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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 29, 2019
86th Legislature, Number 54
The House convenes at 10 a.m.
Part One

One bill is on the Major State Calendar and 64 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
86(R) - 54

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, April 29, 2019
86th Legislature, Number 54
Part 1

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SUBJECT: Revising the Texas Citizens Participation Act

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

WITNESSES: For — David Tate, AT&T; Rick Briscoe, Open Carry Texas; Lee Parsley, Texans for Lawsuit Reform; George Christian, Texas Association of Defense Counsel; Lisa Kaufman, Texas Civil Justice League; Steve Bresnen, Texas Family Law Foundation; Will Adams and Matthew Kita, Texas Trial Lawyers Association; Jeffrey Goldfarb; Andrew Seger; (*Registered, but did not testify*: Jason Winborn, AT&T; Clifford Sparks, City of Dallas; Daniel Womack, Dow Chemical; Lee Loftis, Independent Insurance Agents of Texas; Bill Oswald, Koch Companies; Michael Garcia, Texas Association of Manufacturers; Sam Gammage, Texas Chemical Council; George Christian and John W. Fainter Jr., Texas Civil Justice League; Amy Bresnen, Texas Family Law Foundation; Dan Finch, Texas Medical Association; Jason Vaughn, Texas Young Republicans; Mike Meroney)

Against — Matt Simpson, ACLU of Texas; Erin Dufner, Better Business Bureau serving the Heart of Texas; Arif Panju, Institute for Justice; Alicia Calzada, National Press Photographers Association; JT Morris, Protect Free Speech Coalition; Stacy Allen, Texas Association of Broadcasters; Danny Reneau, Texas Press Association; Emily Cook, Texas Right to Life; Ken Martin, The Austin Bulldog; Anette Beebe, Xcentric Ventures, LLC; Angela Hooks, Yelp; and 10 individuals; (*Registered, but did not testify*: Amanda Gnaedinger, Common Cause Texas; Anthony Gutierrez, Common Cause Texas; Kelley Shannon, Freedom of Information Foundation of Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Oscar Rodriguez, Texas Association of Broadcasters; Donnis Baggett, Texas Press Association; Mike Hodges and Bill Patterson, Texas Press Association; John Seago, Texas Right to Life; Leonard Woolsey, The Daily News (Galveston County) and Texas Press Association; and 11

individuals)

On — Mary Ann Beckett, Corpus Christi Caller-Times; Tony McDonald, Empower Texans; Adrian Shelley, Public Citizen; Tim Archuleta, USA Today Network; Brad Ramsey, WFAA/TEGNA; and 9 individuals; (*Registered, but did not testify*: Samuel Sheetz, Americans for Prosperity; Samantha Omey, ExxonMobil; Shelby Sterling, Texas Public Policy Foundation)

BACKGROUND:

Civil Practice and Remedies Code ch. 27, the Texas Citizens Participation Act (TCPA), requires dismissal of certain legal actions if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of the right of free speech, petition, or association. A court may not grant the motion to dismiss if the plaintiff establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

The TCPA does not apply to:

- an enforcement action brought in the name of the state or a political subdivision by the attorney general, a district attorney, or a county attorney;
- a legal action brought against a person primarily engaged in the business of selling or leasing goods or services if the statement or conduct arises out of the sale or lease of goods, services, insurance products, or a commercial transaction in which the intended audience is an actual or potential customer;
- a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action; or
- a legal action brought under the Insurance Code or arising out of an insurance contract.

DIGEST:

CSHB 2730 would add to the types of legal actions that were exempted from the Texas Citizens Participation Act (TCPA) and would revise provisions related to motions to dismiss legal actions under the statute. The bill would revise various definitions as they relate to the TCPA, including a "matter of public concern." It also would specify that the TCPA applied in cases involving the free speech rights of persons

involved in the media and artistic endeavors, consumer reviews of businesses, and for victims of certain criminal acts.

Exemptions. The bill would exempt the following legal actions from the TCPA's requirements:

- a legal action arising from an officer-director, employee-employer, or independent contractor relationship that sought recovery for misappropriation of trade secrets or corporate opportunities or that sought to enforce a non-disparagement agreement or a covenant not to compete;
- a legal action filed under Family Code provisions related to marriage, divorce, and child custody or an application for certain protective orders;
- a legal action brought under Business and Commerce Code ch. 17 provisions on deceptive trade practices, other than certain advertisements;
- a legal action in which a moving party raised a defense as a member of a medical committee;
- an eviction suit brought under Property Code ch. 24;
- a disciplinary action brought by the State Bar;
- a legal action brought under Government Code 554 protections for reporting violations of law; and
- a legal action based on a common law fraud claim.

Motion to dismiss. Under CSHB 2730, a party moving to dismiss a legal action under the TCPA would have to demonstrate, rather than show by a preponderance of the evidence, that the legal action was based on free speech grounds or specific activities listed in the bill.

The bill would remove the current requirement that a court dismiss a legal action if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the non-movant's claim. Under the bill, the court instead would have to dismiss a legal action if the moving party established an affirmative defense or other grounds on which the party was entitled to judgment as a matter of law.

In determining whether a legal action was subject to the statute's dismissal requirements, a court would have to consider evidence a court could consider under a motion for summary judgment.

The bill would permit, rather than require, a court to award to the moving party sanctions against the party who brought the legal action in an amount the court determined sufficient to deter the party from bringing similar actions.

The bill would exclude a government entity, agency, or an official or employee acting in an official capacity as a party that could file a motion to dismiss a legal action on free speech grounds.

Parties to a legal action could, upon mutual agreement, extend from 60 days the time to file a motion to dismiss. The party moving for dismissal would have to provide written notice of the date and time of the hearing on the motion not later than 21 days before the date of the hearing unless otherwise provided by agreement of the parties or court order. A responding party would have to file any response not later than seven days before the date of the hearing unless otherwise provided by agreement of the parties or court order.

Attorney's fees. If a court ordered dismissal of a compulsory counterclaim, it could award to the moving party reasonable attorney's fees incurred in defending against the counterclaim if the court found that the counterclaim was frivolous or solely intended for delay.

Definitions. The bill would revise the definition of a "matter of public concern" by removing specific references to "health or safety, environmental, economic, or community well-being, the government, a public official or public figure, or a good, product, or service in the marketplace." A matter of public concern instead would be defined as a statement or activity regarding:

- a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;
- a matter of political, social, or other interest to the community; or

- a subject of concern to the public.

The bill would revise the definition of "exercise of the right of association" to mean joining together to collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern. It would remove language describe it in part as a "communication between individuals."

The bill would expressly exclude from the definition of a "legal action" procedural actions taken or motions made in an action that did not amend or add a claim for legal, equitable, or declaratory relief; alternative dispute resolution proceedings; and post-judgment enforcement actions.

Covered actions. CSHB 2730 would specify that the provisions governing the dismissal of civil actions involving the exercise of certain constitutional rights applied to:

- a legal action against a person arising from any act of that person, whether public or private, related to the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information was actually communicated to the public, for the creation, dissemination, exhibition, advertisement, or other similar promotion of a dramatic, literary, musical, political, journalist, or otherwise artistic work, including audio-visual work, a motion picture, a television or radio program, or an article published in a newspaper, website, magazine, or other platform, no matter the method or extent of distribution;
- a legal action against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses;
- a legal action against a victim or alleged victim of family violence or dating violence, unlawful restraint, smuggling of persons, trafficking of persons, and certain sexual and assaultive offenses, based on or in response to a public or private communication.

Severability. If any provision of CSHB 2730 was held invalid, the invalidity would not affect other provisions or applications of the bill that

could be given effect without the invalid provision or application.

The bill would take effect September 1, 2019, and would apply to an action filed on or after that date.

SUPPORTERS SAY:

CSHB 2730 would provide needed reforms to the Texas Citizens Participation Act (TCPA) to curtail abuses and ensure the law is used as intended to protect Texans in the exercise of their constitutionally protected speech, petition, and association rights. The law allows judges to assess whether a lawsuit is being pursued largely to silence critics and to quickly dismiss the types of cases commonly referred to as a Strategic Lawsuit Against Public Participation, or SLAPP.

Since its enactment in 2011, the broadly worded Texas anti-SLAPP law has been used to put an early end to lawsuits in which core constitutional rights have not been invaded, including cases involving trade secrets, employment non-compete agreements, and lawyer disciplinary actions. The law also has impacted the workload of certain Texas appellate courts with numerous appeals. CSHB 2730 would address these issues by exempting certain types of lawsuits that are unlikely to involve free speech rights. While some have criticized these exemptions, other legal remedies exist for persons who believe they have suffered a wrong in these areas.

CSHB 2730 is a carefully negotiated bill that would resolve criticisms that earlier versions of the bill went too far in narrowing the definition of a "matter of public concern" as the standard for bringing an anti-SLAPP action. The bill would use a widely accepted standard from the U.S. Supreme Court to appropriately define when a communication was protected speech. Similarly, criticisms that earlier versions of the bill would have a "chilling" effect on news gathering have been addressed with clear statements that communications involving news reporting and artistic endeavors remain legitimate activity deserving of protection. Websites that provide important consumer information by rating businesses would likewise be specifically protected. The bill also would include important protections for communications by victims of domestic violence and sexual assault.

OPPONENTS SAY:

CSHB 2730 would make unnecessary changes to a law that has been effective in protecting average Texans' free speech rights from being silenced by powerful and wealthy interests. The exemption of numerous categories of lawsuits from the TCPA could weaken the ability of persons to raise a free speech defense in certain types of civil litigation. For instance, a person who was evicted after complaining about a housing situation might not be able to have a court determine whether the eviction was connected to the person's exercise of free speech rights.

Criticism that the TCPA has burdened Texas appellate courts is overblown, as such appeals make up a tiny fraction of all appeals filed.

OTHER OPPONENTS SAY:

CSHB 2730 would not go far enough in reining in the excessive use of the anti-SLAPP law to dismiss valid legal claims. Earlier versions of the bill would have included key language about the nature of the rights to be protected and a narrower definition of what constituted a matter of public concern. The use of a new evidentiary standard that would require a party moving to dismiss a legal action to "demonstrate" that the legal action was based on free speech grounds is undefined and could be confusing to courts.

