HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 26, 2015
84th Legislature, Number 80
The House convenes at 10 a.m.
Part Three

Thirty-two bills and three joint resolutions are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part Three of today's *Daily Floor Report* are listed on the following page.

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

Alma Allen
Chairman
84(R) - 80

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, May 26, 2015

84th Legislature, Number 80

Part 3

SUBJECT: Allowing HIV test results release upon subpoena in criminal proceeding

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 6 — 20-11 (Ellis, Garcia, Hinojosa, Lucio, Menéndez, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: None

BACKGROUND: Health and Safety Code, ch. 81, subch. F deals with tests for HIV and AIDS. Under Health and Safety Code, sec. 81.103, test results are confidential, and a person who possesses or has knowledge of a test result cannot release or disclose the result or allow it to become known except under certain conditions.

DIGEST: SB 779 would make test results under Health and Safety Code, sec. 81.103, subject to release and disclosure in criminal proceedings under the Code of Criminal Procedure's subpoena provisions for both grand jury and other subpoenas. A person releasing or disclosing test results under these provisions in a criminal proceeding would not be subject to criminal or civil liability or professional disciplinary action, except in a case of gross negligence or willful misconduct.

Before entering the results into evidence or releasing or disclosing the test results, a court would have to issue a protective order or take other action to limit the release or disclosure of results. If the result was obtained under a grand jury subpoena, the court would have to issue the order or take action to limit release of the test before it was presented to the grand jury.

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 779 would fill a gap in current law that prohibits certain test results from being obtained for use in criminal proceedings. The confidentially requirement in Health and Safety Code, sec. 81.103 can hinder criminal cases in which the transmission of HIV may be at issue. This problem has been brought to light by sexual assault and other cases in which exposure to HIV was related to an alleged criminal offense.

The bill would address this issue by allowing very limited access to these results for criminal proceedings. The access in the bill would be consistent with federal health care law that protects the privacy of medical records and would better align the handling of these tests with those of other diseases. The results could be accessed only through a subpoena, and both the defense and the prosecution could obtain the information.

The bill would impose additional privacy protections to ensure test results were not used to invade a defendant's privacy. Courts would have to issue protective orders or take other action to limit the release or disclosure, and other provisions in current law would help keep the results confidential.

OPPONENTS SAY:

SB 779 could result in test results obtained under the bill as part of a criminal proceeding being used to stigmatize defendants or to invade their privacy.

SUBJECT: Lowering proficiency requirement to obtain a concealed handgun license

COMMITTEE: Homeland Security & Public Safety — favorable, without amendment

VOTE: 8 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, M. White, Wray

0 nays

1 absent — Moody

SENATE VOTE: On final passage, March 24 — 31 - 0

WITNESSES: *(On the companion bill, HB 284)*
For — Richard Briscoe, Open Carry Texas; Alice Tripp, Texas State Rifle Association; Leland Freeman; (*Registered, but did not testify:* Tara Mica, National Rifle Association; Rachel Malone, Texas Firearms Freedom; Read King; Noe Perez; Raymond Smith)

Against — (*Registered, but did not testify:* Jonathan Panzer, Texas Gun Sense; Heather Ross; Nobie White)

On — (*Registered, but did not testify:* Michael Cargill)

BACKGROUND: Government Code, sec. 411.188 requires completion of a handgun proficiency course to obtain a license to carry a concealed handgun. The course must include classroom and range instruction, including a demonstration of the applicant's ability to safely and proficiently use a handgun. An applicant must demonstrate, at a minimum, the degree of proficiency to effectively operate a handgun of .32 caliber or above.

DIGEST: SB 179 would amend Government Code, sec. 411.188 by lowering the caliber of a handgun that could be used to demonstrate proficiency for purposes of obtaining a concealed handgun license from .32 calibers or above to .22 calibers or above.

The bill would take effect September 1, 2015.

