HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 20, 2017
85th Legislature, Number 54
The House convenes at 10 a.m.

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

The House will consider a Local, Consent, and Resolutions Calendar today.

Dwayne Bohac
Chairman
85(R) - 54

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SUBJECT: Allowing one retiree to be elected to ERS board of trustees

COMMITTEE: Pensions — favorable, without amendment

VOTE: 6 ayes — Flynn, Alonzo, Anchia, Huberty, Paul, J. Rodriguez

0 nays

1 absent — Hefner

WITNESSES: For — Bill Dally, Retired State Employees Association; Yolanda Griego, Texas State Employees Union; (*Registered, but did not testify*: Dick Lavine, AFSCME Retired State Employees, Chapter 12; Elaina Fowler, AFSCME Texas Retirees; Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Tom Griebel, Retired State Employees Association; Jimmy Rodriguez, San Antonio Police Officers Association; Harrison Hiner, Texas State Employees Union)

Against — None

BACKGROUND: Government Code, sec. 815.003 establishes requirements for election to the Employees Retirement System (ERS) of Texas' board of trustees. To be elected to one of the three seats on the board, a person must be an ERS member and hold a position included in the employee membership class that is not with an agency or department with which another trustee holds a position.

DIGEST: HB 1014 would allow one elected board member of the Employees Retirement System to be a retiree.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: HB 1014 would allow the Employees Retirement System (ERS) of Texas board of trustees to adequately represent the members it serves by permitting one board member to be a retiree. More than one-third of ERS members are retirees, and retired state employees are directly and immediately affected by policymaking decisions of the ERS board, which

can lead to changes in their health care coverage and pension annuities. Retirees are more than qualified to serve on the ERS board, considering some have at least two decades of state employment experience and understand the importance of having a properly managed pension fund.

In the 2015 ERS board election, retirees cast about 60 percent of the total 30,000 votes on the ballot. Retirees play a significant role in ERS board elections, and HB 1014 would empower more of them to cast votes for a retiree candidate.

OPPONENTS SAY:

HB 1014 is unnecessary because the ERS board has functioned fine with its current composition. The Sunset Advisory Commission did not recommend altering the agency's board composition when ERS underwent Sunset review during the 2016-17 cycle.

SUBJECT: Allowing certain nonprofits to retain sales tax for vocational training

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

WITNESSES: For — David Cox, Goodwill Industries of Fort Worth; Lori Henning, Texas Association of Goodwills; (*Registered, but did not testify*: Miranda Goodsheller, Texas Association of Business)

Against — None

BACKGROUND: Tax Code, ch. 151 imposes a 6.25 percent tax on goods sold at retail, which includes donated items sold by nonprofit retailers.

DIGEST: CSHB 518 would allow non-profit retailers that provide job training and placement services for people with barriers to employment to keep a portion of their owed sales tax to expand vocational services, beginning in fiscal 2019.

This bill would require the comptroller to certify certain non-profit retailers as workforce training community centers. To be certified, a retailer would have to submit an application to the comptroller and:

- be a 501(c)(3) organization;
- collect sales tax on the sale of donated goods;
- have experience assisting people with disabilities or other barriers to employment with job training and placement services; and
- have annual sales of at least $1 million.

A certified workforce training community center could keep 30 percent of sales taxes imposed by the state in the first year of certification, and 50 percent in each year thereafter, up to an annual limit of $1 million. Sales taxes collected by a local entity would not be affected.

Any money kept by the workforce training community center would be required to be used for:

- job training and placement services for people with barriers to employment;
- the development of a training and employment plan for each person assisted; and
- services to assist and monitor job retention.

A workforce community training center certification would last three years. The comptroller would only renew a certification for a retailer that, for every $10,000 in sales tax collections retained, provided job training and placement services for at least three people and successfully placed an average of at least 2.25 people in jobs.

The comptroller also could, at any point after the first year of certification, require a nonprofit retailer to show it had met these metrics. After a hearing finding that the above criteria had not been met, the comptroller could revoke the certification and require the retailer to repay some of the tax withheld under this program, up to $3,333 per person not successfully placed in a job.

CSHB 518 would take effect September 1, 2018, but would not affect tax liability accruing before September 1, 2019.

SUPPORTERS SAY:

CSHB 518 would help people who experience barriers to employment improve their skills and find meaningful work, which would benefit the Texas economy as a whole.

A $10 million investment by the state would result the placement of 2,250 workers in one fiscal year if all retailers met the minimum criteria. Newly trained individuals likely could increase their earning potential by far more than $3,333 per year, earning enough to outweigh the cost of the program in the first year of employment. In the aggregate, the bill could create an estimated $44 million in direct wages and more than $250 million in overall economic output. This would outweigh the $9 million annual cost to the state projected by the Legislative Budget Board once

the bill had reached full implementation in fiscal 2021.

Not included in these numbers are the intangible benefits to families, schools, and communities. The training would go to those most at risk: veterans and people who are homeless, who are disabled, or who have criminal histories. The bill could help reduce crime, homelessness, and demand for social services by providing people the job skills they need to maintain employment and allowing them to give back to their communities.

CSHB 518 would be effective because the comptroller could request verification that a nonprofit was achieving goals set by the bill at any time after the first year. If a nonprofit did meet the standards of effectiveness, the comptroller could revoke the certification and regain up to $3,333 for each person that was not successfully placed.

The bill would be preferable to another form of spending for job training, as it would ensure that these sales tax dollars, which would otherwise be distributed throughout the state, stayed in the region and were reinvested into local communities by the nonprofits. CSHB 518 would be more efficient than making the money flow through a state program or via an appropriation.

This program appropriately would focus on larger entities that had the expertise and experience necessary to most effectively conduct job training with the money saved on paying sales taxes. Smaller entities might not be able to meet the goals and could be subject to penalties as a result.

OPPONENTS SAY:

CSHB 518 would establish an expensive program whose goals might be better achieved through other means and that would not provide enough return on investment.

The program would not be cost effective. Even with the full $1 million withholding, a nonprofit would be required to serve only 300 people at a cost of more than $3,300 per person. The bill would have a significant negative impact on state revenue, while the effect on the statewide economy would be negligible.

The bill essentially would give private nonprofits an appropriation from general revenue for job training. While job training for workers who are disadvantaged is a worthy cause, the state should not pursue it through what would amount to an expensive tax rebate program for private entities.

Finally, the bill unfairly would limit the availability of this program to large entities with total sales of more than $1 million. In essence, Texas would be picking winners and losers by making this available only to certain nonprofits.

NOTES:

The Legislative Budget Board estimates that this bill would have no impact to general revenue related funds through fiscal 2018-19 and a negative net impact of $14.9 million to the general revenue fund through fiscal 2020-21.

The committee substitute differs from the bill as introduced in that CSHB 518 would delay the effective date from September 2017 to September 2018 and would not affect any tax liability until September 1, 2019. In the committee substitute, during the first year of certification, the nonprofit could withhold only the lesser of 30 percent or $1 million of the total sales tax collection under CSHB 518, rather than the full 50 percent under the bill as filed.

A Senate companion, SB 275 by Watson, was reported favorably as substituted by the Senate Finance Committee on April 4 and placed on the intent calendar for April 20.

SUBJECT: Allowing computer science courses to count as a math or science credit

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Dutton, Gooden, K. King, Koop, Meyer, VanDeaver

0 nays

WITNESSES: For — Andrew Lentz, CodeRGV, Inc.; Teclo Garcia and Cristina Garza, Mission Economic Development Corporation; (*Registered, but did not testify*: Katija Gruene, Green Party of Texas; Mike Meroney, Huntsman Corporation, BASF Corporation, Texas Workforce Coalition; Marlene Lobberecht, League of Women Voters of Texas; Annie Spilman, National Federation of Independent Business/Texas; Deborah Caldwell, North East Independent School District; David Velky, Rocksprings ISD; Priscilla Camacho, San Antonio Chamber of Commerce; Dwight Harris and Ted Melina Raab, Texas American Federation of Teachers; Miranda Goodsheller, Texas Association of Business; Stephanie Simpson, Texas Association of Manufacturers; Michael White, Texas Construction Association; Ellen Arnold, Texas PTA; Erin Jones, The College Board; Thomas Parkinson)

Against — None

On — Courtney Arbour, Texas Workforce Commission; (*Registered, but did not testify*: Dana Harris, Austin Chamber of Commerce; Monica Martinez, Texas Education Agency)

BACKGROUND: Under Education Code, sec. 28.025(b-1), a public high school student must receive a certain number of course credits in different subject areas, including three math credits and three science credits, in order to graduate under the foundation high school program.

