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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 19, 2021
87th Legislature, Number 37
The House convenes at 11 a.m.
Part Two

Two bills are on the Major State Calendar and 26 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed 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; Culture, Recreation and Tourism; Higher Education; Corrections; Business and Industry; Criminal Jurisprudence; and Environmental Regulation.

Alma Allen
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, April 19, 2021
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Part 2

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SUBJECT: Expanding entities from which attorney's fees are recoverable

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 — (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform; Guy Herman, Travis County Probate Court; Thomas Parkinson)

Against — (*Registered, but did not testify*: Jeffrey Brannen, Balfour Beatty Construction, LLC)

BACKGROUND: Business Organizations Code sec. 1.002 defines "organization" as a corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign.

Civil Practice and Remedies Code sec. 38.001 allows the recovery of reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and cost in the case of certain claims.

DIGEST: CSHB 1578 would include an organization as defined by the Business Organizations Code, as well as the state or an agency or institution of the state in the types of entities from which a person could recover reasonable attorney's fees in certain civil cases.

The bill would take effect September 1, 2021, and would apply only to an award of attorney's fees in an action commenced on or after that date.

SUPPORTERS SAY: CSHB 1578 would address challenges related to the recovery of attorney's fees from state entities and certain business entities by expanding the entities from which attorney's fees are recoverable in certain civil cases to

include the state and related agencies or institutions, as well as limited or general partnerships, limited liability companies, and other business entities included under the Business Organizations Code definition of organization. Under current statute, recovery of reasonable attorney's fees is limited to recovery from individuals and corporations, making recovery difficult from other types of organizations or entities. Explicitly including state agencies and other classes of business entities in the current statute should make recovery of these fees from a more encompassing list easier and more accessible.

CRITICS SAY:

No concerns identified.

SUBJECT: Incorporating digital citizenship into 6th grade social studies

COMMITTEE: Public Education — committee substitute recommended

VOTE: 12 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, Huberty, K. King, Meza, Talarico, VanDeaver

0 nays

1 absent — M. González

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 (TAMSA); Chloe Latham Sikes, Intercultural Development Research Association (IDRA); Dena Donaldson, Texas AFT; Oscar Rodriguez, Texas Association of Broadcasters; Amy Beneski, Texas Association of School Administrators; Beaman Floyd, Texas Impact; Suzi Kennon, Texas PTA; Molly Weiner, United Ways of Texas; Linda Litzinger; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Fuat Aki, Eric Marin, Monica Martinez, and Melody Parrish, Texas Education Agency)

BACKGROUND: Education Code sec. 28.002(z) requires each school district to incorporate instruction in digital citizenship into the district's curriculum, including information regarding the potential criminal consequences of cyberbullying.

DIGEST: CSHB 129 would require students enrolled in grade level six to complete instruction in digital citizenship as part of a school district's social studies curriculum. The bill would expand the definition of "digital citizenship" to include:

- media literacy and the ability to identify credible sources of information;

- digital ethics, etiquette, respectful discourse with people who have differing opinions, safety, security, digital footprint, and the identification of rhetoric that incites violence based on a person's race, religion, or political affiliation; and
- cyberbullying prevention and response.

The bill would apply beginning with the 2021-2022 school year.

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

SUPPORTERS SAY:

CSHB 129 would help students learn to navigate the sometimes treacherous waters of social media and the internet by requiring instruction in digital citizenship. Students would benefit from learning about the real-life consequences that can come from online activities, including the danger that misinformation and hateful rhetoric can sometimes lead to violent actions.

Because young Texans have grown up with social media, it is often wrongly assumed that they have the sophistication to think critically about information they see online. The digital space is part of their community and it is critical that they learn how to prevent and respond to cyberbullying, to conduct themselves respectfully in online environments, and to identify credible sources of information.

The bill would appropriately incorporate lessons about digital citizenship into the 6th grade social studies curriculum because that is a time when many students begin to use the internet and social media independently of their parents, teachers, or other responsible adults.

While some have expressed concern that discussions of digital citizenship could result in discrimination against unpopular views, the bill specifically requires that students be taught to have respectful discourse with people who have differing opinions.

CRITICS SAY:

CSHB 129 contains an overly broad definition of digital citizenship that would inappropriately place educators in the position of deciding what is

good or bad content on the internet, possibly leading to discrimination against unpopular sources of information and views. It should be the responsibility of parents, not the public schools, to monitor their children's online behavior and use of social media.

NOTES:

According to the Legislative Budget Board fiscal note, CSHB 129 would have no significant fiscal implication to the state, but schools districts and charter schools would likely have additional costs if 6th grade social studies materials needed to be replaced outside of the regular textbook adoption cycle.

