HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, May 17, 2019
86th Legislature, Number 68
The House convenes at 9 a.m.
Part One

The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

The House also will consider a Local, Consent, and Resolutions Calendar and a Congratulatory and Memorial Calendar.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.

Dwayne Bohac
Chairman
86(R) - 68

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Friday, May 17, 2019
86th Legislature, Number 68
Part 1

SUBJECT: Prohibiting use of public money for certain lobbying activities

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Phelan, Harless, Holland, Hunter, P. King, Raymond, Smithee, Springer

1 nay — Guerra

4 absent — Hernandez, Deshotel, Parker, E. Rodriguez

SENATE VOTE: On final passage, April 17 — 18-13 (Alvarado, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, Rodríguez, Seliger, Watson, West, Whitmire, and Zaffirini)

WITNESSES: *On House companion bill, HB 281:*
For — Adam Cahn, Cahnman's Musings; Tamara Colbert, Paul Hodson, and Shelby Williams, Convention of States; Cheryl Johnson, Galveston County Tax Office; Ed Heimlich, Informed Citizens; Robin Lennon, Kingwood TEA Party, Inc.; Crystal Main, NE Tarrant Tea Party; Terry Holcomb and Summer Wise, Republican Party of Texas; Mark Dorazio, Republican Party of Texas State Republican Executive Committee; Mark Ramsey, Republican Party of Texas, SREC SD7; Terry Harper, RPT; Cary Cheshire, Texans for Fiscal Responsibility; Chuck DeVore, Texas Public Policy Foundation; Terri Hall, Texas TURF and Texans for Toll-Free Highways; Saurabh Sharma, Young Conservatives of Texas; and 21 individuals; (*Registered, but did not testify*: Justin Keener, Americans for Prosperity-Texas; Chris Hill, Collin County; Darrell Hale, Collin County Commissioner; Michael Cassidy, Convention of States; Peter Morales, COS; Stacy Mcmahan, East Texans for Liberty; Angela Smith, Fredericksburg Tea Party; James Lennon, Kingwood TEA Party; Mark Keough, Montgomery County; Fran Rhodes, NE Tarrant Tea Party; Richard Davey, NETTP; Gail Stanart, Republican Party of Texas; Mia McCord, Texas Conservative Coalition; Jimmy Gaines, Texas Landowners Council; Donnis Baggett, Texas Press Association; Jonathan Saenz, Texas Values; Nicole Hudgens, Texas Values Action; Ellen Troxclair, TPPF; Roger Falk, Travis County Taxpayers Union; Walter

West II (RET), VHSE and RPT; and 32 individuals)

Against — Don Allred, Oldham County; Tom Forbes, Professional Advocacy Association of Texas; Becky St. John, Texas Association of School Boards; (*Registered, but did not testify*: Brie Franco, City of Austin; TJ Patterson, City of Fort Worth; Sally Bakko, City of Galveston; Brad Neighbor, City of Garland; David Palmer, City of Irving; Scott Swigert, City of Mont Belvieu; Jeff Coyle, City of San Antonio; Amanda Gnaedinger, Common Cause Texas; Adam Haynes, Conference of Urban Counties; Leon Klement and John Klement, Cooke County; Jay Elliott, Falls County; Bill Kelly, City of Houston Mayor's Office; Adrian Shelley, Public Citizen; Cyrus Reed, Sierra Club Lone Star Chapter; Amy Beneski, Texas Association of School Administrators; John Love, Texas Municipal League; Tammy Embrey, The City of Corpus Christi; Julie Wheeler, Travis County Commissioners Court; Anna Alkire; Tracy Fisher)

On — Ian Steusloff, Texas Ethics Commission

BACKGROUND: Local Government Code sec. 89.002 allows a county commissioners court to spend money from the general fund for membership fees and dues of a nonprofit state association of counties if:

- a majority of the court votes to approve membership;
- the association exists for the betterment of county government and the benefit of all county officials;
- the association is not affiliated with a labor organization;
- neither the association nor an employee directly or indirectly influences or attempts to influence legislation pending before the Legislature; and
- neither the association nor an employee directly or indirectly contributes money, services, or items of value to a political campaign or endorses a candidate for public office.

DIGEST: CSSB 29 would prohibit the governing body of a political subdivision from spending public money to directly or indirectly influence or attempt to influence the outcome of legislation pending before the Legislature relating to:

- taxation, including implementation, rates, and administration;
- bond elections;
- tax-supported debt; and
- ethics and transparency of public servants.

The bill would apply to a political subdivision that imposed a tax and a regional mobility authority, toll road authority, or transit authority.

CSSB 29 would not prohibit an officer or employee of a political subdivision from:

- providing information or appearing before a legislative committee at the request of a member;
- advocating for or against, influencing, or attempting to influence pending legislation while acting as an elected officer; or
- advocating for or against, influencing, or attempting to influence pending legislation if those actions would not require a person to register as a lobbyist.

The governing body of a political subdivision could spend money in its name for membership fees and dues of a nonprofit state association or organization of similarly situated political subdivisions in certain circumstances listed under Local Government Code sec. 89.002 and if the organization did not influence legislation under prohibitions in this bill.

If a political subdivision or organization engaged in an activity prohibited by this bill, a taxpayer or resident of the subdivision would be entitled to appropriate injunctive relief to prevent any further activity. A taxpayer or resident who prevailed in an action would be entitled to recover reasonable attorney's fees and costs incurred in bringing the action.

A political subdivision that used public money to influence or attempt to influence pending legislation would have to disclose on a comprehensive annual financial report the total amount spent that fiscal year to compensate registered lobbyists. This provision would not require a political subdivision or authority to prepare a separate comprehensive

annual financial report for that disclosure and would apply only to a fiscal year that began on or after the bill's effective date.

The bill would apply only to an expenditure or payment of public money made on or after September 1, 2019, including a payment made under a contract entered into before, on, or after the bill's effective date. A contract term providing for a prohibited payment would be void on the bill's effective date for being counter to public policy.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSSB 29 would help end the practice of local governments using tax dollars to lobby the Legislature for legislation that would take even more money from citizens and residents. The bill would prohibit political subdivisions, including cities, counties, school districts, and transportation authorities, from hiring contract lobbyists to influence legislation specifically related to taxation, bond elections, tax-supported debt, and ethics.

Local governments use millions of dollars of taxpayer money each year for lobbying, diverting those funds from important community services. The lobbyists typically represent the best-funded and most well connected individuals, not average citizens. Payments are made with no transparency because local governments do not divulge how much money is used to pay these lobbyists.

Not only is it unfair for taxpayer money to be used for lobbying activities against most taxpayers' interests, but large metropolitan areas have the budget to spend much more on contract lobbying than rural districts, giving them an advantage. This bill would level the playing field between urban and rural areas, giving them equal representation at the Legislature.

CSSB 29 would ensure that taxpayer dollars were not used against taxpayer wishes but also would continue to allow lobbying on other topics. Local governments would have to report lobbying expenses in a comprehensive annual financial report, ensuring transparent use of public funds. The bill also would allow local elected officials and their staff to lobby the Legislature for any issue and local governments to join an

organization representing local governments, as is already allowed for counties.

