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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 13, 2015
84th Legislature, Number 48
The House convenes at 2 p.m.

Nine bills are on the daily calendar for second-reading consideration today. They are listed on the following page.

Alma Allen
Chairman
84(R) - 48

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Monday, April 13, 2015

84th Legislature, Number 48

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SUBJECT: Raising member contributions to the Employees Retirement System

COMMITTEE: Pensions — favorable, without amendment

VOTE: 6 ayes — Flynn, Alonzo, Hernandez, Klick, Paul, J. Rodriguez

0 nays

1 absent — Stephenson

WITNESSES: For — Donald Zavodny, AFSCME Texas Corrections; Maura Powers, AFSCME Texas Retirees; David Sinclair, Game Warden Peace Officers Association; Elizabeth Blount, Retired State Employees Association; Gary Chandler, Texas Department of Public Safety Officers Association; Ray Hymel, Texas Public Employees Association; Harrison Hiner, Texas State Employees Union; (*Registered, but did not testify*: Cynthia Hayes, AFSCME Council 12; Marshall Kenderdine, AFSCME Texas Corrections; Bill Hamilton, Retired State Employees Association; Amy Chamberlain and Jenni Sellers, Texas Public Employees Association; Deborah Ingersoll, Texas State Troopers Association; Richard Lavine)

Against — None

On — Ann Bishop, Employees Retirement System of Texas; Robert May, Pension Review Board; (*Registered, but did not testify*: Ryan Falls, Employees Retirement System; Anu Anumeha and Daniel Moore, Pension Review Board)

BACKGROUND: Government Code, sec. 815.402(a) establishes the contribution rate for state employees to the Employees Retirement System of Texas (ERS), which administers the pension fund. The member contribution rates for the upcoming biennium are scheduled to be 7.2 percent in fiscal 2016 and 7.5 percent after August 31, 2016.

Under Texas Constitution, Art. 16, Sec. 67(b)(3), the state contribution may not be less than 6 percent nor more than 10 percent of the aggregate compensation paid to employees participating in the system. The state

contribution to ERS is set biennially in the general appropriations act.

DIGEST: HB 9 would amend Government Code, sec. 815.402(a) to increase the member contribution rate to ERS. The rate would be set at 9.5 percent of a member's annual salary for those employees who are not members of the Legislature. The contribution rate would be effective for service after August 31, 2015, and before September 1, 2017.

After September 1, 2017, the 9.5 percent contribution rate would remain in effect, although it would be reduced by one-tenth of one percent for each one-tenth of one percent that the state contribution rate dropped below the rate established for fiscal 2017.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: HB 9 would address one aspect of the state's chronically underfunded pension system by increasing state employee contribution rates. The pension fund had $7.8 billion in unfunded liabilities at the end of February, and the shortfall is projected to grow by $500 million annually. This problem could negatively impact retirees and the state's bond ratings in the future. Moody's Investors Service warned Texas in January to take care of its pension funds to avoid a future negative impact on the state's economy. HB 9 would be a step in the right direction and would send a message to Moody's and other bond rating agencies that the Legislature was committed to addressing the ERS shortfall.

The bill would increase employee contribution rates from the current 6.9 percent to 9.5 percent, but the increase would be offset by a 2.5 percent pay raise contained in the House-passed budget bill. Organizations representing state employees and retirees have expressed support for the bill because it addresses funding while not cutting benefits. More than two-thirds of the 17,000 state employees who responded to a recent survey said that to prevent benefit design changes, they would support increasing the employee contribution rate to ERS if the increase was coupled with a pay increase.

The House's budget bill also would increase the state's contribution to the pension fund to a combined 10 percent state (9.5 percent) and agency (0.5

percent) rate. This would demonstrate a joint commitment by the state and employees to shore up the retirement system. The bill also would continue a provision adopted by the 83rd Legislature in 2013 requiring employee contributions to be reduced if state contributions were reduced in a future biennium.

The future outlook for the pension system would improve under HB 9. An actuarial analysis projects the fund would go from an infinite amortization period to a 34-year amortization period. The 34-year period would be within the maximum 40-year amortization period recommended by the Texas Pension Review Board. According to the Legislative Budget Board (LBB), the bill – in conjunction with increased state contributions – likely would have a positive impact on ERS and the state under new governmental accounting reporting standards.

The bill also could pave the way for a future increase in retiree pay. Government Code, sec. 814.604 requires a cost-of-living adjustment be made to certain longtime retirees when ERS's amortization period is less than 31 years.

The state's retirement program is an essential tool in both recruitment and retention of the state's workforce. HB 9 would preserve ERS as a valuable part of state employees' compensation package. Those who argue for benefit cuts often fail to recognize that the state salaries generally are lower than those of comparable jobs in the private sector.

While some have suggested that a better approach would be making benefit changes that could impact newly hired employees, this could create a new set of problems. Recent changes in state law have created three tiers of retirement benefits, and continuing to add tiers could exacerbate an existing equity risk among the state workforce as employees contribute the same percentage of their salaries but receive different benefits. Further changes impacting current employees could create a rush to retirement, which could add to the pension system's woes.

OPPONENTS SAY:

HB 9 would not be the best option for addressing the unfunded liability in the state's pension fund. The ERS shortfall largely is a result of lawmakers failing to appropriate adequate funds for 19 of the past 20

years. Other options are available for lawmakers to make the pension fund solvent without raising employee contributions. For example, SJR 68 by Eltife would ask voter approval for a one-time $1.5 billion contribution from the rainy day fund to the ERS trust fund. That amount would pay down about 20 percent of the outstanding unfunded liability.

In its legislative appropriations request for 2016-17, ERS asked for about $350 million in general revenue above base funding to make the system sound. Some have expressed concern that such an appropriation could exceed the Texas Constitution's limit of state contributions to 10 percent of employee payroll. To avoid exceeding the limit, some proposals would appropriate part of the funding in a fiscal 2015 supplemental appropriations bill. Others have discussed counting pension liabilities as state debt and exempting reductions of state debt from the overall constitutional spending cap.

Increased state appropriations would be a more efficient funding method than increasing the employee contribution because employees can cash out their ERS contributions when they leave state employment. According to the fiscal note, significant increases in member contributions could result in more members electing to take a refund of their contributions than historically has happened.

Making the fund solvent should not come at the expense of a real pay raise for state employees, who have seen only modest increases in pay over the past seven years. Failure over the next biennium to provide a pay raise without requiring a corresponding increase in ERS contributions could lead to higher turnover of employees who do critical work serving Texans.

OTHER OPPONENTS SAY:

The Legislature should not raise employee pay in the state budget to cover the increased member contributions proposed in HB 9. Employees and the state both need to make financial sacrifices to stabilize ERS. In addition, benefit changes should be part of any proposal to shore up the pension fund. ERS administrators have provided several options for benefit changes that could make the plan sound, including some that would impact current employees. Even with benefit changes, state employees still would enjoy a defined benefit pension system at a time when many

private sector employers have shifted to 401(k) or other defined contribution plans.

NOTES:

CSHB 1, as passed by the House, would appropriate $390.2 million in all funds for an across-the-board pay raise of 2.5 percent and related benefits for state employees who contribute to ERS, contingent on passage of HB 9 by Flynn or similar legislation. CSHB 1 also would raise the state's contribution to ERS from 7.5 percent to 9.5 percent for fiscal 2016-17.

The LBB's fiscal note indicates no significant fiscal implication to the state is anticipated from HB 9. The fiscal note estimates the bill would decrease the unfunded actuarial accrued liability by $49.3 million from $8.08 billion to $8.03 billion. The fiscal note indicated that the bill could result in more state government employees electing to receive a refund of their accumulated employee contributions, rather than a deferred pension, upon leaving state employment.

