HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 12, 2021
87th Legislature, Number 32
The House convenes at 2 p.m.

One bill is on the Constitutional Amendments Calendar and 19 bills are on the General State Calendar for second reading consideration today. The table of contents appears on the following page.

The following House committees were scheduled to meet today: Juvenile Justice and Family Issues; Ways and Means; Defense and Veterans' Affairs; Appropriations; Culture, Recreation and Tourism; Criminal Jurisprudence; Energy Resources; and Environmental Regulation.

Alma Allen
Chairman
87(R) - 32

HOUSE RESEARCH ORGANIZATION

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Monday, April 12, 2021
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SUBJECT: Continuing residence homestead exemption for certain surviving spouses

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

WITNESSES: For — None

Against — None

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

BACKGROUND: Tex. Const. Art. 8, sec. 1-b establishes residence homestead tax exemptions and limitations on property taxes. This section allows the Legislature by law to exempt up to $10,000 of the market value of the residence homestead of a person who is disabled or who is at least 65 years old from property taxation for public school purposes.

If a person 65 years old or older dies in a year in which the person received the exemption, taxes on the property may not be increased while it remains the residence homestead of the person's surviving spouse if the spouse is at least 55 years old at the time of the person's death.

Tax Code sec. 11.26 codifies the residence homestead exemption for the surviving spouse of an individual who is at least 65. In 2019, the 86th Legislature enacted HB 1313, which expanded the exemption under this section to include the surviving spouse of an individual who is disabled.

DIGEST: HJR 125 would amend the Texas Constitution to provide that the surviving spouse of an individual who received a limitation on the school district property taxes on the person's residence homestead on the basis of disability continued to receive that limitation while the property remained the spouse's residence homestead if the spouse was at least 55 years old.

The joint resolution would validate the changes to law made by HB 1313, as enacted by the 86th Legislature and an action taken by a tax official in reliance on that bill. A collector would have to calculate the taxes that should have been imposed for the 2020 and 2021 tax years according to that bill, and if the taxes collected exceeded those that should have been imposed, the collector would have to refund the difference to the surviving spouse. This provision would expire January 1, 2023.

The ballot proposal would be presented to voters at an election on November 2, 2021, and would read: "The constitutional amendment to allow the surviving spouse of a person who is disabled to receive a limitation on the school district ad valorem taxes on the spouse's residence homestead if the spouse is 55 years of age or older at the time of the person's death."

SUPPORTERS SAY:

HJR 125 is necessary to validate the enactment of a bill passed last legislative session that ensured that the surviving spouse of an individual with a disability who died continued to receive the residence homestead exemption, just like the spouses of deceased individuals over 65 are allowed. While HB 1313 was enacted in 2019, the legislative session ended before the accompanying joint resolution could be passed. This means that the state law currently extends the residence homestead exemption to surviving spouses of individuals with a disability, but it cannot be enforced because the Texas Constitution does not yet reflect that change. HJR 125 is necessary to let voters decide the issue and validate the law.

CRITICS SAY:

No concerns identified.

NOTES:

According to the fiscal note, passage of the resolution and voter approval of the amendment could reduce school district property taxes and state costs could increase through the operation of the school funding formulas. The proposed amendment also would cost local taxing units currently granting the tax limitation; however, because the number of surviving spouses is unknown, the cost cannot be estimated.

The cost to the state for publication of the resolution is $178,333.

SUBJECT: Allowing subsequent writ of habeas corpus if prosecutor agrees

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut

0 nays

WITNESSES: For — Mike Ware, Innocence Project of Texas; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleseed; Rachana Chhin, Texas Catholic Conference of Bishops; Shea Place, Texas Criminal Defense Lawyers Association; Alycia Castillo, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Rebecca Bernhardt, The Innocence Project)

Against — None

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

BACKGROUND: Code of Criminal Procedure, ch. 11 outlines procedures for filing applications for writs of habeas corpus, which is a way to challenge the constitutionality of a criminal conviction or the process that resulted in a conviction or sentence. Art. 11.07 governs procedures for applying for a writ in a felony conviction where the death penalty was not imposed. Art. 11.07(4) governs procedures when a subsequent application for a writ is filed after an initial one. In this situation, courts may consider the subsequent writ only if certain conditions are met, including sufficient specific facts establishing that:

- the current claims have not been and could not have been presented previously because the factual or legal basis for the claim was unavailable when the writ was filed; or

- by a preponderance of the evidence, but for a violation of the U.S. Constitution no rational juror could have found the individual guilty beyond a reasonable doubt.

DIGEST:

HB 187 would allow subsequent applications for writs of habeas corpus to be filed after an initial writ if the attorney representing the state and having primary responsibility for similar cases in that jurisdiction consented in writing to the court's consideration of and ruling on the merits of the application for a writ. The attorney representing the state would be defined as a district attorney, criminal district attorney, or county attorney with criminal jurisdiction but would not include an assistant prosecuting attorney.

The bill would take effect September 1, 2021, and would apply only to a writ filed on or after that date.

SUPPORTERS SAY:

HB 187 would help address situations in which there could have been a wrongful criminal conviction by allowing criminal defendants to bring an additional application for a writ of habeas corpus before the court with the approval of the prosecutor.

Many times a defendant's first writ is filed without the assistance of a lawyer, and it might fail to raise or develop all the important issues in a case. If that writ is denied, additional ones may be filed only under the limited circumstances. These circumstances are so limited that in some cases, a writ cannot be filed even if it appears that there may have been a wrongful conviction and the prosecutor wants to have a court examine a writ. HB 187 would address this by establishing a condition under which a subsequent writ could be filed, giving the justice system another tool to address potential wrongful convictions.

The courts would not be flooded with writs, and the ability to file them would not be abused because they would require the written consent of the prosecutor. Filing a subsequent writ would not mean that anyone was released from their conviction or from prison as the writ would be subject to all the procedures currently required and the courts would make decisions about its merits.

CRITICS SAY:

No concerns identified.

SUBJECT: Expanding minimum health coverage for ovarian cancer screening

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Oliverson, Vo, J. González, Hull, Israel, Paul, Romero, Sanford

1 nay — Middleton

WITNESSES: For — (*Registered, but did not testify*: James Schwartz, COPA, NCODA, and Texas Oncology; Michelle Wittenburg, KK125 Ovarian Cancer Research Foundation; Clayton Stewart, Texas Medical Association; Roy Paulson, Texas Oncology PA, Texas Society of Clinical Oncology, and The US Oncology Network; Thomas Parkinson)

Against — Jamie Dudensing, Texas Association of Health Plans; Bill Hammond, Texas Employers for Insurance Reform; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield of Texas; John McCord, NFIB; Megan Herring, Texas Association of Business; Jennifer Cawley, Texas Association of Life and Health Insurers)

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

BACKGROUND: Insurance Code sec. 1370.003 requires health benefit plans that cover diagnostic medical procedures to include coverage for an annual medically recognized diagnostic examination for the early detection of ovarian and cervical cancer. Any woman 18 or older and enrolled in the plan is entitled to the coverage. Required coverage includes at a minimum a CA 125 blood test and a conventional Pap smear screening or a liquid-based cytology screening, alone or in combination with a test for the detection of the human papillomavirus (HPV).

DIGEST: HB 428 would require health benefit plans under Insurance Code sec. 1370.003 to include coverage for any other test or screening approved by the U.S. Food and Drug Administration for the detection of ovarian cancer in an annual medically recognized diagnostic examination.

The bill would take effect September 1, 2021, and would apply to a health benefit plan issued or renewed on or after January 1, 2022.

SUPPORTERS SAY:

HB 428 would improve prevention and early detection of ovarian cancer by ensuring that certain health insurance plans provided coverage for all federally approved tests for ovarian cancer as part of annual well-woman exams. Ovarian cancer has a high mortality rate, largely because the disease has vague symptoms that are not unique to ovarian cancer and that patients do not recognize until the disease is too advanced to treat effectively. Expanding ovarian cancer screening minimum health coverage would give more Texas women the best chance for early detection and effective treatment of this disease.

Currently, there are no other tests or screenings approved by the U.S. Food and Drug Administration (FDA) for the detection of ovarian cancer. This bill simply would establish a future requirement for health plans when an FDA-approved test or screening for ovarian cancer became available.

CRITICS SAY:

HB 428 inappropriately would create a state mandate by requiring health insurance companies to include an additional test in their plan's minimum health coverage. Such mandates increase health care costs for employers, especially small employers, and often increase premiums for consumers. The U.S. Preventive Services Task Force, a federal panel of experts, previously rejected this mandate as part of the Affordable Care Act's minimum essential health benefits coverage. The task force determined that the harms of screening for ovarian cancer, including potential surgical interventions in women who do not have cancer, outweighed the benefits.

