HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 20, 2015
84th Legislature, Number 74
The House convenes at 10 a.m.

One joint resolution and 16 bills are on the daily calendar for second-reading consideration today. They are listed on the following page.

Alma Allen
Chairman
84(R) - 74

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, May 20, 2015
84th Legislature, Number 74

SUBJECT: Establishing a right to hunt, fish, and harvest wildlife

COMMITTEE: Culture, Recreation, and Tourism — favorable, without amendment

VOTE: 6 ayes — Guillen, Frullo, Larson, Márquez, Murr, Smith

0 nays

1 absent — Dukes

SENATE VOTE: On final passage, April 1 — 27-3 (Ellis, Garcia, Rodríguez)

WITNESSES: *(On House companion bill, HJR 61)*
For — Marida Favia del Core Borromeo, Exotic Wildlife Association; Robert Linder, Texas Outdoor Partners; Alice Tripp, Texas State Rifle Association; David Yeates, Texas Wildlife Association; (*Registered, but did not testify:* Ben Carter and Milam Mabry, Dallas Safari Club; Marla Flint, Southwestern Jones County Taxpayers Association; Corey Howell, Texas Chapter of the Wildlife Society; Ronald Hufford, Texas Forestry Association; Kaleb McLaurin, Texas and Southwestern Cattle Raisers Association; Tara Mica, National Rifle Association; Ceci Wallace, Texas Deer Association; Hugo Berlanga; Michael Booth)

Against — (*Registered, but did not testify:* Jon Weist, City of Irving; Nancy Williams, City of Austin)

On — Scott Houston, Texas Municipal League; Evelyn Merz, Lone Star Chapter Sierra Club; (*Registered, but did not testify:* Ann Bright, Texas Parks and Wildlife Department; Jon Weist, City of Irving)

DIGEST: SJR 22 would amend Art. 1 of the Texas Constitution by establishing the right to hunt, fish, and harvest wildlife under the Bill of Rights.

SJR 22 would provide that hunting and fishing were preferred methods of managing and controlling wildlife. Under the joint resolution, people would have the right to hunt, fish, and harvest wildlife, including by the use of traditional methods. This right would be subject to laws or

regulations to conserve and manage wildlife and preserve the future of hunting and fishing.

The proposed constitutional amendment would not affect any provision of law relating to trespass, property rights, or eminent domain or the power of the Legislature to authorize a municipality to regulate the discharge of a weapon in a populated area in the interest of public safety.

The proposal would be presented to the voters at an election on November 3, 2015. The ballot proposal would read: "The constitutional amendment recognizing the right of the people to hunt, fish, and harvest wildlife subject to laws that promote wildlife conservation."

SUPPORTERS SAY:

SJR 22 would constitutionally guarantee the right to hunt, fish and harvest wildlife in this state. While Texas has a rich and vibrant hunting and fishing tradition, animal rights and anti-hunting organizations in other states have worked to limit hunting through onerous bag limits or by eliminating the hunting of certain types of game. To guard against such restrictions, many states already have passed right-to-hunt-and-fish amendments. SJR 22 would ensure that Texas' long standing heritage of hunting and fishing was protected for future generations.

SJR 22 not only would preserve the cultural impact of hunting and fishing in this state, but it would protect the economic impact of these activities as well. The outdoor industry drives employment, investment, and tax revenue. It also funds conservation efforts across the state and has a critical impact on the rural landscape. Safeguarding the right to hunt and fish would protect landowners' incentive to provide quality habitat for game animals. It also would ensure the protection of habitats of nongame species, including endangered species, and the open spaces of this state.

In stating that hunting and fishing were the preferred methods of managing wildlife populations, this joint resolution would not restrict the use of other methods to achieve this goal. Use of the term "traditional methods" would ensure the protection of all methods of hunting, fishing and harvesting wildlife, while also allowing for the Texas Parks and Wildlife Department to prohibit methods of hunting that were not sporting or that could endanger wildlife populations.

OPPONENTS SAY:

SJR 22 is unnecessary because there is no immediate threat to hunting and fishing in Texas. Given this, any effort to enshrine these rights in the Constitution could backfire if the electorate, which is composed mainly of citizens who do not hunt or fish, did not approve the proposed amendment at the polls. It is possible that this well-meaning effort could hurt the cause of hunting and fishing in the state at a time when no action is necessary.

SJR 22 would single out hunting and fishing as "preferred methods of managing and controlling wildlife" when there are many ways to manage and control wildlife to achieve a balanced ecosystem. Some other methods, such as techniques to limit the reproduction of certain species, might be more appropriate in certain situations.

Texas has tremendous nongame wildlife populations, including endangered and threatened species. Hunting and fishing of many of those species would not be appropriate and in some cases is prohibited by state and federal law. While the right to hunt, fish, and harvest wildlife under SJR 22 would be "subject to laws or regulations to conserve and manage wildlife and preserve the future of hunting and fishing," there could be confusion in interpreting this, further endangering threatened species.

OTHER OPPONENTS SAY:

Hunting and fishing is a privilege regulated by the Texas Parks and Wildlife Department. To guarantee hunting and fishing as a right, SJR 22 should be strengthened by including the public trust doctrine, the basis upon which the right to hunt and fish was established. The public trust doctrine, in Texas Parks and Wildlife Code, ch. 1, provides that the fish and wildlife of Texas are held in trust by the state for the benefit of all Texans. Failure to include public trust doctrine language in the proposed amendment would omit the basis for exercising this right.

NOTES:

The Legislative Budget Board estimates that the cost to the state for publication of the resolution would be $118,681.

The House companion resolution, HJR 61 by Ashby, was reported favorably by the House Culture, Recreation, and Tourism Committee on March 31 and considered by the Calendars Committee on April 29.

SUBJECT: Graduate Medical Education expansion and support

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Zerwas, Alonzo, Clardy, Crownover, Martinez, Morrison, C. Turner

0 nays

2 absent — Howard, Raney

SENATE VOTE: On final passage, April 7 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Bryan Sperry, Children's Hospital Association of Texas; Cate Graziani, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness-Texas; Maureen Milligan, Teaching Hospitals of Texas; Tom Banning, Texas Academy of Family Physicians; Tim Schauer, Texas Association of Community Based Health Plans; Jose E. Camacho, Texas Association of Community Health Centers; Justin Yancy, Texas Business Leadership Council; Marcus Mitias, Texas Health Resources; Jennifer Banda, Texas Hospital Association; Michelle Romero, Texas Medical Association; David Reynolds, Texas Osteopathic Medical Association; Clayton Travis, Texas Pediatric Society; Max Jones, The Greater Houston Partnership; Marilyn Hartman)

Against — None

On — Jay Thompson, Joint Underwriting Association; Stacey Silverman, Texas Higher Education Coordinating Board

BACKGROUND: The 83rd Legislature enacted several bills related to graduate medical education (GME), which is also known as residency. HB 2550 by Patrick created programs for GME planning grants, grants to fill accredited but unutilized residency slots, and grants to expand residency programs and create new slots, among others. The fiscal 2014-15 general appropriations act and HB 1025 by Pitts, the supplemental appropriations act, allocated

funds to support these new programs.

The Texas Medical Liability Joint Underwriting Association (JUA) was established in 1975 to assist medical providers who had difficulty securing affordable medical liability insurance. The JUA currently covers two hospitals, 15 corporations or associations, and 60 individual providers.

DIGEST:

CSSB 18 would amend strategies for graduate medical education (GME) by specifying types of residency programs targeted for expansion, supporting existing residency slots, studying and targeting areas of critical medical care shortages, and establishing a permanent fund for GME.

GME programs. The bill would amend existing GME programs to target specific health care facilities and partnerships, create and support new and existing residency slots, and prioritize high-need medical practice fields.

CSSB 18 would amend the GME planning grant program to allow grant applicants to partner with an existing GME program or sponsoring institution for funds to plan a new GME program with first-year residency positions. The bill would specify that grants could be awarded to hospitals, medical schools, and community-based, ambulatory patient care centers including rural health clinics as defined by the bill. Facilities and any applicable partners could use these grants to plan new GME programs, whether or not the facilities currently or previously had offered other first-year residency positions.

The bill also would abolish the Resident Physician Expansion Grant Program, which currently exists to encourage the creation of new GME residency slots through community collaboration and innovative funding.

GME programs could apply for grants to support the number of first-year residency slots that as of July 1, 2013, had been approved and accredited at the residency site but went unfilled. The grants would provide support for the duration of the individual's residency, rather than limiting the grants to two consecutive fiscal years. Awarded funds would be used to support resident stipends and benefits and other direct resident costs.

The bill also would make changes to new and expanded grant programs

by allowing grants to be awarded for the duration of an individual's residency, rather than limiting the grant to only three consecutive years. Existing grants to support residency slots for current unfilled positions or new and expanded GME grant programs would continue to be supported so long as those programs remained compliant with the grant requirements that existed at the time of the initial award.

The bill also would require the Texas Higher Education Coordinating Board to prioritize funding programs focused on medical specialties that are at critical shortage levels in the state as determined by several sources, including research conducted by the Health Professions Resource Center at the Department of State Health Services.

GME system research. The Health Professions Resource Center would conduct research to identify all medical specialties and subspecialties at critical shortage levels in the state, along with the geographic location of physicians in those practice areas. The center also would study the overall supply of physicians in the state and other issues relevant to the development of the GME system. It would be required to make a report of these findings by May 1 of every even-numbered year to the Legislative Budget Board, the coordinating board, the Office of the Governor, and the House Appropriations Committee and Senate Finance Committee.

