HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 20, 2021
87th Legislature, Number 38
The House convenes at 10 a.m.
Part One

Two bills are on the Major State Calendar and 27 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

The following House committees were scheduled to meet today: Human Services; Public Education; General Investigating; Land and Resource Management; Business and Industry; Redistricting; Natural Resources; State Affairs; Insurance; County Affairs; and Transportation.

Alma Allen
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 20, 2021
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Part 1

SUBJECT: Abolishing Anatomical Board and transferring duties to TFSC

COMMITTEE: Public Health — committee substitute recommended

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

0 nays

WITNESSES: For — John Hubbard, Anatomical Board of the State of Texas

Against — None

On — Tricia Hammett, Science Care, Inc.; Glenn Bower, Texas Funeral Service Commission; (*Registered, but did not testify*: Darren McDivitt, Sunset Advisory Commission)

BACKGROUND: The Anatomical Board of the State of the Texas, established in 1907, oversees the distribution of cadavers for use in medical or forensic science education and research. The board sets standards for, approves, and may investigate Texas' willed body programs, which are operated by certain colleges and universities and allow adults to donate their deceased bodies for the advancement of medical science and education. The board also inspects and approves certain anatomical facilities that request deceased human bodies and anatomical specimens for use in teaching or research.

Currently, the board oversees 13 willed body programs. These programs may transfer donated bodies to other facilities inspected and approved by the State Anatomical Board, including medical training facilities, medical device companies, search and rescue organizations, and other higher educational institutions that do not operate their own willed body programs. The board also collects data from these programs to ensure they meet education and research needs.

Governing structure. The board's membership includes one representative each from 16 Texas colleges and universities. Members are surgical or anatomical science professors appointed by the chief executive

of each school or college of chiropractic, dentistry, medicine, or osteopathy in the state, and they serve two-year terms. The board typically meets annually and elects a chair, vice chair, and secretary-treasurer who serve two-year terms.

Funding. The board receives no state appropriations but does collect fees from the registration of each body donated to willed body programs and the transfer of those bodies and anatomical specimens to approved facilities. In 2019, the board collected $48,700 from registration and transfer fees and spent $19,250 on its website, records storage fees, and travel reimbursement. The board may manage its funds through a local bank, and in 2019 the board's ending fund balance was $290,784.

Staffing. The board has no staff, and the board members conduct all of the board's activities.

Sunset date. The State Anatomical Board would be discontinued on September 1, 2021, unless continued in statute.

The board last underwent Sunset review in 1984, and in 1985 the Legislature reauthorized the board with several changes, including authorizing the board to collect fees, reducing its size, and clarifying the board's authority to inspect and approve facilities.

DIGEST:

CSHB 1565 would abolish the Anatomical Board of the State of Texas, transfer certain functions of the board to the Texas Funeral Service Commission (TFSC), and reconstitute the State Anatomical Board as an advisory committee to the commission. The bill would make related conforming changes, provide for the transition of the board's duties to TFSC, and repeal the board's Sunset date.

Transferring regulations to TFSC. The bill would transfer the regulation of willed body programs from the State Anatomical Board to TFSC. "Willed body program" would mean a program operated at an institution of higher education and approved by the commission or a program operated by an organization accredited by the American Association of Tissue Banks (AATB) that allowed a living individual to

donate the individual's body or anatomical specimen for educational or research purposes.

Exemptions. A willed body program that was operated by an organization accredited by the American Association of Tissue Banks could not be regulated by TFSC but would be required to register with the commission. The bill would require TFSC by rule to develop a registration process for those AATB-accredited organizations operating willed body programs.

The bill also would exempt AATB-accredited tissue banks from coordinating whole body donations through the Funeral Service Commission.

Duties of TFSC. Under the bill, TFSC would assume certain duties and administrative responsibilities of the State Anatomical Board. These would include responsibilities for:

- the distribution of donated bodies and anatomical specimens to certain institutions of higher education, forensic science programs, search and rescue organizations, physicians, and other authorized persons;
- certain procedures related to unclaimed bodies and autopsies for such bodies;
- receiving bodies from out-of-state;
- properly transporting bodies or specimens received by the commission;
- record keeping related to the donation of bodies and anatomical specimens; and
- public interest and complaint procedures.

The bill also would require TFSC to inspect and allow the commission to approve institutions and other persons for the receipt and use of bodies and anatomical specimens.

The commission would be allowed to set and collect certain fees, including for conducting required inspections of institutions or other authorized persons receiving and using bodies or anatomical specimens.

Advisory committee. The bill would reconstitute the State Anatomical Board as the State Anatomical Advisory Committee, which would advise the Funeral Service Commission on the regulation and operation of willed body programs in this state. The advisory committee would include representatives appointed by the commission from institutions of higher education that operated willed body programs. Members of the committee would serve two-year terms. The required composition and duration of advisory committees under current law would not apply to the State Anatomical Advisory Committee.

Rulemaking authority. TFSC would have to adopt rules, establish procedures, and prescribe forms necessary to administer and enforce the bill's provisions. To aid certain prosecutions under current law, the commission would have to adopt rules that clearly stated the authorized use or dissection of a body.

Rules regarding standards of practice, ethics, qualifications, or disciplinary sanctions for certain regulated institutions or persons could not be adopted by TFSC unless those rules had first been proposed by the advisory committee and authorized under current law. The commission could not modify a proposed rule by the advisory committee but could decline to adopt it.

Transition. Under the bill, the State Anatomical Board would be abolished but continue in existence until September 1, 2022, for the sole purpose of transferring obligations, property, rights, powers, and duties to the Texas Funeral Service Commission. The transfer would have to be completed by September 1, 2022. The commission would assume all of the board's obligations, property, rights, powers, and duties as they existed immediately before the bill's effective date.

By the 60th day after the bill's effective date, TFSC would have to appoint members to the State Anatomical Advisory Committee. Members of the anatomical board whose terms expired when the board was abolished would have to continue providing advice to the commission until a majority of members were appointed to the advisory committee. Current

board members could be appointed to the advisory committee if they met eligibility requirements.

All rules of the State Anatomical Board would continue in effect as rules of the Texas Funeral Service Commission until superseded by a rule of the commission.

All unexpended and unobligated funds under the board's secretary-treasurer would transfer to the general revenue fund so the commission could administer duties as amended by the bill.

Effective date. The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 1565 would clarify and improve the efficiency of regulation of willed body programs in Texas by abolishing the State Anatomical Board, transferring its functions to the Texas Funeral Service Commission, and reconstituting the board as an advisory committee to the commission. Texas has a continuing need to regulate the use of donated cadavers for education and research, and the bill would ensure that this regulation was conducted efficiently and effectively.

While the Anatomical Board's mission is to facilitate the distribution of human cadavers for teaching and research, higher education institutions and their willed body programs are the entities that actually receive and distribute the deceased bodies with minimal board involvement. The board's primary role is to inspect willed body programs; however, inspections occur infrequently, and the board takes few enforcement actions. Also, board members cannot conduct objective inspections while inspecting other members' facilities, placing them at risk of potentially making anticompetitive and unfair decisions. In addition, the Anatomical Board cannot provide effective oversight or adhere to regulatory best practices because it does not employ staff or receive appropriations. The board's statute and other state regulations have not kept up with the evolution of the whole body donation industry, resulting in significant regulatory gaps.

By abolishing the board, transferring its duties to the Texas Funeral Service Commission, and establishing an advisory committee to advise

the commission about the regulation of willed body programs, CSHB 1565 would address these concerns and ensure that willed body programs and related facilities were subject to effective oversight. Concerns about regulating commercial and for-profit body donation companies that have emerged since the board's last Sunset review, in addition to providing appropriations and staffing, are decisions best left up to the Legislature and addressed in a separate bill.

Exemptions for organizations accredited by the American Association of Tissue Banks (AATB) that operated willed body programs would provide flexibility for certain tissue banks currently operating willed body programs in Texas. While not subject to regulation by the Texas Funeral Service Commission under the bill, AATB-accredited organizations would still have to register their willed body program with the commission, which would provide accountability.