DIGEST: CSHB 728 would require the Commissioner of Education to develop and implement a program allowing public high school students in participating districts to count an advanced computer science course toward an

advanced science or advanced math credit needed to graduate. Participating school districts would have to implement rigorous standards developed by the State Board of Education for advanced computer science courses focused on the creation and use of software and computing technologies.

The commissioner would be required to establish the program no later than September 1, 2018, for implementation during the 2018-19 school year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 728 would create a program to allow computer science courses to count toward a student's required advanced math or advanced science credit, encouraging students to develop valuable skills that would expand opportunities after high school. Careers in science, technology, engineering, and math (STEM) will be among the fastest-growing careers in coming years, and by 2018, 51 percent of all STEM jobs will be computer science related. Advanced computer science courses can provide the groundwork for an information technology-related job right out of high school or a degree in computer science that could lead to a high-paying career.

Computer science skills provided through these high school courses are in high demand and are important to a growing number of industries, including transportation, health care, education, and financial services. Developing a workforce with these skills is necessary for Texas to remain competitive. By letting students count a computer science course as an advanced math or science credit, the bill would incentivize more students to participate in these courses, thereby increasing the number of students gaining these valuable skills.

Allowing computer science courses to count toward an advanced science or advanced math credit would give students more flexibility in their graduation plans. CSHB 728 could help more students fit computer science course into their schedules by allowing them to count toward core

subject requirements, as well as current language and elective requirements.

OPPONENTS SAY:

No apparent opposition.

NOTES:

A companion bill, SB 1336 by Hinojosa, was referred to the Senate Education Committee on March 14.

CSHB 728 differs from the bill as filed in certain ways, including that the committee substitute would:

- require the State Board of Education, rather than the commissioner, to develop the computer science course standards; and
- change the implementation date from September 1, 2017, to September 1, 2018, for implementation during the 2018-19 school year.

SUBJECT: Removing home addresses from personal financial statements

COMMITTEE: General Investigating and Ethics — favorable, without amendment

VOTE: 7 ayes — S. Davis, Moody, Capriglione, Nevárez, Price, Shine, Turner

0 nays

WITNESSES: For — (*Registered, but did not testify*: Bill Lauderback, Lower Colorado River Authority)

Against — (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas; Donnis Baggett, Texas Press Association)

BACKGROUND: Government Code, sec. 572.021 requires a state officer, a partisan or independent candidate for elected office, and a state party chair to file verified financial statements with the Texas Ethics Commission.

Sec. 572.032 requires the commission to redact the home address of a judge or justice from financial statements before allowing the public to view them.

DIGEST: HB 776 would require the Texas Ethics Commission to remove the home address from a financial statement filed by any individual before allowing the public to view it or making it publicly available on the commission's website.

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, 2017, and would apply to financial statements filed before, on, or after that date.

SUPPORTERS SAY: HB 776 would extend an existing safety precaution afforded to the judicial branch of government to other elected officials by requiring that their personal home addresses not be made public in financial statements.

The bill would provide elected officials and their families peace of mind knowing that their home addresses were not readily available to those who may wish to harm them. This is especially important given today's highly charged political climate and the level of scrutiny officials face. Although the public does have a right to pertinent information about elected officials, this right must be weighed against the safety of public officials and their families.

The personal financial statement is not used to determine the legitimacy of a candidate's residency. Other means of verifying residency exist that do not require making a home address public, such as the requirement that candidates provide proof of residency or their voter registration information to participate in a party primary in Texas.

While HB 776 would redact an official's home address from the "home address" and "interest in real property" sections of the personal financial statement, the description and value of the property if sold would remain publicly available. This information would be sufficient to understand an official's property interests.

The bill would not unduly hinder identification of officials with common names because a home address is not the sole means of differentiating between individuals, and it is the prerogative of these officials to identify themselves to the public.

OPPONENTS SAY:

HB 776 unnecessarily would require the redaction of home addresses from financial statements filed by elected officials. When individuals choose to run for public office, they are asking for the public's trust and subjecting themselves to public scrutiny. Officials make this decision knowing the risks of being a public figure. Safety concerns are not reason enough to prevent disclosure of personal information such as a home address.

The bill would violate the right of the public to know relevant information about who officials are and where they live. It is not unusual for a person who lives outside a district to run for office there, and it is up to the public and the press to confirm the legitimacy of where a candidate may claim residency.

HB 776 would redact an official's home address from both the "home address" and "interest in real property" sections of the personal financial statement. This effectively would conceal information on a property treated as a home address by an official, such as specific location, size, and potential value. The public needs this information to understand potential conflicts of interest that could influence an official's decision making.

The bill also would make it more difficult to resolve matters of common names. When an individual with a common name runs for office, knowledge of the person’s home address can often help identify exactly who the person is.

SUBJECT: Restricting state investment in companies that boycott Israel

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Cook, Craddick, Farrar, Geren, K. King, Kuempel, Meyer, Paddie, E. Rodriguez, Smithee

0 nays

3 absent — Giddings, Guillen, Oliveira

WITNESSES: For — Kimberly Kamen, AJC; Charles Kaufman, B'nai B'rith International; Sandra Hagee Parker, Christians United for Israel Action Fund; Dillon Hosier, Israeli-American Coalition for Action; Jesse Stock, StandWithUs; Jackie King; Ruth Sherman; (*Registered, but did not testify*: Ann Hettinger, Center for the Preservation of American Ideals; Michael Goldman, Texas Conservative Coalition; Lisa Kaufman, Texas Public Employees Association; William Franklin; CJ Grisham; Rochelle Kraus; Mark Vane; Cecilia Wood)

Against — Katherine Pace, Austin Jewish Voice for Peace; Michael Shirk, Austin Mennonite Church; and seven individuals; (*Registered, but did not testify*: Benjamin Goodman; Sacha Jacobson; Matt Oliver; Charles L. Rand; Masar Sakr)

On — (*Registered, but did not testify*: Paul Ballard, Treasury Safekeeping Trust Co.)

DIGEST: CSHB 89 would prohibit government contracts with companies that boycott Israel and would restrict certain state investments in those companies.

Contracting. The bill would define "boycott Israel" as refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with Israel or with a person or entity doing business in Israel or in an Israeli-controlled territory. The definition would not include an

action made for ordinary business purposes.

The bill defines "company" to include several different business structures including a corporation, partnership, sole proprietorship, organization, association, or affiliate of any of these entities that exists to make a profit.

The bill would prohibit a state agency or political subdivision from entering into a contract for goods or services unless the contract included written verification from the company that it does not boycott Israel and would not boycott Israel during the term of the contract.

Investments. The bill would require certain state governmental entities to divest assets of a company that boycotts Israel. The affected entities would be:

- the Employees Retirement System of Texas, including a retirement system administered by ERS;
- the Teacher Retirement System of Texas;
- the Texas Municipal Retirement System;
- the Texas County and District Retirement System;
- the Texas Emergency Services Retirement System; and
- the Permanent School Fund.

The comptroller would be required to prepare, maintain, and provide a list of all companies that boycott Israel to each governmental entity. The comptroller could rely on publicly available information regarding companies, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities. The list would have to be updated at least annually but no more often than quarterly.

The state governmental entities would be prohibited from acquiring securities of a listed company.

Not later than 30 days after the list was first provided or updated, the comptroller would have to file the list with the presiding officer of each legislative chamber and the attorney general and post the list on a publicly

available website.

Within 30 days of state governmental entities receiving the list, the entities would be required to notify the comptroller of any listed companies in which the entity owns direct or indirect holdings. Direct holdings would include all securities of a company held directly by a state governmental entity in an account or fund in which the entity owns all shares or interest. Indirect holdings would include all securities of a company held in an account such as a mutual fund that is not managed by a state governmental entity in which the entity owns shares or interests together with private investors not subject to the provisions of the bill. The term does not include money invested in a 401(k) or 457 plan under the Internal Revenue Code.

The state governmental entities would be required to send a written notice to each listed company warning that it may become subject to divestment within 90 days and offering the company the opportunity to clarify its Israel-related activities. If the company ceased boycotting Israel, the comptroller would remove it from the list. If after 90 days the company continued to boycott Israel, the state governmental entity would be required to sell, redeem, divest, or withdraw all publicly traded securities.

A state governmental entity could cease divesting from a listed company only if:

- clear and convincing evidence showed that the entity had suffered or would suffer a loss in the hypothetical value of all assets under management by the entity as a result of the divestment; or
- an individual portfolio that used a benchmark strategy would be subject to an aggregate expected deviation from its benchmark as a result of the divestment.

The state governmental entity would be allowed to cease divesting only to the extent necessary to ensure the entity did not suffer a loss in value or deviate from its benchmarks.