SUBJECT: Creating programs, requirements for agencies to assess cybersecurity risk

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Phelan, Hernandez, Guerra, Harless, Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

2 absent — Deshotel, Holland

WITNESSES: For — (*Registered, but did not testify*: Russell Mullins, Alterity Solutions, Inc.; Jim Keffer, City of Del Rio; James Dickey, Republican Party of Texas; Justin Yancy, Texas Business Leadership Council; Nora Belcher, Texas e-Health Alliance; Joe Buser, Traveling Coaches, Inc.; Idona Griffith; Russell Hayter)

Against — None

BACKGROUND: It has been suggested that smaller state agencies and local governmental entities could use additional support to help decrease cybersecurity risk.

DIGEST: CSHB 4214 would create programs and requirements for state agencies and local governments to assess cybersecurity risks.

Regional ISACs. The state cybersecurity coordinator would provide for the establishment and operation of up to 20 regional information sharing and analysis centers (ISAC) located throughout the state. The boundaries for each center would be coextensive with regional education service centers established under state law.

Each municipality with a population of more than 25,000 would have to join the regional ISAC in which it was predominantly located, and any other political subdivision could join an ISAC in which it was predominantly located.

Notifications. A political subdivision would have to notify the regional

ISAC within 48 hours of the discovery of a breach or suspected breach of system security or an unauthorized exposure of sensitive information. The ISAC would report the breach to the Department of Information Resources (DIR) if the person responsible obtained or modified personal information, accessed information systems or infrastructure, or disrupted a core function.

A political subdivision would have to notify the cybersecurity coordinator within 48 hours of making a ransomware payment.

A local government that owned, licensed, or maintained data that included sensitive personal information would have to comply with these notification requirements.

Multihazard plan, security audit. Each municipality or county with a population of more than 100,000 would have to implement a multihazard emergency operations plan that addressed mitigation, preparedness, response, and recovery. The plan would have to provide for employee training in emergency response, coordination with state and local entities in the event of an emergency, and a safety and security audit.

At least once every three years, each municipality and county would have to conduct a safety and security audit of information technology infrastructure and report the results to the municipality's or county's governing body and the cybersecurity council.

Information related to the audit would not be subject to public information laws. A document related to the emergency plan would be subject to disclosure if it enabled a person to verify certain information as specified in the bill.

Definition of disaster. The bill would add cyber attack to the list of occurrences or imminent threats that were considered a disaster for the purposes of the Texas Disaster Act.

Continuous monitoring program. Each state agency would be required to develop and maintain an information security continuous monitoring program that satisfied certain requirements listed in the bill, including

maintaining ongoing awareness of the vulnerabilities of and threats to the information resources, setting priorities to manage organizational risk, and addressing critical security controls. The program would have to align with guidance from the U.S. Department of Commerce's National Institute of Standards and Technology.

DIR would be required to assist each state agency in implementing a continuous monitoring program and establish a statewide dashboard that provided a government-wide view of monitoring and technical guidance.

Risk assessments. At least once every five years, each state agency would have to contract with an independent third party to conduct a risk assessment of information resources systems and practice securing systems and notifying all affected parties in the event of a data breach.

DIR annually would have to compile the results of assessments conducted in the previous year and prepare both a public report on general security issues that did not contain any sensitive information and a confidential report on specific risks and vulnerabilities that would be exempt from public information laws.

The bill would require DIR to submit to the Legislature annually the results of the assessments during the preceding year, including the public report, and provide recommendations to address pervasive security risk vulnerabilities across state agencies. This report could not contain any sensitive information.

DIR would have to develop a cybersecurity threat assessment for local governments that provided best practices for preventing cyber attacks.

Each school district or public junior college district would have to conduct a cybersecurity assessment at least once every three years.

Cyber incident study and response plan. The state Homeland Security Council, in cooperation with DIR, would be required to study cyber incidents and significant cyber incidents affecting state agencies and critical infrastructure owned, operated, or controlled by agencies.

The council would have to develop a comprehensive state response plan as a format for agency-specific plans. Each state agency would implement the plan into its information security plan required under law for use in the event of an incident affecting the agency or critical infrastructure.

By September 1, 2020, the council would have to deliver the response plan and a report on the study's findings to the public safety director of the Department of Public Safety, the governor, the lieutenant governor, the House speaker, and legislative committees with appropriate jurisdiction.

The response plan and report would not be public information for the purposes of state open records laws, and related provisions would expire December 1, 2020.

Cyber operations. The governor could command the Texas National Guard to assist the Texas State Guard with defending the state's cyber operations.

Cybersecurity threat simulation exercises. Executive staff of a state agency could participate in cybersecurity threat simulation exercises with the agency's information resources technologies employees to test cybersecurity capabilities.

Chief innovation officer. CSHB 4214 would require the governor to appoint a chief innovation officer to improve internal state government efficiency and performance, develop methods to improve interaction with state government, work with DIR to increase the use of technology by state agencies, and provide training in skills to support innovation and encourage creative thinking.

Security program for certain objects. DIR would be required to develop a comprehensive risk management program that identified baseline security features for the internet connectivity of computing devices embedded in objects used or purchased by state agencies.

To develop the program, DIR would consult with industry representatives, voluntary standards organizations, and the 10 state agencies that received the most state appropriations for that fiscal year. DIR would have to study

and report to the Legislature on these types of objects by December 31, 2020.

A vendor offering to sell one of these objects would have to include with each bid, offer, or proposal a written certification providing that the good did not contain a hardware, software, or firmware component with any known security vulnerability or defect.

Vendor responsibility for cybersecurity. A vendor that provided a state agency technology at a cost of $1 million or more would be responsible for addressing known cybersecurity risks and for any associated costs.

For a major information resources project, the vendor would have to provide a written attestation to agency contracting personnel that it had a cybersecurity risk management program consistent with accepted security management frameworks, that the program included appropriate training and certifications for employees, and that the vendor had a vulnerability management program that addressed identification, mitigation, and responsible disclosure, as appropriate.

The vendor also would have to provide an initial summary of any costs associated with addressing technology or personnel-related cybersecurity risks identified in collaboration with the state following a risk assessment.

Encrypted secure layer services. The bill would require each state agency that maintained a publicly accessible website that required the submission of sensitive personally identifiable information to use an encrypted secure communication protocol.

Liability exemption. A person who, in good faith, disclosed to a governmental entity information regarding a potential security issue would not be liable for any civil damages resulting from the disclosure unless the person stole, retained, or sold any data obtained as a result of the security issue.

Next generation technology. Each state agency and local government would be required to consider using next-generation technologies, including cryptocurrency, blockchain technology, and artificial

intelligence.

Cloud computing service. Rather than requiring a state agency to consider cloud computing service options when purchasing a major information resources project, the bill would require a state agency to ensure that an automated information system or major project was capable of being deployed and run on cloud computing services.

DIR periodically would have to review guidelines on state agency information that could be stored by a cloud computing or other service and the available services to ensure that an agency purchasing a major information resources project selected the most affordable, secure, and efficient storage service.

The guidelines would include appropriate privacy and security standards that, at a minimum, required a vendor who offered storage services or other information technology solutions to demonstrate that data provided by the state to the vendor would be maintained in compliance with all applicable state and federal laws and rules.

Cybersecurity training for new employees. DIR would have to develop and provide training for new state agency employees on cybersecurity measures and awareness, which employees would have to complete within 30 days of their hiring date.

Cyberstar program. The state cybersecurity coordinator would be required to establish a cyberstar certificate program to recognize public and private entities that implemented best practices for cybersecurity. It would be developed by the coordinator in collaboration with the cybersecurity council and public and private entities. The program would have to allow DIR to issue a certificate of approval to an entity that complied with the best practices, and the entity could include the certificate in advertisements and other public communications.

The cybersecurity coordinator would have to conduct an annual public event promoting best practices for cybersecurity as listed in the bill.

Payment of program expenses. The bill would allow a state agency to

spend public funds to reimburse an employee who served in a cyber-related position for fees associated with industry-recognized certification exams.

Cybersecurity certificate programs. The bill would require the Texas Higher Education Coordinating Board, in consultation with DIR, to coordinate with lower-division institutions of higher education and other entities to develop cybersecurity certificate or credential programs or other courses of instruction leading toward such credentials that could be offered by the lower-division institutions of higher education.

Repository for cybersecurity education, training. DIR, in conjunction with institutions of higher education, would have to maintain and promote a centralized repository of information on cybersecurity education and training that was available to any governmental entity in the state.

Middle, high school access. The bill would expand the responsibilities of the state cybersecurity council to include ensuring all middle and high schools had knowledge of and access to free cybersecurity courses and curriculum approved by the Texas Education Agency, state and regional ISACs, and certain contracting benefits under law.

Matching grants. Using available funds, the governor would be required to administer a cybersecurity matching grant program for local governmental entities to defray the costs of cybersecurity projects.

A local governmental entity that applied for a grant would have to identify the source and amount of matching funds. If the application was approved, the Office of the Governor would have to award a grant equal to 150 percent of the amount committed by the entity.

Select committees on cybersecurity. The bill would require the lieutenant governor and the House speaker each to establish a five-member select committee to study cybersecurity, the information security plans of each agency, the risks and vulnerabilities of state agency cybersecurity, and information technology procurement by November 30, 2019. The committees would jointly report any findings and recommendations to the Legislature by January 12, 2021.

The bill would take effect September 1, 2019.

NOTES:

According to the Legislative Budget Board, the cost associated with the bill could be significant. Although indeterminate, the minimum costs associated with the bill would be $3.8 million in general revenue through fiscal 2020-21.

SUBJECT: Reporting family violence in the Computerized Criminal History System

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

VOTE: 5 ayes — Nevárez, Paul, Calanni, Clardy, Goodwin

3 nays — Burns, Lang, Tinderholt

1 absent — Israel

WITNESSES: For — M. Paige Williams, Dallas Criminal District Attorney John Creuzot; Jaime Esparza, District Attorney, 34th District; Staley Heatly; Bill Wayborn; (*Registered, but did not testify*: Matthew Williamson, Dallas Police Department; Christopher Lutton, San Antonio Police Department; Kristen Lenau, Texas Council on Family Violence)

Against — None

BACKGROUND: Code of Criminal Procedure art. 66, subch. C establishes the Computerized Criminal History System, operated by the Department of Public Safety (DPS) and containing information related to offenders, arrests, prosecutions, dispositions of cases, sentences, and victims.

