HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 23, 2017
85th Legislature, Number 79
The House convenes at 10 a.m.

Seventy-three bills and three joint resolutions are on the daily calendar for second-reading consideration today. Bills and resolutions on the Emergency Calendar, Major State Calendar, and Constitutional Amendments Calendar are analyzed in Part One of today's *Daily Floor Report* and 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.

Dwayne Bohac
Chairman
85(R) - 79

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 23, 2017
85th Legislature, Number 79

SUBJECT: Modifying voter ID requirements and providing a criminal penalty

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Laubenberg, R. Anderson, Fallon, Larson, Swanson

2 nays — Israel, Reynolds

SENATE VOTE: On final passage, March 28 — 21-10 (Garcia, Hinojosa, Menendez, Miles, Rodriquez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: None

BACKGROUND: In 2011, the 82nd Legislature enacted SB 14 by Fraser, which requires a voter to present to an elections officer an acceptable form of photo identification before voting, unless the voter is disabled and presents a voter registration certificate indicating that the voter is exempt from the photo identification requirement. Acceptable forms of photo identification, which cannot be more than 60 days expired, include:

- a driver's license, election identification card, or personal identification card, or license to carry a handgun issued to the person by the Department of Public Safety (DPS); or
- a U.S. military identification card, citizenship certificate, or passport.

An election identification card (EIC) is a form of identification provided at no charge to a person who does not have an unexpired version of the forms of photo ID mentioned above or a certificate of naturalization containing a photograph. These cards can be used only for voting purposes and are valid for six years or, if issued to citizens 70 years of age or older, do not expire. In 2013, the secretary of state and DPS partnered to provide EICs at several mobile locations throughout the state.

A federal district court determined and the Fifth Circuit Court of Appeals affirmed that SB 14 had a racially discriminatory effect in violation of the federal Voting Rights Act because the law disproportionately diminished

African Americans' and Latinos' ability to participate in the political process. A U.S. district judge entered an interim order approving a plan proposed by the parties that created alternatives to the voter identification requirements of SB 14. The voter ID requirements contained in this order were used in the November 2016 election.

The interim order allowed voters to present acceptable forms of photo ID that were not more than four years expired. Voters without acceptable forms of ID were allowed to vote a regular ballot after completing and signing a reasonable impediment declaration in conjunction with presenting a valid voter registration certificate, a certified birth certificate, a current utility bill, a bank statement, a government check, a paycheck, or any other government document displaying the voter's name and address.

DIGEST:

SB 5 would revise the photo identification requirements for voting and establish a mobile unit program for issuing election identification certificates.

Photo identification. SB 5 would allow a voter to present an acceptable form of photo identification if it had been expired for no more than two years. A person 70 years of age or older could use any acceptable form of photo identification that had expired for the purpose of voting as long as the identification was otherwise valid.

The bill also would establish that a person could vote after presenting an alternate form of identification accompanied by a signed reasonable impediment declaration. Acceptable alternate forms of identification would include:

- a government document showing the voter's name and address, including voter registration certificates;
- a current utility bill, bank statement, government check, or paycheck showing the voter's name and address; or
- a certified copy of a domestic birth certificate or other document confirming birth that established identity and would be admissible in court.

The secretary of state would have to prescribe the form for the reasonable

impediment declaration. It would include several things, including notice that a person is subject to prosecution for a false statement or false information on the declaration, an affirmation of the truth of the information provided in the declaration, the location of the polling place, a place for both the voter and election judge to sign and date the form, and an acceptable impediment to having a form of photo identification.

An acceptable impediment would be lack of transportation, lack of documents needed to obtain a photo ID, work schedule, lost or stolen photo ID, disability or illness, family responsibilities, or that a form of photo ID had been applied for but had not been received. Election officers could not question the reasonableness of an impediment sworn to by a voter and would have to affix the voter's voter registration number to the declaration.