Before ceasing divestment in a listed company, a governmental entity would have to provide a written report to the comptroller, the presiding

officer of each legislative chamber, and the attorney general stating the justification and evidence for deciding to cease divestment or to remain invested in a listed company. The divestment of assets would need to be completed in accordance with a schedule described in the bill.

Exceptions. A governmental entity would not be subject to the bill's requirements if it determined that the requirement would be inconsistent with its fiduciary responsibility concerning the investment of assets or other duties imposed by the Texas Constitution on state and local retirement systems.

A state governmental entity would not be required to divest from indirect holdings in actively or passively managed investment funds or private equity funds. For those funds, the state governmental entity would be required to submit letters to the fund managers requesting that they remove listed companies from the fund or create a similar fund with indirect holdings devoid of listed companies. If a similar fund were created with similar management fees, risk levels, and anticipated return, the state governmental entity could replace all applicable investments with investments in that fund.

Other provisions. The bill would exempt a state governmental entity and the comptroller from any conflicting statutory or common law obligations with respect to investment and divestiture decisions. It would indemnify the entities, their governing bodies, employees, and contractors from legal claims related to those decisions.

The bill would not create a private cause of action against a governmental entity, employee, or contractor for breach of fiduciary duty or other claims made in connection with the bill's requirements. A person who filed such a lawsuit would be liable for paying costs and attorney's fees.

Report. The bill would require that no later than January 5 of each year, each state governmental entity file a publicly available report with the presiding officer of each legislative chamber and the attorney general identifying all securities sold, redeemed, divested, or withdrawn; identifying all prohibited investments; and summarizing any changes in investments exempt from divestment.

Enforcement. The attorney general would be authorized to bring any necessary action to enforce the bill's provisions.

This bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 89 would support Israel, a key U.S. ally and Texas trading partner, from efforts by some companies to boycott Israel by prohibiting certain government pension funds and the Permanent School Fund from investing in those companies. It also would bar state agencies and political subdivisions from contracting with companies that do not verify in writing that they do not boycott Israel.

The bill is an appropriate response to the Boycott, Divestment and Sanctions (BDS) movement, an international effort to use economic sanctions to influence Israeli policy. It would not prevent private companies from participating in BDS but would help ensure that the dollars of Texas taxpayers were not used to discriminate on the basis of national origin.

At least 14 other states have by legislation or executive order approved anti-boycott measures. Similar measures have enjoyed bipartisan support in states including Arizona, California, Florida, Illinois, Michigan, and New York. Opposition to BDS is reflected in the national platforms of both the Democratic and Republican parties.

Texas shares common democratic values with Israel and the bill would help protect that bond. Israel is a significant trading partner for Texas and provides important technological support to Texas industries that are involved in water desalination, aerospace, defense, and cybersecurity.

While supporters of the BDS movement say it is an appropriate way to express concern about the treatment of Palestinians, pressure against certain companies actually has resulted in Palestinians losing their jobs. Opponents of the bill say it would violate constitutional rights but there has been no successful court action to prevent similar laws in other states from going into effect.

OPPONENTS SAY:

CSHB 89 would violate the constitutional rights of business owners to use economic pressure to express their concerns about Israeli-Palestinian relations. The state of Texas does not have a right to protect business interests by means that violate Texans' free speech rights. Boycotting is a commonly used non-violent method for concerned citizens to express their views and work for change. The state should not take away this fundamental human right by enacting restrictions on businesses that contract with the state and provide important financial investment returns for state entities.

NOTES:

Depending on the number of governmental entities that contract with or invest in companies that boycott Israel, CSHB 89 could have an indeterminate fiscal impact to the state, according to the Legislative Budget Board's fiscal note.

A companion bill, SB 29 by Creighton, passed the Senate on March 22 and was referred to the House State Affairs Committee on April 18.

Compared to the original bill, the committee substitute would:

- remove The University of Texas Investment Management Company from the list of state governmental entities;
- add an exception for state governmental entities if the divestiture requirements would be inconsistent with the entity's fiduciary responsibility; and
- remove language requiring a state governmental entity to encourage a company to cease boycotting Israel.

SUBJECT: Allowing school districts to donate food to students through a nonprofit

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Dutton, Gooden, K. King, Koop, Meyer, VanDeaver

0 nays

WITNESSES: For — Jenny Eyer, Children at Risk; Sharon Glosson, North East ISD; Jennifer Arredondo, San Antonio ISD; Jesus Chavez, South Texas Association of Schools; Steve Swanson; (*Registered, but did not testify*: Chandra Villanueva, Center for Public Policy Priorities; Marshall Kenderdine, Christian Life Commission, Communities in Schools of Texas; Christine Bryan, Clarity Child Guidance Center; Kathy Green, Feeding Texas; Katija Gruene, Green Party of Texas; Gyl Switzer, Mental Health America of Texas; Christine Yanas, Methodist Healthcare Ministries; Celina Moreno, Mexican American Legal Defense and Education Fund; Will Francis, National Association of Social Workers - Texas Chapter; Deborah Caldwell, North East Independent School District; Mario Obledo, San Antonio Food Bank; Sophia Torres, San Antonio Hispanic Chamber of Commerce; Caroline Joiner, TechNet; Dwight Harris and Ted Melina Raab, Texas American Federation of Teachers; Courtney Boswell and Houston Tower, Texas Aspires; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators; Grover Campbell, Texas Association of School Boards; Elizabeth Lippincott, Texas Border Coalition; Diane Ewing, Texans Care for Children; Jennifer Allmon, Texas Catholic Conference of Bishops; Paige Williams, Texas Classroom Teachers Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Jaime Puente, Texas Graduate Student Diversity; Joshua Houston, Texas Impact; Yannis Banks, Texas NAACP; Ellen Arnold, Texas PTA; Colby Nichols, Texas Rural Education Association; Dee Carney, Texas School Alliance; Portia Bosse, Texas State Teachers Association; James Thurston, United Ways of Texas; Joey Gidseg; Thomas Parkinson; Kimberly Saldivar; Columba Wilson)
Against — None

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

DIGEST:

CSHB 367 would authorize school districts to allow campuses to donate surplus or donated food to a representative of a nonprofit organization affiliated with the campus, including a teacher, counselor, or the parent of a student. The donated food could be received, stored, and distributed on campus at any time. School employees acting as volunteers of the nonprofit organization could assist in preparing and distributing the donated food.

Food donated by the campus could include surplus food prepared to be served at the school cafeteria, subject to local, state, and federal requirements, and food donated to the campus through a food drive or similar event. The types of donated food could include packaged or unpackaged unserved food, packaged served food if the packaging was in good condition, wrapped raw produce, and whole uncut produce and unpeeled fruit.

The commissioner of education could adopt rules to implement the bill, which would apply beginning with the 2017-18 school year.

The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 367 would give school districts the needed flexibility to donate uneaten or donated food to a nonprofit organization for distribution to hungry students on their campuses. The school district would be protected from liability through the Bill Emerson Good Samaritan Act, a federal law created to encourage nonprofit organizations to distribute food to individuals in need.

The bill would provide direction to educators who have access to uneaten food and want to feed hungry children during the school day or through the evenings and weekends. More than 60 percent of public school students in Texas qualify for free or reduced meals. CSHB 367 could

benefit a large number of economically disadvantaged students who might not otherwise have sufficient access to food.

The bill would prevent food waste that currently plagues many Texas schools. As a result, it would increase spending efficiency and ease the burden on school nutrition directors who must balance their budgets and state and federal regulations on food availability for students.

CSHB 367 would allow school districts to feed students in need to ensure they had proper nutrition and the best opportunity to be academically successful. Studies show that school children who are well nourished learn better.

A few school districts engage in similar yet more restrictive food waste programs, such as the "share tables" initiative, which allows students to leave or retrieve unwanted food from a table at specific times of the day. Unfortunately, these programs have been shut down in places by local health authorities due to a lack of understanding or specific guidance from the state. The program outlined in CSHB 367 would remove these restrictions on location or time of distributing food while shielding districts from liability or punitive action from local health authorities.

OPPONENTS SAY:

No apparent opposition.

NOTES:

CSHB 367 differs from the bill as filed in several ways, including that the committee substitute would:

- allow any parent of an enrolled student, rather than just a PTA member, to serve as an official of the nonprofit organization; and
- allow distribution of donated food to be made "at any time."

SUBJECT: Allowing reduced water utility rates for elderly customers

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 11 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King, Lucio, Nevárez, Price, Workman

0 nays

WITNESSES: For — (*Registered, but did not testify*: Kerry Cammack, SouthWest Water Company; Joshua Houston, Texas Impact; Sacha Jacobson)

Against — None

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

BACKGROUND: Water Code, sec. 13.182 prohibits water utilities from setting rates that are unreasonably preferential, prejudicial, or discriminatory. Rates must be sufficient, equitable, and consistent in application to each class of consumers.

