion greater than the change in student enrollment at each college. A college would be allowed to petition the Legislative Budget Board to maintain the number of eligible employees up to 98 percent of the level of the previous biennium.

The bill would impose certain conforming reporting requirements on the two-year institutions.

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

SUPPORTERS SAY:

SB 1812 would place in statute an agreement between state appropriators and community colleges regarding the appropriate level of state funding toward the benefits of certain employees at two-year institutions of higher education. SB 1812 would require the state to cover half of the costs of health insurance and retirement benefits for instructional and administrative employees at public community and junior colleges.

The bill would save the state money. According to the Legislative Budget Board's fiscal note, SB 1812 would mean a positive impact of $69.1 million to general revenue in fiscal 2014-15 because it would lower substantially the state’s required contributions from their historical levels. SB 1812 would resolve an ongoing funding dispute.

The bill would protect the state from sharp increases in these funding costs by limiting the number of eligible employees for whom the state would fund coverage. The growth limit would be the percentage increase in student contact hours. In addition, the bill would allow for an appeal by colleges that experience losses in contact hours and thus a loss of coverage. The bill would allow those colleges to appeal to the Legislative Budget Board to maintain the number of eligible employees up to 98 percent of the level of the prior biennium.

Junior colleges have local sources of revenue and they make their own workforce policies, including how generous their benefits will be. It is appropriate that the state limit its contributions and set the formula in statute.

OPPONENTS SAY:

By setting the state's share of benefits and retirement premiums at 50 percent or in some cases none of the employer's share, SB 1812 would pass costs down to local entities and require them to fund the difference. Making these important recruitment tools more expensive for community colleges would mean they must raise either tuition or local property taxes, cut funding to other programs, or raise employee premiums. If employee premiums are raised or if there is uncertainty at the local level as to how they would pay for benefits and retirement, retention and recruitment could be hurt.

SUBJECT: Requiring mental disorder detection instruction for education certificates

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

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

WITNESSES: For — Linda De Sosa; Andrea Usanga, Mental Health America of Greater Houston; (*Registered, but did not testify*: Greg Hansch, National Alliance on Mental Illness - Texas; Dwight Harris, Texas AFT; Josette Saxton, Texans Care for Children; Gyl Switzer, Mental Health America of Texas)

Against — (*Registered, but did not testify*: Lelia Culpepper; Lauren DeWitt and Lee Spiller, Citizens Commission on Human Rights; MerryLynn Gerstenschlager, Texas Eagle Forum; Christy Peterson; Anna Poulin; Judy Powell, Parent Guidance Center; Michelle Watts; George Wier)

On — Belinda Carlton, Texas Council for Developmental Disabilities; (*Registered, but did not testify*: David Anderson, Texas Education Agency)

BACKGROUND: Education Code, sec. 21.044 requires the State Board for Educator Certification to establish training requirements a person must accomplish to obtain an education certificate.

DIGEST: SB 460 would require instruction in the detection of students with mental or emotional disorders as a part of the training for any education certificate that required a person to possess a bachelor's degree. This instruction would have to be developed by a panel of experts appointed by the Board of Educator Certification and include information on the characteristics and identification of mental and emotional disorders, strategies for intervention, and appropriate ways to notify a child's parent or guardian.

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 460 would train educators to appropriately respond to students with mental or emotional issues, which would help the students and improve classroom management and behavioral and academic outcomes. Mental and emotional illnesses can hinder a student's home and school activities, leading to school problems, disciplinary placements, and, in extreme cases, suicide. Without training in how to recognize and respond to students with these illnesses, educators may inadvertently reinforce or escalate the illness. Equipping school personnel with these basic skills and tools would help educators identify disorders, properly intervene, and help link students with the needed services. This requirement would not be an attempt to turn teachers into mental health professionals, just as taking a cardiopulmonary resuscitation (CPR) course would not attempt to make someone a doctor. SB 460 would be a simple way to help teachers reduce potentially dangerous, degrading, and unhealthy situations, benefiting students and improving educational outcomes.

OPPONENTS SAY:

Texas teachers should remain focused on teaching and not on identifying and intervening with students' mental and emotional health disorders. Schools are already struggling with tight budgets and high expectations. Schools represent the state government, and it is not the government's role or responsibility to identify and intervene with personal matters that should be left to the family and a physician. Additionally, requiring this training could make teachers overly sensitive to possible illnesses in students, which could lead to over-diagnosing and over-prescribing medications for students.

SUBJECT: Drug testing of certain persons seeking financial assistance benefits

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Raymond, Klick, Sanford, Scott Turner, Zerwas

3 nays — N. Gonzalez, Naishtat, Rose

1 absent — Fallon

SENATE VOTE: On final passage, April 10 —31-0

WITNESSES: No public hearing

BACKGROUND: The Temporary Assistance for Needy Families (TANF) program provides financial help for children and their parents or relatives who are living with them. The Health and Human Services Commission (HHSC) determines the amount of the TANF payment depending on family size and income.

Families approved for TANF receive payments for six months and receive a renewal application from HHSC before the end of the six months. The total amount of time a parent or relative can receive TANF ranges from 12 to 36 months. There are no time limits for children.

If a child's parent or relative is also approved for TANF, the parent or relative must agree not to abuse alcohol or drugs. Federal rules permit drug testing as part of the TANF block grant.

DIGEST: SB 11 would require adult applicants, including those who were applying solely on behalf of a child, and minor parents who were head of household, to submit to a marijuana and controlled substance use screening assessment when first applying for financial assistance benefits and on an application for continuation of those benefits.

Drug testing. Under the bill, if the screening assessment indicated good cause to suspect the person had used marijuana or a controlled substance, the person would have to submit to a drug test. The first time a person's

drug test came back positive for drugs not prescribed by a health care practitioner, the person would be ineligible for financial assistance benefits for six months. The second time, the person would be ineligible for 12 months and could reapply six months after the date the person's period of eligibility began if the person completed or enrolled in a substance abuse treatment program. The third time, the person would be permanently ineligible.

The commission would have to pay the cost of the screening assessments and drug tests using funds from the federal TANF block grant. The bill would require the commission to use the most efficient and cost-effective marijuana and controlled substance use screening assessment tool, based on validated tools.

Before denying a person eligibility for financial assistance benefits, the commission would have to:

- notify the person who took the drug test of the test results and the commission's proposed determination of ineligibility; and
- confirm the results of the drug test through a second drug test or other appropriate method.

A person who was denied financial assistance benefits due to a positive drug test would have to submit to a drug test, without first submitting to a marijuana and controlled substance use screening assessment, when reapplying for those benefits.

Exceptions. The Health and Human Services Commission would have to adopt rules exempting a person from drug testing if there was no one in the person's county that could administer the drug test and if submitting to a drug test outside the person's county would impose an unreasonable hardship.

The denial of eligibility for financial assistance benefits to a person would not affect the eligibility of the person's family for those benefits. If a parent or caretaker relative of a dependent child became ineligible for benefits because of the results of a drug test, the bill would require the commission to designate a protective payee to receive financial assistance benefits on behalf of the child. The protective payee would also have to submit to a controlled substance use screening assessment and drug test if appropriate. The protective payee would be ineligible to serve in that role

if the drug test came back positive for controlled substances not prescribed to the person.

Drug test reporting to DFPS. The commission would have to report positive drug test results to the Department of Family and Protective Services (DFPS) to use in investigations of child abuse and neglect.

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

The bill would take effect September 1, 2013, and would apply to initial applications for financial assistance benefits and to applications for continuation of those benefits made on or after that date.

SUPPORTERS SAY:

SB 11 would ensure that the TANF program used public funds responsibly and would put recipients on a path toward self-sufficiency. Drug use tears apart families, hurts children, and prevents individuals from living healthy, productive lives. The state has a responsibility to ensure that individuals are on a true path to self-sufficiency and drug-free in keeping with the mission of the program.

The bill would ensure that children received the assistance they needed by allowing children to continue to receive benefits through a protective payee if their parent or caretaker was disqualified for TANF benefits upon a second or third positive drug test. SB 11 also would encourage parents whose drug tests came back positive a second time to enter treatment by requiring them to enroll in a substance abuse treatment program before they could reapply for benefits.

Texas statute currently requires TANF recipients to sign a personal responsibility agreement not to use, possess, or sell marijuana or a controlled substance, but there are few safeguards within the program to ensure that the money is spent on its intended purposes, such as food, clothing, housing, transportation, laundry, and other basic needs. SB 11 would create a sensible path between complete non-enforcement of the personal responsibility agreement and testing for all recipients.