Subch. F governs uniform incident fingerprint cards, which are forms designed by DPS and distributed to law enforcement agencies that include arrest information, individuals' fingerprints, and other information. Arresting law enforcement agencies are required to prepare uniform incident fingerprint cards and initiate reporting processes for offenders charged with felonies or misdemeanors not punishable by fines only.

DIGEST: HB 1528 would require the Department of Public Safety (DPS) to record in its Computerized Criminal History System whether a judgment imposing a sentence reflected an affirmative finding of family violence.

The bill also would require arresting law enforcement agencies to prepare uniform incident fingerprint cards and initiate reporting processes for offenders charged with fine-only misdemeanors that involved family

violence. Upon disposition of cases in which offenders were charged with fine-only misdemeanors that involved family violence, court clerks would need to report the person's citation or arrest and the disposition of the case to DPS using a uniform incident fingerprint card or an electronic methodology approved by DPS.

The bill would take effect September 1, 2019, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

HB 1528 would allow law enforcement officers and prosecutors to easily identify individuals who committed certain acts of family violence in one jurisdiction and reoffended in another jurisdiction by requiring officers to record these offenses in individuals' statewide criminal history records. Currently, there is no system for reporting and sharing class C family violence misdemeanors across the state's various jurisdictions, which makes it difficult for officers and prosecutors to identify repeat offenders and make informed decisions on how best to respond to them.

In providing law enforcement officers access to this criminal history information, the bill also would empower officers to be more proactive in preventing future family violence and provide a greater level of protection for victims of family violence.

OPPONENTS SAY:

HB 1528 would add unnecessary language to the Code of Criminal Procedure. Current law governing when law enforcement agencies must prepare uniform incident fingerprint cards and initiate reporting processes is adequate, and it is not necessary add additional language for specific offenses such as family violence.

SUBJECT: Regulating the contractual relationship between pharmacists and PBMs

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Lucio, Oliverson, S. Davis, Julie Johnson, Lambert, Paul, C. Turner, Vo

0 nays

1 absent — G. Bonnen

WITNESSES: For — Duane Galligher, Texas Independent Pharmacies Association; Steven Hoffart and Miguel Rodriguez, Texas Pharmacy Business Council; John Hickman (*Registered, but did not testify*: Audra Conwell, Alliance of Independent Pharmacists; Chase Bearden, Coalition of Texans with Disabilities; John McCord, NFIB; Bradford Shields, Texas Federation of Drug Stores, Texas Society of Health-System Pharmacists; Stephanie Chiarello and Michael Muniz, Texas Pharmacy Association; Jerry Valdez and Michael Wright, Texas Pharmacy Business Council; John Heal, Texas TrueCare Pharmacies; Morris Wilkes, United Supermarkets; Omar Fuentes; Lee Ann Hampton; Ryan Hoffart; Charles Weaver)

Against — Melodie Shrader, Pharmaceutical Care Management Association; LuGina Mendez-Harper, Prime Therapeutics; Jamie Dudensing, Texas Association of Health Plans

On — (*Registered, but did not testify*: Robin Vincent, Harris County Human Resources and Risk Management; Jamie Walker and Amy Lee, Texas Department of Insurance-Division of Workers' Compensation; Ryan Van Ramshorst, Health and Human Services Commission)

BACKGROUND: Insurance Code ch. 1369 governs prescription drug benefits and other services.

DIGEST: CSHB 2817 would regulate contracts between pharmacists and pharmacy benefit managers (PBMs) by prohibiting certain claim reductions, unequal reimbursements, and additional accreditation standards.

Applicability. The bill would apply to certain health benefit plans, including a small employer plan, consumer choice of benefits plan, and a health maintenance organization, among others as specified in the bill. The bill would not apply to a PBM under a workers compensation policy.

Claim reduction. The bill would prohibit a health plan issuer or PBM from reducing a claim payment to a pharmacist or pharmacy after adjudication of the claim except in accordance with an audit performed as described in statutory audit process. The bill would not prohibit a health benefit plan issuer or pharmacy benefit manager from increasing a claim payment amount after adjudication.

Drug delivery. Under CSHB 2817, a contract between a health plan issuer or PBM and a pharmacy or pharmacist could not prohibit the pharmacy or pharmacist from lawfully mailing a drug to a patient upon the patient's request or charging certain shipping and handling fees. A pharmacist or pharmacy would not be permitted to charge a health plan issuer or PBM for delivery of a prescription drug unless the charge was specifically agreed to by the plan issuer or PBM.

Accreditation standards. A contract could not require accreditation standards or recertification requirements other than what is required by law or manufacturers.

Reimbursement. A PBM could not provide larger reimbursements to affiliated pharmacies or pharmacists than those provided to unaffiliated pharmacists or pharmacies.

Network contract fee schedule. The bill would require a pharmacy benefit network contract to establish a separate fee schedule and provide a copy of that schedule to each contracted pharmacist and pharmacy. The fee schedule would need to describe:

- services or procedures that the pharmacist or pharmacy could deliver and the amount of the corresponding payment;
- a methodology for calculating payment based on a published fee schedule; or

- any other reasonable manner that provided an ascertainable amount for payment for services.

Pharmacy services administrative organization contract. The bill would define "pharmacy services administrative organization" (PSAO) as an entity that contracted to conduct a pharmacist's or pharmacy's business with a third-party payor, including a pharmacy benefit manager, in connection with pharmacy benefits and to provide administrative services, including negotiating, executing, and administering a contract with a third-party payor.

A PSAO member that entered into a contract with a health benefit plan issuer would be entitled to receive a copy of the contract provisions applicable to the pharmacist or pharmacy.

Other provisions. A PBM would be prohibited from retaliating because a pharmacist or pharmacy exercised a right provided by this bill. Prohibited retaliation would include:

- terminating or refusing to renew a contract with the pharmacist or pharmacy;
- subjecting the pharmacist or pharmacy to increased audits; or
- failing to promptly pay the pharmacist or pharmacy any money owed by the PBM to the pharmacist or pharmacy.

The bill's provisions could not be waived, voided, or nullified by contract.

The bill would take effect September 1, 2019, and would apply to a contract entered into or renewed on or after the effective date.

SUPPORTERS SAY:

CSHB 2817 would prohibit certain unfair contract provisions that are presented to independent pharmacists by PBMs as take-it-or-leave-it conditions for access to the market. Having fewer resources available to independent pharmacists makes it difficult for them to compete with PBM-affiliated pharmacists and leaves them in a weaker negotiating position for contracts. PBMs currently apply retroactive fees against certain pharmacies and also may forbid their network pharmacies from providing mail-order or delivery services to patients. This bill would

prohibit PBMs from assessing retroactive fees or payment reductions against a pharmacy based on performance standards, generic effective rate, or other factors, but would still allow PBMs to reduce payments retroactively as a legitimate audit outcome.

PBMs would remain free to negotiate positive, award-based incentives, although the bill would address certain contractual mechanisms that PBMs can abuse. Prohibiting PBMs from contractually requiring accreditations over and beyond state licensing or manufacturer-required trainings would expand the drugs independent pharmacists could provide without sacrificing patient safety.

OPPONENTS SAY:

CSHB could interfere with private contract negotiation. The limitations on contractual provisions contained in this bill could prohibit arrangements that have been found to improve outcomes. Prohibiting PBMs from contractually requiring accreditations for specialty pharmacies also could create patient safety concerns.

NOTES:

According to the Legislative Budget Board, although there is no specific exemption for Medicaid or the Children's Health Insurance Program (CHIP), it is assumed the provisions would not apply. According to the Health and Human Services Commission, provisions of the bill would conflict with state law specific to Medicaid. If the provisions of the bill were applied to Medicaid or CHIP, there could be a significant cost associated with doing so.

SUBJECT: Requiring discussions between providers and patients with acute pain

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Ortega, Price, Zedler

1 nay — Sheffield

2 absent — Coleman, Lucio

WITNESSES: For — Cynthia Humphrey, Association of Substance Abuse Programs; (*Registered, but did not testify*: Jamaal Smith, City of Houston Mayor's Office; Leticia Van de Putte, Texas Academy of Physician Assistants; Jamie Dudensing, Texas Association of Health Plans; Craig Benton, Texas Chiropractic Association; Cynthia Tays, Texas Chiropractic Association; Michael Wright, Texas Pharmacy Business Council)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

On — Carl Nunziato, Texas Orthopaedic Association; Kristin McGarity; (*Registered, but did not testify*: W. Boyd Bush, Texas State Board of Dental Examiners)

DIGEST: CSHB 2811 would define certain terms and require practitioners to discuss with patients who have acute pain the risks and benefits of controlled substances and document certain medical information in a patient's record.

Definitions. Under the bill, "substance abuse" would mean the maladaptive pattern of substance use manifested by recurrent and significant adverse consequences regarding the repeated use of controlled substances or other drugs. "Addiction" would mean a primary, chronic, or neurobiological disease characterized by craving and compulsive use of drugs despite harm to oneself or others.

"Acute pain" would mean the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. The term would not include chronic pain or pain being treated as part of cancer care, hospice, end-of-life care, or palliative care. "Chronic pain" would mean pain that persists beyond the usual course of an acute disease or healing of an injury.

"Physical dependence" would mean a state of adaptation that was manifested by drug class-specific signs and symptoms that could be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, or administration of an antagonist. "Tolerance" would mean a physiological state resulting from regular use of a drug in which an increased dosage was needed to produce a specific effect or in which a reduced effect was observed with a constant dose over time. Tolerance would not necessarily occur during opioid treatment and would not, alone, indicate addiction.