The actuarial impact statement prepared by the LBB assumes the 9.5 percent employee contribution rate would be accompanied by an increase in the combined state and state agency contribution rate to 10 percent for fiscal 2016 and beyond, resulting in a total combined contribution of 19.5 percent. The statement said this would significantly improve the amortization period for ERS from the current infinite period to 34 years. As a result, ERS would be expected to meet the 31-year amortization limit set in statute within three years.

SUBJECT: Investing a portion of the ESF in excess of the sufficient balance

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 20 ayes — Otto, Sylvester Turner, Ashby, Bell, G. Bonnen, Capriglione, Giddings, Gonzales, Howard, Hughes, Koop, Longoria, Miles, R. Miller, Price, Raney, J. Rodriguez, Sheffield, VanDeaver, Walle

0 nays

7 absent — Burkett, S. Davis, Dukes, Márquez, McClendon, Muñoz, Phelan

WITNESSES: For — (*Registered, but did not testify:* Dale Craymer, Texas Taxpayers and Research Association; Will Francis, Texas Forward; Matthew Geske, Fort Worth Chamber of Commerce; Harrison Hiner, Texas State Employees Union; Chandra Villanueva, Center for Public Policy Priorities)

Against — None

On — (*Registered but did not testify:* Phillip Ashley, Comptroller of Public Accounts; Paul Ballard, Texas Treasury Safekeeping Trust Company)

BACKGROUND: **Economic Stabilization Fund.** Texas Constitution Art. 3, sec. 49-g establishes the Economic Stabilization Fund (ESF), often called the rainy day fund. The fund's balance is expected to reach $11.1 billion by the end of fiscal 2016-17, absent any appropriations from the fund, according to the comptroller's January 2015 *Biennial Revenue Estimate*.

Sources of funding. Funds in the ESF come from biennium-ending balances in the general revenue fund and from a portion of oil and natural gas production taxes.

Sec. 49-g (b) requires the comptroller to transfer to the ESF one-half of any unencumbered balance remaining in the general revenue fund at the

end of a biennium. Under sec. 49-g (d) and (e), the comptroller is required to take 75 percent of any oil and natural gas production tax revenue that exceeds the amount collected in 1987 and send half of that amount to the ESF and half to the State Highway Fund.

Sufficient balance. These allocations can be adjusted under certain circumstances to maintain an amount determined to be the sufficient balance of the fund. Government Code, sec. 316.092 establishes a select legislative committee and requires that it meet immediately preceding each legislative session to determine a sufficient balance for the ESF for the following fiscal biennium. The balance must be an amount the committee estimates will ensure an appropriate amount of revenue in the ESF.

In December 2014, the Joint Select Committee to Study the Balance of the Economic Stabilization Fund determined that $7 billion was a sufficient minimum balance for the fund. The balance does not restrict appropriations from the fund but does affect the amounts transferred to the general revenue fund and the State Highway Fund.

Fund cap. Texas Constitution, Art. 3, sec. 49-g (g) sets a cap on the amount of money that the ESF can hold. The fund cannot exceed an amount equal to 10 percent of the total amount deposited into general revenue the previous biennium, minus investment income, interest income, and amounts borrowed from special funds. The cap for the current biennium is $14.1 billion, and the cap is estimated to be $16.1 billion for fiscal 2016-17. The fund has never reached the cap.

*Appropriations from the ESF***.** Any amount from the fund may be spent for any purpose if approved by at least two-thirds of the members present in each house. Funds also may be spent to cover an unanticipated deficit in a current budget or to offset a decline in revenue for a future budget with approval of at least three-fifths of the members present in each house.

Investment of state funds. Government Code, sec. 404.024 outlines the investments that the comptroller is authorized to make with state funds. Under sec. 404.024(j), if the comptroller is required to invest funds other than as provided under sec. 404.024, and if there is no other law

establishing a conflicting standard, the funds must be invested under the restrictions and procedures for making the investments that people of "ordinary prudence, discretion, and intelligence, exercising the judgment and care under the prevailing circumstances, would follow in the management of their own affairs […]." Sec. 404.024(j) also specifies that the investments be made "not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital." This is sometimes called the prudent investor standard.

The ESF is invested in a fund called the Texas Treasury Pool that is managed by the Texas Treasury Safekeeping Trust Company, a special-purpose trust that manages some of the state's funds. The Treasury Pool is managed in accordance with Government Code, sec. 404.024.

DIGEST:

CSHB 903 would require the comptroller to change the way the Economic Stabilization Fund is invested. The comptroller would be required to invest a percentage of the ESF balance that exceeds the fund's sufficient balance in accordance with the investment standard specified in Government Code, sec. 404.024(j).

The investment would not be subject to other requirement or limitations in Government Code, sec. 404.024, which lists the type of investments the comptroller is authorized to make and certain restrictions on the investments.

The comptroller would be required to adjust the ESF's investment portfolio periodically to ensure that the balance of the ESF was sufficient to meet the fund's cash flow requirements.

The comptroller would be required to include the fair market value of the ESF's investment portfolio when calculating the cap on the ESF and determining allocations from general revenue to the ESF and the State Highway Fund.

The bill's provisions requiring investment of part of the ESF would expire when the Government Code's provisions establishing the procedures to determine the ESF's sufficient balance expire, currently set for December

31, 2024.

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, 2015.

SUPPORTERS SAY:

CSHB 903 would modify the ESF investment strategy to ensure that the state was being a responsible steward of taxpayer funds. The bill would balance the state's need to have an adequate amount of money readily available in the ESF and the need to invest the fund prudently.

Currently, the ESF is in highly liquid, low yield assets that in financial terms are described as cash equivalents. Its recent earnings have been less than inflation, meaning that the ESF is losing purchasing power.

While it is prudent for the state to maintain a certain amount of liquidity so that the ESF is readily accessible in the event of an emergency or other need, it is unnecessary to subject the entire fund to this standard. With the fund's balance estimated to reach $11.1 billion by the end of fiscal 2016-17, absent any appropriations, there is more than enough in the fund to maintain an appropriate threshold of liquidity while investing a portion of the amount above the sufficient balance in a stable, safe class of assets with a slightly higher return.

The bill would protect the ESF by requiring the comptroller to use the prudent investor standard to invest a portion of the fund that is above the sufficient balance. This standard is well defined and considered a best practice by the institutional investment managers. It would judiciously protect the state's money by investing it in a safe class of assets designed to yield a higher rate than the state's current approach.

The investments envisioned under CSHB 903 could be targeted to earn inflation or inflation plus a set percentage. Under some estimates, for every $1 billion invested under CSHB 903, the state could earn $15 million annually. This would preserve the fund's purchasing power and grow the state's savings account.

CSHB 903 would affect only a portion of the ESF. The bill would allow

the comptroller to determine what portion of the fund would be invested under the bill, but whatever amount was set as the ESF's sufficient balance — currently $7 billion — would remain in the current class of assets. The comptroller should have the flexibility to determine what portion of the amount above the sufficient balance would be invested — rather than designate that amount in law — so that the investing could ramp up slowly and be changed when appropriate and necessary.

Investing part of the ESF would not make the state vulnerable during emergency or present problems when the Legislature needed to access the fund quickly. The fund's sufficient balance would remain readily available, and at $7 billion the balance is well above the largest appropriation ever made from the ESF, which was $3.9 billion. Funds invested under the bill would be liquid enough to be made available quickly if necessary — the majority within days and the rest soon thereafter. This would be ample time, given that the Legislature usually knows well in advance when it will be appropriating money from the ESF and that the appropriations process, even during an emergency, takes some time. In addition, funds appropriated from the ESF are not spent instantaneously but often over months or years.