Permanent GME Fund. The bill would establish a permanent fund for supporting GME, which would be a special fund in the state treasury outside the general revenue fund. The permanent fund would be administered by the Texas Treasury Safekeeping Trust Company and could be funded through legislative appropriations, gifts and grants, and returns received from investment of money in the fund.

The comptroller would adopt a distribution policy, which the trust company would be required to follow in determining the amount of funds available for distribution. The money in the fund could be invested by the trust company under certain limitations.

Money in the fund available for distribution could be appropriated only to the coordinating board to fund GME programs or as otherwise directed by the Legislature. The fund would not be subject to the restrictions or

requirements of the Government Code governing the use of dedicated revenue or disposition of interest on investments. The board would limit or withhold appropriations from the permanent fund for programs that failed to comply with relevant GME program requirements.

Transfer of Joint Underwriting Association assets. Under the bill, the Texas Department of Insurance would complete within 90 days of the bill's effective date an actuarial study of assets held by the Texas Medical Liability Joint Underwriting Association (JUA), transferring within 60 days of the study's completion any funds that were not necessary to cover certain JUA costs to the permanent GME fund created by the bill. If the permanent fund was not yet in existence, the comptroller would hold the assets in trust pending the permanent fund's creation.

Following completion of the actuarial study, the commissioner of insurance would be required to hold a hearing to determine whether it was necessary to suspend JUA's ability to issue new insurance policies until further action of the Legislature or until the scheduled September 1, 2017, expiration of the subchapter authorizing the transfer of assets, whichever occurred earlier.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 18 would make several necessary changes to the state's approach on training and educating its medical residents. Texas has too few available residency spots to accommodate its medical school graduates, and several new schools are slated to open within the next few years.

This lack of slots has created a "brain drain," in which students educated at Texas institutions, including some institutions funded with taxpayer dollars, must leave the state to complete their residencies. Many medical residents end up practicing where they complete their training, leaving Texas without the doctors it educated. The bill would help ensure that there were not only enough residency positions available for Texas medical school graduates, but also enough positions to potentially attract out-of-state graduates as well.

The bill would provide a vehicle for channeling needed funding to address

a shortage of doctors in rural areas and in certain areas of medical practice. It would ensure that the state had access to the necessary research to develop plans for its graduate medical education (GME) system to meet the state's medical specialty and geographic needs, including by specifying that rural health centers could be residency sites. By encouraging new GME programs to partner with existing residency programs, more programs could be assisted through the process of becoming accredited residency host programs.

While some GME reform efforts have focused solely on expanding residency slots, the bill would ensure that GME funds appropriated in the budget addressed the lack of available residency slots while offering supportive funding for existing unfilled slots, which are unfilled only because no funding exists to support them even though they have been accredited and approved. By setting up the permanent GME fund, the bill would ensure that the state not only expanded medical education, but sustained the expansion to serve future medical school graduates. The bill also would streamline GME programs by eliminating duplicative programs such as the Resident Physician Expansion Grant Program.

The bill would make effective use of excess funds held at the Texas Medical Liability Joint Underwriting Association (JUA), which was created by the Legislature in the 1970s and was originally intended to be only a temporary program. The JUA currently does not cover a large number of medical professionals and institutions, and those that it does cover often are individuals and institutions who cannot obtain insurance coverage through other means due to those providers' risk profiles. The state could make better use of the funds through supporting future physicians, which is a recommendation of the Legislative Budget Board. The state should prevail in the event of any potential lawsuit filed by policyholders.

OPPONENTS SAY:

CSSB 18 would significantly affect the JUA, which offers a necessary service to many medical professionals and institutions, including nurse practitioners and children's hospitals, whose risk profile is a result of their area of practice and not their own practice records. Also, the JUA's funds are in large part composed of investment income or money paid in by policyholders, so appropriating these funds for a state purpose under the bill could potentially open the state up to a lawsuit. The bill should provide JUA and its agents some immunity from liability or institute a hold harmless policy, as afforded to other state employees, to protect JUA agents from any potential litigation as a result of complying with the bill's requirements.

NOTES:

According to the Legislative Budget Board's fiscal note, CSSB 18 would result in a negative fiscal impact to general revenue of $34.3 million during fiscal 2016-17.

CSSB 18 differs from the Senate engrossed version in that the studies done on the graduate medical education system by the Health Professions Research Center would not include a focus on the ratio of primary care to non-primary care physicians necessary and appropriate to serve current and future state needs. CSSB 18 also would allow facilities and partners to use grants to plan new GME programs if the facilities currently offered GME programs with first-year residency positions, in addition to having previously offered the positions. CSSB 18 also would not repeal a provision establishing grants for additional years of residency that would be repealed in the Senate engrossed version.

The Senate version of the fiscal 2016-17 general appropriations act includes $60 million in general revenue in fiscal 2016-17 for GME expansion. The House version includes about $28.6 million.

SUBJECT: Training for members of higher education governing boards

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 5 ayes — Zerwas, Howard, Alonzo, Crownover, Martinez

0 nays

4 absent — Clardy, Morrison, Raney, C. Turner

SENATE VOTE: On final passage, April 22 — 25-5 (Creighton, Fraser, Kolkhorst, Nelson, V. Taylor)

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Mary Smith, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code, sec. 61.084 establishes training programs for governing board members of higher education institutions. Each member is required to attend at least one training program during the member's first two years of service.

DIGEST: SB 24 would require members of governing boards of higher education institutions to attend at least one training program during the member's first year of service, rather than within two years as in current law.

A governing board member who held an appointive position would be required to attend an intensive short orientation course to be developed by the Texas Higher Education Coordinating Board. The orientation course would have to be offered as an online interactive course and could also be offered as a written document or in a one-on-one or group setting.

Rules developed by the coordinating board would require a member to attend the orientation course and any relevant training sponsored or

coordinated by the governor's office the first time such courses were offered after the member took the oath of office. A member whose first year of service began on or after September 1, 2015, could not vote on a budgetary or personnel matter until the member had completed the intensive short orientation course.

The orientation course would have to include:

- best practices and matters relating to excellence, transparency, accountability, and efficiency in the governing structure and organization of general academic teaching institutions and university systems;
- best practices relating to the manner in which governing boards and administrators develop and implement major policy decisions, including the need for impartiality and adequate internal review; and
- ethics, conflicts of interests, and the proper role of a board member.

The bill would add several new requirements for the content of training programs, including ethics, limitations on the authority of the governing board, and the requirements of federal and state laws governing the privacy of student information.

The coordinating board would be responsible for documenting governing board members' completion of the training requirements.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

SB 24 would establish a new, intensive short orientation course for university system regents to help ensure that newly appointed regents had timely access to training on important governance matters before taking action. Those appointed after the bill took effect would have to take the course before voting on budgetary or personnel matters. The course could be offered in various formats, including as an online interactive course, offering flexibility in meeting the requirement.

The actions of regents help Texas maintain a preeminent higher education system, and it is imperative that governing boards be held to the highest

standards of excellence with rigorous training and accountability. The bill resulted from interim hearings of the Joint Oversight Committee on Higher Education, Governance, Excellence, and Transparency during which witnesses testified that regents would benefit from improved training.

The orientation course would supplement other training, such as programs offered by the governor's office for new appointees. The courses would serve different purposes and work together to reinforce a responsible role for regents. The bill would expand the content of programs developed by the coordinating board to include training on ethics, limits on authority of governing boards, and federal and state laws on privacy of student information.

OPPONENTS SAY:

SB 24 could restrain new regents from effectively executing their fiduciary duties until they had completed a particular orientation course. This unnecessary barrier could limit board members' ability to vote on important budgetary or personnel matters related to system administration or institutions of higher education. Board member oversight is critical to holding these institutions accountable, and it should not be constrained by a specific training requirement.

SUBJECT: Changing property tax exemption procedure for certain veteran nonprofits

COMMITTEE: Ways and Means — favorable, without amendment

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

0 nays

1 absent — Parker

SENATE VOTE: On final passage, April 28 — 31-0

WITNESSES: None

BACKGROUND: Tax Code, sec. 11.23 lists miscellaneous property tax exemptions that require an annual application for the exemption. Tax Code, sec. 11.43(c) establishes that certain exempt organizations, including county fair associations and medical center developments, are not required to apply annually for the exemption.

DIGEST: SB 918 would add certain veterans' organizations to the list of organizations that, once exempt from property taxes, are not required to apply for the exemption in subsequent years unless the property changes ownership, the organization's qualification for the exemption changes, or the chief appraiser requests a new application.

The bill would apply to land owned and primarily used by nonprofit organizations composed of current or former members of the U.S. armed forces or allied forces that was chartered or incorporated by the U.S. Congress, as long as the property was not used to produce revenue or held for gain.

The bill would take effect January 1, 2016, and would apply only to property taxes imposed for a tax year beginning on or after that date.

SUPPORTERS SAY: SB 918 would remove an unnecessary burden placed on nonprofit

veterans' organizations by ending the requirement that they file an annual application for a property tax exemption. The executive boards of many of these organizations change annually and requesting a new application annually from each board creates a paperwork challenge.