In implementing the bill, HHSC would adopt rules to improve access to drug testing facilities and local, state, and nonprofit substance abuse

treatment programs.

OPPONENTS SAY:

SB 11 would stigmatize TANF recipients by promoting the erroneous perception that TANF recipients are drug users, when data is lacking to suggest people in need of government assistance are more likely than those in other socioeconomic groups to use drugs.

Struggling parents should not be treated like criminals for reaching out for help in desperate times. By requiring drug screening for all recipients, SB 11 would set a precedent of requiring innocent Texans to prove they did not commit a crime.

According to the Legislative Budget Board, the requirements of SB 11 would cost about $1.2 million in general revenue related funds in fiscal 2014-15. It is likely the state would spend more money on drug testing and screening than it would have lost to the very small percentage of TANF recipients that were violating the personal responsibility agreement.

Texas has an extreme shortage of substance abuse treatment beds. By not providing funding for treatment, SB 11 could permanently suspend a parent's eligibility for TANF benefits while they waited to enroll in a program. People with drug problems who receive TANF benefits typically do not have the money to gain access to private treatment programs.

NOTES:

SB 11 would have a negative fiscal impact of $1,237,789 in general revenue related funds through fiscal 2014-15, according to the fiscal note. HHSC indicates that it would implement a no-cost drug screening assessment and estimates about 2.5 percent of those screened would be subject to drug testing. HHSC anticipates that 5 percent of those subject to drug testing would refuse to be tested.

The fiscal note also estimates costs for additional DFPS staff, hardware and software for each FTE, and modifications to HHSC technology systems. There could be additional costs related to HHSC designating a protective payee, but the LBB could not estimate those costs at this time.

SUBJECT: Requiring training for educators on mental health illness and suicide risk

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

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

WITNESSES: For — Linda De Sosa; Jeff Miller, Disability Rights Texas; Josette Saxton, Texans Care for Children; Andrea Usanga, Mental Health America of Greater Houston; (*Registered, but did not testify*: Greg Hansch, National Alliance on Mental Illness - Texas; Gyl Switzer, Mental Health America of Texas)

Against — (*Registered, but did not testify*: Lelia Culpepper; Lauren DeWitt, Citizens Commission on Human Rights; MerryLynn Gerstenschlager, Texas Eagle Forum; Anna Poulin; Judy Powell, Parent Guidance Center; Michelle Watts)

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

BACKGROUND: Health and Safety Code, ch. 161, subch. O-1 governs early mental health and prevention of youth suicide. Sec. 161.325 requires the Department of State Health Services to coordinate with the Texas Education Agency to develop a list of recommended best-practice-based programs in early mental health intervention and suicide prevention for implementation in public K-12 schools. Each school district may select appropriate programs from the list for implementation.

DIGEST: SB 1178 would require each school district to provide training in the areas of early mental health intervention and suicide prevention programs for teachers, counselors, principals, and all other appropriate personnel. Each of these employees would be required to participate in the training at least one time and the school district would be required to keep a record of each

employee who participated in the training. Training at an elementary school would only be required to the extent that sufficient funding and programs were available.

The bill would establish that the subchapter describing the early mental health intervention and suicide prevention programs and training would not waive any immunity from liability for the district or employees, including for emergency care, or create any liability for a cause of action against the district or employees.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1178 would provide educators with quick and easily available training to help appropriately respond to students with mental illnesses. This would help the students and improve classroom management and behavioral and academic outcomes. Mental illnesses can hinder a student's academic development, leading to school problems, disciplinary placements, and, in extreme cases, suicide. Without proper training, educators may inadvertently reinforce or escalate illnesses.

This bill would equip school personnel with the basic skills and tools to help identify disorders, properly intervene, and help link students with the needed services, while protecting the educators from liability by granting immunity from prosecution when performing their duties. This requirement is not an attempt to turn teachers into mental health professionals, just as taking a CPR course would not attempt to make someone a doctor. SB 1178 would be a simple way to help teachers reduce potentially dangerous, degrading, and unhealthy situations, benefiting students and improving educational outcomes.

OPPONENTS SAY:

Texas teachers should remain focused on teaching, not on identifying and intervening in students' mental and emotional health disorders. SB 1178 would be an unfunded mandate requiring most school personnel to be trained on an issue outside the scope of the school's primary purpose. It is not the government's role or responsibility to identify and intervene with personal matters that should be left to the family and a physician. In addition, requiring this training could make teachers overly sensitive to students' potential illnesses, which could lead to over-diagnosing and over-prescribing medications to students. Parents might not be informed about what the training included or what actions a teacher would take because of the training.

SUBJECT: Applicability of certain laws to open-enrollment charter schools

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

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

WITNESSES: For — Tommy Fuller, Universal Academy; Lindsey Jones, Texas Charter Schools Association; (*Registered, but did not testify*: Andrew Erben, Texas Institute for Education Reform; Lee Parsley, Texans for Lawsuit Reform)

Against — (*Registered, but did not testify*: Monty Exter, The Association of Texas Professional Educators)

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

BACKGROUND: Education Code, sec. 12.1056 states that open-enrollment charter schools possess the same immunity from liability as school districts. Such immunity applies to employees and volunteers, as well as members of the governing bodies of charter schools.

Civil Practice and Remedies Code, ch. 101 states what tort liability government units, including school districts, may face. Ch. 101 also places limits on the liability local government units can incur in terms of maximum money damages amounts. The tort liability provisions of this chapter only apply to school districts in the case of an injury resulting from the use of a motor-driven vehicle. Civil Practice and Remedies Code, ch. 102 states when a local government entity may pay actual damages on a tort claim and the limits on these actual damages payments.

Local Government Code, ch. 271, Subch. I provides for limits on the amount of liability to which local government entities, including school

districts, may be subject in breach of contract cases.

Labor Code, ch. 504 states that a political subdivision, which includes a school district, is required to extend workers' compensation benefits to its employees. Workers' compensation benefits may be provided through self-insurance, an insurance policy, or an interlocal agreement for self-insurance with other political subdivisions. Labor Code, Title 5, subtitle A ensures that employers who carry workers' compensation insurance get protection from unlimited legal liability for employees' on-the-job injuries, and workers receive timely compensation without having to sue their employers.

DIGEST:

SB 547 would amend Education Code, sec. 12.1056 to establish what tort and contract liability charter schools could incur. Charter schools would be considered a government unit for the purposes of Civil Practice and Remedies Code, ch. 101 and would be subject to the same tort liability as school districts. For purposes of Civil Practice and Remedies Code, ch. 102, with its limits on tort claims payments, a charter school would be considered a local government.

Charter schools would be treated in the same way as school districts for the purposes of contract disputes under Local Government Code, ch. 271, Subch. I.

A charter school could provide workers' compensation benefits to its employees through any of the available methods under Labor Code, ch. 504. In doing so, a charter school would be considered a political subdivision under this chapter. If a charter school chose to self-insure individually or through an interlocal agreement, that charter school would be considered an insurance carrier with limited liability protections under Labor Code, Title 5, subtitle A.

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 547 would extend the same opportunities for liability protections to charter schools as are currently given to traditional public schools. Because charters receive per pupil funding but cannot levy taxes nor receive facilities funding, it is important to protect each and every dollar. Under current law, charter schools do not have a safeguard from

protracted litigation. Money that is put toward expensive litigation would be money that could have been spent on salaries, improved technology, curriculum expansion, and other classroom items.

Charter schools such as Universal Academy, which operates schools in North Texas, have faced protracted litigation. If this bill were enacted, the limited liability of charter schools would be clarified. Charter schools still would be held accountable for any breaches of contract. However, the bill would ensure any breach of contract claim met the same requirements applied to traditional school districts under the Local Government Code, such as the contract having to be in writing in order for a lawsuit to move forward.

The bill also would contain provisions that rightly allow charter schools to be treated in the same respects as the traditional school districts and as local government political subdivisions by allowing them to plan, manage risk associated with civil liability, and offer employee benefits and workers' compensation. Charter schools also would be afforded the tools to save costs on insurance by either self-insuring or participating in intergovernmental risk pools.

In granting charter schools the same immunities granted to traditional school districts, the bill would allow judges the same discretion to determine if a lawsuit was frivolous sooner rather than later in the legal process. Again, this would save charter schools money.

OPPONENTS SAY:

The bill's immunity provisions are unnecessary. The existing immunity from liability provision ensures that a charter school is protected from having to pay damages amounts to the same extent as a traditional public school. While the bill might enable charter schools to get lawsuits dismissed at an earlier stage, charter schools are currently guaranteed to win against certain awards of damages at the court stage.