CRITICS SAY:

CSHB 1565 should include provisions that would appropriate funds to the Texas Funeral Service Commission (TFSC) so the commission could hire additional employees when it assumed the State Anatomical Board's duties. Transferring the board's duties to the commission could increase TFSC personnel costs as employees undergo training to get accustomed to their newly acquired duties.

In addition, the bill would exempt organizations that were accredited by the American Association of Tissue Banks from regulation by the Texas Funeral Service Commission. These exemptions would allow commercial and private entities to operate willed body programs without state oversight, leading to potential unethical business practices for obtaining human cadavers for medical education and research purposes. Regardless of an entity's accreditation status, the bill should require all commercial and private entities that operated willed body programs to follow state regulation just as institutions of higher education do. This would ensure uniform, statewide regulation of the donation, distribution, and use of cadavers and anatomical specimen.

OTHER CRITICS SAY:

CSHB 1565 would inappropriately abolish the Anatomical Board of the State of Texas, which effectively oversees the regulation and stewardship of donations through willed body programs. While the statutes governing

the board need to be updated, the board should not be abolished but instead should be allowed to continue.

NOTES:

According to the Legislative Budget Board, CSHB 1565 would have a positive impact of about $358,896 to general revenue related funds through fiscal 2022-23.

SUBJECT: Adopting Sunset recommendations for the Brazos River Authority

COMMITTEE: Natural Resources — committee substitute recommended

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

0 nays

2 absent — Kacal, Lucio

WITNESSES: For — David Collinsworth, Brazos River Authority; (*Registered, but did not testify*: Matt Phillips, Brazos River Authority)

Against — None

On — (*Registered, but did not testify*: Robert Romig, Sunset Advisory Commission)

BACKGROUND: The Brazos River Authority (BRA) was created by the Legislature in 1929 to provide for the conservation and development of natural resources in the Brazos River basin.

Functions. The BRA may conduct a broad range of activities, including building and operating reservoirs, engaging in flood control, selling water, treating wastewater, acquiring property by eminent domain, managing park land, and generating electricity.

Governing structure. The BRA is governed by a 21-member board of directors appointed by the governor with the advice and consent of the Senate. Members serve six-year staggered terms, and the presiding officer is designated by the governor. The board meets quarterly to provide oversight and approve the authority's budget, water sale rates, and large contracts.

Funding. The BRA does not receive state appropriations, nor does it assess a tax, though the authority may issue bonds to finance capital

projects. Funds are primarily generated from the sale of raw water and cost reimbursements from the operation of water and wastewater treatment facilities. In fiscal 2019, the BRA collected about $64 million in revenue and spent about $57.8 million.

Staffing. The authority employed 246 full-time employees in fiscal 2019, most of whom were located at the Waco headquarters or at the authority's three reservoirs: Possum Kingdom Lake, Lake Granbury, and Lake Limestone.

SB 523 by Birdwell, enacted by the 84th Legislature in 2015, subjects the Brazos River Authority to limited Sunset review every 12 years as if it were a state agency, except that the authority may not be abolished.

DIGEST:

CSHB 1570 would adopt certain Sunset Advisory Commission across-the-board recommendations for the Brazos River Authority (BRA). The bill would subject the authority to Sunset review as if it were a state agency scheduled to be abolished September 1, 2033.

Grounds for removal of directors. The bill would make it a ground for removal from the BRA board that a director did not have or maintain certain qualifications, was ineligible for directorship, could not discharge the individual's duties because of illness or disability, or was absent for more than half of the regularly scheduled meetings without an excuse.

If the general manager had knowledge that a potential ground for removal existed, the manager would have to notify the presiding officer of the board. The presiding officer then would notify the governor and attorney general. If the potential ground for removal involved the presiding officer, the general manager would notify the next highest ranking director.

Director training. The bill would prohibit an appointed person from being counted as a director until the person completed a training program. The bill also would provide requirements for the program. The general manager would have to create and provide to the directors a training manual including the information required for the training.

A person serving on the board of directors could vote, deliberate, and be counted as in attendance at a board meeting until December 1, 2021, notwithstanding the bill's training requirements.

Policies separating policy-making and staff functions. The BRA board would be required to develop and implement policies that clearly separated the policy-making responsibilities of the board and the management responsibilities of the authority's general manager and staff.

Complaints. The bill would require the BRA to maintain a system to promptly and efficiently act on complaints. Information describing the BRA's procedures for complaint investigation and resolution would have to be available to the public.

Public testimony. The BRA would have to develop and implement policies that provided the public with a reasonable opportunity to appear before the board and speak on any issue under the authority's jurisdiction.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 1570 would implement recommendations from the Sunset Advisory Commission to help the Brazos River Authority (BRA) grow and mature so that it could successfully manage and develop critical projects in the largest river basin in Texas. The bill would provide opportunities for BRA to apply basic good government standards by adopting Sunset's across-the-board recommendations that are routinely applied to state agencies to ensure open, responsive, and effective government.

Aside from adopting these recommendations, other statutory changes to the BRA are unnecessary. The current system to appoint members to the BRA board of directors ensures that the members are qualified. The governor would not appoint, nor would the Senate approve, individuals without adequate experience.

Concerns that the general manager would be given too much authority over the presiding officer of the board of directors are unfounded. The presiding officer and board members provide general oversight over the

BRA, but as the exclusive policymaking body they are distinct from the staff who carry out the daily work. CSHB 1570 correctly would task the general manager, who oversees the day-to-day operations of the BRA, with certain duties specified in the bill. Also, any complaints individuals had about the operations of the BRA could be reported under the complaint system established by the bill.

CRITICS SAY:

CSHB 1570 would not go far enough in reforming the Brazos River Authority to ensure proper management of the basin. Currently, board members are appointed by the governor but are not subject to any job experience requirements. The bill should require board members to have certain qualifications to be appointed, especially qualifications in managing flood control or electric generation.

The bill also would provide too much power to the general manager over the presiding officer by allowing the general manager to report grounds for removal, create a training manual for the board, and perform other duties. It should be the presiding officer, not the general manager, who directs the board to ensure a sound chain of command. The bill also should allow any person who had knowledge of a reason to remove a board member to report the issue.

SUBJECT: Establishing a cause of action for bad faith washouts of oil and gas leases

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

WITNESSES: For — Reagan Marble; (*Registered, but did not testify*: Julie Moore, Occidential Petroleum; Jason Modglin, Texas Alliance of Energy Producers)

Against — None

DIGEST: CSHB 4218 would authorize a person to bring a cause of action for a bad faith washout of the person's overriding royalty interest in an oil and gas lease.

The bill would define "washout" to mean the elimination or reduction of an overriding royalty interest in an oil and gas lease by the forfeiture or surrender of the lease and the subsequent reacquisition of a lease free of the overriding royalty interest. The bill would define "bad faith" to mean the conscious taking of action for the purpose of washing out all or part of an overriding royalty interest.

A person would be entitled to a remedy if able to prove by a preponderance of the evidence that:

- the person owned or had a legal right to the overriding royalty interest;
- the defendant had control over the oil and gas lease burdened by that interest;
- the defendant caused a washout of the person's interest; and

- the defendant acted in bad faith by knowingly or intentionally causing the washout.

An owner of an overriding royalty interest in an oil and gas lease would be authorized to bring an action in a district court of a county in which any part of the property subject to the lease was located. An owner who prevails in an action could recover:

- actual damages;
- enforcement of a constructive trust on the oil and gas lease or mineral estate acquired to accomplish the washout of the interest; and
- court costs and attorney's fees.

The provided remedies would be cumulative of other remedies provided by common law or statute. A person would be required to bring an action within two years of the date the person obtained actual knowledge that the washout occurred.