SUBJECT: Granting immunity from liability for school security personnel

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Leach, Krause, Middleton, Schofield, Smith

1 nay — Julie Johnson

3 absent — Davis, Dutton, Moody

WITNESSES: For — (*Registered, but did not testify*: Colby Nichols, Texas Association of Community Schools and Texas Association of School Administrators; Mark Borskey, Texas State Rifle Association)

Against — (*Registered, but did not testify*: Dena Donaldson, Texas AFT)

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

DIGEST: HB 1788 would grant school districts, charter schools, or private schools, as well as the security personnel they employ, immunity from liability for any damages resulting from a reasonable action taken by security personnel to maintain the safety of a school campus, including action relating to possession or use of a firearm. "Security personnel" would be defined to include:

- a school district peace officer;
- a school marshal;
- a school resource officer; and
- a retired peace officer who had been hired by a school district, open-enrollment charter school, or private school to provide security services or who volunteered to provide security services to the school.

The bill would grant immunity to a district, charter school, or private school for any damages resulting from a reasonable action taken by a district or school employee who had written permission from the district's

board of trustees or the school's governing board to carry a firearm on campus.

The statutory immunity provided by the bill would be in addition to and would not preempt the common law doctrine of official and governmental immunity. To the extent that another statute provided greater immunity to a district, charter school, or private school than the bill, that statute would prevail.

The bill would apply beginning with the 2021-2022 school year.

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

SUPPORTERS SAY:

HB 1788 would improve school safety by providing liability protection for public and private schools that employ security personnel or authorize an employee to carry a firearm on campus. The bill would remove an impediment for schools that want to take advantage of different options under Texas law for securing their campuses. For example, some schools hire commissioned peace officers to serve as school resource officers and others appoint school employees to serve as school marshals or school guardians under statutory provisions that allow these employees to possess a firearm on school premises.

Existing provisions in Education Code sec. 22.0511 provide a professional employee of a school district with protection from personal liability for actions taken within the employee's scope of duties, except in circumstances in which the employee used excessive force in disciplining students or negligence resulting in a student being injured. The bill is designed to improve school security rather than to address student discipline issues.

CRITICS SAY:

HB 1788 could pose a risk to student safety by providing immunity from liability for security personnel who might not have the appropriate training to carry a weapon in a school setting. It would give immunity from liability to individuals without requiring the degree of training most

teachers and others who work with students receive in child development and the way trauma can affect students in a school environment.

SUBJECT: Requiring external efficiency audits of the DFPS

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Frank, Hull, Klick, Noble, Shaheen

3 nays — Hinojosa, Meza, Rose

1 absent — Neave

WITNESSES: For — Julia Hatcher, Texas Association of Family Defense Attorneys (TAFDA); Andrew Brown, Texas Public Policy Foundation; (*Registered, but did not testify*: Judy Powell, Parent Guidance Center; Thomas Parkinson)

Against — (*Registered, but did not testify*: Tyler Sheldon, Texas State Employees Union)

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

BACKGROUND: Government Code ch. 2102 requires the Department of Family and Protective Services (DFPS) to conduct an annual internal audit, the findings of which must be submitted in an annual report before November 1 of each year to certain governmental entities.

DIGEST: HB 2374 would require the Department of Family and Protective Services (DFPS) to conduct an efficiency audit during fiscal 2022 and every fourth year after that examining fiscal management, efficiency, outcomes for children and families served by the department, and utilization of resources.

The Legislative Budget Board (LBB) would establish the scope of the efficiency audit and would determine the areas of investigation for the audit, including:

- review of DFPS resources to determine whether they were being used effectively and efficiently to achieve desired outcomes for children and families served by the department;
- identification of cost savings or reallocations of resources; and
- identification of opportunities for improving services through consolidation of essential functions, outsourcing, and elimination of duplicative efforts.

External auditor and report. By March 1 of the state fiscal year in which an efficiency audit was required, the DFPS commissioner, in collaboration with the Family and Protective Services Council, DFPS's chief financial officer, and DFPS's internal audit director, would have to select an external auditor to conduct the efficiency audit. The external auditor would have to be independent of DFPS's direction and would be required to complete the audit by the 90th day after selection by the DFPS commissioner.

By November 1 of the calendar year in which an efficiency audit was conducted, the auditor would be required to prepare and submit a report of the audit and recommendations for efficiency improvements to the governor, the LBB, the state auditor, the DFPS commissioner, the Family and Protective Services Council, and the chairs of the House Human Services Committee and the Senate Health and Human Services Committee.

Other provisions. An efficiency audit completed under the bill would satisfy the department's annual internal audit requirements for the year. DFPS would be required to pay the costs associated with the efficiency audit using money appropriated for administrative and internal audit operations in the state fiscal year the audit was conducted.

If DFPS failed to conduct an efficiency audit under the bill's provisions, the amount appropriated to the department by the Legislature for the next state fiscal biennium could not exceed the department's baseline budget.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 2374 would identify areas of improvement and promote innovation of services and processes within the Department of Family and Protective Services (DFPS) by requiring regular efficiency audits examining fiscal management, efficiency, utilization of resources, and outcomes for the children and families served by the department.