SUBJECT: Prohibiting municipal fees charged to certain licensed contractors

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Cortez, Holland, Bernal, Campos, Jarvis Johnson, Slaton

1 nay — Morales Shaw

2 absent — Gates, Minjarez

WITNESSES: For — Mark Gatewood, ABC Home & Commercial Services; Jeff Bauknight, ABC of Texas; D.J. Pendleton, Texas Manufactured Housing Association (*Registered, but did not testify*: Will McAdams, Associated Builders and Contractors of Texas; Annie Spilman, NFIB; Dan Shelley, Plumbing Heating Cooling Contractors; Ned Muñoz, Texas Association of Builders)

Against — (*Registered, but did not testify*: Christine Wright, City of San Antonio)

DIGEST: HB 871 would prohibit any municipality from charging a registration fee to state-licensed air-conditioning and refrigeration contractors for work performed in the municipality or for any notice of licensure that air-conditioning and refrigeration contractors are required to submit to a municipality in which they work.

HB 871 would not prohibit a municipality from charging a building permit fee.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: HB 871 would eliminate the unfair burden imposed on licensed air-conditioning and refrigeration contractors by unnecessary municipal registration fees.

Working in multiple cities that require these fees can cost a contractor thousands of dollars annually, far exceeding the state licensing fee and

imposing onerous financial and paperwork burdens on small contractors in particular. Other state-licensed mechanical professionals, such as electricians and plumbers, are not required to pay municipal registration fees, and nothing specific to the air-conditioning and refrigeration industry warrants additional fees.

These municipal registration fees are redundant and unnecessary because they are not attached to any oversight or regulation that goes beyond the standards set by the state licensing process for air-conditioning and refrigeration professionals. Concerns or complaints about a contractor are handled by the Texas Department of Licensing and Regulation (TDLR), and consumers can verify a contractor's licensure at any time using the department's website. Any concerns about the TDLR's regulation process would not justify cities taking the regulation of state-licensed contractors into their own hands, especially not in a way that could unfairly penalize a particular industry.

CRITICS SAY:

HB 871 would deprive some cities of funds used to offset the costs associated with ensuring that contractors maintain licenses and meet the minimum state requirements to work in those cities. In some cases the city, not the state, is the first or preferred point of contact for consumers with complaints or concerns about these contractors.

SUBJECT: Requiring cooperative agreements for plant pest and disease prevention

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 8 ayes — Burns, Anderson, Bailes, Cole, Cyrier, Guillen, Rosenthal, Toth

0 nays

1 absent — Herrero

WITNESSES: For — Kody Bessent, Plains Cotton Growers, Inc.; Ryan Skrobarczyk, Texas Nursery & Landscape Association; (*Registered, but did not testify*: J Pete Laney, Texas Citrus Mutual; Kenneth Hodges, Texas Corn Producers; Joy Davis, Texas Farm Bureau; Rob Hughes, Texas Forestry Association; Patrick Wade, Texas Grain Sorghum Association; Shayne Woodard, Wonderful Citrus)

Against — None

On — Phil Wright, Texas Department of Agriculture; (*Registered, but did not testify*: Larry Redmon, Texas A&M University, Department of Soil and Crop Sciences)

DIGEST: HB 2089 would require the Texas Department of Agriculture (TDA) to enter into cooperative agreements with institutions of higher education to conduct plant pest and disease detection and surveillance. The bill also would establish a threat identification and mitigation program to address threats to crop production.

Cooperative agreements. TDA would be required to enter into a cooperative agreement with an institution of higher education that agreed to conduct plant pest and disease detection and surveillance. The department would consult with the State Seed and Plant Board and interested parties to carry out the bill's requirements related to such agreements. The bill would define interested parties to mean certain organizations or their successors, including the following:

- Plains Cotton Growers;
- South Texas Cotton and Grain Association;
- Texas Citrus Mutual;
- Texas Corn Producers;
- Texas Farm Bureau;
- Texas Grain Sorghum Association; and
- Texas Nursery and Landscape Association.

Application. An institution of higher education could apply to enter into a cooperative agreement under the bill by submitting an application to TDA that contained information required by the department. TDA would have to notify each applicant of:

- the auditing and reporting requirements that would apply to the institution in connection with the use of any money provided under the cooperative agreement;
- the criteria used to ensure that plant pest and disease detection and surveillance conducted under the agreement were based on sound scientific data or risk assessments; and
- the required means of identifying pathways of pest and disease introduction.

Funding. TDA would be required to provide money to an institution of higher education to carry out plant pest and disease detection and surveillance under a cooperative agreement if the department determined that:

- the institution was in a region of the state that had a high risk of being affected by plant pest and disease, based on criteria specified in the bill; and
- the supported detection and surveillance would likely prevent plant pest and disease and would provide a comprehensive approach to complement federal and state detection efforts.

An institution of higher education would have to use any money received under a cooperative agreement to carry out plant pest and disease detection and surveillance approved by TDA. The non-state share of the

cost of carrying out a cooperative agreement could be provided in-kind, including by covering certain indirect costs TDA considered appropriate. TDA could not consider an applicant's ability to pay or cover non-state costs when deciding whether to enter into a cooperative agreement with the applicant.

Reporting requirements. An institution of higher education that conducted a plant pest and disease detection and surveillance activity using money provided under the bill would be required to submit a report to TDA describing the purposes and results of the activity within 90 days of the date the activity was completed.

Threat identification and mitigation program. TDA would have to establish a threat identification and mitigation program to determine and address threats to the domestic production of crops. Under this program TDA would be required to:

- develop risk assessments for potential threats from foreign sources to the Texas agricultural industry;
- describe the status of plant pests and diseases present in the state and related management strategies;
- collaborate with the State Seed and Plant Board and interested parties; and
- implement action plans to assist in the prevention of new or highly consequential plant pests and diseases.

By September 1 of each year, TDA would be required to submit to the appropriate legislative committees a report on these action plans, including an accounting of money spent in connection with the plans.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 2089 would provide an effective way to detect and prevent plant pests and diseases that could pose a serious threat to the Texas agriculture industry by requiring the Texas Department of Agriculture (TDA) to enter into cooperative agreements with institutions of higher education and creating a threat identification and mitigation program.

The agriculture industry in Texas can be vulnerable to new plant pests and diseases, which may be difficult and expensive to contain or eradicate once established. The ongoing efforts to contain a new, invasive form of fungal pest that affects pima cotton grown in certain parts of the state exemplifies this type of threat. HB 2809 would address such threats by requiring TDA to enter into cooperative agreements with institutions of higher education to identify problems and solutions related to plant pest and disease before they became too extensive or costly. Cooperation between the state and institutions of higher education also could help to secure federal funding for pest and disease management.

The cooperative agreements required by the bill also would support the surveillance and detection of pests and diseases related to living plant matter that is frequently transported across the state. Improved surveillance and detection would ensure that this transportation was safer and less likely to spread pests and diseases. It also would reassure recipients of exported Texas agricultural products that these products were free of plant pests and diseases.

While the bill does not specifically prohibit TDA from entering into cooperative agreements that covered activities already being performed in the state, TDA could exercise appropriate oversight to prevent such duplication.

CRITICS SAY:

HB 2089 would establish cooperative agreements between TDA and institutions of higher education that might duplicate some activities already performed by the Texas A&M AgriLife Extension program. This could lead to state money being used to fund redundant programs and activities.

SUBJECT: Requiring credit access telemarketers to adhere to no-call list regulations

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — C. Turner, Cain, Crockett, Lambert, Ordaz Perez, Patterson, Shine, S. Thompson

1 nay — Hefner

WITNESSES: For — Ann Baddour, Texas Appleseed; Jennifer Allmon, The Texas Catholic Conference of Bishops; Tracey Whitley; (*Registered, but did not testify*: Joshua Houston, Texas Impact; Molly Weiner, United Ways of Texas; Thomas Parkinson)

Against — None

BACKGROUND: Business and Commerce Code sec. 304.051 requires the Public Utility Commission of Texas to maintain a no-call list consisting of the name and telephone number of each consumer in the state who has requested to be on the list and each person in the state's portion of the national do-not-call registry. Sec. 304.052 prohibits telemarketers from making calls to a telephone number on the Texas no-call list more than 60 days after the date the telephone number appears on the current list.

Sec. 304.004(5) exempts state licensees from no-call list telemarketing regulations under certain circumstances.

DIGEST: HB 1916 would prohibit a credit access business or its representative from making telemarketing calls to consumers on the Texas no-call list unless:

- the consumer had a current contract with the business; or
- the consumer previously had a contract with the business and the call was made before the first anniversary of the date on which the contract had been terminated, unless the consumer requested that the business or its representative stop calling the consumer.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

HB 1916 would close a loophole in current law that allows credit access businesses to use their status as state licensees to make unsolicited calls to Texans on the state's no-call list. This can result in consumers receiving unsolicited telemarketing calls, which defeats the purpose of the no-call list and creates an inconvenience to Texans whose privacy and right to deny solicitation should be protected.