Discussion with patient. By March 1, 2020, the bill would require each regulatory agency that issued a license, certification, or registration to a practitioner to create specific written guidelines for a discussion between the practitioner and patient with acute pain, or the patient's surrogate or guardian, about the risks and benefits of using controlled substances or dangerous drugs to treat acute pain. The guidelines would have to require the discussion to be verbal, except the practitioner also could provide to the patient written information about the risks and benefits, and maintain a signed document in the patient's medical record. Under the bill, the discussion would have to include, among other criteria, explanations of:

- the risk of addiction associated with the prescribed drug, including any risk of developing an addiction or a physical or psychological dependence;
- the risk of taking the drug in a higher dosage than prescribed;
- the danger of combining the drug's consumption with benzodiazepines, alcohol, or other central nervous system depressants;
- the patient's responsibility of storing all drugs in a secure location;
- methods for safely disposing of unused controlled substances or

dangerous drugs;

- potential side and adverse effects; and
- available therapies in addition to or instead of drug therapy, including non-pharmacological therapeutic modalities or psychological techniques.

Review of treatment. The bill would require the practitioner to review the patient's compliance with the prescribed treatment plan and reevaluate the potential for substance abuse or diversion. Patients who were at risk for substance abuse or addiction and patients with acute pain and histories of substance abuse or addiction or with comorbid psychiatric disorders would require the consideration of a consultation with or referral to an expert in managing those patients.

Patient evaluation. The bill would require the Texas Medical Board (TMB) by March 1, 2020, to adopt rules governing information a practitioner who was prescribing a controlled substance or dangerous drug for acute pain or creating a treatment plan for acute pain would have to place in the patient's medical record. Patients' medical records would have to document their medical history and physical examination that included a problem-focused examination specific to a patient's primary complaint.

Under the bill, TMB's adopted rules could create different standards for practitioners treating patients with acute pain in an emergency department.

Before prescribing a controlled substance or dangerous drug for treating acute pain, a practitioner would have to review a patient's prescription data and history. If practitioners determined that reviewing this prescription data and history were unnecessary, they would have to document their rationale in the patient's medical record.

The bill would take effect September 1, 2019, and would apply to a prescription issued on or after March 1, 2020.

SUPPORTERS SAY:

CSHB 2811 would address the growing rate of prescription drug abuse in Texas by requiring practitioners to verbally discuss the risks and benefits of using controlled substances and the safe storage and disposal of prescriptions. Many youth access these drugs through parents' medicine

cabinets, which are unsecure, and often contain leftover medication, which could lead to youth becoming addicted, overdosing, or even dying. Educating patients about safe storage and disposal of medication would help reduce access to controlled substances prescriptions, curbing the potential of addiction.

OPPONENTS SAY:

CSHB 2811 would create administrative burdens for practitioners by requiring additional documentation in a patient's medical record. The bill also would unnecessarily interfere in the doctor-patient relationship by requiring practitioners to discuss with a patient several aspects of using controlled substances.

SUBJECT: Providing guidelines for the appraisal of certain open-space land

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Burrows, Guillen, Bohac, Murphy, Noble, E. Rodriguez, Shaheen, Wray

0 nays

3 absent — Cole, Martinez Fischer, Sanford

WITNESSES: For — Judith McGeary, Farm and Ranch Freedom Alliance; Harold Connett; Scott Snodgrass; (*Registered, but did not testify*: Carolina Mueller, Central Texas Young Farmers Coalition; Jay Crossley, Farm&City; David Glenn, Home Builders Association of Greater Austin; Alex Canepa, Sustainable Food Center; Ray Head, Texas Association of Property Tax Professionals; Andrew Smiley, Texas Organic Farmers and Gardeners Association; Amy Hedtke; Kelley Masters; Shirley Mount; Arthur Simon)

Against — (*Registered, but did not testify*: Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association)

BACKGROUND: Tax Code sec. 23.41 provides that certain land designated for agricultural use is appraised for the purposes of property taxation at its value based on the land's capacity to produce agricultural products, rather than market value. Sec. 23.51 lists requirements that land must meet to qualify for the agricultural appraisal, including what may be grown on the land.

Some have noted that smaller agricultural operations near urban centers are not receiving this exemption because the land is appraised differently with regard to what qualifies as agricultural use of open-space land.

DIGEST: HB 97 would require the comptroller of public accounts to provide guidelines for the appraisal of qualified open-space land for the purposes of property taxation with regard to assessing uncommon agricultural uses.

Definitions. The bill would amend the Tax Code's definition of "qualified open-space land" to require a chief appraiser to distinguish between the degree of intensity required for various agricultural production methods, including organic, sustainable, pastured poultry, rotational grazing, and other uncommon production methods or systems.

The bill also would expand the list of uses that qualified open-space land for appraisal as land designated for agricultural use to include the production of fruits and vegetables.

Guidelines. The comptroller, in consultation with the Texas A&M AgriLife Extension Service and individuals selected by the comptroller who represent appraisal districts and affected producers, would be required to develop guidelines for determining under what conditions the cumulative effect of multiple agricultural uses of a tract of land met the degree of intensity generally accepted in the area.

The comptroller would partner with the Extension Service, representatives of appraisal districts, and representatives of small-scale producers to develop guidelines for determining under what conditions land under 10 acres used for the production of fruits, vegetables, poultry, hogs, sheep, or goats qualified for appraisal as land designated for agricultural use. These guidelines would have to provide that qualifying land under 10 acres used solely for the aforementioned purposes could not also qualify for appraisal if the owner of the land changed the use of the land to wildlife management.

These guidelines could include recordkeeping requirements and would allow the comptroller to consider factors deemed appropriate, including the financial investment of a producer, the degree of active management, and the percentage of a tract of land used for agricultural uses.

Provision of guidelines. By September 1, 2020, the comptroller would distribute the new guidelines to appraisal districts. The comptroller, in cooperation with appraisal districts, would be required to provide educational resources to chief appraisers to assist with the appraisal of land using the developed guidelines.

The bill would take effect September 1, 2019, and would apply only to the appraisal of land for property tax purposes for a tax year that began on or after January 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $150,000 on general revenue related funds through fiscal 2020-21 due to comptroller administrative costs. The bill's proposed changes to the definitions of qualified open space land and agricultural use would have an estimated negative impact of $29.5 million on general revenue related funds beginning in fiscal 2023.

SUBJECT: Creating a rural broadband program through the universal service fund

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Springer

0 nays

2 absent — Hernandez, Smithee

WITNESSES: For — (*Registered, but did not testify*: Andrew Wise, Microsoft; Jennifer Bergland, Texas Computer Education Association; Michael Pacheco, Texas Farm Bureau; Dan Finch, Texas Medical Association)

Against — Bob Digneo, AT&T Texas; Charles Land, TEXALTEL; Richard Lawson, Verizon; (*Registered, but did not testify*: James Hines, Texas Association of Business; Walt Baum, Texas Cable Association; Vance Ginn, Texas Public Policy Foundation; Deborah Giles, Texas Technology Consortium and Center for Technology; Lynden Kamerman, Texas Telephone Association)

On — Weldon Gray, Texas Statewide Telephone Cooperative, Inc.; (*Registered, but did not testify*: Thomas Gleeson and Diana Zake, Public Utility Commission of Texas)

BACKGROUND: Utilities Code ch. 56 establishes a universal service fund to assist telecommunications providers in providing basic local telecommunications services at reasonable rates in high cost rural areas. The fund is funded by a statewide uniform charge payable by each telecommunications provider that has access to the customer base and is overseen by the Public Utility Commission.

DIGEST: CSHB 669 would establish the rural broadband service program to support broadband service providers offering retail broadband service in underserved rural areas of the state. The program would be overseen by the Public Utility Commission (PUC) and supported through the

commission's universal service fund.

The bill would grant PUC jurisdiction relating to broadband service providers only as necessary to enforce the program and related provisions. PUC would not otherwise have authority to regulate broadband services or broadband service providers.

Rural broadband service program. CSHB 669 would establish a rural broadband service program. Under this program, PUC would support broadband service providers to offer retail broadband services in underserved rural areas of the state at rates comparable to federal benchmark rates established by the Federal Communications Commission.

PUC would adopt criteria for areas of the state to qualify as underserved rural areas and establish standards for networks built or maintained using program support. The standards would have to require a network to provide broadband service and be consistent with federal standards.

Support would be provided using broadband charge receipts from providers who elected to participate in the program and could not be used for any other purpose. A provider would have to notify PUC of the provider's election to participate in the program and pay the uniform charge before the provider could receive financial assistance.

Universal service fund. Under the bill, PUC rules governing the universal service fund would apply to broadband service providers that elected to participate in the rural broadband service program. The purpose of the universal service fund would include providing support for the rural broadband service program.

Participating broadband providers would be required to pay a statewide uniform charge used to fund the universal service fund. The charge would have to be impartially established by PUC, and the commission could establish separate uniform charges for telecommunications providers and broadband service providers. Funds from the uniform charge on telecommunications providers could be used only for certain programs supporting such providers, and funds from the uniform charge on broadband service providers could be used only to fund the rural

broadband service program.

PUC could assess a uniform charge on a broadband service provider only if the provider notified the commission of the provider's election to participate in the rural broadband service program. A provider could notify PUC of the provider's intention to discontinue participation at any time, and the discontinuation would be effective 60 days after the notification date.

Duties. PUC would adopt eligibility criteria for broadband service providers that elected to participate in the rural broadband service program and determine which service providers met the criteria.

The commission also would have to review procedures necessary for the credit, collection, and distribution of broadband charge receipts under the program as specified in the bill.

The commission could require service providers to provide a report or information necessary to assess contributions, broadband charges, and disbursements to the universal fund. The information would be confidential and not subject to disclosure.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 669 would create the rural broadband service program, which would incentivize broadband service providers to pursue broadband development in rural and less populated areas of the state.

Broadband access is a key driver of economic development, yet many Texans remain underserved or without any connection because the cost of expanding broadband service is high. The state also currently lacks a coordinated vision or plan for broadband development. CSHB 669 would enable the Public Utility Commission to provide that vision and would help meet the needs of rural populations.

Because rural development is costly, many internet service providers have elected not to expand their service areas to include many rural portions of the state. This has left part of the state's population without access to a

broadband internet connection, which has negative impacts on almost every aspect of life, from education to business and health care. More is needed to encourage the expansion of broadband service and prepare all Texans for the future.

Fees assessed would be universal and have been requested by rural broadband providers. The current universal fee set by PUC is a small percentage of a customer's bill. Any provider that assessed the fee would be allowed to access the rural broadband service program's account under terms determined by the Public Utility Commission. This practice would be no different from the way other accounts funded by the commission's universal service fund operate.