Efficiency audits are intended to determine if taxpayer dollars spent by the agency are achieving desired outcomes, unlike traditional financial audits, which only look at the financial statements of a government agency to ensure that the records provide a fair and accurate representation of financial activities. In the context of child welfare, an efficiency audit could help ensure that agency activities are prioritizing the safety of children and generating positive outcomes in the lives of children served. The efficiency audits required by HB 2374 would help DFPS provide these improved outcomes for families at a lower cost to taxpayers, as the audit would identify duplicative efforts and other inefficiencies.

The unique evaluation that an efficiency audit provides is critical for Texas as the state continues to work toward successful compliance with remedial actions, while transitioning to the community-based care model. The results of the efficiency audit would provide DFPS with a workable plan for addressing such issues and ongoing improvement efforts, and the independent nature of the audit would ensure the department was held accountable for the millions of dollars it receives on a yearly basis.

The bill would require DFPS to pay costs associated with the efficiency audit using money appropriated for administrative and internal audit operations in the fiscal year that the efficiency audit was completed. Concerns about the payment requirement are misplaced because the efficiency audit would satisfy DFPS's annual internal audit requirements for the year.

CRITICS SAY:

HB 2374 would require DFPS to conduct an efficiency audit, which would be unnecessary because the Department of Family and Protective Services (DFPS) already is required to conduct an internal audit annually, the findings of which are reported to the appropriate entities. Even though the stated purpose of the efficiency audits would be to achieve optimal outcomes for children and families within the most cost-effective manner,

the results of the audits could be used to justify financial reductions for certain social services on which vulnerable Texans rely.

HB 2374 would require DFPS to fund the costs of the efficiency audit using money appropriated for administrative and internal audit operations, which could result in a loss of funds for maintenance of current department functions and staff. The bill also requires the external auditor to complete the audit within 90 days of selection by the DFPS commissioner, and if the 90-day time frame is not met, all requests by the department for additional appropriations or exceptional items for the next fiscal biennium would be denied by the Legislature. The current DFPS internal audit does not place a similar time frame on the department, and there are concerns that an external auditor may not be able to comply with the 90-day time frame, leading to financial repercussions for the department that would make its crucial job of serving some of the most at-risk Texans more difficult.

SUBJECT: Allowing distance training and education courses for ARB members

COMMITTEE: Ways and Means — favorable, without amendment

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

0 nays

1 absent — Martinez Fischer

WITNESSES: For — (*Registered, but did not testify*: Matt Grabner, Ryan, LLC; W.W. "Whit" Jones)

Against — None

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

DIGEST: HB 3788 would allow the comptroller to provide required training and education courses for appraisal review board members as distance courses.

The comptroller could adopt rules to implement training and education courses, including rules establishing criteria for course availability and for demonstrating course completion.

The bill would take effect January 1, 2022.

SUPPORTERS SAY: HB 3788 would expand options for the training of appraisal review board (ARB) members by allowing required training and continuing education courses to be provided as distance courses. During the COVID-19 pandemic, the governor issued a waiver of the in-class requirement, and the comptroller successfully provided online training for 863 ARB members by June 2020. The bill would amend statute to allow the comptroller to continue to provide the training in the classroom and online, granting flexibility for both ARB members and the comptroller's

office. The online training option would save taxpayer funds, as ARB members would not have to spend money to travel. Online courses also would reach rural areas and areas affected by potential disasters.

CRITICS SAY:

No concerns identified.

SUBJECT: Amending the calculation of interest rates on certain tax refunds

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Meyer, Thierry, Button, Cole, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

2 absent — Guerra, Martinez Fischer

WITNESSES: For — None

Against — None

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

BACKGROUND: Under Tax Code sec. 111.064, for certain tax refunds, interest may be calculated at the annual rate earned on deposits in the state treasury during December of the previous calendar year, as determined by the comptroller.

DIGEST: HB 2530 would provide that interest on tax refunds could be calculated at the annual rate earned on deposits in the state treasury during November, instead of December, of the previous year.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: HB 2530 would allow the comptroller to calculate the interest rate on certain tax refunds and overpayments using the average rate for the month of November instead of December. This would ensure that the comptroller had enough time to update internal systems with the new interest rate on January 1 of each year so that taxpayers received the appropriate amount of interest on tax refunds.

CRITICS SAY: No concerns identified.

SUBJECT: Increasing community college baccalaureate degree programs

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 — (*Registered, but did not testify*: Dana Harris, Austin Chamber of Commerce; Logan Spence, Lone Star College; Stephanie Hoffman)

Against — None

On — Mike Flores, Alamo Colleges District; Richard Rhodes, Austin Community College District; (*Registered, but did not testify*: Thomas Parkinson)

BACKGROUND: Education Code subch. L allows certain community colleges to offer baccalaureate degree programs in the fields of applied science, applied technology, and nursing if authorized by the Higher Education Coordinating Board. Sec. 130.306(b) limits community colleges to offering three baccalaureate degree programs, although community colleges that previously participated in a pilot project to offer baccalaureate degree programs may offer five such programs.