The bill would protect consumers from predatory lenders who use telemarketing to lure low-income borrowers into high-interest loans. In Texas, these credit access business loans (also known as payday and auto title loans) can carry annual percentage rates as high as 664 percent. Because the state has no limit on fees or these loans, Texans can be particularly vulnerable to predatory lending. Moreover, the unprecedented economic crisis caused by the COVID-19 pandemic and Winter Storm Uri has caused widespread financial distress among Texans, making consumers even more vulnerable to aggressive telemarketing tactics used by predatory lenders.

HB 1916 would not impose an unfair restriction on the lending industry. The bill would target credit access businesses because they lack adequate consumer protections, such as lending caps and borrower requirements, to which competitors such as banks and credit unions must adhere. The competitors would not use the no-call list for telemarketing purposes, so the bill's treatment of credit access businesses would not be unfair.

The bill would not prevent borrowers from accessing payday or auto title loans or prevent lenders from offering these loans to consumers. It simply would protect consumers who had elected to be on the no-call list from receiving intrusive and unsolicited calls. Credit access businesses with existing relationships with customers would not be prevented from contacting them or collecting debts.

CRITICS SAY:

HB 1916 would unfairly single out payday lenders and auto title loan companies for disparate treatment from other state licensees, creating an uneven playing field for credit access businesses.

SUBJECT: Allowing criminal asset forfeiture funds for services to trafficking victims

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr

0 nays

1 absent — Vasut

WITNESSES: For — Allison Franklin; (*Registered, but did not testify*: Jason Sabo, Children at Risk; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Frederick Frazier, Dallas Police Association and State FOP; James Parnell, Dallas Police Association; Jessica Anderson, Houston Police Department; Jennifer Allmon, The Texas Catholic Conference of Bishops)

Against — None

On — Bruce Kellison, University of Texas at Austin

BACKGROUND: Code of Criminal Procedure (CCP) art. 59.06(c) governs the use of the proceeds from property that was taken by law enforcement because it was used or intended to be used for certain crimes and then forfeited through the civil courts. Law enforcement agencies and prosecutors may share forfeited property if they have an agreement with each other as outlined by the statute. Current law limits how forfeited property or funds from its sale may be used. In general, law enforcement agencies may use forfeited property only for law enforcement purposes, and prosecutor's offices may use the property only for official purposes of their offices. Other limits and allowances for use of the property include those in CCP art. 59.06 (d-1), (d-3), and (d-4).

DIGEST: HB 402 would allow prosecutors and law enforcement agencies to use certain civil asset forfeiture funds to cover the cost of a contract with a city or county program to provide services to domestic victims of

trafficking. The funds would have to be from contraband that was used to commit or facilitate human trafficking offenses or was intended to facilitate such offenses. Proceeds gained from the commission of human trafficking offenses or property acquired with proceeds from committing human trafficking also could be used for the programs.

The bill would take effect September 1, 2021, and would apply to the disposition or use of proceeds or property on or after that date, regardless of whether the proceeds or property were received before, on, or after the date.

SUPPORTERS SAY:

HB 402 would provide another way to help human trafficking victims by authorizing prosecutors and law enforcement agencies to use proceeds from specific civil asset forfeitures for certain victim programs or services provided under a contract with a city or county.

Survivors of human trafficking have experienced a heinous crime and have long-term needs for services such as therapy, legal aid, and housing. Finances of groups providing these services are strained, but local law enforcement agencies may have money or assets related to these crimes that have been seized and forfeited through the courts. HB 402 would help bridge this gap by allowing proceeds from assets seized from human trafficking crimes to be used by law enforcement agencies and prosecutors to help survivors in their community.

The bill would be in line with other approved uses of forfeiture funds, including a requirement under CCP sec. 59.06(t)(1) that contraband going to prosecutors or law enforcement agencies that was forfeited from certain crimes, including human trafficking, be used for direct victim services or for a contract with a local nonprofit organization to provide direct services to crime victims. HB 402 would extend an option for similar uses to contracts with cities or counties.

The bill would not put demands on entities' forfeiture funds because it is limited and discretionary. It would apply only to funds forfeited from human trafficking crimes and used for services for domestic victims of trafficking and is permissive so no agency would be required to enter into any contract with a city or county for services. The bill would not change

the core uses and restrictions on the use of forfeiture funds, and any further changes would have to be approved by the Legislature.

CRITICS SAY:

The Legislature should be cautious about expanding the use of civil asset forfeiture funds obtained from certain crimes and directing them to be used for specific uses. This could lead to more forfeiture funds being directed to specific programs rather than having broad parameters on their use and letting individual jurisdictions determine how to spend them.

SUBJECT: Extending alternative methods for high school graduation requirements

COMMITTEE: Public Education — favorable, without amendment

VOTE: 13 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, M. González, Huberty, K. King, Meza, Talarico, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Heather Sheffield, Decoding Dyslexia and Texans Advocating for Meaningful Student Assessment; Chloe Latham Sikes, Intercultural Development Research Association; Fatima Menendez, MALDEF; Grover Campbell, TASB; Kristin McGuire, TCASE; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators; Paige Williams, Texas Classroom Teachers Association; Suzi Kennon, Texas PTA; Starlee Coleman, Texas Public Charter Schools Association; Dee Carney, Texas School Alliance; Portia Bosse, Texas State Teachers Association)

Against — None

BACKGROUND: Education Code sec. 28.058 requires school districts and charter schools to establish an individual graduation committee for students in grades 11 or 12 who have failed to pass one or two of the five end-of-course exams required for graduation. A student must successfully complete the required curriculum and additional requirements established by the committee to be recommended for graduation. This section expires September 1, 2023.

DIGEST: HB 1603 would repeal the September 1, 2023, expiration date for certain alternatives to high school graduation requirements for students who have failed to pass all of their five required STAAR end-of-course exams.

The bill would repeal the expiration date for the requirement that districts and charter schools establish individual graduation committees at the end

of or after the junior year of a student who has failed to pass up to two end-of-course exams, as well as the expiration date for related reporting requirements by schools.

HB 1603 also would repeal the September 1, 2023 expiration date for provisions establishing:

- that a student who has failed to pass the Algebra I or English II end-of-course exam but receives a proficient score on the Texas Success Initiative diagnostic assessment for the corresponding subject satisfies the requirement; and

- that criteria be established for the graduation of certain former students who entered the 9th grade before the 2011-2012 school year and have not performed satisfactorily on a required exam after at least three attempts.

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, 2021.

SUPPORTERS SAY:

HB 1603 would make individual graduation committees a permanent and effective alternative to evaluate those students who have failed to pass one or two of their five required end-of-course exams. Graduation committees have been widely supported in public schools by administrators, parents, and students because they consider the entirety of a student's work and assign additional remediation as well as the completion of a project or portfolio in the relevant course.

Since the graduation committee alternative was established by the Legislature in 2015 for an initial two-year period, the issue has been revisited each session by lawmakers and the expiration dates have been extended. This bill would make the committees a permanent fixture of our public school system.

All students must pass their required courses to qualify for approval by a graduation committee, and HB 1603 would not change that. Unlike Texas, many states do not require passage of a standardized test for graduation.

The bill moves Texas away from high-stakes testing and allows students, especially those with language barriers, testing anxiety, or learning disabilities, to stay on the path to graduation.

Schools are not abusing the process as only about 5 percent of graduates statewide in 2019 were approved by a graduation committee. About 21,000 students were assigned to a graduation committee, and 83 percent of those students were approved for graduation.

CRITICS SAY:

HB 1603 would permanently lower testing standards for graduation at a time when too many students are graduating without being ready for success after high school. The most recent data from the Texas Education Agency show that 53 percent of high school graduates were college ready and about 73 percent were considered ready for either college, the workforce, or the military.

It is premature to permanently extend the graduation committee process without sufficient data comparing whether students who graduate using this alternative do as well after high school as their peers who passed all of their required state exams.

SUBJECT: Exempting certain multi-campus charities from property taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Shine

0 nays

1 absent — Sanford

WITNESSES: For — Amber Fogarty, Mobile Loaves and Fishes; (*Registered, but did not testify*: Dana Harris, Austin Chamber of Commerce; Jennifer Allmon, Texas Catholic Conference of Bishops; Kate Alexander, Travis Central Appraisal District)

Against — None

BACKGROUND: Tax Code sec. 11.18(a) exempts from taxation the buildings, tangible personal property, and certain real property owned by qualifying charitable organizations.

