HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, May 01, 2015
84th Legislature, Number 61
The House convenes at 9 a.m.
Part Two

Thirty bills set for second-reading consideration on today's daily calendar are analyzed or digested in today's *Daily Floor Report*. Those in Part Two are listed on the following page.

The HRO regrets that it is not possible to include analyses in today's *Daily Floor Report* of bills originally scheduled for consideration on Saturday and recently added to today's daily calendar. Any of those bills that are not considered today and are carried over to Monday will be analyzed in the Monday, May 4 *Daily Floor Report*.

Alma Allen
Chairman
84(R) - 61

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Friday, May 01, 2015

84th Legislature, Number 61

Part 2

SUBJECT: Allocating a portion of the hotel occupancy tax to certain municipalities

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 9 ayes — D. Bonnen, Bohac, Button, Darby, Martinez Fischer, Murphy, Springer, C. Turner, Wray

0 nays

2 absent — Y. Davis, Parker

WITNESSES: For — Tom Tagliabue, City of Corpus Christi; Keith McMullin, City of Port Aransas; Ann Vaughan, Port Aransas Chamber of Commerce; Scott Joslove, Texas Hotel and Lodging Association; (*Registered, but did not testify*: David Parsons, City of Port Aransas)

Against — None

On — (*Registered, but did not testify*: Donald Dillard and Brad Reynolds, Texas Comptroller of Public Accounts)

BACKGROUND: Tax Code, ch. 156 imposes a 6 percent tax on hotel rooms that cost more than $15.

Sec. 156.2512 provides that eligible barrier island coastal municipalities receive an allocation of either one-sixth or one-third of the tax revenue from hotel occupancy taxes collected in that municipality. "Eligible barrier island costal municipality" is defined as a municipality that borders the Gulf of Mexico, is located wholly or partly on a barrier island, and:

- includes a portion of a national seashore;
- includes a national estuarine research reserve; or
- is located within 30 miles of Mexico.

The Legislature has granted eligible barrier island coastal municipality status to Galveston, South Padre Island, and Port Aransas. Current law requires the allocation of the hotel occupancy tax to be used either to clean

and maintain public beaches or to fund an erosion response project.

DIGEST:

CSHB 1915 would change the rate at which certain eligible municipalities received allocations from the hotel occupancy tax and the definition of eligible coastal barrier island municipalities.

The bill would give all currently eligible municipalities one-third of the hotel occupancy tax collected within the municipality. This would be an increase in the tax revenue provided to Port Aransas. Recipients of this allocation could use it to clean and maintain bay shores owned by that municipality or leased from the state, in addition to other uses of the tax revenue provided in current law.

The calculation of the allocation percentage would exclude tax revenue collected from persons entitled to a rebate, refund, or payment of hotel occupancy tax revenue under an agreement with a governmental body or an enterprise tax refund.

This bill also would classify Corpus Christi as an eligible barrier island costal municipality by amending the definition to incorporate municipalities with boundaries that included an institution of higher education that was part of the Texas Coastal Ocean Observation Network and met the other requirements in current law.

This bill would take effect October 1, 2015.

SUPPORTERS SAY:

CSHB 1915 would ensure that coastal tourist destinations remained in parity with each other by providing the same hotel occupancy tax allocation to all eligible coastal barrier island municipalities. Galveston and South Padre both receive one-third of the hotel occupancy tax revenues. Port Aransas and Corpus Christi, which this bill would include as an eligible coastal barrier island municipality, should receive the same allocation. A number of factors have contributed to rising costs to keep the beaches clean. Corpus Christi and Port Aransas together spend almost $6 million dollars on beach maintenance. This is a major burden for these municipalities that bring so much tourism to the state.

Providing these funds would ensure that tourism continued to grow and

expand in Texas. Millions of visitors come from all across the nation and bring large amounts of money into the Texas economy, both near the coast and throughout the rest of Texas. It is in the state's interest to provide this assistance and ensure that the beaches continued to be premier tourist destinations.

OPPONENTS SAY:

CSHB 1915 would provide additional state funds to municipalities that probably should be self-sufficient. Tourism generates tax dollars as local municipalities collect sales taxes, in addition to revenue from beach permits and other fees. Tourism should be a self-supporting industry and should not necessarily be funded by the state.

NOTES:

The Legislative Budget Board's fiscal note indicates that the bill would have a negative net impact to general revenue of $7,872,000 through fiscal 2016-17.

SUBJECT: Reforming economic incentives, eliminating Emerging Technology Fund

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 9 ayes — Button, Johnson, C. Anderson, Faircloth, Isaac, Metcalf, E. Rodriguez, Villalba, Vo

0 nays

WITNESSES: For — (*Registered, but did not testify*: Jay Barksdale, Dallas Regional Chamber; Bill Hammond, Texas Association of Business; Carlton Schwab, Texas Economic Development Council; Max Jones, The Greater Houston Partnership)

Against — None

On — Ed Heimlich; (*Registered, but did not testify*: Phillip Ashley, Comptroller of Public Accounts; Jose Romano, Office of the Governor; Paul Ballard, Marianne Dwight, and Corinne Hall, Texas Treasury Safekeeping Trust Co.)

BACKGROUND: Government Code, ch. 490 established the Emerging Technology Fund as a trusteed program within the Office of the Governor. Created in 2005, the fund provides grants, equity stakes, and other forms of investment to fund technology research at companies and higher education institutions with the intention of stimulating job growth and helping technology start-ups bring their products to market.

Government Code, ch. 489 established the Texas Economic Development Bank. Created in 2003, the bank houses a number of financing and other economic development programs to provide competitive, cost-effective state incentives to expanding businesses operating or relocating to Texas. The bank also has programs designed to increase small, medium, and historically underutilized businesses' access to credit.

DIGEST: CSHB 27 would modify the state's two main economic development

programs. The changes would include:

- abolishing the Emerging Technology Fund and transferring that program's unexpended balances and authority over its existing investments; and
- expanding the Texas Enterprise Fund's authority to approve certain higher education research commercialization grants and shortening the fund's standard approval period for grants.

Emerging Technology Fund. The bill would amend Government Code, ch. 490 to abolish the Emerging Technology Fund on September 1, 2015. The state's current equity position in companies that have already received awards from the Emerging Technology Fund would be transferred to the Texas Treasury Safekeeping Trust Company. The trust company would be required to manage the equity portfolio under the prudent investor standard of care. Any proceeds earned from the sale of investments would go to general revenue. Money deposited in the Emerging Technology Fund as a gift, grant, or donation would be spent or distributed in accordance with the terms of the gift, grant or donation.

Any unencumbered balance that remained in the Emerging Technology Fund could be appropriated only to:

- the Texas Research Incentive Program;
- the Texas Research University Fund; and
- the comptroller's office to cover expenses associated with managing the state's portfolio of equity positions and investments in projects funded under the former Emerging Technology Fund.

The trust company would be required to perform to the maximum extent practicable an annual valuation of the equity shares from projects that received funding from the former Emerging Technology Fund in its portfolio. The trust company also would be required to submit an annual report to the lieutenant governor, House speaker, and legislative standing committees with primary jurisdiction on economic development and post on the trust company's website a report on any valuation performed during the previous fiscal year.

The bill also would continue through 2030 a requirement that the governor create an annual report detailing the number of jobs created and the outcomes of all projects that received Emerging Technology Fund investments. The governor would be required to exclude from the report information that is confidential by law.

Texas Enterprise Fund authority. The bill would amend Government Code, ch. 481 to allow the Texas Enterprise Fund to provide grants for commercialization of intellectual property derived from research developed at Texas public or private universities. To be eligible for funding, a research project would have to be supported by funding from one or more private entities in addition to any funding from the university. The state's investment could not be more than 50 percent of the project's funding.

The bill also would reduce from 91 days to 31 days the amount of time that the lieutenant governor and House speaker were provided to approve a grant from the Texas Enterprise Fund.

The governor's office would be required to make grants to encourage development and location of small businesses in the state.

Rules for the operation of the Texas Enterprise Fund would be adopted by the governor's office and would have to include:

- forms and procedures for applications and award of grants;
- procedures for evaluating grant applications;
- provisions governing the grant agreement process;
- methods and procedures for monitoring grant recipients, projects, or activities to determine whether and to what extent the grant recipients comply with job creation performance targets, capital investment commitments, or other specified performance targets;
- document retention requirements consistent with state law; and
- conflict of interest provisions to ensure that individuals involved in the operation of the program do not have a

substantial interest in any grant recipient or grant awarded from the fund.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 27 would provide comprehensive, common-sense reforms for Texas' economic development incentive programs while balancing the state's need to compete for economic growth with a commitment to transparency and accountability.