Intentionally making a false statement or providing false information on the declaration would be a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

Mobile unit program. SB 5 would require the secretary of state to establish a program to provide election identification certificates (EIC) to voters using mobile units. When creating the program, the secretary of state would be required to consult with the Department of Public Safety on security relating to and best practices and equipment required for issuing certificates.

The secretary of state could deny a request for a mobile unit if the required security or other necessary elements of the program could not be ensured.

The bill would take effect January 1, 2018.

SUPPORTERS SAY:

SB 5 would maintain the integrity of elections in Texas while providing an opportunity for any eligible voter to cast a ballot. Requiring a photo ID is favored by most voters and is the preferred method of ensuring integrity at the ballot box. This bill would provide a constitutionally sound way to do that by addressing concerns raised by a federal appellate court.

While the bill may not codify the court's interim order exactly, it closely follows the directive of the order. The bill would codify a mobile unit program that the secretary of state has already used to provide election identification certificates (EIC) free of charge to qualified Texas voters who do not have an approved, unexpired form of photo ID. This program would help Texas voters obtain a valid form of photo ID without requiring them to travel to a DPS office.

While some argue that the bill's establishment of a third-degree felony is too harsh for making a false statement or providing false information on the reasonable impediment declaration for voters without a photo ID, the penalty is in line with the range for similar offenses. The penalty for intentionally lying on a government document is a state-jail felony, and the penalty for voting illegally is a second-degree felony. Another safeguard for the voter is provided by requiring a prosecutor to prove the voter intentionally made the false statement, which is the most difficult standard.

OPPONENTS SAY:

While SB 5 attempts to address the issues raised by federal courts regarding Texas' voter ID law, it misses the mark by deviating from the remedy provided in the interim court order. The court expects to revisit the issue after the legislative session to determine if further remedies are needed. The state already has spent resources defending its voter ID law, and it would be better not to codify a remedy that could also fail to meet the standards of the federal Voting Rights Act.

A voter should be allowed to vote a regular ballot if that person presents an acceptable form of photo ID that is not more than four years expired. The list of acceptable impediments to obtaining the ID should include an "other" box with room for a written explanation. Not all voters will fall into the six categories laid out in the bill. A person also should be able to present federally acceptable identification for Indian tribes, student photo IDs, and government photo IDs, which are acceptable in other states.

The penalty provided in the bill could act as a form of voter intimidation. Voters already are anxious about their participation in the process, and a penalty this severe could deter those voters from the ballot box. The penalty also is not accompanied by an affirmative defense to protect a

voter who was directed to fill out the reasonable impediment declaration incorrectly by an election worker.

NOTES:

A companion bill, HB 2481 by P. King, was left pending following a public hearing by the House Elections Committee on April 10.

SUBJECT: Continuing the Texas Optometry Board

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Price, Sheffield, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

2 absent — Arévalo, Collier

SENATE VOTE: On final passage, April 19 — 30-1 (Hall)

WITNESSES: None

BACKGROUND: In 1921, the 37th Legislature created the Texas State Board of Examiners in Optometry, now known as the Texas Optometry Board. The mission of the board is to ensure optometry professionals are qualified, competent, and adhere to established standards.

Functions. The Texas Optometry Board licenses optometrists, regulates the separation of optometry practices and retail optical dispensing, and investigates complaints, taking disciplinary action when necessary. The board also can collect fees for providing certain services, including giving examinations and issuing licenses.

Governing structure. The board is composed of nine members who serve staggered six-year terms, including six optometrists or therapeutic optometrists and three members of the public. Board members are appointed by the governor.

Disciplinary actions. Under Occupations Code, sec. 351.501, on the vote of five or more members and in certain circumstances, the board may refuse to issue a license to practice optometry, place a probation on a license holder, impose a fine, or impose a condition for continued practice.

Funding. The total expenditures of the board in fiscal 2016 totaled $472,825. Most board funding comes from fees deposited to general revenue, with the remainder coming from certain appropriated receipts and interagency contracts.