OPPONENTS SAY:

CSSB 29 would limit the ability of cities, counties, school districts, and other local governments to advocate on behalf their communities. It is not an efficient use of taxpayer money to pay for certain local government employees, who have other needs and full-time jobs in the community, to travel to the Texas Capitol to attend multiple committee hearings, visit legislative offices, and field requests from members.

The premise of the bill — that local government lobbyists advocate against the interests of taxpayers — is incorrect. Local governments hold transparent open meetings to gain community input and are also subject to open records. Residents and taxpayers ultimately have the ability to set the legislative agenda. Local government lobbyists often protect the interests of residents against private lobbyists. This bill would remove local control and have a chilling effect on local engagement at the Legislature. If local governments could not lobby the Legislature, future legislation that constituted an unfunded mandate could further cost taxpayer money.

CSSB 29 also would leave cities, counties, and other local governments open to liability for any number of simple activities. The bill is not specific as to what is meant by "directly or indirectly influencing" legislation, which may lead to confusion and a large number of suits filed against the local government. Those actions would ultimately come at the expense of the taxpayer.

The bill would void certain contracts that would be counter to public policy, infringing on private contract rights and raising questions about the constitutionality of the bill.

OTHER OPPONENTS SAY:

While CSSB 29 is a necessary step to end the practice of taxpayer-funded lobbying, the bill should go further to better protect taxpayer interests. It should have a better enforcement mechanism, rather than making taxpayers pay to go to court and face lawyers paid for with public tax dollars. The bill would be more effective if violations were reported to the Office of the Attorney General and individuals who violated the bill had to pay with their own money.

SUBJECT: Prohibiting transactions between governmental entity, abortion provider

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 7 ayes — Phelan, Harless, Holland, Hunter, P. King, Parker, Springer

4 nays — Deshotel, Guerra, Raymond, E. Rodriguez

2 absent — Hernandez, Smithee

SENATE VOTE: On final passage, April 2 — 20-11 (Alvarado, Hinojosa, Johnson, Menéndez, Miles, Powell, Rodríguez, Watson, West, Whitmire, and Zaffirini)

WITNESSES: *On House companion bill, HB 1929:*
For — Caryl Ayala, Concerned Parents of Texas; Ann Hettinger, Concerned Women for America; Melanie Salazar and Jerry Sharp, Students for Life Action; Sarah Zarr, Students for Life of America; Kyleen Wright, Texans for Life; Jenny Andrews, Amy O'Donnell, and Joe Pojman, Texas Alliance for Life; Philip Sevilla, Texas Leadership Institute for Public Advocacy; Elizabeth Graham, Emily Horne, and John Seago, Texas Right To Life; Mary Castle and Nicole Hudgens, Texas Values Action; Jennifer Allmon, The Texas Catholic Conference of Bishops; and 12 individuals; (*Registered, but did not testify:* Cindy Asmussen, Southern Baptists of Texas Convention; Maureen Davis, Concerned Parents and Grandparents; James Dickey, Republican Party of Texas; Terry Harper, Republican Party; Bill Kelly, City of Houston Mayor's Office; Mia McCord, Texas Conservative Coalition; Rebecca Parma, Texas Right to Life; Jonathan Saenz, Texas Values; Girien Salazar, Christian Life Commission-BGCT; Thomas Schlueter, Texas Apostolic Prayer Network; Jason Vaughn, Texas Young Republicans; and 21 individuals)

Against — Stephanie Hayden, City of Austin; Stacy Alexander; Elizabeth Ela; Amy Kamp; Vanessa MacDougal; (*Registered, but did not testify:* Drucilla Tigner, ACLU of Texas; Raymond Hampton, American College of Obstetricians and Gynecologists; Chas Moore, Austin Justice Coalition;

Jonathan Lewis, Center for Public Policy Priorities; Jamaal Smith, City of Houston Mayor's Office; Tina Hester, Jane's Die Process; Amanda Boudreault, League of Women Voters Texas; Erika Galindo, Lilith Fund for Reproductive Equity; Aimee Arrambide, Blake Rocap, and Jasmine Wang, NARAL Pro-Choice Texas; Brett Barnes and Sarah Wheat, Planned Parenthood of Greater Texas; Elaina Fowler, Planned Parenthood Texas Votes; Samantha Robles and Wesley Story, Progress Texas; Phil Bunker, Teamsters Joint Council 58; Carisa Lopez and Katherine Miller, Texas Freedom Network; Elizabeth Ballew, Texas Handmaids; Valerie Street, Texas Progressive Action Network; Jen Ramos, Texas Young Democrats; and 67 individuals)

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

BACKGROUND: Health and Safety Code sec. 245.002(1) defines "abortion" as the act of using or prescribing an instrument, a drug, medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

- save the life or preserve the health of an unborn child;
- remove a dead, unborn child whose death was caused by spontaneous abortion; or
- remove an ectopic pregnancy.

Sec. 171.002(3) defines "medical emergency" as a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

DIGEST: SB 22 would prohibit a governmental entity, defined as the state, a state agency in the executive, judicial, or legislative branch, or a political subdivision, from entering into a taxpayer resource transaction with an abortion provider or affiliate of an abortion provider. This prohibition would not apply to a taxpayer resource transaction that was subject to a

federal law in conflict with the bill's prohibition as determined by the executive commissioner of the Health and Human Services Commission and confirmed in writing by the attorney general.

Definitions. The bill would define "taxpayer resource transaction" as a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provided to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity received something of value in return. The term would exclude the provision of basic public services, including fire and police protection and utilities, by a governmental entity to an abortion provider or affiliate in the same manner the entity provided services to the general public.

A taxpayer resource transaction would include advocacy or lobbying by or on behalf of a governmental entity on behalf of an abortion provider or affiliate's interests but would not include:

- an officer or employee of a governmental entity providing information to a member of the Legislature or appearing before a legislative committee at the request of the member or committee;
- an elected official advocating for or against or otherwise influencing or attempting to influence the outcome of pending legislation; or
- an individual speaking as a private citizen on a matter of public concern.

The bill would define an "abortion provider" as a licensed abortion facility or an ambulatory surgical center that performed more than 50 abortions in any 12-month period. "Affiliate" would mean a person or entity who entered into with another person or entity a legal relationship that was created by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrated:

- common ownership, management, or control between the parties to the relationship;

- a franchise granted by the person or entity to the affiliate; or
- the granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service marks, or other registered identification mark.

Exemptions. The bill would not apply to:

- a licensed general or special hospital;
- a licensed physician's office that performed 50 or fewer abortions in any 12-month period;
- a state hospital providing inpatient care and treatment for persons with mental illness;
- a public or private higher education teaching hospital; or
- an accredited residency program providing training to resident physicians.

A facility would not be considered an abortion provider when abortions were performed in medical emergencies as defined in Health and Safety Code sec. 171.002.

Other provisions. The bill would allow the attorney general to bring an action to enjoin a violation of prohibited transactions and recover reasonable attorney's fees and costs. The bill would waive sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability.