DIGEST: CSHB 3348 would raise the cap on the number of baccalaureate degree programs a public junior or community college could offer from three to five.

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 3348 would allow community colleges to offer additional affordable bachelor's degree programs aligned to area workforce needs. Since the Legislature in 2017 authorized most community colleges to offer bachelor's degrees, demand for additional degree programs has grown, particularly in areas related to healthcare, technology, manufacturing, and construction.

The programs commonly serve adults who already are in a job such as nursing or information technology but need to acquire a bachelor's degree to move into management or earn a higher salary. Community college baccalaureate programs are developed in coordination with local business and industry leaders to ensure they are meeting an area workforce need. Most of the students entering these programs would not otherwise obtain a four-year degree, often because of family responsibilities or financial concerns. These students should have the opportunity to obtain a bachelor's degree without having to incur significant student debt.

Baccalaureate degree programs at community colleges must 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.

CRITICS SAY:

No concerns identified.

SUBJECT: Requiring GCD management plans to include desired future conditions

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — T. King, Harris, Bowers, Kacal, Larson, Paul, Price, Walle, Wilson

0 nays

2 absent — Lucio, Ramos

WITNESSES: For — Gregory Ellis, GM Ellis Law Firm PC; Leah Martinsson, Texas Alliance of Groundwater Districts; Sarah Kirkle, Texas Water Conservation Association

Against — None

On — (*Registered, but did not testify*: John Dupnik, TWDB)

BACKGROUND: Water Code sec. 36.1071 requires a groundwater conservation district to coordinate with other water management entities on a regional basis to develop a management plan that addresses certain goals relating to the use and conservation of groundwater. These goals include addressing the desired future conditions for groundwater in the area.

Under sec. 36.108, districts in the same groundwater management area must propose and adopt desired future conditions for the relevant aquifer within the management area every five years. The districts must consider certain information before adopting the conditions, including aquifer uses and conditions, water supply needs, the feasibility of achieving the desired future conditions, and the impact on private property interests and rights.

DIGEST: CSHB 3801 would require that a groundwater conservation district management plan include the most recently approved desirable future conditions adopted under Water Code sec. 36.108 and the amount of modeled available groundwater corresponding to those conditions. A district would be required to amend a management plan within two years

of the adoption of the desired future conditions. If a petition challenging the reasonableness of a desired future condition was filed, the executive administrator of the Texas Water Development Board would be required to consider the management plan administratively complete if the district included:

- the most recently approved desired future conditions;
- the amount of modeled available groundwater corresponding to the desired future conditions;
- a statement of the status of the petition challenging the reasonableness of a desired future condition; and
- certain other information currently required by statute.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 3801 would provide necessary clarification on the information that is required to be included in a groundwater conservation district (GCD) management plan. A crucial component of these plans is the desired future conditions adopted as part of the joint planning process conducted by GCDs within each of the state's 16 groundwater management areas based on major aquifer boundaries. Current statute allows persons affected by an adopted desired future condition to petition that it is unreasonable. This has resulted in confusion among GCDs about whether to include a desired future condition that has been petitioned as unreasonable in a management plan and at the Texas Water Development Board (TWDB) about how to evaluate plans that contain such desired future conditions.

The bill would make it clear that a GCD is required to include the most recently adopted desired future conditions in a management plan regardless of any finding or petition of unreasonableness. The bill also would provide TWDB with the necessary statutory guidance to evaluate management plans that contain such desired future conditions. This would provide necessary direction to all affected parties and help to clear up points of contention that form the basis of recent litigation.

CRITICS SAY:

No concerns identified.

SUBJECT: Exempting certain nonresidents from vehicle inspection for temporary tag

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 — William Daniel, Vroom Automotive LLC; (*Registered, but did not testify*: Colin Parrish, Mecum Auctions; Mario Martinez, Texas Independent Auto Dealers Association; J. McCartt, Vroom)

Against — None

On — (*Registered, but did not testify*: Roland Luna, Texas Department of Motor Vehicles)

BACKGROUND: Transportation Code sec. 503.063 requires a dealer to issue a person who buys a vehicle a temporary buyer's tag, which is valid until the vehicle is registered, up to 60 days.

DIGEST: HB 3429 would allow a vehicle to be issued and display a temporary buyer's tag without satisfying state inspection requirements if:

- the buyer of the vehicle was not a resident of the state;
- the vehicle, at the time of purchase, was not located or required to be titled or registered in the state;
- the vehicle would be titled, registered, and inspected in accordance with the laws of the buyer's state of residence.