Staffing. In fiscal 2016, the board employed seven staff members.

The Texas Optometry Board is subject to the Sunset Review Act and, unless continued, will be abolished September 1, 2017.

DIGEST:

SB 314 would continue the Texas Optometry Board through September 1, 2029. The bill also would adopt certain Sunset Advisory Commission recommendations.

Disciplinary actions. The board could impose disciplinary measures on an applicant or license holder who developed an incapacity that prevented the individual from practicing optometry with reasonable skill, competence, and safety to the public. The bill would remove the requirement that five of the nine board members must vote in order to refuse to issue a license, place a probation on a license holder, impose a fine, or impose a condition for continued practice. It also would remove certain references to specific reasons for the board to discipline a license holder.

To enforce a disciplinary action against an applicant or license holder who developed an incapacity, the board or an agent of the board would have to request the individual to submit to a mental or physical examination by a physician or other health care professional. The board would adopt guidelines to evaluate circumstances in which an applicant or license holder could be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

If the individual refused to submit to the examination, the board would have to issue an order requiring the applicant or license holder to show cause for refusal. The board would schedule a hearing on the order within 30 days of the notice being served, and notify the applicant or license holder of the order and hearing. The individual would have the burden of

proof to show why he or she should not be required to submit to the examination. After the hearing, the board would either require the applicant or license holder to submit to the examination no within 60 days after the order was submitted or withdraw the request.

Training program. The bill would expand the training program required for members of the board to include information regarding the scope and limitation of the board's rulemaking authority and the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law. The executive director of the board would have to create a training manual and distribute the manual to each board member annually.

A board member who had not completed the additional training required in the bill could not vote, deliberate, or be counted as a member in attendance at a meeting of the board held on or after December 1, 2017, until the member had completed the additional training.

Criminal history record information. The board would require applicants for a new or renewed optometry license to submit a complete and legible set of fingerprints for the purpose of obtaining criminal history record information from the Department of Public Safety (DPS) and the Federal Bureau of Investigation by September 1, 2022. The board could not issue a license to an individual who did not comply with fingerprinting requirements. A license holder would not have to submit fingerprints for a renewed license if the license holder had done so previously for the initial license or a prior license renewal.

The bill would allow the board to enter into an agreement with DPS to administer a criminal history record information check and authorize DPS to collect from an applicant any costs incurred in conducting the check. The board also would establish a process to search at least one national practitioner database to determine whether another state had taken disciplinary action against an applicant or license holder.

The board could suspend or refuse to renew the license of an individual who did not comply with fingerprinting requirements or for violating a statute or rule of this or another state.

Investigative process. Complaints, adverse reports, and all investigative information received by the Texas Optometry Board relating to an optometry license holder, license application, or criminal investigation would be privileged and confidential. The board would be required to protect the identity of a complainant to the extent possible.

The bill would prohibit the board from accepting anonymous complaints. A complaint filed by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder would have to include the name and address of the person filing the complaint. The board would have to notify the license holder who was the subject of a complaint of the name and address of the complainant within 15 days of the filing date unless the notice would jeopardize an investigation.

Licensing and applications. The bill would allow a license to practice optometry or therapeutic optometry to be valid for a term of one or two years, as determined by board rules.

The bill would remove language from statute requiring that an optometry license applicant be "of good moral character" to be issued a license.

Fees. The bill would repeal Occupations Code, sec. 351.152(c), which prohibited the board from setting a fee less than the amount that the fee was on September 1, 1993.

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 314 would continue the Texas Optometry Board, a state agency necessary to oversee the practice of optometry and therapeutic optometry in the state. The bill also would strengthen licensing and enforcement practices to be more consistent with standard best practices.

The bill would require license applicants to submit to fingerprinting and criminal background checks in order to conform to common licensing standards across the state. Requiring mental or physical examination as part of a disciplinary action is also standard procedure for several state boards.