The bill appropriately would provide relief to organizations that support military veterans as well as those currently serving, including organizations that assist widows and orphans of veterans and the dependents of disabled veterans.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Creating penalties for unlawful use of alcoholic beverage permit, license

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 9 ayes — Smith, Gutierrez, Geren, Goldman, Guillen, Kuempel, Miles, D. Miller, S. Thompson

0 nays

SENATE VOTE: On final passage, April 27 — 26-4 (Birdwell, Hancock, Huffines, Perry)

WITNESSES: For — None

Against — None

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

BACKGROUND: Alcoholic Beverage Code, sec. 11.05 prohibits holders of a permit issued by the Texas Alcoholic Beverage Commission from allowing another person to use or display their permit.

DIGEST: SB 367 would create criminal offenses and penalties related to the unauthorized use of an alcoholic beverage license or permit.

Holders of licenses issued by the Texas Alcoholic Beverage Commission (TABC) would be prohibited from allowing another person to use or display their license, similar to the prohibition for permit holders under current law. It would be an offense for a person knowingly to allow another person to unlawfully display or use a permit or license issued by TABC. It also would be an offense for a person to unlawfully display or use a permit or license issued to another person by TABC.

The offenses would be class B misdemeanors (up to 180 days in jail and/or a maximum fine of $2,000). If it were shown at trial that the person previously had been convicted of an offense under the bill, it would be a

class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

TABC would have to cancel an original or renewal license or permit if it was found, after notice and a hearing, that a permit or license holder was convicted of an offense under the bill. TABC and certain officials would have to refuse to issue an original permit or license to a person for five years after the person was convicted of such an offense.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

SB 367 would penalize all bad actors in cases of subterfuge, which occurs when individuals without a valid alcoholic beverage permit or license use another person's permit or license to operate their business.

Currently, only the conduct of the legal permit holder is prohibited, limiting law enforcement's ability to punish the owner of the business who inappropriately uses the permit. These business owners often are engaged in other illegal activities as well. The bill would give law enforcement officers the tools they need to punish everyone involved in subterfuge and would provide harsher penalties to deter such activity.

The bill would not punish innocent actors for technical violations because TABC and criminal prosecutors have discretion about what penalties to assess and which cases to pursue. The goal is to stop criminals from avoiding prosecution because of a loophole in the law, not to punish otherwise law-abiding citizens.

OPPONENTS SAY:

SB 367 would be unnecessary to punish people involved in subterfuge because current law already prohibits permit holders from allowing someone else to use their permits. A separate offense for the one using the permit is not needed. The bill also could be too broad with the unintended consequence of punishing people for technical but innocent violations. For example, if a father obtained a license but then his children ran his business, both could have committed a criminal offense under the bill and be ineligible to hold a permit or license for five years.

SUBJECT: Requiring cooperation with other states to compare voter registration lists

COMMITTEE: Elections — favorable, without amendment

VOTE: 4 ayes — Laubenberg, Fallon, Phelan, Schofield

2 nays — Israel, Reynolds

1 absent — Goldman

SENATE VOTE: On final passage, April 23 — 25-5 (Ellis, Garcia, Menéndez, Rodríguez, Watson)

WITNESSES: *(On House companion bill, HB 891)*
For — Jacquelyn Callanen, Bexar County Elections Administrator, Texas Association of Elections Administrators; Dana Debeauvoir, Legislative Committee of County and District Clerks Association of Texas; Kat Swift, Green Party of Texas; Alan Vera, Harris County Republican Party Ballot Security Committee; (*Registered, but did not testify*: Erin Anderson, True the Vote; Rachael Crider, Cheryl Johnson, and Sheryl Swift, Galveston County Tax Office; William Fairbrother, Texas Republican County Chairmen's Association; Ed Johnson, Harris County Clerk's Office; Willie O'Brien, Mountain View College Student Government Association; John Oldham, Texas Association of Elections Administrators; and six individuals)

Against — (*Registered, but did not testify*: Mike Conwell; Jennifer Hall; Brandon Moore)

On — Keith Ingram, Texas Secretary of State; Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: Ashley Fischer; Texas Secretary of State)

BACKGROUND: The National Voter Registration Act, 52 U.S.C. ch. 205, establishes requirements that must be met before a state removes a voter from its list of eligible voters. Under section 20507, a state cannot remove a registrant from the official list of eligible voters unless the registrant:

- fails to respond to a notice sent by the state that allows the voter to confirm his or her address or gives the voter information regarding registration at the voter's new address; and
- fails to vote or appear to vote in two general elections for federal office after the date of the notice.

Section 20507 also requires states to make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters.

Two systems currently are available to states to directly compare voter registration data and identify potential duplicate registrations or inaccuracies.

The Electronic Registration Information Center (ERIC) is a nonprofit formed in 2012 with the help of The Pew Charitable Trusts and IBM that is managed by its member states. Members of ERIC — currently 11 states and the District of Columbia — submit voter registration and motor vehicle licensee data, with private information anonymized, and receive reports showing voters who have moved within the state, moved out of state, or have died, plus duplicate registrations in the same state and individuals potentially eligible to vote but not registered. ERIC membership requires a one-time $25,000 fee and annual dues.

The Interstate Voter Registration Crosscheck Program (IVRC), established in 2005, is administered by the Kansas Secretary of State's Office. IVRC currently has 29 participating states, which may upload their data to a secure site. The Kansas Secretary of State's Office staff then analyzes the data and provides results on duplicate registrations and potential double votes for individual state use. There is no cost to participate in IVRC.

DIGEST:

SB 795 would require the secretary of state to cooperate with other states and jurisdictions to develop systems to compare voters, voter history, and voter registration lists to identify voters whose addresses have changed. Any system developed would have to comply with the National Voter Registration Act.

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:

SB 795 would help ensure that the state had accurate voter rolls. Texas does not have a system in place to prevent duplicate registration in another state. This lack of oversight could lead to voter fraud if it allowed the same person to vote in a single election multiple times. Participation in an interstate database comparison program would help identify duplicate registrations. The state could use these data to clean up its voter registration lists and prevent voter fraud.

The bill would not dictate which interstate database comparison program should be used to compare voters. The Office of the Secretary of State would have the flexibility to select a program that would best serve the interests of the state, to change programs, or to select both programs, as several other states have done.

SB 795 would not remove eligible voters from the voter rolls. Any interstate database comparison program implemented by the secretary of state would serve only to identify potential duplicate registrations. The process for removing a registered voter from a list of eligible voters still would be governed by the National Voter Registration Act and state laws related to removal. These safeguards would ensure that voters were not erroneously removed from the lists.

OPPONENTS SAY:

SB 795 could disenfranchise registered voters in good standing by embarking on a program that might remove them in error from the rolls of eligible voters. Although some say the provisions of the National Voter Registration Act would protect eligible voters from such a mistake, a significant number still could be removed erroneously. Although registered voters could rectify the problem by responding to a notice sent to them by the state, they might not respond to all mail they receive and should not have to go through that process if they receive a notice in error.

Because no funds would be appropriated to implement SB 795, it is likely that the secretary of state would choose the Interstate Voter Registration Crosscheck (IVRC) program, a system that has been criticized for its error

rates in the lists it provides to states. Such errors could increase the risk of disenfranchising eligible voters in Texas. If the state were to embark on such a program, the Electronic Registration Information Center (ERIC) system, which employs a more rigorous method for identifying potential duplicate voters, would be a better choice.

NOTES:

The House companion bill, HB 891 by Klick, was placed for second-reading consideration on the May 12 General State Calendar but was not considered.

SUBJECT: Expanding authority of certain municipalities to provide sewer services

COMMITTEE: Urban Affairs — favorable, without amendment

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

0 nays

1 absent — Hunter

SENATE VOTE: On final passage, April 30 — 30-1 (Creighton), on local and uncontested calendar

WITNESSES: *(On House companion bill, CSHB 1279)*
For — Greg Morgan and John Nix, City of Tyler; (*Registered, but did not testify*: Edward Broussard, City of Tyler)

Against — Greg Sorenson, Liberty Utilities

On — (*Registered, but did not testify*: Tammy Benter, Public Utility Commission of Texas)

BACKGROUND: Water Code, sec. 13.001 establishes that retail public utilities are monopolies in the areas they serve and their regulation by public agencies serves as a substitute for competition.

Sec. 13.247 specifies that, except under certain circumstances, a municipally owned or operated utility may not provide retail water and sewer utility service within an area certificated to another retail public utility without first obtaining from the Public Utility Commission (PUC) a certificate of public convenience and necessity that includes the areas to be served.

On September 1, 2014, responsibility for certain water utility programs, including the certificate of convenience and necessity program, was transferred from the Texas Commission on Environmental Quality to the PUC as required by the enactment in 2013 of Sunset legislation

reauthorizing the PUC (HB 1600 by Cook).

DIGEST:

SB 789 would allow a municipality that met the description in the bill (Tyler) to provide sewer service to an area within its boundaries without first having to obtain a certificate of convenience and necessity from the commission, regardless of whether that area was certificated to another retail public utility.

The bill would require the municipality to notify the affected retail public utility and the commission of the municipality's intention to provide sewer services to the area at least 30 days before beginning to provide them.

Once notified, the utility could petition the commission to decertify the utility's certificate for the area to be served by the municipality, or it could discontinue service to the affected area as long as there was no disruption of services to any customer.

The bill would prohibit its provisions from being construed to limit the right of a retail public utility to provide service in an area certificated to the utility. It also would not expand a municipality's power of eminent domain under Property Code, ch. 21.

The bill would require the Texas Commission on Environmental Quality to adopt rules and establish procedures related to the notice required under Water Code, sec. 13.2475 as soon as practicable after the effective date of the bill.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

SB 789 would provide Tyler residents a much needed choice in sewer service providers, which could improve service and lower rates in the area. The city should be able to provide sewer services to its own residents that live within its boundaries without having to obtain an additional certificate of public convenience and necessity.