The comptroller is the entity best suited to invest ESF funds under the bill. The comptroller currently handles the ESF, and keeping the funds under one entity would make management easier, especially if the state needed to tap the ESF for short-term cash management. The Texas Treasury Safekeeping Trust Company, which manages the fund for the comptroller, would continue in its role. While other entities may do a good job of investing state funds, the Texas Treasury Safekeeping Trust Company has the most experience with a large pool of assets that must be kept relatively liquid compared to other types of investments, such as endowments.

The Legislature would retain its oversight of the ESF and its authority to appropriate funds when it chooses. The Legislature could revisit the provisions of CSHB 903 at any time and change the state's policy for investing the ESF.

OPPONENTS SAY:

CSHB 903 could subject the state's emergency cash reserves to unnecessary risk. The Economic Stabilization Fund was set up for the

purpose its name suggests — to stabilize state finances in a time of need caused by recession, depression, or other economic disruption. Investing a portion of the funds in a more aggressive portfolio could expose the state to the risk of losing the very funds on which it would rely in an emergency.

OTHER OPPONENTS SAY:

CSHB 903 should not limit the potential investment entities for the ESF to the comptroller. Other entities such as UTIMCO, which oversees investments for the University of Texas and Texas A&M systems, could be a better fit to manage the funds. The state could solicit potential investment plans from a number of entities and then retain legislative oversight of the investment of the fund by having the elected members of the Legislative Budget Board decide which plan to follow.

Another way to retain appropriate legislative oversight of the investment of the fund would be to establish a legislative committee to evaluate the investments or to set in statute a percentage of the ESF above the sufficient balance to be invested, instead of allowing the comptroller to determine the portion invested.

NOTES:

The committee substitute made several changes to the original bill. The original bill would have required the comptroller to invest the ESF balance that was in excess of 30 percent of the sufficient balance, while the committee substitute would apply to an undetermined percentage of the ESF balance over the sufficient balance. The original bill would have required the comptroller to adjust the ESF portfolio so that as money was withdrawn or transferred from the ESF or as the sufficient balance changed, only the balance over 30 percent of the sufficient balance would be invested. The committee substitute instead would require the comptroller to adjust the ESF's investment portfolio to ensure the fund's balance met the cash flow requirements of the fund. The committee substitute also added provisions that would require the fair market value of the ESF's portfolio to be used in calculating the fund's cap and to make the bill expire upon expiration of the law that sets up how the fund's sufficient balance is determined.

According to the LBB's fiscal note, CSHB 903 could result in an indeterminate change in the investment earnings of the ESF.

The companion bill, SB 116 by V. Taylor, was considered in a public hearing of the Senate Finance Committee on April 9 and left pending.

A related bill, SB 1927 by Seliger, also would allow a portion of the ESF to be invested under the prudent investor standard and would require the LBB to publish an annual report on the performance of the investments. It would apply to an amount of the ESF equal to the sufficient balance of the fund. SB 1927 would require the comptroller to submit at least two investment plans for the ESF to the LBB, which would choose a plan. At least one of the plans would have to exclude participation by the Texas Treasury Safekeeping Trust Company. SB 1927 was considered in a public hearing of the Senate Finance Committee on April 9 and left pending.

SUBJECT: Prescription and pharmaceutical substitution of biological products

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Crownover, Naishtat, Blanco, Coleman, Collier, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

1 absent — S. Davis

WITNESSES: For — Cam Scott, American Cancer Society Cancer Action Network; Thomas Felix, Amgen, Inc.; Chris Nieto, Arthritis Foundation; Chase Bearden, Coalition of Texans with Disabilities; Mark Godfrey, Eli Lilly and Company; Cindi Brannum, Global Healthy Living Foundation; Chuck Clayton, International Cancer Advocacy Network; Jim Mckay, Novartis; Tom Kowalski, Texas Healthcare and Bioscience Institute; Shannon Garrett; (*Registered, but did not testify*: John Robert Ball, AbbVie, Takeda Pharmaceuticals; Michelle Apodaca, Biotechnology Industries Organization; Kwame Walker, Boehringer Ingelheim Pharmaceuticals; Jesse Lewis, Bristol-Myers Squibb; Dennis Borel, Coalition of Texans with Disabilities; Juliana Kerker, Express Scripts; Brad Westmoreland, Genentech; Robert Culley, Generic Pharmaceutical Association; Myra Leo, GlaxoSmithKline; Richard Ponder, Johnson & Johnson; Rebecca Waldrop, Sanofi; Colin Parrish, Sullivan Public Affairs, Hospira; Dan Hinkle, Texas Academy of Family Physicians; Eric Woomer, Texas Dermatological Society; Darren Whitehurst, Texas Medical Association; Kevin Cooper, Texas Nurse Practitioners; Robert Peeler, UCB; Denise Berry)

Against — (*Registered, but did not testify*: Wendy Wilson, Prime Therapeutics)

On — Joe DaSilva, Texas Pharmacy Association; (*Registered, but did not testify*: Audra Conwell, Alliance of Independent Pharmacists of Texas; Bradford Shields, Texas Federation of Drug Stores; Michael Wright, Texas Pharmacy Business Council; Gay Dodson, Texas State Board of

Pharmacy)

BACKGROUND: Federal law defines "biological product" under 42 USC sec. 262 to include a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or protein applicable to the prevention, treatment, or cure of a disease or condition of a human.

The same law defines "biosimilar" as a biological product that is highly similar to another biological product apart from minor differences in clinically inactive components and that has no clinically meaningful differences between the safety, purity, and potency of the two products. An application for federal license and evaluation of a biosimilar must include studies demonstrating that the biosimilar is highly similar to the biological product except for minor differences in clinically inactive components.

Federal law also defines the term "interchangeable" to mean a biological product that may be substituted for another biological product without the intervention of the health care provider who prescribed the product.

Occupations Code, ch. 562 regulates the prescription and dispensation of drugs that can be substituted for brand-name prescriptions, such as generic drugs.

DIGEST: CSHB 751 would allow interchangeable biological products to be substituted for brand-name biological products under certain circumstances.

Definitions. CSHB 751 would define the term "biological product" in the state Occupations Code as it is defined by federal law, under 42 U.S.C. 262. It also would define the term "interchangeable" as it is defined in federal law or as a biological product that is designated as therapeutically equivalent to another product by the U.S. Food and Drug Administration (FDA) in the most recent edition or supplement of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book.

Authorized substitution. If the price of a biological product was lower

than a patient's copayment under the patient's prescription drug insurance plan, a pharmacist would have to offer the patient the option of paying for the lower-priced alternative instead of paying the amount of the copayment. The pharmacist would have to record on the prescription form the name, strength, and manufacturer or distributor of a dispensed biological product.

Physician notification by a pharmacist. The dispensing pharmacist or the pharmacist's designee would have to communicate to prescribing practitioners the name as well as the manufacturer or national drug code number of the specific biological product provided to the patient within three business days of dispensing the product. This notification would be made by entering the information, including information submitted for the claims payment, into an interoperable electronic medical records system or through electronic prescribing technology or a pharmacy record that a pharmacist reasonably concluded was electronically accessible by the prescribing practitioner. Otherwise, the pharmacist or a designee would have to communicate the dispensed biological product to the prescribing practitioner by fax, phone, electronic transmission, or other prevailing means. Communication would not be required if there were no interchangeable biological product approved by the FDA for the prescribed product or a refill prescription was not changed from the product dispensed on the prior filling of the prescription.

The notification requirements would expire September 1, 2019.

Labeling. Unless otherwise directed by the practitioner, the label on a biological product's dispensing container would have to indicate the actual product dispensed. The product dispensed would be indicated either by the brand name or, if there was not a brand name, by the drug's generic name or the name of the biological product, the strength of the biological product, and the name of the manufacturer or distributor of the biological product. The bill would require the same state labeling requirements for a biological product as for another drug dispensed by a Class A or Class E pharmacy.