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 3429 would allow out-of-state buyers of a vehicle that will not be operated on Texas roads to be issued a temporary buyer's tag without

having to get a state inspection. These vehicles are not required to be registered in Texas, and thus already do not need to be inspected in this state. However, current rules regarding temporary tags do not account for a business model by which vehicles in the state are purchased online by nonresidents, intended for use in a different state. This bill would prevent confusion in the industry by clarifying that the vehicles could be issued a temporary tag without a state inspection if the vehicle would be titled, registered, and inspected in the buyer's state of residence.

CRITICS SAY:

No concerns identified.

SUBJECT: Evaluating effects on exempt wells during the well permitting process

COMMITTEE: Natural Resources — favorable, without amendment

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

0 nays

2 absent — Kacal, Lucio

WITNESSES: For — Vanessa Puig-Williams, Environmental Defense Fund; Judith McGeary, Farm and Ranch Freedom Alliance; Andrew Wier, Simsboro Aquifer Water Defense Fund; Gregory Ellis; (*Registered, but did not testify*: Shauna Sledge, Barton Springs Edwards Aquifer Conservation District, Prairielands GCD, and Upper Trinity GCD; Carlos Rubinstein, Belding Farms/Cockrell; Chris Herrington, City of Austin; Steve Box, Environmental Stewardship; Cyrus Reed, Lone Star Chapter Sierra Club; Myron Hess, National Wildlife Federation; Adrian Shelley, Public Citizen; Eric Opiela, South Texans' Property Rights Association; Leah Martinsson, Texas Alliance of Groundwater Districts; David Yeates, Texas Wildlife Association; Vanessa MacDougal; Linda Kaye Rogers)

Against — (*Registered, but did not testify*: Billy Howe, Texas Farm Bureau)

On — (*Registered, but did not testify*: Kimberly Nygren, TCEQ)

BACKGROUND: Water Code sec. 36.117 exempts certain wells from the need to obtain a permit. This includes wells solely for domestic use or for providing water for livestock or poultry. Exempted wells are required to be located on a tract of land larger than 10 acres and be incapable of producing more than 25,000 gallons of groundwater a day.

DIGEST: HB 3619 would require a groundwater conservation district to consider whether a proposed water use would unreasonably affect wells that are

exempt from permitting requirements before granting or denying a permit or an amendment to a permit to drill, equip, or operate a well.

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 3619 would protect the livelihoods and investments of rural property owners, prevent these property owners from incurring prohibitively high well costs, and establish permitting procedures that are equitable for all stakeholders by requiring groundwater conservation districts to take into account the effects that permitting decisions may have on shallow wells currently exempt from consideration.

Wells are essential for rural property owners and represent a significant financial investment. Shallow wells that are exempt from permitting requirements are typically used for domestic or small-scale agricultural purposes. Any negative impact on these wells from larger permitted wells could have a devastating impact on the livelihood of the owner. The critical nature of these exempt wells and the significant investment landowners make in digging them are worthy of consideration in the permitting process. The bill does not require that a groundwater conservation district regulate to the needs of the shallowest well, it simply requires that due consideration be given to the impact on exempt wells.

For many rural landowners, digging a deeper well to account for every new well in the area is prohibitively costly. The decision to dig a shallow exempt well is often the result of the financial circumstances of property owners who operate on slim margins. In many cases, they would be unable to construct a well deep enough to withstand the effects of neighboring wells. The inability of owners to modify existing wells or construct wells requiring a permit could cause some to abandon affected wells altogether. This would not diminish the need for water on these properties, and the construction of new infrastructure to deliver water to these rural areas could represent a significant cost to the state.

Existing permitting processes require a district to consider the effect of a proposed well on other permitted wells. Granting exempt wells parity with

permitted ones would ensure the equitable use of groundwater by all stakeholders. Excluding one set of wells from consideration while others receive it is inherently unfair. Accounting for all wells in a given area during the permitting process is the most effective way to ensure equitable distribution of groundwater.

CRITICS SAY:

HB 3619 would negatively impact the right of property owners seeking permits to use water underneath their land and violate the principle that a decision to issue or deny a permit should be based on the effect a proposed well would have on a landowner's fair share of water.

Property owners in Texas have a right to access and use the water located underneath their land. The presence of exempt wells in the area of a proposed well should not affect this. The deliberate decision to dig a shallow well that is exempt from permitting requirements comes with foreseeable risks. It is the responsibility of a well owner to mitigate the effects of the collective use of water, and a property owner should not be denied a permit because no mitigating action was taken.

A landowner has the right to produce a fair share of the common aquifer. Choosing to include the impact on existing wells among the considerations for a district when evaluating a permit application would stand in opposition to this. Property owners who are affected by the fair use of water by a neighbor still retain their right to access groundwater; they must simply access it in a manner that accounts for collective use. The established fair share principle ensures that groundwater remains available for use by all eligible parties and should be preserved.