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

SUPPORTERS SAY:

CSHB 4218 would ensure that owners of an overriding royalty interest received their deserved payments for crucial services by establishing a cause of action against bad faith washouts. Overriding royalty interests are typically granted as a form of payment for brokers, landmen, geologists and other persons who are essential to bringing about the development of an oil and gas lease. Rather than accept a one-time payment, these individuals instead receive a portion of the lease's total production revenue. This is a payment that is earned by persons essential to the lease's future production and should be honored. It is appropriate to establish a cause of action to address bad faith attempts to wash these individuals out.

The bill sets an appropriate legal standard for the established cause of action. Together, the bill's definitions of "bad faith" and "washout" serve to reinforce each other and make the bill's meaning clear. Read together, the clear factor in determining a bad faith washout is the relatively quick resumption of another lease that is free of the overriding royalty interest.

Affected individuals who have their interest removed under a new lease that is otherwise similar to the canceled lease would have a clear path to a successful cause of action under the bill.

Concerns about the bill's effects on the development of marginally profitable oil and gas leases are unfounded and do not account for the methods currently used in such situations. Owners of overriding royalty interests are typically willing to work out an altered payment structure rather than see a lease go undeveloped. Additionally, they sometimes choose to sell their interest back to the lease holder in exchange for a one-time payment. It benefits interest holders to be flexible and alter the terms of an existing royalty interest rather than receive no payment from an undeveloped lease. These royalty interests represent previously agreed payment for vital services, and the existing methods for altering this payment method render any attempt to washout the interest owner unnecessary.

CRITICS SAY:

The requirement to prove bad faith in an action brought under the provisions of the bill may be too high of a standard. The necessity of showing in court by a preponderance of the evidence that the act of washing out an overriding royalty interest owner was done consciously for the purpose of removing that royalty could be a difficult standard to meet. The cause of action should instead rely only on the bill's definition of "washout" which would make the rapid resumption of a lease free of the washed out royalty interest the most important factor in an action brought under the bill.

OTHER CRITICS SAY:

The bill could create a chilling effect on the development of marginally profitable oil and gas leases. There are instances where the overriding royalty interest could mean the difference between profitability and unprofitability for an oil and gas lease. Creating a new lease free of the overriding royalty interest would negatively impact the owner of that interest, but allowing the lease to be developed rather than sit idle would create the most benefit for the state.

SUBJECT: Increasing the personal needs allowance for certain Medicaid recipients

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Frank, Hinojosa, Hull, Klick, Meza, Neave, Noble, Rose

1 nay — Shaheen

WITNESSES: For — Alexa Schoeman, Long Term Care Ombudsman; (*Registered, but did not testify*: Amanda Fredriksen, AARP; Anne Dunkelberg, Every Texan (formerly CPPP); Myra Leo, Methodist Healthcare Ministries; Laurie Vanhoose, Texas Association of Health Plans; Troy Alexander, Texas Medical Association; Dan Finch, Texas Medical Association; Ashley Ford, The Arc of Texas; Jennifer Allmon, The Texas Catholic Conference of Bishops)

Against — None

On — (*Registered, but did not testify*: Janice Quertermous, Texas Health and Human Services Commission)

BACKGROUND: Human Resources Code sec. 32.024(w) requires the executive commissioner of the Health and Human Services Commission to set a personal needs allowance of at least $60 per month for Medicaid recipients who are residents of long-term care facilities.

DIGEST: HB 270 would increase the personal needs allowance for Medicaid recipients in long-term care facilities from $60 to $75.

If a state agency determined that a waiver or authorization from a federal agency was necessary for implementation of any provision of the bill, the agency would be required to request the waiver and would be permitted to delay implementation of that provision until the waiver or authorization was granted.

The bill would take effect September 1, 2021, and would apply only to personal needs allowances paid on or after the effective date.

SUPPORTERS SAY:

HB 270 would increase the personal needs allowance to $75, allowing residents of long-term care facilities to retain more of their money from Social Security to purchase personal items such as haircuts, toiletries, cellphone minutes and data, and other items, the costs of which are often overlooked when budgeting for the needs of these residents.

Residents of long-term care facilities who receive Medicaid are allowed to keep a certain amount of their Social Security income for their own personal needs, an amount that is known as a personal needs allowance. The amount is set by the executive commissioner of the Health and Human Services Commission, subject to a statutory minimum, and has not been raised since 2006. The current minimum monthly personal needs allowance of $60 does not adequately account for the increase in the cost of living and goods since the allowance was last increased more than a decade ago.

The bill's $15 increase in the personal needs allowance would account for the increase in cost of living and goods over the years and would enable residents to maintain meaningful control over their budgets. When an individual enters a long-term care facility, they often lose much of the autonomy associated with their previous life, and increasing the personal needs allowance would allow these residents to maintain some of that autonomy through increased flexibility related to personal finances.

To ensure effective implementation of the increase in the personal needs allowance and should any unforeseen costs arise, $18 million could be made available to the Health and Human Services Commission for fiscal 2022-23 through a rider in Art. 11 of CSSB 1 by Nelson (Bonnen), the general appropriations act, contingent on the passage of this bill.

CRITICS SAY:

Increasing the personal needs allowance for certain residents of long-term care facilities would cost Texas close to $10 million in general revenue related funds through the next biennium.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $10 million to general revenue related funds through fiscal 2022-23. A contingency rider for $18 million was included for

consideration in Art. 11 of CSSB 1 by Nelson (Bonnen), the general appropriations act for fiscal 2022-23.

SUBJECT: Allowing RRC to use drones for inspection of certain oil and gas sites

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 9 ayes — Goldman, Anchia, Craddick, Darby, Geren, T. King, Leman, Longoria, Reynolds

0 nays

2 absent — Herrero, Ellzey

WITNESSES: For — (*Registered, but did not testify*: Jimmy Carlile, Fasken Oil and Ranch; Cyrus Reed, Lone Star Chapter Sierra Club; William Stevens, Panhandle Producers and Royalty Owners Association; Ben Shepperd, Permian Basin Petroleum Association; Lon Burnam, Public Citizen; Jason Modglin, Texas Alliance of Energy Producers; Ryan Paylor, Texas Independent Producers & Royalty Owners Association (TIPRO); Suzanne Mitchell)

Against — None

On — (*Registered, but did not testify*: Alexander Schoch, Texas Railroad Commission)

BACKGROUND: Government Code sec. 423.002 lists certain circumstances under which it is lawful to capture an image using an unmanned aircraft, including for oil pipeline safety and rig protection, by the operator of a pipeline for inspection and maintenance, or by an electric or natural gas utility or a telecommunications provider in certain situations.

DIGEST: HB 2957 would expand the lawful use of an unmanned aircraft to include capturing an image by the Railroad Commission in connection with the inspection and examination of:

- an oil or gas site or facility, including a well, tank, or disposal or injection site;
- a pipeline facility; or

- a surface mining site.

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 2957 would provide the Railroad Commission (RRC) with a tool to improve inspections of oil and gas facilities under its regulatory authority. Under current law, RRC already can use drones to capture images at the scene of a spill of hazardous materials, in connection with oil pipeline safety and rig protection, and for the purposes of fire suppression. However, current law does not explicitly authorize RRC pipeline and surface inspectors to use drones for inspection purposes.

By permitting RRC to use drones for inspection purposes, the bill would ensure the commission could complete more regular and efficient inspections of oil and gas facilities by allowing inspectors to more quickly access sites, gather better data, including a more complete picture of sites, and decrease inspection turnaround times.

CRITICS SAY:

No concerns identified.

SUBJECT: Establishing a commercial oyster mariculture advisory board

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 — Bradley Lomax; (*Registered, but did not testify*: Joey Park, Coastal Conservation Association Texas; David Sinclair, Game Warden Peace Officers Association; Patricia Shipton, Nueces County)

Against — None

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

BACKGROUND: In 2019, the state established the Texas Oyster Mariculture Program under the Parks and Wildlife Commission to oversee the development and regulation of the oyster mariculture industry.

DIGEST: HB 3600 would establish a commercial oyster mariculture advisory board within the Office of the Governor to advise all state agencies with regulatory authority over the commercial oyster mariculture industry.

