HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 21, 2021
87th Legislature, Number 39
The House convenes at 10 a.m.

One bill is on the Major State Calendar and 13 bills are on the General State Calendar for second reading consideration today. The bills analyzed in today's *Daily Floor Report* are listed on the following page.

The following House committees were scheduled to meet today: Agriculture and Livestock; Higher Education; International Relations and Economic Development; Judiciary and Civil Jurisprudence; Public Health; Corrections; Elections; Homeland Security and Public Safety; Urban Affairs; and Licensing and Administrative Procedures.

Alma Allen
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, April 21, 2021
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SUBJECT: Making police employment records available electronically to agencies

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: Christine Wright, City of San Antonio; Jennifer Szimanski, CLEAT; David Sinclair, Game Warden Peace Officers Association; Jimmy Rodriguez, San Antonio Police Officers Association; Gyl Switzer and Louis Wichers, Texas Gun Sense; Julie Wheeler, Travis County Commissioners Court; Brian McDowell; Janice Riley)

Against — None

On — Kim Vickers, Texas Commission on Law Enforcement; (*Registered, but did not testify*:; AJ Louderback and Brian Hawthorne, Sheriffs Association of Texas; Thomas Parkinson)

BACKGROUND: Under Occupations Code sec. 1701.451, before a law enforcement agency may hire a peace officer, the agency head must submit confirmation to the commission that the agency took certain actions, including obtained written consent for the agency to view the officer's employment records. The law enforcement agency is required to make the officer's employment records available to a hiring law enforcement agency on request.

DIGEST: CSHB 8 would specify that a law enforcement agency that obtained consent to view a person's employment records would have to make an electronic copy of the employment records available to a hiring law enforcement agency on request.

The Texas Commission on Law Enforcement would have to prescribe the manner by which a law enforcement agency would make the records

electronically available to a hiring law enforcement agency. The commission would have to adopt rules to implement the bill by December 1, 2021, and the rules would have to provide appropriate privacy and security protections.

The bill would take effect September 1, 2021, and would apply only to the hiring of a person by a law enforcement agency that occurred on or after December 1, 2021.

SUPPORTERS SAY:

CSHB 8 would ensure that all law enforcement agencies had access to applicants' employment records from previous agencies during the hiring process by requiring that such records be made available electronically.

Current law requires a law enforcement agency to make employment records available to a hiring agency for the purpose of vetting a candidate. However, there is no standardized system for sharing law enforcement employment data, and statute does not specify how records are to be made available. This has created a barrier to thoroughly vetting applicants and resulted in inconsistent availability of employment data. For example, some agencies have reported that other agencies' employment records are available only for in-person viewing, imposing a burden on the hiring agency, especially smaller agencies, to use money and resources to travel to view the data. As a result, officers can be hired with minimal backgrounds completed.

This bill would improve an important part of the police officer hiring process by ensuring employment records were made available to law enforcement agencies across the state uniformly, thereby reducing the barrier to thoroughly vetting applicants before hire.

The bill should not be any more prescriptive and appropriately would give the Texas Commission on Law Enforcement (TCOLE) the authority and discretion through agency rules to implement the bill in a way that would most benefit law enforcement agencies and enhance public safety. The bill importantly would require rules to include privacy and security protections. In addition, by leaving implementation up to TCOLE rules, the bill would allow the commission to investigate software systems and related requirements that best align with commission resources.

CRITICS SAY:

While CSHB 8 would take an important step toward ensuring law enforcement agencies thoroughly vetted applicants, the bill as written could impose implementation challenges.

The bill is unclear on whether law enforcement agencies would have to make available electronically currently required documents or complete personnel files. Currently, law enforcement agencies must provide certain forms and statements in employee records to a hiring agency, and departmental policies may differ on what other information is provided and how it is able to be viewed. Forms already maintained electronically would be easy to upload in a future system, but if the bill were to require entire personnel files, some hundreds of pages, be made available electronically, it would be labor intensive and could result in an unfunded mandate on some agencies. Not all agencies keep electronic personnel files, so the bill would impact agencies, especially smaller ones with already limited resources, to scan and upload files. To most effectively implement the bill, a database and communication system to securely send and store personnel records that was compatible with law enforcement agencies across the state would have to be created.

SUBJECT: Modifying public school financing

COMMITTEE: Public Education — committee substitute recommended

VOTE: *After recommitted:*
7 ayes — Dutton, Lozano, Allen, Buckley, M. González, Huberty, K. King

0 nays

6 absent —Allison, K. Bell, Bernal, Meza, Talarico, VanDeaver

WITNESSES: *March 23 public hearing:*
For — (*Registered, but did not testify*: Mike Meroney, Academic Language Therapy Association; Lindsay Munoz, Greater Houston Partnership; Amanda List, Hunton Andrews Kurth; Justin Yancy, Texas Business Leadership Council; Suzi Kennon, Texas PTA; Michelle Wittenburg, Texas Public Charter Schools Association; Dale Craymer, Texas Taxpayers and Research Association; Julie Linn, The Commit Partnership)

Against — None

On — Josh Sanderson, Equity Center; Greg Smith, Fast Growth School Coalition; Bruce Gearing, Leander ISD; Jesus H. Chavez, South Texas Association of Schools; Barry Haenisch, Texas Association of Community Schools; Michael Lee, Texas Association of Rural Schools; Kevin Brown, Texas Association of School Administrators; Amanda Brown, Texas Association of School Business Officials; Alycia Castillo, Texas Criminal Justice Coalition; Kyle Lynch, Texas School Coalition; Greg Gibson, Texas Association of Midsize Schools; (*Registered, but did not testify*: Steven Aleman, Disability Rights Texas; Chloe Latham Sikes, IDRA (Intercultural Development Research Association); Kristin McGuire, Texas Council of Administrators of Special Education; Von Byer, Leonardo Lopez, Eric Marin, and Melody Parrish, Texas Education Agency; Dee Carney, Texas School Alliance; Paula Clark)

BACKGROUND: The 86th Legislature in 2019 enacted HB 3 by Huberty, which increased school funding by revising formulas that determine how much revenue a district or charter school is entitled to receive from the state.

DIGEST: CSHB 1525 would revise certain Education Code provisions relating to local taxation and revenue, the level of recapture paid to the state by certain property wealthy districts, funding allotments for students taking career and technology education courses and those enrolled in fast-growth schools, early literacy training requirements for educators, and the teacher incentive allotment.

Local property taxes. CSHB 1525 would revise certain laws governing school district tax rates.

Tax swap. The bill would specify that a school district could not impose a school maintenance and operations tax at a rate intended to create a surplus in maintenance tax revenue for the purpose of paying the district's debt service. It would require the Texas Education Agency (TEA) to develop a method to identify districts that may have adopted such a tax rate, which must include a review of data over multiple years, and investigate each identified district to determine whether it had adopted such a tax rate.

If TEA determined that a district had adopted a prohibited tax rate, the agency would have to order the district into compliance by not later than three years after the date of the order. The agency would have to assist the district in developing a corrective action plan that, to the extent feasible, did not result in a net increase in the district's total tax rate. The implementation of a corrective action plan would not prohibit a district from increasing its total tax rate as necessary to achieve other legal purposes.

If a district failed to take action under a corrective action plan, the commissioner could impose any accountability interventions or sanctions the commissioner deemed appropriate. A conservator or management team imposed on the district on those grounds would be exempted from the statutory prohibition against a conservator or management team setting a tax rate for the district.

Tax compression. The bill would change the district taxable property value used to calculate a district's maximum compressed tax rate (MCR) from the value determined by the comptroller's study to a value determined by TEA rule using locally determined property values adjusted for certain exemptions and deductions. Local appraisal districts, school districts, and the comptroller would have to provide any information necessary for TEA to implement the provisions. A school district could appeal to the commissioner the education agency's determination of a district's taxable property value.

The bill would specify that a district whose MCR is otherwise more than 10 percent below the rate in another district would have an MCR equal to 90 percent of the other district's MCR.

Excessive taxation. The bill would specify that the education commissioner would have to reduce a district's state aid or adjust the limit on local revenue in excess of entitlement when a district levied a tax that exceeded the allowable tax rate.

Recapture districts. CSHB 1525 would revise provisions related to certain property wealthy districts that are required to pay a portion of their local property tax revenue to the state to improve funding for districts with lower property wealth.