SUBJECT: Changing examination requirements for a license to practice medicine

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Kolkhorst, Naishtat, Cortez, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

2 nays — Collier, S. Davis

1 absent — Coleman

SENATE VOTE: On final passage, April 8 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Snapper Carr, Permian Regional Medical Center; Corey Davison, Tenet Healthcare; Dan Finch, Texas Medical Association; Chuck Girard, Hospital Corporation of America; Stacy Wilson, Texas Hospital Association)

Against — None

On — Mari Robinson, Texas Medical Board

BACKGROUND: Texas requires physician applicants to pass the U.S. medical licensing examination (USMLE) within a certain number of attempts and within a certain time frame. Occupations Code, sec. 155.056 requires a physician to pass each part of the examination within three attempts. Sec. 155.051 requires a physician applicant to pass each part of the licensing examination within seven years, with some exceptions. This limitation does not apply to certain applicants who are licensed in another state and who have passed all but one part of the examination approved by the board within three attempts, if other requirements are met. Additionally, the Texas Medical Board is required to maintain a profile for every physician licensed to practice medicine in Texas.

DIGEST: CSSB 1082 would require a physician applicant to pass each individual part of the licensing examination within five attempts and all parts of the examination within nine attempts. The bill would require a physician's profile maintained by Texas Medical Board to include the number of

attempts taken to pass each part of the licensing examination.

The time frame to pass each part of the physician licensing examination and the limitation on the number of attempts would not apply to an applicant who:

- was licensed and in good standing as a physician in another state;
- had been licensed for at least five years;
- did not have a medical license that had or ever had any restrictions, disciplinary orders, or probations; and
- would practice in a medically underserved or a health manpower-shortage area.

The board by rule could establish a process to verify that these physicians only practice in medically underserved or health manpower-shortage areas.

The bill would repeal provisions providing additional eligibility requirements for certain aliens and provisions establishing examination attempt limits for those who held a physician-in-training license on September 1, 2005. The bill would apply physician license applications filed on or after the bill's 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:

CSSB 1082 would help alleviate health care workforce shortages, especially in rural and border areas of Texas that are chronically underserved. Texas requires physicians to pass the national licensing exam within a small number of attempts. This is difficult to achieve, even for qualified physicians. As a result, many physicians cannot practice in Texas due to the restrictive licensing requirements.

By increasing the number of examination attempts, the bill would allow more physicians to practice medicine in Texas. It would also create an exemption by which qualified out-of-state physicians could serve underserved areas of Texas, even if they did not pass the national licensing exam within the requisite number of attempts.

This bill would not lower the quality of physicians practicing in Texas. All

physicians must pass a national licensing exam, and states often allow physicians a greater number of attempts to pass this exam than is allowed in Texas. Moreover, many states have no limit on the number of attempts. This bill would promote uniformity by aligning Texas with other states, while still maintaining a very high standard for physicians.

OPPONENTS SAY:

CSSB 1082 would lower the quality of physicians who practice in Texas, and the impact would disproportionately affect rural and border areas that are medically underserved. To ensure high-quality health care for all Texans, the state should maintain its rigorous standards for the licensing exam.

SUBJECT: Relating to requirements for state educator certification examinations

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

SENATE VOTE: On final passage, May 3 — 30-0

WITNESSES: For — (*Registered, but did not testify:* Melva Cardenas, Texas Association of School Personnel Administrators; Monty Exter, Association of Texas Professional Educators; Lindsay Gustafson, Texas Classroom Teachers Association; Ben Maddox, Kids First; Mike Moses; Jim Nelson; Sandra West, Science Teachers of Texas)

Against — None

On — David Anderson, Texas Education Agency

BACKGROUND: Under Education Code, ch. 21, to be a certified elementary or secondary teacher in Texas, a person must, among other requirements, pass certification exams required by the State Board of Educator Certification (SBEC).

The exam for a generalist teaching certificate for early childhood through the sixth-grade and a generalist teaching certificate for grades 4-8 consist of subsections that focus on core subjects such as English, math, social studies, and science. There is no requirement that a person pass each of the exam's subsections because only the exam's cumulative score is reported to certifying agencies and employers.

DIGEST: SB 1555 would amend Education Code, sec. 21.048, to require the State Board for Educator Certification (SBEC) to determine by January 1, 2014 the satisfactory level of performance required for each teacher certification test.

For the issuance of a generalist certificate, the SBEC would have to require a teacher to achieve a satisfactory level test performance in each core subject.

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

SUBJECT: Easements used for dune maintenance projects in certain counties

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 6 ayes — Deshotel, Frank, Goldman, Herrero, Parker, Springer

3 nays — Walle, Paddie, Simpson

SENATE VOTE: On final passage, May 15 — 31-0

WITNESSES: For — Marie Robb, City of Galveston; (*Registered, but did not testify*: Ben Raimer)

Against — Jamie Mitchell, Surfrider Foundation; Jerry Patterson, General Land Office

On — (*Registered, but did not testify*: David Land, General Land Office)

BACKGROUND: The Texas Open Beaches Act, Natural Resources Code, ch. 61, grants the public free and unrestricted right to access state-owned beaches and a right to use any public beach or larger area extending from the line of mean low tide to the line of vegetation bordering the Gulf of Mexico.

The Texas Supreme Court rulings in *Severance vs. Patterson*, 2009, determined that in certain circumstances land that was once generally considered public beach is in fact private property. State and local funds cannot be spent on dune construction and maintenance projects on private property unless the public has legal access to that property.

DIGEST: SB 1560 would provide the mechanism for a property owner to grant a static easement to the state or a local government for the purpose of performing a dune project in a county that contained a barrier island and a peninsula, had a population of more than 50,000 and less than 350,000, and bordered a county with more than 4 million people (Galveston County). A dune project would be defined as a project to construct and maintain a vegetated stabilized dune on a beach for the protection against avulsive (dramatic changes in landscape often resulting from storms or floods) or meteorological events.

A person who owned property that bordered state-owned beaches could grant an easement on the property or a portion of the property to the state or a local government for purpose of allowing the governmental entity to construct and maintain a dune project on the easement. The bill would require the public entity to maintain the dune project or the easement would terminate.

The bill would require the person granting the easement to perform surveys and grant recreational easements to ensure public access to the beach. The easement could not decrease the size of the public beach.

A person who granted a recreational easement would be provided certain liability protections but would not be protected from being grossly negligent or to have acted with malicious intent or in bad faith.

An easement granted before the effective date of the bill would be governed by the law that was in effect on the date the easement was granted, and the former law would be continued in effect for that purpose.

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 1560 would authorize landowners to offer static easements to government on private property for the construction of dunes to maintain beaches. It is time to start rebuilding dunes and renourishing beaches on West Galveston Island to protect private property from storm surges. Sand dunes feed the public beaches with sand, and many coastal states nourish beaches from a static line.

OPPONENTS SAY:

SB 1560 is unnecessary because static easements are already allowed by law. In addition, there is no local consensus for the bill.

Static easements reduce the size of the public beach once storm events occur because they define a permanent line and the beach erodes in front of the easement. Static easements, after storm events and with naturally occurring erosion, limit public access to beaches. Also, dunes constructed on static easements are expensive to maintain because they are not allowed to migrate, as dunes do naturally on barrier islands. Rolling easements are the more appropriate form of easements for West Galveston Island.

SUBJECT: Property tax limits on homes constructed with disaster relief funding

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Martinez Fischer

0 nays

2 absent — Ritter, Strama

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

WITNESSES: (*On House companion, HB 835)*
For — Shelly Batten; Mary C. Colunga; Emily Rickers, Alliance for Texas Families; (*Registered, but did not testify:* Daniel Gonzalez and Chelsey Thomas, Texas Association of Realtors; Donald Lee, Texas Conference of Urban Counties; Scott Norman, Texas Association of Builders)

Against — None

On — (*Registered, but did not testify*: Katy Sellers, General Land Office)

BACKGROUND: The General Land Office reports that the federal community development block grants disaster recovery (CDBG-DR) program has assisted about 3,000 families and will assist about 5,000 more with rebuilding their homes in the 63 counties affected by hurricanes Ike and Dolly, and the Bastrop County wildfires. To qualify for assistance, a family of four must have an income of about $50,000 or less.

Homes rebuilt under the federal programs must be rebuilt to federal, state, and local housing standards, and may also be required to meet additional construction standards related to windstorms and elevations.