If a biological product has been selected other than the one prescribed, the pharmacist would have to label the container with the words "substituted

for brand prescribed" or "substituted for 'brand name'" where "brand name" was the name of the biological product prescribed.

Interchangeable biological products. The bill would apply to interchangeable biological products the same requirements, other than signage requirements, that apply to generically equivalent drugs in Occupations Code, sec. 562.008-562.011, sec. 562.013, and sec. 562.015. These requirements would relate to:

- authorization to dispense an interchangeable biological product;
- selection of an interchangeable biological product to dispense;
- liability for selecting an interchangeable biological product to dispense; and
- restrictions on selecting interchangeable biological products and charging fees.

The new requirements would apply only to biological product prescriptions issued on or after December 1, 2015.

Rules. The Texas State Board of Pharmacy (TSBP) would have to adopt rules necessary to implement CSHB 751 by December 1, 2015, including rules to provide a dispensing directive to instruct pharmacists on the manner in which to dispense a biological product according to the contents of a prescription.

The board also would maintain on its website a link to the FDA's list of approved interchangeable biological products.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 751 would update Texas pharmacy substitution laws for generic drugs so that patients would have access to interchangeable biological products, part of a category of drugs commonly known as biosimilars. The bill would extend the same labeling and patient notification requirements that apply to substituting generic medications to interchangeable biological products. It also would follow federal law that governs substitution, which authorizes substitution of a biosimilar only if it is determined to be interchangeable by the FDA.

Current substitution laws do not contemplate the existence of biosimilars, including interchangeables, although the FDA recently approved Zarxio, the first biosimilar product in the United States, which can be prescribed for patients with cancer, acute myeloid leukemia, and severe chronic neutropenia. Many other biosimilars are undergoing trial and will soon be available, with a host of interchangeable biological products to follow. CSHB 751 would allow greater access to new and less expensive treatment options for Texans who require a biologic medicine for their disease or condition.

Biosimilars, including interchangeables, are much more complex than regular generics, involving biologic molecules that are thousands of times larger and more complex than those in traditional drugs like aspirin or Claritin. The bill recognizes this difference by requiring communication between the pharmacist and prescribing physician as part of a complete treatment plan for patients who would use these drugs. The bill would allow a physician to have up-to-date information that reflected the specific product dispensed and would allow a physician to make changes accordingly. Due to their complexity, one biosimilar or interchangeable biological product might work better or worse for a patient than another, and the physician needs to know which one was dispensed to make the best decisions regarding the patient's health.

The bill was amended in committee to account for concerns over notification requirements. In response to stakeholder concerns, the the communication requirements in CSHB 751 would expire four years after its effective date, which should give patients, doctors, and pharmacists enough time to fully realize the value of physician communication and patient safety.

OPPONENTS SAY:

CSHB 751 would create cumbersome notification requirements for pharmacists. Pharmacies already are highly regulated, and an additional notification requirement would further burden the state's pharmacists.

NOTES:

CSHB 751 differs from the bill as introduced in that the substitute would:

- eliminate on September 1, 2019, the requirement for a pharmacist

or pharmacist's designee to communicate to the prescribing practitioner the specific product provided to the patient;

- specify that a pharmacist or pharmacist's designee would have to communicate to the prescribing practitioner the specific product provided to the patient within three business days of dispensing the product;
- add "national drug code number" as information a pharmacist or designee could communicate to the prescribing practitioner;
- specify that communication to the prescribing practitioner would include information submitted for claims payment;
- add that a pharmacy record was one that a "pharmacist reasonably concludes" was electronically accessible by the prescribing practitioner;
- remove a provision that would have specified the wording of a sign that a pharmacist was required to display under Occupations Code, sec. 562.009;
- remove a provision regarding requirements for immunosuppressant drugs; and
- add a requirement that the board would have to maintain a website with a link to the FDA's list of approved interchangeable biological products.

The Senate companion bill, SB 542 by Kolkhorst, was considered in a public hearing of the Senate Health and Human Services Committee on April 1 and left pending.

SUBJECT: Creating defense to prosecution for those who call 911 for drug overdoses

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

WITNESSES: For — Amy Granberry, Association of Substance Abuse Programs; Robin Peyson, Communities for Recovery; Cate Graziani, Mental Health America of Texas; Scott Henson, Texas Criminal Justice Coalition; Kate Murphy, Texas Public Policy Foundation; Richard Greene; (*Registered, but did not testify*: Marsha Stone, Benchmark Recovery Center; Mathew Gorman, Eudaimonia Recovery Homes; Eric Woomer, Federation of Texas Psychiatry; Mark Bennett, Harris County Criminal Lawyers Association; Holly Deshields, Kaleo Pharmaceuticals; Fred Shannon, National Safety Council; Kristin Etter, Texas Criminal Defense Lawyers Association; Michelle Romero, Texas Medical Association; Krista Crockett, Texas Pain Society; Cynthia Humphrey, Texas Recovery Network)

Against — None

BACKGROUND: The Texas Controlled Substances Act (Health and Safety Code, ch. 481) contains criminal enforcement provisions and penalty groups relating to the possession, manufacture, and delivery of controlled substances.

- Penalty Group 1 includes cocaine, heroin and other opiates.
- Penalty Group 1-A includes LSD.
- Penalty Group 2 includes amphetamines, MDMA (“ecstasy”), PCP and mescaline.
- Penalty Group 2-A includes synthetic marijuana.
- Penalty Group 3 includes certain stimulants, barbiturates, preparations containing certain amounts of codeine and morphine, peyote, certain anabolic steroids, and salvia divinorum.
- Penalty Group 4 includes certain mixtures of codeine, opium and other narcotics.

DIGEST: CSHB 225 would create a defense to prosecution for certain drug offenses for individuals seeking medical assistance for themselves and others and would allow the use of opioid antagonists in certain situations.

Defense to prosecution. CSHB 225 would create a defense to prosecution for the first individual who requested emergency medical assistance in response to a possible overdose of that person or another person, remained on the scene until medical assistance arrived, and cooperated with medical assistance and law enforcement personnel if that individual was in possession of:

- less than one gram of a substance in Penalty Group 1;
- fewer than 20 units of a substance in Penalty Group 1-A;
- less than one gram of a substance in Penalty Group 2;
- up to four ounces of a substance in Penalty Group 2-A;
- less than 28 grams of a substance in Penalty Group 3;
- less than 28 grams of a substance in Penalty Group 4;
- controlled substances listed in a schedule by an action of the commissioner of DSHS but not listed in a penalty group;
- up to four ounces of marijuana;
- drug paraphernalia;
- a dangerous drug without a prescription; or
- abusable volatile chemicals with the intent to inhale, ingest, or apply the chemical in a manner contrary to directions and designed to produce intoxication.

Opioid antagonists. The bill would allow a health care professional, directly or by standing order, to prescribe, dispense or distribute drugs that block the effects of an opioid ("opioid antagonists") to a person at risk of experiencing an opioid-related overdose or to someone in a position to assist that person, including a friend or family member. It would shield a health care professional who, with reasonable care, prescribed, dispensed or distributed opioid antagonists from any criminal or civil liability or professional disciplinary action. It also would shield from criminal prosecution or civil liability an individual from any outcome resulting from the administration of an opioid antagonist to another person with

reasonable care.

The bill would allow people or organizations under a standing order issued by a health care professional to store and dispense opioid antagonists as long as they did not request or receive compensation for the antagonists. It also would allow any person to possess opioid antagonists without a prescription.

A pharmacist who provided opioid antagonists to a person would be required to offer counseling to that person about overdose recognition and prevention and the administration of opioid antagonists, patient responses, and potential side effects.

Any entity that provided opiate antagonists to emergency services personnel would be required to provide those personnel with a course of instruction about overdose recognition and prevention and the administration of opioid antagonists, patient responses, and potential side effects.