The bill would address concerns about the Texas Enterprise Fund raised in a September 2014 report by the State Auditor's Office. The report said it was not always possible to determine whether award decisions were supported or to determine the number of jobs that recipients of awards from the fund created. The report said the governor's office should strengthen its control structure for administration of the Texas Enterprise Fund. The bill would require the governor's office to develop procedures to determine grant recipients' success in meeting job creation targets and capital investment commitments.

The governor's office also would be required to develop strong conflict of interest provisions to ensure that those involved in awarding grants and monitoring compliance do not have a substantial interest in any grant recipient.

Small businesses and rural communities often have been left out of the state's economic development efforts. The bill would explicitly require that the governor make grants to encourage development and location of small businesses in Texas.

Eliminating the Emerging Technology Fund would ensure that Texas was not in the business of picking winners and losers. Even sophisticated private firms that specialize in early-stage funding can make errors of judgment, as evidenced by the dot-com bubble of the 1990s. It is important that the state end the use of taxpayer money for something as speculative and volatile as venture capital.

The bill could free up $90.6 million in unexpended balances in the

Emerging Technology Fund for appropriation to university research programs. Texas has some of the most advanced research universities in the world, and the state supports these institutions with billions of dollars every year. However, a significant percentage of research that emerges from Texas universities is commercialized in other parts of the country. By allowing the Texas Enterprise Fund to provide commercialization grants in certain circumstances, this bill would provide an incentive for research to stay in Texas. As an added benefit, the grants would go to public universities and not private corporations as had been the case with the Emerging Technology Fund.

OPPONENTS SAY:

CSHB 27 could fail to take the long view of economic development in the state. Texas cannot take its economic growth for granted. Other states are performing better economically than they were a few years ago, which, combined with the uncertainty surrounding oil prices, could erode Texas's competitive edge in job creation.

Maintaining an environment with strong job creation requires a commitment to innovation and research. By eliminating the Emerging Technology Fund, the bill could handicap Texas startups. Startups, especially in biomedical research, are highly regulated and extremely complex, and these businesses typically take about seven years to establish themselves before they can begin hiring employees on a large scale.

California and New York both have a venture capital industry that is significantly larger than the venture capital industry in Texas, and these states also have an extensive commitment to early-stage funding. Without a similar willingness to make long-term commitments to early-stage funding, Texas may not be able to compete with these other states.

Focusing on grants for research commercialization would not signal a long-term commitment to research in the same way as taking equity in a startup. A well-managed, early-stage funding program should pay for itself and when done correctly, can be stable and profitable. A portfolio of early-stage funding investments would pay for itself, whereas research commercialization grants would not show the state any direct return.

The bill would not do enough to help the state's small businesses and rural communities. The bill should include requirements that a certain percentage of grants from the Texas Enterprise Fund go to small businesses or businesses that locate in less populous counties.

SUBJECT: Requiring regular audits of the state's economic development programs

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 9 ayes — Button, Johnson, C. Anderson, Faircloth, Isaac, Metcalf, E. Rodriguez, Villalba, Vo

0 nays

WITNESSES: For — (*Registered, but did not testify*: Jay Barksdale, Dallas Regional Chamber; Bill Hammond, Texas Association of Business; Carlton Schwab, Texas Economic Development Council; Max Jones, The Greater Houston Partnership)

Against — None

On — (*Registered, but did not testify*: John Young)

BACKGROUND: Government Code, ch. 321 provides the powers and duties of the state auditor. The state auditor is required to consider recommendations concerning coordination between the Legislative Budget Board, the Sunset Advisory Commission, and the State Auditor's Office in determining an audit plan. The state auditor also is required to perform risk assessments as part of an audit, which involves determining what problems may occur in an operational or program area of a department and potential adverse effects.

HB 26 by Button, which is under consideration by the 84th Legislature, would create an Economic Incentive Oversight Board to assess the efficiency and effectiveness of the state's economic incentive programs. Several other bills before the 84th Legislature also would make changes to the oversight and operation of the state's economic development incentives.

DIGEST: CSHB 28 would create a schedule for the state auditor to audit 21 economic incentive programs administered by the Office of the Governor,

the Office of the Comptroller of Public Accounts, the Department of Agriculture, and the Texas Workforce Commission. The schedule would require audits of different programs every two years beginning in September 2015. Each program would be audited every 12 years thereafter. Items to be audited would include the Moving Image Industry Incentive Program and the distribution of grants from the Texas Enterprise Fund.

The state auditor could establish a scope and objective for an audit consistent with accepted government auditing standards and could assess the efficiency and effectiveness of the program or fund. The state auditor would be required to present a report of each audit to the lieutenant governor, the House speaker, and the presiding officer of each standing committee of the Senate and House with primary jurisdiction over economic development. This report would have to be presented within two years after the audit was scheduled to begin.

CSHB 28 would stipulate that the audit schedule in the bill would be subject to risk assessment requirements and to inclusion in the annual audit plan. If the state auditor decided that an exception to the schedule was warranted, the auditor would be required to notify the Legislative Audit Committee and each standing committee of the Senate and House with primary jurisdiction over economic development of the reasons for the exception.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 28 would be an important piece of the larger effort by the 84th Legislature to overhaul state economic incentive programs. HB 26 by Button appropriately would create the Economic Incentive Oversight Board to oversee economic development programs. In addition to increasing oversight, it is important to require an independent audit of these programs and funds. By adding another layer of accountability, CSHB 28 would help instill confidence in the state's economic development programs.

OPPONENTS SAY:

CSHB 28 might not yield sufficient value to the state to justify its expense. Some of the high-profile programs scheduled for audit have been

the subject of ongoing concerns about their transparency and accountability, while other programs are small or even inactive. Conducting these reviews at an estimated cost of $450,000 per audit would not necessarily be a wise use of state resources in every case.

NOTES:

According to the Legislative Budget Board's fiscal note, CSHB 28 would have an estimated negative net fiscal impact to general revenue of $450,000 through fiscal 2016-17.

SUBJECT: Sending ballots to mail-in voters for all elections in which they can vote

COMMITTEE: Elections — committee substitute recommended

VOTE: 6 ayes — Laubenberg, Goldman, Fallon, Phelan, Reynolds, Schofield

0 nays

1 absent — Israel

WITNESSES: For — Bill Sargent, Galveston County Clerk; Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: LaQuan Rogers, Get Fit Wit Me; Alan Vera, Harris County Republican Party Ballot Security Committee; Cinde Weatherby, League of Women Voters of Texas; Bill Fairbrother, Texas Republican County Chairmen's Association)

Against — None

On — Colleen Vera; (*Registered, but did not testify*: Ashley Fischer, Texas Secretary of State; Keith Ingram, Texas Secretary of State, Elections Division)

BACKGROUND: Under Election Code, sec. 86.0015, an application for a mail-in ballot that does not specify the election for which a ballot is requested is considered an application for a ballot for each election in which the county clerk serves as early voting clerk.

DIGEST: CSHB 1927 would add ballots for political subdivisions that do not use the county clerk as their early voting clerk to the ballots that are requested when an application for a mail-in ballot does not specify the election for which the ballot is requested.

The bill would require county clerks to provide early voting clerks in counties that do not use the county clerk as their early voting clerk with a list of voters in the political subdivision who had applied for mail-in ballots with the county. The early voting clerk would be required to provide a mail-in ballot to each voter on the list.

The secretary of state would be required to provide a method by which counties and political subdivisions in the county could exchange and update information on mail-in ballot applications.

The bill would require a county clerk that received notice of receipt of a notice of a change in registration information from the voter registrar either to:

- send the voter mail-in ballots at the voter's updated address and update the lists provided to early voting clerks; or
- delete the voter from the county clerk's list of voters who had ballot applications on file, if the voter had moved to another county.

An application for a mail-in ballot that did not specify an election would be considered an application for a ballot for each election that occurred before the end of the calendar year or the date the county clerk received notice that the voter had moved to another county, whichever was earlier.