It is important that the board protect the identity of a complainant to the best extent possible to ensure that individuals are not disincentivized from submitting complaints against problematic optometrists.

OPPONENTS SAY:

SB 314 would expand government and increase the regulatory burden on the optometry industry by allowing the Texas Optometry Board to require a member to submit to mental or physical examination and by requiring license applicants to submit to fingerprinting and background checks.

Further, maintaining the confidentiality of complaints against a license holder could be impossible in cases in which patient records are necessary to adjudicate the complaint.

NOTES:

A companion bill, HB 3012 by Flynn, was considered in a public hearing by the Public Health Committee on May 9 and left pending.

SUBJECT: Changing the dates for CPRIT Sunset review and the awards period

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Price, Arévalo, Burkett, Coleman, Guerra, Klick, Oliverson, Zedler

0 nays

3 absent — Sheffield, Collier, Cortez

SENATE VOTE: On final passage, April 19 — 23-8 (Bettencourt, Burton, Creighton, Hall, Huffines, Hughes, Nichols, V. Taylor)

WITNESSES: *On House companion bill, HB 84:*
For — Cam Scott, American Cancer Society Cancer Action Network, Texas Public Health Coalition, and Texas Cancer Partnership; Gary Thompson, Leukemia and Lymphoma Society; Amanda Martin, Texas Association of Business; Thomas Kowalski, THBI Texas Healthcare and Bioscience Institute; (*Registered, but did not testify*: Greg Parkington, American Cancer Society; JoAnna Strother, American Lung Association; Kathy Hutto, AstraZeneca; Drew Scheberle, Austin Chamber of Commerce and 2050 Group; Tom Kleinworth, Baylor College of Medicine; Max Jones, Greater Houston Partnership; David Lofye, LIVESTRONG Foundation; Jessica Schleifer, Teaching Hospitals of Texas; Marilyn Doyle, Texas Medical Association; Shauna Huffington, ZERO The End Of Prostate Cancer; Thomas Parkinson)

Against — None

On — Kristen Doyle and Wayne Roberts, Cancer Prevention and Research Institute of Texas

BACKGROUND: The Cancer Prevention and Research Institute of Texas (CPRIT) was established by a voter-approved constitutional amendment in 2007, which authorized the state to issue $3 billion in bonds to fund cancer research and prevention programs and services in Texas. Under the guidance of the

CPRIT oversight committee, CPRIT accepts applications and awards grants for cancer-related research and for the delivery of cancer prevention programs and services by public and private entities in Texas.

DIGEST:

SB 224 would extend to 2023 from 2021 the date on which the Cancer Prevention and Research Institute of Texas would be abolished unless continued under the Texas Sunset Act. The bill also would extend the awards period after which the institute's oversight committee could not award money to August 31, 2022 from August 31, 2020.

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:

SB 224 is a necessary extension of the Sunset review date for the Cancer Prevention and Research Institute of Texas (CPRIT) that would allow the institute to use its entire constitutional funding authorization for cancer research and prevention. The will of the voters in approving the constitutional amendment in 2007 was to expend the full $3 billion, which cannot be done unless the Sunset review is moved to the 2022-23 biennium. Without an extension of Sunset review and the award period, about $150 million could be left unused.

Early discontinuation would negatively impact the Texas economy. Every dollar granted for product development research has generated a significant return for private sector follow-on investment, which now totals more than $1 billion. The Perryman Group also found that the awards generated hundreds of millions in revenue at the state and local levels. Screenings and prevention services provided with the awards have led to significant treatment cost savings and prevented a potentially expensive population from entering the already costly health care system.

Early discontinuation also would have a negative effect on the strides made in preventing cancer and in cancer research. CPRIT prevention programs have identified thousands of cancers or cancer precursors. Through the institute, Texas has become a leader in both cancer research and the biomedical industry, and three National Cancer Institute-designated Comprehensive Cancer Centers are now functioning in the

state, benefitting Texas patients.