Sec. 11.18(d)(23) specifies that this exemption applies to a charitable organization engaged in providing housing and related services to certain individuals who are unaccompanied, homeless, and have a disabling condition. The tax exemption authorized under this section applies only to a property that:

- is owned by a charitable organization that has been in existence for at least 12 years;
- is used to provide housing and related services; and
- is located on or consists of a single campus in a municipality with a population of more than 750,000 and less than 850,000 or within the extraterritorial jurisdiction of such a municipality.

DIGEST: HB 115 would remove the requirement under Tax Code sec. 11.18 that property owned by certain charitable organizations and used to provide

housing and related services to certain populations be located on a single campus in order to be exempt from taxation.

The bill would take effect January 1, 2022, and would apply only to an ad valorem tax year that began on or after that date.

SUPPORTERS SAY:

HB 115 would allow certain charitable organizations in Austin to remain eligible for a property tax exemption if they expanded their operations to additional properties by removing the requirement that exempted property be located on a single campus. Some organizations that have been successful in providing housing and services to people experiencing homelessness and have expanded their operations in order to meet a growing demand for their services could lose their tax exemption as a result. HB 115 would address this by ensuring that these charitable organizations remained eligible for a property tax exemption whether they operated from a single campus or multiple properties. The bill would be narrowly targeted to apply only to certain organizations and so would have a minimal impact on property tax revenues while supporting private organizations that provided critical services.

CRITICS SAY:

No concerns identified.

NOTES:

According to the Legislative Budget Board, HB 115 could result in more properties becoming eligible for the ad valorem tax exemption for certain charitable organizations, which could reduce taxable property values and increase related costs to the Foundation School Program through the operation of the school finance formulas.

SUBJECT: Amending the governance of certain toll collection fee and fine structures

COMMITTEE: Transportation — favorable, without amendment

VOTE: 13 ayes — Canales, E. Thompson, Ashby, Bucy, Davis, Harris, Landgraf, Lozano, Martinez, Ortega, Perez, Rogers, Smithee

0 nays

WITNESSES: For — Enrique Martin, Blueridge Transportation Group; Mark Arnold, Hunton Andrews Kurth and Blueridge; (*Registered, but did not testify*: Thamara Narvaez, Harris County Commissioners Court; Thomas Parkinson)

Against — Don Dixon; (*Registered, but did not testify*: Matt Long, Fredericksburg Tea Party of Texas)

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

DIGEST: HB 1116 would provide that a toll collected pursuant to an agreement with a toll project entity other than the Texas Department of Transportation (TxDOT) would be governed by the fee and fine structure of the entity issuing the initial toll invoice.

Except as provided above, an entity operating a toll lane under a comprehensive development agreement would have, with regard to toll collection and enforcement, the same powers and duties as TxDOT under state law governing state highway toll projects.

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, 2021.

SUPPORTERS SAY: HB 1116 would simplify the process of paying tolls on certain toll roads. Currently, drivers using a single continuous road may be unaware that they are moving from one tolling authority to another if the road takes

them into a different county. Those two segments of toll road operated by separate entities also could be administered differently, leading to multiple toll invoices with separate transactions and fees. Additionally, if the driver misses a violation notice, they cannot pay the fine with a single entity because the fines become administratively separated. HB 1116 would provide that certain tolls were governed by the fee and fine structure of the entity issuing the initial invoice, ensuring that no matter who operated the toll road, the toll collections would be uniform.

It is not within the scope of this bill to amend all toll authority regulations in the state, just to allow certain tolls to operate in a uniform way. This bill presents a simple solution that would provide consistency, curb driver confusion, and increase compliance in paying late fees on those toll roads.

CRITICS SAY:

HB 1116 would not go far enough in reforming tolling in Texas. Instead of different policies for tolling authorities in different regions of the state, there should be one unified system to simplify the process.

SUBJECT: Qualifying certain land used for sand mining as open-space land

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 9 ayes — T. King, Harris, Bowers, Larson, Lucio, Paul, Price, Ramos, Wilson

0 nays

2 absent — Kacal, Walle

WITNESSES: None

BACKGROUND: Under Tax Code sec. 23.52, the appraised value of qualified open-space land for property tax purposes is determined based on the category of the land using accepted income capitalization methods. The value determined by this appraisal may not exceed the market value. Qualified open-space land as defined under Tax Code sec. 23.51 includes land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been used for agriculture for five of the preceding seven years.

Under sec. 23.41(a), land designated for agricultural use is appraised at its value based on the land's capacity to produce agricultural products. If the determined value of the land exceeds its market value as determined by other generally accepted appraisal methods, the land must be appraised by the other methods.

DIGEST: HB 1544 would establish that the eligibility of land for appraisal as qualified open-space land for property tax purposes would not end because the land ceased to be devoted principally to agricultural use if certain conditions were met. The land would remain eligible if:

- the landowner intended that the use of the land for agricultural purpose would be resumed;
- the land was used for a sand mining operation; and

- the land was reclaimed according to certain standard best practices no later than one year after the date the sand mining operation began.

The bill would apply only to a sand mining operation overlying the Carrizo Aquifer and located within 30 miles of a city with a population of more than 500,000 or within one mile of a single-family or multifamily residence.

A landowner would have to notify the appraisal office in writing no later than 30 days after sand mining operations began on the land that the owner intended to ensure that the requirements for eligibility were met.

The bill would require the Texas Commission on Environmental Quality (TCEQ) by rule to adopt standard best practices for the reclamation of land used for sand mining operations. The standards would have to:

- provide for the protection of surface water, groundwater, agricultural land, wildlife habitat, and wetlands;
- require reclamation to occur concurrently with sand mining operations and incorporate certain federal best practices;
- include post-mining reclamation grade standards and slope stabilization requirements;
- require unmarketable excavated material from the land to be used as backfill for site restorations; and
- fulfill other requirements listed in the bill.

TCEQ would have to establish a process to allow a landowner who submitted a notice to an appraisal office to obtain a letter from the executive director of TCEQ determining whether the land was reclaimed according to the best practices adopted under the bill. The landowner would have to apply to the director for the determination within 90 days after the first anniversary of the date sand mining operations began on the land.

The bill would require the executive director to:

- send to the chief appraiser of the appraisal district for the county in which the land was located notice that the owner had applied for a determination letter;
- issue a letter to the owner stating the determination; and
- send a copy of the determination letter to the chief appraiser.

Not later than the 20th day after receiving a determination, the landowner could appeal the determination to TCEQ, which would have to consider the appeal at the next regularly scheduled commission meeting for which adequate notice could be given. The landowner and chief appraiser could testify at the meeting, and TCEQ could remand the matter to the director for a new determination or deny the appeal. A proceeding to appeal a determination would not be a contested case for purposes of certain laws regarding administrative procedure.

TCEQ could charge an owner seeking a determination letter a fee not to exceed the administrative costs for making the determination and issuing the letter.

The chief appraiser would have to accept a final determination by the executive director as conclusive evidence that land was reclaimed according to standard best practices in the time frame required by the bill.

Land on which a sand mining operation began before the effective date of the bill would not have its eligibility for appraisal as qualified open-space land end if the owner provided notice within 90 days of the bill's effective date and the chief appraiser of the district in which the land was located had not made a determination that a change in land use had occurred.

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, 2021.

SUPPORTERS SAY:

HB 1544 would incentivize the reclamation of land used for sand mining operations by allowing certain land on which such mining occurred to be appraised as agricultural use land for property tax purposes if the owner reclaimed it. This would both support the Texas economy and better protect the state's environment and natural resources.

Sand mining is a rapidly growing industry in Texas and contributes to the economic health of the regions in which it occurs. However, these operations can have negative environmental and other impacts if not properly reclaimed. Currently, sand mining operations that take place on land overlying the Carrizo Aquifer and do not provide for land reclamation may lower the aquifer's ability to recharge and negatively impact surrounding agriculture, wildlife, and residents. Land reclamation enables aquifers to recharge by introducing water permeability to the soil, restores vegetation, and minimizes noise and dust from mining operations, which can be a nuisance and pose a health hazard. Allowing sand mining operators to receive property tax appraisals at lower than market values by having their land appraised as agricultural use land in exchange for conducting reclamation under best practices adopted by the Texas Commission on Environmental Quality would support a vital sector of the Texas economy while protecting the environment and the Carrizo Aquifer.

HB 1544 would ensure that sand mining operators carried out land reclamation in accordance with adopted best practices before receiving the agricultural use exemption by requiring TCEQ to issue a letter of determination before an appraisal could occur. In addition, the reclamation process can improve the quality of the land and soil, and reclaimed land can be used for agricultural purposes. Therefore, land used for sand mining and then reclaimed could appropriately be appraised under the existing agricultural use exemption.