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. It would apply only to a transaction entered into on or after the effective date.

SUPPORTERS SAY:

SB 22 would close loopholes to ensure that taxpayers were not inadvertently subsidizing abortion by prohibiting state and local governments from entering into contracts with abortion providers and their affiliates.

The bill would provide greater transparency and accountability to contracts and transactions entered into by cities, counties, and hospital districts. Although the Legislature has taken steps through budget riders to prevent state funds from flowing to abortion providers and their affiliates, this bill would create a permanent ban on the use of public funds to subsidize abortions opposed by many Texans for moral or other reasons.

The bill would not reduce access to health care because the state has invested more funds and increased the number of available providers for women's health care programs, such as the Healthy Texas Women program, which helps decrease the maternal mortality rate by providing preventive screenings for cholesterol, diabetes, and high blood pressure.

OPPONENTS SAY:

SB 22 would reduce access to reproductive health care by preventing political subdivisions, the state, and state agencies from contracting with entities that are abortion providers or affiliated with an abortion provider. The bill could contribute to increased teen pregnancy and maternal mortality rates by requiring local government entities to exclude health care providers with the most experience providing essential and affordable services, such as reproductive health care and cancer screenings.

The bill would limit the ability of cities, counties, and hospital districts to address the unique needs of their communities. Texas has multiple health care crises, including sexually transmitted infections and virus outbreaks. The bill could undermine future partnerships to address emerging local issues, potentially jeopardizing the health of vulnerable populations. Decisions about contracting with health care providers should be left to local elected officials, who are accountable to their voters.

NOTES:

According to the Legislative Budget Board, it is assumed the bill would not apply to Medicaid because doing so could conflict with federal requirements and lead to a loss of federal matching funds for Medicaid.

SUBJECT: Defining supportive palliative care; requiring HHSC study

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Coleman

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

WITNESSES: *On House companion bill, HB 2057:*
For — (*Registered, but did not testify:* Aaron Gregg, Alzheimer's Association; Marina Hench, American Cancer Society Cancer Action Network; Robert Howden, Baylor Scott and White Health; Rhonda Sepulveda, Catholic Charities of the Archdiocese of Galveston-Houston; Rachel Hammon, Texas Association for Home Care and Hospice; Jennifer Allmon, The Texas Catholic Conference of Bishops; Sara Gonzalez, Texas Hospital Association; Maxcine Tomlinson, Texas New Mexico Hospice Organization; Andrew Cates, Texas Nurses Association; Daniel Chepkauskas, Texas Pain Society; Alexis Tatum, Travis County Commissioners Court; Amelia Averyt; Taylor Beall; Mercedez Cruz; Wilson Lam)

Against — (*Registered, but did not testify:* Gregory Young)

DIGEST: SB 916 would require the Health and Human Services Commission (HHSC) to conduct a study on Medicaid reimbursement for supportive palliative care.

Definition. The bill would define "supportive palliative care" as physician-directed interdisciplinary patient- and family-centered care provided to a patient with a serious illness without regard to the patient's age or terminal prognosis that:

- could be provided concurrently with methods of treatment or therapies that sought to cure or minimize the effects of the patient's illness; and
- sought to optimize the quality of life for a patient with a life-threatening or life-limiting illness and the patient's family through various methods.

These would include methods that sought to:

- anticipate, prevent, and treat the patient's total suffering related to the patient's physical, emotional, social, and spiritual condition;
- address the physical, intellectual, emotional, cultural, social, and spiritual needs of the patient; and
- facilitate for the patient regarding treatment options, education, informed consent, and expression of desires.

Any reference to palliative care in the Health and Safety Code and any other law would mean supportive palliative care as defined in the bill. SB 916 would repeal the current definition of "palliative care" and modify the definition of "hospice services" to remove the reference to palliative care.

Study. HHSC would be required to conduct a study to assess potential improvements to patients' quality of care and health outcomes and to anticipated cost savings to the state from supporting the use of or providing Medicaid reimbursement to certain Medicaid recipients for supportive palliative care. The study would have to include an evaluation and comparison of other states that provided Medicaid reimbursement for supportive palliative care.

The Palliative Care Interdisciplinary Advisory Council would have to provide HHSC with recommendations on the structure of the study, including recommendations on identifying specific populations of Medicaid recipients, variables, and outcomes to measure.

HHSC could collaborate with and solicit and accept gifts, grants, and donations from any public or private source for the purpose of funding the study.

The commission would have to provide the findings of the study to the Palliative Care Interdisciplinary Advisory Council by September 1, 2022. The advisory council would have to include the study's findings in its palliative care report submitted to the Legislature by October 1, 2022.

The bill's provisions requiring the study on palliative care would expire on September 1, 2023.

HHSC would have to conduct the study only if the commission received a gift, grant, or donation or the Legislature appropriated money specifically for that purpose. If HHSC did not receive gifts, grants, donations, or appropriated funds for the purpose of the bill, the commission could, but would not be required to, conduct the study using other money available for that purpose.

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:

SB 916 would help increase the accessibility of and awareness about supportive palliative care by making a statutory distinction between palliative and hospice care and requiring the Health and Human Services Commission (HHSC) to conduct a study and report its findings.

Many patients and health care providers currently may fail to understand the difference between palliative care and hospice care, leading to the underutilization of palliative care services. The bill would remedy this by creating a statutory definition of supportive palliative care that was distinct from hospice care. This clarification was the first recommendation of the Texas Palliative Care Interdisciplinary Advisory Council's report to the Texas Legislature.

Although the bill would not implement a program on palliative care right away, it would lay the groundwork to facilitate greater access to palliative care. Defining supportive palliative care in statute and commissioning an HHSC study should be the first step toward raising awareness of the distinction between palliative and hospice care. Removing this confusion

would increase public and professional awareness of the benefits of palliative care and set the stage for opportunities that could fund research and pilot programs on this care.

By raising awareness of the benefits of palliative care, the bill also could result in an increase in utilization of palliative care services by patients. This could result in longer patient lifespans, lower health care costs due to fewer admissions to health care facilities, and the improved physical, emotional, and spiritual well-being of patients and their families. Other states that have taken the first step of creating a statutory definition of palliative care have later increased access to this much-needed service.

The bill would not introduce ethical concerns about palliative care because the improvement of a patient's quality of life is inherent in the definition of this care. The definition introduced in statute under the bill could not be misconstrued to authorize treatments which could cause or hasten the death of a patient.

OPPONENTS SAY:

SB 916 could fail to protect the health and safety of patients and might create ethical concerns by introducing a definition of palliative care that did not explicitly state that this care could not be used to cause or hasten a patient's death. Federal laws on palliative care include this crucial caveat, and Texas should do the same if it intends to define supportive palliative care in statute.

SB 916 also would not increase the accessibility of palliative care because it would not require any substantive action by state agencies on providing this care. By simply requiring another study and creating a new definition in code, the bill would not result in any meaningful increase in the use of palliative care by Texas patients.