SUPPORTERS SAY:

CSHB 1927 is necessary to ensure that those voters who submit applications for mail-in ballots are able to vote in every election for which they are eligible voters. Current law allows voters to submit yearly applications for mail-in ballots for all elections in which the county clerk serves as the early voting clerk. However, if they want to vote in every election for which they are eligible to vote, they would have to figure out which political subdivisions did not contract for the county clerk to serve as the early voting clerk and to request ballots from each one of those subdivisions individually. This bill would streamline that process and ensure that people who requested mail-in ballots for all elections received ballots for every election.

Any cost to political subdivisions would be outweighed by the need to ensure that every voter was able to exercise the right to vote.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Regulating certain motor vehicle auctions

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Smith, Gutierrez, Geren, Goldman, Kuempel, D. Miller

0 nays

3 absent — Guillen, Miles, S. Thompson

WITNESSES: For — John Swofford, Texas Wholesale Automobile Auction Association; (*Registered, but did not testify*: Colin Parrish and Ray Sullivan, Copart; Mark Vane, Gardere Wynne Sewell)

Against — None

On — William Kuntz, Texas Department of Licensing and Regulation

BACKGROUND: A person wishing to conduct a wholesale motor vehicle auction must have a wholesale motor vehicle auction general distinguishing number (GDN) for each location from which the person conducts business. The number is issued by the Texas Department of Motor Vehicles.

DIGEST: CSHB 1066 would exclude certain motor vehicle auctions from the requirement that they be conducted by auctioneers licensed under Occupations Code, ch. 1802. The bill would exempt the sale of motor vehicles at auctions conducted by a person:

- who was licensed for the sale or lease of motor vehicles;
- who was licensed as a salvage vehicle dealer ;
- who held a wholesale motor vehicle auction general distinguishing number (GDN); or
- who held an independent motor vehicle GDN issued by the Texas Department of Motor Vehicles.

Under current law, there is a general prohibition against a licensed

auctioneer acting as an auctioneer for certain entities, with a few exceptions. The bill would remove the exception for vehicle auctions conducted for entities that held a dealer GDN.

CSHB 1066 would authorize a licensed auctioneer to conduct an auction to sell motor vehicles, as defined by Transportation Code, secs. 501.002 or 502.001, if the auctioneer conducted the auction for a person holding:

- a dealer GDN or wholesale motor vehicle auction GDN; or
- a salvage vehicle dealer license.

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 1066 would end the dual regulation of wholesale motor vehicle auctions. Currently, wholesale motor vehicle auctions are regulated by two agencies. The Texas Department of Motor Vehicles issues and governs the wholesale motor vehicle auction general distinguishing number (GDN) required to conduct those auctions, and the Texas Department of Licensing and Regulation governs licensed auctioneers and certain auctions. This dual regulation is a waste of resources and creates the potential for conflicting regulations.

“Motor vehicles,” as defined by Transportation Code, does not have an overly expansive meaning, and the bill would limit only the circumstances under which an auctioneer could auction motor vehicles. Auctioneers would be able to conduct motor vehicle auctions for entities that held certain licenses to sell or auction motor vehicles.

OPPONENTS SAY:

CSHB 1066 would preclude licensed auctioneers from conducting auctions of motor vehicles unless they conducted the auction for an entity that held certain licenses to sell or auction motor vehicles. This could limit an auctioneer's business because the definition of “motor vehicles” in the Transportation Code is expansive and it is not clear what types of vehicles it might include.

The bill also would prevent individuals from employing auctioneers to

conduct an auction of a motor vehicle. In an estate sale, auctioneers generally auction all items included on the property, such as cars or boats on trailers. The bill could remove the auctioneer's ability to auction those items, forcing the owner to find alternative solutions to sell their motor vehicles.

SUBJECT: Handling of ammonium nitrate; Tier II hazardous chemical reporting

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Morrison, E. Rodriguez, Isaac, Kacal, P. King, Lozano, Reynolds, E. Thompson

0 nays

1 absent — K. King

WITNESSES: For — Jim Farley, Farley Farm Supply, Inc; Brad Johnson, Northeast Texas Farmers Co-op; Tom "Smitty" Smith, Public Citizen; Richard Szecsy, Texas Aggregate and Concrete Association; Elizabeth Riebschlaeger; (*Registered, but did not testify*: Adrian Shelley, Air Alliance Houston; Tommy Muska, City of West; Luke Metzger, Environment Texas; Donna Warndof, Harris County; Cyrus Reed, Lone Star Chapter Sierra Club; Jimmy Schulz, Donnie Dippel, and Chris Pepper, Texas Ag Industries Association; Robin Schneider, Texas Campaign for the Environment; Marissa Patton, Texas Farm Bureau; David Weinberg, Texas League of Conservation Voters; Chesley Blevins, Texas Mining and Reclamation Association; Jim Reaves, Texas Nursery and Landscape Association; Patricia Gonzales, Texas Organizing Project; Ware Wendell, Texas Watch)

Against — None

On — (*Registered, but did not testify*: Hoyt Henry, Department of State Health Services Tier 2 Program; Tim Herrman, Office of the Texas State Chemist; Kelly Cook, Texas Commission on Environmental Quality; Chris Coneally, Texas Department of Insurance, State Fire Marshal's Office)

BACKGROUND: The Tier II Chemical Reporting Program is administered by the Department of State Health Services (DSHS). Facilities that store substantial amounts of hazardous substances must make an annual Tier II report to DSHS on those chemicals. The Tier II reports currently are

outlined in three chapters of the Health and Safety Code, also known as the community right-to-know acts:

- the Manufacturing Facility Community Right-to-Know Act under Chapter 505 applies to manufacturing plants using raw materials to make a final product, such as plastic;
- the Public Employer Community Right-to-Know Act under Chapter 506 applies to cities, water districts, and school districts using chlorine gas for treating water, fuel, and propane for bus fleets; and
- the Nonmanufacturing Facilities Community Right-to-Know Act under Chapter 507 applies to oil production and agribusiness.

When hazardous chemicals or extremely hazardous substances are present at a facility in certain threshold amounts, these laws require the facility to compile and maintain a Tier II report containing information about the chemicals and substances. Tier II reports must be filed annually as well as within 90 days of beginning operation or of receiving a reportable addition of a hazardous chemical. The facility must give a copy of the report to the fire chief of the fire department with jurisdiction over the facility and to the appropriate local emergency planning committee.

DIGEST:

CSHB 942 would transfer Tier II reporting requirements from the Department of State Health Services (DSHS) to the Texas Commission on Environmental Quality (TCEQ) on September 1, 2015. The transfer would include all resources used for reporting as well as the civil, criminal, and administrative penalties in the Health and Safety Code used in reporting compliance.

The bill would allow a state fire marshal to enter ammonium nitrate facilities in order to complete an inspection for hazardous conditions and would grant the facility owner up to 10 days to correct the hazard. Local fire departments would be allowed to do pre-fire planning assessments of the facilities.

The bill would adjust the reporting requirements timeline for ammonium nitrate storage facilities to give notice to the state and local emergency entities.

Fire prevention at ammonium nitrate storage facilities. The owner or operator of an ammonium nitrate storage facility would have to, on request, at a reasonable time:

- allow a fire marshal to enter the facility to make a thorough examination of the facility; and
- allow the local fire department access to the facility to perform a pre-fire planning assessment.

A fire marshal who determined the presence of hazardous conditions that endangered the safety of a structure or its occupants by promoting or causing fire or combustion would have to notify the owner or operator of the facility.

On request by a fire marshal or the Texas Feed and Fertilizer Control Service, the owner or operator of the facility would have to provide evidence of compliance of Tier II reporting requirements and U.S. Department of Homeland Security registration requirements.

A fire marshal who identified a hazardous condition or a violation would have to notify the Texas Feed and Fertilizer Control Service. If directed by the Texas Feed and Fertilizer Control Service to correct a hazardous condition or a violation, an owner or operator would have to remedy the condition or violation within 10 days. If the Texas Feed and Fertilizer Control Service determined that the condition or violation had not been remedied, appropriate enforcement action would be taken.

The bill would require that ammonium nitrate or ammonium nitrate material be stored in a fertilizer storage compartment or bin constructed of wood, metal, or concrete protected against impregnation by the ammonium nitrate or ammonium nitrate material and separately from any non-fertilizer materials. Ammonium nitrate or ammonium nitrate material also would have to be separated from combustible or flammable material by at least 30 feet. Warning placards would have to be placed on the outside of the storage area.

Reporting requirements. The operator of a facility storing ammonium

nitrate used in fertilizer would have to file a Tier II form with TCEQ within 72 hours, instead of 90 days, of beginning operations or receiving a reportable addition of ammonium nitrate. The operator also would have to file an updated Tier II form within 72 hours of a change in the chemical weight range of previously reported ammonium nitrate.