DIGEST: HB 1083 would allow the regulatory authority of a water utility to authorize the utility to establish reduced rates for a minimal level of service for elderly customers. Utilities would be able to establish a donation fund to recover the costs of providing these reduced rates. The utility could not recover costs through charges to other customers.

The bill would specify that a reduced rate for elderly customers did not constitute an unreasonable preference, advantage, prejudice or disadvantage to any corporation or person or an unreasonable difference in rates between classes of service.

The bill would apply only to water utility rates filed on or after January 1, 2018. The Public Utility Commission of Texas and other regulatory authorities would be required to adopt rules necessary to implement the provisions of the bill by December 31, 2017.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

HB 1083 would allow water utilities to provide subsidized rates for elderly customers without burdening taxpayers. Many senior citizens live on a fixed income and have difficulties paying utility bills, threatening their access to water. This bill specifically would allow utilities to join a voluntary program providing reduced rates for elderly customers. The cost would be made up by donations, so other customers would not be penalized for the subsidized rates.

The bill is specifically tailored to meet the needs of senior citizens but would leave room for utilities to develop programs and rates to address local needs. Utilities identify elderly customers internally through their policies, so defining the term for a voluntary program in this bill would be unnecessary.

OPPONENTS SAY:

While HB 1083 is well intended, the language of the bill is not detailed enough. It does not clarify how much the water utility rate discount would be for elderly customers, and there is no definition of "elderly," making it unclear at what age the rate discount would apply.

OTHER OPPONENTS SAY:

Like many senior citizens, low-income Texans often have difficulty paying their utility bills. The bill should go further by including this vulnerable population in the discount program.

SUBJECT: Adding a category for existing formula funding of public transportation

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Minjarez, Phillips, E. Thompson, Wray

0 nays

2 absent — Pickett, S. Thompson

1 present not voting — Simmons

WITNESSES: For — John McBeth, Public Transportation Advisory Committee (*Registered, but did not testify*: Elizabeth Bruchez, Association For Community Transit; Jeff Heckler, Brazos Transit; Eric Bustos, Capital Metro; Robert Flores, Texas Citizens Action Network; Jennifer McEwan and Jim Pitts, Texas Transit Association; Drew Scheberle, The Greater Austin Chamber of Commerce)

Against — None

On — Eric Gleason and Marc Williams, Texas Department of Transportation; Carlos Leon

BACKGROUND: Transportation Code, sec. 456.021 requires the Texas Transportation Commission to distribute certain public transportation funding to local entities in accordance with formulas developed by the commission. The commission allocates certain amounts to three categories of areas based on population: urban, urbanized, and rural. Sec. 456.001 defines an "urbanized area" as one with a population greater than 50,000, as determined by the U.S. Census Bureau.

DIGEST: HB 1140 would rename the three categories of areas to which the commission allocates public transportation funding. It would split the current "urbanized" category into two separate categories: a "large urbanized area," with a population of 200,000 or more, and a "small

urbanized area" with a population greater than 50,000 but less than 200,000. The bill also would use the term "nonurbanized" area instead of rural area to conform with an existing definition in sec. 456.001.

This bill would take effect September 1, 2017.

SUPPORTERS SAY:

HB 1140 would level the playing field between cities when competing for formula funding for public transportation. Currently, small urbanized areas must compete for funding in the same category as large urbanized areas, even though the formulas favor areas with greater population and thus more demand for transportation services.

Texas is growing, and more cities are joining the urbanized category while funding for the category has been flat, so the same amount of money is being split in more ways. Five more areas are projected to join the urbanized category following the 2020 census. Compounding this phenomenon is the fact that fewer areas are leaving the urbanized classification by creating transit authorities. The bill would stop this decline in the effectiveness of public transportation formula funding by creating a separate category, allowing areas to compete with their peers and the Texas Transportation Commission to allocate any new appropriations more specifically where they were most needed.

This bill would not actually increase or reduce the funding available to any area without a separate appropriation by the Legislature. By more fairly distributing funds, it could help localities secure more federal matching dollars, making existing public transportation spending in those areas more cost effective.

OPPONENTS SAY:

No apparent opposition.

NOTES:

A companion bill, SB 1334 by Hinojosa, was considered during a public hearing of the Senate Transportation Committee on April 19.

SUBJECT: Revising jurisdiction of the Texas Supreme Court

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

WITNESSES: For — Lisa Hobbs, Texans for Lawsuit Reform; Nelson Roach, TTLA; Lee Parsley; (*Registered, but did not testify*: George Christian, Texas Civil Justice League)

Against — Bobie Townsend, San Jacinto Constitutional Study Group

On — Matthew Kita

BACKGROUND: Government Code, ch. 22 establishes the statutory jurisdiction of the Texas Supreme Court, giving it appellate jurisdiction, except in matters of criminal law. Sec. 22.001(a) gives the Supreme Court jurisdiction over the following types of cases when they have been brought to a court of appeal from an appealable judgment of a trial court:

- when justices of a court of appeals disagree on a question of law material to the decision;
- when one of the courts of appeals holds differently from a prior decision of another court of appeals or the Supreme Court on a question of law material to a decision of the case;
- those involving the construction or validity of a statute necessary to a determination of the case;
- those involving state revenue;
- when the Railroad Commission of Texas is a party; and
- others in which it appears that an error of law has been committed by the court of appeals, and that error is of such importance to the jurisprudence of the state that, in the opinion of the Supreme Court, it requires correction, but excluding those cases in which the jurisdiction of the court of appeals is made final by statute.

Civil Practice and Remedies Code, sec. 51.014 establishes when individuals may appeal interlocutory orders from certain courts. These are orders that decide an intermediate question in a case and are not the final decision concerning a case itself. An example is a court's decision to refuse or grant a temporary injunction.

Government Code, sec. 22.225(d) lists four circumstances when petitions for reviews may be made to the Texas Supreme Court for appeals of interlocutory orders. The appeals may be made when an interlocutory order:

- certifies or refuses to certify a class in a class action suit;
- denies a motion for a summary judgment in certain cases involving the media and free speech or free press claims; or
- denies a motion to dismiss an asbestos-related or silica-related case.

Appeals also may be made when an interlocutory order that is not otherwise appealable is allowed to be appealed by trial courts if the order involves a controlling question of law with substantial ground for differences of opinion and an immediate appeal may materially advance the ultimate end of the litigation.

The Supreme Court also considers appeals of interlocutory orders based on dissent and conflict, described in Government Code, sec. 22.225(c) as when the justices in a court of appeals disagree on a question of law material to a decision or when one court of appeals holds differently from a prior decision of another court of appeals or the Supreme Court on a question of law material to the case's decision. Sec. 22.225(b) lists five types of cases in which petitions for review are not allowed to the Texas Supreme Court.

DIGEST:

HB 1761 would revise the appellate jurisdiction of the Texas Supreme Court listed in Government Code, sec. 22.001(a). The court's statutory jurisdiction over appealable judgments of trial courts in six specific types of cases would be removed and replaced with jurisdiction over appealable *orders or judgments* of trial courts if the Supreme Court determined that

an appeal presented a question that was important to the jurisprudence of the state. The Supreme Court's jurisdiction would not include cases in which the statutes made the jurisdiction of the court of appeals final.

HB 1761 would eliminate the current statutory list of four types of cases for which the Supreme Court has jurisdiction over interlocutory orders. It also would repeal the description of how to determine when one court disagrees or holds differently from another, which establishes a conflict, and the list of types of cases for which petitions for review to the Supreme Court are not allowed.

The bill would revise language describing how cases may get to the Supreme Court by eliminating references to writs of error and certification by courts of appeals and replacing them with references to petitions for review. HB 1761 also would eliminate several sections of the Government Code that describe how the Supreme Court may designate and use justices of the courts of appeals to act on applications for writs of error and detail that process. It also would repeal a provision stating that the Supreme Court shall pass on an application for writ of error in a case in which the justices of the courts of appeals have disagreed or have declared void a state statute.

The bill would take effect September 1, 2017, and would apply only to interlocutory orders rendered on or after that date.

SUPPORTERS SAY:

HB 1761 would simplify the statutory jurisdiction given to the Texas Supreme Court by authorizing court jurisdiction over both appealable orders, such as interlocutory orders, and judgments based on the same standard — whether the court determined something presented a question of sufficient importance to the state.