SUBJECT: Implementing true cost reimbursement for rural hospitals under Medicaid

COMMITTEE: Human Services — favorable, without amendment

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

0 nays

2 absent — Miller, Rose

SENATE VOTE: On final passage, April 17 — 31-0

WITNESSES: For — James Janek, Rice Medical Center; Don McBeath, Texas Organization of Rural and Community Hospitals; (*Registered, but did not testify*: Frank McStay, Baylor Scott and White Health; Timothy Ottinger, Catholic Health Initiatives-Texas Division; Anne Dunkelberg, Center for Public Policy Priorities; Amber Hausenfluck, CHRISTUS Health; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Sara Gonzalez, Texas Hospital Association; John Henderson, Texas Organization of Rural and Community Hospitals)

Against — None

On — (*Registered, but did not testify*: Victoria Grady and Charlie Greenberg, Health and Human Services Commission)

BACKGROUND: Concerns have been raised about the financial sustainability of rural hospitals. Financial losses incurred for treatment of Medicaid patients have been identified as one of the threats to the survival of these hospitals, which are the only source of care for many rural Texans.

DIGEST: SB 170 would require the executive commissioner of the Health and Human Services Commission (HHSC) to adopt by rule a prospective cost-based reimbursement methodology for the payment of rural hospitals participating in Medicaid.

The methodology would have to ensure that, to the extent allowed by

federal law, the hospitals were reimbursed on an individual basis for providing inpatient and general outpatient services to Medicaid recipients using the hospital's most recent cost information concerning the costs incurred for providing such services. The bill would require HHSC to calculate the prospective cost-based reimbursement rates once every two years.

In adopting a reimbursement methodology, HHSC could adopt a methodology that either:

- required a managed care organization to reimburse rural hospitals for services delivered through the Medicaid managed care program using a minimum fee schedule or other method for which federal matching money was available; or
- required HHSC and a managed care organization to share in the total amount of reimbursement paid to rural hospitals.

HHSC also could require that the amount of reimbursement paid to a rural hospital be subject to any applicable adjustments made by the commission for payments to or penalties imposed on the rural hospital that were based on quality-based or performance-based requirements under the Medicaid managed care program.

Transition to true cost-based reimbursement. By September 1 of each even-numbered year, HHSC would have to determine the allowable costs incurred by a rural hospital participating in the Medicaid managed care program based on the rural hospital's cost reports submitted to the federal Centers for Medicare and Medicaid Services and any other available information that the commission considered relevant. By September 1, 2020, HHSC would have to make an initial determination of allowable costs incurred by an applicable rural hospital.

Beginning with the fiscal year ending August 31, 2022, HHSC would be required to implement a true cost-based reimbursement methodology for inpatient and general outpatient services provided to Medicaid recipients at rural hospitals. This methodology would have to provide prospective payments to rural hospitals during a state fiscal year using the reimbursement methodology adopted under the bill's provisions and, to

the extent allowed by federal law, provide a cost settlement in the subsequent state fiscal year to provide additional reimbursement as necessary to reimburse the hospitals for true costs incurred in providing services to Medicaid recipients during the previous fiscal year.

If federal law did not permit the use of a true cost-based reimbursement methodology described by the bill, HHSC would have to continue to use the prospective cost-based reimbursement methodology for the payment of rural hospitals for providing inpatient and general outpatient services to Medicaid recipients.

Implementation. HHSC would be required to implement a provision of the bill only if the Legislature appropriated money specifically for that purpose. Otherwise HHSC could, but would not be required to, implement the bill's provisions using other available appropriations.

If before implementing any provision of the bill a state agency determined that a waiver or authorization from a federal agency was necessary, the agency affected by the provision would have to request the waiver or authorization and could delay implementing that provision until the waiver or authorization was granted.

The bill would take effect September 1, 2019.

SUBJECT: Allowing certain emergency services districts to create new districts

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 7 ayes — Coleman, Bohac, Anderson, Biedermann, Dominguez, Rosenthal, Stickland

0 nays

2 absent — Cole, Huberty

SENATE VOTE: On final passage, May 3 — 30-1 (Fallon), on Local and Uncontested Calendar

WITNESSES: For — John Carlton, Texas State Association of Fire and Emergency Districts

Against — None

BACKGROUND: Health and Safety Code ch. 775, subch. B governs the creation of emergency services districts.

Interested parties have noted that several emergency services districts in Harris County provide both fire and emergency medical services and have suggested that in some cases, two separate districts could be more effective and efficient.

DIGEST: SB 1579 would allow the board of an emergency services district located in a county with a population of more than 3.3 million (Harris County) to create another emergency services district with identical boundaries to the current district if it determined that the creation of another district would enable more economical and efficient delivery of services.

The board would adopt an order creating the district that named the district and, if considered reasonable by the board of the creating district, renamed the creating district, described the services to be provided by the creating district and the other district, and listed the proposed date on

which the creating district would cease providing services to be provided by the other district. The order could not provide for the creating district and the other district to provide the same service.

The board would have to hold an election on the next uniform election date to confirm the district's creation and authorize the imposition of a tax by the other district. The district would be created only if a majority of voters approved the creation and the tax.

The created district would be overseen by a new board, the appointment of which is specified in the bill.

The creating district could convey assets and transfer indebtedness, other than bonded indebtedness, to the other district. If the creating district had bonded indebtedness at the time that the other district was founded, the other district would have to pay to the creating district annually an amount equal to one-half of the amount required to service the bonded indebtedness in that year.

The bill would take effect on September 1, 2019.

SUBJECT: Collecting and publishing day care center safety data

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Frank, Hinojosa, Clardy, Deshotel, Klick, Meza, Miller, Noble

0 nays

1 absent — Rose

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

WITNESSES: *On House companion bill, HB 1682:*
For — Kimberly Kofron, Texas Association for the Education of Young Children; (*Registered, but did not testify:* Jason Sabo, Children at Risk; Melanie Rubin, Dallas Early Education Alliance; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Will Francis, National Association of Social Workers-Texas Chapter; Sarah Crockett, Texas CASA; David Feigen, Texans Care for Children; Julie Linn, The Commit Partnership; Jennifer Lucy, TexProtects; Clayton Travis, Texas Pediatric Society; Knox Kimberly, Upbring)

Against — None

On — Jean Shaw, Texas Health and Human Services Commission; (*Registered, but did not testify:* Ashland Batiste, Department of Family and Protective Services)

DIGEST: SB 708 would require the Health and Human Services Commission (HHSC), in collaboration with the Department of Family and Protective Services (DFPS) and using existing resources, to collect, compile, and publish on the commission's website certain data aggregated on reported incidents in licensed day care centers that threatened or impaired the basic health, safety, or welfare of a child.

This data would have to be aggregated by child age and include:

- the number of incidents investigated by HHSC or DFPS and assigned HHSC's highest priority;
- the number of incidents investigated by HHSC or DFPS and assigned HHSC's second-highest priority;
- the number of violations;
- the number of confirmed serious injuries to children; and
- the number of child fatalities.