Texans approved the investment of these dollars in preventing and researching cancer, and the institute has been working effectively, efficiently, and ethically. Delaying the Sunset review and extending the award period would allow these funds to be used for their intended purpose.

As a Texas institute, CPRIT is dedicated to upholding the state's best interest when granting funding, including its mission to eradicate cancer and also to stimulate the Texas economy. CPRIT makes three types of grants, one of which is academic, which has allowed it to partner with numerous research institutions to benefit Texans. Because private organizations may have different goals, grant requirements, and funding levels, their efforts might not generate the same positive impact as CPRIT's efforts have proven able to do.

OPPONENTS SAY:

CPRIT has not met its potential to find the causes of and cures for cancer. With past issues regarding conflicts of interest and mismanagement, CPRIT could benefit from Sunset review in the fiscal 2020-21 biennium, rather than waiting until fiscal 2022-23. Undergoing Sunset review does not necessarily mean that the institute would be discontinued.

OTHER OPPONENTS SAY:

CPRIT should not be extended until 2023. The duties of the institute are more appropriately handled by private organizations than by state government.

NOTES:

The House companion bill, HB 84 by S. Davis, was approved by the House on April 25.

According to the Legislative Budget Board's fiscal note, no significant fiscal implication to the state from SB 224 would be anticipated through fiscal 2020. Beginning in fiscal 2021, the Legislative Budget Board projects a negative impact of $11.4 million in general revenue each fiscal year through fiscal 2041 for additional debt service payments by the Texas Public Finance Authority.

SUBJECT: Maternal Mortality and Morbidity Task Force data analysis and reporting

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Price, Sheffield, Arévalo, Burkett, Guerra, Klick, Oliverson, Zedler

0 nays

3 absent — Coleman, Collier, Cortez

SENATE VOTE: On final passage, April 27 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Juliana Kerker, American Congress of Obstetricians and Gynecologists-Texas District, Texas Association of Obstetricians and Gynecologists; Joel Romo, American Heart Association; Stacey Pogue, Center for Public Policy Priorities; Mandi Kimball, Children at Risk; Liz Garbutt, Children's Defense Fund-Texas; Stacy Wilson, Children's Hospital Association of Texas; Leah Gonzalez, Healthy Futures of Texas; Nora Del Bosque, March of Dimes; Jason Sabo, Mental Health America of Greater Houston; Gyl Switzer, Mental Health America of Texas; Sebastien Laroche, Methodist Healthcare Ministries of South Texas, Inc.; Greg Hansch, National Alliance on Mental Illness Texas; Will Francis, National Association of Social Workers-Texas Chapter; Elaine Cavazos and Donna Kreuzer, Pregnancy and Postpartum Health Alliance of Texas; Adriana Kohler, Texans Care for Children; Joshua Houston, Texas Impact; Michelle Romero, Texas Medical Association; Clayton Travis, Texas Pediatric Society; Maggie Jo Buchanan, Young Invincibles; Kristi Morrison; Nancy Sheppard)

Against — None

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

BACKGROUND: Health and Safety Code, ch. 34 governs the Maternal Mortality and Morbidity Task Force, which is administered by the Department of State

Health Services (DSHS). Sec. 34.005 requires the task force to:

- study and review cases of pregnancy-related deaths and trends in severe maternal morbidity;
- determine the feasibility of studying cases of severe maternal morbidity; and
- make recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity.

Sec. 34.007 requires DSHS to randomly select cases for the task force to review to reflect a cross-section of pregnancy-related deaths. DSHS also is required to analyze aggregate data of severe maternal morbidity to identify any trends.

DIGEST:

SB 1929 would expand the topics that the Maternal Mortality and Morbidity Task Force was required to study and review to include rates or disparities in pregnancy-related deaths and severe maternal morbidity. The bill would give the Department of State Health Services (DSHS) the option to either randomly select cases or select all cases for the task force to review. DSHS would have to conduct a statistical analysis of the aggregate data for pregnancy-related deaths and severe maternal morbidity to identify any trends, rates, or disparities.