The retail sewer utility company currently operating in the area is not able to keep up with growth in the city and has failed to provide adequate

services for new development. Existing retail utility customers also have filed complaints with the city about service levels and costs. The bill would not automatically deprive the retail utility of customers but instead would provide customers a choice and would promote residential and commercial development. In addition, there is no historical evidence to suggest that the bill's changes would drive up future rates for area residents.

Existing law allows large-tract landowners to petition to be released from certificates of convenience and necessity if the certificate holder is not providing services, and several landowners have utilized this option in Tyler. This bill would give the smaller landowners a similar choice.

SB 789 would not revoke the existing retail utility's certification but rather would seek authorization to offer an alternative to the city's residents. The bill would be limited to the city of Tyler and would be a fair way to address a problem that the municipality faces.

OPPONENTS SAY:

SB 789 unfairly would exempt the city of Tyler from the rules that apply to utilities across the state regarding certificates of convenience and necessity. Competition does not serve the public interest when it comes to providing utility services, which is clear in the legislative intent of current law.

Under this bill, the city would be able to gain a competitive advantage because it could subsidize its sewer services with other city revenues or credit, which a retail utility cannot do. By taking customers from the retail utility, the city unfairly would deprive the investor-owned utility — which is regulated by and in compliance with state laws — of some of its profits. Moreover, the bill would not compensate the retail utility for this loss. Additionally, both the city and the retail utility would make infrastructure investments, rather than only one entity, which could result in higher costs being passed on in the future to residents who pay for the services.

The bill is intended to affect only Tyler but could set a precedent for later expanding the certificate exemption to other municipalities in the state.

NOTES:

The House companion bill, CSHB 1279 by Schaefer, was reported

favorably by the House Urban Affairs Committee on April 7 and considered by the Calendars Committee on May 5.

The House sponsor plans to offer a floor amendment to specify that functions referenced in bill would be the responsibility of the Public Utility Commission, not the Texas Commission on Environmental Quality.

SUBJECT: Changing the date for setting utility deposit interest rates by PUC

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Cook, Giddings, Craddick, Farney, Farrar, Harless, Huberty, Kuempel, Minjarez, Smithee, Sylvester Turner

1 nay — Oliveira

1 absent — Geren

SENATE VOTE: On final passage, April 9 — 31-0, on local and uncontested calendar

WITNESSES: For — (*Registered, but did not testify*: John W. Fainter, Jr., the Association of Electric Companies of Texas, Inc.; Stephanie Simpson, Texas Association of Manufacturers)

Against — None

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

BACKGROUND: Utilities Code, ch. 183 establishes rules for deposits that utilities may require from users to establish service. Sec. 183.002 requires that utilities pay interest on deposits if they are required for service. Under sec. 183.003, the Public Utility Commission (PUC) is required on December 1 of each year to establish the annual interest rate on deposits for the next calendar year. If December 1 falls on a weekend or a holiday, the PUC must establish the rate on the first regular workday after December 1.

In its 2015 Scope of Competition in the Electric Markets in Texas report to the 84th Legislature, the PUC included a recommendation to amend Utilities Code, sec. 183.003 to allow the commission to set the deposit interest rate on any day in the fourth quarter, rather than December 1. According to the report, this would give the agency logistical flexibility on the posting and scheduling of open meetings.

DIGEST:

SB 734 would amend Utilities Code, sec. 183.003 to require the Public Utility Commission on or before December 1 to establish the annual interest rate on utility deposits for the next calendar year.

The bill would take effect September 1, 2015.

SUBJECT: Exempting certain software sales to hosting providers from the sales tax

COMMITTEE: Ways and Means — favorable, without amendment

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

0 nays

2 absent — Bohac, Parker

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

WITNESSES: *(On House companion bill, HB 3174)*
For — Chris Rosas, Rackspace; (*Registered, but did not testify:* Jeffrey Brooks, Texas Conservative Coalition; Dana Chiodo, TechAmerica; Dale Craymer, Texas Taxpayers and Research Association; Dachia Guatelli, Soft Layer Technologies, Inc.; John T. Montford, Rackspace; Fred Shannon, Hewlett Packard; Angela Smith and Sandy Ward, Fredericksburg Tea Party; David Kaplan; Matt Long)

Against — None

On — Brad Reynolds, Texas Comptroller of Public Accounts

BACKGROUND: Tax Code, sec. 151.009 defines “tangible personal property” to include a computer program. Under sec. 151.006, "sale for resale" includes the sale of tangible personal property or a taxable service to a purchaser who acquires property or service for the purpose of reselling it with or as a taxable item in the normal course of business in the form or condition in which it is acquired.

Sec. 151.302 exempts sales of taxable items for resale from the sales tax.

DIGEST: SB 755 explicitly would classify certain sales of software to a hosting provider as sales for resale, thus exempting those sales from the sales tax. Specifically, the bill would exempt software licenses sold by a vendor to

a provider, as long as they were sold by the provider to an unrelated user in the normal course of business and in the form or condition in which they were obtained from the vendor.

This exchange would qualify as sale for resale only if the provider:

- offered the unrelated user a selection of software that the public may purchase directly from the vendor; and
- executed a written contract with the user that specified the name of the software sold and included a charge to the user for computing hardware.

Routine maintenance of the computer program recommended by the vendor would not affect the application of these 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. The bill would not affect tax liability accruing before its effective date.

SUPPORTERS SAY:

SB 755 would update state tax law to reflect the modern realities of software sales. The comptroller collects sales taxes both when a vendor sells a hosting provider software licenses and when the provider resells the licenses to end users. The software is taxed twice, even though the hosting provider makes no use of the software license. This is no different from charging a retailer sales tax both when the retailer purchases goods from a manufacturer and when it sells them to an end consumer.

This double taxation is detrimental because it results in tax pyramiding, in which an item is taxed multiple times before it reaches the end user, thus increasing the cost to the end user. Current law providing for the application of sales taxes to software has not been updated since 1984. The Legislature at that time could not have foreseen certain developments that have occurred since that time, including cloud computing, which is sometimes subject to this double-taxation.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The Legislative Budget Board's fiscal note indicates that this bill would have a negative impact of $2.8 million through fiscal 2016-17 if the bill took effect September 1, 2015. If the bill took effective June 1, 2015, it would have a negative impact of $3.3 million.

The House companion bill, HB 3174 by Button, was placed on the General State Calendar for May 13 but was not considered.

SUBJECT: Authorizing eradication of Carrizo cane along the Rio Grande

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 4 ayes — T. King, Cyrier, González, Springer

0 nays

3 absent — C. Anderson, Rinaldi, Simpson

SENATE VOTE: On final passage, April 28 — 29-2 (Nelson, Nichols)

WITNESSES: No public hearing

BACKGROUND: Agriculture Code, ch. 201 establishes the State Soil and Water Conservation Board. The board is responsible for implementing constitutional provisions and state laws relating to the conservation and protection of soil resources.

DIGEST: SB 1734 would require the State Soil and Water Conservation Board to develop and implement a program to eradicate Carrizo cane along the Rio Grande.

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: SB 1734 would require the State Soil and Water Conservation Board to take steps to eradicate Carrizo cane, a non-native invasive species along the Rio Grande that poses an ecological threat and provides cover for individuals seeking to cross the border illegally into the United States.

Carrizo cane is a bamboo-like plant that poses a serious ecological threat to lowlands, rivers, and other waterways because it forms large colonies that quickly overwhelm the river bank. These plants block access for wildlife and livestock and, because they consume large amounts of water compared to native vegetation, can worsen the water shortage in the Rio

Grande Basin. The board already has local programs to eradicate other resilient and harmful plant life such as salt cedar. With the proper funding, the board could use its knowledge and skill to effectively remove Carrizo cane with the least ecological impact on the surrounding ecosystem.

This bill would support efforts by federal border patrol agents and the Department of Public Safety to control the border. Carrizo cane can grow up to 30 feet tall and forms an interlocking network of subterranean roots. Due to the plant's size and density, Carrizo cane reduces visibility and provides ample cover for illegal activities, including cover for individuals attempting to illegally cross the border. Controlling this plant is essential for border protection.

OPPONENTS SAY:

SB 1734 may not help to eradicate Carrizo cane effectively from the Rio Grande region because the root system of the plant is resilient and extremely difficult to remove. Pulling Carrizo cane's roots from the ground can stop the plant from growing, but this is difficult to accomplish because the roots grow in interlocking networks and are difficult to cut and remove. The three methods generally used to remove Carrizo cane — mechanical, herbicidal, or biological using insects — have not proved effective thus far in eliminating this plant species. The Legislature should not authorize a program that could cost nearly $5 million per year with no guarantee of success.

NOTES:

The Legislative Budget Board's fiscal note estimates that the bill would have a negative impact of $9.8 million on general revenue related funds during fiscal 2016-17.

SUBJECT: Creating a sales tax holiday for emergency preparation supplies

COMMITTEE: Ways and Means — favorable, without amendment

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

0 nays

2 absent — Bohac, Parker

SENATE VOTE: On final passage, May 4 — 26-5 (Birdwell, Burton, Hancock, Huffines, Kolkhorst)

WITNESSES: For — Paul Martin, National Association of Mutual Insurance Companies (*Registered, but did not testify*: Anne O'Ryan, AAA Texas, the Interinsurance Exchange of the Auto Club and Auto Club County Mutual; Annie Spilman, National Federation of Independent Business/TX)

Against — None

On — (*Registered, but did not testify*: Deeia Beck, Office of Public Insurance Counsel)

BACKGROUND: Tax Code, ch. 151 imposes a 6.25 percent sales tax on the sale of taxable items.