Within 72 hours of receiving a Tier II form, TCEQ would have to provide a copy to the state fire marshal and the Texas Division of Emergency Management. The state fire marshal would have to provide a copy to the chief of the fire department with jurisdiction over the facility. The Texas Division of Emergency Management would have to provide a copy to the appropriate local emergency planning committee.

Fees. The bill would provide that up to 20 percent of fees collected for the Tier II program could continue to be used to provide grants to local emergency planning committees to assist them in fulfilling responsibilities related to chemical storage. TCEQ would be authorized to use up to 15 percent of fees collected for the Tier II program for DSHS administrative costs under Health and Safety Code, ch. 502.

Violations and penalties. The bill would prohibit a facility operator from violating the community right-to-know laws.

Administrative penalties. The maximum administrative penalty for a violation of a manufacturing facility community right-to-know law would be up to $500 a day and up to $5,000 for each violation. The penalty against a facility operator in violation of a non-manufacturing and public employer community right-to-know law would be up to $50 a day and up to $1,000 for each violation.

Civil penalties. A person who knowingly disclosed false information or negligently failed to disclose a hazard under the public employer community right-to-know law or the manufacturing facility community right-to-know law would be subject to a civil penalty of up to $5,000 for each violation.

Criminal penalties. A person who proximately caused an occupational disease or injury by knowingly disclosing false information or knowingly

failing to disclose hazard information as required by the public employer community right-to-know law or the manufacturing facility community right-to-know law would commit a criminal offense punishable by a fine of up to $25,000.

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, 2015.

SUPPORTERS SAY:

CSHB 942 would improve public safety by clarifying the oversight and regulation of ammonium nitrate storage facilities. Ammonium nitrate is a commonly used fertilizer due to its high nitrogen content. It is also a hazardous chemical with strict guidelines for handling and storage. On April 17, 2013, an explosion at an ammonium nitrate facility in the community of West, Texas, killed 15 individuals, injured multiple others, and leveled parts of the town. This bill is the result of interim Homeland Security and Public Safety Committee hearings as well as investigations that took place following the disaster in West. A product of much stakeholder input, this bill would strike a careful balance between public safety regulations and the agriculture industry that is so crucial to Texas.

Currently, fire marshals do not have the legal authority to enter a property to conduct an inspection. Had the appropriate emergency authorities been aware of the contents of the West facility before the fire occurred, the tragedy might have been avoided. There are currently 83 ammonium nitrate facilities operating in Texas, 45 of which are fertilizer companies similar to the facility in West. The bill would take common-sense steps to reduce the likelihood of another disaster while avoiding cost-prohibitive provisions that would burden industry compliance.

While there is an existing Tier II reporting requirement that should keep state and local emergency entities aware of hazardous chemicals such as ammonium nitrate, reporting is not consistent, and some smaller facilities were not even aware of the reporting requirement. The Tier II report is an annual report that requires an update within 90 days of a reportable change. Any reportable quantity of fertilizer could be sold by the time it would have to be reported. The bill would adjust the reporting timeline for ammonium nitrate storage facilities to hasten the notice to state and local

emergency entities.

The bill would allow the state fire marshal to enter ammonium nitrate facilities in order to complete inspections as well as allow local fire departments to do pre-fire planning assessments of the facilities. While there are concerns that this bill could place an additional regulatory burden on private facilities, many of the requirements of the bill, including the storage requirements, already are enforceable by the Texas state chemist's office. This bill would simply codify existing rule. Also, the bill would not make any change to the existing penalty structure.

OPPONENTS SAY:

CSHB 942 would impose additional regulations on private facilities that could hinder business. While intended in the interest of safety, the expedited reporting requirements as well as some of the corrective actions the facilities might be required to make could be cost-prohibitive and burdensome to smaller businesses.

SUBJECT: Notice for mortgage servicer of contract with owner, property tax lender

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: For — Josue Lopez, ARISE and LUPE; Thomas Tallent, Cendera Funding, Inc.; Ford Sasser, Independent Bankers Association of Texas, Texas Bankers Association; Richard Ruppert, Texas Land Developers; John Fleming, Texas Mortgage Bankers Association; (*Registered, but did not testify*: Melodie Durst, Credit Union Coalition of Texas; Stephen Scurlock, Independent Bankers Association of Texas; Brian Yarbrough, JPMorgan Chase; Doug Foster, Polunsky Beitel Green; Paulina McGrath, Republic State Mortgage Co.; Kristin Clardy, Security National Mortgage Company; Tom Rhodes, Sente Mortgage; Scott Gillen, Stewart Title; Daniel Gonzalez, Texas Association of Realtors; John Heasley, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; Nate Walker, Texas Family Council; Chuck Rice, Texas Land Developers Association; Will Livesley-O'Neill, Texas Low Income Housing Information Service; Pam Jenkins, Dayna McElreath, Suzanne Mayer Burke, Suzanne Smith, Pam McCollum, Angela Watson, Fred Worley III, Troy Garris, Julie Gross, Cari McCue, Mary Pirrello, Mark Raskin, Mike Schmuelgen, Kristin Willoughby, Amy Coke, Jim Clapp, Winifred Hrncir, Michael Lee, Paul Pritchett, and Kathie Thomas, Texas Mortgage Bankers Association; Tracy Maynard Cole; David Rembert; Ruth Ruhl)

Against — Paul Halstead, Ovation Financial Services; Charles Brown, Matt Longhofer, and Jack Nelson, Texas Property Tax Lienholders Association; Kathleen Hunker, Texas Public Policy Foundation; (*Registered, but did not testify*: Jim Arnold, Protect My Texas Property; Bill Hammond, Texas Association of Business; Corey Allen, Cissy Larkin, and Kristin Willoughby, Texas Mortgage Bankers Association; Doug Ruby, TPTLA)

On — Vicki Truitt, Mackie, Wolf, Zeintz and Mann; Leslie Pettijohn,

Office of Consumer Credit Commissioner

BACKGROUND:

Tax Code, sec. 32.06 allows a property owner to authorize another person (a transferee) to pay the taxes imposed on the owner's real property. The owner must file with the tax collector certain information about the transferee and a sworn document stating:

- the authorization for payment of the taxes;
- the name and address of the transferee authorized to pay the taxes of the property owner;
- a description of the property by street address and legal description; and
- that notice has been given to the property owner that if the owner is disabled they may be eligible for a tax deferral.

DIGEST:

HB 1936 would require property owners to send a notice to any applicable mortgage servicer before they could enter into a contract with a transferee to pay delinquent taxes on their property. The notice would indicate that the owner intended to enter into the contract with the transferee. The bill would require the notice to be sent at least 10 days before the execution date of the contract.

Under current law, a property owner may authorize another person to pay the taxes on the owner's real property by filing with the collector for the taxing unit a statement swearing to certain facts. The bill would add to that statement the fact that the notice described above was sent by certified mail to any applicable mortgage servicer.

The bill would take effect September 1, 2015, and would apply only to a contract between a property owner and a transferee authorizing the transferee to pay the delinquent taxes on the property that was entered into on or after that date.

SUPPORTERS SAY:

HB 1936 would provide mortgage servicers the opportunity to protect their liens and collateral by requiring property owners to send notice before they entered into a contract with a property tax lender. It also would benefit property owners who were struggling to pay their property taxes by giving them more options.

The bill would protect the sanctity of contracts and the property interests of mortgage servicers. The mortgage servicer would have 10 days to work out an agreement with the property owner to pay the taxes on the property without involving a third party. Currently, mortgage servicers usually do not learn that their customers have entered into these contracts until after the deal has closed. This bill would give them notice before the contract was signed.

When a property owner becomes delinquent on property taxes, the government has a superior lien on the property to the mortgage servicer in the amount of the taxes owed. When a property tax lender pays those taxes, it steps into the shoes of the government, giving it a superior lien to the mortgage servicer. Property tax lenders do not have to verify a borrower's ability to repay, which results in frequent defaults on these loans. When borrowers default, mortgage servicers often pay the remaining balance to protect their interest in the property by keeping the property tax lender from foreclosing on the property.