State law, coupled with practices and rules, has resulted in the Supreme Court considering a broad range of appealable judgments, and HB 1761 would revise the statute to reflect this. It would place clear language in the statute, allowing the court to take up any case in which an appeals court presented a question important to the state. This would be similar to a court rule that lists among the factors that the Supreme Court considers when granting review whether the court of appeals has decided an

important question of state law that the Supreme Court should resolve. The bill would make no change to current law that makes courts of appeals judgments on facts in cases final.

HB 1761 also would address confusion and other issues relating to the Supreme Court's ability to hear appeals of interlocutory orders. The statute establishes the court's jurisdiction over appealable orders by listing four specific types of cases and by referring to conflicts and dissents. These references, along with case law, have resulted in a broad interpretation of the ability of the court to consider orders based on conflicts. The court's decision on whether to take up an appeal is based on language allowing consideration if one court holds differently from another when there is inconsistency in their decisions that should be clarified to remove uncertainty in the law and unfairness to the parties. This been interpreted loosely, and has resulted in a low threshold for establishing a conflict and bringing an appealable order to the Supreme Court.

Although the conflict requirement has been interpreted loosely, when an appeal of an interlocutory order is presented to the Supreme Court based on a conflict, the issue must be researched and presented to the court. This is time consuming and costly for what ultimately is a low bar to overcome. HB 1761 would address this issue by eliminating statutory references to types of cases for which the Supreme Court has jurisdiction over interlocutory orders and eliminating references to conflict jurisdiction. The bill instead would give the Supreme Court discretion to take up any order that presented an issue important to the jurisprudence of the state. The result would be that parties requesting the court to consider orders based on conflicts no longer would have to spend resources to submit detailed briefs proving the conflict. With this change, orders still would have to meet the standard in law as being an important issue to the state's jurisprudence, but parties and the court could focus on the merits of the appeal. While HB 1761 would make the process of asking for review of orders more efficient, it would not result in a significant departure from standards used now to decide these questions and would not disadvantage anyone before the court.

HB 1761 would not place a burden on the court's resources or significantly increase its workload. The bill's fiscal note estimates no

significant cost to the state and reports that implementing the bill could be done with current resources. The Supreme Court operates efficiently and currently is disposing of cases within the same fiscal year that they are argued and could handle any additional work that resulted from the bill. The court has an established procedure and a staff person dedicated to handling emergency orders, so the court could absorb any increase in these.

The bill also would remove obsolete references to a "writ of error" as a way to bring requests before the court and would replace these references with "petition for review," which is the commonly used language now. The bill also would repeal other outdated language, including provisions describing an unused procedure for establishing panels of courts of appeals justices to consider writs of error.

OPPONENTS SAY:

The current statutory jurisdiction of the Supreme Court and the current process of identifying conflicts when asking for review of an order works well to balance the process for both sides in legal disputes. Expanding the Supreme Court's jurisdiction could work to the disadvantage of some parties by resulting in some cases being taken on appeal that currently would not be or in cases being taken up more quickly than they might be under current law.

Expanding the Supreme Court's jurisdiction could result in additional cases coming before the court, especially certain types of hotly contested business disputes and family matters, that demand quick decisions. With increased demand on the resources of the Supreme Court, and absent additional resources, litigants could wait longer for responses.

SUBJECT: Addressing certain repeat requests under the public information act

COMMITTEE: Government Transparency and Operation — favorable, without amendment

VOTE: 7 ayes — Elkins, Capriglione, Gonzales, Lucio, Shaheen, Tinderholt, Uresti

0 nays

WITNESSES: For — Kelley Shannon, Freedom of Information Foundation of Texas; Zindia Thomas, Texas Municipal League; (*Registered, but did not testify*: Trey Lary, Allen Boone Humphries Robinson LLP; David Anderson, Arlington ISD; Lindsey Baker, City of Denton; Eric Magee, County Judges and Commissioners Association of Texas; Cheri Huddleston, Lufkin/Angelina County Economic Development Partnership; Kevin Cooper, RELX, Inc; Mark Mendez, Tarrant County; Michael Schneider, Texas Association of Broadcasters; Ruben Longoria, Texas Association of School Boards; Michelle Smith, Texas Association of School Business Officials; John Dahill, Texas Conference of Urban Counties; Mark Terry, Texas Elementary Principals and Supervisors Association; Donnis Baggett, Texas Press Association; Joseph Green, Travis County Commissioners Court)

Against — (*Registered, but did not testify*: Tom Tagliabue, City of Corpus Christi)

On — (*Registered, but did not testify*: Justin Gordon, Texas Attorney General)

BACKGROUND: The Public Information Act (Government Code, ch. 552) governs public access to records and other material maintained by governmental bodies.

Under sec. 552.261, a charge for providing a copy of public information must be an amount that reasonably includes costs of materials, labor, and overhead expenses, depending on the number of pages and the location of the records.

Sec. 552.275 allows a governmental body to establish a reasonable limit on the time it spends complying with requests for public information from a single requestor without recovering labor costs. The cumulative time limit per requestor may not be less than 36 hours within a fiscal year. Once a requestor has reached the limit, a governmental body must submit a written cost estimate to the requestor and is not required to comply with additional requests unless the requestor within 10 days submits a statement committing to pay certain costs. If a requestor does not submit this statement, the pending request for information is considered withdrawn.

The limits do not apply to a requestor who performs certain duties for specific types of news media, is an elected official, or is a representative of a tax-exempt publicly funded legal services organization.

Sec. 552.3215 allows an individual to file with a district or county attorney a complaint against a governmental body, alleging a violation of the Public Information Act. Within 31 days, the prosecutor must determine and inform the complainant as to whether the alleged violation was committed and whether action will be brought against the governmental body.

DIGEST:

HB 3107 would make certain changes to provisions on the production of information under the Public Information Act, including establishing a timeline for request termination, revising procedures for subsequent requests by a person, and creating an additional option for requestors filing complaints.

Request termination. A public information request would be considered withdrawn if the requestor either did not inspect or duplicate the information in the offices of the governmental body within 60 days of the information being made available or failed to pay the postage and any other applicable charges within 60 days of being informed of them.

Procedures for subsequent requests. A governmental body could define a monthly limit, in addition to the current yearly limit, on the time that personnel would have to spend responding to a request for information

without recovering labor costs. The monthly time limit could not be less than 15 hours per requestor. The bill would allow all county officials who had the same designated public information officer to collectively calculate the amount for the purposes of the monthly or yearly limit.

A governmental body would not have to comply with additional requests from a person who had exceeded the time limits, been notified of the estimated costs, and had not paid the amount due at the time a new request was submitted until the requestor paid or withdrew the previous request.

All public information requests received from an individual in the same calendar day could be treated as a single request to calculate the costs for reproducing the information. A governmental body could not combine multiple requests from separate individuals who submitted a request on behalf of an organization.

The bill would revise the list of requestors to whom these provisions did not apply to include an individual seeking information for dissemination by a communication service provider, including a journalist, scholar, or researcher employed by an institution of higher education.

Requestor complaint process. The bill would entitle a requestor to file a complaint with the attorney general if a prosecutor had not taken action within 90 days on a complaint alleging a governmental body violated a section of the Public Information Act.

The bill would take effect September 1, 2017, and would apply only to a request of information received on or after that date.

SUPPORTERS SAY:

HB 3107 would provide governmental entities with tools to address subsequent requests for large amounts of public information that require many hours of personnel time. While the Public Information Act is essential to holding governmental bodies accountable by guaranteeing access to public information, abuses by requestors intended to debilitate governmental processes and productivity do occur and can strain resources. Many of these requestors do not intend to access the information once the agency produces it. Current law does not provide effective means to address such situations. Instead, governmental bodies

are required to comply with these requests in almost all situations. This bill would put measures in place to help alleviate this burden without eroding the spirit of the Public Information Act.

Although this bill would address only a small number of requestors, they are disproportionately impacting the process, costing governmental bodies money and time. HB 3107 would promote transparency by allowing these entities to focus their resources on addressing reasonable requests in a more cost effective way.

OPPONENTS SAY:

The Public Information Act already provides procedures for handling subsequent or redundant requests. Not all repeat requestors or requestors seeking large amounts of information are doing so maliciously, and some may have legitimate reasons. It is important to protect the public's right to information, and the procedures proposed in HB 3107 could hinder access.

SUBJECT: Specifying telecommunications classification for franchise tax calculation

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Y. Davis, Bohac, Darby, Murr, Raymond, Shine, Springer, Stephenson

0 nays

3 absent — D. Bonnen, E. Johnson, Murphy

WITNESSES: For — None

Against — None

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

BACKGROUND: Tax Code, sec. 171.002 sets the general franchise tax rate at 0.75 percent of taxable margin. For taxable entities primarily engaged in retail or wholesale trade, this rate is 0.375 percent of taxable margin.