CRITICS SAY:

HB 1544 inappropriately would allow sand mining operators to claim the agricultural land use exemption. This exemption should be reserved for land used for agricultural production, not for aggregate production operations. Land used for sand mining and granted property tax exemptions by HB 1544 also might not be adequately reclaimed according to best practices set by the Texas Commission on Environmental Quality.

NOTES:

According to the Legislative Budget Board, the bill would have an indeterminate fiscal impact to the state because the amount of fees collected for determination letters and the value and number of acres that would qualify for continued open space appraisal under the bill are unknown.

The bill also could cause a reduction in taxable property values by specifying that the eligibility of land for special open space appraisal did not end because the land was used for a sand mining operation for a limited time. This could increase costs to the Foundation School Fund through the operation of the school finance formulas.

SUBJECT: Requiring HHSC to conduct a study on recovery housing needs

COMMITTEE: Public Health — favorable, without amendment

VOTE: 11 ayes — Klick, Guerra, Allison, Campos, Coleman, Collier, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

WITNESSES: For — Sheila Hemphill, Texas Right to Know; Elizabeth Henry; (*Registered, but did not testify*: Matthew Lovitt, National Alliance on Mental Illness Texas; Alison Mohr Boleware, National Association of Social Workers - Texas Chapter; Lee Johnson, Texas Council of Community Centers; Devin Driver, Texas Criminal Justice Coalition; Ashley Harris, United Ways of Texas)

Against — None

On — (*Registered, but did not testify*: Lisa Ramirez, Health and Human Services Commission)

DIGEST: HB 707 would require the Health and Human Services Commission (HHSC) to conduct a study to evaluate the current status of recovery housing and the opportunities, challenges, and needs to expand recovery housing in Texas. The bill would define "recovery housing" as a shared living environment that promoted sustained recovery from substance use disorders by integrating residents into the surrounding community and providing a setting that connected residents to supports and services that promoted sustained recovery from substance use disorders, was centered on peer support, and was free from alcohol and drug use.

In conducting the recovery housing study, HHSC would have to:

- identify and evaluate state and federal regulatory deficiencies and potential impacts on recovery housing, including impacts on local government resources and interests of surrounding communities;
- create focus groups with interested community stakeholders;

- interview stakeholders and experts in recovery housing that represented both rural and urban areas;
- conduct certain site visits to recovery houses demonstrating different models of recovery housing in both rural and urban areas; and
- review scholarly research.

By December 1, 2022, HHSC would have to submit a report to the Legislature that contained the results of the study and any recommendations for legislative or other actions, including policy changes and the adoption or implementation of best practices and training and technical assistance resources.

The bill would take effect September 1, 2021, and its provisions would expire September 1, 2023.

SUPPORTERS SAY:

HB 707 would help identify gaps in recovery housing and support services by directing the Health and Human Services Commission to conduct a study on recovery housing in Texas. The prevalence of substance use disorders in this state creates a clear need to expand the availability of recovery supports, including recovery housing, a community-based housing model that can help people concentrate on treatment in a substance abuse-free environment while accessing peer support services. However, the availability and quality of recovery housing is largely unknown, which hinders the ability of state and local governments to make informed policy decisions and support Texans recovering from substance use disorders. HB 707 would provide a more accurate understanding of recovery housing in Texas and enable the Legislature to make strategic policy decisions in the future.

By identifying gaps in recovery housing, the bill could lead to greater use of this recovery support, which would help save lives, reconnect families, and increase the well-being of Texans affected by substance abuse. The report's findings also could lead to more cost efficient and effective ways to provide individuals in recovery from substance use with supportive living environments.

CRITICS SAY:

HB 707 would require the Health and Human Services Commission to include recommended legislative actions in its submitted report, which could lead to an expansion of state regulation of and funding for recovery housing programs.

SUBJECT: Entering information on conditions of bond for violent offenses in TCIC

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

0 nays

WITNESSES: For — Kyle Zulkowski, College Station Police Department; (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; M Paige Williams, Dallas County District Attorney John Creuzot; Frederick Frazier, Dallas Police Association and State FOP; James Parnell, Dallas Police Association; Chad Bridges, Fort Bend County DA's Office; David Sinclair, Game Warden Peace Officers Association; Tom Nobis, Harris County Republican Party; Noel Johnson, JPCA; Carlos Lopez and Jama Pantel, Justices of the Peace and Constables Association of Texas; Ken Shetter, One Safe Place; Jimmy Rodriguez, San Antonio Police Officers Association; David Scott, TCFV; Katherine Strandberg, Texas Association Against Sexual Assault (TAASA); Gyl Switzer and Louis Wichers, Texas Gun Sense; Mitch Landry, Texas Municipal Police Association; Thomas Parkinson)

Against — None

On — Brian Hawthorne, Sheriffs Association of Texas; (*Registered, but did not testify*: AJ Louderback, Sheriffs Association of Texas)

DIGEST: CSHB 755 would require a magistrate that issued an order imposing a condition of bond on a defendant for certain violent offenses to notify the sheriff of the condition and provide the sheriff with:

- certain information related to conditions of bond imposed for the protection of victims in any family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case;

- the name and address of any person the condition of bond was intended to protect and, if different, the name and address of the victim of the alleged offense;
- the date the order releasing the defendant on bond was issued; and
- the court that issued the order.

The magistrate would have to provide the information within one day of the order being issued.

The sheriff would have to enter the information by the next business day into the statewide law enforcement information system maintained by the Department of Public Safety (DPS), also known as the Texas Crime Information Center (TCIC). The sheriff also would have to make a good faith effort to notify any named person the condition of bond was intended to protect and, if different, the victim of the alleged offense that the defendant had been released on bond.

The clerk of the court would have to send a copy to any named person the condition of bond was intended to protect and, if different, the victim of the alleged offense by the next business day after the order was issued.

After a magistrate revoked a bond that contained a condition, modified the terms or removed a condition of bond, or disposed of the underlying criminal charges, the magistrate would have to notify the sheriff within one day and provide information to enable the sheriff to modify or remove the record in TCIC. The sheriff would have to take action on the record within one business day.

The bill would apply to conditions of bond imposed on defendants for the following violent offenses:

- murder and capital murder;
- kidnapping and aggravated kidnapping;
- indecency with a child;
- sexual assault and aggravated sexual assault;
- aggravated assault;
- injury to a child, elderly individual, or disabled individual;

- aggravated robbery;
- continuous sexual abuse of a young child or children; or
- any offense involving family violence.

DPS would be required to modify TCIC by December 31, 2021, to enable it to accept and maintain the information required under the bill. DPS also would have to develop and adopt a form for magistrates and sheriffs to facilitate the required data collection and data entry.

The bill would not create liability for any errors or omissions of a sheriff caused by inaccurate information provided to the sheriff by a magistrate.

The bill generally would take effect January 1, 2022. Provisions requiring DPS to modify TCIC would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 766 would reduce risk to victims, law enforcement, and other affected parties by ensuring they had access to information on conditions of bond for certain defendants charged with violent crimes, including murder, sexual assault, and family violence. By requiring the entry of such conditions into a statewide database and requiring victims to be notified, the bill would provide victims, law enforcement, and the community with additional protection when a defendant was released on bond.

Conditions of bond are often imposed to protect a victim or other affected person and may restrict the defendant from going to certain locations or coming into contact with the victim or another person. Currently, law enforcement is unable to access information on such conditions in the Texas Crime Information Center (TCIC), which results in officers being unaware a defendant is out on bond with conditions imposed, leaving officers and victims unprotected. By requiring such conditions to be entered into TCIC, just as emergency and protective orders are, CSHB 766 would provide law enforcement with a tool to offer victims and the community additional protection. In many cases, violating a bond condition is an offense that could result in further action by the judge, and having related information accessible in a statewide system would allow officers to know immediately if conditions exist, what they were, and if an arrest could be made if necessary.

CSHB 766 would minimize the workload impact on sheriffs' offices as it would apply only to conditions of bond for a narrow set of violent crimes, which are not issued in large amounts of cases. The bill appropriately would require sheriffs' offices to receive and enter the conditions of bond into TCIC as information sharing already is established between sheriffs' offices and courts. By requiring a sheriff's office to enter this data into TCIC within one business day after receiving an order from a magistrate, CSHB 766 would provide for timely delivery of the information, which is critical for protecting victims, law enforcement, and the community. Often victims are unaware a defendant is released with conditions on bond, so providing this information quickly would enhance public safety. Additionally, by defining time in business days, the bill would reduce a burden on sheriffs' offices by having data entered only when administrative staff was available.