DIGEST: SB 835 would amend Tax Code, sec. 23.23 to provide that only to the extent necessary to satisfy a disaster recovery program defined by certain federal laws, a replacement structure would not be considered to be a new

improvement if to satisfy the requirement of the disaster recovery program it was necessary that:

- square footage was added to the replacement structure; or
- the exterior of the replacement structure is of higher quality construction and composition than that of the replaced structure.

The bill would apply only to property tax appraisals of a residence homestead beginning on or after January 1, 2014.

The bill would take effect on January 1, 2014.

SUPPORTERS SAY:

SB 835 would provide property tax relief to individuals and families of low to modest income who had their house destroyed by hurricanes Ike or Dolly, or the Bastrop County wildfires. Due to modern building standards, and federal, state and local construction codes, many of the homes have had to be built or repaired to a higher construction standard or to a larger size.

Under existing law, the appraised value of a homestead may not increase by more than 10 percent of the previous year's appraised value, plus the market value of any new improvements. However, homeowners do not benefit from this cap if the new structure increases in size or the new exterior of the house is of higher quality than the old exterior.

This has the unintended consequences for some homeowners who cannot rebuild their homes as to identical pre-disaster conditions once because of disaster recovery program requirements or local building codes. Taxpayers whose homes are improved only to meet minimum disaster recovery or building code requirements should benefit from the 10 percent cap.

OPPONENTS SAY:

SB 835 could open the doors for a substantial loss of tax revenue that would otherwise benefit public schools and local governments.

NOTES:

The Legislative Budget Board's fiscal note states that the bill "would create a cost to local governments and the state through the operation of the school funding formula because such structures would be subject to the 10 percent limitation on homestead appraised valued increases while under current law they are not."

SUBJECT: Discharge of a surety's liability on a bail bond in a criminal case

COMMITTEE: Corrections — favorable, without amendment

VOTE: 4 ayes — Parker, White, Riddle, J.D. Sheffield

0 nays

3 absent — Allen, Rose, Toth

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

WITNESSES: No public hearing

DIGEST: SB 876 would require a judge or magistrate in whose court a criminal action was pending to discharge a surety's liability on a bond if the surety filed with the judge or magistrate a motion for discharge supported by an affidavit stating that:

- more than five years had elapsed since the date on which the surety posted the bond;
- either the defendant had never been required to appear in court in the criminal action or, during the three-year period preceding the date of the motion for discharge, there was no apparent activity in the criminal action and the prosecutor did not file a written request to set a date for the action;
- the bond was not forfeited before or on the date of the motion for discharge;
- the surety no longer wished to be a surety on the bond;
- the surety had served the defendant's attorney, if the defendant was represented by an attorney, with a copy of the motion for discharge in the manner provided by the Texas Rules of Civil Procedure; and
- the surety had provided a copy of the motion for discharge to the prosecuting attorney.

If the judge or magistrate discharged a surety's liability under the bill and the indictment, information, or complaint remained pending against the defendant, the judge or magistrate could issue:

- a capias, or arrest warrant, for the arrest of the defendant; or
- a summons for the defendant to appear before the judge or magistrate for the purpose of giving another bond.

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

SUPPORTERS SAY:

SB 876 would fix a flaw in the bail bond process, allowing resolution of bonds that would otherwise be left in effect indefinitely. Currently in Texas a bail bond that is written to obtain the release of a defendant from custody is valid for an indefinite amount of time. If the defendant fails to appear, the bond is forfeited and the state has four years to prosecute the forfeiture. However, if the underlying criminal case is never set for a hearing, the bond remains in effect forever. Courts have begun a practice of setting hearings in old cases just to forfeit the bond and collect the bond revenue. This bill would allow for discharge of those bonds instead, allowing these bonds to be resolved and protecting the private bail bond industry from improper government overreach.

The bill would provide sufficient opportunity for a prosecuting attorney to object. By requiring the surety to provide notice to a prosecutor, the bill would ensure that any objections or concerns about the discharge of a bond could be raised.

OPPONENTS SAY:

SB 876 should include a provision to ensure that the prosecuting attorney in the underlying criminal case had no objections to the surety's discharge. The prosecuting attorney in a case should have a chance to prevent the discharge of a surety's liability on a bond if there are reasonable objections to the discharge.

SUBJECT: Procedure for requesting, issuing nondisclosure orders of criminal records

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

1 nay — Toth

1 absent — Hughes

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

WITNESSES: For — Marc Levin, Texas Public Policy Foundation Center for Effective Justice; Jorge Renaud, Texas Criminal Justice Coalition; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Kandice Sanaie, Texas Association of Business)

Against — (*Registered, but did not testify:* Michael Schneider, Texas Association of Broadcasters)

BACKGROUND: Under Government Code, sec. 411.081(d), persons receiving a discharge and dismissal from deferred adjudication who also meet certain conditions may ask the court for an order of nondisclosure of their criminal records. These conditions include not being convicted of or placed on deferred adjudication for certain offenses while on deferred adjudication and not having previous convictions for certain violent, sex, or family violence offenses.

If a court issues an order of nondisclosure, criminal justice agencies are prohibited from disclosing to the public criminal history records subject to the order. This makes criminal history records unavailable to the public but allows criminal justice agencies access to them and allows access by certain other listed entities listed in sec. 411.081(i).

When a request for an order of nondisclosure is made, subject to certain deadlines and criteria, courts must hold a hearing on the request, after notifying the prosecutor. After a hearing on whether the person is entitled to file the petition and whether the issuance of the order is in the best

interest of justice, courts must issue the nondisclosure order.

DIGEST:

SB 977 would allow petitions for nondisclosure of criminal records to be filed with a court in person, electronically, or by mail. The Office of Court Administration (OCA) would be required to develop a form for filing an electronic or mail request. The form would have to allow the petition to be accompanied by the required fee and supporting material that OCA determined was necessary.

The electronic and printable application would have to be available on OCA's website. County and district clerks offices that maintain websites would have to include on their website a link to the forms.

Upon receipt of a petition of nondisclosure, courts would have to give notice to the prosecutor and an opportunity for a hearing on whether the person was entitled to file the request and whether the issuance of the order would be in the best interest of justice.

Courts would not have to hold hearings if the prosecutor did not request one within 45 days after receiving notice and the court determined that the defendant was entitled to nondisclosure and that the change was in the best interest of justice.

The bill would take effect September 1, 2013, and would apply to petitions made on or after that date, regardless of when the person was placed on deferred adjudication.

SUPPORTERS SAY:

SB 977 is needed to increase access to orders of nondisclosure by those who currently are authorized to ask for them. SB 977 would not change who is eligible for an order of nondisclosure, only the process involved in requesting and granting.

Current law does not explicitly authorize electronic submission of these requests. Allowing electronic submission along with traditional methods of filing in person and the mail would improve efficiency and make this tool more easily accessible. This should allow more people who meet the criteria to reap the benefits of nondisclosure. When criminal records are publically available persons can have difficulties with access to housing, jobs, school, and more.

The bill would eliminate the need to hold a hearing in all these cases so

that they could proceed more quickly and efficiently when the prosecutor was not challenging the request or wanting to weigh in on the court decision. Courts would continue to have to consider whether the order was in the best interest of justice, providing a check in the process to ensure that the orders were issued only in appropriate cases.

OPPONENTS SAY:

Allowing some orders of non-disclosure to be granted without a hearing would remove a check and balance in the current process that helps ensure the orders are issued in appropriate cases and that a public record of the consideration of the request is made.

SUBJECT: Allowing adverse possession of property by a cotenant heir in 15 years

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King

2 nays — Raymond, S. Thompson

1 absent — Hernandez Luna

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

WITNESSES: For — Roland Love, Texas Land Title Association; Joe Maley

Against — None

BACKGROUND: Under the Civil Practice and Remedies Code, the doctrine of adverse possession cannot be asserted against a cotenant heir. If there is no deed or title, a person can acquire rights to real property after adversely possessing the property for 10 years, if all requirements are met.

DIGEST: SB 108 would allow a cotenant heir to adversely possess real property against another cotenant heir after 15 years.

Definition. The bill would define cotenant heir as a person who simultaneously acquired an identical, undivided ownership interest in, and the right to possession of, the same real property as one or more individuals. Cotenant heirs could occur through Texas' intestate (no valid will) succession laws or if a cotenant heir had a successor in interest.