SUBJECT: Authorizing injury leave for law enforcement commissioned by AG

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

2 absent — Farrar, Smithee

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

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 661.918 entitles certain law enforcement officers and agents to injury leave without a salary deduction or a reduction of any other kind of leave that the officer has accrued. This applies to law enforcement commissioned by:

- the Public Safety Commission and the director of the Department of Public Safety;
- the Parks and Wildlife Commission; or
- the Texas Alcoholic Beverage Commission.

These officers and agents are eligible for injury leave for any injury received due to the nature of the officer's duties that occurred during the course of duty.

The attorney general employs various officers and agents for its different divisions to investigate sexual predators, deceptive trade practices, and other offenses of state and federal crimes, but they are not entitled to the injury leave provided under Government Code, sec. 661.918.

DIGEST: SB 1330 would include law enforcement officers and agents of the attorney general in the list of officers and agents that are eligible to receive injury leave if injured in the course of duty.

The bill would take effect September 1, 2015.

SUBJECT: Electronic filing campaign finance reports, personal financial statements

COMMITTEE: General Investigating and Ethics — favorable, without amendment

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

0 nays

1 absent — Hunter

SENATE VOTE: On final passage, May 6 — 31-0

WITNESSES: None

BACKGROUND: Elections Code, ch. 254 governs the reporting of political funds and campaigns.

Government Code, ch. 572 governs personal financial disclosures, standards of conduct, and conflicts of interest.

Currently, local officeholders and candidates are allowed to file personal financial statements with local authorities, but it is unclear whether they are required to use locally developed software or the Texas Ethics Commission's newly developed electronic filing system.

Because not all local authorities in Texas, especially in rural and smaller counties, have the resources to develop an electronic filing system, electronic filing may not be widely adopted in these localities. Electronic filing also may not be widespread among state-level candidates and officeholders.

DIGEST: SB 1437 would allow state and local candidates and officeholders to use the Texas Ethics Commission (TEC) electronic filing application to file campaign finance reports and personal financial statements with TEC and with local filing authorities equipped to receive such filings.

Campaign finance reports. The bill would allow a report filed with an

authority other than the TEC to be filed electronically using computer software developed by the TEC if the authority with whom the report was required to be filed had adopted rules and procedures for the filing of the report using the software.

Personal financial statements. The bill would require a personal financial statement for a state officer to be filed with the TEC by computer diskette, modem, or other means of electronic transfer using computer software provided by the TEC or computer software that met TEC specifications for a standard file format.

Each personal financial statement filed with a filing authority other than the TEC that was not filed electronically would have to be accompanied by a sworn affidavit. Personal financial statements would be considered to be under oath, subjecting a person to prosecution for perjury and other falsification, regardless of the absence of or a defect in the affidavit.

The bill would exempt a person who electronically filed a financial statement with the TEC or another filing authority from the requirement to include a notarized affidavit with the financial statement if the person used an electronic filing password under rules of the TEC or other authority.

The bill also would amend the Local Government Code to allow certain local candidates and officeholders to file financial statements electronically using computer software developed by the TEC if the authority with whom the report was required to be filed had adopted rules and procedures to provide for the filing of the statement using the software.

The bill would take effect September 1, 2015, and changes regarding financial statements would apply only to a financial statement due on or after the effective date of the act.

SUBJECT: Thresholds for pecuniary punishments for certain property, other crimes

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

SENATE VOTE: On final passage, April 30 — 31-0, on local and uncontested calendar

WITNESSES: (*On House companion, HB 1530*)
For — Douglas Smith, Texas Criminal Justice Coalition; Derek Cohen, Texas Public Policy Foundation; (*Registered, but did not testify:* Matt Simpson, ACLU of Texas; Traci Berry, Goodwill Central Texas; Cathy Dewitt, Texas Association of Business; Lori Henning, Texas Association of Goodwills; Patricia Cummings, Texas Criminal Defense Lawyers Association; Rebecca Bernhardt, Texas Fair Defense Project; Yannis Banks, Texas NAACP)

Against —None

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

BACKGROUND: Throughout the Penal Code, specific pecuniary loss thresholds are applied to property crimes to determine the punishment applied for the offense. For example, Penal Code, sec. 31.03 establishes the punishments for theft as a class C misdemeanor (maximum fine of $500) if the value of the property stolen is less than $50, a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if the value of the property stolen is $50 or more but less than $500, and a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if the value of the property stolen is $500 or more but less than $1,500.