The board would make recommendations to the governor and relevant agencies concerning the oyster mariculture industry and could consult with both state and federal agencies. The bill would exempt the board from certain provisions governing state agency advisory committees.

The governor would appoint seven members, including:

- four members from the oyster mariculture, seafood, or related industries who have a documented interest in free enterprise and commercial use of oysters, and;

- three members from the scientific and conservation community who have a documented interest in coastal environmental sustainability.

Members would serve staggered three-year terms and vacancies would be filled for the remainder of a term by the governor's appointment. The governor would designate one of the industry representative members as the board's presiding officer for a one-year term. The presiding officer would remain a voting member. Members would not be compensated, but would be entitled to reimbursement for expenses related to official duties.

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 3600 would contribute to the continuing development of the oyster mariculture industry in the state by creating an advisory board that would provide regulatory guidance and consistent policy recommendations on the industry to the governor and relevant state agencies.

Currently, the oyster industry is subject to regulatory oversight by multiple state agencies. Due to a lack of coordination, these agencies have been unable to significantly assist the development of the new oyster mariculture industry. HB 3600 would create a focused advisory panel representing both business and conservation interests that would be an interface between the industry and state agencies and would work to provide a coordinated approach to facilitating the growth of the industry.

CRITICS SAY:

No concerns identified.

SUBJECT: Establishing the Texas Commission on Antisemitism

COMMITTEE: Culture, Recreation and Tourism — committee substitute recommended

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

0 nays

WITNESSES: For —Randall Czarlinsky, American Jewish Committee; Ben Proler; (*Registered, but did not testify*: Joel Schwitzer, American Jewish Committee; Mark Vane)

Against — None

On — Mark Wolfe, Texas Historical Commission

DIGEST: CSHB 3257 would establish the Texas Commission on Antisemitism and specify that the commission would be administratively attached to the Texas Historical Commission (THC). The Texas Commission on Antisemitism would be subject to the Texas Sunset Act and would be abolished September 1, 2033, unless continued in statute.

Definition. The bill would define "antisemitism" as a certain perception of Jews that may be expressed as hatred towards Jews. The term would include rhetorical and physical acts of antisemitism directed toward Jewish or non-Jewish individuals or their property or toward Jewish community institutions and religious facilities. The bill would establish as examples of antisemitism those that are included with the International Holocaust Remembrance Alliance's "Working Definition of Antisemitism" adopted on May 26, 2016.

Duties. The Texas Commission on Antisemitism would have to:

- conduct a study on antisemitism in Texas and submit a report on the results of the study to the governor, the lieutenant governor, the

House speaker, and the Legislature no later than November 1 of each even-numbered year;

- provide advice and assistance to public and private primary and secondary schools and institutions of higher education in Texas regarding methods of combating antisemitism;
- meet with appropriate representatives of public and private organizations, including service organizations, to provide information on and to assist in planning, coordinating, or modifying antisemitism awareness programs; and
- solicit volunteers to participate in commemorative events designed to enhance public awareness of the fight against antisemitism.

The commission would have to adopt rules as necessary for its own procedures.

Composition. The commission would be composed of nine members appointed by the governor. Commission members would have to be residents of Texas, and the commission would have to include members who demonstrated a significant interest in and were knowledgeable about issues in the Jewish community and antisemitism.

Commission members would serve staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year. As soon as practicable after the effective date of the bill, the governor would have to appoint members to the commission. The governor would have to provide for three of the members to serve terms expiring February 1, 2023, three of the members to serve terms expiring February 1, 2025, and three of the members to serve terms expiring February 1, 2027. Subsequent appointments would be for six-year terms.

A commission member would be eligible for reappointment to another term or part of a term, but could not serve more than two consecutive terms. A member would be considered to have served a term only if the member served two or more years of a term.

A commission member would not be entitled to compensation but would be entitled to reimbursement for travel expenses incurred while

transacting commission business, as provided by the general appropriations act.

The governor would have to designate a presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Advisory status. The commission would function only in an advisory capacity in implementing its powers and duties. Membership on the commission would not constitute a public office. Statutes concerning state agency advisory committees would not apply to the commission.

Meetings. The commission would have to meet at least quarterly in Texas as designated by the commission. Five voting members of the commission would constitute a quorum for transacting commission business.

The commission would have to develop and implement policies that provided the public with a reasonable opportunity to appear before the commission and speak on any issue under the commission's jurisdiction.

Staff. THC would have to provide one part-time employee to serve as the coordinator for the Texas Commission on Antisemitism to transact commission business.

THC could provide staff and support functions and activities of the Texas Commission on Antisemitism from money available to THC that could be used for this purpose. The Legislature could specifically appropriate money to THC to provide staff and to otherwise support functions and activities of the commission.

Funding. The commission could accept gifts, grants, and donations from a public or private source to use in performing its duties. The commission could participate in the establishment and operation of an affiliated nonprofit organization whose purpose was to raise funds for or provide other services or benefits to the commission.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 3257 would help raise awareness of and combat antisemitism by defining it in statute and creating the Texas Commission on Antisemitism, to be housed in the Texas Historical Commission. Incidents of antisemitism are on the rise in the United States, but a recent survey found a worrying lack of awareness by the public about these incidents and antisemitism more broadly. The bill would help address this problem in Texas by codifying a definition of antisemitism broadly used internationally and requiring a new specialized commission to study and make recommendations for fighting antisemitism in Texas, including through educational opportunities.

The bill takes the crucial step of formally defining antisemitism in statute and appropriately creates a commission to combat antisemitism. The state government should direct resources towards its priorities, including combating antisemitism. The bill would house the Texas Commission on Antisemitism within an existing state agency for this purpose.

CRITICS SAY:

CSHB 3257 would create a new government commission and involve the government in educating the public about antisemitism, a responsibility best reserved for religious institutions and parents.

SUBJECT: Adding requirements for remote and in-person open meetings

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, P. King, Metcalf, Raymond, Shaheen, Smithee

0 nays

3 absent — Hunter, Lucio, Slawson

WITNESSES: For — Kelley Shannon, Freedom of Information Foundation of Texas; Laura Prather, Transparent and Accountable Government Coalition; (*Registered, but did not testify*: Bill Kelly, City of Houston Mayor's Office; Dena Donaldson, Texas AFT; Michael Schneider, Texas Association of Broadcasters; Pamela McPeters, Texas Classroom Teachers Association; Mike Hodges, Texas Press Association; James Quintero, Texas Public Policy Foundation; Thomas Parkinson)

Against — None

DIGEST: CSHB 2683 would create public access, notice, accessibility and other requirements for remote or partially remote meetings of a governmental body subject to the statutory requirements for open meetings. The bill also would add notice and broadcasting requirements for open meetings.

Remote or partially remote meetings. The bill would require a governmental body that held an open meeting at which at least a majority of the members of the body participated by a method other than by appearing in person at the meeting's physical location, including by telephone conference call or videoconference call, to:

- make the open meeting audible to the public by telephone and at each physical location where a member of the public could observe and participate in the meeting;

- provide public access to both audiovisual and audio-only feeds of the meeting over the internet, if the meeting was broadcast live over the internet or held wholly or partly by videoconference call;
- if applicable, allow members of the public to provide testimony to the governmental body by telephone and by videoconference call if the meeting was wholly or partly held by videoconference call; and
- ensure that members of the public could listen to and, if applicable, speak at the meeting by telephone.

These requirements for remote or partially remote open meetings would be in addition to other requirements applicable to open meetings. Such an open meeting would have to be recorded and, except as otherwise provided by law, made available to the public not later than 24 hours after the adjourning of the meeting.

The notice of a remote or partially remote open meeting would have to:

- comply with the statutory requirements for open meetings;
- list each physical location where a member of the public could observe and participate in the meeting;
- include a toll free telephone number that members of the public could use to hear and, if applicable, speak at the meeting;
- include access information for any audiovisual or audio-only feeds; and
- include instructions for a member of the public to speak at the meeting from a remote location or while physically present at a physical location where a member of the public could observe and participate in the meeting.