Teacher incentive allotment. The bill would provide for an adjustment to a district's funding for certain districts subject to recapture to preserve the district's full entitlement under the teacher incentive allotment. This adjustment would expire September 1, 2025.

Recapture offset. The bill would establish that only the Foundation School Program (FSP) operations funding that was allocated to a district from the available school fund could not be used to offset a district's local revenue in excess of entitlement, or recapture. The district's other Tier 1 funding entitlements and all of its Tier 2 entitlements could be used for such an offset.

Notice of excess revenue. If the commissioner determined that a district had a local revenue level in excess of entitlement after the date for notifying districts of their status, the commissioner would have to include the amount of the excess revenue in the following school year's review of the district's local revenue levels.

Consolidated district. A consolidated district created by agreement to reduce local revenue in excess of entitlement would be eligible for certain incentive aid that, for a maximum of 10 years, preserved any FSP funding entitlements that were lost to the consolidating districts through the consolidation process.

Teachers. The bill would remove a requirement that a teacher must be certified to be designated by a school district or charter school as a master, exemplary, or recognized teacher. It would extend until the 2023-2024 school year the deadline for a classroom teacher in kindergarten through third grade to attend a teacher literacy achievement academy or demonstrate proficiency in the science of teaching reading on a certification examination.

The Texas School for the Deaf and the Texas School for the Blind and Visually Impaired would be entitled to the teacher incentive allotment. The commissioner could use the average point value assigned for students' home districts for purposes of calculating the high needs and rural factor.

The bill would include increased compensation paid to a teacher by a school district under the teacher incentive allotment as salary and wages for purposes of teacher retirement benefit computations.

Students. The commissioner by rule could allow a former student to take at state cost a college preparation assessment if circumstances existed that prevented the student from taking the assessment before the student graduated from high school. The education agency would have to negotiate a price for each assessment with an approved vendor and reimburse a school district for the negotiated amount.

Accountability. An annual graduate who earned an associate degree while attending high school or during a time period established by

commissioner rule would be considered to have demonstrated college readiness for purposes of the college, career, or military readiness outcomes bonus.

Funding adjustments and allotments. CSHB 1525 would revise certain student-based allotments for which schools are entitled to receive funding.

Compensatory education allotment. Districts would receive the compensatory education allotment for students who met a federal definition of being a homeless child or youth. The allotment would be equal to the basic allotment multiplied by the highest weight provided for the allotment.

CTE allotment. The bill would change the basis of the career and technology education (CTE) allotment for applicable districts to the sum of the basic allotment and the district's small or mid-sized district allotment. It would replace the 1.35 funding multiplier with a three-tiered rate multiplier as follows:

- 1.0 for a student in CTE courses not in an approved program of study;
- 1.28 for a student in levels one and two CTE courses in an approved program of study; and
- 1.48 for a student in levels three and four CTE courses in an approved program of study.

The bill would define "approved career and technology education program" as a sequence of CTE courses authorized by the State Board of Education and qualifying for high school credit. It would define "approved program of study" as a course sequence that provided students with the knowledge and skills necessary for success in the students' chosen careers and approved by TEA for purposes of the federal Strengthening Career and Technical Education for the 21st Century Act.

Fast growth allotment. CSHB 1525 would make a district eligible for the fast growth allotment if its student enrollment during the school year immediately preceding the current school year exceeded its enrollment

during the school year three years preceding the current school year by more than 50 students.

In temporary provisions set to expire September 1, 2025, the amount of the multiplier and total amount of allotments to which districts would be entitled would change depending on the school year as follows:

- for the 2021-2022 school year, 0.72 and a statewide cap of $270 million;
- for the 2022-2023 school year, 0.84 and a statewide cap of $310 million; and
- for the 2023-2024 school year, 0.85 and a statewide cap of $315 million.

Beginning with the 2024-2025 school year, the amount of the multiplier to which districts would be entitled would be 0.86, and the statewide cap on the total amount that could be used to provide allotments would be $320 million.

The bill would require TEA to provide to each district that received a fast growth allotment for the 2019-2020 school year but would not be entitled to one for the 2021-2022 school year an amount equal to the amount provided for the 2019-2020 school year. Funding for this provisions could not exceed $40 million.

Charter schools. The bill would require the commissioner of education, to ensure compliance with a federal requirement to maintain the level of state funding for special education from one fiscal year to the next, to make the following adjustments to open-enrollment charter school funding:

- if necessary, increase the amount of a charter school's special education allotment to the amount of the school's entitlement for the 2018-2019 school year; and
- reduce the amount of the charter school's small and mid-sized district allotment by the amount of any special education allotment increase.

The adjustment requirement would expire September 1, 2025.

Attendance and dropout reporting. The bill would add requirements for districts and charter schools to report information, disaggregated by campus and grade, about:

- the number of students who failed to meet certain compulsory attendance requirements;
- the number of students for whom the district initiated a truancy prevention measure; and
- the number of parents against whom an attendance officer had filed a complaint for contributing to a student's non-attendance.

The bill also would add reporting requirements related to certain students who had not previously been reported to TEA as dropouts and who had enrolled in a high school equivalency program, a dropout recovery school, or certain adult education programs.

Regional service centers. Regional education service centers would be entitled to state aid for staff salaries of $500 for certain full-time employees and $250 for certain part-time employees.

The bill would take effect September 1, 2021, and would prevail over another act of the 87th Legislature to the extent there was a conflict.

SUPPORTERS SAY:

CSHB 1525 would improve education in Texas by revising the school finance system, resulting in an estimated $333 million in increased funding for public schools through the biennium ending August 31, 2023. The comprehensive rewrite of school finance laws last session in HB 3 by Huberty had unintended revenue consequences for certain districts. CSHB 1525 would ensure equitable funding for all districts to help their students succeed.

Tax swap. HB 3 ended a practice known as "swap and drop" that had been used by some school districts to move taxable pennies from the portion of the property tax rate that pays for facilities to the portion that pays for school operations. Districts used this as a way to lower their tax

rate while increasing the revenue generated from some of the pennies. CSHB 1525 requires the Texas Education Agency (TEA) to identify those districts and bring them into compliance. Concerns that the tax rate changes could put some districts in danger of defaulting on their debt could be addressed by a floor amendment.

CTE allotment. After HB 3 made changes to the funding adjustment for small and midsize districts and the funding allotment for CTE students, some smaller districts did not get the same revenue boost from the CTE allotment as larger districts. CSHB 1525 would address this disparity and strengthen CTE programs by giving a greater weight to high school courses that are more likely to lead to a certification.

Fast-growth allotment. CSHB 1525 would help additional districts qualify for the fast-growth allotment by measuring growth in the number of enrolled students rather than by a percentile.

Teacher incentives. The bill would remove a requirement that teachers must be certified in order to participate in the teacher incentive bonus program created by HB 3. Allowing all teachers to participate would broaden the program to more charter school teachers and CTE teachers who come from industry.

CRITICS SAY:

CSHB 1525, while attempting to correct unintended consequences from HB 3, would create some winners and losers by changing certain tax and funding provisions. While the bill is designed to adequately fund certain education programs, it would grow state spending when it has not been established that higher spending leads to better student outcomes.

Tax swap. The bill would create uncertainty for school districts that had used a so-called "swap and drop" tax rate change before it was prohibited. Some districts could be at risk of defaulting on their debt if their interest and sinking fund tax raised insufficient revenue after being recalculated.

Recapture payments. While the bill lowers recapture overall, one provision could create a costly catch-up payment for certain districts that were not notified that they had become a recapture district in time to seek voter approval to send a portion of their tax collections to the state. The

practice at TEA has been to allow such districts to wait until the following year to begin their recapture payments. CSHB 1525 would require these districts to pay revenue from the initial year of recapture in the subsequent year, effectively resulting in a district paying two years of recapture in a single year.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of $333.2 million to general revenue related funds through fiscal 2023.

The bill's author plans to offer a floor amendment to limit the reduction in funding for a district that used a tax swap to lower its property tax rate. The amendment would authorize the education commissioner to reduce the amount of state and local funding by an amount equal to the difference between:

- the amount of state and local funding the district received as a result of adopting a maintenance tax rate in violation of the tax swap prohibition; and
- the amount of state and local funding it would have received if it had not adopted such a tax rate.