Generally, these loss thresholds were established in 1993 when the Penal Code was revised and have not been updated.

DIGEST:

SB 393 would increase the pecuniary loss thresholds applied to certain punishment ranges to determine how numerous property offenses would be punished, including criminal mischief, graffiti, theft, and fraud. The bill also would increase the loss thresholds for the crime of abuse of official capacity, part of the Penal Code chapter on offenses against public administration.

The bill would make other changes in punishments for some of these offenses, including:

- establishing a class C misdemeanor punishment for graffiti if the amount of loss was less than $100;
- expanding punishments for some repeat offenses for breaches of computer security to include misdemeanor punishments;
- creating a class C misdemeanor punishment for organized retail theft of less than $100; and
- extending the current punishment ranges for the fraudulent transfer of a motor vehicle to include first- and second-degree felony punishments.

The bill would take effect September 1, 2015, and would apply to offenses committed on or after that date.

SUBJECT: Requiring recognition of risks in agency information security plans

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

2 absent — Farrar, Smithee

SENATE VOTE: On final passage, April 30 — 31-0 on local and uncontested

WITNESSES: None

BACKGROUND: Government Code, sec. 2054.133 requires each state agency to develop and periodically update an information security plan for protecting the agency's information from unauthorized access, disclosure, destruction, and other security threats.

A successful cybersecurity attack could pose serious threats to state infrastructure and the personal information of Texans. Observers have noted that the lack of direct communication between organizations' cybersecurity officers and upper management could increase the risks posed by such an attack. SB 1597 by Zaffirini, enacted by 83rd Legislature, requires state agencies to submit an information security plan biennially, but does not require that state agency executives be informed of cybersecurity and other risks revealed during the plan development process.

DIGEST: SB 35 would require that each agency's information security plan include a written acknowledgement that the official head of the agency, the chief financial officer, and each executive manager of the agency be made aware of the risks revealed during the preparation of the agency's information security plan.

The bill would take effect September 1, 2015.

SUBJECT: Establishing a governor's program for victims of child sex trafficking

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Minjarez, Oliveira

0 nays

4 absent — Giddings, Craddick, Smithee, Sylvester Turner

SENATE VOTE: On final passage, April 29 — 31-0

WITNESSES: No public hearing

BACKGROUND: Under Penal Code, ch. 20A, it is a crime to knowingly traffic a child and by any means cause the trafficked child to engage in or become victim of certain prohibited conduct, including prostitution, sexual assault, and promotion of child pornography. It is also a crime for a person to receive a benefit from participating in a venture that involves one of the prohibited activities or to engage in sexual conduct with a child trafficked in the manner described above.

According to data from federal authorities, more than 100,000 children become victims of commercial sexual exploitation each year in the United States. Victims of child trafficking experience intense trauma, and comprehensive victim services play a critical role in their rehabilitation and treatment.

DIGEST: SB 1708 would establish a program through the governor's office for providing comprehensive, individualized services to address the rehabilitation and treatment needs of child sex trafficking victims.

The governor would appoint a director of the program who would be required to coordinate with state and local law enforcement agencies, state agencies, and service providers to identify victims of child sex trafficking eligible to receive services under the program.

For every identified child victim, the program would be required to immediately facilitate the assignment of a caseworker to coordinate with local service providers on creating a customized package of services to fit the victim's immediate and long-term rehabilitation and treatment needs. These services would be required to address all aspects of the medical, psychiatric, psychological, safety, and housing needs of the victim.

The bill would take effect September 1, 2015, and the program would be established and its director named no later than December 1, 2016.

NOTES:

The Legislative Budget Board estimates the bill would have a negative fiscal impact of $4 million in general revenue related funds during fiscal 2016-17.