Notice of open meeting. The required written notice of an open meeting would have to include an agenda of the specific subjects to be considered in the meeting and, to the extent foreseeable at the time the notice was posted, the subjects to be considered in a closed meeting.

A governmental body could not conduct a closed meeting on a subject not included in the notice unless the body determined by official action during the open meeting for which the notice was posted that the necessity of

considering the subject was not reasonably foreseeable at the time the notice was posted.

Broadcast of open meeting. With certain exceptions, a governmental body would have to broadcast an open meeting over the internet if the physical location of the meeting was not accessible to members of the public or was not large enough to accommodate all persons seeking to attend the meeting in person, including if the located had reduced capacity as the result of a public emergency or disaster.

With certain exceptions, a governmental body that broadcast a meeting over the internet would have to establish an internet site and provide free and open access for members of the public to the broadcast from that site.

The bill would take effect September 1, 2021, and would apply only to a meeting of a governmental body held on or after the bill's effective date.

SUPPORTERS SAY:

CSHB 2683 would enhance the openness and transparency of the state government by requiring public access to meetings conducted remotely or partially remotely. During the COVID-19 pandemic, governmental agencies in Texas were able to conduct remote meetings online due to a temporary suspension of the requirement for government officials to be physically present at a meeting location. However, not all governmental agencies provided adequate public access to meetings conducted remotely. The bill would remedy this by requiring the public be able to access and, if applicable, speak during open meetings conducted remotely, requiring the broadcast and archival of certain open meetings, as well as expanding meeting notice requirements.

The bill seeks to create a standard for public access to remote meetings in response to an increase of such meetings because of the pandemic, not to change testimony rules for the Legislature or other governmental bodies.

CRITICS SAY:

CSHB 2683 should require that same-day registration be allowed for testimony in an open meeting and should codify the ability to testify remotely to the Legislature.

SUBJECT: Allowing comptroller to require electronic submission of certain tax items

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 — None

Against — None

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

DIGEST: HB 3786 would allow the comptroller, after providing notice, to require a document, payment, notice, report, or other property tax-related item required to be submitted to the comptroller to be submitted electronically. The comptroller also could send such an item electronically.

The comptroller could adopt rules to administer these provisions, including rules specifying the format of an item electronically submitted or sent.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: HB 3786 would make the comptroller's office more efficient and bring older laws up to date by allowing the comptroller to require property tax-related items be submitted electronically. Currently, some provisions require tax documents, payments, or notices be mailed to or from the comptroller, creating an administrative burden and a significant postage cost. By allowing the comptroller to send and receive documents electronically, the bill would reduce costs and allow the comptroller's office to use its staff more efficiently. The comptroller would adopt rules

to administer the bill, which could provide an opt-out system for an entity that could not submit documents electronically.

CRITICS SAY:

No concerns identified.

SUBJECT: Specifying sales tax exemption for items sold by nonprofit at county fair

COMMITTEE: Ways and Means — committee substitute recommended

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*: Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Tax Code sec. 151.3102 exempts the sale of a taxable item from sales and use taxes if the seller or retailer is a 501(c)(3) nonprofit organization, the sale takes place at a county fair, and the purchaser is a person attending or participating in the fair.

DIGEST: CSHB 3799 would specify that an item was exempt from sales and use taxes if the seller or retailer was a county fair association or other nonprofit and the sale took place at a county fair operated by a county fair association on county-owned property.

The bill would define "county fair association" as a 501(c)(3) organization exempt from federal income taxation that organized a county fair primarily for the exhibition of local horticultural or agricultural products or livestock. The term would not include an association that held a license issued after January 1, 2001, under the Texas Racing Act or an association that organized events other than a county fair, including an exhibition of arts and crafts or a state fair.

"Livestock" would include turkeys, domesticated fowl, cows, sheep, swine, horses, mules, donkeys, and goats. The term would not include

domesticated animals such as dogs, cats, guinea pigs, hamsters, or similar animals.

The bill would take effect October 1, 2021, and would not affect tax liability accruing before that date.

SUPPORTERS SAY:

HB 3799, by providing a definition for a county fair association, would clarify existing law exempting from sales and use taxes sales at county fairs by nonprofit organizations. The clarification would ensure that the tax exemption applied to particular organizations, as originally intended.

CRITICS SAY:

No concerns identified.

SUBJECT: Requiring auto insurance coverage in peer-to-peer car sharing programs

COMMITTEE: Insurance — committee substitute recommended

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

0 nays

1 absent — Vo

WITNESSES: For — Jon Van Arsdell, Avail and Allstate; Jon Schnautz, National Association of Mutual Insurance Companies; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Joe Woods, American Property and Casualty Insurance Association; Bradford Shields, Getaround Inc.; Lee Loftis, Independent Insurance Agents of Texas; Servando Esparza, TechNet)

Against — None

On — (*Registered, but did not testify*: Marianne Baker and Jaime Walker, Texas Department of Insurance)

BACKGROUND: Business and Commerce Code sec. 91.001 defines "rental agreement" as an agreement for 30 days or less that states the terms governing the use of a private passenger vehicle rented by a rental company.

DIGEST: CSHB 113 would require a peer-to-peer (P2P) car sharing program to ensure that, during each car sharing period, the owner and driver were insured under certain automobile liability insurance policies. The bill also would define several terms, including "P2P car sharing," "P2P car sharing program," "agreement," and "car sharing period," among others.

Definitions. "Peer-to-peer (P2P) car sharing" would mean the authorized use of a vehicle by an individual other than the vehicle's owner through a P2P car sharing program. The term would not include the use of a private passenger vehicle from a rental company under certain rental agreement

terms as those terms were defined by Business and Commerce Code sec. 91.001.

"P2P car sharing program" would mean a business platform that connected owners with drivers to enable vehicle sharing for financial consideration. The term would not include:

- a service provider who was solely providing hardware or software as a service to a person or entity that was not effectuating payment of financial consideration for use of a shared vehicle; or
- a rental company as defined in current law.

"Agreement" would mean the terms and conditions applicable to an owner and driver that govern the use of a shared vehicle through a P2P car sharing program. The term would exclude a rental agreement defined by current law.

"Car sharing period" would mean the period of time:

- beginning with the delivery period in which a shared vehicle was being delivered to the location of the start time, if applicable, under the agreement; or
- if there was no delivery period, the start time and ending at the termination time.

Eligible drivers. A P2P car sharing program could not enter into an agreement with a driver unless the driver who would operate the shared vehicle:

- was a resident of the state and held a driver's license from this state that authorized the driver to operate in the shared vehicle's class;
- was a nonresident of the state and held a driver's license from that state that authorized the driver to operate in the shared vehicle's class; and met the minimum driving age requirements of this state; or
- was otherwise specifically authorized by this state to drive vehicles in the shared vehicle's class.

Applicability. The bill would apply to auto insurance policies in the state, including policies issued by a Lloyd's plan, a reciprocal or interinsurance exchange, or a county mutual insurance company.

Coverage requirements. Required auto insurance for the owner and driver during each car sharing period would have to:

- provide coverage in amounts not less than amounts under Transportation Code sec. 601.072;
- recognize that the shared vehicle insured under the policy was made available and used through a P2P car sharing program;
- provide primary coverage during the car sharing period; and
- could not exclude the use of a shared vehicle by a driver.

The coverage requirements could be satisfied by automobile insurance maintained by the owner, driver, or P2P car sharing program, or a combination of those coverages.

The bill would allow a P2P car sharing program to own and maintain as the named insured one or more policies of auto insurance that separately or in combination provided coverage for:

- liability assumed by the program under an agreement;
- liability of the owner;
- damage to or loss of the shared vehicle; or
- liability of the driver.

Exclusions. The bill would allow an auto insurer to exclude any coverage and the duty to defend or indemnify for any claim afforded under an owner's auto insurance policy during a car sharing period, including an exclusion of liability for the following coverages: bodily injury and property damage; personal injury protection; uninsured and underinsured motorist; medical payments; comprehensive physical damage; and collision physical damage.