The bill would require the Health and Human Services Commission (HHSC) to:

- evaluate options for reducing maternal mortality, focusing on the most prevalent causes of maternal mortality as identified in the DSHS and task force's joint biennial report, and for treating postpartum depression in economically disadvantaged women;
- submit a written report summarizing HHSC's efforts to assess options for reducing maternal mortality and for treating postpartum depression in economically disadvantaged women;
- seek federal funding for postpartum depression under the 21st Century Cures Act as permitted by state and federal law; and
- consider the biennial report's recommendations when using any federal grant money received.

HHSC would submit the written report to the governor, lieutenant governor, House speaker, Legislative Budget Board, and the appropriate House and Senate standing committees by December 1 of each even-numbered year.

The bill would extend the task force's Sunset date from September 1, 2019, to December 31, 2023.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 1929 would help address an increase in maternal mortality and morbidity rates in Texas by continuing the Maternal Mortality and Morbidity Task Force. Studies have found that Texas has a higher rate of maternal mortality and morbidity than most other states and many industrialized countries. Continuing the task force through 2023 would allow it to develop a better understanding of this threat to public health.

The Department of State Health Services (DSHS) uses task force findings to decide what kind of public health interventions and prevention initiatives would best prevent maternal mortality and morbidity. It also uses the information to decide how to leverage and target existing programs. Allowing the task force to continue reviewing cases would help DSHS make decisions on prevention programs going forward.

The bill would help combat suicides resulting from postpartum depression. Suicide is one of the leading causes of pregnancy-related deaths, and requiring the Health and Human Services Commission to seek federal funding for postpartum depression would improve women's access to mental and behavioral health screenings before and after childbirth.

The Maternal Mortality and Morbidity Task Force works best as a statewide task force, bringing together physicians, DSHS staff, community advocates, registered nurses, medical examiners, ob-gyns, researchers, nurse-midwives, social workers, and other experts in pregnancy-related deaths to work on this issue. Continuing the task force would demonstrate the importance Texas places on reducing the state's rates of maternal mortality and morbidity.

OPPONENTS SAY:

Continuing the Maternal Mortality and Morbidity Task Force would be unnecessary. A non-governmental entity, such as a private research institution, would be better suited to undertake the functions of the task force.

SUBJECT: Property tax exemption for surviving spouses of certain first responders

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murr, Raymond, Shine, Springer, Stephenson

0 nays

1 absent — Murphy

SENATE VOTE: On final passage, March 13 — 30-0

WITNESSES: *On House companion resolution, HJR 88:*
For — (*Registered, but did not testify:* Arianna Smith, Combined Law Enforcement Associations of Texas (CLEAT); David Sinclair, Game Warden Peace Officers Association; Allen Blakemore and Casey Haney, State Firefighters' and Fire Marshals' Association; Julia Parenteau, Texas Association of Realtors; Noel Johnson, Texas Municipal Police Association; Deborah Ingersoll, Texas State Troopers Association)

Against — None

BACKGROUND: Texas Constitution, Art. 8, sec. 1(b) requires that all real and tangible personal property be taxed in proportion to its value unless exempted under the Constitution.

DIGEST: SJR 1 would amend the Texas Constitution to allow the Legislature to entitle the surviving spouse of a first responder who was killed or fatally injured in the line of duty to a property tax exemption of all or part of the market value of the spouse's residence homestead, if the spouse had not remarried. If the surviving spouse moved to a new homestead after receiving an exemption, the Legislature could entitle the spouse to an exemption on the new homestead equal to the dollar amount of the exemption for the previous homestead in the last year in which it was received.

The Legislature could define "first responder" and prescribe additional eligibility requirements for the exemption.