DIGEST: SB 904 would exempt the sale of certain emergency preparation supplies from the state sales tax for a three-day period in April. The three-day period would begin the Saturday before the last Monday in April and would end at midnight on the last Monday in April.

The bill would define "emergency preparation item" as:

- a portable generator that costs less than $3,000;
- a storm protection device manufactured specifically to prevent damages to windows or doors, if less than $300;

- an emergency/rescue ladder, if less than $300; or
- certain items that cost less than $75 each, including a reusable or artificial ice product; a portable, self-powered light source; a gasoline or diesel fuel container; certain batteries; an ice chest; a tarpaulin; a ground anchor system or tie-down kit; a cell phone battery or charger; certain portable self-powered radios; a fire extinguisher, smoke detector, or carbon monoxide detector; a hatchet or axe; a self-contained first-aid kit; or a non-electric can opener.

The bill would take effect September 1, 2015, and would not affect tax liability accruing before that date.

SUPPORTERS SAY:

SB 904 would establish a tax holiday for emergency supplies and hurricane-proofing materials right before the storm season. It would be an incentive for Texans to purchase items that could save lives and significantly reduce property damage during weather-related emergencies.

This bill would raise public awareness about hurricane and disaster preparedness and would provide an opportunity for consumers to prepare themselves for potential threats. It is not the goal of the bill to increase economic activity but to increase the probability that a person would be prepared if a natural disaster should occur. This, in turn, would reduce the strain on social services, some of which are provided by the state, in the aftermath of a disaster.

OPPONENTS SAY:

SB 904 would be another example of a sales tax holiday that effectively could distort markets and favor certain items over others. Sales tax holidays have been shown not to create additional economic activity or increase consumer purchases but merely to change the timing of purchases. Attempting to get people to buy certain items on certain days would fall outside of what government should seek to do.

NOTES:

The Legislative Budget Board's fiscal note indicates that this bill would have a negative impact of $2.3 million through fiscal 2016-17.

SUBJECT: Expanding eligibility for orders of nondisclosure for criminal records

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 4 ayes — Herrero, Moody, Shaheen, Simpson

0 nays

3 absent — Canales, Hunter, Leach

SENATE VOTE: On final passage, May 5 — 26-5 (Bettencourt, Huffman, Nelson, Nichols, L. Taylor)

WITNESSES: *(On House companion bill, HB 3936)*
For — Greg Glod, Texas Public Policy Foundation; Doug Deason; Paul Quinzi; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Kathryn Freeman, Christian Life Commission; Traci Berry, Goodwill Central Texas; JoAnn Fleming, Grassroots America; Robin Lennon and Jim Lennon, Kingwood Tea Party; Annie Spilman, National Federation of Independent Business/TX; Mike Buster, Jack Graham, and David Shivers, Prestonwood Baptist Church; Josiah Neeley, R Street Institute; Lori Henning, Texas Association of Goodwills; Jenna White, Young Conservatives of Texas; Leah Lobsiger; Richard Tenenbown)

Against — (*Registered, but did not testify*: William Squires, Bexar County District Attorney; Kelley Shannon, Freedom of Information Foundation of Texas; Justin Wood, Harris County District Attorney's Office; Brian Eppes, Tarrant County Criminal District Attorney's Office; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett, Texas Press Association)

On — Patricia Cummings, Texas Criminal Defense Lawyers Association; Sarah Pahl, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Deferred adjudication is a form of probation under which a judge

postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of that probation. Orders of nondisclosure are court orders that seal criminal records from the public but allow limited access by criminal justice agencies and certain others. Orders of nondisclosure are available only in certain cases in which individuals receive deferred adjudication.

Under Government Code, sec. 411.081(d), persons receiving a discharge and dismissal from deferred adjudication who also meet certain conditions may ask the court for an order of nondisclosure of their criminal records. Under sec. 411.081(e), individuals are entitled to request an order of nondisclosure only if they are not convicted of or placed on deferred adjudication for any offense other than a fine-only traffic offense while they are on deferred adjudication or during the waiting period for asking for non-disclosure.

In addition, under sec. 411.081(e), individuals are not entitled to ask for nondisclosure if they were placed on deferred adjudication for or have previous convictions or deferred adjudications for certain offenses, including those that require registration under the state's sex offender registration laws; aggravated kidnapping; murder; capital murder; injury to a child, elderly individual, or disabled individual; abandoning or endangering a child; stalking; offenses involving family violence; and violations of certain court orders or conditions of bonds in family violence, sexual assault or abuse, or stalking cases.

In eligible cases, courts shall issue orders of nondisclosure after notice to the prosecutor, an opportunity for a hearing, and determinations that the person was eligible to file a request for nondisclosure and that the order would be in the best interest of justice.

Under Government Code, sec. 411.081(g-3), courts cannot disclose to the public information in records that are subject to orders of nondisclosure. Courts can disclose the information only to criminal justice agencies, for criminal justice or regulatory licensing purposes, to entities listed in Government Code, sec. 411.081(i), or to the person who is the subject of the order. Under Government Code, sec. 411.081(i), criminal history

record information that is subject to a nondisclosure order may be disclosed to non-criminal justice agencies specified in the section. (There are three Government Code, secs. 411.081(i), due to multiple bills that amended the section being enacted by the 83rd Legislature.)

Under sec. 411.081(d)(1) and (2), individuals can ask a court for an order of nondisclosure upon the discharge and dismissal if placed on deferred adjudication for certain misdemeanors but must wait two years for others. Individuals must wait two years after the discharge and dismissal of their case if placed on deferred adjudication for a misdemeanor under Penal Code, ch. 20 (kidnapping, unlawful restraint, and human smuggling); ch. 21 (sex offenses); ch. 22 (assaultive offenses); ch. 25(family violence offenses); ch. 42 (disorderly conduct); and ch. 46 (weapons). If placed on deferred adjudication for a felony, the waiting period to ask for a nondisclosure order is five years after the discharge and dismissal.

Under Government Code, sec. 411.081(g-2), persons whose criminal history records have been sealed under orders of nondisclosure are not required to state in applications for employment, information, or licensing that they have been subject to criminal proceedings relating to the offense.

DIGEST:

SB 1902 would expand eligibility to request orders of nondisclosure and would revise the process for issuing orders of nondisclosure in some situations. Eligibility would be expanded from current provisions allowing the orders only for some individuals placed on deferred adjudication to allow requests for orders from persons convicted and placed on probation for certain misdemeanors.

The bill would reorganize the provisions dealing with eligibility for the orders and the procedures for issuing them. Most current provisions would be transferred from various sections of Government Code sec. 411.081 to a new subchapter titled E-1 within Government Code, ch. 411.

Overall eligibility requirements. SB 1902 would establish in Government Code, sec. 411.074 conditions similar to current ones that define overall eligibility for orders of nondisclosure.

Similar to current law, those eligible for an order of nondisclosure would

become ineligible if while on deferred adjudication or after sentencing for a misdemeanor conviction and during any required waiting period the individual was convicted of or placed on deferred adjudication for any offense other than a fine-only traffic offense.

In addition, as under current law, orders of nondisclosure could not be issued for those who had been convicted or placed on deferred adjudication for, or who had a previous conviction or deferred adjudication for, offenses that require registration under the state's sex offender registration law and certain offenses currently listed in Government Code, sec. 411.081(e). The bill would add human trafficking and continuous human trafficking to this list of offenses that would disqualify someone from a nondisclosure order.

SB 1902 would establish an additional criterion not in current law that would prohibit someone from receiving an order of nondisclosure if the court made an affirmative finding that the offense for which nondisclosure was being requested involved family violence.

Orders without petition for deferred adjudication for certain misdemeanors. The bill would establish procedures for those placed on deferred adjudication for certain misdemeanors to be issued orders of nondisclosure without a petition having to be filed with the court. Eligibility under these provisions would apply to individuals with no previous convictions or placement on deferred adjudication for an offense except for a fine-only traffic offense.

Eligibility for an order of nondisclosure under these provisions would not apply to individuals:

- placed on deferred adjudication for a misdemeanor offense under the following Penal Code sections: ch. 20 (kidnapping, unlawful restraint, and human smuggling); ch. 21 (sex offenses); ch. 22 (assaultive offenses); ch. 25 (family violence offenses); ch. 42 (covering disorderly conduct and related offenses); ch. 43 (public indecency, including prostitution and obscenity); ch. 46 (weapons); and ch. 71 (organized crime); and
- for whom a court had made an affirmative finding that it was not in

the best interest of justice that the person receive an order of nondisclosure.

If a judge placing someone on deferred adjudication for a misdemeanor eligible for an order of nondisclosure determined that it was not in the best interest of justice for the person to receive an automatic order, the judge would have to file an affirmative finding to that effect.

Courts would be required to issue an order of nondisclosure if an eligible individual completed deferred adjudication under this section, received a discharge and dismissal of their case, and met the overall requirements in Government Code, sec. 411.074. The bill would establish deadlines for courts to issue the order relative to when they discharged and dismissed the proceedings.

Before an order of nondisclosure could be issued, the person receiving the order would be required to pay a $28 fee to the court, the same fee required of those who file petitions with court requesting an order.