The bill would allow the Health and Human Services Commission (HHSC) and the Criminal Justice Division of the governor's office to issue grants for drug overdose prevention; recognition and response education for individuals, family members, and emergency services personnel; and opioid antagonist prescription or distribution projects.

If any provision in CSHB 225 relating to opioid antagonists conflicted with any other law, the subchapter added by the bill would prevail.

The bill would take effect on September 1, 2015, and would apply only to conduct that occurred on or after that date.

SUPPORTERS SAY:

CSHB 225 would reduce drug overdose-related deaths in Texas, which have increased by 78 percent since 1999. Most of these deaths can be prevented with quick and appropriate medical treatment. However, fear of arrest and prosecution often prevents people who witness an overdose from calling 911.

This bill would encourage people best positioned to seek emergency care

to help those in danger of an overdose. In another state that passed a similar law, a survey found that 88 percent of prescription painkiller users indicated that once they were aware of the law, they would be more likely to call 911 during future overdoses.

The bill would ensure that only those who made a good-faith effort to help the victim were protected from prosecution by limiting the protection to the first person who called and stayed with the victim. Under the bill, drug dealers and individuals in possession of large quantities of controlled substances would not be protected.

Once emergency responders are called, one of the most effective ways to prevent drug overdose is through the use of an opioid antagonist such as naloxone. Administration of naloxone counteracts life-threatening depression of the central nervous system and respiratory system, allowing an overdose victim to breathe normally. Although naloxone is a prescription drug, it is not a controlled substance and has no abuse potential. It can also be administered by a minimally trained layperson. In the vast majority of cases, naloxone has no significant negative side effects, even if administered to someone not suffering from an overdose.

In states that have allowed the use of naloxone, the drug has been provided to more than 50,000 people and has led to more than 10,000 overdose reversals. Allowing the use of naloxone could prevent numerous overdoses in Texas.

OPPONENTS SAY:

Because law enforcement officers rarely make arrests for possession of small amounts of controlled substances when responding to overdose calls, CSHB 225 is unnecessary and would not significantly change the way these cases are handled.

By making the antidote so easily available, the bill could make addicts less likely to seek treatment. It could give people a false sense of security that the opioid antagonist was a "silver bullet" against overdose. Putting the antidote in the hands of individuals rather than restricting its use to medical professionals and emergency services personnel could dissuade addicts from seeking treatment.

The bill should not authorize non-medical emergency services personnel to administer opioid antagonists. This would place a burden on law enforcement officers who already carry extensive responsibilities in these high-stress situations. Although the bill would not require police to carry the opioid antagonists, law enforcement entities could face pressure to begin carrying and administering them. This pressure could lead to administrative problems regarding the storage and transportation of opioid antagonists and complicated situations where officers without proper medical training were required to diagnose and inject potential victims. Major issues could arise if officers failed to properly diagnose an overdose and victims suffered serious injury.

OTHER OPPONENTS SAY:

CSHB 225 would not provide sufficient protection from prosecution for overdose victims who do not call 911 themselves, potentially resulting in preventable deaths. Individuals hesitate to call 911 not only for fear of their own prosecution but also the victim's, so without adequate protection for the overdose victim, bystanders might hesitate or fail to call for help.

Granting a defense to prosecution only to the first person to request emergency medical assistance would create a disincentive for people to make these requests. If multiple people witness someone at risk overdosing, all of them should have an incentive to seek help.

The bill also should provide a defense to probation or parole violations, making it more likely prevent serious injury or death. As it is, people on probation or parole still would be discouraged from seeking help in the event of an overdose.

NOTES:

The committee substitute differs from the bill as introduced in that CSHB 225 would:

- allow the use of opioid antagonists in certain situations by individuals and emergency service personnel;
- shield individuals, emergency service personnel and medical professionals from criminal and civil liability for certain uses of opioid antagonists;
- allow possession of an opioid antagonist without a prescription;

- require pharmacists who provide opioid antagonists to a person to offer counseling;
- require providers of opioid antagonists to provide instruction on their use;
- allow HHSC and the Criminal Justice Division of the governor's office to issue grants;
- establish that conduct occurring before the effective date would not be governed by this bill; and
- establish that if the provisions in the bill relating to opioid antagonists conflicted with any other law, the subchapter added by the bill would prevail.

The companion bill, SB 1921 by Watson, was referred to the Senate Criminal Justice Committee on March 25.

SUBJECT: Cardiac assessments of participants in UIL athletics

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Aycock, Allen, Bohac, Deshotel, Dutton, Farney, Galindo, González, Huberty, K. King, VanDeaver

0 nays

WITNESSES: For — Bart Koontz, Augustheart; Thomas DeBauche, Cypress ECG Project; Joe Stephens, Galena Park ISD; Bret Cullers, Living for Zachary; Mo Jahadi, Texas Chiropractic Association; Pat Shuff, Who we play for - Cypress ECG; Laura Britton; John Cadigan; Scott Christensen; Laura Friend; Scott Stephens; (*Registered, but did not testify*: Pam Velasco and Holly Farmer, Augustheart; Melody Stephens, Cody Stephens Foundation; Denise Cullers, Living for Zachary; Freddy Warner, Memorial Hermann Health System; Scott Gilmore and Michael Henry, Texas Chiropractic Association; Paige Williams, Texas Classroom Teachers Association; Yannis Banks, Texas NAACP; Ellen Arnold, Texas PTA; Monty Exter, The Association of Texas Professional Educators; Debbie Goyne, The Brandon Goyne Foundation); and 14 individuals

Against — John Erwin, Texas Chapter of the American College of Cardiology; James Lukefahr, Texas Pediatric Society; Arnold Fenrich

On — John Higgins, The University of Texas Health Science Center at Houston; (*Registered, but did not testify*: Mike King and Gina Mannino, Bridge City ISD; Von Byer and Monica Martinez, Texas Education Agency; Troy Alexander, Texas Medical Association; Jamey Harrison, UIL)

BACKGROUND: The University Interscholastic League (UIL) is an organization separate from the Texas Education Agency that creates rules for and administers most athletic, music, and academic contests for public primary and secondary schools. Education Code, Ch. 33, subch. D governs extracurricular activities at public schools, including UIL competitions.

Under the UIL's Constitution and Contest Rules: Athletics, sec. 1205, each student athlete must undergo a physical examination by a medical professional prior to athletic participation in their first and third years of high school. Student athletes must complete a medical history form each year prior to participation in any practice, scrimmage, or game associated with UIL athletics.

DIGEST: CSHB 767 would require all student athletes to receive an electrocardiogram (ECG) prior to participating or practicing in an athletic activity sponsored or sanctioned by the University Interscholastic League (UIL). The student athlete would have to receive an ECG once before the student's first year of participation and once before the student's third year of participation.

The bill would not create a civil cause of action or liability against a licensed or certified health care professional, a school district, or a district employee for the death or injury of a student athlete who participated or practiced in a UIL-sponsored athletic activity based on the administration of or reliance on an ECG or echocardiogram.

CSHB 767 would permit a parent or guardian to waive the administration of an ECG to the student following a written request citing religious or financial reasons.

The UIL would be required to adopt rules to implement the bill.

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, 2015, and would apply at the start of the 2015-16 school year.

SUPPORTERS SAY: CSHB 767 would help reduce the incidence of sudden cardiac death (SCD) among student athletes in Texas by requiring them to receive an electrocardiogram (ECG) twice during their high school sports careers. Studies show that SCD is the leading medical cause of death in athletes, and competitive athletes are much more likely to succumb to SCD than non-athletes. Although the exact incidence of SCD is unknown due to a lack of reporting and varying methods of study, by some estimates, one

student dies each year from SCD out of a population ranging from 50,000 to 80,000 high school athletes.