Sec. 171.002(c)(3) specifies that taxable entities that provide telecommunications services do not qualify for the reduced retail and wholesale franchise tax rate.

DIGEST: HB 2126 would specify that selling telephone prepaid calling cards did not constitute the provision of telecommunications services for the purposes of franchise tax rate calculation.

The bill would take effect on January 1, 2018, and would apply only to a franchise tax report originally due on or after that date.

SUPPORTERS SAY: HB 2126 would allow the reduced franchise tax rate for wholesalers and retailers to fulfill its intended purpose. Recently, an administrative law judge held that the sale of prepaid calling cards is a telecommunications service, effectively disqualifying providers of prepaid cards from

receiving the reduced franchise tax rate. Under current law, a large wholesaler that derives even a fraction of revenue from selling prepaid calling cards would be disqualified.

The bill is intended to apply to wholesalers whose primary purpose is the sale of goods and would not alter the administrative law judge's holding determining the meaning of telecommunications services. Rather, the bill would clarify the intent of the telecommunications exclusion in franchise tax statute.

OPPONENTS SAY:

HB 2126 unfairly would provide reduced tax rates to service providers. The reduced franchise tax rate for wholesale and retail is intended to be applied to the sale of goods, not services, and the bill would circumvent the effect of the administrative law judge's holding that calling cards should be classified as a telecommunications service for tax calculation purposes.

NOTES:

A companion bill, SB 1726 by Birdwell, was referred to the Senate Finance Committee on March 23.

SUBJECT: Making certain insurance carrier examination information privileged

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — Jay Thompson, AFACT; (*Registered, but did not testify*: Fred Bosse, American Insurance Association; John Marlow, Chubb; Paul Martin, National Association of Mutual Insurance Companies; Joe Woods, Property Casualty Insurers Association of America (PCI); Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Robert (Bo) Gilbert and Kari King, United Services Automobile Association (USAA))

Against — (*Registered, but did not testify*: Kathleen Field)

On — (*Registered, but did not testify*: Doug Slape, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 401.058 makes a final or preliminary financial examination report and any information obtained during an examination of insurer carriers confidential and not subject to disclosure under the Public Information Act. This section applies to an examined carrier under supervision or conservatorship and does not apply to an examination conducted in connection with a liquidation or receivership under the Insurance Code or another state insurance law.

DIGEST: HB 2437 would make a final or preliminary financial examination report and any information obtained during an examination privileged for all purposes. The bill would make this information not subject to a subpoena other than a grand jury subpoena or discovery or admissibility in evidence in a civil action.

Under the bill, the privileged and confidential status of such reports and

information would not limit the authority of the Commissioner of Insurance to use a final or preliminary examination report and any information obtained during an examination in the furtherance of any legal or regulatory action that the commissioner, in the commissioner's sole discretion, considered appropriate.

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, 2017.

SUPPORTERS SAY:

HB 2437 would clarify in code long-standing Texas Department of Insurance (TDI) practices regarding confidentiality of insurers' financial examination information. It also would make the section of Insurance Code addressing confidentiality of financial examination information consistent with subsequently adopted statutes governing confidentiality of insurer information obtained by TDI.

The bill would not limit an individual's ability to obtain financial information directly from insurers through a subpoena or discovery. It simply would prohibit TDI from being a conduit between insurers and private parties who wish to obtain this financial information and would prevent the department from becoming involved in disputes and other issues between insurance companies.

Specifying that the commissioner could use insurers' financial examination information only in the furtherance of a legal or regulatory action relating to the administration of the Insurance Code would be unnecessary because that issue already is covered in other parts of statute.

OPPONENTS SAY:

HB 2437 should change the bill language to mirror Insurance Code, sec. 823.011(h), which specifies that the insurance commissioner could only use insurers' financial examination information in the furtherance of a legal or regulatory action "relating to the administration of" the Insurance Code, rather than an action that "the commissioner, in the commissioner's sole discretion, considers appropriate." This change would make the bill even more consistent with the existing Insurance Code governing confidentiality and would prevent a rogue commissioner from irresponsibly releasing insurance carriers' financial information.

NOTES:

A companion bill, SB 1072 by Hancock, was reported favorably from the Senate Committee on Business and Commerce on April 10 and placed on the Senate intent calendar on April 11.

SUBJECT: Raising the age of adult criminal responsibility to 18 years old

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Biedermann, Cain, Moody, Thierry

2 nays — Dale, Schofield

WITNESSES: For — Daphne Previti Austin, 289th District Court; Candace Aylor and Chas Moore, Austin Justice Coalition; Brandy Mueller, judge criminal court; Lauren Rose, Texans Care for Children; Brett Merfish, Texas Appleseed; Sarah Turowski, Texas Association of School Resource Officers; Kathryn Freeman, Texas Baptist Christian Life Commission; Lindsey Linder, Texas Criminal Justice Coalition; Yannis Banks, Texas NAACP; Stephanie Haug, Texas PTA; Haley Holik, Texas Public Policy Foundation; Christopher Calderon; Elizabeth Kooy; Stacey Mathews; Lexus'Kiyra Newhouse; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Kathryn Bedecarre, Hetty Borinstein, Margaret "Peggy" Cook, Joey Gidseg, Sukyi McMahon, and Lori Privitera, Austin Justice Coalition; Patrick Bresette, Children's Defense Fund - Texas; Dennis Borel, Coalition of Texans with Disabilities; Kathryn Lewis, Disability Rights Texas; Holly Kirby, Grassroots Leadership; Gyl Switzer, Mental Health America of Texas; Celina Moreno, Mexican American Legal Defense and Educational Fund (MALDEF); Greg Hansch and Deborah Rosales-Elkins, National Alliance on Mental Illness (NAMI) Texas; Will Francis, National Association of Social Workers - Texas Chapter; Katherine Barillas, One Voice Texas; Chris Kaiser, Texas Association Against Sexual Assault; Cathy Dewitt, Texas Association of Business; Sarah Crockett, Texas CASA; Nathan Fennell, Texas Fair Defense Project; Kym Olson, Texas Network of Youth Services; Clayton Travis, Texas Pediatric Society; Mark Hanna, Texas Society For Clinical Social Work; Pamela McPeters, TexProtects (Texas Association for the Protection of Children); Jennifer Allmon, The Texas Catholic Conference of Bishops; Knox Kimberly, Upbring; and 14 individuals)

Against — (*Registered, but did not testify*: Jim Baxa)

On — Ron Quiros, Texas Probation Association, Guadalupe County Juvenile Services; (*Registered, but did not testify*: Mike Meyer and Kaci Singer, Texas Juvenile Justice Department; Michele Deitch)

DIGEST:

CSHB 122 would raise the age of adult criminal responsibility in Texas from 17 to 18 years old, placing 17-year-olds accused of crimes in the juvenile rather than the adult justice system. Juvenile courts would have jurisdiction over youths who committed offenses before their 18th birthday, and adult courts would have jurisdiction over those who committed offenses on or after their 18th birthday.

The bill also would make conforming changes to reflect this, including changing offenses in which the age of the person committing the offense was a factor, amending juvenile court procedures to adjust for the change in age, and altering certain criminal procedures. The bill also would extend the amount of time that prosecutors and juvenile probation departments could retain some abbreviated records of juveniles involved in certain offenses so that all such records could be retained until a youth turned 19 years old.

CSHB 122 would require the Texas Juvenile Justice Board to appoint by December 1, 2018, an advisory committee to monitor and evaluate the bill's provisions. The committee would have to include several specified members, including a representative from the Texas Juvenile Justice Department (TJJD), a representative from TJJD's probation services, a representative from the Health and Human Services Commission, a representative of county commissioners courts, two juvenile court judges, chief juvenile probation officers from each regional chiefs association, juvenile prosecutors and defense attorneys, juvenile justice advocates, and individuals who had gone through the juvenile justice system or their family members. The advisory committee would be abolished June 1, 2020.

The bill would take effect September 1, 2019, and would apply only to offenses and conduct committed on or after that date. The requirement to appoint the advisory committee would take effect September 1, 2017. To the extent of any conflict, CSHB 122 would prevail over other bills

enacted by the 85th Legislature.

SUPPORTERS SAY:

By raising the age of adult criminal responsibility to 18 years old, CSHB 122 would improve public safety, create better outcomes for youths, have long-term economic benefits, and better conform Texas law with national trends in juvenile justice and other state laws. Under current law, the state holds 17-year-olds accountable for criminal actions as if they were adults, while not allowing them to vote, serve on a jury, or buy tobacco, alcohol, or lottery tickets.