Assumption of liability. Except as specified in the bill, a P2P car sharing program would have to assume liability of an owner for bodily injury or property damage to third parties or uninsured or underinsured motorist or personal injury protection losses by damaged third parities during the car sharing period in an amount stated in the agreement, which could not be less than amounts:

- required for uninsured or underinsured motorist coverage under Insurance Code sec. 1952.101;
- provided as the maximum amount of required personal injury protection coverage under Insurance Code sec. 1952.153; or
- provided by Transportation Code ch. 601, subch. D.

A P2P car sharing program would not have to assume liability of an owner if the owner:

- made an intentional or fraudulent material misrepresentation or omission to the program before the car sharing period in which the loss occurred; or
- acted in concert with a driver who failed to return the shared vehicle as stated in the agreement.

Claims. An insurer or P2P car sharing program providing the required auto insurance coverage would have to assume primary liability for a claim when:

- a dispute existed as to who was in control of the shared vehicle at the time of the loss and the program did not have available, did not retain, or failed to provide certain required information; or
- a dispute existed as to whether the shared vehicle was returned to the alternatively agreed upon location.

Vicarious liability. Under the bill, a P2P car sharing program and an owner would not be liable under a theory of vicarious liability in accordance with 49 U.S.C. sec. 30106 or under any state or local law that imposed liability solely based on vehicle ownership.

Disclosures. Each agreement entered into in the state would have to provide certain disclosures to the owner and driver, including:

- any right of the P2P car sharing program to seek indemnification from the owner or driver for economic loss sustained by the program resulting from a breach of the agreement;
- that an auto insurance policy issued to the owner for the shared vehicle or to the driver would not provide a defense or indemnification for any claim asserted by the P2P program;
- that the program's insurance coverage on the owner and the driver was in effect only during each car sharing period;
- the daily rate, fees, and, if applicable, any insurance costs that were charged to the owner or driver; and
- that the owner's auto insurance could not provide coverage for a shared vehicle, among other required disclosures.

Record retention, equipment. The bill would require a P2P car sharing program to keep and maintain records of:

- the name and address of each driver who entered into an agreement with the program; and
- the driver's license number and place of issuance of each driver and individual who would operate a shared vehicle under the program.

A P2P program would have to collect and verify certain information and provide that information on request to the owner, the owner's insurer, or the driver's insurer to facility a claim coverage investigation, settlement, negotiation, or litigation.

Under the bill, a P2P program would be solely responsible for any equipment placed in or on a shared vehicle used under the program to monitor or facilitate the car sharing transaction. The program would have to agree to indemnify and hold harmless the vehicle's owner for any damage to or theft of such equipment during the car sharing period not caused by the owner.

Other provisions. Before an owner made a shared vehicle available for car sharing on a P2P program, the bill would require the program to verify that the vehicle did not have a safety recall for which repairs had not been made.

The commissioner of the Texas Department of Insurance could adopt rules to implement the bill's provisions.

The bill would take effect September 1, 2021, and would apply only to a P2P car sharing agreement entered into and an automobile insurance policy issued or renewed on or after January 1, 2022.

SUPPORTERS SAY:

CSHB 113 would establish clear definitions within the peer-to-peer (P2P) car sharing industry, which provides flexibility to car owners who want to offer their vehicles for rent to others. This allows Texans to create new economic opportunities for themselves. The bill would implement robust measures for consumer safety, transparent pricing, and insurance coverage for users in P2P programs by requiring both the owner and driver of a shared vehicle to be covered under an auto insurance policy.

The bill is based on the Peer-to-Peer Car Sharing Model Act, which was developed by the National Council of Insurance Legislators. Currently, 14 other states have adopted this model. The bill is necessary for establishing a uniform, statewide insurance framework for an increasingly popular industry in Texas.

CRITICS SAY:

No concerns identified.

SUBJECT: Continuing the Trade Agricultural Inspection Grant Program until 2025

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 9 ayes — Burns, Anderson, Bailes, Cole, Cyrier, Guillen, Herrero, Rosenthal, Toth

0 nays

WITNESSES: For — Tony Martinez, Pharr International Bridge; Dante Galeazzi, Texas International Produce Association; (*Registered, but did not testify*: Cynthia Garza-Reyes and Michael Vargas, City of Pharr and Pharr International Bridge; J Pete Laney, Texas Citrus Mutual)

Against — None

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

BACKGROUND: Agriculture Code sec. 12.050 establishes the Trade Agricultural Grant Program and authorizes the Texas Department of Agriculture to partner with a nonprofit organization to assist in performing agricultural inspections on products entering from Mexico. The nonprofit organization is chosen through a competitive bidding process and is required to match all state funds granted.

DIGEST: HB 1371 would extend the Trade Agricultural Inspection Grant program until September 1, 2025. The Texas Department of Agriculture would be required to evaluate the performance of the program and submit a report to the Legislature containing certain information relating to that performance by January 15, 2025.

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 1371 would allow the proven benefits of the Trade Agricultural Inspection Grant Program to continue until 2025. This program reduces the potential financial harm to Texas businesses caused by backups at border agricultural inspection sites and increases access to fresh produce throughout Texas and the nation.

Long wait times at federal inspection sites can have a detrimental impact on the quality of produce brought across the border and can disrupt a crucial component of the state's food industry. The loss of imported produce can have serious repercussions across Texas, and the perishable nature of these products creates an urgent need for methods that decrease wait times for inspections at border crossings. The state has found the grant program to be an effective method to address this issue. Partnering with a nonprofit organization chosen through a competitive bidding process based on the organization's proven experience working with border authorities and ability to match state funds effectively supplements existing inspection programs and should be allowed to continue.

To ensure effective implementation of the program, $725,000 could be made available to the Texas Department of Agriculture through a rider in Art. 11 of CSSB 1 by Nelson (Bonnen), the general appropriations act.

CRITICS SAY:

HB 1371 would continue the Trade Agricultural Inspection Grant Program, a useful tool in the effort to reduce inspection wait times for agricultural products at the border, but appropriations would need to be made in support of the program to accomplish the bill's goals.

NOTES:

According to a Legislative Budget Board estimate, the bill would have a negative impact of $500,000 on general revenue related funds through the biennium ending August 31, 2023.

SUBJECT: Waiving fishing license fees for residents 85 years old or over

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

Against — None

On — John Shepperd, Texas Foundation for Conservation; Justin Halvorsen, Texas Parks and Wildlife Department

BACKGROUND: Parks and Wildlife Code sec. 46.004(c) requires the Texas Parks and Wildlife Commission to waive the resident fishing license fee for a qualified disabled veteran or a Texas resident on active military duty.

Some have suggested that waiving fishing license fees could reduce barriers for seniors with limited income to participate in a healthy outdoor activity.

DIGEST: HB 559 would require the Parks and Wildlife Commission to waive the resident fishing license fee for Texas residents who are 85 years old or over.

The Parks and Wildlife Department would not be required to issue a refund for any fishing license issued before the bill's effective date.

The bill would take effect September 1, 2021, and would apply only to a fee charged for a fishing license issued on or after that date.

SUBJECT: Requiring notice of known fuel gas piping in home seller's disclosures

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — C. Turner, Hefner, Crockett, Lambert, Ordaz Perez, Patterson, S. Thompson

0 nays

2 absent — Cain, Shine

WITNESSES: For — Matt Long; Becky Teel

Against — None

DIGEST: CSHB 1993 would require that fuel gas piping made of either black iron pipe, copper, or corrugated stainless steel tubing be included among known property features that must be included in home seller's disclosures.

The bill would take effect September 1, 2021, and would apply only to transfers of property that occur on or after that date. For the purposes of the bill, a transfer of property would occur before the effective date of the bill if the contract were executed before that date.