During each monitoring inspection of a licensed day care center and using existing resources, HHSC also would be required to collect data on each group of children 4 years old and younger, including the specified age of the children in each group, the number of children in each group, and the number of caregivers in the group supervising the children. "Group of children" and "specified age" would be determined by the formula provided in HHSC's minimum standards for childcare centers.

Beginning on January 31, 2020, HHSC would have to make data collected under the bill's provisions available upon request to individuals researching the factors related to child injury, maltreatment, and death in licensed day care centers.

HHSC also would be required to use existing resources to provide an annual report to the Legislature that included:

- the number of confirmed serious injuries and fatalities for children 4 years old and younger that occurred at each licensed day care center, including information collected by DFPS, aggregated by the age of the injured or deceased child;
- the priority assigned to the investigation conducted by HHSC or DFPS in response to an incident that resulted in a serious injury or child fatality;
- the number of investigations conducted by HHSC or DFPS at each licensed day care center involving children 4 years old and younger that were assigned the highest priority or the second-highest priority, aggregated by the age of the youngest affected child; and
- the number of violations HHSC found at each licensed day care center during its investigations.

The executive commissioner of HHSC would have to review the data collected by the bill and submit to the Legislature by January 1, 2021, a report that included recommendations for modifications to the minimum standards by age group to enhance child safety. This requirement would expire September 1, 2023.

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:

SB 708 would provide important data to state leaders on caregiver-child ratios, group size standards, and serious violations, injuries, and deaths in licensed day care centers. This could help lawmakers assess the adequacy of current minimum health, safety, and well-being standards for day care centers and allow them to develop better-informed childcare policies.

Studies have shown that children in day care centers are safer when caregivers have a manageable number of children to supervise, and the state's minimum standards for these ratios are substantially below national standards. However, the state does not record or report the number of children per caregiver in day care centers, making it difficult for policymakers to access data that could inform their policies and help keep children safe.

The bill would require childcare licensing representatives to collect this data during the day care center inspections they already are required to conduct, which would adequately limit any potential burden on state resources.

OPPONENTS SAY:

SB 708 would place an unnecessary burden on the Health and Human Services Commission (HHSC) to collect data. Parents who are concerned about their children's day care centers already can seek out health, safety, and well-being information about such centers.

SUBJECT: Revising the definition of hazing and qualifications for immunity

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 6 ayes — C. Turner, Stucky, Frullo, Howard, E. Johnson, Pacheco

1 nay — Schaefer

4 absent — Button, Smithee, Walle, Wilson

SENATE VOTE: On final passage, April 11 — 26-5 (Creighton, Hancock, Hughes, Nelson, and Schwertner)

WITNESSES: *On House companion bill, HB 1482:*
For — Judson Horras, North American Interfraternity Conference; Jay Maguire, Parents and Alumni for Student Safety; Michael Shawn Cumberland; Debra Debrick

Against — (*Registered, but did not testify*: CJ Grisham)

BACKGROUND: Education Code ch. 37, subch. F defines and creates offenses related to hazing. Hazing is defined as any intentional, knowing, or reckless act, occurring on or off the campus of an educational institution, by one person alone or acting with others, directed against a student, that endangers the mental or physical health or safety of a student for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in an organization. The definition includes a list of examples.

Penal Code sec. 1.07 defines coercion as a threat, however communicated:

- to commit an offense;
- to inflict bodily injury in the future on the person threatened or another;
- to accuse a person of any offense;
- to expose a person to hatred, contempt, or ridicule;
- to harm the credit or business repute of any person; or

- to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

DIGEST:

SB 38 would revise the definition of hazing, provide criteria for immunity from prosecution or civil liability for hazing in certain circumstances, allow for alternative venues for the prosecution of hazing offenses, and require post-secondary educational institutions to report to students information on hazing.

Definition. SB 38 would revise the definition of "hazing" to include an act involving coercing a student to consume an alcoholic beverage, liquor, or drug, by applying the Penal Code definition of "coercion." The bill would remove from the definition's list activities that included:

- intimidating or threatening the student with ostracism;
- subjecting the student to extreme mental stress, shame, or humiliation;
- adversely affecting the mental health or dignity of the student or discouraging the student from entering or remaining registered in an educational institution; or
- activities that would be reasonably expected to cause a student to leave the organization or institution rather than submit to such acts.

Immunity. The bill would provide immunity from civil or criminal liability to any person who voluntarily reported a specific hazing incident involving a student to an institution of higher education if the person:

- reported the incident before being contacted by the institution concerning the incident or otherwise being included in the institution's investigation of the incident; and
- cooperated in good faith throughout any institutional process regarding the incident, as determined by the dean of students or other appropriate official of the institution.

Immunity provided by the bill would extend to participation in any judicial proceeding resulting from the institution's investigation. A person would not be immune if the person reported on the person's own act of

hazing or if the person reported on an act of hazing in bad faith or with malice.

Venue. SB 38 would allow a county attorney, district attorney, or criminal district attorney to prosecute a hazing offense in a county in which the offense did not occur if the venue was in the same county as the educational institution at which a victim of the offense was enrolled. Such a change in venue only could occur with the written consent of a prosecuting attorney of a county in which the offense otherwise could be prosecuted.

Reporting. By the 14th day before the first class day of each spring and fall semester, each postsecondary educational institution would be required to distribute to each student enrolled at the institution a summary of the hazing subchapter of the Education Code, as well as a copy, or an electronic link to a copy, of a report on hazing committed on or off campus by an organization registered with or recognized by the institution.

The report would have to include information on each disciplinary action taken by the institution against an organization for hazing, and each conviction of hazing by an organization, during the three years preceding the date the report was issued. For each incident, the report would show:

- the name of the organization disciplined or convicted;
- the date on which the incident occurred or the citation was issued;
- the date on which the institution's investigation was initiated;
- a general description of the incident, the violations of the institution's code of conduct or the criminal charges, the findings of the institution or the court, and any sanctions imposed by the institution or fines imposed by the court; and
- the date on which the institution's disciplinary process was resolved or on which the conviction was final.

The report would have to be updated to include information on each disciplinary process or conviction not later than the 30th day after the process was resolved or the conviction became final. The report could not

include personally identifiable student information and would have to comply with the federal Family Educational Rights and Privacy Act of 1974.

Each postsecondary educational institution would have to develop and post the report by January 1, 2020. Students who attended student orientation would have to receive notice about the nature and the availability of the report.

The bill would take effect September 1, 2019, and would apply only to an offense committed or a cause of action that accrued on or after the effective date.

SUPPORTERS SAY:

SB 38 would encourage reporting of hazing by witnesses, facilitate prosecution of perpetrators, and improve a student's ability to choose an organization that would not partake in harmful initiation practices.

Current law on hazing is too vague for many prosecutors to successfully pursue such a case, and perpetrators often conduct hazing away from campus. SB 38 would address these issues by creating a firm penalty for coercing a student to consume alcohol or drugs and by allowing for a district or county attorney to prosecute a hazing offense in the same county as the school in which the victim was enrolled.

Students who are hazed can suffer socially and psychologically. SB 38 would help prevent such adverse experiences by ensuring that students had a list of organizations that were known to engage in hazing. This, along with the immunity the bill would provide to those who reported hazing, would deter organizations from engaging in such behavior and help other students avoid harmful situations.