Requirements. One or more cotenant heirs of real property could acquire the interests of another cotenant heir through the doctrine of adverse possession. The possessing cotenant heir would have to meet several requirements to acquire the rights of another cotenant heir. The person would have to:

- continuously possess the property for 10 years;

- peaceably and exclusively have possession of the property;
- cultivate, use, or enjoy the property; and
- pay all property taxes on the property within two years of the taxes being due.

Disqualifying actions. The possessing cotenant heir would not be able to assert adverse possession of the property if another cotenant had:

- contributed to the property's taxes or maintenance;
- challenged a possessing cotenant heir's exclusive possession of the property;
- asserted any other claim against a possessing cotenant heir in connection with the property, such as the right rental payments;
- acted to preserve their own interest in the property by filing notice of interest in the applicable county's deed records;
- entered into certain written agreements that did not forfeit their ownership rights.

Claim of adverse possession. To make a claim of adverse possession, the possessing cotenant heir would have to file the appropriate affidavit in the deed records of the county where the property was located. For a month after the affidavit was filed, the person would have to publish a notice in a newspaper that was generally circulated in the county and would have to send a written notice by certified mail to the last known addresses of all other cotenant heirs.

Affidavits. The required affidavits could be filed separately or combined into a single document. The affidavits would have to include a legal description of property, attestations that all requirements for adverse possession were met, and an attestation that there had been no disqualifying actions by other cotenant heirs.

Converting affidavits. In order to interrupt a claim of adverse possession by the possessing cotenant heir, another cotenant heir would have to file a controverting affidavit within five years of that filed by the possessing cotenant heir.

Rights acquired. The possessing cotenant heir would acquire the title and rights to the property, which would prevent all claims by other cotenant heirs, if:

- no cotenant heir filed a notice of interest in the deed records during the ten years when the adverse possession period was accruing; and
- no controverting affidavit or judgment was filed within five years of the possessing cotenant heir's affidavit.

A bona fide lender for value (*e.g.*, a bank offering a mortgage) could rely on the possessing cotenant heir's affidavit if it had been filed for five years and no controverting affidavit or judgment had been filed.

Acreage. Without a title document, the possessing cotenant heir would only be able to adversely possess 160 acres. If the acreage were enclosed, the possessing tenant could adversely possess all enclosed acreage, even if it exceeded 160 acres. If there were a registered deed that fixed the boundaries of the property, the possessing cotenant's claim could extend to the boundaries specified in the deed.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 108 would allow owners to gain clarity about their title and rights to a piece of land. Large tracts of land are often passed down from generation to generation without clear title, especially among siblings and their heirs. Specifically, this is a challenge for landowners in rural areas in Texas who want to know if other individuals – perhaps distant relatives – can assert a claim to pieces of land. This bill would provide landowners with a mechanism to identify potentially interested parties or else attain full and clear title to land.

This bill would be especially helpful in the current economy. Property without clear title often cannot be sold, rented, or used as collateral to secure a loan. By allowing landowners to acquire full ownership through adverse possession, this bill would promote clarity, encourage the use and cultivation of resources, and allow the market transfer of land.

This bill would protect against the unintentional loss of property rights. The requirements for adverse possession are difficult to meet, and this bill is narrowly tailored to prevent it from being over-applied in inappropriate circumstances.

OPPONENTS SAY:

While SB 108 could grant clarity of title to some individuals, it could cause others unintentionally to lose their rights to a piece of land.

SUBJECT: Employment, higher education, and state contracts for veterans

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

VOTE: 5 ayes — Menéndez, R. Sheffield, Collier, R. Miller, Moody

2 nays — Frank, Schaefer

2 absent — Farias, Zedler

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

WITNESSES: (*On House companion, HB 3545*)
For — None

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

On — Thomas Palladino, Texas Veterans Commission

BACKGROUND: Government Code, ch. 657 establishes employment preferences for competent, honorably discharged veterans who have served at least 90 consecutive days during a national emergency or who were honorably discharged because of a recognized service-connected disability.

The preference also extends to the orphan or the surviving spouse who has not remarried of a veteran who was killed during active duty and had served at least 90 consecutive days during a national emergency.

Under sec. 657.003, if someone eligible for the veteran's employment preference seeks work or appointment to a public work or public entity — a department, commission, board, or agency — the person is entitled to preference in employment over other applicants who are not more qualified for the position.

Under sec. 657.004, the person in charge of hiring for a public entity or public work is required to give preference in hiring to those eligible for the veteran's employment preference so that at least 40 percent of the

employees are those eligible for the preference.

The Texas Council on Purchasing from People with Disabilities oversees a set-aside purchasing program under which state agencies must buy goods and services made by people with disabilities, as long as the items meet agency specifications and have a fair market price. Its purpose is to promote personal growth and independence for the disabled while providing state government with reasonably priced goods and services.

The 82nd Legislature in 2011 enacted SB 1736 by Van de Putte to form the College Credit for Heroes program, which offers veterans credit from higher education institutions for their skills and experience.

DIGEST:

SB 10 would make changes to the state's veteran's employment preference and hiring policies.

Veteran's employment preference. The bill would amend Government Code, sec. 657.002 to make eligible for the state's veteran's employment preference any honorably discharged veteran of the U.S. or state military.

A surviving spouse who had not remarried or the orphan of a veteran killed while on active duty also would qualify for the employment preference.

State agency hiring requirements. SB 10 would replace "public entity or public work" with the term "state agency" and would give a qualifying veteran, spouse, or orphan preference for state agency employment over other applicants.

Unless an insufficient number of persons entitled to a veteran's employment preference applied for an open agency position, a state agency that had not already selected at least 40 percent of its workforce from persons who qualified for the preference would be required to interview the greater of:

- one person entitled to the preference; or
- a number of persons entitled to the preference equal to 20 percent of the total number of people interviewed for the position.

A state agency would be able to designate an open position as a veterans position and accept applications only from people who qualified for the

employment preference.

Immediate hiring. A state agency that had not selected at least 40 percent of its workforce from persons who qualified for the preference could hire for an open position a person entitled to the preference without announcing or advertising the position if the agency determined the person met the job qualifications and used the commission's employment website to identify a person who qualified for the preference.

Veterans' liaison. The bill would require a state agency with more than 500 full-time-equivalent positions to designate a person as its veterans' liaison.

Council on Purchasing program participation. SB 10 would add a service-disabled veteran-owned business to the list of entities that qualified as a community rehabilitation program under the state's Council on Purchasing From People With Disabilities.

College Credit for Heroes program. The bill would make permanent the College Credit for Heroes program and require the Texas Workforce Commission to report annually by November 1 to the Legislature and the governor on:

- the results of any program grants awarded;
- the best practices for veterans and military service-members to achieve maximum academic or workforce education credit at higher education institutions for experience, education, and training obtained during military service;
- measures needed to facilitate the award of academic or workforce education credit by higher education institutions for experience, education, and training obtained during military service; and
- other measures to help the entry of trained, qualified veterans and military service-members into the workforce.

The bill would repeal sections of Government Code, ch. 657 that currently place conditions on the state's veteran's employment preference under certain circumstances.

The bill would take effect September 1, 2013, and would apply to an open position with a state agency for which applications were accepted on or after that date.

SUPPORTERS SAY:

SB 10 would help U.S. military veterans connect to jobs, improve their opportunities, and use their skills to achieve higher education credits through a set of provisions that honor those who served their country in the military.

Although Texas offers employment and educational help to its veterans, there is a great need to do more. The U.S. Bureau of Labor Statistics reported an unemployment rate of 9.9 percent in March 2013 for veterans who had served on active duty at any time since September 2001. The national jobless rate for the same period was 7.7 percent. In 2012, the comptroller reported that veterans made up just 5 percent of all state employees.

The bill would help Texas reduce this disparity by allowing state agencies to hire veterans directly through the Texas Workforce Commission's system. It also would promote a greater awareness of the skills veterans bring with them by requiring state agencies to ensure that veterans made up at least 20 percent of their interview pools. In addition, the state's larger agencies would include a liaison who specialized in outreach to veterans, which is critical given that two recent wars have yielded a new wave of service-members looking to transition to civilian employment.

The bill also would increase the ability of disabled veteran-owned businesses to compete for state contracts by making them eligible for the state's Council on Purchasing From People with Disabilities. Allowing these veterans into the procurement program would increase their ability to grow as entrepreneurs and to hire additional staff. This kind of economic development is key for communities and would generate revenues that benefit the state.

Making permanent the College Credit for Heroes program would help veterans receive educational credit for the skills and knowledge they developed in the military. The bill would help to prepare veterans for academic and professional success.