The ballot proposal would be presented to voters at an election on November 7, 2017. The proposal would read: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a first responder who is killed or fatally injured in the line of duty."

If approved by voters, the amendment would take effect January 1, 2018, and would apply only to a tax year beginning on or after that date.

SUPPORTERS SAY:

SJR 1 would extend the same well-deserved property tax exemption given to surviving spouses of veterans and disabled veterans to surviving spouses of first responders. The spouse of a fallen first responder loses a source of income, which can jeopardize his or her ability to pay property taxes and may ultimately affect the ability of surviving spouses to maintain their homesteads. SJR 1 would help ensure that families in these situations were not forced to sell their homes due to this sudden property tax burden. The tax exemption would be appropriate considering the significant sacrifices made by these families.

OPPONENTS SAY:

SJR 1 would continue a pattern of giving tax exemptions to specialized groups, when instead the Legislature should focus its efforts on reducing the aggregate property tax burden. Exempting a specific category of people, regardless of how deserving, results in an increased tax burden on other homeowners.

NOTES:

SB 15 by Huffines, the enabling legislation for SJR 1, is set for second-reading consideration on today's calendar.

According to the Legislative Budget Board, SJR 1 would have no fiscal implication to the state other than the cost for publication of the resolution, which would be $114,369. Any additional fiscal implication would be attributable to the resolution's enabling legislation.

A companion resolution, HJR 88 by Fallon, was reported favorably from the House Ways and Means Committee on May 3. Another companion, HJR 86 by Button, was left pending after a public hearing of the House Ways and Means Committee on April 26.

SUBJECT: Limiting terms for certain appointees of the governor

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Giddings, Farrar, Geren, Guillen, K. King, Kuempel, Meyer, Paddie, Smithee

3 nays — Craddick, Oliveira, E. Rodriguez

SENATE VOTE: On final passage, April 20 — 31-0

WITNESSES: No public hearing

DIGEST: SJR 34 would amend Texas Constitution, Art. 16, sec. 17 to create an exception to the requirement that all officers within the state must continue to perform the duties of their offices until their successors are duly qualified. The exception would apply to officers appointed by the governor with the advice and consent of the Senate who did not receive a salary. The period for which an appointed officeholder would be required to continue to perform the officeholder's duties would end on the last day of the first regular session of the Legislature that began after the expiration of the officer's term.

The ballot proposal would be submitted to voters on November 7, 2017, and would read: "The constitutional amendment limiting the service of certain officeholders appointed by the governor and confirmed by the senate after the expiration of the person's term of office."

SUPPORTERS SAY: SJR 34 would address concerns about some gubernatorial appointees being held over in their positions long after their terms have expired. Amending the Texas Constitution to place a limit on how long an appointee whose term had expired could continuing serving in office would ensure that these non-salaried volunteer positions were rotated among qualified Texans. Placing the limit at the end of a regular legislative session would allow the Texas Senate to hold confirmation hearings on replacement appointees.

OPPONENTS SAY:

SJR 34 could result in important appointed offices remaining vacant if a successor had not been duly qualified within the time limits of the proposal. The Office of the Governor has many appointed positions to fill, and the existing constitutional provision allows flexibility for appointees to continue serving until qualified replacements can be found.

NOTES:

According to the Legislative Budget Board's fiscal note, the cost to the state for publishing the resolution would be $114,369.

SUBJECT: Court notice to attorney general of constitutional challenge to state laws

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Neave, Schofield

1 nay — Rinaldi

1 absent — Murr

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

WITNESSES: *On House companion resolution, HJR 45:*
For — (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform)

Against — (*Registered, but did not* testify: Charles Williams, Disabled Vet Child Support Info Group)

On — Amanda Cochran-McCall, Office of the Attorney General; (*Registered, but did not* testify: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Government Code, sec. 402.010(a) requires courts to notify the attorney general when a petition, motion, or other pleading is filed challenging the constitutionality of a Texas statute. Under sec. 402.10(b), courts must wait 45 days after this notice is provided before entering a final judgment holding a Texas statute unconstitutional.