The ECG administration required by CSHB 767 would detect cardiovascular issues better than a traditional medical exam. The screening protocol recommended by the American Heart Association (AHA) may not be effective at detecting cardiac disease that can lead to SCD. In a study of 115 SCD cases, only one individual was identified using this approach. The majority of athletes show no warning signs or symptoms prior to an attack. Cardiac arrest is the first manifestation of a problem in up to 80 percent of cases. Due to the risk of false negatives from traditional screening methods, many American professional sporting organizations have adopted the use of an ECG to detect the risk of SCD during cardiovascular screenings.

The mass administration of ECGs would not be a burden on the Texas health care system. ECG machines cost around $2,000, and results can be reported within 48 hours. A comprehensive online training module for ECG interpretation in athletes was developed and is freely accessible worldwide. This module provides a framework for developing an infrastructure that can be used by primary care physicians and cardiologists to effectively use an ECG for diagnostic purposes.

CSHB 767 would have no fiscal impact to the state and minimal cost to school districts. An ECG is an inexpensive preventive measure that costs $15 and would be added to the cost of the physical exam. Numerous doctors, hospitals, and non-profit organizations offer free screenings for students.

False positive rates are decreasing as the interpretation process develops, and athletic-specific ECG interpretation standards have the capability to drastically reduce these rates. If an individual receives a positive result, a secondary office visit or an echocardiogram may be administered.

CSHB 767 would protect parental choice by allowing parents or guardians to opt out of the requirement that students receive ECGs for religious or financial reasons. This bill would strike the right balance between protecting the health of students participating in school athletics and

allowing parents to weigh issues of cost or conscience in deciding whether receiving an ECG would be best for their child.

OPPONENTS SAY:

CSHB 767 could be burdensome and costly while conferring little benefit to the student athletes it seeks to protect. Few young athletes have cardiovascular conditions that place them at risk for SCD. Estimates by the AHA of the incidence of SCD cases among high school athletes range from 1 in 23,000 to 1 in 300,000. Requiring two ECGs for all young athletes during high school would cost an estimated $50,000 to identify each positive case. This small number limits the benefit of an expensive screening program that includes the use of ECGs or echocardiograms.

There is no evidence that SCD is more common in athletes than non-athletes. Non-athletes are just as likely to suffer from genetic heart diseases that raise the risk for SCD. Because only about 30 percent of high school students participate in competitive sports, requiring the mass administration of ECGs would not significantly reduce cases of SCD.

False positives and false negatives limit the extent to which ECGs are helpful in discovering underlying heart problems in athletes. The AHA does not recommend mandatory ECG or echocardiogram administration for young athletes. It recommends use of a prescreening tool to determine risk for SCD in competitive athletes, the elements of which are contained in the UIL's pre-participation medical history form. If an athlete answers yes to any elements, the health care provider can administer an ECG to more accurately determine risk for SCD.

CSHB 767 could create a burden on the Texas health care infrastructure. Texas has 1,025 school districts, most of which participate in UIL athletics. Texas currently has an insufficient number of ECG machines and a shortage of pediatric cardiologists to interpret ECG reports.

OTHER OPPONENTS SAY:

CSHB 767 should not permit parents to opt out on behalf of their children from the required ECG administration for religious or financial reasons. Allowing a waiver could leave unevaluated a large population of student athletes at risk for SCD, including those in populations particularly susceptible to the disease, such as African-American males. Also, a waiver could lead some parents or guardians who were aware of existing

heart conditions in a young athlete to waive the ECG in fear of the athlete's becoming ineligible to participate in sports.

NOTES:

Unlike the bill as introduced, CSHB 767 would permit a parent or guardian to waive an ECG screening for a student athlete with a written request citing a financial burden or religious reason.

Rep. Smith plans to offer a floor amendment that would permit a parent or guardian to submit a written request to waive an ECG screening for a student athlete for any reason.

SUBJECT: Rollback taxes on open-space land conveyed to and by an exempt entity

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Murphy, Parker, Springer, C. Turner, Wray

0 nays

1 absent — Martinez Fischer

WITNESSES: For — (*Registered, but did not testify*: Donald Lee, Texas Conference of Urban Counties; Bill Longley, Texas Municipal League; Conrad John, Travis County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Mike Esparza, Comptroller of Public Accounts)

BACKGROUND: Tax Code, sec. 23.52 provides that "qualified open space land," which is land used for agricultural or wildlife management purposes, is appraised using the average annual net income that would have been earned from the land during the previous five years if it were used prudently for agricultural purposes. This appraisal value may not exceed the market value of the land.

Tax Code, sec. 23.55(a) applies a one-time tax (commonly known as the "rollback tax") to a property owner who changes the use of qualified open-space land such that the land loses its classification. When this occurs, the property owner is required to pay a tax equal to the difference between what the tax would have been at market value without the exemption and the actual tax paid for each of the preceding five years, plus a 7 percent annual interest rate.

Certain exceptions apply to this tax. Under sec. 23.55(f)(3), this tax is not imposed if the change of the land's use occurs as a result of a transfer of

the property to the state or a political subdivision of the state to be used for a public purpose.

DIGEST: HB 376 would apply a rollback tax to property owners who conveyed and reacquired certain land. It would apply to property owners having land that:

- was qualified open-space land;
- was conveyed to one of certain entities exempt from the rollback tax on open-space land;
- had its use changed in the exempt entity's possession;
- was conveyed back to the original property owner within five years of the initial conveyance; and
- was used within that same five-year period for a purpose that would have subjected the land to rollback taxes had the initial conveyance to the exempt entity not occurred.

For rollback taxes assessed under this subsection, the date on which the land initially was conveyed to the exempt entity would be considered the date of the change of use.

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, 2015.

SUPPORTERS SAY: HB 376 would close a tax loophole that can rob county and local school districts of millions of dollars in revenue. Some municipalities wishing to attract economic development will buy qualified open space land from a developer, change the use of the land, and then sell the land back to the developer. Because the change in use occurred while the land was in possession of a nontaxable entity — a political subdivision of the state — the developer avoids the rollback tax entirely. In this scenario, the county and the local school district miss out on significant tax revenue.

Although this activity is legal, it is not in the spirit of the law. Municipalities and entities that use this loophole as an economic incentive are more likely to attract business to their jurisdiction and gain an unfair

advantage over those who do not. Furthermore, current law already provides a possible exemption to the rollback tax. Land may be exempted if the tax revenue from economic development is expected by the comptroller to be more than 20 times greater than the amount of rollback tax revenue to be collected. Finally, taxing entities have the option of jointly providing a rollback tax refund if they wish to do so.

Rollback taxes can represent a valuable revenue source for local governments, counties, and school districts. HB 376 would protect this valuable source of revenue to protect the services these entities provide.

OPPONENTS SAY:

HB 376 would apply the rollback tax on open-space land to even more circumstances. The rollback tax is a costly impediment to economic development. Instead of being applied in still more cases, this tax should be eliminated.

NOTES:

The Legislative Budget Board's fiscal note states that the bill could have a positive impact on taxable property values and could decrease costs to the Foundation School Fund. The fiscal note also states that tax revenues for local governments could increase but that amounts for all of these impacts could not be estimated due to lack of data on the amount of land to which HB 376 would apply.