OPPONENTS SAY:

SB 10 would provide an unfair advantage to veterans with regard to others seeking employment at state agencies, including candidates who might have stronger job qualifications. This is not necessary given the state's variety of programs targeted to helping former members of the military obtain employment and receive financial aid for higher education. The

Texas Veterans Commission already has a robust set of employment programs to help those who served in the military, and the Hazlewood Act benefit already provides qualifying veterans and their children an exemption on tuition and related fees at higher education institutions, which helps them parlay their skill sets into college degrees.

SUBJECT: Life in prison for capital felony by those 17 years old at time of offense

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody, Schaefer, Toth

0 nays

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

WITNESSES: (*On House companion, HB 901*)
For — Justin Wood, Harris County District Attorney's Office; Tuck Mclain, (*Registered, but did not testify:* Brian Eppes, Tarrant County District Attorney's Office)

Against — (*Registered, but did not testify:* Lauren Rose, Texans Care For Children)

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

BACKGROUND: Under Family Code, sec. 54.02, juvenile courts may transfer certain juveniles to adult court for prosecution. In the case of capital murder, this applies to juveniles who are 14, 15, and 16 years old. Those who are 17 years old are considered adults and tried in the adult system.

Those 14, 15, and 16 years old who have their cases transferred to adult court can receive only a sentence of life in prison, which carries with it the possibility of parole. They must serve 40 calendar years in prison, without consideration of good conduct time, before being eligible to be considered for parole.

Those 17 years old and older fall under the punishments available for all other capital murders: death or life without parole. However, the U.S. Supreme Court has held that the Eighth and Fourteenth amendments to the U.S. Constitution forbid the death penalty for offenders who were younger than 18 years old when their crimes were committed and that the Eighth

Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders.

DIGEST:

SB 187 would require sentences of life in prison for all those convicted of a capital felony who were younger than 18 years old when the crime was committed.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. It would apply to cases pending, on appeal, or begun on or after the bill's effective date.

SUPPORTERS SAY:

SB 187 would bring Texas into compliance with a U.S. Supreme Court ruling that forbids mandatory life without parole for capital murder offenders who are younger than 18.

Under Texas statutes, 17-year-olds convicted of capital murder fall under the adult criminal justice system, which makes them eligible either for the death penalty or life without parole. However, the death penalty was eliminated as an option when the U.S. Supreme Court ruled in 2005 in *Roper v. Simmons* that the Eighth and Fourteenth amendments forbid the imposition of the death penalty for offenders who were younger than 18 years old when their crimes were committed. This left life without parole as the only punishment option for 17-year-olds who commit capital murder in Texas.

In 2012, the U.S. Supreme Court made another decision affecting the Texas sentencing structure under which life without parole is the only option for 17-year-olds. The court ruled in *Miller v. Alabama* that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders. The U.S. Supreme Court defines juveniles as younger than 18 years old, which means that the 17-year-olds in Texas are included in that prohibition.

This has resulted in there being no punishment available for 17-year-olds convicted of capital murder. Cases have been put on hold, and courts are waiting for legislative direction. In some cases, prosecutors are charging these juveniles with lesser offenses, such as murder or aggravated robbery. This sets up an inequitable situation in which these 17-year-old offenders would become eligible for parole much sooner than younger teens convicted of capital murder who must serve 40 years before being eligible

for parole.

SB 187 would address this situation by instituting a sentence of life in prison for these 17-year-olds. This would be the same sentence available for defendants ranging from 14 to 16 years of age who had their cases transferred to adult courts. The bill would meet the requirements of the U.S. Supreme Court rulings and allow these cases in Texas to move forward. Adult defendants, including those at least 18 years old, could continue to be sentenced to death or life without parole upon conviction of capital murder.

SB 187 should not be used to institute a unique punishment scheme only for 17-year-olds convicted of capital murder, nor should it be used to revise the entire punishment structure for 14, 15, and 16 year olds who commit capital murder and are punished in the adult system. This narrowly drawn bill would be designed only to address the gap in Texas law resulting from the Supreme Court decision. It would meet the court's prohibition on mandatory life without parole by working within the current sentencing structure to implement a life sentence for those who were 17 years old and committed capital murder offender.

OPPONENTS SAY:

The state should not respond to the 2012 U.S. Supreme Court decision by instituting a mandatory life sentence for 17-year-olds convicted of capital murder. Replacing one mandatory sentence with another mandatory sentence would not meet requirements for individualized sentencing. Instead, the state should develop individualized sentencing for all those younger than 18 who commit capital murder. This would allow courts to take into account the unique characteristics of a young offender and to institute more judicial discretion in sentencing all those convicted of capital murder who are younger than18 years old.

SUBJECT: Regulating the sale and installation of integrated home technology

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

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

0 nays

1 absent — Gooden

SENATE VOTE: On final passage, April 4 — 31-0

WITNESSES: For — Michael Creamer; Albert D'Andrea; Matt Freund; Hank Hodes; Todd McAlister, Texas Air Conditioning Contractors Association; Stephen Pape; Vikrant Reddy, Texas Public Policy Foundation; (*Registered, but did not testify:* Randel Beal; Alfred Bingham Jr. and Jeff Bright, Texas Burglar and Fire Alarm Association; Charles Davidson, Chris Dees, Brandon Foster, and Brent Lewis, Standard Supply; KeeAnn DeVora, Air Conditioning Contractors Association San Antonio; Phillip Doll; Shannon Noble and Victoria Schaefer, Texas Air Conditioning Contractors Association; Dan Shelley, Plumbing Heating Cooling Contractors; K. C. Walters, QLS Services, Inc.; Marvin White)

Against — None

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

BACKGROUND: Occupations Code, ch. 1702, otherwise known as the Private Security Act, regulates private security firms. The chapter includes licenses for investigations firms, security services contractors, and electronic access control device companies.

Insurance Code, ch. 6002 governs the certification and licensing of individuals and organizations engaged in the planning, designing, installation, and maintenance of fire alarm devices and systems.

Occupations Code, ch. 1302 regulates the licensing of air conditioning and refrigeration contractors.

DIGEST:

SB 407 would exempt from the air conditioning and refrigeration licensing requirements of Occupations Code, ch. 1302, license holders under Occupations Code, ch. 1702 and Insurance Code, ch. 6002 who sold, designed, or offered to sell or design a product or technology that was integrated with an air conditioning or refrigeration system if the sale, design, or offer did not include the installation of any part of an air conditioning or refrigeration system by that person.

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

SUBJECT: Educator preparation programs and teacher evaluations

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

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

WITNESSES: For — Sandra West, Science Teachers Association of Texas; (*Registered, but did not testify:* Patricia V. Hayes, Stand for Children Texas; Ben Maddox, Kids First; Mike Moses; Jim Nelson; Justin Yancy, Texas Business Leadership Council)

Against — (*Registered, but did not testify:* Harley Eckhart, Texas Elementary Principals and Supervisors Association)

On — Priscilla Aquino-Garza, Educate Texas; (*Registered, but did not testify:* David Anderson, Texas Education Agency; Melva V. Cardenas, Texas Association of School Personnel Administrators)

BACKGROUND: The 82nd Legislature in 2011 passed SB 866, which included requirements for educator preparation related to detecting and educating students with dyslexia. The 82nd Legislature also passed SB 1620, which included requirements to obtain a certificate to teach an applied STEM (or science, technology, engineering or mathematics) course.

DIGEST: SB 1403 would reenact SB 866 and 1620 from the 82nd session and make other changes to educator preparation programs and teacher evaluations in Education Code, sec. 21.044. It also would require surveys of teacher pay and working conditions.

Teacher certification. Each educator preparation program would be required to provide information regarding:

- the skills and responsibilities of educators and the high

expectations for students;

- the effect of supply and demand on the educator workforce;
- the performance over time of the educator preparation program;
- the importance of building strong classroom management skills; and
- the framework for teacher and principal evaluation.

The bill would require 15 credit hours for certification in grades 7-12 for math and science and 12 hours for teachers not teaching those subject areas.

It would require the State Board for Educator Certification (SBEC) not to exceed a requirement for an overall grade point average of at least 2.75 or the equivalent for the last 60 semester credit hours. An exception to the minimum GPA requirement could be granted only in extraordinary circumstances and could not be used by a program to admit more than 10 percent of candidates.

SBEC would determine the satisfactory level of performance required for each certification examination and would allow 45 days to pass before a person could retake the exam.