SUBJECT: Housing recovery plans for natural disasters

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 4 ayes — Deshotel, E. Thompson, Cyrier, Sanford

0 nays

3 absent — Bell, Krause, Lucio

SENATE VOTE: On final passage, May 11 — 27-4 (Burton, Campbell, Hall, Huffines)

WITNESSES: No public hearing

BACKGROUND: The Federal Emergency Management Agency (FEMA) coordinates government-wide relief efforts during natural or man-made disasters. FEMA is designed to bring an orderly and systemic means of federal natural disaster assistance for state and local governments in carrying out their responsibilities to aid citizens.

The U.S. Department of Housing and Urban Development (HUD) provides flexible grants to help cities, counties, and states recover from disasters declared by the president. In response to such a disaster, Congress may appropriate additional funding for the Community Development Block Grant program as disaster recovery grants to rebuild affected areas.

Government Code, ch. 418, establishes the Texas Disaster Act of 1975, which provides services related to disaster relief, including an emergency management system embodying all aspects of pre-disaster preparedness and post-disaster relief.

DIGEST: SB 1376 would establish a state process for the administration and funding for the rapid and efficient construction of permanent replacement housing following a natural disaster using a plan developed by a local government with input from a variety of public and private sources.

SB 1376 would require the General Land Office (GLO), or another state agency designated by the governor, to administer federal and state funds appropriated for long-term natural disaster recovery. GLO, or the agency, would be required to:

- collaborate with the Texas Division of Emergency Management and FEMA to secure housing reimbursements for areas affected by natural disasters;
- seek prior approval from FEMA and HUD for the immediate implementation of a governor-approved local housing recovery plan if a disaster occurred; and
- maintain adequate staffing and adopt necessary rules to implement duties relating to long-term natural disaster recovery.

A local government could develop and adopt a local housing recovery plan, with input from stakeholders in the community and neighboring local governments, for the rapid construction of permanent replacement housing following a natural disaster.

A local government recovery plan could be submitted to the Hazard Reduction and Recovery Center at Texas A&M University to receive certification. This plan would have to meet certain criteria specified in the bill in order to be certified. If the center determined the plan did not satisfy these criteria, it would identify the plan's deficiencies and assist the local government in revising the plan to meet the criteria.

The center would provide training to local governments and community-based organizations to develop a plan. The training would include certain information related to natural disasters and housing recovery. The local government would be required to designate at least one representative to attend this training.

This bill would require the center to fulfill certain other duties related to natural disasters, including creating and maintaining mapping and data resources related to natural disaster recovery and providing recommendations to the Texas Department of Insurance for the development of certain policies, procedures, and education programs. The center could seek and accept gifts, grants, donations, and other funds to

assist in fulfilling its duties.

A plan that was certified by the center would be submitted for review to the General Land Office (GLO), which would review the plan and consult with the local government and the center to give suggestions for improvements. GLO would be required to give deference to the local government regarding matters in the local government's discretion. GLO would accept the plan unless it did not satisfy the criteria or certain requirements mentioned above or comply with applicable state and federal law.

A plan that was accepted by GLO would be submitted to the governor for approval. The governor would be required to provide a written explanation if plans were rejected. Any plan the governor rejected could be revised by the local government and resubmitted to the governor for approval.

A plan that received the governor's approval would be valid for four years and could be implemented during this period without further approval if a natural disaster occurred. The plan could be reviewed, at any time on or before expiration, by the center and GLO and updated and resubmitted to the governor's office for approval or rejection.

This bill would take effect September 1, 2015.

SUBJECT: Re-establishing the Truancy Prevention and Diversion Fund

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 16 ayes — Otto, Ashby, Bell, G. Bonnen, Burkett, S. Davis, Gonzales, Howard, Hughes, Koop, Márquez, Miles, Phelan, Raney, Sheffield, VanDeaver

0 nays

11 absent — Sylvester Turner, Capriglione, Dukes, Giddings, Longoria, McClendon, R. Miller, Muñoz, Price, J. Rodriguez, Walle

SENATE VOTE: On final passage, May 4 — 25-6 (Campbell, Fraser, Hancock, Kolkhorst, Nichols, V. Taylor)

WITNESSES: No public hearing

BACKGROUND: The 83rd Legislature in 2013 enacted SB 1419 by West, which established a court fee to fund truancy prevention and intervention. Under this legislation, individuals convicted of certain offenses in municipal or justice courts are required to pay the $2 court fee, in addition to other court costs. The bill established a Truancy Prevention and Diversion Fund as a general revenue-dedicated account, into which fee revenue would have been deposited.