Under the proposed amendment, a district would not be prohibited from using a surplus in maintenance tax revenue to pay its debt service if its interest and sinking fund tax revenue were insufficient to pay the debt service and the use of the surplus maintenance tax was necessary to prevent a default on the district's debt.

SUBJECT: Allowing writs of habeas corpus based on evidence affecting punishment

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

1 absent — Vasut

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

Against — None

On — Ben Wolff, Office of Capital and Forensic Writs

BACKGROUND: Code of Criminal Procedure ch. 11 outlines procedures for filing applications for writs of habeas corpus, which is a way to challenge the constitutionality of a criminal conviction or the process that resulted in a conviction or sentence.

Under art. 11.073, courts are authorized to grant a convicted person relief for such writs if they meet certain conditions, including if scientific evidence currently is available and was not available at the time of a trial and, had the scientific evidence been presented at trial, on the preponderance of the evidence the person would not have been convicted.

DIGEST: HB 275 would expand the situations in which relief on an application for a writ of habeas corpus based on scientific evidence could be granted to include situations in which a court found that, had the scientific evidence

been presented at trial, on a preponderance of the evidence the person would have received a different punishment.

The bill would take effect December 1, 2021, and would apply to writs filed on or after that date.

SUPPORTERS SAY:

HB 275 would allow for relief in habeas cases in which an applicant showed that new, admissible scientific evidence that was unavailable at trial would have resulted in the applicant receiving a different punishment, addressing a limitation in current law.

Currently, a person may obtain relief in a habeas case if a court finds by a preponderance of the evidence that, had the new, admissible scientific evidence been presented at trial, the person would not have been convicted. This leaves a gap in cases in which the new scientific evidence would not have changed the conviction but would have resulted in a different punishment.

While the number of cases that would be affected is modest, the bill's expansion becomes especially important in death penalty cases in which the convicted person's guilt is not in dispute but the punishment is, making consideration of the punishment the entirety of the case. The bill also would address issues related to "prior bad act" evidence, which can be used during the sentencing phase of a case to show that a person may be a future danger to society even if the prior bad act did not result in a criminal conviction. A court could consider whether unreliable forensic science tainted prior bad act evidence used for sentencing, which then could warrant relief on an application for a writ of habeas corpus.

Texas has made significant strides recently on concerns involving forensic science, in which the science previously relied upon has been disproven or changed. The bill would work as a modest expansion of the court's ability to continue redressing the use of unreliable forensic science that taints not only convictions, but also sentences.

CRITICS SAY:

No concerns identified.

SUBJECT: Limiting disasters in which property tax may be raised without election

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Meyer, Thierry, Button, Murphy, Noble, Sanford, Shine

2 nays — Cole, Rodriguez

2 absent — Guerra, Martinez Fischer

WITNESSES: For — Vance Ginn, Texas Public Policy Foundation; (*Registered, but did not testify*: Justin Keener, Americans for Prosperity and Libre Initiative; Dale Craymer, Texas Taxpayers and Research Association)

Against — (*Registered, but did not testify*: David Anderson, Arlington ISD Board of Trustees; Melissa Shannon, Bexar County Commissioners Court; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Daniel Collins, El Paso County; Thamara Narvaez, Harris County Commissioners Court; Colby Nichols, Leander Independent School District; Amanda Brownson, Texas Association of School Business Officials and Texas School Alliance; Louann Martinez, Texas Urban Council of Superintendents; Julie Wheeler, Travis County Commissioners Court; Heather Sheffield)

On — Sally Bakko, City of Galveston; (*Registered, but did not testify*: Korry Castillo, Comptroller of Public Accounts; Russell Schaffner, Tarrant County; Christy Rome, Texas School Coalition)

BACKGROUND: Tax Code ch. 26 governs how local taxing units may propose and adopt property tax rates. Generally, a proposed rate must be approved by election if a taxing unit adopts a rate exceeding the voter-approval rate. The voter-approval rate for a taxing unit other than a special taxing unit is the rate that would increase property tax revenues by 3.5 percent. The voter approval rate for a special taxing unit is the rate that would increase revenue by 8 percent.

Under sec. 26.04(c-1), a taxing unit other than a special district may calculate the voter-approval tax rate in the manner provided for a special taxing unit if any part of the taxing unit is located in an area declared a disaster area during the current tax year by the governor or president. This calculation continues until the second tax year in which the total taxable value of property exceeded the total value the year the disaster occurred, up to three years.

Secs. 26.07(b) and 26.08(a-1) provide that taxing units and school districts, respectively, are not required to hold an election to approve a tax rate when increased expenditures are necessary to respond to certain disasters, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought. The exception applies to tax rates adopted the year after the disaster. If a school district adopted a rate under this section, the amount by which it exceeded the voter-approval rate could not be considered with calculating rates for the following tax year.

DIGEST:

HB 3376 would specify that a taxing unit other than a special taxing unit could calculate the voter-approval tax rate in the manner provided for a special taxing unit during a disaster if the disaster caused physical damage to property in the taxing unit. The bill would limit the period of time taxing units would use this calculation to the first tax year in which the total taxable value of property exceeded the total value the year the disaster occurred, up to three years.

The bill would limit the disasters in which a taxing unit or school district could adopt a tax rate without holding an election. Such a disaster still would include a tornado, hurricane, flood, wildfire, or other calamity, but not a drought, epidemic, or pandemic. If a taxing unit adopted a tax rate under this provision, the amount by which the rate exceeded the voter-approval tax rate could not be considered when calculating rates for the following tax 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 3376 would clarify that the property tax disaster exceptions provided to taxing units would apply only during disasters that caused physical property damage and not during a pandemic or epidemic.

Last session, the Legislature enacted property tax reform in SB 2 by Bettencourt, which also created two exceptions allowing taxing units to raise property tax rates during a disaster without triggering an automatic election. The first exception allows certain localities to raise property tax revenue up to 8 percent, instead of 3.5 percent, for up to three years. The second allows localities or school districts to exceed the voter-approval tax rate without holding an election if increased expenditures are needed to respond to a disaster. However, these exceptions were not meant for disasters such as pandemics or epidemics, which do not cause property damage.

Although the Legislature did not intend for the disaster exclusion to apply to pandemics, some localities improperly attempted to use the statute to increase taxes without holding an election during the COVID-19 pandemic. By raising rates, these localities imposed an additional burden on struggling businesses and homeowners, who were already facing an economic downturn.

HB 3376 would limit the disaster exceptions so that taxing units could raise rates without an election only during a disaster that caused physical damage and not during a pandemic or epidemic. This correction would be in line with current law, which excludes droughts. The bill also would limit the amount of time that a taxing unit could raise property tax revenue up to 8 percent to the first year that property values recovered to pre-disaster levels. By limiting the exceptions, the bill would provide that taxing units only claimed the disaster exceptions in situations where it was necessary to fund major repairs and only for a limited time.

HB 3376 would not prohibit a taxing unit from raising tax rates to respond to a disaster but would ensure that if the taxing unit wanted to surpass the voter-approval rate, approval from the voters would be required. Local elections are the ultimate form of local control and allow the taxpayers to decide whether it is necessary to send more dollars to their local governments.

The disaster exception, as clarified by the bill, should stay in place for the legitimate needs of local governments and school districts facing physical property damage due to a disaster like a hurricane or similar calamity. Such an adjustment provides those taxing units with flexibility to set rates to fund major repairs and fund disaster response.

CRITICS SAY:

HB 3376 would limit the ability of local governments to respond to and recover from a disaster by limiting the disaster exceptions for increasing property tax rates without having to hold an election. Disasters, including pandemics like the current COVID-19 pandemic, impose additional costs on taxing units, and localities should not be restricted from calculating their taxing needs according to their own disaster response plans.

The bill could cost millions of dollars for some localities that had already adopted property tax rates at the increased rates, as allowed by current law, decreasing the availability of public services. The bill also could prevent certain school districts from responding to the current or future pandemics in a timely fashion, affecting their ability to get children back in school. While not all localities would need to use the disaster exception, this bill would limit those that had genuine need. These decisions should be made at the local level because communities know their needs best.