Orders for deferred adjudications for certain felonies, certain misdemeanors. SB 1902 would establish eligibility for orders of nondisclosure for individuals placed on deferred adjudication for certain felonies and misdemeanors who would not qualify for orders of nondisclosure under the above requirements. These provisions would be similar to current law provisions for those on deferred adjudication for certain felonies and misdemeanors.

Such requests could be made if the individual was not prohibited by Government Code, sec. 411.074 and if the current waiting periods of two or five years were met. The bill would add offenses for public indecency under Penal Code, ch. 43 to the list of offenses that require a two-year waiting period.

In these cases, courts would issue orders of nondisclosure after notice to the prosecutor, an opportunity for a hearing, and determinations that the person was eligible to file a request for nondisclosure and that the order would be in the best interest of justice.

Orders after convictions, probation for certain misdemeanors. SB 1902 would authorize requests for orders of nondisclosure for those who were convicted of certain misdemeanors and placed on probation and who did not have their probation revoked.

Convictions for misdemeanors under the following offenses would be excluded: driving or operating a watercraft by a minor under the influence of alcohol, driving while intoxicated, flying while intoxicated, boating while intoxicated, assembling or operating an amusement ride while intoxicated, or violations of court orders enjoining organized criminal activity.

Individuals asking for an order of nondisclosure would have to qualify under Government Code 411.074 and could not have had a previous conviction for or been placed on deferred adjudication for another offense other than a fine-only traffic offense.

In these cases, courts would issue orders of nondisclosure after notice to the prosecutor, an opportunity for a hearing, and determinations that the person was eligible to file a request for nondisclosure and that the order would be in the best interest of justice.

Requests could be made under these circumstances two years after the end of probation for misdemeanors under: ch. 20 (kidnapping, unlawful restraint, and smuggling of persons); ch. 21 (sex offenses), ch. 22 (assaultive offenses); ch. 25 (offenses against the family); ch. 42 (disorderly conduct and related offenses); ch. 43 (public indecency); and ch. 46 (weapons). For other misdemeanors, requests could be made after probation was completed.

Orders after convictions, confinement for certain misdemeanors. The bill would establish eligibility to request orders of nondisclosure for those convicted of and sentenced to terms of confinement for certain misdemeanors. Convictions for misdemeanors under the following offenses would be excluded: driving or operating a watercraft by a minor under the influence of alcohol, driving while intoxicated, flying while intoxicated, boating while intoxicated, assembling or operating an amusement ride while intoxicated, or violations of court orders enjoining

organized criminal activity.

Individuals asking for an order of nondisclosure would have to qualify under Government Code, sec. 411.074 and could not have had a previous conviction for or have been placed on deferred adjudication for another offense other than a fine-only offense under the Transportation Code.

In these cases, courts would issue orders of nondisclosure after notice to the prosecutor, an opportunity for a hearing, and determinations that the person was eligible to file a request for nondisclosure and that the order would be in the best interest of justice. Such requests could be made two years after the end of a term of confinement.

Other provisions. Other provisions of SB 1902 would:

- make criminal history record information related to a conviction that was the subject of an order of nondisclosure able to be admitted into evidence during a trial for a subsequent offense or disclosed to a prosecutor for criminal justice purposes;
- require that when courts pronounce a sentence they inform defendants of their right to ask a court for an order of nondisclosure, unless the defendant was ineligible to obtain an order due to the nature of the offense or the defendant's criminal history;
- require courts dismissing proceedings against defendants on deferred adjudication to grant an order, if required, or to inform a defendant about eligibility to receive an order;
- add banks and other financial institutions to the list of entities that can receive information subject to orders of nondisclosure if it related to an employee, contractor, subcontractor, intern, volunteer, or an applicant for employment; and
- allow judges to refer to magistrates cases involving orders of nondisclosure that do not require petitions.

The bill would take effect September 1, 2015, and would apply only to the issuance of an order of nondisclosure for an offense committed on or after that date. SB 1902 would prevail if it conflicted with another act of the

84th Legislature.

SUPPORTERS SAY:

SB 1902 would allow an expanded but limited and appropriate group of ex-offenders who have paid their debt to society to ask to have their criminal records sealed to help them rebuild their lives. Current law allowing only certain individuals who successfully complete deferred adjudication to ask for orders of nondisclosure is too narrow and excludes many deserving individuals.

When criminal records are publically available, ex-offenders can struggle to rebuild their lives. They can have difficulties with access to housing, jobs, and school, which can effect recidivism. At some point, some low-level ex-offenders with misdemeanor convictions, who have done what was asked of them of them and gone on to lead law-abiding lives deserve a second chance at a life without a criminal record.

SB 1902 would provide that chance by expanding eligibility for orders of nondisclosure to certain first-time offenders with convictions for specified misdemeanor offenses who have been placed on probation or served a sentence of confinement. This would recognize that these offenders met their obligations after an offense and would provide an incentive for them to continue to abide by the law.

The bill would maintain current safeguards and add additional ones to ensure that eligibility for orders of nondisclosure was extended only to an appropriate group of offenders. As under current law, those with certain sex, serious, and family violence offenses listed in Government Code, sec. 411.074(e) would be excluded from eligibility for the orders. The bill would add offenses with an affirmative finding of family violence and human trafficking offenses to the list of offenses that exclude someone from eligibility.

In the case of misdemeanor convictions resulting in probation or confinement, the bill would exclude those with driving while intoxicated, other intoxication offenses, and violations of court orders enjoining organized criminal activity. Also excluded would be those with previous convictions or deferred adjudications for any offense other than a fine-only traffic offense. As under current law, individuals would have to

successfully complete their deferred adjudication or probation terms and not commit another crime during that term or during a waiting period. For all these cases, there would be oversight and checks and balances to ensure only appropriate orders of nondisclosure were issued because prosecutors would have to be notified, a hearing could be held, and a determination would have to be made that an order of nondisclosure was in the best interest of the public.

SB 1902 would not influence decisions for deferred adjudications and trials. There would not be a disincentive for deferred adjudication as those seeking orders of disclosure after a conviction that resulted in confinement would have to wait two years. For some, deferred adjudication could result in a streamlined order of nondisclosure, and in certain cases of convictions and probation, orders could be requested upon completion of probation.

To help reduce the barriers to obtaining orders of nondisclosure, the bill would establish a streamlined process for those with eligible first misdemeanor offenses who were given deferred adjudication so that these cases would proceed without a petition. There would be judicial discretion and checks and balances in these cases because nondisclosure would occur if a court made an affirmative finding that nondisclosure was not in the best interest of justice.

For others, SB 1902 would impose reasonable timelines for requests for orders so that these individuals could prove they would remain law abiding before getting their records sealed. Some of those completing a probation term could ask for an order after their term, and those serving confinement would have to wait two years. This would be in line with current law waiting periods for those receiving deferred adjudication for eligible misdemeanors and felonies.

Records under a nondisclosure order would continue to be available for criminal justice purposes as they are under current law, and the bill would say explicitly that information related to a conviction that was the subject of a nondisclosure order under the bill could be used as evidence during a trial for a subsequent offense.

OPPONENTS SAY:

SB 1902 would go too far in expanding those who can have their records sealed under an order of nondisclosure. Nondisclosure of records was designed for a limited group of offenders who receive deferred adjudication under which they were not convicted. Access to public records can be important for employers, landlords, the press, and others, and as eligibility for nondisclosure is expanded, this access decreases.

SB 1902 would allow some with convictions for relatively serious offenses to be eligible for nondisclosure. These convictions could include misdemeanor offenses that can carry sentences of up to year in confinement, such as assault and theft. Some of these offenses could have been handled in jury trials, something for which the information generally remains public.

The bill could increase trials by providing a disincentive for some to agree to deferred adjudication. Currently, because of the opportunity to have records sealed, some individuals may agree to forgo a trial and accept deferred adjudication and the rehabilitation programs or other requirements that come with it. Under the bill, some offenders might choose to go to trial with the possibility of confinement and then pursue an order of nondisclosure rather than agree to the terms of deferred adjudication.

For some offenders, SB 1902 would provide a process for the sealing of some records without requiring a petition and without a chance for the prosecutor to object or to request a hearing. This would remove oversight and checks and balances in the system that work to ensure that courts have full information about an individual and that orders of nondisclosure are granted only in appropriate cases.

NOTES:

The House companion bill, CSHB 3936 by Herrero, was reported favorably from the House Criminal Jurisprudence Committee on May 4.

SUBJECT: Providing certain authority to captive insurance companies

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Frullo, G. Bonnen, Guerra, Meyer, Paul, Sheets, Workman

0 nays

2 absent — Muñoz, Vo

SENATE VOTE: On final passage, April 9 — 31-0 on local and uncontested calendar

WITNESSES: *(On House companion bill, HB 1700)*
For — Joshua Magden, Texas Captive Insurance Association; (*Registered, but not testify*: Kinnan Golemon, Shell Oil Company; Amanda Martin, Texas Association of Business)

Against — None

On — Jamie Walker, Texas Department of Insurance

BACKGROUND: SB 734 by Carona, enacted by the 83rd Legislature in 2013, authorized companies in Texas to create their own captive insurance companies. Captive insurance companies are regulated by the Texas Department of Insurance and must meet certain standards provided by the department. Under Insurance Code, sec. 964.051, captive insurance companies in Texas may not issue life insurance, workers' compensation insurance, or other specified forms of insurance.

DIGEST: SB 667 would allow a captive insurance company to join other captive insurance companies to create a reinsurance pool.