CRITICS SAY:

CSHB 766 would implement a statewide requirement for sheriffs' offices to enter certain information into TCIC, which could be challenging as sheriffs' offices vary in size, capacity, and resources. In addition, counties likely vary in the volume of orders imposing conditions of bond, and thus, the related data that would have to be entered into TCIC. Getting conditions of bond from the magistrate to personnel at the sheriff's office, entering data accurately into TCIC, and notifying a victim of the release in a timely manner would be a labor intensive process. To help reduce the administrative burden, the bill should increase the time frame for data entry and victim notification from one business day to three business days. A three-day time frame would ensure the requirement of additional entry for conditions of bond was reasonable and accounted for varied departmental capacities. It also would mirror the required time frames for entry of other orders.

SUBJECT: Requiring 911 dispatchers be trained to coach CPR over the phone

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

0 nays

WITNESSES: For — Watson Kohankie; Kevin Patel; (*Registered, but did not testify*: Alec Puente, American Heart Association; Bill Kelly, City of Houston Mayor's Office; John Hawkins, Texas Hospital Association; Dan Finch, Texas Medical Association; Joel Romo, The Cooper Institute/Austin EMS Association/Association of Texas EMS Professionals; Shelia Franklin, True Texas Project; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Kim Vickers, Texas Commission on Law Enforcement)

DIGEST: CSHB 786 would require all telecommunicators in the state to be trained during their basic licensing or continuing education courses on how to coach cardiopulmonary resuscitation (CPR) over the phone. The training would be required to:

- use the most current nationally recognized emergency cardiovascular care guidelines;
- incorporate recognition protocols for out-of-hospital cardiac arrest; and
- provide information on best practices for relaying compression-only CPR instructions to callers.

The Texas Commission on Law Enforcement would be required to adopt rules to implement tele-CPR training as soon as practicable after the bill's effective date.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 786 would save the lives of Texans by enabling a bystander, coached by a 911 dispatcher over the phone, to perform CPR on the spot until paramedics arrived. By requiring dispatchers be trained in tele-CPR before they could become licensed or as part of their continuing training, people in cardiac arrest could receive CPR sooner, which could result in a significant increase in survival rates. Requiring the training to adhere to best practices and nationally recognized emergency cardiovascular care guidelines, would help to ensure consistent and high-quality standards across the state.

A study from the American Heart Association (AHA) indicated the certain individuals who received tele-CPR had a 64 percent better chance of surviving than those who did not. Unfortunately, not everyone is trained in CPR and Texas does not mandate that 911 dispatchers or other licensed telecommunicators be trained to coach the lifesaving technique by phone.

The Texas Commission on Law Enforcement easily could incorporate the training into existing education for telecommunicators, so it would not impose any additional costs on the state, counties, or municipalities.

CRITICS SAY:

No concerns identified.

SUBJECT: Creating a regional associate judge program to assist in guardianship cases

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

WITNESSES: For — Terry Hammond, Texas Guardianship Association; Guy Herman, Travis County Probate Court; (*Registered, but did not testify*: Craig Hopper)

Against — (*Registered, but did not testify*: Jeff Miller, Disability Rights Texas)

On — Drue Farmer

DIGEST: CSHB 79 would create a program for presiding judges of administrative judicial regions to appoint associate judges to assist county courts and statutory county courts other than statutory probate courts in those regions with guardianship proceedings or proceedings for protective services for elderly persons and persons with disabilities.

Appointment. The presiding judge of each administrative judicial region would be required to confer with the judges of the region's county courts and statutory courts with jurisdiction over guardianship or protective services proceedings and determine whether there was a need for the appointment of a full-time or part-time associate judge to assist the courts in conducting those proceedings.

If an associate judge was needed, the presiding judge would have to appoint a judge from a list of applicants kept by the Office of Court Administration (OCA) who met certain qualifications specified in the bill. Before the appointment was made, this list would be provided to each judge of a court from which proceedings would be referred. Each of those

judges and the presiding judge of the statutory probate courts could recommend any of the listed applicants for appointment.

An appointed associate judge would serve the courts in the administrative judicial region that were specified by the presiding judge. Two or more presiding judges of administrative judicial regions jointly could appoint associate judges to serve specified courts in the presiding judges' regions.

An associate judge appointed under the bill to serve in one administrative judicial region would be required to reside in that region or in an adjacent county during the term of appointment. An associate judge appointed to serve in two or more administrative judicial regions could reside anywhere in the regions.

Additional rules. Associate judges appointed under CSHB 79 would be subject to the rules pertaining to statutory probate court associate judges, except to the extent that the provisions of this bill conflicted with those rules. They would have the judicial immunity of district judges, and all existing immunity granted to an associate judge would continue in full force.

Associate judges could not engage in the private practice of law.

Referred proceedings. Under CSHB 79, guardianship or protective services proceedings would have to be referred to an associate judge appointed under the bill by a general order issued by the judge of each court that the associate judge was appointed to serve. A general order could be amended or withdrawn at any time by the judge that issued the order. A judge of a court the associate judge was appointed to serve also could refer a specific guardianship or protective services proceeding to the associate judge instead of issuing a general order.

An associate judge could render and sign any pretrial order and recommend to the referring court any order after a trial on the merits. The proposed order or judgment of an associate judge would become the order or judgment of the referring court unless the right to a de novo hearing before the referring court was not waived and a request for such a hearing was timely filed.

An associate judge also would be allowed to refer a complex guardianship proceeding back to the referring court for final disposition after recommending temporary orders for the protections of a ward.

Term. The term of an associate justice would be four years. However, the presiding judge of the administrative judicial region or any successor presiding judge could terminate the associate judge's appointment at any time.

Salary. An associate judge would be entitled to a salary that was 90 percent of the salary paid to a district judge as set by the general appropriations act. The associate judge's salary would be paid from money available from the state and federal governments, county money available for payment of officers' salaries, subject to approval of the commissioners courts in the counties in which the associate judge served, or a combination of the two.

Host county. If an associate judge was appointed to serve in one administrative judicial region, the presiding judge of that region would determine the host county of the associate judge. If an associate judge was appointed to serve in more than one administrative judicial region, the presiding judges by majority vote would determine the associate judge's host county. The designation of a host county would be subject to the approval of the commissioners court of that county.

The host county would be required to provide an adequate courtroom and quarters for the associate judge and personnel assisting the judge. An associate judge would not have to reside in the host county unless otherwise required.

Personnel. The appointing presiding judge or judges of the administrative judicial region or regions could appoint necessary personnel to assist the associate judge. The salaries of the personnel would be paid from money available from the state and federal governments and/or county money available for payment of officers' salaries, subject to the approval of the commissioners courts of the counties in which the associate judge served.

Reappointment. Before reappointing an associate judge, a presiding judge of an administrative judicial region would have to notify each judge of a court form which proceedings would be referred to the associate judge of the presiding judge's intent to reappoint the associate judge. Each of those judges and the presiding judge of the statutory probate courts could submit a recommendation on whether the associate judge should be reappointed.

Visiting associate judges. CSHB 79 would not limit the authority of presiding judges of administrative judicial regions to assign judges eligible for assignment to assist in processing guardianship proceedings or protective services proceedings in a reasonable time.

If an associate judge appointed under the bill was temporarily unable to perform the judge's official duties or if a vacancy occurred in the position, the presiding judge or judges could appoint a visiting associate judge to perform the duties of the associate judge temporarily. A person would not be eligible for appointment as a visiting associate judge unless the person had served for at least two years as an associate judge appointed pursuant to this bill, a district judge, a statutory county court judge, or a statutory probate judge.

A visiting associate judge would be subject to the same requirements as an associate judge, would be entitled to compensation in an amount to be determined by the presiding judges, and would not be considered a state employee for any purpose. The prohibition against a state agency entering into employment contracts with former or retired employees of the agency would not apply to the appointment of a visiting associate judge.

Supervision, training, and evaluation. OCA would be required to assist the presiding judges of the administrative judicial regions in:

- monitoring associate judges' compliance with job performance standards, uniform practices adopted by the presiding judge, and federal and state laws and policies;
- addressing the training needs and resource requirements of associate judges;

- conducting annual performance evaluations for associate judges and other personnel; and
- receiving, investigating, and resolving complaints about particular associate judges or the associate judge program.

OCA would have to develop procedures and written evaluation forms to be used by the presiding judges in conducting the annual performance evaluations required by the bill. Each judge of a court that referred proceedings to an associate judge could submit to the appropriate presiding judges or to OCA information on the associate judge's performance during the preceding year.

OCA also would be required to develop caseload standards for associate judges to ensure adequate staffing.