SUPPORTERS SAY: CSHB 1993 would help protect prospective homebuyers by requiring that they be made aware of a known use of potentially dangerous gas piping in a home for sale. Corrugated stainless steel tubing (CSST) can be dangerous if not properly installed and punctured or exposed to high levels of electricity. The release of gas combined with an electrical charge can result in deadly house fires. This bill would ensure that homebuyers were able to consider the risks associated with CSST when deciding whether to buy a property.

CRITICS SAY: No concerns identified.

SUBJECT: Modifying certain court orders after the death of a child's conservator

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 — Patsy Rainwater-Maddux; (*Registered, but did not testify*: Amy Bresnen, Texas Family Law Foundation; Anna Alkire; Beth Maynard; Ruth York)

Against — None

On — Jeremy Newman, Texas Home School Coalition

BACKGROUND: Family Code sec. 156.101 establishes grounds for the modification of an order establishing conservatorship or possession and access to a child. A court may modify an order that provides for the appointment of a conservator for a child if the modification would be in the child's best interest and the circumstances of the child, conservator, or other party affected by the order have materially and substantially changed since the order was rendered.

DIGEST: HB 1849 would establish the death of a child's conservator as a material and substantial change of circumstances sufficient to justify a temporary order and modification of an existing court order or portion of a decree that:

- provided for the appointment of a conservator; or
- set the terms and conditions of conservatorship or for the possession of or access to the child.

Before modifying an order, the court would have to consider any term or condition of the order or portion of a decree that denied possession of the child to a parent or imposed restrictions or limitations on a parent's right

to possession of or access to the child. The modified order would have to include those restrictions or limitations if the court found that the restrictions or limitations continued to be in the child's best interest.

The bill would take effect September 1, 2021, and would apply to a suit for modification that was pending in a trial court on the effective date or that was filed on or after that date.

SUPPORTERS SAY:

HB 1849 would protect Texas children by ensuring that they were placed in a safe and stable environment following the death of a custodial parent. If divorced parents have a court order or divorce decree that imposes limitations on one parent regarding access to the child, the decree is upheld only when both parents are alive. When a custodial parent dies, generally possession of the child can revert to the surviving parent, which could put children at risk by placing them with a surviving but potentially unfit parent. HB 1849 would prevent dangerous placements by requiring the court to revisit orders or divorce decrees following the death of a custodial parent to modify the decree or include the original limitations.

CRITICS SAY:

HB 1849 could deprive a surviving parent of access to the parent's child by requiring a court to revisit any limitations or restrictions contained in an original divorce decree or related order after the death of a child's custodial parent. The bill also could open the door for parties who were not part of the original divorce decree, such as grandparents or others, to weigh in on the decision of where a child is placed after the death of the child's custodial parent.

SUBJECT: Allowing GCA development corporations to finance certain projects

COMMITTEE: International Relations and Economic Development — favorable, without amendment

VOTE: 8 ayes — Button, C. Morales, Beckley, C. Bell, Canales, Hunter, Metcalf, Ordaz Perez

0 nays

1 absent — Larson

WITNESSES: For — Elizabeth Fazio Hale, Gulf Coast Authority; Charlene Heydinger, Keeping PACE in Texas; (*Registered, but did not testify*: Carrie Simmons, Conservative Texans for Energy Innovation; Frank Jones, Gulf Coast Authority)

Against — None

DIGEST: HB 2390 would allow a development corporation created by the Gulf Coast Authority to finance:

- projects authorized under the Development Corporation Act located inside or outside of Texas; and
- qualified improvements located inside or outside of Texas in the same manner and to the same extent as a municipality or county is authorized under the Property Assessed Clean Energy Act.

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 2390 would expand regional and statewide business opportunities, save Texans money, and help protect the water and environment of Texas by allowing development corporations created by the Gulf Coast Authority (GCA) to finance projects and improvements across Texas' borders. Water treatment projects may span across state lines and be

conducted by businesses with operations in multiple states. By allowing the financing of such projects, the bill would expand opportunities for regional investment in wastewater treatment and reduce the costs of waste management. Regional financing would allow greater cost-sharing among stakeholders in wastewater and other eligible projects, thereby reducing the burden on Texas customers.

The bill also would promote the building of energy-efficient and water-saving developments by allowing GCA-created development corporations to finance qualified improvements under the Property Assessed Clean Energy Act outside of Texas.

CRITICS SAY:

No concerns identified.

SUBJECT: Providing financial assistance for nature-based infrastructure projects

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — T. King, Harris, Bowers, Kacal, Larson, Paul, Price, Walle

1 nay — Wilson

2 absent — Lucio, Ramos

WITNESSES: For — Elizabeth Arceneaux; David Batts; (*Registered, but did not testify*: Scott Moorhead, Audubon Texas; Jill Boullion, Bayou Land Conservancy; Daniel Womack, Dow Inc.; Kirby Brown, Ducks Unlimited; Gavin Massingill, Edwards Aquifer Authority; Anna Farrell-Sherman, Environment Texas; Judith McGeary, Farm and Ranch Freedom Alliance; Cyrus Reed, Lone Star Chapter Sierra Club; Bill Kelly, City of Houston Mayor's Office; Adrian Shelley, Public Citizen; Brian Sledge, San Antonio River Authority; Vanessa MacDougal; Suzanne Mitchell)

Against — None

On — Jeff Walker, Texas Water Development Board

DIGEST: CSHB 2350 would establish the water resource and restoration program and set requirements for the program's content, funding, and application procedures.

Establishment of program. The Texas Water Development Board (TWDB) would be required to establish and administer the water resource restoration program to assist in enhancing water quality in the state through the provision of financial assistance to political subdivisions for locally directed projects. TWDB would be required to establish a process by which a political subdivision could combine a project funded through a state revolving fund with a project under the program so that the total cost of both projects did not exceed the cost of the project funded through the state revolving fund.

Program requirements. A proposed project could include certain practices and infrastructure relating to nature-based infrastructure and stormwater management, including practices that reduced impervious cover in a watershed, increased water infiltration and retention, implemented green streets in public rights-of-way, among others.

A proposed project would be prohibited from including certain forms of infrastructure or projects, including:

- passive recreation facilities;
- non-permeable surface parking lots;
- stormwater control, treatment, and conveyance systems that were not nature-based;
- hardening, channelizing, dredging, or straightening streams; and
- supplemental environmental projects required as a part of a consent decree.

A project could not include the acquisition of property, an interest in property, or improvements to property through the use of eminent domain.

Applications. An application for financial assistance administered through the water resource restoration program would be required to include a copy of a resolution approving the proposed project adopted by the governing body of a municipality or special purpose district or the commissioners court of a county in which the proposed project was to be located.

When passing on an application for financial assistance for water quality enhancement purposes, TWDB would have to consider whether the political subdivision proposed a project through the water resource restoration program.

An application for the financing of a project under the bill would have to include a viability assessment that included the ability of the applicant to provide proper oversight and management through a certified operator and the financial ability of the users to support the long-term maintenance of the project.

Funding. To the extent not prohibited by TWDB rule, any additional state revolving fund established to provide financial assistance for water pollution control could be used to provide financial assistance for projects under the water resource restoration program. TWDB also could use water quality enhancement funds to provide assistance to political subdivisions for projects proposed under the water resource restoration program.

If there was insufficient money available to fund all applications for financial assistance for water quality enhancement purposes, TWDB would give preference to applications for political subdivisions that proposed a project through the water resource restoration program that provided a significant improvement in the relevant watershed or that affected a disadvantaged community. TWDB also would have to adopt rules to establish a means of prioritizing projects in disadvantaged communities and include certain criteria specified in the bill to determine whether a political subdivision seeking financing was a disadvantaged community.

Other provisions. TWDB would be required to adopt rules necessary for the implementation and administration of the program by September 1, 2022.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 2350 would encourage the adoption and implementation of nature-based infrastructure by creating the water resource restoration program to provide state funding for this purpose. To receive funding under current state programs, a nature-based infrastructure project is required to comprise at least 30 percent of the total cost of an infrastructure project to be used for flood mitigation purposes. Most nature-based infrastructure projects are relatively small and do not meet this threshold, making it difficult to obtain funds for these projects. Establishing a state funding program for these projects and allowing their combination with other funded projects would be an effective solution to this issue.