CSHB 122 would put Texas in line with other states' laws, federal law on sentencing and correctional practices for those under 18, and U.S. Supreme Court rulings that have recognized differences between children and mature adults. Forty-four other states have set their age of adult criminal responsibility at 18 years old, according to the National Conference of State Legislatures. Raising the age also would resolve inconsistencies in how state and federal law treat 17-year-olds.

Public safety. Moving 17-year-olds to the juvenile system from the adult justice system would enhance public safety because youths are more likely to be rehabilitated in the juvenile system. Education, treatment, and services in the juvenile system focus on rehabilitation, take into account adolescent development, and involve the family, while the adult system lacks this emphasis and often focuses on punishment. Most offenses by 17-year-olds are non-violent, low-level, misdemeanor crimes that do not warrant the adult system's severe sanctions.

The juvenile system is equipped to handle all types of young offenders and could absorb 17-year-olds. It has a range of sanctions available, from pre-trial diversion to probation, and may include confinement in local or state facilities. State-run juvenile facilities offer intensive specialized treatment, including programs for youths who commit murder or other violent offenses.

Public safety would be maintained if Texas raised the age of criminal responsibility because, under certain conditions, 17-year-olds accused of serious crimes still could move to the adult system. The bill would not change the laws that allow certification of older youths accused of certain

crimes to be tried and sentenced as adults. Seventeen-year-olds who committed serious and violent crimes could be handled this way while still protecting public safety. In addition, courts could continue transferring to the adult system certain youths with sentences that began in the juvenile system.

Outcomes for youth. By moving 17-year-olds from the adult to the juvenile justice system, CSHB 122 would improve the lives of offenders and recognize scientific studies that show teenage brains are still maturing and that teenagers can exhibit increased risk taking and poor decision making and impulse control. However, teenagers are malleable and have potential for rehabilitation, making it appropriate for them to be in the juvenile system, which includes services and support specifically designed for them.

These offenders would continue to be held accountable for their actions but in a system designed to protect and rehabilitate them and to ensure they had help understanding legal proceedings and consequences. CSHB 122 also would ensure that, unlike in the adult system, youths' parents were involved. Most 17-year-olds are still in high school and could continue their education in the juvenile system, which has appropriate education, vocation, training, and career programs that could be adapted for 17-year-olds.

Seventeen-year-olds would be better protected in the juvenile system, and those sent to local or state facilities could be housed and treated without endangering younger offenders. Local juvenile probation departments and the state are experienced in dealing with offenders as old as 19 in a way that protects everyone. By contrast, youths in adult facilities are at high risk of physical assault, sexual abuse, and mental health problems. Outcomes for 17-year-olds also would improve if they were kept out of local adult jails, which lack appropriate programs and often struggle to meet federal standards under the Prison Rape Elimination Act (PREA) to separate 17-year-olds from older offenders without isolating them.

Raising the age also would help older youths by allowing their records to remain private, giving them a better chance of moving past their brush with the law. The adult criminal justice system leaves 17-year-olds with

an adult criminal record that generally is public information and can have long-lasting consequences for education, jobs, housing, and more.

Costs of implementation. While raising the age could shift some costs from the adult to the juvenile justice system, it would reduce other costs, might be less costly than predicted, and could result in long-term economic benefits. One 2012 study estimated that raising the age of jurisdiction of the juvenile justice system in Texas would result in $88.9 million in net benefits for each cohort of 17-year-olds. This takes into account costs and savings to taxpayers and the fiscal benefits resulting from better outcomes for youths and reduced victimization.

Long-term savings and other benefits could result because the juvenile system has a better record of reducing recidivism than the adult system, meaning fewer crimes and lower costs for the correctional system. While cost per day of supervision may be more in the juvenile system, lengths of stay often would be shorter, reducing overall costs. Those who might have been crime victims would benefit along with rehabilitated youths.

The costs of raising the age could be less than some estimates. Arrests of 17-year-olds have been dropping for years, and counties could absorb those who entered the juvenile system. Given the frequency with which youths receive probation in the juvenile system, some of the 17-year-olds currently sentenced to adult correctional facilities instead could be placed on probation and kept locally, which would cost less. Some commonly used diversion options in the juvenile system would be cheaper than having 17-year-olds in the adult system.

Other states that have raised the age of criminal responsibility have found it less costly than predicted, with no spike in juvenile corrections costs, and Texas could have the same experience. For example, after a Connecticut law raised the age in 2010, not only were increases in cost not realized, but spending on juvenile justice was lower in 2011-12 than it had been 10 years earlier. Some of the estimated costs for implementing CSHB 122 reflect costs such as new facilities that may occur regardless of the bill. Not all 17-year-olds would enter the juvenile justice system on the bill's effective date but would enter gradually, so the local juvenile probation systems and the state were not overburdened.

Developing and implementing age-appropriate programs and housing for 17-year-olds in the Texas juvenile justice system would not be unaffordable. In some cases, the juvenile system already supervises offenders as old as 19, and current education, vocation, and career programs used for them could be modified or expanded.

Raising the age would help reduce costs to local jails and the state to comply with federal standards under PREA. Texas counties are incurring significant costs trying to meet the sight and sound separation standards. Counties also could incur costs if noncompliance with PREA were raised in a lawsuit against them.

OPPONENTS SAY:

The current system is the best approach for both the public and 17-year-olds. The cost of CSHB 122 could be prohibitive, and many options are currently available for 17-year-olds to be treated appropriately in the Texas criminal justice system.

Most 17-year-olds receive probation in the adult system, and the adult prison system operates a youthful offender program designed for them. While 17-year-olds may need services for their age group, this can be done in the adult system, rather than altering Texas' juvenile justice system.

Public safety. Placing all 17-year-olds in the juvenile system could make it difficult to hold them appropriately accountable for their crimes. Seventeen-year-olds are old enough to understand the consequences of their actions, and the adult criminal justice system provides a range of sanctions to handle them properly. Options include pre-trial diversion, deferred adjudication, probation, fines, and state jail or prison terms, which allow the punishment to fit the individual and crime

Simply shifting the age of court jurisdiction by one year would not necessarily result in less crime or fewer victims. Many things contribute to crime rates, including social, economic, and other factors, as well as decisions made by law enforcement officers, prosecutors, and courts.

Outcomes for youth. Moving 17-year-olds to the juvenile system could

have a negative impact on younger youths. It could result in 17-year-olds entering a juvenile justice system that in recent years has dealt with scandals, reorganization, implementation of a regionalization plan, and allegations that some juvenile facilities are unsafe for youths and staff. Younger youths in juvenile settings, which are more informal, could be endangered or influenced by the influx of 17-year-olds, some of whom would have been involved in serious crimes. Many younger youths also have serious and complicated mental health and education needs that may not be helped by the addition of 17-year-olds to the juvenile system.

The rehabilitation needs of 17-year-olds may be more aligned with those in the adult system than with younger offenders in the juvenile system. Any other needs could be met by treating them as a unique group within the adult system, rather than moving them to the juvenile system, which may not provide the type of programs these offenders need.

Costs of implementation. Raising the age could be costly because thousands of 17-year-olds entering the juvenile system could strain juvenile courts, local juvenile probation systems, and juvenile facilities. Enacting CSHB 122 without adequate funding could stress these systems, which often operate under tight budgets.

Placing 17-year-olds in the juvenile system could require more resources for supervision, programs, and treatment. These offenders may have challenging mental health and behavioral issues and may need new programs focused on job training and life skills to transition to adulthood. Costs of supervision and programs in the juvenile system, due to their intensiveness, are higher than those in the adult system, and providing services for these older youths while keeping probation caseloads low could be costly for the state and counties.

While the fiscal note for CSHB 122 estimates no state cost in fiscal 2018-19, costs would increase significantly after that when the bill's main provisions took effect. The first full biennium of implementation would cost $45.6 million for fiscal 2020-21 and $35.1 million in fiscal 2022. This estimate does not include potentially significant costs for probation, including mental health, substance abuse, or other specialized services, according to the fiscal note.

Raising the age could be costly for counties. The fiscal note for CSHB 122 reported that Tom Green County estimates it would have to expand its detention facilities and might no longer be able to provide detention services to other counties. El Paso County estimated a $15.4 million cost in fiscal 2020-21, including the cost to build a 40-bed facility, and Jefferson County estimated an ongoing biennial cost of $452,852. Tarrant County reported potentially being impacted by an additional 1,081 juveniles annually, costing $9.8 million.

OTHER OPPONENTS SAY:

If the state raised the age of adult criminal responsibility to 18 years old, it would have an obligation to provide adequate funding for the state and local probation departments to provide programs and supervision.