The presiding judges of the administrative judicial regions and OCA, in cooperation with other agencies, would have to take action necessary to maximize the amount of federal money available to fund the use of associate judges. OCA could contract for available county, state, and federal money from any available source and employ personnel necessary to implement and administer the associate judge program. Such personnel would be state employees for all purposes. Likewise, the presiding judges of the administrative judicial regions, state agencies, and counties could contract for federal money available from any source to reimburse costs and salaries associated with associate judges and certain personnel and also could use available state money and public or private grants for these purposes.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 79 would create a system of regional specialized guardianship courts to provide under-resourced counties with assistance and oversight in handling guardianship and protective services proceedings. County courts would retain full discretion to decide whether an associate judge appointed under the bill was necessary to assist with guardianship cases in their county.

In Texas, depending on the county, guardianship proceedings are heard by a statutory probate court, constitutional county court, or statutory court-at-law. Statutory probate courts have probate judges who are specialists on the Estates Code, court investigators who review guardianship filings for potential abuse, and court visitors who visit wards. However, most counties in Texas do not have these statutory probate courts, and in these counties guardianship proceedings are handled by constitutional county courts or statutory courts-at-law.

Constitutional county court and statutory court-at-law judges are often generalists and may lack relevant legal experience for guardianship proceedings. These judges also handle other resource-intensive civil and criminal cases and often cannot afford to hire staff dedicated specifically to guardianship proceedings or expend the time necessary to handle these multi-year, ongoing cases. Despite this lack of resources and specialization, judges have a continuing responsibility to the security of wards and their estates after a guardianship is established and can be liable for damages or injury that occur in relation to their oversight in these cases.

It has been estimated that 18,000 guardianship cases are located in counties that lack the resources to monitor guardianships effectively and efficiently. CSHB 79 would remedy this problem by giving judicial administrative regions the option of providing courts with associate judges and adequate staff to assist in conducting guardianship and protective services proceedings. The associate judge program would be similar to the specialized child protection courts (CPC), which have had better outcomes than courts that handle child protection cases as part of a regular docket. A court that specializes in a particular type of case can focus its efforts on and devote added attention to the relevant legal area, and this bill would enable the courts of Texas to provide the unique oversight and resources that guardianship cases require, improving protections for the state's most vulnerable.

CRITICS SAY:

No concerns identified.

SUBJECT: Allowing Navarro College to offer a bachelor's degree program in nursing

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 10 ayes — Murphy, Pacheco, Cortez, Frullo, Muñoz, Ortega, Parker, Raney, C. Turner, J. Turner

0 nays

1 absent — P. King

WITNESSES: For — Will Turner, Baylor Scott & White Medical Center-Waxahachie; Kevin Fegan, Navarro College; Kalli Young; (*Registered, but did not testify*: Guy Featherston, Navarro College; Thomas Parkinson)

Against — None

BACKGROUND: Education Code sec. 130.307(b)(1) allows a public junior college to offer a baccalaureate degree program only if its junior college district had a taxable property valuation amount of not less than $6 billion in the preceding year.

DIGEST: CSHB 885 would create an exception to the requirement that a junior college district meet a certain threshold for taxable property valuation to offer a baccalaureate degree program. The exception would be for a nursing degree program offered by Navarro College if the degree program met other statutory requirements for approval by the Texas Higher Education Coordinating Board.

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, 2021.

SUPPORTERS SAY: CSHB 885 would meet a growing demand for highly educated nurses to serve in Navarro County's seven hospitals by allowing Navarro College, a public community college, to offer a bachelor of nursing degree program. The baccalaureate degree program would complement Navarro College's

successful associate degree nursing program and would provide an affordable option for local students who are most likely to work in the area after receiving their degrees.

The program could be initiated with existing resources because Navarro College has the infrastructure and faculty in place, and it is not expected to result in increased property tax rates. It would have to be approved by the Texas Higher Education Coordinating Board, which must consider whether the program would unnecessarily duplicate degree programs offered by other higher education institutions and whether the college has long-term plans to finance the program and recruit any necessary faculty, among other factors.

While some say that the bill should be expanded to allow all junior college districts with taxable property valuation amounts of less than $6 billion to offer bachelor degree programs, it is appropriate for the Legislature to carve out exemptions for a community college that has demonstrated the need and resources to implement a bachelor degree program in a specific discipline, as has previously been done.

CRITICS SAY:

CSHB 885 could create an unfair advantage for Navarro College by exempting it from a legislatively enacted limitation on when a junior college may qualify to offer a bachelor's degree program. It would be better public policy to amend the bill to apply the exemption to all junior college districts.

SUBJECT: Creating offense for continuous sexual abuse of disabled individual

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Collier, K. Bell, Cason, Cook, Hinojosa, A. Johnson, Murr, Vasut

1 nay — Crockett

WITNESSES: For — Eric Carcerano, Chambers County District Attorney's Office; (*Registered, but did not testify*: M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; George Craig, Houston Police Department; John Hubert, Kleberg and Kenedy Counties District Attorneys Office; Katherine Strandberg, Texas Association Against Sexual Assault; John Chancellor, Texas Police Chiefs Association; Thomas Parkinson)

Against — (*Registered, but did not testify*: Shea Place, Texas Criminal Defense Lawyers Association)

BACKGROUND: Penal Code sec. 21.02 establishes the offense of continuous sexual abuse of a child or children. The offense must involve committing two or more acts of sexual abuse, as defined in the statute, against one or more victims, during a period of 30 days or more.

The offense of continuous sexual abuse of a child is a first-degree felony punishable by imprisonment for life or for a minimum of 25 years or maximum of 99 years.

DIGEST: HB 375 would expand the criminal offense of continuous sexual abuse of a child to include continuous sexual abuse of a disabled individual. Disabled individuals would be defined as individuals who because of age or physical or mental disease, defect, or injury were substantially unable to protect themselves from harm or to provide food, shelter, or medical care for themselves, or who had one or more of the following:

- developmental disability, as defined in Human Resources Code sec. 112.042;
- intellectual disability, as defined in Health and Safety Code sec. 591.003; or
- traumatic brain injury, as defined in Health and Safety Code sec. 92.001.

The bill would amend relevant statutes that refer to the continuous sexual abuse of a child to include individuals with a disability. These codes include the Civil Practice and Remedies Code, the Code of Criminal Procedure, the Education Code, the Family Code, the Government Code, the Health and Safety Code, the Occupations Code, the Property Code, and the portion of the Penal Code relating to human trafficking.

The bill would take effect September 1, 2021, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

HB 375 would help protect individuals who are disabled and cannot give consent for sexual encounters by expanding the existing criminal offense for continuous sexual abuse of a child to include continuous sexual abuse of a disabled individual.

The current offense is designed to address ongoing, serious sexual abuse of the most vulnerable individuals, and HB 375 would be consistent with that. The disabled individuals who would be covered by the bill are unable to consent and often unable to protect themselves or come forward when abuse happens, and they deserve the protection that HB 375 would afford. The bill would ensure that Texas could address situations like one in Arizona in 2018 in which an incapacitated woman living in a nursing home gave birth after being sexually assaulted.

Like the current law for continuous sexual abuse of children, this bill would require the offense to involve multiple acts over a certain period and would be used in appropriate situations.

The definition of disabled individual is narrowly drawn to apply to those who are disabled and cannot give consent.

CRITICS SAY:

The Legislature should be cautious about expanding the offense of continuous sexual abuse of a child. As this offense is broadened, there could be pressure to expand it to other groups or to charge individuals with it in cases that would be more appropriately charged with other felony offenses.

OTHER CRITICS SAY:

The language in the bill should be drawn more narrowly so that it would be clear that it could not be interpreted broadly enough to apply to consensual situations.

SUBJECT: Limiting liability and sanctions in connection with smoke

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 8 ayes — Burns, Anderson, Bailes, Cole, Cyrier, Guillen, Rosenthal, Toth

0 nays

1 absent — Herrero

WITNESSES: For — Charles Maley, South Texans Property Rights Association; Justin Penick and Rob Hughes, Texas Forestry Association; (*Registered, but did not testify*: Eric Opiela, South Texans' Property Rights Association; Lee Parsley, Texans for Lawsuit Reform; Peyton Schumann, Texas and Southwestern Cattle Raisers Association; J Pete Laney, Texas Conservation Association For Water and Soil; Harold Stone, Texas Farm Bureau; Joe Morris, Texas Forestry Association; Kenneth Hodges)

Against — None

On — (*Registered, but did not testify*: Dan Hunter, Texas Department of Agriculture)

BACKGROUND: Natural Resources Code sec. 153.048 establishes the requirements for a person to qualify as a certified and insured prescribed burn manager by the Prescribed Burning Board. The requirements include completion of an approved training program, payment of a fee, and meeting certain insurance standards set by the board.

DIGEST: CSHB 2004 would establish that a burn boss who was a certified and insured prescribed burn manager as defined by statute would not be liable for property damage, personal injury, or death caused by or resulting from smoke that occurred more than 300 feet from the burn. This exemption would not apply to a burn boss who committed gross negligence or intentionally caused property damage, personal injury, or death.