A captive insurance company, with the approval of the commissioner of insurance, could accept risks from, cede risks to, or take credit for reserves on risks ceded to a captive reinsurance pool composed only of other captive insurance companies or affiliated captive insurance companies with a certificate of authority. The certificate could be issued under

Insurance Code, ch. 964, which regulates captive insurance companies, or under a similar law of another jurisdiction.

Before determining whether to approve a captive insurance company's participation in a captive reinsurance pool, the commissioner could require that the reinsurance pool:

- be composed only of other captive insurance companies with a certificate of authority under ch. 964 or a similar law of another jurisdiction; and
- be able to meet its financial obligations.

The commissioner could impose any other limitations or requirements necessary and proper to provide adequate security for the captive insurance company.

SB 667 also would allow captive insurance companies, with the commissioner's approval, to issue dividends or other distributions to people who owned an equity interest in the company. The commissioner would adopt rules to implement this provision.

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:

SB 667 would make the state more attractive to large companies that currently are unable to create a captive insurance company in Texas without collaborating with other captive insurance companies.

Captive insurance companies can save large companies a substantial amount of money. When a company that is large enough to create its own captive insurance company seeks to relocate, it usually is being courted by many different locations. Because of the cost savings of having a captive insurance company, a state's insurance laws can be a critical factor in deciding where to relocate.

Any concerns about a captive insurance company having unethical intentions are not relevant to the kinds of captive insurance companies

allowed to operate in Texas. The law relating to captive insurance companies in Texas is very narrow — it is primarily concerned with companies insuring their own equipment and facilities. If the captive insurance company failed, then the company itself would be directly liable to pay the claim. The commissioner of insurance applies the same diversification and solvency standards to captive insurance companies as are applied to other insurance companies.

OPPONENTS SAY:

SB 667 could expand the presence of captive insurance companies in the state. While current state law keeps captive insurance companies within narrow confines, this bill could represent a trend toward giving them greater leeway. Captive insurance companies taking on larger roles in the company creates a possibility that the captive insurance company could be caught in a conflict of interest between the profit motives of the company and the best interest of employees.

NOTES:

The House companion bill, HB 1700 by Smithee, was placed for second-reading consideration on the May 13 General State Calendar but was not considered.

SUBJECT: Amending the position of border commerce coordinator

COMMITTEE: International Trade and Intergovernmental Affairs — favorable, without amendment

VOTE: 7 ayes — Anchia, Lozano, R. Anderson, Bernal, Burrows, Koop, Scott Turner

0 nays

SENATE VOTE: On final passage, May 4 — 25-6 (Burton, Creighton, Hall, Kolkhorst, Perry, V. Taylor)

WITNESSES: *(On House companion bill, HB 3378)*
For — Buddy Garcia, President, Modern Stewardship; *(Registered, but did not testify*: Stephen Ellsesser, Greater El Paso Chamber of Commerce; Arnold Flores, Cameron County; Amber Hausenfluck, City of McAllen; Elizabeth Lippincott, Texas Border Coalition; Chuck Rice, Texas Land Developer Association; Sally Velasquez, Willacy County Commissioners Court)

Against — None

On — *(Registered, but did not testify*: Chris Nordloh, Texas Department of Public Safety; Russell Zapalac, Texas Department of Transportation)

BACKGROUND: Three sections in the Government Code define duties of the border commerce coordinator. Several bills enacted beginning with the 76th Legislature in 1999 contain provisions related to this office. The three sections, all labeled as sec. 772.010, overlap in language covering many of the same duties.

DIGEST: SB 1389 would reenact and amend sections of the Government Code related to the duties of the border commerce coordinator.

Consolidating existing sections on coordinator duties. SB 1389 would repeal two of the three current sections in the Government Code labeled

sec. 772.010, which govern the duties of the border commerce coordinator. The bill would preserve and move certain language from repealed sections into the remaining sec. 772.010 to require that the coordinator continue to perform the following duties:

- study the flow of commerce at ports of entry between Texas and Mexico and establish a plan to aid that commerce and improve movement of commercial vehicles;
- work with work groups and government and community entities along the border to address the unique planning and capacity needs of those areas and submit an annual report to the Legislature on the coordinator's activities in this area;
- work with private industry and state and federal entities to require the sale of low-sulfur fuel along highways in Texas with increased traffic related to activities under the North American Free Trade Agreement; and
- work with representatives from the Mexican government and the Mexican states along the Texas border to increase the use of low-sulfur fuel.

New coordinator duties. SB 1389 also would add the following new duties required of a border commerce coordinator:

- identify problems with border truck inspections and related trade and transportation infrastructure and develop recommendations for addressing those problems;
- work with state and federal agencies to develop initiatives to mitigate congestion at ports of entry; and
- develop recommendations to increase trade by attracting new business ventures, to support expansion of existing and new industries, and to address workforce training needs.

Border mayor task force. SB 1389 would require the coordinator to appoint the "Texas Good Neighbor Committee" — a border mayor task force consisting of mayors from every Texas municipality located along the border that has a sister city in Mexico. This task force would advise the coordinator on key trade, security, and transportation-related issues

that were important to the municipalities represented. It also would hold quarterly meetings with mayors from Mexico to increase cooperation, communication, and the flow of information and to identify problems and recommend solutions.

The border mayor task force would seek assistance and input from private sector stakeholders involved in commerce to identify issues to address. It also would provide recommendations to assist the coordinator in carrying out his or her statutory duties.

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:

SB 1389 would foster increased cooperation and stronger coordination among Texas, Mexico, and private entities to support the flow of commerce along the Texas-Mexico border. The bill also would help the state understand economic issues resulting from increased wait times at the border and issues with the flow of commerce at the ports of entry through the coordinator's required reporting and recommendations.

Creating a border mayor task force would be critical to addressing the commercial issues facing border communities. These mayors know the area best. They could provide their insight in creating public policy that benefitted their communities, which would be preferable to relying on state agencies with less knowledge of the area to determine what was best for border communities.

Although the secretary of state carries out many of the same duties as the border commerce coordinator, maintaining the position would give the Office of the Governor the flexibility to assign these tasks to either.

The bill would clean up the coordinator's enabling statute to consolidate all the position's functions into one section, reducing confusion and misunderstanding about the coordinator's duties.

OPPONENTS SAY:

SB 1389 is unnecessary because the duties of the border commerce coordinator are already required duties of the secretary of state. The

coordinator's position is duplicative and a waste of funds. The position of the coordinator was necessary when it was created, but over time these duties have passed to the secretary of state. The coordinator position could be eliminated, rather than expanded. This bill would serve only to further enlarge the government.

NOTES:

A House companion bill, HB 3378 by Lucio, was considered in a public hearing of the House International Trade and Intergovernmental Affairs Committee on April 6 and left pending.

SUBJECT: Creating limited purpose disaster declaration authority for the governor

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Cook, Giddings, Craddick, Farney, Kuempel, Minjarez, Oliveira, Smithee

4 nays — Farrar, Harless, Huberty, Sylvester Turner

1 absent — Geren

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

WITNESSES: None

BACKGROUND: Government Code, ch. 418, subch. B, outlines the emergency management powers and duties of the governor. Under sec. 418.014, the governor may declare a state of disaster if a disaster has occurred or one is imminent. This provision details the requirements and procedures associated with a declaration.

Under sec. 418.016(a), the governor may suspend any regulatory statute on procedures for conduct of state business if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

Sec. 418.016(e) allows the governor, at the request of a political subdivision, to waive or suspend a deadline imposed by a statute or the orders or rules of a state agency on the political subdivision if the waiver or suspension is reasonably necessary to cope with a disaster.

DIGEST: SB 1465 would allow the governor, if the governor determined that a disaster could be adequately addressed without invoking all the powers and duties provided in the provisions governing emergency management, to issue a limited purpose disaster declaration that invoked the authority of only secs. 418.016(a) and 418.016(e).

A limited purpose disaster declaration would be subject to the same requirements as a regular declaration under Government Code, sec. 418.014.

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:

SB 1465 would allow the governor to declare a limited purpose disaster, which could help reduce government intrusion into the lives of residents during a disaster. A disaster declaration is a broad tool, and as the law currently stands, the governor does not have more limited options available to deal with a disaster. The bill would provide flexibility so the governor could tailor a response appropriate to the scale of a disaster.

The governor would retain the ability to suspend state agency rules in order to expedite state action and respond to local requests for assistance. The bill also would allow the governor to bypass signage requirements, as they may be unnecessary in the event of a minor disaster such as a drought.

OPPONENTS SAY:

SB 1465 would effectively allow the governor to bypass signage requirements in the event that a law, rule, or regulatory statute was temporarily suspended. In such an event, the installation of signage would be an important measure to ensure the public knew about the temporary suspension.

SUBJECT: Increasing the population cap for subregional transportation authorities

COMMITTEE: Transportation — favorable, without amendment

VOTE: 12 ayes — Pickett, Martinez, Burkett, Y. Davis, Fletcher, Harless, Israel, Minjarez, Murr, Paddie, Phillips, Simmons

0 nays

1 absent — McClendon

SENATE VOTE: On final passage, May 8 — 31-0, on local and uncontested calendar

WITNESSES: *(On House companion bill, HB 3777)*
For — Kelly Allen Gray and Denis McElroy, City of Fort Worth; (*Registered, but did not testify*: Jerry Valdez, City of Richland Hills; Matthew Geske, Fort Worth Chamber of Commerce; Mark Mendez, Tarrant County Commissioners Court; Vic Suhm, Tarrant Regional Transportation Coalition)

Against — None

On — Nancy Amos, Fort Worth Transportation Authority; (*Registered, but did not testify*: John Barton and Marc Williams, Texas Department of Transportation)

BACKGROUND: Transportation Code, ch. 452, subch. N specifies the board membership and appointment process for transportation authorities in subregions with no city with a population greater than 800,000. Subchapter O specifies the board membership and contains additional provisions for transportation authorities in subregions with a principal city that has a population greater than 800,000.