Teacher evaluations and mentoring. School districts would be required to conduct more frequent classroom observations and walk-throughs to ensure that teachers received adequate evaluation and guidance. This would be done more frequently for inexperienced teachers. Feedback would be provided promptly so that the appraisal could be used as a development tool.

Teacher surveys. The Texas Education Agency (TEA) would be required to consult with the Teacher Retirement System of Texas to determine median salaries of teachers by grade level and subject, post the median salaries on the agency website, and report to the Legislature.

The bill would allow funding for teacher mentoring to be used for scheduled release time for mentors to meet with the teachers they were assigned to mentor. The commissioner would report annually to the Legislature on the effectiveness of district mentoring programs.

TEA also would be required to annually analyze the cost of living in each region of the state to determine if teacher salaries were comparable to

salaries paid to persons engaged in comparable professions.

The bill also would require TEA to conduct a statewide survey of working conditions, including demands on a teacher's time, campus and district leadership, support for new teachers, professional development opportunities, and other matters. The survey would be designed to prevent disclosure of participants, and teachers could decline to participate. The initial survey would be completed by September 1, 2014, and aggregate results would be released to the public.

TEA would periodically conduct an audit of professional development requirements and work to eliminate conflicting requirements.

TEA could only use available funds and resources from public or private sources to conduct the surveys.

The bill also would require a new advisory committee to evaluate the implementation of changes made by SB 1403 and a joint review by public and higher education agencies of existing standards for educator preparation programs.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1403 would increase entry requirements for educator-preparation programs to improve the quality of candidates seeking to teach Texas students. It would add credit hours for math and science to ensure the best-trained teachers were delivering those subjects.

Requiring a satisfactory level of performance on each core subject covered by the generalist exam would be a step forward.

Teachers would receive timely feedback of their appraisal results and could use that information to immediately improve their performance.

The salary data review and comparison to other professionals on a regional basis would provide relevant information for state and local decisions on teacher pay.

The bill’s provisions on annual surveys of teacher working conditions and periodic audits of professional development requirements and mentoring also would provide valuable information to improve the teaching

profession.

OPPONENTS SAY:

SB 1403 could result in decreased enrollment in educator preparation programs at a time of growing student populations and a great need for teachers as many teachers are retiring or otherwise leaving the profession.

The bill would cost $1.1 million for fiscal 2014-15 for annual cost-of-living analyses and surveys of working conditions required by the bill, according to the Legislative Budget Board.

OTHER OPPONENTS SAY:

SB 1403 would not go far enough in raising entry requirements for teacher preparation programs. The bill also could have done more to overhaul the teacher evaluation system, including taking into account student test scores as Dallas and Houston ISDs are doing.

NOTES:

The fiscal note states that the bill would cost TEA an estimated $800,000 in fiscal 2014 and $300,000 in subsequent years for an annual cost-of-living analysis. TEA also estimates a $300,000 cost in fiscal 2014 to contract for the statewide survey of working conditions for public school teachers.

SUBJECT: Licensing requirements for persons measuring or fitting orthoses

COMMITTEE: Public Health — favorable, without amendment

VOTE: 7 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, J.D. Sheffield

3 nays — S. King, Laubenberg, Zedler

1 absent — Coleman

SENATE VOTE: On final passage, April 8 — 30-1 (Seliger)

WITNESSES: (*On House companion bill, HB 1161*)
For — Edward Correia, Orthotic Coalition for Patient and Physician Choice; Bobby Hillert, Texas Orthopaedic Association; (*Registered, but did not testify:* Jennifer Banda, Texas Hospital Association; Jaime Capelo, Texas Academy of Physician Assistants; Patricia Conradt; Dan Finch, Texas Medical Association; J. Pete Laney, Orthotic Coalition for Patient and Physician Choice; David Williams, Texas Nurse Practitioners; Eric Woomer, Federation of Texas Psychiatry)

Against — Mike Allen; Katie Brinkley; Snapper Carr, Texas Association of Orthotists and Prosthetists; Scott Jameson, American Academy of Orthotists and Prosthetists, Texas Chapter; Mark Kirchner; Amy Mehary, Texas Association of Orthotists and Prosthetists; Robb Walker; (*Registered, but did not testify:* Sheron Archie, Hanger Clinic; Frieda Borth, Hanger Clinic; Michael Brown; Gary Crowe; Ninfa Gonzales, Hanger Clinic, ABC; Amanda Ischy, Hanger Clinic; Jennifer Marchel, Hanger Clinic, ABC; Allison Neil, Hanger Clinic, ABC; Shawn Schroeder, Hanger Clinic; Mark Scott, Hanger Clinic; Rose Scott, Hanger Clinic)

On — Mari Robinson, Texas Medical Board; (*Registered, but did not testify:* David Olvera, Texas Board of Orthotics and Prosthetics)

BACKGROUND: Chapter 605 of the Occupations Code governs the licensing and regulation of orthotists, persons licensed to practice orthotics, which is the science

and practice of measuring, designing, fitting, or servicing an orthosis. An orthosis is a custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of a neuromuscular or musculoskeletal disease, injury, or deformity.

DIGEST:

SB 505 would exempt from the licensing and regulatory requirements in ch. 605, Occupations Code, persons measuring or fitting an orthosis under the supervision of a physician licensed to practice in Texas. This exemption would not apply to the measuring and fitting of a custom-fabricated device if its measuring and fitting required substantial clinical judgment as determined by the treating physician.

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 505 would improve patient access to orthotic health care devices and services by allowing supervised employees to measure and fit orthoses without requiring they be licensed orthotists. Many orthotics are simple, standardized, and safe. Requiring special degrees or licenses to provide access to these devices reduces the number who would otherwise assist clients in obtaining them.

The bill would save money for individuals and the health care system. Currently, those available to fit and measure orthoses are limited by burdensome licensing restrictions, which raises the cost of orthotic devices and service. Increasing the number of orthotic assistants would remove this source of health care inflation and allow the free market to more accurately determine the costs of orthotics.

SB 505 would protect consumers' health by requiring a licensed physician oversee any measuring or fitting of clients that required substantial clinical judgment.

OPPONENTS SAY:

SB 505 would put patient health at risk. The Texas Board of Orthotics and Prosthetics' current licensing requirements are reasonable and ensure a safe experience for patients. Although the bill would require a non-licensed employee be supervised by a physician, it would not specify the degree or frequency of this supervision. In a lax environment where physicians and licensed orthotists provided only background oversight over non-specialized employees, there would be a higher risk that

situations requiring substantial clinical judgment would go undetected.

SUBJECT: Relating to leave for certain veterans returning to state employment

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 5 ayes — Menéndez, Farias, R. Miller, Moody, Zedler

2 nays — Frank, Schaefer

2 absent — R. Sheffield, Collier

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

WITNESSES: No public hearing

DIGEST: CSSB 442 would amend Government Code, ch. 661, to revise military leave provisions for state employees.

A state employee would be entitled to leave if the person was a member of a reserve unit of U.S. military, including the National Guard, that was ordered to federal active duty for at least 180 days during a war or conflict or to support a stability operation that followed a war or conflict.

The bill also would ensure that such a member of the military who was re-employed by a state agency would be granted leave without a deduction in salary or loss of vacation time, sick leave, earned overtime, or state compensatory time to tend to a matter related to their military service or reintegration into civilian life, which would include obtaining medical or mental health care and receiving counseling. This leave could not exceed 15 days and would have to be used before the first anniversary of the day the reservist or guardsperson was re-employed by the state agency.

The administrative head of a state agency could grant additional days of leave to the state employee.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: CSSB 442 would ensure that military reservists and members of the National Guard who returned to their state agency jobs had available leave

time to tend to the matters that often crop up when transitioning back to civilian life.

Allowing these citizen soldiers, marines, sailors, and airmen up to 15 days of leave following their active-duty service would minimize any financial hardship military service might cause them. The effects of fighting in a war can cause reservists and guardsmen to continue to seek health care well after they have been released and returned to their employers. CSSB 442 would ensure that an appointment at a Veterans Affairs clinic or any other reintegration matter would not cost a state employee to lose out in salary, vacation time, or sick leave.

Additionally, the bill would ensure that only those who fought in a conflict were allowed this leave, and it would require an agency's director to grant any additional time off from work if these 15 days of leave were exhausted within a year of the service member's return to employment. This provision would ensure that such leave was used sparingly but it also would give discretion to an agency's administrator to allow for a necessary absence.

OPPONENTS SAY:

CSSB 442 is unnecessary because the military does not simply release a service member who has a serious disability that requires medical care. Although Texas should make a priority of honoring state employees who serve in our military, it should not expend important resources to do so.