This bill would protect property owners from the property tax lenders that use predatory lending practices. Some claim that property tax lenders can offer the best option to property owners because an agreement with the mortgage servicer to pay the property taxes drastically could increase the property owner's monthly payments; however, property tax lenders charge high interest rates, making their monthly payments substantial. Another option that is better than a contract with a property tax lender for property owners is to enter into an agreement with the taxing entity to repay the taxes at a lower rate.

Even if the property owner's monthly payments increased because their mortgage servicer paid the property taxes, it would benefit the property owner in the long run. Under the deed of trust, if a mortgage servicer loans money for property taxes, the future monthly mortgage payments must be paid into an escrow account. The property owner has to pay for the mortgage, the amount borrowed to cover the taxes, and an amount to cover the next year's taxes. This would increase monthly payments, but it would provide a structured process to ensure the property owner would not be delinquent on future property taxes, which would benefit both the

owner and the mortgage servicer.

HB 1936 would not impose a duty on property tax lenders — the only duty imposed would be on property owners. The bill would not encourage mortgage servicers to interfere with potential contracts between property owners and property tax lenders. In fact, property tax lenders would be the ones interfering with the mortgage contract if they were to pay the property owner's property taxes. The bill would not favor one business over another. Instead, it would favor giving consumers options. By requiring the property owner to give notice to the mortgage servicers, HB 1936 would allow owners to get more information about the options available to pay their property taxes.

Critics of the bill argue that the notice is unnecessary because mortgage servicers can collect information themselves about which clients are delinquent in their taxes, but data mining is not the business of mortgage servicers. Property tax lenders engage in data mining because that is how they learn about potential new clients.

OPPONENTS SAY:

HB 1936 could affect a property owner's best chance to restructure their property tax payments. When mortgage servicers lend money to pay property taxes, the property owner must start making monthly payments into escrow. The amounts due each month can double or even triple. This can turn short-term financial trouble into an extended financial crisis. Property tax lenders can lend money with a low monthly payment plan that property owners can afford in addition to their monthly mortgage payment. This bill would protect the first lienholder, not the property owner. Property tax lenders offer important services to help property owners keep people in their homes.

The bill would invite mortgage servicers to interrupt negotiations between property owners and property tax lenders. Mortgage servicers sometimes discourage property owners from using property tax lending services by incorrectly characterizing their services as predatory. The property tax lending industry is heavily regulated, especially regarding what information can be used in advertisements. This heavy regulation ensures consumer protection. The bill would give mortgage servicers 10 days to interfere with a contract between a property owner and a property tax

lender. Many property owners do not contact property tax lenders until they are within 10 days of the taxes being due. The 10-day notice required by the bill is 10 days that the property owner would not have. After the taxes are due, fees begin to accrue and the amount of debt increases.

The bill would give preferential treatment to one business over another by allowing mortgage servicers to profit unfairly from the work of property tax lenders. Mortgage servicers can conduct the same kind of data mining that property tax lenders conduct to discover which customers need help with their property taxes. The notice requirement is unnecessary because the information is already available to mortgage servicers.

SUBJECT: Redesigning STAAR testing and studying curriculum standards

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Bohac, Deshotel, Farney, Galindo, González, Huberty, K. King, VanDeaver

0 nays

2 absent — Allen, Dutton

WITNESSES: For — Drew Scheberle, Greater Austin Chamber of Commerce; Dineen Majcher and Theresa Treviño, Texans Advocating for Meaningful Student Assessment; Buck Gilcrease, Texas Association of School Administrators; and 12 individuals; (*Registered, but did not testify*: Kevin Brown, Alamo Heights ISD, TASA; Ann Teich, Austin Independent School District; Julie Cowan, Austin ISD Trustees; Mike King and Gina Mannino, Bridge City ISD; Debbie Seeger, Corpus Christi ISD; Jodi Duron, Elgin ISD; Mary Whiteker, Hudson ISD; Howell Wright, Huntsville ISD; Betsy Singleton, League of Women Voters; Berhl Robertson, Jr., Lubbock ISD; Jimmy Parker, Lubbock Roosevelt ISD; Keith Bryant, Lubbock-Cooper ISD; Mike Motheral, Small Rural School Finance Coalition; Kim Cook, TAMSA; Ted Melina Raab, Texas American Federation of Teachers (AFT); Barry Haenisch, Texas Association of Community Schools; Paige Williams, Texas Classroom Teachers Association; Janna Lilly, Texas Council of Administrators of Special Education; Mark Terry, Texas Elementary Principals and Supervisors Association; Sara Solomon, Texas PTA; Colby Nichols, Texas Rural Education Association; Maria Whitsett, Texas School Alliance; Portia Bosse, Texas State Teachers Association; Monty Exter, the Association of Texas Professional Educators; Grover Campbell, Texas Association of School Boards; and 15 individuals)

Against — MerryLynn Gerstenschlager, Texas Eagle Forum; (*Registered, but did not testify*: Betty Anderson, Montgomery County Eagle Forum; Cathie Adams, Texas Eagle Forum; and nine individuals)

On — Celina Moreno, MALDEF; Zenobia Joseph; (*Registered, but did*

not testify: Gary Martel, Diboll ISD; Criss Cloudt, Shannon Housson, Monica Martinez, and Gloria Zyskowski, Texas Education Agency)

BACKGROUND: Education Code, sec. 39.023 requires that students in grades 3 through 8 be assessed annually in reading and math. Students in grades 4 and 7 take a writing test; students in grade 5 take a science test; and students in grade 8 take science and social studies tests.

Test items on the State of Texas Assessments of Academic Readiness (STAAR) exams in grades 3 through 8 are developed to measure knowledge and skills based on readiness and supporting standards. The Texas Education Agency (TEA) defines readiness standards as concepts essential for success in the current grade or course. Supporting standards are concepts that are introduced in the current grade or course but may be emphasized in previous or subsequent years.

DIGEST: CSHB 743 would add new requirements concerning the design of STAAR exams. The bill would require TEA to conduct a study on the required state curriculum known as the Texas Essential Knowledge and Skills (TEKS). The bill also would require TEA to audit and monitor performance by testing contractors.

Test design. The bill would require all statewide standardized exams administered beginning with the 2015-16 school year to be, on the basis of empirical evidence, determined valid and reliable by an entity independent of TEA and any other entity that developed the assessment instrument.

TEA would be required to ensure that all statewide standardized exams were designed primarily to assess the essential knowledge and skills identified by the State Board of Education (SBOE) for the subject and grade level being tested. The exams could assess supporting knowledge or skills from a different subject or grade level only to the extent necessary or helpful for diagnostic or reporting purposes.

The education commissioner would be prohibited from including student performance on test questions that assessed supporting standards from being used as a performance indicator of student achievement for the purpose of determining state accountability ratings for districts and

campuses.

The bill would require that exams be designed so that 85 percent of students in grades 3 through 5 could finish within two hours and 85 percent of students in grades 6 through 8 could finish within three hours. The amount of time allowed for test administration could not exceed eight hours, and a test would have to be administered within one day.

TEKS study. The bill would require TEA to conduct a study of the curriculum to evaluate:

- the number and scope of the TEKS standards identified as readiness or supporting standards, and whether the number or scope should be limited;
- the number and subjects of standardized exams that are required to be administered to students in grades 3 through 8; and
- how the exams assess standards essential for student success and whether the exams also should assess supporting standards.

The study would be required to include analysis of the portion of the TEKS capable of being accurately assessed, the appropriate skills that could be assessed within the testing parameters under current law, and how current standards compared to those parameters.

TEA would be required to submit a report with results of the study to the SBOE no later than March 1, 2016. The SBOE would be required to review the study no later than May 1, 2016, and to submit the report and its recommendations to the governor and Legislature. The requirement would expire June 1, 2017.

Testing contract. The bill would require TEA to develop a comprehensive methodology for auditing and monitoring performance under testing contracts to verify compliance with contractual obligations. All new and renewed contracts would include a provision that TEA or a designee could conduct periodic contract compliance reviews, without advance notice, to monitor vendor performance.

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 743 would place restrictions on the length of time spent on STAAR tests and would redesign the exams to align with grade-level standards. This redesign could result in tests that had fewer questions, reducing the time spent both preparing for exams and taking them. This could reduce testing stress on students, teachers, and parents.

Although the exams would be designed so that 85 percent of students could complete them in fewer than three hours, students who needed more time would have the opportunity to complete the exams without facing pressure from other students who had already finished. It is not appropriate for third-graders to have to endure a four-hour test or for struggling learners to fail because they cannot complete the test within a specific time limit. The bill would accommodate both concerns.