Transportation Code, sec. 452.655 requires that an election to withdraw from a subregional transportation authority be held on the first regularly scheduled election day 12 months after the local government calls for an election. Sec. 452.659 specifies that cities that withdraw from a

subregional transportation authority are responsible for a share of the authority's outstanding debt obligations at the time of withdrawal and establishes how the financial obligation is determined.

DIGEST:

SB 1511 would change the description of subregional transportation authorities under Transportation Code, ch. 452, subch. N to specify that such an authority would have no municipality with a population of more than 1.1 million, instead of 800,000 as in current law. The bill would specify in references to these transportation authorities elsewhere in the Transportation Code that the 1.1 million population figure was based on the most recent decennial census. It also would make conforming changes in Tax Code, ch. 321 to reflect this new threshold.

In addition, the bill would expand the membership of the board of a subregion governed by Subchapter N from nine to 11 members. The principal municipality's governing body would appoint one of the new seats, and the county commissioners court would appoint the other, unless the principal municipality was not entirely located within one county. In that case, the county commissioners court would appoint both of the new seats.

The bill would change the population threshold for subregional transportation authorities under Transportation Code, ch. 452, subch. O — those with a principal city with a population of 800,000 or more — to specify that the city would have a population of 1.1 million or more.

The bill would add provisions related to a municipality with a population of less than 10,000 that withdraws from a subregional transportation authority. The provisions would specify that the transportation authority retained title to real estate holdings, apart from rights-of-way, in the withdrawn municipality. The bill also would amend provisions on how a withdrawn city determined its financial obligation to an authority.

This bill would take effect September 1, 2015. The provisions related to financial obligations of cities that withdraw from a subregional transportation authority would expire August 31, 2016.

SUPPORTERS

SB 1511 is needed to accommodate the growth of Fort Worth and allow

SAY:

its regional transportation authority to continue operating under the same statute. The U.S. Census Bureau estimated the population of Fort Worth in 2013 at about 793,000. The Fort Worth Transportation Authority is organized under Transportation Code, ch. 452, subch. N, which applies to subregions containing no city larger than 800,000 people. At its current rate of growth, Fort Worth may soon exceed that cap, if it has not already.

The bill also would give more flexibility to Fort Worth suburbs, such as Richland Hills, that may no longer wish to be part of the subregional transportation authority. The bill would ensure that Richland Hills could make a smooth exit from the authority, while allowing the transportation authority to keep the real estate assets it uses in that area.

The bill would add two more board seats to the subregional transportation authority's board, which could give minorities a greater opportunity to serve on the board.

OPPONENTS SAY:

SB 1511 might address Fort Worth's numerical population growth, but not its population changes. Transportation Code, ch. 452, subch. O imposes requirements such as minority representation for the board of Dallas' subregional transportation authority (DART) and contracting with minority- and women-owned businesses, but subchapter N does not. These subchapter O requirements are intended to ensure that large cities have adequate minority representation, and it would be more appropriate to allow Fort Worth to grow into this category rather than changing the requirements for the municipality to fit within subchapter N. Legislation intended to address Fort Worth's growth into a big city also should acknowledge its diversity.

NOTES:

The House companion bill, HB 3777 by Collier, was finally passed by the House on May 13 and is scheduled for a public hearing today in the Senate Administration Committee. HB 3777 as engrossed would allow an authority governed by a subregional board under subchapter N to establish a program designed to increase the participation of minority and women-owned businesses in contracts awarded by the authority. It also would require the voting members of a subregional board under subchapter N to appoint one or more state legislators who represent an area included in the authority to serve in non-voting advisory positions to the board without

compensation.

SUBJECT: Requesting criminal record order of nondisclosure if conviction set aside

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Canales, Leach, Shaheen, Simpson

0 nays

2 absent — Moody, Hunter

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

WITNESSES: For — Sarah Pahl, Texas Criminal Justice Coalition; Greg Glod, Texas Public Policy Foundation; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Justin Keener, representing Doug Deason; Traci Berry, Goodwill Central Texas; Mike Wolfe, Office of Harris County District Clerk Chris Daniel; Lori Henning, Texas Association of Goodwills; Josh Gravens, Texas Citizens United for Rehabilitation of Errants (CURE); Patricia Cummings, Texas Criminal Defense Lawyers Association)

Against — None

BACKGROUND: Deferred adjudication is a form of probation under which a judge postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of that probation.

Under Government Code, sec. 411.081(d), persons receiving a discharge and dismissal from deferred adjudication who also meet certain conditions may ask the court for an order of nondisclosure of their criminal records. Under sec. 411.081(e), these conditions include not being convicted of or placed on deferred adjudication for any offense other than a fine-only traffic offense while on deferred adjudication or during the waiting period for asking for non-disclosure. Individuals are not entitled to ask for nondisclosure if they were placed on deferred adjudication for or have previous convictions or deferred adjudications for certain sex, violent, or family violence offenses listed in sec. 411.081(e).

Under Government Code, sec. 411.081(g-3), courts cannot disclose to the public information in records that are subject to orders of nondisclosure. Courts can disclose the information only to criminal justice agencies, for criminal justice or regulatory licensing purposes, to entities listed in Government Code, sec.411.081(i), or to the person who is the subject of the order. Sec. 411.081(i) allows criminal justice agencies to disclose criminal history record information that is subject to a nondisclosure order only to the non-criminal justice agencies specified in the section.

Under Code of Criminal Procedure, art. 42.12, sec. 20(a), certain persons placed on community supervision who complete at least one-third of their probation terms, or two years, whichever is less, can have their probation term reduced or terminated. If the probationer is discharged, the judge can set aside the verdict or allow the probationer to withdraw a plea and must dismiss the case. The person is then released from the penalties from the offense except that the conviction or guilty plea will be made known to a judge if the person is convicted of another offense or the Health and Human Services Commission may consider that the person has received community supervision in the course of issuing, renewing, denying, or revoking certain licenses.

DIGEST:

SB 130 would expand the category of people that could ask a court for an order of nondisclosure to include those placed on community supervision who had their probation terms reduced or terminated by a judge after serving at least one-third of their terms or two years, whichever was less, and had their convictions set aside.

This would not apply to those convicted of certain offenses listed in Code of Criminal Procedure, art. 42.12, sec. 5(d) for which deferred adjudication is unavailable. It also would not apply to those who would be barred from asking for an order of nondisclosure because they had been placed on deferred adjudication for certain offenses listed in Government Code, sec. 411.081(e).

After notice to the prosecutor, an opportunity for a hearing, and a determination that the nondisclosure was in the best interest of justice and that the person met the criteria to ask for nondisclosure, the court would

be required to issue an order. The order would prohibit criminal justice agencies from disclosing to the public the criminal history record related to the offense. Criminal justice agencies could disclose information subject to the order only to criminal justice agencies for criminal justice purposes, to entities that currently can receive information when such records are sealed under a nondisclosure order, and to the person subject to the order.

A person could petition the court for an order of nondisclosure after the conviction was set aside if the offense was a misdemeanor. If the conviction was a felony, the petition could be made five years after a conviction was set aside.

The bill would take effect September 1, 2015, and would apply to convictions set aside on or after that date.

SUPPORTERS SAY:

SB 130 would give probationers who had their verdicts set aside the same options for handling their criminal records that currently are available to similar offenders. Currently, the records of probationers whose terms are reduced or terminated and then set aside are not eligible to be sealed through an order of nondisclosure because this option is available only to those given deferred adjudication. These records also are not eligible for pardons followed by an expunction because when a conviction is set aside, there is no conviction to pardon. This leaves these offenders no option for asking to have their records closed to the public. When criminal records are publicly available, people can have difficulties with access to housing, jobs, school, and more.

SB 130 would remedy this by allowing a narrow group of deserving probationers to ask courts to have their records sealed under the same process and guidelines used for those given deferred adjudication. Under the bill, courts would have deemed the person worthy of probation, which was then terminated and the conviction set aside. This is analogous to offenders who receive deferred adjudication and then have their cases dismissed. Offenders convicted of or with previous convictions for certain offenses would not be eligible. For felony offenses, individuals would need a clean record for five years to be eligible to make a request. Asking for nondisclosure would not guarantee it would be granted, but a court

would make the final decision and prosecutors could raise objections.

The state has deemed that restricting public access to criminal records is appropriate in some circumstances, and SB 130 is a limited bill that would be consistent with those circumstances. Criminal justice agencies would continue to access these records and could use them if the person again ran afoul of the law.

OPPONENTS SAY:

Nondisclosure of records was designed for a limited group of offenders who receive deferred adjudication under which they were not convicted. SB 130 would expand this to a group of offenders who had been convicted, which could open the door to further expansion.

The state should carefully evaluate whether to allow more people to have their public records sealed through orders of nondisclosure. Access to public records can be important for employers, landlords, the press, and others. As eligibility for nondisclosure is expanded, this access decreases.

NOTES:

According to the Legislative Budget Board's fiscal note, SB 130 would result in a gain to general revenue of $1.2 million during fiscal 2016-17 due to increased court filing fees related to petitions for orders of nondisclosure. The overall revenue gain to the state is estimated at $3 million per fiscal year.