By shortening the recalculation of the voter-approval rate to the first year in which property values reached pre-disaster levels, the bill could prevent communities from fully recovering. Rather than limiting this timeframe, the bill should allow localities to claim the disaster exception for up to five years if property values had not recovered to pre-disaster levels. By providing more time, taxing units could raise rates incrementally to slowly recover rather than spiking rates in three years to cover the cost of repairs.

OTHER CRITICS SAY:

While HB 3376 is a good first step, it could go further by eliminating the disaster exception. Such an exception is unnecessary because if a taxing unit's property values declined because of damage from a disaster, the taxing unit simply could adjust its tax rate to generate the same amount of revenue as the prior year, or up to 3.5 percent more revenue, without holding an election.

NOTES:

According to the Legislative Budget Board, the bill's provisions could result in reduced tax revenues for school districts and impact costs to the state through the operation of the school funding formulas.

SB 1438 by Bettencourt, the Senate companion bill, was passed to engrossment by the Senate on April 19.

SUBJECT: Prohibiting the use of hypnotically induced testimony in a criminal trial

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

1 absent — A. Johnson

WITNESSES: For — Mike Ware, Innocence Project of Texas; Scott Henson, Just Liberty; Allen Place, Texas Criminal Defense Lawyers Association, Billy Muston; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Angelica Cogliano, Austin Lawyers Guild; Shea Place, Texas Criminal Defense Lawyers Association; Maggie Luna, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Cynthia Simons, Texas Women's Justice Coalition; Rebecca Bernhardt, The Innocence Project of Texas; Suzanne Mitchell)

Against — None

On — Wende Wakeman

DIGEST: HB 1002 would make testimony obtained by hypnosis inadmissible in any phase of a criminal trial.

The bill would take effect September 1, 2021, and would apply only to criminal proceedings commencing on or after that date.

SUPPORTERS SAY: HB 1002 would help ensure the rights of defendants and prevent wrongful convictions based on unreliable evidence by making testimony obtained through the use of investigative hypnosis inadmissible in criminal trials. Studies have found that hypnosis can produce unreliable eyewitness identification because hypnotized subjects are highly suggestible. Hypnosis can lead to confabulation, the creation of false memories that the subject believes to be true, in order to fill gaps in memory or respond

to leading questions by the hypnotist. Hypnosis can give an unwarranted sense of confidence to a subject's testimony that may sway a jury's verdict.

The current training curriculum for investigative hypnosis certification is based on scientifically outdated concepts about the nature of memory, and the certifying agency, the Texas Commission on Law Enforcement, has no immediate plans to update or otherwise improve the program. The Texas Department of Public Safety recently suspended its long-running investigative hypnosis program due to scientific criticism of the practice.

Dozens of people have been convicted in Texas in cases based at least partially on hypnosis, with some convictions overturned due to DNA exoneration and some currently on death row. HB 1002 would prevent the untrustworthy method of hypnosis from being a determining factor in deciding a person's guilt in a situation where lives are at stake.

Concerns about the application of the bill due to its specific language could continue to be discussed.

CRITICS SAY:

HB 1002, as written, would apply to testimony obtained by using hypnosis during a criminal trial. In order to clearly prohibit the admissibility in criminal trial of statements made under hypnosis during an investigation, the bill's language would need to be amended. HB 1002 could create legal confusion over the admissibility of corroborating tangible evidence discovered due to investigative hypnosis, as the bill would not explicitly prohibit the practice and, as written, would apply only to testimony.

SUBJECT: Creating a procedure to request a new criminal trial if all parties agree

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

WITNESSES: For — Becky Haigler, Texas Inmate Families Association (TIFA); Nicolas Hughes; Amanda Marzullo; (*Registered, but did not testify*: Lauren Johnson and Matt Simpson, ACLU of Texas; M. Paige Williams, Dallas County Criminal District Attorney John Creuzot; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Emily Gerrick, Texas Fair Defense Project; Rebecca Bernhardt, The Innocence Project of Texas; Jennifer Allmon, The Texas Catholic Conference of Bishops; Theresa Laumann)

Against — (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association and State FOP; James Parnell, Dallas Police Association; Ray Hunt, Houston Police Officers' Union; Brian Hawthorne, Sheriffs' Association of Texas; John Wilkerson, Texas Municipal Police Association)

On — Shannon Edmonds, Texas District and County Attorneys Association (TDCAA)

BACKGROUND: Under the Texas Rules of Appellate Procedure, Rule 21, a motion for a new trial (MNT) in criminal cases must be granted for certain reasons, including for a verdict contrary to the law and evidence, error in jury instructions, jury misconduct, forcible exclusion of a defense witness or destruction of evidence, or the defendant being tried in absentia or being denied counsel. An MNT must be filed within 30 days after the date a trial court imposes or suspends sentence in open court.

DIGEST: HB 1293 would establish a procedure for requesting a new criminal trial in certain cases if all parties agreed to the request. The bill would allow

defendants to file a motion for a new trial with the convicting court at any time during a prison term if the defendant had the written consent of the district attorney or criminal district attorney. The motion would have to include an agreed statement of facts for the court to consider.

After a hearing, the court could grant the defendant a new trial in the interest of justice. The court could rely on the agreed statement in granting a new trial, and the agreed statement of facts could constitute the entire record in the cause.

A decision to grant a new trial could be appealed, but neither the prosecutor nor the defendant could appeal a decision to deny a motion for a new trial. The prosecutor could condition consent to a motion for a new trial on any appropriate reason, including a requirement that the defendant plead guilty and accept a specific punishment, waive parole eligibility, or waive the right to appeal.

Until the trial court granted the motion for a new trial, the defendant could withdraw the motion or the prosecutor could withdraw consent to the motion. If the motion or consent was withdrawn, the court would be prohibited from granting a new trial in the case based on that motion.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 1293 would provide relief for certain wrongful convictions that had already occurred in limited cases by establishing a mechanism to request a new criminal trial by motion when the defendant, the state, and the trial court all agree that it is in the interest of justice for a new trial to be granted. Recent efforts to bring attention to individuals wrongfully convicted of crimes or serving inappropriate sentences have led to improvements in the criminal justice system in Texas, and HB 1293 would provide another necessary tool to ensure just outcomes within the system.

Currently in Texas, a motion for a new trial (MNT) in criminal cases must be granted only under limited circumstances, and the MNT must be filed within 30 days after sentencing of the defendant. Habeas relief is permitted only after appeals have been exhausted, and then, only if actual

innocence or a constitutional violation can be shown. Because of these procedural hurdles and narrow standards, defendants can be in prison for months or years awaiting habeas relief even after the state and the trial court have agreed that a new trial was appropriate in the case. Clemency by courts and by the governor is limited as well in the types of situations it can cover and the relief that it can grant. Allowing requests for a new criminal trial in the interest of justice when all parties agree with the request would fill this gap, providing a streamlined process that could decrease costly periods of imprisonment for defendants.

HB 1293 also would provide Texas with a needed safety valve for justice that other states have adopted. Prosecutors and judges could act in the interests of justice to ensure that defendants who were confined in prison, but who are innocent or inappropriately punished, could quickly receive a new trial, even after the 30 days typically allotted for an MNT had expired. By tying the MNT to the term of imprisonment of the person filing the motion, the bill would ensure that overlooked errors could be addressed so a person was not unjustly deprived of liberty for any longer than necessary.

The bill's required agreement by all parties provides a sufficient check, as district attorneys and judges should be trusted in determinations on granting a new trial in the interests of justice. Further safeguards are provided through the judge's discretion and through the bill allowing a district attorney to condition consent to the MNT on any appropriate reason; however, should any concerns still exist on the bill's "interest of justice" language, they could be addressed in a floor amendment.

HB 1293 is drawn to exclude providing relief through an MNT in death penalty cases by specifically saying the bill applies during the period of a term of imprisonment.

CRITICS SAY:

The criminal justice system is already equipped to correct injustices in past cases using the relief provided through writs of habeas corpus, the process of which provides necessary oversight and limitations that would not be similarly present in HB 1293 provisions establishing a motion for a new trial (MNT) in the interests of justice. Motions for a new criminal trial already must be granted under specific circumstances after being filed

within 30 days of sentencing. Allowing an MNT to be filed at any time during the period of a term of imprisonment, along with allowing a judge to grant an MNT in the "interest of justice" could cause a flood of litigation, ultimately undoing years of work. The current remedies available to a defendant provide adequate access to justice, while ensuring the criminal justice system is not overburdened with unnecessary cases brought under an overly broad standard.