SUBJECT: Allowing election judges to carry handguns at polling sites during voting

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

VOTE: 7 ayes — White, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

2 nays — Bowers, Goodwin

WITNESSES: For — James Buntrock, Glorious Way Church; Dee Chambless, Smith County Republican Women; and seven individuals; (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association and State FOP; Angela Smith, Fredericksburg Tea Party; Felisha Bull and Rachel Malone, Gun Owners of America; Tara Mica, National Rifle Association; Brian Hawthorne and AJ Louderback, Sheriffs Association of Texas; and 21 individuals)

Against — Aimee Mobley Turney, League of Women Voters of Texas; Gyl Switzer, Texas Gun Sense; John Robert Behrman; Ling Zhu; (*Registered, but did not testify*: Daniel Collins, County of El Paso; Louis Wichers, Texas Gun Sense; Julie Wheeler, Travis County Commissioners Court)

On — Richard Briscoe, Open Carry Texas; Brad Hodges; (*Registered, but did not testify*: Adam Bitter, Secretary of State; Thomas Parkinson)

BACKGROUND: Penal Code sec. 46.03 makes it a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) to intentionally, knowingly, or recklessly possess or go with a firearm on the premises of a polling place on the day of an election or while early voting is in progress. Sec. 46.15 specifies that this offense does not apply to peace officers and that peace officers are not prohibited from carrying a weapon.

DIGEST: HB 530 would specify that the offense of possessing or going with a firearm on the premises of a polling place would not apply to presiding election judges who possessed a handgun license and were performing their duties as a judge during early voting or on the day of an election.

The bill would take effect September 1, 2021, and would apply only to an offense committed on or after the bill's effective date.

SUPPORTERS SAY:

CSHB 530 would clarify that the prohibition on carrying handguns in polling places did not apply to presiding election judges. A nonbinding opinion from the attorney general in 2018 found that the offense of carrying firearms in a polling place did not apply to presiding election judges who possessed a handgun license and were performing their duties under the Election Code. The bill would codify the opinion and allow presiding election judges to carry handguns in polling places.

The bill would not lead to voter intimidation but instead provide voters with a sense of security in casting their ballots. Under statute, a peace officer may carry a handgun in a polling place during voting. If a peace officer were unavailable to protect a high-profile or rural polling place, voters could be fearful of entering a gun-free zone without protection. The bill would remedy this problem by allowing election judges, who are performing a public service, to arm themselves in defense of polling sites.

CSHB 530 would address situations where peace officers may not be available to secure an election facility due to the rural location of the facility or staffing shortfalls. Election judges would be required to possess a license to carry a handgun under the bill.

The bill would not lead to the escalation of violence in polling places but rather discourage potential criminals from inciting violence at a polling site on election day or during early voting.

CSHB 530 appropriately would be limited to presiding election judges in line with the attorney general opinion the bill seeks to codify.

CRITICS SAY:

CSHB 530 could lead to voter intimidation by inappropriately allowing partisan election judges to carry handguns in polling places. Texas already has among the lowest voter turnouts in the country, and the state should be taking actions to expand voter access to the polls rather than creating a chilling effect on potential voters as this bill does.

The bill is unnecessary since peace officers, who are trained to identify and respond to threats, already can carry handguns in polling places to ensure the security and integrity of elections. Election judges would be in no position to use a handgun in a polling place, as they are not trained to respond to threats with firearms. Election judges should only be expected to focus on conducting their election-related duties, not performing the duties of a peace officer. Merely possessing a license to carry does not equip an individual with the proper training to respond to a security threat.

The bill also could create the opportunity for escalations of violence at polling places by injecting guns into a potentially charged environment. This could be a concern given a lack of clarity about whether an election judge could possess a handgun at a polling place located in a school.

The bill could address some of the concerns regarding voter intimidation by requiring any handgun possessed by an election judge at a polling place to be concealed, which could help mitigate the potential chilling effect an openly carried weapon may have on voters.

OTHER CRITICS SAY:

CSHB 530 would not go far enough and should allow alternate election judges and poll workers to carry a handgun at a polling place during voting. This would allow alternate judges and election workers to protect a polling place if the presiding judge were absent.

SUBJECT: Requiring hospitals to disclose cash price of certain health care services

COMMITTEE: Public Health — favorable, without amendment

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: Charles Miller, Texas 2036; Jason Baxter, Texas Association of Health Plans; Thomas Parkinson)

Against — None

On — Cameron Duncan, Texas Hospital Association

DIGEST: HB 1490 would require hospitals licensed under Health and Safety Code ch. 241 or owned or operated by the state or a state agency to disclose the hospital's cash price for each health care service it regularly provided.

The disclosure of cash prices would have to be made by posting the prices on the hospital's website or, if the hospital did not have a website, provided in writing on request to any person.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: HB 1490 would improve price transparency for consumers by codifying in statute a federal rule that requires hospitals to disclose the cash price of certain health care services.

Currently, Texans lack access to transparent prices for hospital services, leaving patients without adequate information to make decisions regarding their health. The bill would increase Texans' access to hospital price information, empowering them to make more informed choices about their health care prior to receiving services. While federal rule already requires hospitals to disclose cash prices, HB 1490 is necessary to protect

patients from potential changes in federal rule, allowing Texas to maintain and enforce transparency efforts.