Funds in the Truancy Prevention and Diversion Fund would have been appropriated to the Office of the Governor's criminal justice division, which would have distributed the funds as grants to local government entities for truancy prevention and intervention services, such as juvenile case managers.

Because the Truancy Prevention and Diversion Fund was not exempted from the consolidation of funds under HB 6 by Otto, also enacted by the 83rd Legislature, revenues dedicated to the fund instead have been deposited into the general revenue fund.

DIGEST:

SB 1925 would re-enact portions of SB 1419 by West, 83rd Legislature, and would re-establish the Truancy Prevention and Diversion Fund as a dedicated account in the general revenue fund. Funds collected through the $2 court fee in municipal and justice courts would be deposited into that fund. SB 1925 also would rededicate money dedicated to the fund since January 1, 2014, when collections from the court cost began.

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 1925 would carry out the original intent of SB 1419, which was not specifically exempted from the consolidation of certain funds following the enactment of HB 6 last session.

SB 1419 was an important piece of legislation that would have helped local governments across Texas implement needed truancy prevention and intervention services. Truancy charges can have serious legal consequences for youth, and some truant students are absent from school due to factors outside of their control. SB 1419 would have helped address these issues, keeping students in school and out of the courtroom by providing needed resources.

According to the Legislative Budget Board (LBB), lack of funding can be a barrier to courts starting new juvenile case manager programs. SB 1925 would implement an LBB recommendation to re-establish the Truancy Prevention and Diversion Fund, which would help address this issue.

The bill would not authorize a new fee and would not be reauthorizing a fee, because the fee has been collected continuously since the beginning of 2014 and was not intended to be temporary. The bill simply would dedicate an existing revenue source for its intended purpose, serving another priority of the 84th Legislature.

The relatively small amount collected in the truancy fund would not have a significant impact on other major state funding priorities, such as education or border security, and was never intended for these purposes in any case.

OPPONENTS SAY:

SB 1925 would work against efforts by the state to reduce reliance on general revenue dedicated accounts. Holding special funds outside of general revenue limits the amount of available funds for general purpose spending, which could be directed toward important state priorities such as education and public safety. Directing these funds toward a limited purpose such as truancy, for which other interventions and sources of funding exist, hampers the state's ability to tackle larger state priorities and micromanages the state's money.

SB 1925 also would present a cost to general revenue, as indicated by the fiscal note, which projects a negative impact of $5.4 million during fiscal 2016-17.

NOTES:

According to the Legislative Budget Board, SB 1925 would result in a negative fiscal impact to general revenue of about $5.4 million during fiscal 2016-17 due to the rededication of court fee money to the Truancy Prevention and Diversion Fund.

SUBJECT: Classifying a synthetic cannabinoid as a Schedule I controlled substance

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Crownover, Naishtat, Collier, S. Davis, Guerra, R. Miller, Sheffield, Zerwas

0 nays

3 absent — Blanco, Coleman, Zedler

SENATE VOTE: On final passage, May 7 — 30-1 (Huffines)

WITNESSES: For — (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Karen Tannert, Department of State Health Services)

BACKGROUND: The Texas Controlled Substances Act under Health and Safety Code, ch. 481 regulates the use of controlled substances and classifies them into schedules and penalty groups. Schedule I controlled substances have the highest potential for abuse and do not have a currently accepted medical use. The other schedules take into account the potential for abuse, the level of accepted medical use in treatment, and the likely level of dependence resulting from abuse of the substance.

Some have called for synthetic cannabinoids to be classified as a Schedule I controlled substance because they have a high potential for abuse and do not have a currently accepted medical use.