HB 1293 may not explicitly exclude defendants serving capital sentences from filing an MNT agreed on by all parties in the interests of justice.

NOTES:

The bill's author intends to offer a floor amendment that would specify the reasons that a court could grant the defendant a new trial in the interest of justice, which would include:

- the discovery of exculpatory, mitigating, or impeachment evidence that established that the defendant's conviction or sentence was against the weight of the evidence;
- a change in law that provided a new legal basis for a defense to criminal prosecution for the offense of which the defendant was convicted or a ruling of the U.S. Supreme Court or the Texas Court of Criminal Appeals that the law under which the defendant was convicted or sentenced was unconstitutional;
- that material evidence was improperly admitted or withheld from the jury; or
- that the agreed statement of facts established a ground for which a new trial would have to be granted under the Texas Rules of Appellate Procedure.

The floor amendment also would include county attorneys with criminal jurisdiction in the parties that could give a defendant written consent to file a motion for a new trial.

SUBJECT: Revising jury instructions in sentencing proceeding of death penalty cases

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

0 nays

1 absent — Vasut

WITNESSES: For — (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Emily Gerrick, Texas Fair Defense Project; Jennifer Allmon, The Texas Catholic Conference of Bishops)

Against — (*Registered, but did not testify*: Ray Hunt, HPOU)

BACKGROUND: Code of Criminal Procedure art. 37.071 establishes the procedures used after a defendant has been found guilty in a capital felony case.

Under Penal Code sec. 12.31, if the state is not asking for the death penalty in the case, the judge must sentence the defendant to life without parole if the defendant was over 18 years old when the offense was committed. If the prosecutor is asking for the death penalty, courts must conduct a separate punishment proceeding to decide if the defendant will receive the death penalty or life in prison without parole.

The sentencing proceeding is conducted in the trial court and with the trial jury. After both sides present evidence, courts must submit the following questions to the jury:

- whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

- for cases in which the jury charge allowed the defendant to be found guilty as a party to an offense, whether the defendant actually caused the death or did not actually cause the death but intended to kill the deceased or another or anticipated that a human life would be taken.

Under Code of Criminal Procedure art. 37.071, sec. 2(d)(2), the court must tell the jury that it may not answer either of the two questions "yes" unless it agrees unanimously and it may not answer any issue "no" unless 10 or more jurors agree.

Under sec. 2(e), if a jury answers yes to each question, the court must ask it whether, taking into consideration all the evidence, there are sufficient mitigating circumstances to warrant a sentence of life in prison without parole rather than a death sentence. The court must tell the jury that if it answers that circumstances warrant a sentence of life without parole, that will be the sentence.

Under sec. 2(f), the court must tell the jury that in answering the question about mitigating circumstances, the jury must answer "yes" or "no" and that it may not answer the issue "no" unless it unanimously agrees and may not answer the issue "yes" unless 10 or more jurors agree. If the jury answers "yes" on the first two questions and "no" on the question about mitigating circumstances, the court must sentence the defendant to death.

Under sec. 2(g), if the jury answers "no" on either of the first two questions or "yes" to the question about mitigating circumstances or is unable to answer any question, the court must sentence the defendant to life without parole.

Under sec. 2(a)(1), the court, the prosecutor, the defendant, and the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on the questions.

DIGEST:

CSHB 252 would revise the jury instructions given during the sentencing phase of a capital felony trial.

It would remove the requirement that courts inform the jury that it may not answer "no" to questions about the defendant's continuing threat to society and the defendant's role as a party to an offense unless 10 or more jurors agree and that it may not answer "yes" to the question about mitigating circumstances unless 10 or more jurors agree.

Instead, the instructions to the jury would have to be that it may not answer any issue submitted about the defendant's continuing threat to society and the defendant's role as a party to an offense "yes" unless the jury agrees unanimously, and unless the jury answers an issue "yes" unanimously, the jury shall answer the issue "no."

When giving instructions relating to mitigating evidence, the court would have to charge the jury that it may not answer the issue "no" unless the jury agrees unanimously, and unless the jury answers the issue "no" unanimously, the jury shall answer the issue "yes."

The bill would take effect September 1, 2021, and would apply only to criminal proceedings that began on or after that date.

SUPPORTERS SAY:

HB 252 would eliminate misleading jury instructions in capital felony cases so jurors had accurate information about their duties. The current confusion over the questions put to juries deciding punishment in a capital case can result in jurors casting votes based not on how they want to answer the question but on their perception of requirements to reach certain vote counts.

The current instructions provided to juries can be misleading because they suggest to juries that certain decisions require a specific number of votes. Jurors have reported being confused by the instructions. For example, one reported that he believed a defendant was not a future danger but voted the other way because he did not think he could persuade nine other jurors to his point of view. Such confusion adds to the pressures of a capital felony trial with possible sequestration or media attention.

Those involved in a trial currently are prohibited from informing jurors about the effect of the jury's failure to agree on the questions. Because of the requirement that all jury verdicts in criminal trials be unanimous, life

without parole will be imposed if, in the final tally for a question, a single juror answers "no" to the questions about future dangerousness or involvement as a party or answers "yes" to the mitigating circumstances question.

HB 252 would clear up confusion by requiring jury instructions to clearly state how a question should be answered if the jury is not unanimous on questions about future dangerousness, involvement as a party, and mitigating evidence.

Jurors being asked by the state to decide between life and death should have clear instructions to ensure fairness and truth in sentencing and public confidence in their decisions. The current instructions can distort sentencing by incentivizing vote switching over honest votes. HB 252 would not discourage deliberation by juries nor change the questions they answer or the effect of those answers; it simply would eliminate misleading information that can skew jurors' votes.

CRITICS SAY:

By revising instructions about certain questions so juries were told only about unanimous votes, HB 252 could increase the difficulties juries have in making punishment decisions in capital cases and discourage deliberations.

SUBJECT: Allowing food establishment to sell certain unprepared food to consumers

COMMITTEE: Public Health — committee substitute recommended

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

0 nays

WITNESSES: For — Kelsey Streufert, Texas Restaurant Association; Skeeter Miller, The County Line; (*Registered, but did not testify*: Guadalupe Cuellar, City of El Paso; TJ Patterson, City of Fort Worth; Carolina Mueller, Farm and Ranch Freedom Alliance; Jarred Maxwell, Foodshed Investors; John McCord, NFIB; Simone Benz, Sustainable Food Center; Martin Hubert, Sysco Corporation)

Against — (*Registered, but did not testify*: Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner)

On — (*Registered, but did not testify*: Stephen Pahl, Department of State Health Services)

BACKGROUND: 25 TAC sec. 228.2(57) defines "food establishment" as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, including:

- a restaurant, retail food store, satellite or catered feeding location, and food bank; and
- an establishment that relinquishes possession of food to a consumer directly, or indirectly, such as through a home delivery service for groceries or restaurant takeout orders, or common carrier delivery service; among other entities.

"Food establishment" does not include an establishment that offers only prepackaged foods that are not time or temperature controlled for safety, a produce stand that only offers whole, uncut fresh fruits and vegetables, or a food processing plant, among other specified entities.

Health and Safety Code sec. 431.2211 exempts certain food manufacturers, food wholesalers, and warehouse operators from licensure requirements, including a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant is not otherwise required to hold a license.

DIGEST:

CSHB 1276 would allow a food service establishment to sell unprepared food directly to an individual. A food service establishment that held a permit under current law could sell food that:

- was labeled, which could include a handwritten label, with any information required by the Department of State Health Services' (DSHS) rules;
- for a meat product or poultry product, was obtained from a source that was appropriately inspected and included an official mark from DSHS or the U.S. Department of Agriculture; and
- for food requiring refrigeration other than whole, uncut produce, was protected from contamination and maintained at or below 41 degrees Fahrenheit until the establishment sold or donated the food.

A food service establishment that held a permit could not sell directly to an individual food that was in a package exhibiting damage. It also could not sell food that was distressed because the food:

- was subjected to fire, flooding, excessive heat, smoke, radiation, or another environmental contamination;
- was not held at the correct temperature for the food type; or
- was not in good condition.