Courts do not have to make the notification if the attorney general is a party to or counsel involved in the litigation. Parties to the litigation challenging the constitutionality of a statute must file a form with the court indicating which pleading in the case should be in the notice to the attorney general. A court's failure to notify the attorney general or a party's failure to file the required form does not deprive the court of jurisdiction or forfeit an otherwise timely filed claim or defense based on

the challenge to the constitutionality of the law.

In *Ex Parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013), the Texas Court of Criminal Appeals held that Government Code, secs. 402(a) and sec. 402(b) violated the separation of powers provision in Tex. Const., Art. 2.

DIGEST:

SJR 6 would authorize the Legislature to require a court to provide notice to the attorney general when a party to litigation files a petition, motion, or other pleading challenging the constitutionality of a state statute if the party notifies the court of the challenge. SJR 6 also would authorize the Legislature to establish a reasonable period of up to 45 days after receiving the notice during which a court could not enter a judgment holding the statute unconstitutional.

SJR 6 would include a temporary provision that would make Government Code, sec. 402.010 validated and effective on approval of the constitutional amendment and would make the section apply only to a petition, motion, or other pleading filed on or after January 1, 2018.

The proposed constitutional amendment would be submitted to voters at an election on November 7, 2017. The ballot proposal would read: "The constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional."

SUPPORTERS SAY:

SJR 6 would ensure that the state had an opportunity to defend Texas laws from constitutional challenges by clarifying that courts can be required to notify the attorney general when a suit challenges those laws. In 2013, the Texas Court of Criminal Appeals struck down the Texas law establishing that requirement, and SJR 6 is needed to restore the law.

It is important that the state, through the attorney general, has an opportunity to weigh in when someone is challenging the constitutionality of a law. This protects the prerogative of the Legislature to pass laws on behalf of Texans and to have those laws maintained. SJR 6 would help protect that prerogative by amending the Constitution to make it clear that

the Legislature may request notice from courts and may establish a reasonable period for the attorney general to respond.

The proposed amendment would not alter the state's separation of powers doctrine nor restrict the ability of courts to strike down laws enacted by the Legislature on constitutional grounds. SJR 6 would be in line with a similar provision relating to federal law and would not deny anyone relief in state courts.

The proposed constitutional amendment would not change the authority of the attorney general's office over criminal matters and would not cause confusion. It simply would provide the attorney general with notice so that the attorney general could offer assistance or file amicus briefs to defend a state law from a constitutional challenge.

The attorney general's current system for receiving notices and deciding how the office should respond to a challenge to Texas law works well. SJR 6 would allow that process to continue so that the state at least would know when its laws were being challenged.

OPPONENTS SAY:

The Constitution should not be amended in a way that could undermine the state's separation of powers doctrine. The doctrine helps ensure that the branches of government can exercise their powers without interference from another branch, and the Legislature should not be authorized to enact laws that might erode the doctrine.

The Legislature should not be empowered to establish procedures that could delay relief for those challenging a law as unconstitutional. Texans should be able to pursue and receive relief from unconstitutional laws without courts being subject to a waiting period to make a ruling.

The constitutional amendment proposed by SJR 6 could create confusion regarding the attorney general's role in criminal cases. In these cases, the prosecutor represents the state and can defend the constitutionality of a law. The state prosecuting attorney also is charged with representing Texas before the Court of Criminal Appeals. Under current law, the attorney general, with a few statutory exceptions that require the consent of local prosecutors, is not authorized to represent the state in criminal

cases. Because of this lack of authority, it would be unnecessary to provide notice to the attorney general in those cases. If prosecutors feel that they need the attorney general's assistance in a pending case, they easily can request it.

NOTES:

According to the bill's fiscal note, the cost to the state for publishing the resolution would be $114,369.