OPPONENTS SAY:

CSHB 669 would create a program to support rural broadband development that may be unlikely to achieve its intended goal, as it would require broadband service providers to levy a fee on customers to access the program's benefits. Broadband providers that operate in rural areas have a small customer base, so fees levied against the base would have to be large in order to effectively incentivize broadband development. This could burden the same Texans the bill is attempting to help. CSHB 669 also would provide no guidance on whether providers would receive the full benefit of fees assessed on their customers. Creating such a program also could be a stepping stone to making participation mandatory for broadband service providers.

SUBJECT: Establishing a public law school in the Rio Grande Valley

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 11 ayes — C. Turner, Stucky, Button, Frullo, Howard, E. Johnson, Pacheco, Schaefer, Smithee, Walle, Wilson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Fátima Menendez, Mexican American Legal Defense and Education Fund)

Against — None

On — Rex Peebles, Texas Higher Education Coordinating Board

BACKGROUND: Some have suggested that a law school in the Rio Grande Valley is needed to provide access to legal education in a more geographically isolated and traditionally underserved area to help address the shortage of attorneys from underrepresented populations in Texas.

DIGEST: HB 103 would allow the governing board of a university system to establish and operate a school of law in Cameron County or Hidalgo County.

The governing board could:

- prescribe courses leading to customary degrees offered at other leading American law schools and award those degrees;
- assign responsibility for the management of the law school to a general academic teaching institution in the university system; and
- accept and administer gifts and grants from any public or private or entity for the use and benefit of the law school.

The establishment of the law school would be subject to the availability of funding either through appropriation or from another source.

The governing board of a system that intended to establish the law school would be required to notify the Texas Higher Education Coordinating Board (THECB). If more than one governing board notified THECB of their intent to establish a law school, THECB would determine which of the governing boards could establish the law school based on:

- the need for a law school in a geographic area;
- potential student demand;
- available system resources;
- the feasibility of each proposal; and
- other criteria considered appropriate by the board.

The governing board would have to request THECB prepare a feasibility study to determine the actions the system would have to take to obtain accreditation of the law school. THECB would have to deliver a copy of the study to the governing board and to the chair of each legislative standing committee with jurisdiction over higher education.

The bill would prohibit any state funds from being appropriated for the law school on or before August 31, 2025.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Creating fund for border security enhancement projects, pilot program

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Springer

0 nays

2 absent — Hernandez, Smithee

WITNESSES: For — Gerald Schwebel, International Bank of Commerce; Robert Eads, Mercurio Martinez, and Pete Saenz, The City of Laredo; (*Registered, but did not testify*: Matt Long and Angela Smith, Fredericksburg Tea Party; James Dickey, Republican Party of Texas; James Hines, Texas Association of Business; Ramon Chavez, The City of Laredo; Michael Belsick; Tonya Benson; Richard Bohnert; Russell Hayter; Joseph Murphy)

Against — (*Registered, but did not testify*: Joshua Houston, Texas Impact; Vanessa MacDougal; Arthur Simon)

DIGEST: CSHB 4306 would create the Border Security Enhancement Fund for the governor to use for certain activities along the Texas-Mexico border and would provide for a pilot program in certain counties to identify successful strategies for implementing provisions of the bill.

Border Security Enhancement Fund. The bill would establish the Border Security Enhancement Fund as a special fund in the state treasury outside the general revenue fund. The new fund would consist of legislative appropriations.

The comptroller would have to deposit interest and other earnings on the fund's balance into the Foundation School Fund.

Use of fund. The governor would administer the fund and could use it only for certain activities to prevent human trafficking and illegal entry

into the United States of aliens without official approval, terrorists and instruments of terrorism, and contraband, including narcotics and other controlled substances.

The fund could be used for planning, designing, constructing, or maintaining water and transportation infrastructure, technology, and commercial vehicle inspection infrastructure at ports of entry along the border. It also could be used to clear nonindigenous plants.

Powers of the governor. The governor could enter into contracts and agreements and waive legal requirements as necessary to expeditiously perform activities under the bill.

The governor could not use the fund for the activities or contract with a third party to perform the activities unless the governor consulted with the General Land Office commissioner and appropriate federal authorities to coordinate border security efforts.

Preference, verification of contractors. If the governor contracted with a private entity, the governor would have to give preference to an entity that was incorporated or formed under state law or had a headquarters or other principal office in Texas.

The governor could not award a contract unless the proposed contractor registered with and participated in the federal E-verify program and continued participation for the duration of the contract.

Reimbursement. CSHB 4306 would require the governor to request federal reimbursement of the amounts expended from the fund. The comptroller would deposit any federal reimbursement into the Foundation School Fund.

Pilot program. In consultation with local officials and law enforcement, the Department of Public Safety, and U.S. Customs and Border Protection, the governor would implement a pilot program designed to:

- create a communication portal for all law enforcement entities to share information, video and radio feeds, and other technological

information that would further the purposes of the bill;

- evaluate the benefits of infrastructure improvements on main roads that ran parallel to the border; and
- study the effects of clearing at least 20 percent but not more than 30 percent of brush or invasive plant species on land along the border.

The pilot program would have to be implemented by November 1, 2019, in one or more of the following:

- a county located on an international border with a population of more than 54,000 but not more than 55,000 (Maverick County); and
- a county located on an international border with a population of more than 240,000 but not more than 252,000 (Webb County).

The governor would identify successful strategies and submit a plan to the Legislature by January 1, 2021, for implementation in all other areas along the border.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

NOTES:

According to the Legislative Budget Board, the fiscal impact of the bill would depend on the amount appropriated by the Legislature to the Border Security Enhancement Fund.

SUBJECT: Modifying the state judicial compensation and retirement systems

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Farrar, Julie Johnson, Krause, Meyer, Neave, Smith, White

1 nay — Y. Davis

WITNESSES: For — Joe K. Longley, State Bar of Texas; Lee Parsley, Texans for Lawsuit Reform; Will Adams, Texas Trial Lawyers Association; and six individuals; (*Registered, but did not testify*: Kerry Cammack, Alliance for Judicial Funding; Samantha Omey, ExxonMobil; Alfonso Charles, Judicial Section, State Bar of Texas; Guy Herman, Statutory Probate Judges of Texas; George Christian, Texas Association of Defense Counsel; Carol Sims, Texas Civil Justice League; Windy Johnson, Texas Conference of Urban Counties; Shea Place, Texas Criminal Defense Lawyers Association; Ware Wendell, Texas Watch; Cheryl Lieck; Thomas Parkinson;)

Against — (*Registered, but did not testify*: Julie Gilberg; Arthur Simon)

On — Nathan Hecht, Supreme Court of Texas; Robert Kepple, Texas District and County Attorneys Association; David Slayton, Texas Judicial Council, Office of Court Administration; Shawn Dick

BACKGROUND: Government Code subtitle D, chs. 831-835 and subtitle E, chs. 836-840 establish the Judicial Retirement System of Texas Plan One and Plan Two, respectively, and limit membership to judges, justices, and commissioners of the Supreme Court, the Court of Criminal Appeals, courts of appeals, district courts, and certain commissions to courts.

Government Code sec. 659.012 sets the minimum state annual salary of a district judge. This salary serves as the basis for determining other types of compensation for certain public officials, including:

- state annual base salaries of various other judges, justices,

magistrates, and prosecutors;

- contributions paid by the state to counties in connection with statutory county court judges and statutory probate court judges;
- compensation paid by the state to administrative counties of a multicounty statutory county court for the salary of the judges of that court;
- annual salary supplements paid by the state to county judges;
- service retirement annuities for persons who hold offices normally filled by statewide election that are not included in the judicial retirement systems, members of the legislature, and certain district and criminal district attorneys; and
- service retirement annuities under the Judicial Retirement System of Texas Plan One and the Judicial Retirement System of Texas Plan Two.

Government Code sec. 659.0445 provides that an active judge who is a member of the Judicial Retirement System of Texas Plan One or Plan Two is entitled to a longevity pay increase of 3.1 percent after completing 16 years of service credit.

DIGEST:

CSHB 2384 would increase the minimum annual base salary for district judges from $125,000 to $140,000 and would provide for periodic increases in the state annual salaries of certain judges and justices based on their years of service. Certain family court associate judges and presiding judges of administrative judicial regions would be added to the list of persons whose salaries were tied to that of a district judge. CSHB 2384 would make changes to the contributions, supplements, and compensation paid to various persons in connection with judicial salaries. The bill also would make changes to the retirement systems for certain judges, justices, and prosecutors.

Periodic salary increases. CSHB 2384 would increase the state annual salary of district judges and justices of courts of appeals, the Supreme Court, and Court of Criminal appeals every four years for the first 12 years of judicial service. These increases would take effect beginning with the pay period after the judges or justices accrued four, eight, or 12 years of:

- contributing service credit in the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two;
- service as a judge of a statutory county court, multicounty statutory county court, and statutory probate court; or
- any combination of the above.

The state annual salary of such judges or justices would be 110 percent of the applicable base salary after four years, 120 percent of the applicable base salary after eight years, and 130 percent of the applicable base salary after 12 years.

Judges of statutory county courts, multicounty statutory county courts, and statutory probate courts would be entitled to similar periodic increases based on their years of service.

The salary of district attorneys, criminal district attorneys, county prosecutors, state prosecutors, and state prosecuting attorneys also would be adjusted to a percentage of the state annual salary of a district judge with comparable years of experience.

Maximum salaries of certain judges. The bill would set the maximum annual salary of statutory county court judges and statutory probate court judges at $1,000 less than the sum of 130 percent of the state base salary paid to district judges, including the longevity pay increase received by district judges after 16 years of service.

State contributions and compensation to counties. The bill would change the state contribution to a county for each statutory probate judge from $40,000 to 60 percent of the state annual salary paid to district judges with comparable years of service.

The state contribution to a county for each statutory county court judge in the county would be adjusted to account for the state annual salary of a district judge with comparable years of experience.

The amount that the state would be required to compensate the

administrative county of a multicounty statutory county court for the salary of the judge of that court also would be adjusted to reflect the state annual salary of a district judge with comparable years of experience.