STAAR exams should be redesigned to measure students' knowledge on grade-level content. The exams include some questions designed to intentionally test skills students have not yet mastered. By requiring the education commissioner to count only questions that measure grade-level standards, the bill would focus the accountability program on the critical skills in each grade and course.

The requirement for TEA to conduct a study on the TEKS could help determine whether critics are correct in saying that the required curriculum is "a mile wide and an inch deep." The bill would retain the SBOE's authority over the curriculum by allowing the members to review TEA's report and make recommendations to the governor and Legislature.

TEA's management of the state's multi-million dollar testing contract was criticized in a 2013 state audit. The October 2014 Sunset report on TEA recommended that the agency should provide more centralized contract oversight and develop monitoring plans for all major contracts. CSHB 743 would require TEA to develop a process for auditing and monitoring testing contractors.

OPPONENTS

CSHB 743 could weaken the rigorous curriculum standards that serve as

SAY:

building blocks to help students succeed in their education. The elected members of the SBOE have responsibility for developing the curriculum standards and should be the ones to determine whether the scope of those standards should be streamlined.

Students must be prepared to compete in a global economy, and Texas should not back away from a testing and accountability system that measures whether students are being prepared for their next grade or higher-level course.

The required TEA evaluation of the number and subjects of exams could lead to further reductions in testing. Some are concerned about the possible elimination of the 8th grade social studies exam. If students are not tested in social studies, there could be less emphasis on teaching students about America's unique role in the world and how to participate in the political process.

NOTES:

The Legislative Budget Board's fiscal notes estimates that CSHB 743 would cost an estimated $1.1 million to general revenue-related funds for fiscal 2016-17.

SUBJECT: Enforcement of certain ordinances by a building standards commission

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Alvarado, Hunter, R. Anderson, Bernal, Elkins, M. White

1 nay — Schaefer

WITNESSES: For — Janet Spugnardi, City of Irving (*Registered, but did not testify*: Jon Weist, City of Irving)

Against — None

BACKGROUND: Local Government Code, sec. 54.012 provides a list of activities for which a municipality may bring a civil action to enforce an ordinance, including ordinances relating to animal care and control and water conversation measures, such as water restrictions. Sec 54.032 provides a list of activities for which a city can bring a quasi-judicial action against a person or business. These items also include animal care and control and water conservation measures.

The functions of a building standards commission are outlined in sec. 54.036. These include ordering that violations of certain ordinances be remedied and determining the amount and duration of civil penalties for violations of health and safety ordinances.

DIGEST: CSHB 3060 would amend Local Government Code, sec. 54.036 to allow a building standards commission panel to order that action be taken as necessary to remedy, alleviate, or abate a violation of an ordinance relating to animal care and control or a water conservation measure, including a water restriction.

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 3060 would add to the functions of a building standards

commission to address an unintentional omission when the 83rd Legislature enacted SB 654 by West in 2013. While SB 654 authorized cities to bring civil action and quasi-judicial action against animal control violations and water restriction violations, it did not make the corresponding change to give these commissions the ability to enforce or order the abatement of any violations that came before them.

CSHB 3060 would allow a building standards commission to order that action be taken to remedy violations of animal control ordinances and water restriction ordinances, which would help to keep such matters away from already overloaded court dockets. Authorizing building standards commissions to enforce these violations could result in more attention being given to many of these cases because water violations typically are not considered priority items for courts.

OPPONENTS SAY:

CSHB 3060 would give the municipality further authority to enforce ordinances through civil action or quasi-judicial hearings. This authority should reside with the judiciary, not a municipality.

SUBJECT: Prohibiting certain municipal employees from wildland firefighting duties

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Alvarado, Hunter, R. Anderson, Bernal, Elkins

2 nays — Schaefer, M. White

WITNESSES: For — Randy Moreno, Austin Firefighters Association; (*Registered, but did not testify*: Wayne Delanghe; Mike Martinez)

Against — William Conrad, City of Austin

BACKGROUND: Under 4 Texas Administrative Code, part 13, sec. 225.1(16), the Prescribed Burn Board defines prescribed burning as the controlled application of fire to fuels under specified environmental conditions in accordance with a written prescribed burn plan.

Local Government Code, ch. 143 provides requirements and standards of municipal civil service for firefighters and police officers. The provisions of ch. 143 apply only to a municipality with a population of 10,000 or more that has a paid fire or police department and has voted to adopt this chapter.

DIGEST: CSHB 2870 would prohibit certain employees of a municipality that has adopted Local Government Code, ch. 143 from performing wildland firefighting duties, including conducting a prescribed burn.

This prohibition would not apply to permanent, full-time fire department civil service employees that were regularly assigned to perform one or more duties of fire protection personnel, such as fire inspection and suppression, regardless of whether the person held a certificate issued by the Texas Commission on Fire Protection (TCFP). A municipal employee could perform wildland firefighting duties if the employee was acting as a member of a volunteer fire department and not as an employee of the municipality when performing the duty.

TCFP would be required to adopt rules relating to the application of this bill to a fire department by January 1, 2016.

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 2870 would ensure that prescribed burns were conducted safely and efficiently by requiring that only fire professionals perform this and other wildland firefighting duties. Prescribed burns can be beneficial land-management, ecosystem-restoration, and educational tools, but with any activity involving fire-related equipment, fire professionals should be involved.

Prescribed burns are highly dangerous and carefully orchestrated events that require a high standard of safety that only a fire department can provide. If a spillover occurred during a prescribed burn, a fire department could suppress it quickly. Currently, Austin Water Utility conducts prescribed burns with the Austin Fire Department as support; however, the Fire Department should have the lead and authority over the prescribed burn for safety and efficiency purposes.

OPPONENTS SAY:

CSHB 2870 would reclassify prescribed burning as a wildfire-fighting duty rather than a land-management tool. Prescribed burning historically has been considered a land-management tool because it controls vegetative fuels that can contribute to wildfires and helps restore ecosystems. The bill could negatively impact certain cities that depend on municipal departments to conduct prescribed burns.

CSHB 2870 could create administrative confusion about the authority to regulate prescribed burning. The Prescribed Burn Board (PBB), under the Texas Department of Agriculture, already regulates prescribed burning. This bill would give authority for prescribed burning to the Texas Commission on Fire Protection (TCFP), even though regulations already exist under the PBB. The PBB trains, educates, and certifies burn managers in leading prescribed burns.

The bill could keep trained land-management personnel from fulfilling an

important duty and could prohibit city employees who might be highly trained in prescribed burning from conducting the activity. Cities are in the best position to decide which of their employees may or may not perform a specific duty.

SUBJECT: Changing certain dates and deadlines in the Election Code

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Laubenberg, Goldman, Fallon, Phelan, Reynolds, Schofield

0 nays

1 absent — Israel

WITNESSES: For — Bill Sargent, Galveston County Clerk; (*Registered, but did not testify*: Rosemary Edwards; Kathy Haigler; Jason Vaughn; Heather Hawthorne, County and District Clerks Association of Texas; Ed Johnson, Harris County Clerk's Office; Alan Vera, Harris County Republican Party Ballot Security Committee; Cinde Weatherby, League of Women Voters of Texas; Glen Maxey, Texas Democratic Party; Julie Wheeler, Travis County Commissioners Court)

Against — None

On — Ashley Fischer, Texas Secretary of State; (*Registered, but did not testify*: Keith Ingram, Texas Secretary of State, Elections Division)

DIGEST: HB 3005 would define, in the Election Code, "national holiday" to mean a legal public holiday under 5 U.S.C. sec. 6103, and any holiday taken in lieu of one of those holidays if the holiday occured on a Saturday or Sunday. The bill also would define "state holiday" to mean a state holiday under Government Code, sec. 662.003(b)(1) through sec. 662.003(b)(6).

This bill would move various dates in the Election Code, move the deadlines for a candidate to withdraw in certain circumstances, and change when a candidate's name would appear on the ballot if the candidate was declared ineligible.

The bill would allow runoff elections following elections held on the uniform election date in May of an even-numbered year to be held within 30 days of a general primary election, or runoff primary election.

Write-in candidates running for office in a city or county would not be able to file a declaration of write-in candidacy earlier than the 30th day

before the filing deadline for the declaration.