OPPONENTS SAY:

While well intended, SB 38 would implement language that was too broad to be properly enforced. Postsecondary institutions still would have to define and investigate hazing, and the broad language of the statute could lead to impaired impartiality.

SUBJECT: Protecting expressive activities at public institutions of higher education

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 7 ayes — C. Turner, Stucky, Frullo, Howard, E. Johnson, Pacheco, Schaefer

0 nays

4 absent — Button, Smithee, Walle, Wilson

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

WITNESSES: *On House companion bill, HB 3395:*
For — Thomas Lindsay, Texas Public Policy Foundation; (*Registered, but did not testify*: Jennifer Allmon, The Texas Catholic Conference of Bishops; Donnis Baggett, Texas Press Association; Adam Cahn, Cahnman's Musings; Mark Dorazio, State Republican Executive Committee; Terry Holcomb and Tanya Robertson, Republican Party of Texas; Rhonda Sepulveda, Catholic Charities of the Archdiocese of Galveston-Houston; Tom Nobis; Gail Stanart)

Against — Samantha Fuchs

On — Ryan Vassar, Office of the Attorney General

DIGEST: SB 18 would create requirements related to speech and expressive conduct protected by the First Amendment on public campuses of higher education institutions.

Policy statement. SB 18 would adopt a statement that it was state policy to protect the expressive rights of persons guaranteed by the U.S. and Texas constitutions by recognizing freedom of speech and assembly as central to the mission of institutions of higher education and ensuring that all persons could assemble peaceably on the campuses of institutions of higher education for expressive activities, including to listen to the speech of others.

Common outdoor areas. An institution of higher education would be required to ensure that the common outdoor areas of its campus were deemed traditional public forums. Any person would be permitted to engage in expressive activities in those areas freely, as long as the person's conduct was not unlawful and did not materially and substantially disrupt the functioning of the institution.

An institution could adopt a policy that imposed reasonable restrictions on the time, place, and manner of expressive activities in common outdoor areas if those restrictions:

- were narrowly tailored to serve a significant institutional interest;
- employed clear, published, content-neutral, and viewpoint-neutral criteria;
- provided for ample alternative means of expression; and
- allowed members of the university community to assemble or distribute written material without a permit or other permission from the institution.

The bill's provisions on common outdoor areas would not limit the right of student expression at other campus locations.

Students' rights and responsibilities. SB 18 would require each higher education institution to adopt a policy by August 1, 2020, detailing students' rights and responsibilities regarding expressive activities at the institution. The policy would have to allow:

- any person, subject to reasonable restrictions adopted by the institution in accordance with the bill, to engage in expressive activities on campus, including by responding to the expressive activities of others; and
- student organizations and faculty to invite speakers to speak on campus, subject to provisions in the bill.

The policy also would have to:

- establish disciplinary sanctions for students, student organizations, or faculty who unduly interfered with the expressive activities of others on campus;
- include a grievance procedure for addressing complaints of a violation of the bill's requirements;
- be approved by a majority vote of the institution's governing board before final adoptions; and
- be posted on the institution's website.

Each institution would have to make its policies available to students enrolled at and employees of the institution by including them in student and personnel handbooks, providing a copy to students during student orientations, and posting them on the institution's website.

Each institution would have to develop materials, programs, and procedures to ensure that employees responsible for educating or disciplining students understood the bill's requirements and the institution's adopted policies.

Student organizations. A higher education institution could not take action against a student organization or deny the organization any benefit generally available to other student organizations at the institution on the basis of a political, religious, philosophical, ideological, or academic viewpoint expressed by the organization or of any expressive activities of the organization.

SB 18 would define "benefit" to include recognition by or registration with an institution, the use of an institution's facilities for meetings or speaking purposes, the use of communication channels controlled by the institution, and funding sources generally made available to student organizations.

The bill would define "expressive activities" to mean any speech or expressive conduct protected by the First Amendment, and including assemblies, protests, speeches, distribution of written material, carrying of signs, and circulation of petitions. The term would not include commercial speech.

Guest speakers. In determining whether to approve a speaker or the amount of a fee for use of the institution's facilities, an institution:

- could consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as the proposed venue and expected size of the audience, any anticipated need for campus security, any necessary accommodations, and any relevant history of compliance or noncompliance by the requesting student organization or faculty member with the institution's required policy of expressive activities; and
- could not consider any anticipated controversy related to the event.

Report. By December 1, 2020, each institution would have to prepare, post on its website, and submit to the governor and Legislature a report on the institution's implementation of the bill's requirements.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

SB 18 would promote civility, respect, and safety for those expressing diverse views on public college and university campuses by recognizing that the First Amendment applies to all speech, even that deemed unpopular or contentious. The bill would bolster free speech protections on college campuses by ensuring that constitutionally protected expression existed in common outdoor areas and that higher education institutions could not make decisions about guest speakers based on the speaker's viewpoint.

Texas colleges and universities should be places where vibrant debate is not just allowed but encouraged. Recently, higher education campuses have become the focus of those concerned with restrictions on speech content that could potentially violate constitutional principles. SB 18 would affirm that it is Texas policy to protect the expressive constitutional rights of individuals by recognizing freedom of speech and assembly as central to the mission of public institutions of higher education. Texas would join more than a dozen states that have passed campus free speech laws in the past five years, with many of these bills occurring on a bipartisan basis.

Common outdoor areas. The bill would ensure that common outdoor areas were deemed to be traditional public forums and permit any individual to engage freely in expressive activities there as long as the person's conduct was lawful and did not disrupt the functioning of the institution. Institutions could exert control over common outdoor areas by adopting a policy that imposed reasonable restrictions on time, place, and manner of expressive activities in common outdoor areas as long as the restrictions were narrowly tailored, content neutral, and provided for alternative means of expression. The bill would address reports that students have been told they need campus approval to distribute flyers by specifically allowing members of the university community to assemble or distribute written material without a permit in common outdoor areas.

Student rights and responsibilities. SB 18 would ensure that students, faculty, and staff knew their rights and responsibilities by requiring each institutions to adopt a policy that included disciplinary sanctions for students, student organizations, or faculty who unduly interfered with others' free speech rights. Institutions would have sufficient discretion to adopt the disciplinary policy and a grievance procedure for addressing complaints about free speech violations.

Guest speakers. The bill would prevent campuses from making decisions about scheduling speakers or charging higher fees to student groups sponsoring a speaker based on any anticipated controversy related to the event. An institution would retain the ability to consider any anticipated need for campus security when determining whether or not to approve a guest speaker or charge a fee to the sponsoring student organization.

OPPONENTS SAY:

SB 18 would change Texas campuses from appropriately limited public forums where the free speech rights of the campus community are protected to traditional public forums where the rights of persons who were not attending classes or working on campus were equally protected, which could be detrimental the campus community. Federal courts have declined to treat a campus the same as a public park for First Amendment purposes. The bill would primarily benefit those not attending a university by making campuses open to outside groups that could spread offensive ideology or a political agenda.