The bill would prohibit a municipality or public health district from requiring a food establishment that sold food directly to an individual to obtain a food manufacturer license or permit if the establishment complied with the bill's provisions and was not required to hold that license or permit under other state law.

The bill would exempt from licensure requirements under Health and Safety Code sec. 431.2211 a restaurant that sold food directly to an individual consumer if the restaurant held a permit as a food service establishment under current law, complied with the bill's provisions, and otherwise was not required to hold a license under current law.

As soon as practicable after the bill's effective date, the executive commissioner of the Health and Human Services Commission would have to adopt rules to implement the bill's provisions.

The bill would apply only to the sale of food by a food service establishment and a license issued or renewed on or after the bill's effective date.

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 1276 would increase Texans' access to food and generate additional revenue for food establishments by codifying Department of State Health Services (DSHS) guidelines allowing these establishments to sell unprepared food directly to consumers.

During the COVID-19 pandemic, stay-at-home orders caused many restaurants to suspend dine-in operations, making it difficult for business owners to make financial ends meet and reducing sources of food for Texans. As grocery stores remained open as the primary source of food, the supply chain struggled to keep up with increased demand. In an effort to provide relief for overburdened grocery stores, to give consumers a convenient place to purchase necessary goods, and to keep restaurants open, the governor directed DSHS to issue temporary guidelines allowing retail food products to be sold directly to individuals.

The bill would allow food service establishments to continue selling retail food products to individuals beyond the pandemic, creating a sustainable source of food for Texas families and generating another source of revenue for business owners. The bill would provide sufficient food safety

regulations by requiring unprepared food to be properly labeled, stored, inspected, and time and temperature controlled.

CRITICS SAY:

No concerns identified.

SUBJECT: Allowing nonprofit indigent defense organizations to receive TIDC grants

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

WITNESSES: For — Emily Gerrick, Texas Fair Defense Project; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Melissa Shannon, Bexar County Commissioners Court; Jim Allison, County Judges and Commissioners Association of Texas; Daniel Collins, County of El Paso; Charles Reed, Dallas County Commissioners Court; Kathy Mitchell, Just Liberty; Russell Schaffner, Tarrant County; Rachana Chhin, Texas Catholic Conference of Bishops; Alycia Castillo, Texas Criminal Justice Coalition; Rebecca Bernhardt, The Innocence Project of Texas; Julie Wheeler, Travis County Commissioners Court)

Against — None

On — Scott Ehlers, Texas Indigent Defense Commission

BACKGROUND: Government Code sec. 79.037(a) requires the Texas Indigent Defense Commission (TDIC) to assist counties in providing indigent defense services by distributing grants from appropriated funds to the county, a law school's legal clinic or program that provides indigent defense services in the county, or an eligible regional public defender who provides indigent defense services in the county. TDIC also must provide technical support to assist counties in improving their indigent defense systems.

DIGEST: HB 295 would allow grants provided by the Texas Indigent Defense Commission (TIDC) under Government Code sec. 79.037(a) to be used to improve the provision of indigent defense services in a county. TIDC would have to determine for each county the entities eligible to receive funds for the improvement in the provision of indigent defense services

based on criteria established in statute, and the bill would remove a requirement that TIDC consider only entities located within the county.

The bill would add to the list of entities eligible to receive grants issued by TIDC under sec. 79.037(a):

- a contract supervision agency, designated local government, or organization that provided administrative services to a county under an interlocal contract entered into for the purpose of providing or improving the provision of indigent defense services in the county; and
- a nonprofit corporation that provided indigent defense services or indigent defense support services in the county.

HB 295 also would specify that TIDC had to provide technical support to assist counties in improving their systems for providing indigent defense services, including indigent defense support services.

In addition, the bill would reenact Government Code secs. 79.037(b) and (c) to harmonize differences between the two versions of the subsections that were amended through the enactment in 2015 of SB 1353 and SB 1057.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 295 would enable the Texas Indigent Defense Commission to more efficiently allocate existing funds for indigent defense services by allowing the commission to directly issue grants to certain nonprofit organizations providing these services. Allowing nonprofits to accept grants from the commission without funds first having to be routed through the county would save counties valuable time and resources and allow nonprofits to more efficiently provide indigent defense services. This also would provide flexibility to rural counties that did not provide extensive indigent defense services.

CRITICS SAY:

No concerns identified.

SUBJECT: Waiving state park entrance fees for first responders and veterans

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

VOTE: 8 ayes — K. King, Gervin-Hawkins, Burns, Clardy, Frullo, Krause, Martinez, C. Morales

1 nay — Israel

WITNESSES: For — (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; J Pete Laney, State Firefighters' & Fire Marshals' Association; Monty Wynn, Texas Municipal League; Mitch Landry, Texas Municipal Police Association; Ron Hinkle, Texas Travel Alliance; Jason Vaughn, Texas Young Republicans; James Babb; Frank Holman; Thomas Parkinson)

Against — John Shepperd, Texas Foundation for Conservation

On — Justin Halvorsen, Texas Parks and Wildlife Department

BACKGROUND: Parks and Wildlife Code sec. 13.018 establishes the state parklands passport program. Under this section, the Texas Parks and Wildlife Department may waive or reduce a park entrance fee for passport holders. Persons who may apply for a passport include seniors who reside in the state, certain veterans with service-connected disabilities, and individuals who have certain physical or mental impairments.

DIGEST: HB 1341 would require the Texas Parks and Wildlife Department (TPWD) to waive the state park entrance fee for a Texas resident who was a first responder. "First responder" would mean certain firefighters, emergency medical services personnel, municipal police officers, and sheriffs and constables and their deputies.

The bill also would include among the persons authorized to apply to TPWD for a state parklands passport all active duty members or veterans of the U.S. armed services, the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 1341 would enable the state to make a gesture of appreciation to active duty members of the military, veterans, and first responders. Waiving entrance fees to state parks for these groups would provide them with important benefits and not create an undue financial burden for the state. Allowing veterans and active duty service members free entrance to national parks has been a longstanding federal policy and should be replicated at the state level.

HB 1341 would recognize and honor individuals who have put their lives on the line for the public's benefit. In addition, first responders, active duty military, and veterans suffer from post-traumatic stress disorder and other mental health concerns at a higher rate than the general population as a result of their service and have expressed how a visit to a state park can be a cathartic and healing experience. The opportunity to thank these individuals and potentially improve their mental health outcomes is worth a potential cost to the state.

Despite the fee waivers, it is possible that the bill could create a net positive financial impact for the state. Many whose entrance fee would be waived when they visited a park could be accompanied by friends and family who would not receive a waiver. These group outings could result in an overall higher level of park attendance and cover or substantially mitigate the financial impact of entrance fee waivers.

A general revenue appropriation in anticipation of lost revenue from another fund would not be an appropriate solution for any financial impact the bill could create. The bill makes no appropriation from the state parks account, and the related fiscal note accounts only for potential lost revenue based on estimates of visitors who would be eligible for fee waivers. While uncertainty about the specific fiscal impact of the bill persists, it would be inappropriate to dedicate state funds to replace potential lost revenue based solely on guesswork.

CRITICS SAY:

HB 1341 would fail to achieve its purpose of making a gesture of thanks on behalf of all Texans and risks doing harm to the operations of the Texas Parks and Wildlife Department (TPWD) that would outweigh the

minor benefit given to the individuals covered by the bill. The waiving of state park entrance fees under the bill would represent a relatively small benefit to the groups covered by the bill because park entrance fees are only a small cost on the individual level. Waiving a large number of these fees, however, could have a significant impact on the ability of TPWD to finance its operations.

In addition, while the bill intends to provide a gesture of appreciation on behalf of all Texans, the cost would be borne only by those who pay into the state parks account. This account consists of revenue from entrance fees and other activity fees paid to state parks. Rather than allowing the state parks account to bear the full cost of lost revenue from waived entrance fees, money should be appropriated from general revenue to reflect the intent of the bill to provide a statewide token of appreciation.

OTHER CRITICS SAY:

State parks are a natural resource that should be shared equally by all Texans. Carving out special classes of Texans to receive preferential treatment at state parks would be discriminatory and not reflect the principles of equality that should govern access to shared resources.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $4.3 million to the state parks account through fiscal 2022-23.