Presiding judges of administrative judicial regions. CSHB 2385 would change the maximum salary of presiding judges of administrative judicial regions from $33,000 to 30 percent of the state base salary of district judges without regard to periodic salary increases based on years of service.

The salary of a retired or former district judge or a retired appellate judge who was the presiding judges of administrative judicial regions with at least 30 district courts, statutory county courts, and retired and former judges subject to assignment would be changed from certain flat dollar amounts to amounts that would range from 30 percent to 45 percent of the state base salary of district judges without regard to periodic salary increases based on years of service. The applicable percentage would be determined based on the number of courts and judges in the region, as specified in the bill.

Certain family court associate judges. CSHB 2384 would tie the salaries of child support and child protection court associate judges to the state base salary of district judges by removing the discretion of presiding judges of administrative judicial regions to determine their salaries. These judges would be required to receive a salary of 90 percent of the state base salary of district judges without regard to periodic increases based on years of service.

Salary supplements. The bill would eliminate a requirement that at least 40 percent of the functions that county judges performed be judicial in order to receive annual salary supplements from the state. These salary supplements would be an amount equal to 18 percent of the state base salary of district judges without taking into account any periodic salary increases for years of service.

The bill also would specify that the state supplemental salary compensation for county prosecutors would be calculated based on the years of service that the prosecutor had accrued as of September 1 of the

state fiscal year in which the payment was made.

Other salary provisions. The periodic salary increases of district judges based on years of service would not be used to calculate:

- the pro rata compensation paid to former or retired judges or justices assigned to appellate courts;
- the state salaries of judges who were serving in counties outside of their judicial districts or counties;
- the compensation of retired judges or justices assigned to a district court; or
- the salaries of full-time magistrates.

Judicial Retirement System of Texas Plan One. CSHB 2384 would provide that the service retirement annuity of members of the Judicial Retirement System of Texas Plan One would be calculated based on 130 percent of the salary of judges of courts of the same classification as the court on which the retiree last served before retirement. This system no longer would provide disability retirement benefits.

Members of the retirement system who had accrued 20 years of service credit and had elected to make contributions for each subsequent year of service credit would contribute at a rate of 9.5 percent of the member's state compensation for each payroll period.

The medical board designated by the Employees Retirement System of Texas would be required to review all medical examinations required under the retirement system. The chief justice of the Supreme Court no longer would be required to certify an applicant's entitlement to an annuity.

Judicial Retirement System of Texas Plan Two. CSHB 2384 would adjust the standard service retirement annuity under the Judicial Retirement System of Texas Plan Two to reflect periodic salary increases related to years of service. The salary earned by visiting judges could not be used to determine service retirement annuities.

The bill would change the contribution rate for each payroll period from

6.6 percent to 9.5 percent of a member's compensation for service rendered after September 1, 2019.

The bill would change the procedures for members of retirement system to apply for a disability retirement annuity. Members who were eligible for service retirement annuities or who were current judicial officeholders would not be eligible to receive disability retirement annuities.

Members could apply for disability retirement annuities by filing an application for retirement with the board of trustees or having an application filed with the board by the member's spouse, employer or legal representative.

Applications for disability retirement annuities could not be made after the earlier of the date that the retirement was to become effective or two years after the date the members ceased making contributions to the retirement system, or earlier than 90 days before the date the retirement was to become effective. Applicants would be required to submit to a medical examination and provide other pertinent information as required by the retirement system.

In determining whether a members were mentally or physically incapacitated, the medical board designated by the retirement system's board of trustees would be allowed to apply the standard that would apply to determining disability under the Employees Retirement System of Texas. The medical board no longer would have to report its conclusions to the chief justice of the Supreme Court about any matters referred to it.

Retirees who received disability retirement annuities would have to undergo medical examinations each year for the first five years after retiring and once every three years after that.

Employees Retirement System. The standard service retirement annuity for service credited for members who were district or criminal district attorneys whose effective date of retirement was on or after September 1, 2019, would be an amount equal to the number of years of service credit, multiplied by 2 percent of the state salary being paid to district judges who had the same number of years of contributing service credit as the

members on the members' last days of service as district or criminal district attorneys. In computing service retirement annuities, the longevity increase in pay for district judges after 16 years would be excluded.

Effective date. Provisions relating service retirement annuities under the Judicial Retirement System of Texas Plan Two would apply only to members who retired on or after the effective date of the bill. Provisions relating to disability retirement annuities under that system would apply only to an application for a disability retirement annuity filed on or after the effective date.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 2384 would help attract and retain qualified and experienced judges by increasing judicial salary based on years served on the bench.

Judicial salaries in Texas are 20 to 35 percent lower than those in other states, ranking in the bottom half of judicial salaries in the country. Over the past 18 years, Texas judges have received only two pay raises, and, adjusting for inflation, they are receiving less on average than they did in 1991.

Judges in the state also make less than they would make in the private sector. Most former judges cite the pay gap as one of the primary reasons for leaving the judiciary. CSHB 2384 would help solve this problem by increasing judicial salary every four years for the first 16 years served on the bench. Tying increases in pay to longevity would bring judicial compensation in line with that of the private sector, where more experienced attorneys usually have higher salaries. This would encourage judges to stay longer on the bench, rewarding them for their hard work while providing the public with experienced judges. At the same time, the bill would help attract younger judges to fill the spots that come open as the judiciary ages.

OPPONENTS SAY:

CSHB 2384 would create an arbitrary compensation system based on longevity that would treat judges elected to do the same job differently. The bill also could be perceived to devalue the experience that individuals bring with them when they come to the bench.

NOTES: According the Legislative Budget Board, the bill would have a negative impact of $59.5 million on general revenue related funds through fiscal 2020-21.

SUBJECT: Appropriating certain water flows for aquifer storage or recharge projects

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Larson, Metcalf, Dominguez, Harris, T. King, Lang, Nevárez, Price, Ramos

0 nays

2 absent — Farrar, Oliverson

WITNESSES: For — Michael Booth, Booth, Ahrens & Werkenthin; Amber Blount, Texas Alliance of Groundwater Districts; Shauna Fitzsimmons Sledge, Texas Aquifer Storage and Recovery Association; (*Registered, but did not testify*: Trey Lary, Allen Boone Humphries Robinson LLP; Alfonso Lucio, Austin Chamber of Commerce; Matt Phillips, Brazos River Authority; Steve Perry, Chevron USA; Brian Sledge, City of Bryan, Prairielands Groundwater Conservation District; Tammy Embrey, City of Corpus Christi; Edmond McCarthy, Fort Stockton Holdings; Tom Oney, Lower Colorado River Authority; C.E. Williams, Panhandle Groundwater Conservation District; Matthew Bentley, San Jose Water Group DBA Canyon Lake Water Service Company; Mia Hutchens, Texas Association of Business; Justin Yancy, Texas Business Leadership Council; Billy Howe, Texas Farm Bureau; Dean Robbins and Stacey Steinbach, Texas Water Conservation Association; Perry Fowler, Texas Water Infrastructure Network; Heather Harward, Texas Water Supply Partners; Teddy Carter)

Against — (*Registered, but did not testify*: Charles Flatten, Hill Country Alliance; Jennifer Walker, National Wildlife Federation; Adrian Shelley, Public Citizen; Chris Mullins, Save Our Springs Alliance; Vanessa Puig-Williams, Trinity Edwards Spring Protection Association)

On — (*Registered, but did not testify*: Ashley Forbes and Kim Nygren, Texas Commission on Environmental Quality; John Dupnik, Texas Water Development Board)

BACKGROUND:

Under Water Code sec. 11.023, to the extent that state water has not been set aside to meet downstream instream flow or freshwater inflow needs, state water may be appropriated for certain domestic and municipal uses, agricultural and industrial uses, mining, and other beneficial uses.

Sec. 27.151 defines "aquifer storage and recovery project" as a project involving the injection of water into a geologic formation for later recovery and beneficial use.

DIGEST:

CSHB 720 would allow certain unappropriated water to be used for recharge into an aquifer or for aquifer storage and recovery (ASR) and establish requirements for applications or amendments to water rights related to aquifer recharge or ASR projects.

Water appropriated for aquifer recharge or storage. CSHB 720 would allow unappropriated water, including storm water and floodwater, to be appropriated for recharge into an aquifer. An aquifer recharge project would be considered an allowed appropriation of state waters under Water Code sec. 11.023.

The bill also would allow water appropriated for diversion and a beneficial use to be stored in an aquifer storage and recovery project before the water was recovered for that use.

The Texas Commission on Environmental Quality (TCEQ) could authorize either appropriation of water if it determined that:

- the appropriation was in accordance with Water Code sec. 11.023;
- the application for or amendment to the water right complied with state law regarding water use applications; and
- the application or amendment included any special conditions TCEQ considered necessary.

The application for or amendment to the water right could be for water that was not continuously available.

An application for a water right or amendment to a water right would be subject to statutory motion and hearing requirements. No later than 180 days after a water right or water right amendment was administratively

complete, TCEQ would have to complete a technical review of the application.

TCEQ would have to adopt rules to provide the considerations for determining the frequency that the water had to be available before it could be appropriated.

Rio Grande basin. Before approving a water right application or amendment for a new appropriation of water in the Rio Grande basin for aquifer recharge or ASR, TCEQ would have to consider the water accounting requirements for any international water sharing treaty or other agreements in the area. TCEQ could not authorize a new appropriation of water that would result in a violation of a treaty or court decision.

Aquifer recharge projects. The bill would define an "aquifer recharge project" as a project involving the intentional recharge of an aquifer by means of an injection well or other means of infiltration, including actions designed to reduce declines in the aquifer's water level, supplement the quantity of available groundwater, improve water quality, improve spring flows, or mitigate subsidence.

TCEQ would have exclusive jurisdiction over the regulation and permitting of recharge injection wells, defined as Class V injection wells used for the injection of water into a geologic formation for an aquifer recharge project, including an improved sinkhole or cave connected to an aquifer. CSHB 720 would allow TCEQ to authorize the use of a recharge injection well by rule or under an individual or general permit.

Aquifer recharge regulations. In adopting a rule or issuing a permit, TCEQ would have to consider whether the injection of water would comply with the federal Safe Drinking Water Act, the effect of the project on existing wells, and whether the introduction of water into the relevant geologic formation would alter the quality of the native groundwater to a degree that would render it harmful or require an unreasonably high level of treatment.