SUBJECT: Contested cases conducted under the Administrative Procedure Act

COMMITTEE: Special Purpose Districts — favorable, without amendment

VOTE: 7 ayes — D. Bonnen, Alvarado, Clardy, Goldman, Krause, Stickland, E. Thompson

0 nays

2 absent — D. Miller, Lucio

SENATE VOTE: On final passage, April 25 — 24-4 (Campbell, Huffman, Nelson, Williams)

WITNESSES: For — Bruce Bennett; (*Registered, but did not testify:* Kathy Barber, NFIB/Texas; George Christian, Texas Civil Justice League; Kandice Sanaie, Texas Association of Business; Jeffery Hart)

Against — None

DIGEST: SB 522 would amend the Government Code relating to contested cases conducted under the Administrative Procedure Act, which governs procedures in contested case hearings before state agencies.

Detailed statement of the facts. A state agency or other party would be required to include a short, plain statement of factual matters in detail at the time notice of a contested case hearing was served. In a proceeding in which the state agency had the burden of proof, a state agency that intended to rely on a section of a statute or rule not previously referenced in the notice of hearing would have to amend the notice within seven days, rather than three days, of the hearing.

This would not prohibit the state agency from filing an amendment during the hearing of a contested case provided the opposing party was granted a continuance of at least seven days to prepare its case on request of the opposing party.

In a suit for judicial review of a final decision or order of a state agency in a contested case, the state agency's failure to include in the notice for a

contested case hearing a reference to the particular sections of the statutes and rules involved or a detailed statement of the facts would constitute prejudice to the substantial rights of the appellant under sec. 2001.174(2), making it reversible error, unless the court found that the failure did not unfairly surprise and prejudice the appellant.

License suspension. Licensees would be required to be given notice and an opportunity to show compliance before their licenses were suspended. If a state agency that already had the power to suspend a license under another statute determined that an imminent threat to the public health, safety, or welfare required emergency action and incorporated a factual and legal basis establishing that threat in an order, the agency could issue an order to suspend the license pending proceedings for revocation or other action.

The agency would be required to initiate the proceedings for revocation or other action within 30 days of the summary suspension order being signed. The proceedings would have to be promptly determined, and if the proceedings were not initiated within 30 days of the order being signed, the license holder could appeal the summary suspension order to a Travis County district court.

This would not grant any state agency the power to suspend a license without notice or a hearing.

Notice and show of compliance before license suspension. In a suit for judicial review of a final decision or order of a state agency brought by a license holder, the agency's failure to give notice and give the license holder an opportunity to show compliance before a license is suspended would constitute prejudice to the substantial rights of the license holder, making it a reversible error, unless the court determined that the failure did not unfairly surprise and prejudice the license holder.

Notification of decisions and orders. SB 522 would revise the provision requiring that a party in a contested case hearing be notified of decisions and orders personally or by first-class mail, to instead require a state agency to make such notification to each party personally, by e-mail, fax, or by first-class, certified, or registered mail.

Motion for rehearing. A motion for rehearing in a contested case would have to identify the errors made in the contested case and be filed by a

party within 20 days of the date the decision or order that was the subject of the motion was signed, unless the time for filing the motion for rehearing had been extended by an agreement or by a written state agency order. On filing of the motion for rehearing, copies of the motion would be sent to all other parties using the appropriate notification procedures. The bill would provide a deadline for replying to a motion for rehearing, but it would not be required.

The bill would establish when and how the time for filing a motion for rehearing and a reply to a motion for rehearing could be extended.

If a party did not receive notice of the date the decision or order was signed within 15 days, the deadline for filing a motion for rehearing would begin to run either on the date that the party finally received the notice or on the date the party actually acquired knowledge that a decision or order had been signed, whichever happened first. The deadline would begin to run no earlier than the 15th day following the signing of the decision or order, and could not begin later than the 90th day.

SB 522 would place the burden of showing that proper notice of the decision or order was not received within 15 days on the adversely affected party by filing a sworn motion. If the state agency wished to contest the party's claim that it did not receive notice, it would have to deny the sworn motion at its next meeting or, if it did not hold meetings, no later than 10 days after the date it received the motion. If the state agency failed to respond, the motion would be granted.

Final decisions or orders. SB 522 would require a decision or order that could become final in a contested case to be signed, rather than rendered, within 60 days of the hearing being finally closed. In a contested case heard by other than a majority of the officials of a state agency, the person who conducted the contested case hearing could extend the period in which the decision or order could be signed, in lieu of the agency.

SB 522 would provide that a decision or order in a contested case would be final on the date it was signed, rather than rendered.

Prematurely filed petitions. In a contested case in which a motion for rehearing was a prerequisite for seeking judicial review, a prematurely filed petition would be effective to initiate judicial review and would be considered to be filed on the date the last timely motion for rehearing was

overruled and after the motion was overruled.

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

SUPPORTERS SAY:

SB 522 would address procedures and the rights of parties in contested case hearings involving state agencies. Differences between the Administrative Procedure Act, which governs procedures in contested case hearings before state agencies, and the Texas Rules of Civil Procedure, which govern procedures in traditional courts, can be confusing and difficult with respect to when an agency decision can be appealed. These procedures can be difficult for even experienced administrative lawyers to apply, especially with regard to motions for rehearing and suits for judicial review.

Detailed statement of the facts. SB 522 would achieve effective enforcement of the Administrative Procedure Act's notice of hearing requirement in contested case proceedings. State agencies are required to give notice to the licensees regarding the statutes and rules involved in a contested case before it goes to trial. However, agencies often fail to give adequate notice of the grounds for contested cases, either by failing to comply with statutory requirements or by justifying decisions based on statutes and rules that were never disclosed before the hearing. As a result, many businesses, professionals, and other entities have been disciplined for violating statutes or rules that were never disclosed before the hearing and against which they had no opportunity to defend. Such disciplinary actions are contrary to the due process of law.

A licensee that goes before a state agency to defend his or her license should be provided all information as required by law. If the licensee does not receive the appropriate notifications, his or her license should not be jeopardized simply because a state agency failed to do its job. Small business owners are at a disadvantage in this process simply because retaining a lawyer is most likely not within their financial resources. They must rely on the state for relevant information and when they do not receive it, they cannot vigorously defend their licenses.

Notice and show of compliance before license suspension. The courts are currently not strictly enforcing the requirements of notice and an opportunity to show compliance before a license is suspended due to a desire to give agencies flexibility to suspend licenses in emergencies. Consequently, licensees are being denied the statutory right to show

compliance. This bill would allow agencies to suspend licenses in emergencies, while strictly enforcing the requirements of notice and an opportunity to show compliance before a license was suspended. The bill would make failure by a state agency to provide the statutes and rules involved in the contested case a reversible error. This would provide incentive to state agencies to make available necessary information as required by law.

Motion for rehearing. Under the current process, the deadline for seeking relief from an agency decision is dependent on the date a party to the proceeding receives actual or presumed notice of the decision. Starting the clock on the date each party received actual or presumed notice of an agency decision results in multiple deadlines for filing motions for rehearing or petitions for judicial review in multi-party cases. The multiple, different deadlines and the resulting uncertainty cause regulated businesses, professionals, and other licensees to lose their appellate rights– even when they are represented by capable, experienced attorneys.

SB 522 would establish a similar structure contained in the Texas Rules of Civil and Appellate Procedure by providing that the deadlines for a motion for rehearing would begin on the date the agency decision was signed. This structure has worked well for many years without major problems. Tying the beginning date for seeking relief from an agency decision to the date the decision was signed would cause fewer deadlines to be missed because one controlling date would be established.

Prematurely filed petitions. SB 522 includes a provision that would overrule judicial decisions in which the courts had ruled that a prematurely filed petition for judicial review was ineffective in contested cases in which a motion for rehearing was a prerequisite for seeking judicial review. This would allow a prematurely filed petition for judicial review to become effective immediately after the last timely motion for rehearing was overruled by the agency and the agency decision became final. This would prevent appellate rights from being lost because of premature action.

OPPONENTS SAY:

SB 522 would allow agencies to suspend licenses in emergencies without a hearing. While this provision of the bill would be limited to agencies that already have this authority under another statute, a suspension of a license could be extremely damaging financially and would be a clear case of regulatory overreach that would have a chilling effect on the marketplace.

Many licensed professionals depend on their licenses for their livelihoods. It could create regulatory uncertainty and reduce the willingness of businesses to invest in Texas.