SUBJECT: Releasing certain unclaimed property for restitution to crime victims

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Tiana Sanford, Montgomery County District Attorney's Office; Katherine Strandberg, Texas Association Against Sexual Assault)

Against — None

On — Ron Steffa, Texas Department of Criminal Justice; Bryant Clayton, Texas Comptroller of Public Accounts

BACKGROUND: Government Code sec. 501.014 requires the Texas Department of Criminal Justice (TDCJ) to take possession of all money that an inmate has upon arrival at a facility and all money the inmate receives during confinement and to credit the money to an account created for the inmate. TDCJ may spend money from the account on order of the inmate or as required by law or policy. On notification by a court, TDCJ is required to withdraw from the account any amount the inmate is ordered to pay by order of the court, including for child support, restitution, and court fees.

Property Code sec. 74.501 governs the process for filing a claim for unclaimed property delivered to the comptroller and specifies certain persons' claims the comptroller can approve.

DIGEST: CSHB 978 would require the Texas Department of Criminal Justice (TDCJ) to file a claim for unclaimed property with the comptroller on behalf of a crime victim if the reported owner of the unclaimed property:

- was convicted of the criminal offense;

- was ordered to pay restitution to the victim; and
- was confined in a facility operated by or under contract with TDCJ on the date the claim was submitted.

TDCJ would have to file a claim only if it had received notification from a court of an order of restitution payable from an inmate account and had confirmed with the county the amount of outstanding restitution owed before filing the claim. The court notification would have to specify the amount of restitution owed on the date of notification.

A county would have to accept a restitution payment received from TDCJ and forward it to the victim or other eligible person, including the compensation to victims of crime fund. The county would be required to return to TDCJ any amount in excess of the balance owed to the victim.

The bill would allow the comptroller to approve a claim for unclaimed property under the bill. TDCJ quarterly would have to send the comptroller a data set on confined inmates to initiate the filing and facilitate the approval of the claims submitted.

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

SUPPORTERS SAY:

HB 978 would support justice for crime victims by increasing opportunities for them to receive compensation they are due from individuals in TDCJ custody. Current law requires TDCJ to withdraw funds from accounts of those in custody to pay court costs and fees, fines, and restitution. The bill would give victims an additional avenue through which to receive restitution by allowing crime victims access to unclaimed property held by the comptroller of persons in TDCJ custody. This expanded process would increase overall the amount of restitution paid to crime victims.

CRITICS SAY:

No concerns identified.

SUBJECT: Revising burden of proof in innocent owner asset forfeiture proceedings

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Vasut

2 nays — A. Johnson, Murr

0 absent

WITNESSES: For — James Peinado, El Paso Republican Liberty Caucus; Arif Panju, Institute for Justice; Faith Bussey and Kathy Mitchell, Just Liberty; Thomas Wilson, Smith County Criminal District Attorney's Office; Emily Gerrick, Texas Fair Defense Project; Derek Cohen, Texas Public Policy Foundation; (*Registered, but did not testify*: Nick Hudson, American Civil Liberties Union of Texas; Justin Keener, for Doug Deason, Americans for Prosperity, and Libre Initiative; Amanda List, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Alycia Castillo, Texas Criminal Justice Coalition; Jason Vaughn, Texas Young Republicans; Molly Weiner, United Ways of Texas; Thomas Parkinson)

Against — Philip Mack Furlow, 106th Judicial District Attorney; Angela Beavers, Harris County District Attorney's Office; James Smith, San Antonio Police Department; (*Registered, but did not testify*: Eric Carcerano, Chambers County District Attorney's Office; Jennifer Szimanski, CLEAT; Shawn Connally, Galveston County Criminal District Attorney's Office; George Craig, Houston Police Department; John Hubert, Kleberg and Kenedy Counties District Attorneys Office; Laura Nodolf, Midland County District Attorney's Office; James Smith, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Lindy Borchardt for Sharen Wilson, Tarrant County Criminal District Attorney; Dallas Reed, Texas Municipal Police Association; John Chancellor and Robert Flores, Texas Police Chiefs Association)

On — (*Registered, but did not testify*: Buddy Mills, Sheriffs Association

of Texas; Floyd Goodwin and Matt Hicks, Texas Department of Public Safety)

BACKGROUND:

Under Code of Criminal Procedure ch. 59, Texas law enforcement officers may take private property if it is used or intended to be used for certain crimes. A civil court may then transfer ownership of the property to a law enforcement department or other government office that may use or sell it. Seizure is the taking of the property, and forfeiture is the transfer of ownership of the property.

Property may be seized if it is used or intended to be used to commit a felony or misdemeanor offense listed in Code of Criminal Procedure art. 59.01(2), including any first- or second-degree felony in the Penal Code and any felony in the Texas Controlled Substances Act.

Property owners who say they had no role in an alleged crime may use what is called the "innocent owner" defense to try to recover seized property. Code of Criminal Procedure art. 59.02 (c) and (h) require owners to prove by a preponderance of the evidence a lack of participation in the crime or of knowledge about the crime. Art. 59.02 (c) requires, in part, that owners prove that they acquired the property before or during the alleged crime and did not know or should not have reasonably known of the alleged crime or that it was likely to occur. Art. 59.02 (h) applies when owners claim not to have been a party to the alleged offense and that the property was stolen from them, purchased with money stolen from them or with proceeds from property stolen from them, or used in the commission of the alleged crime without the owner's effective consent.

DIGEST:

CSHB 1441 would revise the burden of proof required in asset forfeiture proceedings in which property owners said they had no role in an alleged crime and were trying to recover property seized through Code of Criminal Procedure ch. 59.

Instead of the property owner having to prove by a preponderance of the evidence that they had no knowledge of the crime or that they did not participate in it, the state would have the burden of proving by clear and convincing evidence that the required circumstances that can make

property exempt from forfeiture do not apply to the property that was subject to seizure and forfeiture.

The bill would take effect September 1, 2021, and would apply only to forfeiture proceedings that began on or after that date.

SUPPORTERS SAY:

CSHB 1441 would help property owners who are innocent of a crime recover property that had been seized through the asset forfeiture process by revising the burden of proof required in forfeiture proceedings when someone raised an innocent owner defense.

Current law requiring property owners to prove they and their property had no role in an alleged crime violates individuals' private property rights by upending the idea of innocent until proven guilty. Innocent owners are required to prove a negative — that they did not know or did not do something — to keep what is rightfully theirs. The process can be difficult and expensive and can discourage people from trying to regain their property.

Shifting the burden to the government when an owner raises the innocent owner defense would restore the presumption of innocence and place the responsibility where it belongs: on government officials taking private property. The government agencies seizing and bringing forth forfeiture proceedings should have sufficient information and records about a crime and the property to meet this burden. This shift in burden would help prevent injustices that occur when innocent owners give up their property rather than challenge the seizure because it is too difficult or costly.

The bill would raise the burden of proof in these proceedings from the low threshold of preponderance of evidence, sometimes referred to as having to prove something only by 51 percent, to a more appropriate level for something as important as property rights. The clear and convincing evidence standard is used in civil proceedings and would protect innocent property owners from an injustice while allowing cases in which property was owned by a criminal and tied to a crime to go forward.

Jurisdictions that are careful to ensure seized property meets statutory requirements to be tied to crimes and to identify the proper owner should

not be burdened by CSHB 1441. This bill is narrowly drawn to affect only the innocent property owner's defense in a way that would not harm such jurisdictions.

CRITICS SAY:

CSHB 1441 would erode an effective tool for preventing criminals from profiting from their crimes and for protecting the due process rights of property owners.

The burden of proof when an individual raises the innocent owner defense is properly placed on property owners because they have the information, such as car titles or bank records, that can prove their innocence. This follows the way affirmative defenses traditionally work with a defendant raising them and then giving evidence supporting the claim. If the burden were shifted and the government had to prove that the defense did not apply, the government likely would have to obtain the proof from the owners, which could involve detailed or intrusive investigations into property owners. This could extend court cases and delay returning property to innocent owners. Government agencies work in good faith to seize contraband only from those involved with a crime and to return property early in the forfeiture process to legitimate innocent owners.