Common areas. The bill could negatively impact the experience of students who are paying tuition and fees to attend a university by allowing outside groups who might express views that are an anathema to the values of the campus community. There would be little that campus officials could do to stop such activity if it did not meet the bill's high bar of substantially disrupting the function of the institution. The perception that certain voices are being stifled on college campuses does not match reality, as speakers of a variety of political affiliations commonly appear and students regularly discuss contentious issues under existing policies.

Student rights and responsibilities. The bill's requirements for a grievance process to handle complaints should be limited to complaints from students, faculty, and staff of the university. Allowing any person to file a complaint could create an unnecessary and possibly heavy burden on universities.

SUBJECT: Prohibiting prior authorization for HIV/AIDS drugs under Medicaid

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, April 17 — 31-0

WITNESSES: *On House companion bill, HB 4055:*
For — Amy Leonard, Legacy Community Health; (*Registered, but did not testify*: Chase Bearden, Coalition of Texans with Disabilities; Anne Dunkelberg, Center for Public Policy Priorities; Will Francis, National Association of Social Workers-Texas Chapter; John Hawkins, Texas Hospital Association; Adriana Kohler, Texans Care for Children; Tom Kowalski, Texas Healthcare and Bioscience Institute; Myra Leo, GlaxoSmithKline GSK; Michelle Romero, Texas Medical Association; Mark Vane, Gilead Sciences; Sandra Fountain, Robyn Ross, Arthur Simon)

Against — None

On — Ryan Van Ramshorst, Health and Human Services Commission

BACKGROUND: Government Code sec. 531.073(a) establishes the authority of the executive commissioner of the Health and Human Services Commission (HHSC), in the rules and standards governing the Medicaid vendor drug program and the child health plan program, to require prior authorization for the reimbursement of a drug that is not included in the appropriate preferred drug list adopted by HHSC for those programs, except for any drug exempted from prior authorization requirements by federal law.

Concerns have been raised that requiring prior authorization or step

therapy for certain HIV or AIDS medication could prevent patients from accessing the best medication as soon as possible.

DIGEST:

SB 1283 would prohibit the executive commissioner of the Health and Human Services Commission (HHSC), in the rules and standards governing the Medicaid vendor drug program, from requiring prior authorization, step therapy, or other protocol for an antiretroviral drug that could restrict or delay the dispensing of the drug.

The bill would apply the same prohibition to an outpatient pharmacy benefit plan maintained by a managed care organization under contract with HHSC, for any contract entered into or renewed on or after the effective date of the bill.

The bill would define "antiretroviral drug" to mean a drug that treated human immunodeficiency virus or prevented acquired immune deficiency syndrome, including certain drug types specified in the bill.

If before implementing any provision of the bill a state agency determined that a waiver or authorization from a federal agency was necessary, the agency affected by the provision would have to request the waiver or authorization and could delay implementing that provision until the waiver or authorization was granted.

The bill would take effect September 1, 2019.

SUBJECT: Prohibiting certain communications outside of open meetings

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

SENATE VOTE: On final passage, April 9 — 30-1 (Creighton)

WITNESSES: *On House companion bill, HB 3402:*
For — Stacy Allen, Texas Association of Broadcasters; Kelley Shannon, Freedom of Information Foundation of Texas; (*Registered, but did not testify:* Chris Barbee and Mike Hodges, Texas Press Association; Perry Fowler, Texas Water Infrastructure Network; Anthony Gutierrez, Common Cause Texas; Aryn James, Travis County Commissioners Court; Tom Oney, Lower Colorado River Authority; Michael Schneider, Texas Association of Broadcasters; Alexie Swirsky)

Against — None

On — Jennie Hoelscher, Office of the Attorney General

BACKGROUND: Government Code ch. 551, the Texas Open Meetings Act, generally requires meetings of governmental bodies to be open to the public. Closed meetings are allowed under certain circumstances. The act also requires governmental bodies to give written notices of upcoming meetings and to keep minutes or make a recording of each open meeting.

A "meeting" means a deliberation between a quorum of the body, or between a quorum and another person, during which public business is discussed or considered or formal action is taken. A "deliberation" means a verbal exchange during a meeting between a quorum of the body, or between a quorum and another person, concerning an issue within the body's jurisdiction or any public business.

Under sec. 551.143, a member or group of members of a governmental body commits an offense if the member or group knowingly conspires to circumvent the Open Meetings Act by meeting in numbers less than a quorum for the purpose of secret deliberations. An offense is a misdemeanor punishable by jail for at least one month but not more than six months and/or a fine of at least $100 but not more than $500.

DIGEST:

SB 1640 would revise the conduct constituting an offense under Government Code sec. 551.143. Under the bill, a member of a governmental body would commit an offense if the member knowingly engaged in at least one communication among a series of communications that each occurred outside of a meeting authorized by the Open Meetings Act and that concerned an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constituted fewer than a quorum.

At the time the member engaged in the communication, the member also would have to have known that the series of communications involved or would involve a quorum and would constitute a deliberation once a quorum engaged in the series of communications.

The bill would revise the definition of "deliberation" to mean a verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body.

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, and would apply only to an offense committed on or after the bill's effective date.

SUPPORTERS SAY:

SB 1640 would restore the "walking quorum" prohibition to the Texas Open Meetings Act by addressing constitutional issues found by the Texas Court of Criminal Appeals. In February 2019, the court concluded in *State v. Doyal* that Government Code sec. 551.143, commonly referred to as the "walking quorum" prohibition, was unconstitutionally vague on its face. The court took issue with "knowingly conspires to circumvent this chapter," concluding that current statute requires a person to envision

actions that are like a violation of the act without actually being a violation and refrain from engaging in them. That issue, along with the absence of a clear definition of the concept of a walking quorum, reinforced the court's conclusion that the current language is broad and lacks any reasonable degree of clarity on what it covers.

Restoring this prohibition is essential to ensure that the public's business is conducted in the open. The original intent of the prohibition was to prevent members of a governmental body from skirting requirements of the Open Meetings Act by meeting in a series of small, private gatherings to avoid a quorum. Without a walking quorum prohibition, there is nothing to stop governmental bodies from meeting in smaller groups to obscure government business from the public, thereby avoiding the spirit and intent of the act.

The bill would address the court's concerns by making the conduct that constituted an offense more specific, precise, and clear. It also would help governmental bodies better understand the limits of the law, ensuring transparency and accountability to the public they serve. Officials would have to knowingly engage in a series of exchanges outside of a public meeting that involved or would eventually involve a quorum. The bill would specify that the prohibition would apply only to issues within a governmental body's jurisdiction and that deliberations could take place in verbal or written exchanges.

OPPONENTS SAY:

No concerns identified.

NOTES:

The House sponsor intends to offer a floor amendment that would specify that an offense occurred if the members engaging in the series of communications constituted a quorum.