DIGEST: SB 1583 would include in the state's Schedule I drug schedule any unregulated synthetic cannabinoid or cathinone designer drug that was similar by structure or pharmacological effect to a regulated Schedule I or II controlled substance. A substance would be similar by structure or

pharmacological effect to a Schedule I or II controlled substance if the substance contained a majority of functional features in a similar chemical structural arrangement or otherwise mimicked the pharmacological effect of a Schedule I or II controlled substance.

Any compound of a designer drug described by SB 1583 that was manufactured, formulated, sold, distributed, or marketed with the intent to circumvent the law would be a Schedule I controlled substance.

Examples of synthetic cannabinoid designer drugs would include substances that were generated using a three-component pharmacophore model. Synthetic cannabinoid designer drugs that contained one or more components of a controlled substance in Schedule I or II would be analogues of Schedule I or II controlled substances.

SB 1583 would specify that nothing in the bill would affect an exemption provided under state law to a person who possessed for a lawful purpose a chemical formula defined as a controlled substance.

The bill would take effect September 1, 2015.

SUBJECT: Providing audiotape of certain individualized education programs

COMMITTEE: Public Education — favorable, without amendment

VOTE: 6 ayes — Aycock, Allen, Deshotel, Farney, Galindo, Huberty

1 nay — Bohac

4 absent — Dutton, González, K. King, VanDeaver

SENATE VOTE: On final passage, May 11 — 26-5 (Bettencourt, Hall, Nichols, Perry, Schwertner)

WITNESSES: For — Steven Aleman, Disability Rights Texas; Celina Moreno, Mexican-American Legal Defense Educational Fund; Rona Statman, The Arc of Texas; Jolene Sanders; Columba Wilson; (*Registered, but did not testify*: Kate Kuhlmann, Association of Texas Professional Educators; Chase Bearden, Coalition of Texans with Disabilities; Tanya Lavelle, Easter Seals Central Texas; Ted Melina Raab, American Federation of Teachers - Texas; Lindsay Gustafson, Texas Classroom Teachers Association; Yannis Banks, Texas NAACP; Ellen Arnold, Texas Parent Teacher Association; Portia Bosse, Texas State Teachers Association; Michael Hart; Linda Litzinger)

Against — None

On — Gene Lenz, Texas Education Agency

BACKGROUND: Education Code, sec. 29.005 requires a school district to establish a committee to develop a student's individualized education program (IEP) prior to enrolling the student in a special educational program. An IEP states the goals aligned with and chosen to facilitate the student's achievement of the state's grade-level academic standards.

Under sec. 29.005(d), if the parent is unable to speak English, the district is required to provide the parent with a written or audiotaped copy of the child's IEP translated into Spanish, if Spanish is the parent's native

language. If the parent speaks a language other than Spanish, the district is required to make a good faith effort to provide a written or audiotaped copy of the program translated into the parent's native language

Some school districts provide an audiotape of an entire IEP planning meeting, which can be hours long, rather than providing an audiotape of just the required elements of the IEP. Such recordings may be inadequate to ensure that a parent is advised of education services being provided to their child, as required by law.

DIGEST:

SB 811 would require a school district to provide, at the request of a parent who was unable to speak English, an audiotape in Spanish or another language of the individualized educational plan (IEP) of the child served by special education services. Audiotaped copies would have to include all required federal and state components of the IEP that were developed or revised by the IEP committee.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015, and would apply beginning with the 2015-16 school year.

SUBJECT: Updating certain trust-related issues in the Property Code

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Farrar, Clardy, Laubenberg, Schofield, Sheets, S. Thompson

0 nays

2 absent — Hernandez, Raymond

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

WITNESSES: (*On House companion bill, HB 1029*)
For — Jeffrey Myers, Real Estate, Probate, and Trust Law Section of the State Bar of Texas; (*Registered but did not testify*: Guy Herman, Statutory Probate Courts of Texas; Craig Hopper, Real Estate, Probate, and Trust Law Section of the State Bar of Texas)

Against — (*Registered but did not testify*: John Heasley, Texas Bankers Association)

On — (*Registered but did not testify*: Leslie Friedlander, Office of the Attorney General)

BACKGROUND: Each legislative session, the State Bar of Texas' Real Estate, Probate, and Trust Law Section proposes changes to Texas law to streamline and simplify trust-related issues, clarify ambiguities, or correct technical deficiencies.