Any concerns about the bill requiring cash prices to be disclosed in writing could be addressed in a floor amendment.

CRITICS SAY:

HB 1490 would impose an administrative burden on hospitals by requiring them to provide a lengthy list of prices to any person who requested such information. Some hospitals do not always have the cash price available for each health care service due to a hospital's charity care policies, financial assistance policies, and uninsured discount policies. In addition, the bill could place hospitals in a difficult position if a patient experiencing a medical emergency requested a list of prices before hospital staff stabilized or treated the patient, potentially delaying treatment in violation of federal regulations.

NOTES:

The author intends to offer a floor amendment to HB 1490 that would remove the provision requiring a hospital that did not have a website to provide the cash prices for services in writing to any person on request.

SUBJECT: Consecutive sentences for certain crimes out of same criminal episode

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

0 nays

WITNESSES: For — Amy Derrick, Dallas County Criminal 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 & Kenedy Counties District Attorneys Office; John Chancellor, Texas Police Chiefs Association)

Against — None

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

BACKGROUND: Under Penal Code sec. 3.03(b), if an individual is found guilty of more than one offense arising out of the same criminal episode the sentences may run concurrently or, under certain circumstances, the sentences may be served consecutively. Six subsections list offenses for which sentences may be consecutive, with some of the subsections listing more than one offense. For example, sec. 3.03(b)(1) authorizes consecutive sentences for intoxication assault and intoxication manslaughter, and sec. 3.03(b)(2) allows consecutive sentences for indecency with a child, sexual assault, aggravated sexual assault, and other sex offenses.

Penal Code sec. 3.01 defines criminal episode as the commission of two or more offenses committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan, or as offenses that are the repeated commission of the same or similar offenses.

DIGEST: CSHB 1403 would state that any combination of offenses listed in Penal Code sec. 3.03(b) subdivisions (1) through (6) could run consecutively.

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

SUPPORTERS SAY:

CSHB 1403 would ensure that courts had flexibility in imposing criminal sentences by making it clear that judges could require sentences from any combination of offenses listed in Penal Code sec. 3.03(b) to be served consecutively if they arose out of the same criminal episode.

Penal Code sec. 3.03(b) has numerous subsections listing multiple offenses for which courts have the discretion to require sentences be served consecutively. There has been confusion about whether only offenses within each subsection can be required to be served consecutively or whether sentences from all the offenses in Penal Code sec. 3.03(b) could be required to be served consecutively, no matter in which subsection they are placed. CSHB 1403 would clear up this confusion by saying that any combination of offenses in sec. 3.03(b) could be served consecutively, sometimes called "stacking" sentences.

Stacking sentences may be appropriate in situations in which a defendant is convicted of multiple serious offenses, and judges should have the flexibility to use this option when appropriate. The bill would not change what offenses could be stacked, only make it clear that all the offenses listed in the statutes could be served consecutively.

The use of the stacking statutes would remain discretionary, and judges would continue to use it only when they deemed it to best fit a situation involving a criminal episode. The bill would provide judges a tool but would do nothing to encourage specific sentences. Stacked sentences, no matter which subsection of the code they come from, would continue to have to come from the same criminal episode.

CRITICS SAY:

CSHB 1403 could encourage the addition of still more offenses to the stacking statutes and the use of overly punitive stacked sentences.

SUBJECT: Limiting prior authorizations for autoimmune disease prescription drugs

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Oliverson, Vo, J. González, Hull, Israel, Romero

3 nays — Middleton, Paul, Sanford

WITNESSES: For — John Carlo and Lisa Ehrlich, Texas Medical Association; Tommy Lucas, Texas Optometric Association; (*Registered, but did not testify*: Ricardo Martinez, Equality Texas; Lindsay Lanagan, Legacy Community Health; Jaime Capelo, Texas Chapter American College of Cardiology and Texas Urological Society; David Reynolds, Texas Chapter American College of Physicians; Clayton Stewart, Texas Medical Association; Eric Woomer, Texas Pediatric Society; Stacey Mather, Texas Society of Health-System Pharmacists; Ware Wendell, Texas Watch; Georgia Keysor; Thomas Parkinson; Roy Paulson)

Against — Jamie Dudensing, Texas Association of Health Plans; Bill Hammond, Texas Employers for Insurance Reform; (*Registered, but did not testify*: Billy Phenix, America's Health Insurance Plans; Patricia Kolodzey, Blue Cross Blue Shield of Texas; Jamaal Smith, City of Houston, Office of the Mayor; Christine Wright, City of San Antonio; Mindy Ellmer, Pharmaceutical Care Management Association; Jennifer Cawley, Texas Association of Life and Health Insurers)

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

DIGEST: CSHB 907 would prohibit a health benefit plan issuer from requiring an enrollee to receive more than one prior authorization annually for a prescription drug prescribed to treat an autoimmune disease.