Nature-based infrastructure provides another method of flood mitigation. By channeling stormwater through natural processes, nature-based

infrastructure allows stormwater to be contained, drained, and filtered. Such infrastructure also provides other benefits, such as enhanced aquifer recharge, reduced heat islands, and more scenic cityscapes. The program established by the bill would replace the piecemeal efforts at implementing effective, cost-efficient nature-based infrastructure, often on the initiative of nonprofit organizations, with a more comprehensive approach on the municipal or county level. CSHB 2350 also would provide benefits to disadvantaged communities by prioritizing nature-based infrastructure projects in such communities, which have been subject to consistent issues with flood mitigation and suffer the worst effects of flood events.

Discussion about the bill's effect on interest rates that the Texas Water Development Board (TWDB) relies on to meet debt service obligations is ongoing, and a solution that addresses TWDB concerns and increases the adoption of nature-based infrastructure in Texas is anticipated.

CRITICS SAY:

CSHB 2350 would authorize the combination of a project under the water resource restoration program with a project funded through a state revolving fund so that the total cost of both projects did not exceed the cost of the project funded through the state revolving fund. This could result in a reduction in the amount of interest that could be collected from these loans, which could affect the ability of the Texas Water Development Board (TWDB) to meet debt service obligations and fund other water quality enhancement programs.

TWDB receives federal funding that allows it to provide financing for a wide range of water quality infrastructure projects. General appropriations for TWDB are not sufficient to cover fund matching, so the board issues bonds to meet the matching requirements. Further federal regulations require TWDB to pay the debt service on these match bonds from interest earnings made on loans for water quality enhancement projects. Forgoing additional interest earnings could limit TWDB's ability to repay the bonds required to meet the fund matching requirement. Together, these unintended consequences could result in reductions to existing allocations that target disadvantaged, rural, or small communities as well as emergency relief or green projects.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of $985,945 to general revenue related funds through fiscal 2022-23.

SUBJECT: Allowing TDUs to lease certain facilities for emergency power restoration

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

1 absent — Lucio

WITNESSES: For — Jeff Stracener, AEP Texas; Joseph DiCamillo, Apr Energy; Jason Ryan, CenterPoint Energy; Liz Jones, Oncor; (*Registered, but did not testify*: Monty Wynn, Texas Municipal League)

Against — Michele Richmond, Texas Competitive Power Advocates (TCPA); (*Registered, but did not testify*: Ray Sullivan, Calpine; Eric Blackwell, NRG; Mance Zachary, Vistra Corporation)

On — Connie Corona, Public Utility Commission of Texas; Katie Coleman, Texas Association of Manufacturers

DIGEST: CSHB 2483 would allow a transmission and distribution utility (TDU), notwithstanding other law, to lease and operate facilities that provided temporary emergency electric energy to aid in restoring power to the utility's distribution customers during a widespread power outage. A TDU that leased facilities could not sell electric energy or ancillary services from those facilities.

The bill also would allow a TDU to procure, own, and operate, or enter into a cooperative agreement with other TDUs to procure, own, and operate jointly, long lead time facilities that would aid in restoring power to the utility's distribution customers following a widespread power outage.

A TDU that leased or that procured facilities would have to include in its emergency operations plan filed with the Public Utility Commission (PUC) a detailed plan on the utility's use of those facilities.

PUC would permit a TDU that leased or that procured facilities to recover reasonable and necessary associated costs using the rate of return on investment established in PUC's final order in the utility's most recent base rate proceeding. A TDU could request cost recovery through a ratemaking proceeding. A lease for a facility to provide emergency electric energy would have to be treated as a capital lease or finance lease for ratemaking purposes.

PUC would have to authorize a TDU to defer for recovery in a future ratemaking proceeding the incremental operations and maintenance expenses and the return, not otherwise recovered in a rate proceeding, associated with the leasing or procurement of the facilities.

The bill would define a widespread power outage as an event that resulted in a loss of electric power affecting a significant number of distribution customers of a transmission and distribution facility and a risk to public safety.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 2483 would help transmission and distribution utilities (TDU) reduce the impacts to customers of widespread power outages resulting from an energy emergency. Recent events, including Hurricane Harvey and Winter Storm Uri, have highlighted the need for additional tools to minimize the duration of and aid in the restoration of service after such outages.

During a widespread outage, the main priority is the timely restoration of service to customers to minimize the potential for loss of life and property as a result of the emergency situation. Under the bill, a TDU could lease and operate equipment, such as fuel cells, batteries, or diesel-operated generators, to provide temporary, emergency power to its customers if traditional generation were unavailable during a widespread outage. The bill also would allow a TDU to own or jointly own long lead time

equipment, including auto-transformers, transmission towers, and other items that take a significant amount of time to manufacturer, to aid in the restoration of service following a widespread outage. While there may be other avenues TDUs can take to access temporary power generation, those processes are too slow and inefficient. The bill would provide TDUs a way to prepare in advance of emergencies, ensuring they had resources that could be used immediately.

CSHB 2483 would preserve the structure of Texas' competitive energy market, which separates competitive entities, such as power generation companies, from regulated ones, like TDUs. Under the bill, TDUs would not gain the ability to participate in the wholesale or retail electric markets, as the bill specifically would prohibit TDUs from selling electric energy or ancillary services from those facilities. In addition, the bill would provide only for the provision of temporary, emergency electric energy to aid in restoration of service under limited circumstances that involved a risk to public safety. This limitation further safeguards against impacts to the competitive electricity market.

The bill would ensure that TDUs expenses related to the lease or procurement of facilities or equipment could not be recovered through rates unless they were reasonable and necessary. Any increase in rates associated with the bill likely would be negligible and would not compare to the expenses incurred and costs to human life and property resulting from days-long, widespread power outages, such as Texas experienced in February.

CRITICS SAY:

CSHB 2483 could open the door for TDUs to compete with generators in the wholesale electricity market, which would affect the market and wholesale power prices. The bill is unnecessary as there already are processes in place to handle the energy emergencies the bill seeks to address. For example, during Hurricane Harvey, PUC and a TDU sought and received the governor's approval to temporarily use a generator to restore service to areas that had sustained significant damage. In any future emergency, TDUs should continue to seek this solution instead of leasing generation equipment, which would blur the lines of separation between competitive generation companies and regulated TDUs.

In addition, the regulated portion of an electricity customer's bill could increase as a result of a TDU seeking cost recovery for their investments. This increase would be inappropriate as generation capability, including batteries, should be developed only in the competitive market where costs would be borne by investors and shareholders and not customers.

OTHER CRITICS SAY:

CSHB 2483 should require a TDU to request cost recovery in a ratemaking proceeding at PUC prior to investing in a project to lease or own facilities of equipment, ensuring the investment would benefit customers and any cost was reasonable and necessary.

NOTES:

The bill's author intends to offer a floor amendment that would:

- allow a TDU to aid in restoring power during a widespread power outage only when the independent system operator had ordered the utility to shed load or the utility's distribution facilities were not being fully served by the bulk power system under normal operations;
- specify the types of facilities a TDU could procure or procure jointly were transmission and distribution facilities that had a lead time of at least six months;
- change the definition of a "widespread power outage" to require that the outage had lasted or was expected to last for at least eight hours; and
- require a TDU to use a competitive bidding process when practicable to lease facilities under the bill.

The floor amendment also would specify that facilities leased by a TDU to provide temporary emergency electric energy to aid in power restoration to customers during a widespread power outage had to be operated in isolation from the bulk power system and could not be included in independent system operator locational marginal pricing calculations, pricing, or reliability models. A TDU that leased and operated facilities would have to ensure that retail customer usage during operation of those facilities was adjusted out of the usage reported for billing purposes by the customer's retail electric provider.