DIGEST: CSSB 387 would update the Property Code in various ways.

Delegating agents for sale of real estate. The bill would allow trustees to grant an agent powers to act for the trustee in real property transactions. The trustee could delegate powers if the governing instrument did not affirmatively permit or expressly prohibit the trustee from hiring agents.

A trustee would be liable to the beneficiaries or to the trust for the actions of the agent. The delegation would be required to be documented in a written instrument acknowledged by the trustee before an officer authorized to take acknowledgments to deeds of conveyance and administer oaths. The delegation would terminate after six months unless terminated earlier by the death or incapacity of the trustee, the resignation or removal of the trustee, or a date specified in the delegation.

The bill would allow a person to rely on a delegation if that person, in good faith, accepted a delegation without actual knowledge that the delegation or the agent's authority was void, invalid, or terminated, or that the agent was exceeding or improperly exercising the agent's authority.

Directed trusts. The bill would allow a governing instrument of a trust to designate directing parties that would be fiduciaries of the trust, would have certain powers and protections granted to trustees, and would be subject to certain fiduciary duties and standards applicable to a trustee. Directing parties could include:

- an investment trust advisor, who would have authority to exercise the investment powers of the trust;
- a distribution trust advisor, who would have authority to exercise the distribution powers and discretions of the trust; and
- a trust protector, who would have authority to make certain decisions affecting the trust.

An investment trust advisor would have the authority to:

- direct the trustee with respect to the retention, purchase, transfer, assignment, sale, and encumbrance of trust property and the investment and reinvestment of principal and interest of the trust;
- direct the trustee with respect to all management, control, and voting powers related to trust assets;
- select and employ certain agents reasonably necessary in the administration of the trust estate; and
- determine the frequency and methodology for valuing any asset for which there was no readily available market value.

A distribution trust advisor would have the power to direct the trustee with regard to all decisions relating directly or indirectly to discretionary distributions to or for one or more beneficiaries.

A trust protector's powers would be granted in the governing instrument and could include broad authority to modify or amend the governing instrument; increase, decrease, or modify the interests of beneficiaries; modify terms of powers of appointment granted by the trust; remove or appoint directing parties; or terminate the trust. Under the bill, if a charity was a beneficiary of the trust, a trust protector would be required to give notice to the attorney general within 60 days of certain actions.

The bill would define "excluded fiduciary" as a fiduciary directed by the governing instrument to act in accordance with the exercise of specified powers by a directing party. The bill would specify which powers would be considered granted to the fiduciary and which would be considered granted to the directing party.

The bill would limit the liability of an excluded fiduciary that complies with the direction of the directing party unless the direction was contrary to an express prohibition or mandate in the governing instrument, the excluded fiduciary's act constituted willful misconduct, or the excluded fiduciary had actual knowledge that the direction constituted fraud.

The bill would provide certain limitations to the default powers granted to a directing party.

Technical and other changes. The bill would make several other changes to the Property Code, including:

- clarifying that excess contributions to a Roth IRA were not exempt from creditors;
- making rollover contributions to certain retirement plans exempt from creditors;
- allowing the terms of a trust to limit a trustee's duty to act in good faith and in accordance with the purposes of the trust with regard to directed trusts and excluded fiduciaries;

- providing that the terms of a trust could not limit a directing party's duty to act in good faith and in accordance with the purposes of the trust;
- including a directing party in the definition of an "interested person" in the Texas Trust Code;
- limiting a trustee's ability to distribute principal from a trust that was held solely for charitable purposes and had as beneficiaries only charitable entities;
- updating trust modification provisions to allow a trust to be reformed to correct drafting errors if there was clear and convincing evidence of the settlor's intent to reform; and
- providing for postponed vesting of certain estates or interests created by exercise of a donee's powers.

This bill would take effect September 1, 2015, and would apply to trusts created on or after that date. The bill also would apply to acts or omissions that occurred on or after the effective date related to a trust existing on or before that date.