Applicability. The bill would apply only to certain health plans issued by organizations specified in the bill, including:

- the state Medicaid program, including Medicaid managed care;

- the Children's Health Insurance Program (CHIP);
- a plan issued by a health maintenance organization;
- a small employer health plan subject to the Health Insurance Portability and Availability Act;
- a consumer choice of benefits plan;
- a basic coverage plan under the Texas Employees Group Benefits Act;
- a basic plan under the Texas Public School Retired Employees Group Benefits Act;
- a primary care coverage plan under the Texas School Employees Uniform Group Health Coverage Act; and
- a basic coverage plan under the Uniform Insurance Benefits Act for employees of the University of Texas and Texas A&M systems.

The bill also would apply to coverage under a group health benefit plan provided to a state resident regardless of whether the group policy, agreement, or contract was issued or renewed in the state.

Exceptions. The bill would not apply to certain plans and policies, including a Medicare supplemental policy as defined by 42 U.S.C. Section 1395ss(g)(1) or a workers' compensation policy. The bill also would not apply to an individual health plan issued on or before March 23, 2010, that did not have any significant changes since that date that reduced benefits or increased costs to the individual.

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

SUPPORTERS SAY:

CSHB 907 would improve Texans' access to health care by prohibiting health plans from requiring multiple prior authorizations each year for a prescription drug used to treat an individual's autoimmune disease. Prior authorizations delay access to timely care, create administrative burdens for physicians, and interfere with a patient's ongoing treatment.

Currently, health plans use prior authorizations to require a physician to obtain approval of the medical necessity and appropriateness of health

care services, like prescription drugs, before they are provided. Concerns have been raised that some patients have to undergo the prior authorization process every time they need to refill their medication, even though their disease requires consistent, lifelong treatment. As patients wait for the prior authorization request to get approved, some may run out of medication, disrupting treatment and potentially increasing health risks. By limiting the number of prior authorizations a health plan could require each year for these patients, CSHB 907 would increase access to vital medication, leading to better patient outcomes, and reduce physicians' administrative burden.

CRITICS SAY:

CSHB 907 could undermine important patient protections and increase health care costs by prohibiting health plans from requiring multiple prior authorizations in a year for a prescription drug used to treat an individual's autoimmune disease. Prior authorization programs rely on evidence-based medicine to support the safe and appropriate use of medicines that have a higher tendency of misuse or abuse. Limiting the number of prior authorizations for an autoimmune disease prescription drug could reduce oversight of fraud, waste, and abuse and undermine practices that prevent harm, lower costs, and ensure care is delivered effectively. In addition, removing the ability to ensure appropriate utilization in Medicaid and the Children's Health Insurance Program (CHIP) could increase costs to taxpayers.

SUBJECT: Waiving title requirements for certain antique outboard motors

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 9 ayes — K. King, Gervin-Hawkins, Burns, Clardy, Frullo, Israel, Krause, Martinez, C. Morales

0 nays

WITNESSES: For — Leonard Sturm; (*Registered, but did not testify*: David Sinclair, Game Warden Peace Officers Association)

Against — None

On — (*Registered, but did not testify*: Justin Halverson, Texas Parks and Wildlife)

DIGEST: HB 2450 would define an antique outboard motor to mean an outboard motor that was at least 40 years old. The bill would exempt an antique outboard motor with a maximum capacity of 25 horsepower from certain titling requirements for vessels and outboard motors.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: HB 2450 would encourage participation in fishing and recreational boating by making it easier for Texans to purchase and legally use antique outboard motors of limited capacity on public waterways without a title. Current regulations prohibit the use of any outboard motor without a title on public waterways in the state except under certain restrictive conditions.

New outboard motors can cost thousands of dollars, making them prohibitively expensive for many Texans. By contrast, an older engine can cost less than $100. There are many outboard motors that meet the bill's criteria for sale in Texas at flea markets, garage sales, and through other channels, but often without the paperwork needed to legally transfer ownership. As a result, many would-be owners of older engines put off

buying and repairing them because of the difficulty in obtaining a title. By exempting older engines from titling requirements, HB 2450 would enable less-affluent and younger people, who may be less able to buy new, to enjoy Texas waterways and encourage the preservation of older motors.

HB 2450 would not have a significant financial impact on the Texas Parks and Wildlife Department (TPWD) and the state. Waiving the title fee would decrease revenue to the department's Game, Fish and Water Safety fund only by a small amount and would have a negligible impact on sales tax revenues.

CRITICS SAY:

HB 2450 could result in an increase in the number of stolen outboard motors on public waterways in Texas. Proof of ownership of an outboard motor is evidenced by a certificate of title issued by the TPWD, and exempting older motors from titling requirements could open the door to theft and illegal activity. Waiving title fees for antique outboard motors also would deprive the Texas Parks and Wildlife Department of title fees and its share of state sales tax revenue on those fees.