SUBJECT: Allowing hospitals to build nursing homes using bonds and UPL funds

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Crownover, Naishtat, Blanco, Coleman, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

2 absent — Collier, S. Davis

WITNESSES: For — Ted Matthews, Eastland Memorial Hospital District; Brian Roland, Hamilton Healthcare System; Kevin Frosch, Medina County Hospital District; Ronald McCann, Oakbend Medical Center; Kevin Reed, Texas Organization of Rural and Community Hospitals; Tom Nordwick, Uvalde Memorial Hospital Authority; Adrian Larson, Val Verde Hospital District; Phillip Hopkins; (*Registered, but did not testify*: Dan Posey, Baylor Scott and White Health; Maureen Milligan, Teaching Hospitals of Texas; Charles Bailey, Texas Hospital Association; Don McBeath and David Pearson, Texas Organization of Rural and Community Hospitals; Andrew Smith, University Health System)

Against — None

BACKGROUND: Chapter 223 of Health and Safety Code, the Hospital Project Financing Act, authorizes cities, counties, public hospital authorities, and hospital districts to issue revenue bonds or notes to finance health care facilities as a hospital project. Under this chapter, a "hospital project" means property or a property interest — other than a nursing home — for which financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of that property is deemed necessary for medical care, research, training, or teaching in Texas by the governing body of a debt issuer.

Sections 285.101 and 262.034 of the Health and Safety Code allow rural public hospitals, public hospital authorities, and hospital districts to own, operate, and issue revenue bonds for nursing homes or similar long-term

care facilities, elderly housing, assisted living, home health, special care, continuing care, durable medical equipment, and personal care facilities. A public hospital, hospital district, or public hospital may lease or enter into an operations or management agreement relating to all or part of these facilities or services.

The Health and Human Services Commission recently implemented a Nursing Facility Upper Payment Limit (UPL) Supplemental Payment Program through which a hospital authority, hospital district, health care district, city, or county operating a nursing facility can use UPL funding for nursing facilities they own. Under this program, the state draws down federal funding for Medicaid to pay nursing facilities the Medicare rate for services, rather than the Medicaid rate, which is usually lower.

DIGEST:

HB 3332 would allow the definition of a "hospital project" to include a nursing facility, assisted living facility, or multi-unit senior housing facility. The bill would allow a hospital project to be located anywhere in Texas if the project served a legitimate public purpose and the location of the project was consistent with the project's purpose.

The bill would repeal a provision in statute that prohibits a public hospital, hospital district, or public hospital authority from issuing revenue bonds or notes for housing or a facility for people who are elderly or disabled if a private provider can provide those services within the service area of a hospital, hospital district, or hospital authority.

It also would remove a requirement in statute that only rural public hospitals, hospital districts, or public hospital authorities can issue revenue bonds or notes to acquire, construct, or improve nursing homes or similar long-term care facilities, elderly housing, assisted living, home health, special care, continuing care, durable medical equipment, and personal care facilities for people who are elderly or disabled.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 3332 would enable public hospitals to participate in the Health and Human Services Commission's Nursing Facility UPL Supplemental Payment Program by allowing them to issue bonds for the purpose of

building or operating nursing homes. This would increase federal dollars available to long-term care facilities under the Medicaid program without incurring additional state expense. It also would create valuable new nursing home and long-term care facility space to house patients for whom one of these settings would be more appropriate than a hospital bed.

HB 3332 particularly would help public hospitals remain financially viable in rural counties, which would improve rural Texans' access to quality health care, improve continuity of care, and reduce unnecessary hospital readmissions. Rural counties cannot afford to lose these public hospitals, which often are the only trauma health providers for many miles and serve a geriatric population.

Public hospitals also are often the largest and highest-paying employers in rural Texas. Allowing them to participate in the Nursing Home UPL Supplemental Payment Program would ensure that they could continue to operate in these communities. Support for these entities should be a priority.

Hospitals have a need for UPL funding for nursing homes because the hospital model is moving away from keeping patients in hospital beds and more toward delivering care in long-term care facilities. Rural hospitals in particular have a need for funding because they serve a geriatric population that uses Medicare, and the federal Affordable Care Act recently cut Medicare reimbursement rates.

Hospitals also are financially penalized for avoidable readmissions under Medicare. Allowing public hospitals to participate in UPL funding for nursing homes would improve follow-up care and prevent readmissions because providers would better be able to keep track of geriatric patients' health if a nursing home was within the hospital system.

Hospital authorities would build a new nursing home only if there was a need for one. It is not in their financial interest to build a nursing home in an area with competing, high-quality nursing homes. The state needs better quality nursing homes. Certain nursing homes might be at low capacity because they are not providing the high level of care that a

hospital authority could provide.

OPPONENTS SAY:

HB 3332 would give public hospitals an unfair advantage over private nursing homes by allowing all public hospitals — not just rural hospitals — to build nursing homes using revenue bonds and public funding. Rural hospitals already are allowed to build nursing homes as part of a hospital project, but the bill specifically would remove a provision that allows public hospitals to use revenue bonds for a nursing home only if a private provider is not available within the public hospital's service area. This provision is in law because nursing homes across the state are overbuilt and are not at full capacity.

The state does not need more nursing homes in areas already served by private providers, and the bill should not allow public hospitals to use government funding for this purpose. The bill also should not allow hospitals to build a nursing home outside of their hospital districts using government funds, as it would if enacted. The UPL program is meant to reimburse public hospitals for providing charity care. It was not meant to grant public hospitals an unfair advantage over private nursing homes.

Hospitals also do not need nursing homes to be within their networks to provide follow-up care. They can use electronic health records to keep track of patients' health regardless of their location.

SUBJECT: Prohibiting use and possession of e-cigarettes at public schools

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, Allen, Bohac, Deshotel, Farney, Galindo, González, Huberty, K. King, VanDeaver

0 nays

1 absent — Dutton

WITNESSES: For — Joel Dunnington, Texas Medical Association; (*Registered, but did not testify*: Nelson Salinas, Texas Association of Business; Barry Haenisch, Texas Association of Community Schools; Lindsay Gustafson, Texas Classroom Teachers Association; Colby Nichols, Texas Rural Education Association; Julie Lindley, Texas School Nurses Organization; Portia Bosse, Texas State Teachers Association; Lon Craft, TMPA)

Against — None

On — (*Registered, but did not testify*: Von Byer and Monica Martinez, Texas Education Agency)

BACKGROUND: Education Code, sec. 38.006 requires the board of trustees of a school district to prohibit smoking or using tobacco products at a school-related activity that is on or off school property and to prohibit students from possessing tobacco products at a school-related activity that is on or off school property. The board also must ensure that school personnel enforce these policies on school property.

Education Code, sec. 28.004(k) requires a school district to publish in the student handbook and, if it has one, on the district's website a statement about whether the district has adopted and enforces policies for penalizing use of tobacco products on school campuses or at school-related activities.

DIGEST: CSHB 456 would require the board of trustees of a school district to prohibit smoking or using e-cigarettes at a school-related activity that is

on or off school property and to prohibit students from possessing e-cigarettes at a school-related activity that is on or off school property. The board would have to ensure that school personnel enforced these policies on school property.

E-cigarettes would be defined as an electronic cigarette or any other device that simulates smoking through a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to whomever is inhaling the device. A device would be considered an e-cigarette regardless of whether it is manufactured, distributed, or sold as an e-cigarette, as an e-cigar, as an e-pipe, or under another name or description. E-cigarettes under this bill also would include a component or accessory of the device, whether it was sold with or separately from the device. The term would not include a prescription medical device unrelated to smoking cessation.

A school district would have to publish in its handbook and, if it has one, on its website a statement about whether the district has adopted and enforced policies penalizing the use of e-cigarettes on school campuses or at school-related activities.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 456 would protect Texas children by prohibiting the use and possession of e-cigarettes on public school campuses and at school functions. More minors are using e-cigarettes, which contain dangerous chemicals, including known carcinogens. The National Youth Tobacco Survey conducted by the Centers for Disease Control and Prevention (CDC) indicated that use of e-cigarettes by U.S. high school students nationwide rose from 4.7 percent in 2011 to 10 percent in 2012. Forbidding students from having or using e-cigarettes on school grounds would help to reduce minors' access to these products.