TCEQ would have to provide for public notice and comment for a proposed general permit under the bill. The commission also would have

to require applicants for individual permits to meet certain notice requirements.

The bill also would require TCEQ to adopt technical standards governing the approval of the use of a recharge injection well. TCEQ could not adopt or enforce groundwater quality protection standards for the water injected into a recharge injection well that were more stringent than federal standards.

Aquifer recharge operations. An aquifer recharge project operator would have to install a meter on each recharge injection well associated with the project. Each year, the operator would have to report to TCEQ the volume of water injected for recharge the previous calendar year.

The bill would require a project operator to perform water quality testing annually on water to be injected as part of an aquifer recharge project and provide the results to TCEQ.

Conversion of storage from reservoir to aquifer. The holder of a water right authorizing the storage of water for a beneficial use in a reservoir that had not been constructed could file an application to amend the water right to remove the authorization, provided that the diverted water would be stored in an ASR project for later retrieval.

The application would be exempt from any notice and hearing requirements of a statute, TCEQ rule, or permit condition. The application could not be referred to the State Office of Administrative Hearings for a contested case hearing if the requested change would not negatively affect other water rights holders or the environment to a greater degree than the original permit.

TCEQ could adopt rules providing an expedited procedure for adopting an application to convert water use from storage in a reservoir to ASR.

Water loss from evaporation or sedimentation. An application for an amendment to a water right to convert water use from storage in a reservoir to ASR could request an increase in the amount of water diverted or the diversion rate on the basis of an evaporation credit that

accounted for the amount of water that would have evaporated if the reservoir had been constructed.

The holder of a water right authorizing an appropriation of water for storage in a reservoir that had lost storage because of sedimentation could file an application for an amendment to the water right to change the use or purpose from storage by diversion to storage as part of an ASR project for later retrieval and use as authorized by the original water right in an amount equal to all or part of the water yield lost to sedimentation.

The above applications would be subject to notice and hearing requirements. If such an application was granted, TCEQ would have to include in the amendment any special conditions necessary to protect existing water rights and comply with requirements related to the effect of the permit on bays, estuaries, instream uses, environmental flow standards, and set-asides.

Non-applicability. CSHB 720 would not affect the ability to regulate an ASR project as authorized under certain other laws related to the Edwards Aquifer Authority, Harris-Galveston Subsidence District, Fort Bend Subsidence District, Barton Springs-Edwards Aquifer Conservation District, or Corpus Christi ASR Conservation District.

The bill would not affect the authority of TCEQ regarding recharge projects in certain portions of the Edwards underground reservoir, injection wells that transect or terminate in the Edwards Aquifer, or ASR projects under other statutes.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 720 would incentivize water users to capture and store unappropriated water underground, where the water cannot be lost through evaporation. The bill would establish an expedited permit for this water use and give the Texas Commission on Environmental Quality (TCEQ) 180 days to review the permit, making aquifer storage and recovery or recharge a priority for the agency. TCEQ would be required to

consider the process for issuing an evaporation credit permit for water that would be gained by storing water in an aquifer rather than a reservoir, further promoting the use of these projects.

According to a study by the University of Texas at Austin, from 2015 to 2017 more than twice as much water as Texas used to meet all its water supply needs in 2016 flowed from inland basins to the state's coast. This shows a significant potential for the storage of unappropriated surface water, such as floodwater, in ASR projects. Storing more of this water could help the state manage peak water demands and better control subsidence while also preparing the state to meet its future water needs.

Even as Texas sees large, unappropriated surface water flows, serious groundwater depletion has been recorded in several aquifers, underscoring the need to recharge those aquifers to maintain or increase the state's water supply. CSHB 720 would allow TCEQ to develop regulations for a permit to use unappropriated flows for aquifer recharge projects, which have environmental benefits and assist with storm water management. Surface water already flows underground into aquifers, and the bill simply would create a formalized process to purposefully perform this activity.

TCEQ already has the authority to permit the use of unappropriated flows for water intermittently available during floods. CSHB 720 would not inappropriately expand this authority but instead would allow these water flows to be stored and used more beneficially. Entities currently store this water in surface water reservoirs, where the water may evaporate. Allowing the water to be stored underground would help increase the total amount of water retained for beneficial use.

TCEQ also already oversees the use of injection wells by issuing underground injection control permits, and this bill falls within the existing statutory oversight process for surface water injection.

The bill would not create a carve-out for water rights related to aquifer recharge or ASR, since any new water right holder still would have to respect the existing environmental flow standards. Any permit or amendment to a permit for a new water right that could affect existing water rights would be subject to notice and hearing requirements.

OPPONENTS SAY:

CSHB 720 would make aquifer recharge a beneficial water use by default. This means that public surface water that was owned by the state could be converted to private ownership by injecting it into the ground, with little regard to how the water would be used afterwards. Currently, there is no system in the state to manage the interrelationship between surface water and groundwater, and as a result this process lacks oversight.

The bill is based on an idea that there would be an excess appropriation of water available for use in aquifer recharge or ASR projects, which is not the case. There also are concerns that the use of unappropriated flows would alter natural hydrological flows, since the natural variability in wet and dry seasons is needed but could be affected by water use under CSHB 720. Instead of using surface water to recharge groundwater, the Legislature should focus on strengthening and updating environmental flow standards and water availability models.

The bill also would exempt certain applications and amendments to water rights for aquifer recharge or ASR projects from notice and hearing requirements and any special conditions of TCEQ, potentially impacting existing water rights.

OTHER OPPONENTS SAY:

CSHB 720 may not be necessary because surface water already may be captured and stored in an ASR project. However, water suppliers do not see a compelling need for such water projects, and there are no proposed projects dependent on the expedited permit process provided by the bill.

SUBJECT: Prohibiting employers from taking employee tips to pay credit card fees

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Martinez Fischer, Darby, Beckley, Collier, Landgraf, Moody, Parker

0 nays

2 absent — Patterson, Shine

WITNESSES: For — Rene Lara, Texas AFL-CIO; Ana Gonzalez, Workers Defense Action Fund; (*Registered, but did not testify*: Anna Bocchini, Equal Justice Center; Montserrat Garibay, Texas AFL-CIO; Edward Sills)

Against — (*Registered, but did not testify*: Kenneth Besserman, Texas Restaurant Association; Jay Gopal)

BACKGROUND: Labor Code sec. 62.052 defines a "tipped employee" as an employee engaged in an occupation in which the employee customarily and regularly receives more than $20 a month in tips.

DIGEST: HB 133 would prohibit an employer from collecting or receiving any portion of a gratuity paid to or left for a tipped employee, including for the purpose of paying a credit or debit card issuer for any financial services rendered on account of the gratuity.

The bill would take effect September 1, 2019, and would apply only to a gratuity paid to or left for an employee on or after the effective date.

SUPPORTERS SAY: HB 133 would ensure that tipped employees kept all the tips they had worked to earn, including the swipe fee that some employers currently deduct when customers pay using a credit card or debit card. The decision to accept cards is up to the business, so the business should bear this cost.

OPPONENTS HB 133 could harm businesses that did not have the financial means to

SAY: shoulder the burden of paying transaction fees associated with employees' tips. It is fair and allowable under federal law for an employer to charge tipped employees for the portion of swipe charges attributable to their tips.

SUBJECT: Providing organ donor registration information through TPWD

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — S. Thompson, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

3 absent — Wray, Allison, Coleman

WITNESSES: For — John Shepperd, Texas Foundation for Conservation and Texas Coalition for Conservation; (*Registered, but did not testify*: Frank McStay, Baylor Scott and White Health; Shayne Woodard, Donate Life Texas; Marshall Kenderdine, Texas Academy of Family Physicians; Michelle Romero, Texas Medical Association; Sherry Ferguson; Connie Gray; Frances Lee)

Against — None

On — (*Registered, but did not testify*: Mike Hobson, Texas Parks and Wildlife Department; John Seago, Texas Right to Life)

BACKGROUND: Health and Safety Code sec. 629A.020 establishes the Glenda Dawson Donate Life-Texas Registry, a statewide organ donor registry.

DIGEST: CSHB 406 would require the Texas Parks and Wildlife Department to add to its website a link to the Glenda Dawson Donate Life-Texas Registry for persons to access when applying for a hunting, fishing, or combination hunting and fishing license.

TPWD could adopt rules as necessary to implement the bill.

The bill would take effect September 1, 2019.

SUBJECT: Testing exemptions for students with severe cognitive disabilities

COMMITTEE: Public Education — favorable, without amendment

VOTE: 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: Mary Cullinane, League of Women Voters of Texas; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Will Holleman, Texas Association of School Boards; Paige Williams, Texas Classroom Teachers Association; Kyle Ward, Texas PTA; John Grey, Texas School Alliance; Lisa Dawn-Fisher, Texas State Teachers Association; Calvin Tillman)

Against — (*Registered, but did not testify*: Jacquie Benestante, Autism Society of Texas; Chris Masey, Coalition of Texans with Disabilities; Lisa Flores)

On — Christine Broughal, Texans for Special Education Reform; Linda Litzinger, Texas Parent to Parent; (*Registered, but did not testify*: Mara Moskowitz, Texans for Special Education Reform; Tyson Kane, Eric Marin, and Tammy Pearcy, Texas Education Agency)

BACKGROUND: Education Code sec. 39.023(b) requires appropriate criterion-referenced assessment instruments to be administered to each student in a special education program for whom a standard instrument, even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee.

DIGEST: HB 1906 would allow the parent of a significantly cognitively disabled student to request that the student be exempted from state testing requirements to the extent consistent with federal law. If such a request was made, the student's admission, review, and dismissal committee, in

consultation with the parent, would have to determine:

- if the student should be exempted from administration of the alternative assessment instrument; and
- whether, if the student was exempted, another appropriate method to assess the student's progress was available.

By January 1, 2020, the Texas Education Agency would have to apply to the U.S. Department of Education for a waiver of the required annual alternate assessment of students with significant cognitive disabilities under the Every Student Succeeds Act and the Individuals with Disabilities Education Act.

The bill would apply beginning with the 2019-2020 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

HB 1906 would provide relief from the stress of STAAR testing for students who are challenged by significant cognitive disabilities. It would allow parents, in cooperation with the student's admission, review, and dismissal committee, to find an individualized method to measure academic progress for students on a case-by-case basis.