NOTES:

CSHB 122 would have no fiscal impact during fiscal 2018-19, according to the Legislative Budget Board's fiscal note. Costs would be $45.6 million in fiscal 2020-21 and $35.1 million in fiscal 2022. The fiscal note also says that additional costs potentially associated with increased demand on juvenile probation programs were not included and could be significant.

A companion bill, SB 941 by Hughes, was referred to the Senate Committee on Criminal Justice on March 1.

The committee substitute differs from the filed bill in several ways, including that CSHB 122 would take effect September 1, 2019, instead of September 1, 2018, and would apply to offenses committed on after the revised effective date. It also eliminated a provision in the filed bill that would have expanded when prosecutors could appeal some orders relating to certifying a youth as an adult, as well as provisions that would have amended laws dealing with juvenile curfews.

SUBJECT: Permitting sale of lottery tickets by certain wine and beer retailers

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: *After recommitted:*
6 ayes — Kuempel, Guillen, Goldman, Hernandez, Herrero, S. Thompson

0 nays

3 absent — Frullo, Geren, Paddie

WITNESSES: *March 27 public hearing:*
For — Dya Campos, H-E-B; (*Registered, but did not testify*: Jim Sheer, Texas Retailers Association)

Against — None

On — (*Registered, but did not testify*: Gary Grief, Texas Lottery Commission)

BACKGROUND: Under Government Code, sec. 466.155(a)(4)(C), a license to sell Texas Lottery tickets must be denied to a person who would sell them at the same location for which the person holds a wine and beer retailer's permit.

DIGEST: CSHB 155 would allow lottery tickets to be sold at locations where a beer and wine retailer's permit was held if the location derived less than 30 percent of its gross receipts from the sale or service of alcoholic beverages.

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, 2017.

SUPPORTERS SAY: CSHB 1555 would allow grocery and convenience stores to continue selling lottery tickets at locations that have expanded to include food and beverage service areas that require a wine and beer retailer’s permit.

Grocery and convenience stores increasingly are expanding to provide in-store food and alcohol service areas at which customers also can refill growlers, which are half-gallon containers that allow customers to take beer home with them.

The bill would provide a way for stores to meet customer demand, be competitive, and still contribute to the Texas Lottery's success. Grocery stores provide a significant portion of the lottery's retail revenue base. It is important to the lottery's ongoing success that grocery and convenience stores continue as participating retailers even as some are expanding into limited on-premise consumption of beer and wine. CSHB 1555 would offer a sensible way to balance these interests.

The bill would narrowly target establishments that sold lottery tickets and whose main source of revenue was not alcohol sales and service, protecting consumers from mixing alcohol consumption and lottery purchases. The consumption of alcohol on premises would be in a distinct location separate from the sale of lottery tickets.

OPPONENTS SAY:

CSHB 1555 would blur a line that was deliberately drawn to keep separate those who sold lottery tickets from establishments where alcohol could be consumed. This sensible restriction was created to provide a buffer between lottery sales and on-site alcohol consumption.

NOTES:

A companion bill, SB 888 by Seliger, was considered in a public hearing of the Senate Committee on Business and Commerce on April 18.

CSHB 1555 was reported favorably as substituted by the House Committee on Licensing and Administrative Procedures on April 3, sent to Calendars on April 11, recommitted to committee, and again reported favorably on April 13.

SUBJECT: Requiring certain establishments to allow peace officers to carry weapons

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

VOTE: 9 ayes — P. King, Nevárez, Burns, Hinojosa, Holland, J. Johnson, Metcalf, Schaefer, Wray

0 nays

WITNESSES: For — Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); (*Registered, but did not testify*: Bill Kelly, City of Houston Mayor's Office; David Sinclair, Game Warden Peace Officers Association; Justin Bragiel, Texas Hotel and Lodging Association; Mitch Landry, Texas Municipal Police Association (TMPA); James McLaughlin, Texas Police Chiefs Association)

Against — Terry Holcomb, Texas Carry; (*Registered, but did not testify*: John-Michael Gillaspy, Texas Carry; Thomas Parkinson)

BACKGROUND: Penal Code, sec. 46.02 establishes a crime for the unlawful carrying of weapons. Sec. 46.03 establishes a crime for carrying a weapon in a place where weapons are prohibited.

Sec. 46.15 establishes that secs. 46.02 and 46.03 do not apply to peace officers and special investigators, and neither section prohibits them from carrying a weapon in Texas, including in an establishment serving the public, regardless of whether the officer or investigator is on duty.

DIGEST: HB 873 would require an establishment serving the public to not prohibit or otherwise restrict a peace officer or special investigator from carrying on its premises a weapon that the officer or investigator was otherwise authorized to carry, regardless of whether the officer or investigator was on duty.

An establishment serving the public would be defined as:

- a hotel, motel, or other place of lodging;

- a restaurant or other place where food was sold to the public;
- a commercial establishment or office building open to the public;
- a sports venue, including an arena or stadium used for amateur or professional events that charges an admission fee; and
- any other place of public accommodation, amusement, convenience, or resort to which the general public is normally invited.

The bill would take effect September 1, 2017, and would apply only to conduct that occurred on or after that date.

SUPPORTERS SAY:

HB 873 would clarify that police officers and certain federal agents are permitted by law to carry weapons on the premises of establishments serving the public. While current law on carrying weapons does not apply to officers on these premises, questions have been raised about this authority when public venues have attempted to deny entry to off-duty police officers carrying weapons. In application, current law prevents these officers from being charged with a crime, but it is not understood to give them the right to carry on these properties.

Some law enforcement agencies have policies requiring officers to carry a firearm while off duty to comply with the duty of peace officers, which is assumed to apply regardless of whether an officer is on the clock. Various public venues currently prohibit weapons on their premises, and some of them screen people before allowing them to enter. Off-duty officers may be denied entry to these venues by complying with their agency's policy. The right granted to officers by this bill would allow officers to tell establishments that they have statutory authority to carry.

The bill would not expand the places where police officers and certain federal agents may carry weapons. Rather, it would clarify that they had the right to carry a weapon in establishments that serve the public, even while off duty. Further, the bill would not take away a private property owner's right to ask an individual to leave if the individual violated a trespassing notice.

OPPONENTS SAY:

By prohibiting an establishment serving the public from forbidding a police officer or special investigator from carrying a weapon on its premises, HB 873 would infringe on the rights of private business owners to determine who can and cannot carry a weapon on their property. Under Penal Code, secs. 30.06 and 30.07, the gun trespass statutes, a private business may prohibit individuals from carrying a firearm on its premises. The bill would create a specific category of individuals allowed to carry on the property even if the owner had chosen to prohibit weapons in the establishment.

OTHER OPPONENTS SAY:

HB 873 would not go far enough to address how its provisions would be enforced. It would be clearer to add language that established a defense to prosecution under the gun trespass statutes for peace officers, regardless of whether they were on duty.

SUBJECT: Increasing the compensation cap for emergency services commissioners

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 5 ayes — Coleman, Springer, Hunter, Neave, Roberts

1 nay — Biedermann

3 absent — Stickland, Thierry, Uresti

WITNESSES: For — (*Registered, but did not testify*: Wayne Smith, Emergency Services District Number 6)

Against — None

BACKGROUND: Under Health and Safety Code, sec. 775.038, the commissioner of an emergency services district may receive compensation of no more than $50 per day worked, not to exceed $3,000 per year.

Under Water Code, sec. 49.060, the director of a water district may receive compensation of no more than $150 per day worked, not to exceed $7,200 per year.

DIGEST: HB 2504 would amend the Health and Safety Code to authorize the commissioner of an emergency services district to receive the same compensation provided to the director of a water district by Water Code, sec. 49.060.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: HB 2504 would provide a uniform compensation rate between water districts and emergency services districts (ESDs), both of which serve critical public service roles. ESDs were first established to provide volunteer firefighting services, but the role of a district has since expanded to include ambulance and other emergency services. As communities across the state continue to grow, the need for these services expands as well.

The current commissioner compensation cap hampers personnel retention, as ESDs must compete with other local first responders for personnel. The bill would provide adequate compensation for an expansion of services and ensure that ESDs remained competitive with market demands.

HB 2504 would not increase taxes or adopt an unfunded mandate. Its language is permissive, giving room for ESDs to compensate their commissioners appropriately while allowing for a range of pay rates below the cap as appropriate to the fiscal situation of each district.

OPPONENTS SAY:

HB 2504 would almost triple the pay for ESD commissioners, raising concerns about increased spending in the district. While these commissioners do important work, there is no compelling reason right now for a bill that would authorize such a substantial increase in pay.