Nobody knows the long-term effects of e-cigarettes, which are largely unregulated and have poor quality control. Batteries of e-cigarettes have exploded in some cases. Like traditional cigarettes, e-cigarettes can contain the additive substance nicotine. CSHB 456 would deter use of these potentially dangerous and habit-forming products by children at the

state's public schools.

E-cigarettes are a gateway to cigarettes and other dangerous substances. Some young people already use e-cigarettes to inhale vapors of illegal drugs, such as marijuana and synthetics. Many are dual users of cigarettes and e-cigarettes. Most adult smokers started using traditional cigarettes habitually as children, and minors who smoke traditional cigarettes are more likely to be depressed, commit suicide, and use illegal drugs. This bill could help prevent students from taking up e-cigarettes and other harmful substances.

The number of calls to poison control centers concerning e-cigarettes has skyrocketed in recent years. According to the CDC, in February 2014, poison centers received 215 calls about e-cigarette liquids containing nicotine, compared to just one call in September 2010. More than half of the calls involved children under 5. Young people likely are drawn to e-cigarettes because of the enticing flavors, such as cotton candy and marshmallow, that appeal to this market.

As tobacco use has been de-normalized, youth cigarette smoking rates have declined. The industry now is trying to normalize e-cigarettes. Although some advocacy groups tout e-cigarettes as a way to quit traditional cigarettes, the Food and Drug Administration has not approved e-cigarettes as smoking cessation products.

Sometimes state government must enact laws that are right for all Texans and their children. Local governments do not always respond quickly to issues. A state law would empower school districts to enforce an e-cigarette policy they already had adopted. Court cases on student e-cigarette use and possession on campus have surfaced recently, and this bill would give school districts leverage to prevent future lawsuits.

This bill would help protect vulnerable young people who do not always make good choices for themselves. It would not intend to tell a school how to manage its employees.

Comprehensive research on the risks of e-cigarettes will not be available for several years, but based on current data, it is time to initiate regulatory

and legislative steps to protect children and the health of future generations. Texas is one of only a handful of states that has not yet restricted e-cigarette sales to minors. CSHB 456 would be a step toward the goal shared by many to prevent youth from accessing e-cigarettes.

OPPONENTS SAY:

CSHB 456, by imposing a statewide policy on the use and possession of e-cigarettes in public schools, would infringe on the ability of local school districts to determine the policies that are best for their communities. Although most people believe that minors should not be using e-cigarettes, local districts are in the best position to decide how to manage the issue. This bill would send a message to local communities that the state knows what is best for individual school districts.

Moreover, many local school boards already have taken the initiative to ban e-cigarettes at public schools in their districts. The state should continue to trust local school districts to make their own decisions about this issue.

The bill also is unclear about whether it would restrict the use of e-cigarettes by teachers and staff at schools or only by students. A policy that would limit use of e-cigarettes by non-students would restrict the liberties of adults and could interfere with their use of e-cigarettes as a means to quit smoking traditional cigarettes.

OTHER OPPONENTS SAY:

The state should be cautious about regulating products whose effects are not well known. Not enough reliable information on the risks of e-cigarettes is available at this point to determine whether their use should be restricted or banned.

NOTES:

CSHB 456 differs from the original in that the bill as filed would have regulated use and possession of “vapor products” at public schools rather than “e-cigarettes.”

SB 96 by Hinojosa, the Senate companion bill, was passed by the Senate on March 30.

SUBJECT: Transferring higher education energy savings contract approval to SECO

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Clardy, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

1 absent — Alonzo

WITNESSES: For — Cyrus Reed, Lone Star Chapter Sierra Club; (*Registered, but did not testify*: Justin Yancy, Texas Business Leadership Council)

Against — None

On — (*Registered, but did not testify*: Dub Taylor and Robert Wood, Comptroller of Public Accounts; Susan Brown and Raymund Paredes, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code, sec. 51.927 describes the Texas Higher Education Coordinating Board's responsibility for approving energy savings performance contracts at public institutions of higher education. Energy savings performance contracting is a construction financing method that allows an entity to finance the completion of energy-saving improvements with money saved through reduced utility expenses.

Under sec. 51.927(i), the coordinating board is required to create guidelines and an approval process for energy savings performance contracts in consultation with the State Energy Conservation Office (SECO). SECO is not required to review or approve energy savings performance contracts.

DIGEST: CSHB 599 would transfer responsibility for awarding energy savings performance contracts at public higher education institutions away from the Texas Higher Education Coordinating Board to the State Energy Conservation Office (SECO). All energy savings performance contracts

would have to be approved by SECO. Under the bill, the coordinating board could not review the contracts.

The bill would take effect September 1, 2015, and would apply to contracts submitted for approval on or after that date.

SUPPORTERS SAY:

CSHB 599 would reflect the spirit of the Sunset Advisory Commission's recommendations for the 83rd legislative session that certain projects be transferred away from the Texas Higher Education Coordinating Board, allowing it to focus more narrowly on its charge. Transferring approval authority over energy savings performance contracts would be consistent with this goal. In addition, this change is a legislative priority of the coordinating board.

The bill's transfer of approval authority for energy savings contracts to the State Energy Conservation Office (SECO) would result in a more efficient and consistent process for these contracts. SECO already consults with the coordinating board to develop guidelines and processes for contract approval in addition to managing contract approval for all other state agencies, making it the entity best suited to take on this role. The board still would have the opportunity to offer input on these projects through SECO, as it does for other capital projects through the governor and the Legislature.

While the coordinating board no longer would be responsible for reviewing or approving these contracts, the bill would improve oversight of the process, not weaken it. CSHB 599 merely would shift the responsibility from the coordinating board to another office, SECO, that has more experience. The state plays an important role in approving these kinds of contracts at public institutions because the state's money is on the line if contractors do not perform as required under their contracts. The approval process also is not a selection process, as contracts would be approved by SECO only after the schools had selected a contractor through established criteria.

While a 2008 report indicated that previous energy savings performance contracts did not provide the required statement of utility costs savings the state would recover by investing in facilities upgrades or operations, that

contractual language has since been corrected and no longer affects the processes at either the coordinating board or SECO for contracts they approve. The report also said that sufficient energy savings from these contracts may be achieved over the life of the contract to pay for the work done.

Recently, the coordinating board has had to approve only one or two contracts per year, so transferring the responsibility to SECO would have a minimal impact on the office. The fiscal note for this bill also indicates no significant impact.

OPPONENTS SAY:

CSHB 599 would transfer approval of energy savings performance contracts to SECO, but nothing in the Sunset Advisory Commission's most recent report on the coordinating board indicated that responsibility for energy savings performance contracts should be transferred from the coordinating board.

At a time when government must monitor state contracting carefully, the bill would remove a source of oversight from the approval of energy savings performance contracts by barring the coordinating board from reviewing the contracts, thereby placing the process in the hands of one entity, SECO, rather than two.

The bill would constrain the oversight of contracts whose benefit to the state already is far from clear. A 2008 study indicated that energy savings performance contracts often do not fulfill the requirement that they recover the cost of performing the contracts in utility cost savings. In these circumstances, the state's effort to save money is costing more than the energy savings performance contracts actually recover.

SECO's handling of energy savings performance contracts for all institutions of higher education could present an administrative burden and strain the office's budget, which did not include funds for this additional responsibility in fiscal 2016-17. SECO's more stringent standards also could make it harder for higher education institutions to find contractors to perform work under the contracts.

OTHER

CSHB 599 would continue to give the government a role it should not

OPPONENTS SAY:

have in selecting winners and losers for service contracts. Institutions of higher education should be able to access the free market to determine the best investment for their respective facilities.

NOTES:

CSHB 599 differs from the bill as introduced in that it would not permit the coordinating board to review energy savings contracts, whereas the bill as introduced would have allowed but not required the board to review such contracts.