The Texas Department of Agriculture could not take disciplinary action against a certified and insured burn manager in relation to a prescribed burn on the basis that the burn resulted in emissions or was a nuisance.

The bill would take effect September 1, 2021, and would apply only to a cause of action that accrued on or after that date.

SUPPORTERS SAY:

CSHB 2004 would help prevent forest fires and maintain soil health by ensuring that certified, insured prescribed burn managers were able to conduct their work without being held liable for smoke that traveled more than 300 feet from a burn site.

Prescribed burning is a critical tool to protect life and property in the state. This burning is especially important in areas known as Wildland Urban Interfaces (WUIs), where there is a heightened threat of catastrophic wildfires. Reducing liability originating from runaway smoke for certified and insured burn managers as well as shielding them from a weaponized complaint process would protect this vital industry and allow necessary prescribed burning to continue.

Texas has about 70 certified and insured burn managers. The disruption caused by unwarranted claims poses a serious risk to the entire industry. Burn managers are able to control many aspects of a prescribed burn, but they are unable to control the wind. Limiting their liability in relation to this uncontrollable factor would ensure that lawsuits did not unnecessarily affect prescribed burns. Provisions in statute governing the immediate area around the burn, as well as adjacent roadways, would remain in effect. Burn managers would still have responsibility for smoke within 300 feet of the burn site, and the bill would contain no relief for damage caused by fire.

The bill would prevent the chilling effect on prescribed burns created by unfounded complaints made against burn managers. These complaints, which often do not adequately establish the prescribed burn as the source of the smoke, place an unreasonable burden on burn managers. Such complaints are especially prevalent in WUIs where a growing population is surrounded by wildland that requires regular prescribed burning. Rather than face regular complaints, many burn managers are choosing not to

operate in these areas and some insurance carriers are no longer offering the insurance coverage necessary to be certified as a burn manager. Burn managers who continue to operate in these areas are more likely to increase their prices, which could put a financial strain on residents and local governments or price them out of prescribed burning by a certified and insured burn manager entirely.

CRITICS SAY:

No concerns identified.

SUBJECT: Entering data on missing persons, unidentified bodies in national database

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

0 nays

WITNESSES: For — Lynn Holt, Justices of the Peace and Constables Association of Texas; Brian Hawthorne, Sheriffs Association of Texas; Alice Almendarez; David Fritts; (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; Andy Kahan and Sydney Zuiker, Crime Stoppers of Houston; Tom Nobis, Harris County Republican Party; Noel Johnson, JPCA; Carlos Lopez and Jama Pantel, Justices of the Peace and Constables Association of Texas; Kathy Mitchell, Just Liberty; Jimmy Rodriguez, San Antonio Police Officers Association; AJ Louderback, Sheriffs Association of Texas; Michael Fossum; Zoila Vega-Marchena)

Against — None

On — (*Registered, but did not testify*: Thomas Parkinson)

DIGEST: CSHB 1419 would require a law enforcement agency, on receiving a report of a missing child or missing person, to enter into the National Missing and Unidentified Persons System (NamUs) within 60 days of receiving the report the name of the missing child or person, all available identifying features, and all available information describing any person believed to have taken or retained the missing child or person. The bill would be known as John and Joseph's Law.

A justice of the peace or a medical examiner investigating the death of an unidentified person would have to enter all available identifying features of the unidentified body into NamUs within 10 working days after one or more identifying features were determined or within 60 days after the investigation began, whichever was earlier.

Examples of identifying features would include fingerprints, dental records, physical characteristics, and a description of the clothing worn when last seen or found on the body.

Immediately after the return of the missing child or person or the identification of the unidentified body, the local law enforcement having jurisdiction of the investigation would have to notify NamUs.

The bill would take effect September 1, 2021, and would apply only to the report of a missing person or child that was made or the investigation of a death of an unidentified person that commenced on or after that date.

SUPPORTERS SAY:

CSHB 1419 would help bring closure to the loved ones of missing persons and reduce the anguish families endure by empowering law enforcement to use a tool that could resolve cases more quickly. Every year, thousands of people go missing and many unidentified bodies are found but not matched to a missing person. The bill would offer a way to bridge the gap between missing persons and unidentified bodies by requiring the use of a centralized database of records and identifying information that would help law enforcement and loved ones solve missing persons cases.

The National Missing and Unidentified Persons System (NamUs) is a national resource for missing, unidentified, and unclaimed persons cases throughout the United States. Funded and administered by the National Institute of Justice through a cooperative agreement with the University of North Texas Health Science Center, all NamUs resources are provided to law enforcement, medical examiners, and family members of missing persons at no cost. The system helps agencies conserve resources and solve missing persons cases by ensuring nationwide access to important identifying information and other data.

While some law enforcement agencies use NamUs as an investigative tool, Texas state law currently does not require information relating to missing persons or unidentified remains to be entered into NamUs. Just as several other state have done, Texas should require all law enforcement agencies, justices of the peace, and medical examiners to use NamUs to ensure access to complete information and to be sure that a life-saving,

effective, and invaluable tool for law enforcement and the public did not continue to be underutilized.

CRITICS SAY:

No concerns identified.

SUBJECT: Excluding certain evidence from use in child abuse and neglect cases

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu

0 nays

WITNESSES: For —Judy Powell, Parent Guidance Center; Julia Hatcher, Texas Association of Family Defense Attorneys; Jeremy Newman, Texas Home School Coalition; Cecilia Wood; (*Registered, but did not testify*: Andrew Brown, Texas Public Policy Foundation; Jackie Schlegel)

Against — None

On — (*Registered, but did not testify*: Marta Talbert, Department of Family and Protective Services)

BACKGROUND: Family Code sec. 261.001(4) defines neglect for the purposes of investigations based on reports of child abuse or neglect as including certain specified behaviors and excluding certain other specified behaviors of the person responsible for a child's care, custody, or welfare.

Family Code sec. 161.001 establishes the grounds under which a court may terminate the parent-child relationship and contains provisions prohibiting a court from terminating the parent-child relationship based on evidence of certain behaviors and categorizations of the parent.

Family Code sec. 262.116 prohibits the Department of Family and Protective Services (DFPS) from taking possession of a child based on evidence of certain behaviors or categorizations of a parent.

DIGEST: HB 2536 would prohibit a court from ordering the involuntary termination of the parent-child relationship based on evidence that the parent sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical

provider, or transferred the child to another health care facility. The Department of State Health Services also could not take possession of a child based on evidence that the parent took one of these actions.

The bill would exclude a decision by a person responsible for a child's care, custody, or welfare to take any of the above actions from behavior that would constitute neglect of a child under current law.

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, 2021.

SUPPORTERS SAY:

HB 2536 would help ensure that families with medically fragile children were protected from unnecessary removal of their child by establishing that certain actions commonly taken on legitimate grounds, including seeking a second medical opinion or transferring a child to a different medical provider or facility, could not be used as evidence of child abuse or neglect in proceedings against the parent. Concerns have been raised that these legitimate actions taken by parents of medically fragile children could be misinterpreted as evidence of child abuse or neglect, which can result in involuntary termination of the parent-child relationship or the Department of Family and Protective Services (DFPS) taking possession of a child.

In a recent case a medically fragile child was taken from the child's family for more than five months due to a report from a doctor who had not treated the child in the past, interacted with the parents, nor read the child's full report. Doctors' opinions are typically given significant weight and met with acceptance by DFPS case workers and courts, even if the doctors did not personally examine the child on whom they make a report, which can result in children being wrongfully taken from their homes. These cases are painful and often expensive for the parents and can leave children confused and traumatized. HB 2536 would enable parents to feel safe in seeking second medical opinions or deciding to transfer their child's medical care to a new provider or different facility despite the weight that comes with a doctor's opinion or report.

HB 2536 would protect the right of families to make appropriate decisions for the care of their medically fragile children and for the stability of their families, while also ensuring that the well-being of the child was not at risk. There are cases that warrant the involuntary removal of a child from the child's parents, and the opinions of medical professionals in these cases are an important part of the process for weighing the safety of the child against the possibility of an unnecessary removal. The bill would not take away the discretion of doctors to make reports on child abuse or neglect. Rather, it would ensure that all parties involved could take the steps they believed were necessary to protect the interests of vulnerable children, whether those steps included a medical professional's report to DFPS or a parent's decision to seek a second medical opinion.

CRITICS SAY:

HB 2536 could hinder the state's ability to protect vulnerable children by prohibiting the consideration of potentially relevant evidence in the cases of medically fragile children. In addition, the bill would prohibit the immediate removal of a child under certain circumstances when such removal could be warranted to ensure the child's safety.