This bill would repeal:

- Education Code, sec. 11.055(c) which sets the filing deadline for positions on the board of trustees of an independent school district in elections held on the date of the general election for state and county officers as the 78th day before election day;
- Election Code, sec. 65.051(c) which exempts the date by which early voting ballot boards are required to verify and count provisional ballots from the effects of the deadline falling on a weekend or holiday; and
- Election Code, sec. 101.052(g) which provides a deadline of the 7th day before election day for a federal postcard application to be submitted.

The bill would take effect on September 1, 2015.

SUPPORTERS SAY:

HB 3005 would fix several inconsistencies that have been inadvertently created in the Election Code from legislation enacted over the past few sessions. The bill would align candidate filing and mail-in ballot ordering deadlines for all uniform election dates, eliminate separate ordering deadlines for mail in ballots, ensure that primary blackout periods do not limit available dates for runoff elections, and ensure that agencies have enough time to meet deadlines imposed on them for printing ballots, counting and verifying ballots, and delivering applications for mail-in ballots.

It also would prevent the early voting ballot board from having to meet twice to count provisional ballots and late ballots from oversees voters, align application deadlines for mail-in ballots and federal postcard ballots, close gaps between filing deadlines and replacement nomination deadlines, give candidates an appropriate amount of time to decide whether they should withdraw from elections, align various deadlines for certification of candidates, and remove sections of code that are no longer necessary after proposed changes.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Allowing e-filing of financial statements without a notarized affidavit

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 6 ayes — Kuempel, Collier, S. Davis, Hunter, Larson, C. Turner

0 nays

1 absent — Moody

WITNESSES: For — (*Registered, but did not testify*: Joanne Richards, Anti-Corruption Campaign; Liz Wally, Clean Elections Texas; Tom "Smitty" Smith, Public Citizen, Inc.; Karen Hadden; Todd Jagger)

Against — None

On — (*Registered, but did not testify*: Ian Steusloff, Texas Ethics Commission)

BACKGROUND: Government Code, ch. 572 governs personal financial disclosure and provides standards of conduct for certain state officers and candidates for state office. Under sec. 572.021, a state officer, a partisan or independent candidate for an office as an elected officer, and a state party chair must file with the Texas Ethics Commission a verified financial statement.

DIGEST: CSHB 3511 would allow a person who electronically filed verified financial statements with the Texas Ethics Commission or other filing authorities to do so without including a notarized affidavit if the person had requested an electronic filing password and used it to file the statement. Financial statements filed electronically would be required to contain the digitized signature of the person filing the statement.

The bill also would require financial statements that were not filed electronically to be accompanied by an affidavit executed by the person required to file the financial statement. The affidavit would have to contain a statement swearing that the report was correct and complete.

All financial statements would be considered to be under oath and would be subject to prosecution for perjury, regardless of whether an affidavit was included.

The bill would take effect September 1, 2015, and would apply only to financial statements due on or before that date.

SUPPORTERS SAY:

HB 3511 would encourage the use of electronic filing of financial statements while maintaining a verification process that would ensure the financial statements were filed by the appropriate person.

The requirements for receiving a password under this bill would be similar to methods for receiving a password to submit campaign finance reports under the Texas Ethics Commission's campaign finance application. A person would need to submit a signed form that would affirm, under penalty of perjury, that they were the person required to file the reports. This password requirement would provide sufficient verification that the person filing the report was the person required to do so without the need for a notarized affidavit.

The bill's provision that those persons who did not file reports electronically still must execute signed affidavits with their financial statements simply would confirm the requirement already imposed by the commission.

The provision that financial statements would be considered to be under oath and subject to prosecution for perjury is consistent with the same provision provided in Election Code, sec. 254.036(h). These provisions simply codify the affirmations included in the Ethics Commission's forms for reporting and would apply them to forms that are filed electronically.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Allowing the comptroller to engage with third parties in purchasing

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 7 ayes — Elkins, Walle, Galindo, Gonzales, Gutierrez, Leach, Scott Turner

0 nays

WITNESSES: For — Todd Abner, National IPA, NCPP

Against — None

BACKGROUND: Government Code, sec. 2156.181 allows the Texas Comptroller of Public Accounts to enter into agreements, including cooperative purchasing agreements, with other state governments, agencies of other states, and other governmental entities. This enables the comptroller to save the state money by using established cooperative purchasing contracts negotiated by other parties.

In recent years, firms that market and manage cooperative purchasing agreements on behalf of other government agencies have emerged.

DIGEST: CSHB 3342 would expand the comptroller's ability to enter into cooperative purchasing agreements by amending Government Code, sec. 2156.181 to allow the comptroller to engage with third parties that were not government entities to sponsor, administer, or participate in these contracts.

This bill would take effect September 1, 2015.

SUBJECT: Medicaid managed care services for individuals with certain disabilities

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Raymond, Rose, S. King, Naishtat, Peña, Spitzer

0 nays

3 absent — Keough, Klick, Price

WITNESSES: For — George Linial, LeadingAge Texas; Carole Smith, Private Providers Association of Texas; Amy Mizcles, The Arc of Texas; Cate Carroll, Volunteers of America Texas; (*Registered, but did not testify*: Marilyn Hartman; Amanda Fredriksen, AARP; Jason Berry, Berry Family Services; Dennis Borel, Coalition of Texans with Disabilities; Joe Tate, Community NOW!; Susan Murphree, Disability Rights Texas; Taylor Sims, Legend Healthcare; Sandra Frizzell, Providers Alliance for Community Services of Texas; Lee Johnson, Texas Council of Community Centers; Kevin Warren, Texas Health Care Association)

Against — None

On — (*Registered, but did not testify*: Gary Jessee and Chris Traylor, Health and Human Services Commission)

BACKGROUND: SB 7, enacted by the 83rd Legislature in 2013, set forth a multiyear redesign of the Medicaid delivery system for individuals with intellectual and developmental disabilities (IDD) in need of acute-care services and long-term services and supports. The first stage of the redesign under SB 7 began in fall 2014 with the transition of Medicaid acute-care services for individuals with IDD to Medicaid managed care.

During the second stage of the redesign under SB 7, individuals in the Texas Home Living Medicaid waiver program were to transition from Medicaid into Medicaid managed care by September 1, 2017. All other individuals with IDD using Medicaid waiver programs for long-term services and supports were to transition to Medicaid managed care by

September 1, 2020.

The transition from Medicaid to Medicaid managed care for services to individuals with IDD has progressed more slowly than anticipated, and some have called for longer deadlines to allow more time for the Legislature and stakeholders to evaluate the rollout of Medicaid managed care to this population.

DIGEST:

CSHB 3523 would extend the deadlines for transition of health services for individuals with intellectual and developmental disabilities to Medicaid managed care, would expand the role of the Intellectual and Developmental Disability System Redesign Advisory Committee, would require more detailed reports to the Legislature on implementation of system redesign, and would remove expiration dates on existing regulations regarding nursing facility providers seeking to participate in Medicaid managed care.

Advisory committee. The bill would change the expiration date for the Intellectual and Developmental Disability System Redesign Advisory Committee and related statute from January 1, 2024, to January 1, 2026. The bill also would allow the advisory committee to establish working groups that met at times other than the quarterly minimum for advisory committee meetings prescribed in statute to study and make recommendations on issues the committee considered appropriate.

Annual report. The Health and Human Services Commission (HHSC) also would be required to consult and collaborate with the advisory committee in preparing and submitting its annual report on implementation of system redesign to the Legislature. The annual report would have to include, in addition to the information already required in existing statute, the following:

- an assessment of the implementation of the system for the delivery of Medicaid acute-care and long-term services and supports to persons with intellectual and developmental disabilities;
- recommendations regarding implementation of and improvements to the system redesign; and
- an assessment of the effect of the system on seven different topics

specified in the bill.

Pilot programs for long-term services and supports. The bill would extend the deadline for implementation of long-term services and support pilot programs from September 1, 2016, to September 1, 2017. The bill also would specify that a pilot program could operate for up to 24 months rather than requiring the pilot program to operate for 24 months or more. A pilot program could cease operation at any time if the pilot program service provider terminated the contract with HHSC before the agreed-upon termination date.

The bill also would require the Department of Aging and Disability Services (DADS) to collaborate with the Intellectual and Developmental Disability System Redesign Advisory Committee in identifying private service providers that were strong candidates to develop a capitated Medicaid managed care pilot program for providing long-term services and supports to individuals with intellectual and developmental disabilities. The bill would remove a requirement for the capitated managed care pilot program to be designed to promote efficiency and the best use of funding and would require the pilot program to promote customized, integrated, and competitive employment rather than supported employment.