Requiring a standard of clear and convincing evidence would be too high of a burden for decisions in asset forfeiture cases and would improperly equate these decisions with other situations using that standard, including parental rights cases. Using the current standard of preponderance of the evidence allows courts to get at the truth and identify when property belongs to criminals and to discover false ownership claims. Under current law there is a check on these proceedings because law enforcement authorities have to meet an initial burden of proving that property has a substantial connection to crime before seizure.

Since the asset forfeiture statutes were reformed about a decade ago, the law has functioned well and systemic abuses have been removed. Any problems with improper seizures of property from innocent owners, would be better addressed by education and training.

SUBJECT: Commissioning a study on first responder workers' compensation claims

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 — Noel Johnson, JPCA; John Wilkerson, Texas Municipal Police Association; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Frederick Frazier, Dallas Police Association/FOP716 State FOP; Carlos Lopez and Jama Pantel, Justices of the Peace and Constables Association of Texas; Aidan Alvarado, Laredo Firefighters Association; Leroy Garcia, Mission Firefighters Association; Glenn Deshields and Mike Silva, Texas State Association of Fire Fighters; Jonathan Firebaugh; Jerod Kostecka; Angela Multer)

Against — None

On — (*Registered, but did not testify*: Amy Lee, Texas Department of Insurance, Division of Workers' Compensation)

BACKGROUND: Labor Code sec. 504.055 defines a first responder to mean an individual employed by a political subdivision of this state who is:

- a peace officer;
- a licensed emergency care attendant, emergency medical technician (EMT), EMT-intermediate; EMT-paramedic, or licensed paramedic;
- a firefighter; or
- a volunteer firefighter or emergency medical services volunteer.

DIGEST:

CSHB 1635 would require the Workers' Compensation Research and Evaluation Group to study workers' compensation claims involving first responders. The group would analyze:

- medical costs;
- return-to-work outcomes;
- access to and utilization of care;
- satisfaction with care; and
- health-related functional outcomes.

The group would be required to issue a report on the study to the governor, the lieutenant governor, the House speaker, and the Legislature by December 1, 2022. The bill's provisions would expire on January 1, 2023.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 1635 would protect injured first responders in Texas by studying the issues that have led to dissatisfaction with the state's workers' compensation system. Texas is indebted to these brave men and women who willingly put themselves in harm's way to protect the public. Unfortunately, after being injured or getting sick in the line of duty, first responders too often encounter a frustrating system. Many have complained about issues such as the length of time it takes to get a response from workers' compensation, peace officers being terminated from their jobs for not returning to work quickly enough, and insufficient compensation from workers' comp while unable to work.

First responders also are at elevated risk for on-the-job exposure to COVID-19 and many may have contracted the virus in the line of duty, with some having died of the disease. There is confusion and disagreement between claimants and workers' comp over how to handle COVID-19 claims. Advocates for first responders would like to see workers' compensation address this issue and to devote more resources to the unique needs of these front-line workers.

CSHB 1635 would address the unique challenges first responders face while on duty by tasking the Texas Department of Insurance's Workers' Compensation Research and Evaluation Group specifically to study workers' compensation for peace officers, firefighters, EMTs, and other first responders. The one-time study would identify issues and gather data on their claims and outcomes. The group's report, which would be shared with state leaders, would provide valuable insights that could be used to inform future legislation to protect the state's first responders.

CRITICS SAY:

No concerns identified.

SUBJECT: Expanding automatic orders of nondisclosure of criminal history records

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, K. Bell, Cason, Crockett, Hinojosa, A. Johnson, Vasut

0 nays

2 absent — Cook, Murr

WITNESSES: For — Jonathan Copeland, Cannabis Reform of Houston; Linda Nuno, Dem party; Amelia Casas, Texas Fair Defense Project and Clean Slate; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Terra Tucker, Alliance for Safety and Justice; Greg Glod, Americans For Prosperity; Warren Burkley and Chas Moore, Austin Justice Coalition; Melissa Shannon, Bexar County Commissioners Court; Adam Haynes, Conference of Urban Counties; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Dustin Cox, GRAV; Thamara Narvaez, Harris County Commissioners Court; Scott Henson and Kathy Mitchell, Just Liberty; Elizabeth Miller, Libertarian Party of Texas SD10; Maggie Luna, Statewide Leadership Council; Heather Fazio, Texans for Responsible Marijuana Policy; Amanda List, Texas Appleseed; Sarah Reyes, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Louis Wichers, Texas Gun Sense; Koretta Brown, The Alliance For A New Justice System; and eight individuals)

Against — (*Registered, but did not testify*: Deana Johnston)

BACKGROUND: Government Code subch. E-1 governs the issuing of orders of nondisclosure, which prohibit criminal justice agencies from disclosing to the public criminal history record information related to an offense. The statute establishes who is eligible to petition a court for such an order and the process for doing so. Government Code sec. 411.074 establishes the general required conditions for petitioning a court for an order, including ones requiring no additional offense and prohibiting orders for certain previous offenses and offenses involving family violence.

Sec. 411.072(a) requires courts to issue orders of nondisclosure if individuals placed on deferred adjudication community supervision for certain nonviolent misdemeanors also had not previously been convicted of or placed on deferred adjudication for another offense other than a fine-only traffic offense and if they met other requirements in the statutes.

To qualify for the order under this provision, the misdemeanor offense for which the defendant has received deferred adjudication may not be one of the misdemeanors listed in sec. 411.072(a), which include driving or boating while intoxicated and misdemeanors under Penal Code provisions governing kidnapping, sexual offenses, assaultive offenses, offenses against the family, disorderly conduct and related offenses, public indecency offenses, weapons, and organized crime. In addition, the misdemeanor cannot be one for which a judge entered a finding in the case that it would not be in the best interest of justice for the defendant to receive an automatic order of nondisclosure under sec. 411.072.

If an individual meets these criteria, receives a discharge and dismissal of deferred adjudication for the nonviolent misdemeanor, and meets the requirements in Government Code sec. 411.074, courts are required to issue an order of nondisclosure.

DIGEST:

HB 4136 would expand eligibility for orders of nondisclosure issued for those placed on deferred adjudication community supervision for certain nonviolent misdemeanors by eliminating a prohibition on eligibility for those who have been previously convicted of or placed on deferred for another offense other than a fine-only traffic offense.

The bill would take effect September 1, 2021, and would apply to those receiving a discharge and dismissal on or after that date.

SUPPORTERS SAY:

HB 4136 would allow an expanded but limited and appropriate group of individuals to move on after a minor offense by making more individuals eligible for an automatic order of nondisclosure after a term of deferred adjudication for certain low level, non-violent offenses. Current law limiting automatic orders of nondisclosure under Government Code sec. 411.072 excludes many deserving individuals who do everything a court asks of them while fulfilling a term of deferred adjudication after such an

offense. These individuals, even those with previous offenses, should be recognized with an automatic order of non-disclosure related to the minor offense, just like the statute does for those with a first offense.

While HB 4136 would expand who could receive an automatic order of nondisclosure, the circumstances would remain very limited. The original offense for which the person received deferred adjudication would have to be a non-violent misdemeanor and could not be one of the numerous misdemeanors listed in Government Code sec. 411.072 or a misdemeanor for which the court made a finding that it would not be in the best interest of justice for the defendant to receive an order of nondisclosure under sec. 411.072. A court would have to determine that deferred adjudication was appropriate instead of proceeding with a prosecution, and the person would have to meet all of the terms of the deferred adjudication and receive a discharge and dismissal by the court. In addition, the individual would have to meet the numerous criteria in current law under Government Code sec. 411.074 as well as any required waiting time.

One of the goals of deferred adjudication is to allow individuals who successfully complete every court requirement to move on from the offense without further involvement in the criminal justice system, and HB 4136 would further that goal. It would encourage individuals to take responsibility for their misdemeanor and work hard to meet the court's requirements. An order of nondisclosure would help individuals move on from the negative effects that even a minor offense can have on employment, housing, schooling, and more and help them integrate fully into the community.

Law enforcement agencies would continue to be able to access records because orders of nondisclosure only apply to releasing information to the public.

CRITICS SAY:

Current law in Government Code sec. 411.072 is designed to allow automatic orders of nondisclosure only in narrow circumstance, and expanding those provisions could distort a message of personal accountability for actions that break the law.