SUBJECT: Repealing judicial preference for licensed appraisers in appraisal appeal

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

SENATE VOTE: On final passage, March 26 — 31-0

WITNESSES: *On House companion bill, HB 2220:*
For — Michael Henry, Ryan, LLC; (*Registered, but did not testify:* Matt Grabner, Ryan, LLC; Galt Graydon, Citizens for Appraisal Reform; Ray Head, Texas Association of Property Tax Professionals; Ned Munoz; Texas Association of Builders; Julia Parenteau, Texas Realtors; James Popp, Popp Hutcheson)

Against — None

BACKGROUND: The Legislature enacted SB 1760 by Creighton in 2015, which established Tax Code sec. 42.23(i), effective January 1, 2020.

The statute states that if an appraisal district employee testifies as to the value of real property in an appeal for excessive or unequal appraisal, the court may give preference to an employee who is certified or licensed to perform real estate appraisals.

DIGEST: SB 449 would repeal Tax Code sec. 42.23(i), which allows a court to give preference to an appraisal district employee licensed to perform real estate appraisals in an appraisal appeal.

The bill would take effect September 1, 2019.

SUPPORTERS SAY: SB 449 would repeal a statute that could be unfriendly to taxpayers if it

goes into effect in 2020. If left intact, the statute will give judicial preference to the testimony of appraisal district employees over property owners in an appraisal appeal case, which is unfair and puts taxpayers at a disadvantage during court proceedings.

Taxpayers are required to hire licensed or certified appraisers to testify in district courts for an appraisal repeal, but appraisal district employees may testify without that license. Rather than leveling the playing field by requiring both parties to have licensed representation, this statute will have the unintended consequence of making the system even more disadvantageous for property taxpayers. The bill would keep that system at the status quo.

This bill would not give more weight to the testimony of a taxpayer or taxpayer agent but would ensure greater parity between the parties by removing judicial preference for the testimony of one over the other.

OPPONENTS SAY:

If the Legislature were to repeal court preference for appraisal district employees licensed to perform real estate appraisals, it may be best to ensure parity between appraisal districts and property owners in appeals cases so that the value of district employee testimony was not reduced.

SUBJECT: Establishing minimum wellbeing standards for certain childcare facilities

COMMITTEE: Human Services — committee substitute recommended

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

1 nay — Noble

1 absent — Rose

SENATE VOTE: On final passage, April 11 — 26-5 (Bettencourt, Birdwell, Hughes, Paxton, Schwertner)

WITNESSES: *On House companion bill, HB 1808:*
For — Kimberly Avila Edwards, Texas Pediatric Society, Texas Medical Association, American Heart Association, Texas Public Health Coalition, Partnership for a Healthy Texas; David Feigen, Texans Care for Children; Kimberly Kofron, Texas Association for the Education of Young Children; (*Registered, but did not testify:* Rachel Cooper, Center for Public Policy Priorities; Will Francis, National Association of Social Workers-Texas Chapter; Greg Hansch, National Alliance on Mental Illness Texas; Marshall Kenderdine, Texas Academy of Family Physicians; Knox Kimberly, Upbring; Jamie Olson, Feeding Texas; Michelle Romero, Texas Medical Association; Joel Romo, The Cooper Institute; Melanie Rubin, Dallas Early Education Alliance; Jason Sabo, Children at Risk; Nataly Sauceda, United Ways of Texas; Tim Schauer, Community Health Choice; Kyle Ward, Texas PTA; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Tracy Castro; Robert Gross; Audrey Spanko)

Against — None

On — Jean Shaw, Texas Health and Human Services Commission

BACKGROUND: Human Resources Code sec. 42.042(e) requires the executive commissioner of the Health and Human Services Commission to establish certain minimum standards relating to children's health, safety, and

welfare for licensed childcare facilities and registered family homes.

DIGEST:

CSSB 952 would require the minimum standards for daycare centers and registered family homes established by the executive commissioner of the Health and Human Services Commission (HHSC) to be consistent with:

- the American Academy of Pediatrics standards for physical activity and screen time as published in the fourth edition of "Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs;" and
- the nutrition standards in the Child and Adult Care Food Program administered by the Department of Agriculture.

Daycare centers and registered family homes would not be required to participate in or comply with the reporting requirements of the Child and Adult Care Food Program.

If HHSC determined that the economic impact of requiring a daycare center or registered family home to comply with these minimum standards was sufficiently great that compliance was impractical, HHSC could require the daycare center or registered family home to meet the minimum standards through an alternative method.

The bill would take effect September 1, 2019, and HHSC's executive commissioner would have to adopt rules to implement this bill as soon as practicable after that date.

SUPPORTERS SAY:

CSSB 952 would align the minimum standards for physical activity, screen time, and nutrition in Texas daycare centers and registered family homes with nationally recognized best practices. Many experts note that early care and education programs play a critical role in helping kids stay active and eat healthily.

The bill would not overregulate or burden childcare facilities; rather, it would improve the minimum standards for the wellbeing of children already prescribed by current law. Many daycare centers and registered family homes already comply with and go beyond the standards proposed by this bill.

OPPONENTS SAY:

CSSB 952 would allow for the unnecessary regulation of private daycare centers and registered family homes. State lawmakers should not dictate the standards for physical activity, screen time, and nutrition that daycare centers and registered family homes must follow. Parents can find childcare facilities that abide by certain standards if they choose to do so.

SUBJECT: Requiring TxDOT to issue bids for traffic safety and control systems

COMMITTEE: Transportation — favorable, without amendment

VOTE: 11 ayes — Canales, Landgraf, Bernal, Goldman, Hefner, Krause, Leman, Ortega, Raney, Thierry, E. Thompson

0 nays

2 absent — Y. Davis, Martinez

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2833:*
For — (*Registered, but did not testify*: Steven Albright, AGC of Texas-Highway Heavy Branch; Michael Pacheco, Texas Farm Bureau)

Against — None

On — (*Registered, but did not testify*: Rich McMonagle, Texas Department of Transportation)

BACKGROUND: Transportation Code sec. 223.001 requires the Texas Department of Transportation (TxDOT) to use competitive bids for contracts for materials, improvements, and maintenance of state highways.

34 TAC ch. 20 establishes the comptroller's statewide procurement support services. One of these services is the Electric State Business Daily, also known as Texas SmartBuy. Government Code ch. 2155 requires state agencies to use Texas SmartBuy for requests for proposal for certain products and services with a value of more than $25,000, which the comptroller pools into a single, larger contract.

DIGEST: SB 1092 would require TxDOT to use competitive bids for contracts for traffic control and safety devices used on state highways.

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:

SB 1092 would make Texas Department of Transportation (TxDOT) operations more efficient by moving contracting for traffic control and safety systems from Texas SmartBuy to TxDOT. Texas SmartBuy levies a 1.5 percent fee and has contracting requirements that can delay and increases the costs of projects.

Even without TxDOT's involvement, SmartBuy would still be one of the largest buyers of traffic safety and control systems in the country and would still be able to get fair prices.

OPPONENTS SAY:

SB 1092 could hurt the users of Texas SmartBuy, which is able to negotiate for fair prices by leveraging the combined buying power of the state and local governments purchasing traffic safety and control systems to achieve the best possible contracts. TxDOT purchasing these systems on its own could weaken that buying power.