DADS also would be required to collaborate with the advisory committee in evaluating each submitted managed care strategy proposal, making determinations about the proposals and analyzing information provided by the pilot program service providers. DADS would contract with pilot program service providers based on the department's evaluation. DADS' analysis of the pilot program service providers required under existing statute would have to include an assessment of the effect of the managed care strategies implemented in the pilot programs on seven different topics stipulated in the bill.

The bill would remove the timeline for HHSC and DADS to collaborate with the advisory committee in reviewing and evaluating the progress and outcomes of each pilot program. Instead, the bill would require the review to be submitted as part of HHSC's annual report to the Legislature on implementation of system redesign.

Acute care. The bill would require HHSC and DADS to consult and collaborate with the advisory committee in analyzing the outcomes of providing acute-care Medicaid benefits to individuals with intellectual or developmental disabilities through Medicaid managed care or the most appropriate integrated capitated managed care program delivery model. The agencies' analysis in collaboration with the advisory committee would:

- include an assessment of the effects on access to and quality of acute care services and the number and types of fair hearing and appeals processes in accordance with federal law;
- be incorporated into HHSC's annual report to the Legislature on implementation of system redesign; and
- include recommendations for delivery model improvements and implementation for consideration by the Legislature, including recommendations for needed statutory changes.

Basic attendant and habilitation services. DADS would contract with providers participating in Medicaid waiver programs for the delivery of basic attendant and habilitation services. DADS would have regulatory and oversight authority over these providers.

Texas Home Living waiver program. The bill would extend the deadline from September 1, 2017, to September 1, 2018, for the transition of individuals using the Texas Home Living medicaid waiver program to Medicaid managed care and would permit, rather than require, the transition to occur. HHSC would have to consult and collaborate with the advisory committee regarding the transition and in ensuring a comprehensive plan existed for the transition.

The bill would require HHSC, with the advisory committee, to analyze the outcomes of the transition of long-term services and supports under the Texas Home Living waiver program to Medicaid managed care. The analysis would be required to include an assessment of the effect of the transition on specified outcomes, and the analysis would be incorporated into HHSC's annual report to the Legislature. The analysis also would include recommendations for improvements to the transition

implementation for consideration by the Legislature, including recommendations for needed statutory changes.

ICF-IID programs and Medicaid waivers other than Texas Home Living. The bill would extend the deadline for transferring individuals receiving long-term services and supports under an ICF-IID program or a Medicaid program other than the Texas Home Living waiver program to Medicaid managed care from September 1, 2020, to September 1, 2021. The bill would permit rather than require that transition to occur according to the deadline.

Nursing facilities. The bill would remove the expiration dates for certain sections of code that relate to provision of benefits through Medicaid managed care to recipients who reside in nursing facilities, credentialing and minimum performance standards for nursing facility providers, nursing facility reimbursement rates under Medicaid managed care, and prior authorization under Medicaid managed care for a nursing facility resident in need of emergency hospital services.

Federal waiver or authorization. The bill would require a state agency to request a waiver or authorization from a federal agency if such a waiver or authorization was necessary for implementing the bill's provisions.

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.

SUBJECT: Requiring licensure of anesthesiologist assistants

COMMITTEE: Public Health — committee substitute recommended

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

1 nay — Zedler

WITNESSES: For — Stephen Hoang, Anesthesiologists for Children, Children's Health Dallas; Sam Gumbert, Case Western Reserve and TSA; Paul McHorse and Gary Jones, Texas Academy of Anesthesiologist Assistants; David Gloyna, Texas Society of Anesthesiologists; Jana McAlister; David Norman; (*Registered, but did not testify*: Jaime Capelo, Coalition for Patient Safety; Brian Haskins, CWRU, TSA, TAAA; Dan Finch, Texas Medical Association, and 12 individuals)

Against — Juan Quintana, AANA; Garry Brydges; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas; James Willmann, Nursing Legislative Agenda Coalition; Jay Hopper, Texas Association of Nurse Anesthetists; Kevin Cooper, Texas Nurse Practitioners; Andrew Cates, Texas Nurses Association; and five individuals)

On — (*Registered, but did not testify*: Mari Robinson, Texas Medical Board)

DIGEST: CSHB 2267 would add a chapter to the Occupations Code requiring anesthesiologist assistants to be licensed by the Texas Medical Board. A person would not be permitted to practice as an anesthesiologist assistant in Texas unless the person held an anesthesiologist assistant license issued by the medical board.

Eligibility. The medical board would issue a license to an individual who met the eligibility requirements, submitted an application on a form prescribed by the medical board, and paid the required application and licensing fees as set by the medical board to cover administrative and

enforcement costs.

To be eligible for a license under this chapter, an applicant would be required to submit proof of completing an accredited graduate-level training program, pass a certifying examination within the specified time period, submit proof of current certification from the National Commission for Certification of Anesthesiologist Assistants or its successor organization, be of good moral character, and meet any additional qualifications adopted by the medical board by rule.

Administration. The Texas Medical Board would be required to establish requirements governing the licensure application process and develop a mandatory program of continuing education for anesthesiologist assistants. The board would be permitted to establish requirements governing the education, training, and examination process for anesthesiologist assistants.

The medical board would be required to adopt rules necessary to implement the bill, including requirements and limitations on anesthesia services provided by an anesthesiologist assistant as determined by the board to be in the best interests of patient health and safety. These requirements and limitations would include:

- requiring an anesthesiologist assistant to be supervised by an anesthesiologist who was actively engaged in clinical practice and available on-site to provide assistance;
- capping the number of anesthesiologist assistants and student anesthesiologist assistants an anesthesiologist could supervise, in accordance with federal requirements; and
- requiring an anesthesiologist assistant to comply with all continuing education requirements adopted by the medical board and with recertification requirements of the National Commission for Certification of Anesthesiologist Assistants or its successor organization.

Procedures under the Medical Practice Act that govern license or registration renewal, complaints, and disciplinary actions would apply to an anesthesiologist assistant in the same manner they would apply to a

physician.

Practice and title. An anesthesiologist assistant would be permitted to assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient consistent with the rules in the bill. An anesthesiologist assistant who assists an anesthesiologist would not be considered to be practicing medicine.

A student in an anesthesiologist assistant training program would be required to be identified as a student anesthesiologist assistant or an assistant student. A student would not be permitted to use the term "intern," "resident," "fellow," or another term that identified the student as a physician or surgeon.

A person would not be permitted to practice as an anesthesiologist assistant in Texas without a license. A person also would not be permitted to use the title "anesthesiologist assistant" unless the person was licensed. Any person found in violation would be subject to an administrative penalty for an amount set by the medical board.

The Texas Medical Board would be required to adopt the rules, procedures, and fees necessary to administer the bill by June 1, 2016. An anesthesiologist assistant would not be required to hold a license to practice under the bill until September 1, 2016.

This bill would take effect September 1, 2015, except that provisions related to the use of the "anesthesiologist assistant" title and the procedures under the Medical Practice Act would not take effect until September 1, 2016.

SUPPORTERS SAY:

CSHB 2267 would help ensure a level of accountability and transparency by establishing licensing standards for anesthesiologist assistants. Currently, many anesthesiologist assistants receive their training in Texas but then leave because the state does not recognize anesthesiologist assistants as licensed medical professionals. By creating this licensing standard, more anesthesiologist assistants would be encouraged to stay in Texas.

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The educational requirements and skill sets for anesthesiologist assistants are nearly as extensive as those for nurse anesthetists, so formally recognizing anesthesiologist assistants with licensure standards would be an appropriate step. These licensure standards also could help the state meet its overall needs in the nursing field. By 2020, Texas' shortage of full-time nurses is expected to grow to 70,000. Nurse anesthetists draw exclusively from the pool of critical care nurses, one of the Texas's biggest areas of need. Licensing anesthesiologist assistants could help address this shortage by ensuring that more qualified medical professionals were available to provide care.

OPPONENTS SAY:

CSHB 2267 could decrease the quality of medical care provided in the field of anesthesiology. Licensing anesthesiologist assistants would not decrease costs or improve access to services because they would be limited to working with anesthesiologists, who would have to supervise the provision of any care. Creating licensing requirements for the relatively small number of anesthesiologist assistants working in Texas also could burden hospitals and lead to more bureaucracy.

NOTES:

The Legislative Budget Board anticipates that CSHB 2267 would have a positive fiscal impact to the general revenue fund of about $54,000 during fiscal 2016-17.