While alternative assessments and testing accommodations are available for students in special education programs, they still might not appropriately accommodate students with the greatest needs. HB 1906 could help a small group of students whose challenges are so great that a traditional test may not make sense. While some have said the bill could result in some students being left behind, the bill would require that any exemption be permissible under federal requirements. The bill also could open the door to other creative solutions for evaluating achievement for these students.

Exempting students with cognitive disabilities from STAAR would provide for more accurate testing results in statewide reporting. Individual schools are aware of their students with disabilities and are better able to

provide for their educational needs, regardless of testing requirements.

OPPONENTS SAY:

HB 1906 could put students with significant cognitive disabilities at risk of being left behind in the classroom by removing them from state and federal testing requirements. Federal law is designed to ensure that the educational rights of students with special needs are protected. Testing helps ensure that these students are being educated well and that their parents can know their levels of achievement. While STAAR might not be the best assessment for all students, it is currently the statewide standard and should be used until another one is available.

SUBJECT: Establishing a child welfare task force

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Frank, Hinojosa, Clardy, Deshotel, Klick, Meza, Noble

0 nays

2 absent — Miller, Rose

WITNESSES: For — Brandon Logan, 2INgage; Andrew Brown, Texas Public Policy Foundation; Angel Carroll; Jimmy Vaughn; (*Registered, but did not testify*: Jo DePrang, Children's Defense Fund-Texas; Girien Salazar, Christian Life Commission-BGCT; Will Francis, National Association of Social Workers-Texas Chapter; Linda Garcia, Our Community Our Kids; Michael Barba, Texas Catholic Conference of Bishops; Steve Koebele, Texas Coalition of Homes for Children; Lauren Rose, Texas Network of Youth Services)

Against — None

On — Kristene Blackstone, Department of Family and Protective Services; (*Registered, but did not testify*: Liz Kromrei, Department of Family and Protective Services; Alyssa Jones, Texas Alliance of Child and Family Services)

BACKGROUND: Family Code ch. 264, subch. B-1 governs the state's community-based care program, a form of foster care in which the Department of Family and Protective Services contracts with community-based nonprofit and local government entities with the ability to provide child welfare services, including direct case management to ensure child safety, permanency, and well-being, in accordance with state and federal child welfare goals.

DIGEST: CSHB 3950 would establish a child welfare task force to develop a statewide plan for the continued implementation of community-based care and the implementation of family preservation and other prevention

services for the state's child welfare system.

Task force. The task force would be composed of nine voting members. Of these, three members would be appointed by the governor, three would be members of the Senate and appointed by the lieutenant governor, and three would be members of the House of Representatives and appointed by the speaker. The task force would elect a chair and vice chair from its membership.

The task force would meet at least quarterly at the call of the chair and could consider public testimony. It could meet by conference call, videoconference, or another similar telecommunication method. All meetings would be subject to the state's Open Meetings law.

Task force members would not be entitled to compensation for service on the task force but would be entitled to reimbursement for actual and necessary expenses incurred in performing task force duties. The task force could accept gifts, grants, and donations to pay for those expenses.

The task force could request relevant information from the Health and Human Services Commission (HHSC), the Department of Family and Protective Services (DFPS), or other relevant state agencies, and those entities would be required to comply unless otherwise prohibited by state or federal law.

The task force would be permitted to use available resources to contract with a third-party consultant and employ full-time staff and would be administratively attached to HHSC for contracting purposes. Task force members and personnel could be appointed or employed from different catchment areas in the state.

Statewide plan. The child welfare task force would be responsible for developing a statewide plan for the continued implementation of family-based care and related services. This plan would have to:

- identify sources of funding, including the development of a robust financial methodology, for the continued implementation of community-based care and family preservation and other related

prevention services;

- include a timeline for the complete implementation of the plan and identify additional resources that DFPS would need to meet the timeline;
- identify barriers to using federal and state money and necessary purchased services to keep more children and youth safely with their families, including by reviewing and maximizing prevention and early intervention services available in the state and any services related to families entering the child protective services system;
- identify all sources of flexible funding under federal and state law that could be used to support community-based care, family preservation, and related prevention services, including placing children in settings eligible for federal funding under the federal Family First Prevention Services Act; and
- identify legislative or regulatory barriers to full implementation of community-based care.

Deadlines. The task force would have to submit a written report by September 1, 2020, on the statewide plan to the governor, lieutenant governor, House speaker, and each member of the standing legislative committees with primary jurisdiction over child welfare issues.

The task force would have to continue to monitor the implementation of community-based care and related services, as well as the implementation plan developed by DFPS. A final evaluation of the implementation of community-based care would have to be submitted to the governor, lieutenant governor, House speaker, and standing legislative committees with primary jurisdiction over child welfare by December 30, 2024.

The task force would be abolished and the bill would expire on December 31, 2024. The bill would not supersede or limit DFPS's duty to develop and maintain the community-based care implementation plan.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

NOTES: According to the Legislative Budget Board, the bill would result in a negative impact of about $670,000 in general revenue related funds through fiscal 2020-21.

SUBJECT: Expanding use of Texas Disaster Act for cyber attacks

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, E. Rodriguez, Smithee, Springer

0 nays

1 absent — Raymond

WITNESSES: For — Damon Fleury, CyberDefenses, Inc.; Adrian Shelley, Public Citizen; (*Registered, but did not testify*: Donna Warndof, Harris County Commissioners Court; Cinde Weatherby, League of Women Voters of Texas; Tom Oney, Lower Colorado River Authority; Chris Shields, Port San Antonio; Russell Keene, Texas Public Power Association; Deece Eckstein, Travis County Commissioners Court; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Todd Kimbriel, Department of Information Resources; Aaron Blackstone, Texas Department of Public Safety; Nim Kidd, Texas Division of Emergency Management, Texas Emergency Management Council; Keith Ingram, Texas Secretary of State Elections Division)

BACKGROUND: Government Code ch. 418, the Texas Disaster Act of 1975, governs powers and responsibilities of the governor, state agencies, and local governments in the event of a disaster and provides an emergency management system for pre-disaster preparedness and post-disaster response and recovery. Disaster is defined as the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property from any natural or man-made cause, including those listed in statute.

Some have suggested including cyber attacks among the events that qualify as a disaster, making cyber attacks eligible for a disaster declaration to help the state respond and mitigate damages.

DIGEST:

HB 351 would expand the purposes of the Texas Disaster Act of 1975 (Government Code ch. 418) to include reducing the vulnerability of people and communities to cyber attacks.

A cyber attack would be defined as an attempt to damage, disrupt, or gain unauthorized access to a computer, network, or computer system.

The bill would add a cyber attack to list of occurrences or imminent threats that were considered a disaster for purposes of the Texas Disaster Act.

The governor could order the Department of Information Resources to disconnect from the Internet a computer network used by a state agency or by an entity receiving security services from the department in the event of a cyber attack.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Extending the maximum duration of bingo occasions

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 10 ayes — T. King, Goldman, Geren, Guillen, Harless, Hernandez, K. King, Kuempel, Paddie, S. Thompson

0 nays

1 absent — Herrero

WITNESSES: For — Will Martin, American Legion; (*Registered, but did not testify*: Steve Bresnen, Bingo Interest Group; TJ Patterson, City of Fort Worth; Angela Hale, Conservative Texans for Charitable Bingo; Kimberly Kiplin, Department of Texas, Veterans of Foreign Wars)

Against — None

On — (*Registered, but did not testify*: Michael Farrell, Texas Lottery Commission)

DIGEST: HB 882 would extend from four hours to six hours the maximum allowable duration of a bingo occasion conducted by licensed authorized organizations and authorized organizations with temporary licenses.

The bill would apply to bingo occasions conducted under licenses issued by the Texas Lottery Commission (TLC) before, on, or after the bill's effective date. Holders of unused temporary licenses issued before the bill's effective date could submit to TLC a license amendment or notification that provided the specific date and time of the bingo occasion for which the temporary license would be used.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Exempting firefighters and police officers from jury duty

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Leach, Farrar, Julie Johnson, Meyer, Smith

0 nays

2 absent — Y. Davis, Neave

2 present not voting — Krause, White

WITNESSES: For — Greg Shipley, Combined Law Enforcement Associations of Texas, Corpus Christi Police Officers Association; Scott Leeton, Corpus Christi Police Officers' Association; (*Registered, but did not testify*: TJ Patterson, City of Fort Worth; Chris Jones, Combined Law Enforcement Associations of Texas; Ray Hunt, Houston Police Officers' Union; Aidan Alvarado, Laredo Fire Fighters Association; Glenn Deshields, Texas State Association of Fire Fighters; Ray Wilkinson, Texas Municipal Police Association)

Against — Lee Parsley, Texans for Lawsuit Reform

On — (*Registered, but did not testify*: Patti Henry and Cary Roberts, County and District Clerks Association of Texas)

BACKGROUND: Government Code sec. 62.106 establishes several categories of people who may establish an exemption from jury service, including those older than 70, those with legal custody of a child younger than 12, college and university students, and elected officials and employees of the Legislature.

DIGEST: HB 354 would add certain types of employees to the list of people who could establish an exemption from jury service. These would include firefighters, including fire chiefs, who were permanent, paid employees of the fire department of a city or county or of a special district or authority that provided firefighting services. The bill also would establish an exemption for police officers, including police chiefs, who were

permanent paid employees of a city or county police department.

The bill would take effect on September 1, 2019, and would apply only to those summoned to appear for jury service on or after that date.

SUPPORTERS SAY:

HB 354 would allow firefighters and police officers, who often work overnight shifts or have unusual hours, to opt out of jury service. The bill would keep cities and counties safer, especially cities with smaller police and fire departments that may not have the resources to cover the shifts of police and firefighters called to jury duty.

Firefighters and police officers represent a small fraction of the population, so the bill would not burden the justice system. The exemption would be voluntary, so the bill would not deny anyone the opportunity to serve.

OPPONENTS SAY:

HB 354 would undermine a fundamental part of the justice system by allowing certain people to opt out of jury service. This narrows the potential jury pool and could send a message to others that jury duty is unimportant.