HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • https://hro.house.texas.gov

HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 27, 2021
87th Legislature, Number 43
The House convenes at 10 a.m.
Part One

Three bills are on the Major State Calendar, one joint resolution is on the Constitutional Amendments Calendar, and 38 bills are on the General State Calendar for second reading consideration today. The bills and joint resolutions 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: County Affairs; Appropriations; Human Services; Public Education; Land and Resource Management; Business and Industry; Natural Resources; House Administration; Corrections; Insurance; Elections; and Transportation.

Alma Allen
Chairman
87(R) - 43

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 27, 2021
87th Legislature, Number 43
Part 1

SUBJECT: Creating the Brain Institute of Texas; authorizing general obligation bonds

COMMITTEE: Higher Education — committee substitute recommended

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

0 nays

1 absent — Frullo

WITNESSES: For — Melissa McDonald; Emily McDonald; Craig Rosenfeld; Thomas Taylor; (*Registered, but did not testify*: Anthony Haley, Baylor Scott & White Health; Jason Sabo, Children at Risk; Traci Berry, Goodwill Central Texas; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Nathan Cook, Rice University; Adriana Kohler, Texans Care for Children; Dan Finch, Texas Medical Association; Thomas Holloway, Texas Neurological Society; Stephanie Hoffman; Thomas Parkinson)

Against — None

On — Steve Strakowski, Dell Medical School at The University of Texas at Austin; Bess Frost, University of Texas Health San Antonio; Eric Boerwinkle, Samden Lhatoo, and Louise McCullough, University of Texas Health Science Center Houston; William Dauer, UT Southwestern Medical Center; (*Registered, but did not testify*: Michael Apperley, Texas Comptroller of Public Accounts)

DIGEST: CSHB 15 would create the Brain Institute of Texas to award grants to institutions of higher education to fund brain research. The bill would establish the processes for awarding grants, monitoring compliance, and recusal in the case of conflict of interest. The bill also would authorize the issuance of up to $300 million in general obligation bonds in a fiscal year to fund the grant program.

Brain Institute. The Brain Institute of Texas would be established to:

- create and expedite innovation in brain research to improve the health of state residents, enhance the potential for a medical or scientific breakthrough in brain-related sciences and biomedical research, and enhance the brain research superiority of the state;
- attract, create, or expand research capabilities of eligible institutions of higher education by awarding grants to promote a substantial increase in brain research, strategies for prevention of brain-related diseases, brain health initiatives, and the creation of jobs; and
- develop and implement a research plan to foster synergistic collaboration and investigation into brain health and research by eligible institutions of higher education and their partners.

Sunset. The Brain Institute of Texas would be subject to review by the Sunset Advisory Commission and unless continued, would be abolished September 1, 2032.

Powers and duties. The institute could make grants to implement the research plan; research certain areas impacting the brain; provide money for facilities, equipment, and salaries; and establish prevention programs to mitigate detrimental impacts on the brain.

The bill would require the institute to collaborate with state agencies, coordinating councils, and consortiums to enhance brain-related health care and research. The institute also would have to monitor grant contracts and agreements to ensure each recipient complied with terms and conditions and ensure that all grant proposals complied with this bill and adopted rules.

The institute could establish standards and oversight bodies to ensure money was properly used and employ necessary staff for administrative support. The institute would be governed by an oversight committee, and the bill would provide for the creation of committees for program integration, peer review, and higher education advice.

The institute would have to establish procedures to document compliance with all rules governing conflicts of interest and the peer review process.

The bill also would require the institute to create a statewide research and clinical data registry for brain research.

Office location. An institute employee could not have an office located in a facility owned by an entity receiving or applying for money from the institute.

Bonds. The institute could request the Texas Public Finance Authority to issue and sell general obligation bonds of the state. The authority could not issue and sell the bonds before January 1, 2022, and could not issue and sell more than $300 million in bonds in a fiscal year. Proceeds from the bonds would be deposited to the credit of the Brain Institute of Texas research fund.

If the authority contracted with a private entity to issue the bonds, the authority would have to consider contracting with an entity that had its principal place of business in the state and using a historically underutilized business.

Fund. CSHB 15 would establish the Brain Institute of Texas research fund as a dedicated account in the general revenue fund consisting of legislative appropriations, gifts and grants, and earned interest.

The fund could be used only for:

- the award of grants for brain research;
- the purchase of approved research facilities;
- the operation of the institute; and
- debt service on and other costs of bonds.

Grant money. A grant recipient awarded money from the Brain Institute of Texas research fund could use the money for research consistent with the purposes of this bill and in accordance with a contract between the recipient and institute.

The money could be used for authorized expenses, including honoraria, salaries and benefits, travel, conference expenses, supplies, operating

expenses, contracted research and development, capital equipment, and construction of state or private facilities.

No more than 5 percent of the money could be used for facility purchase, construction, remodel, or renovation in a fiscal year, and any of these expenditures would have to benefit brain research.

No more than 10 percent of money appropriated by the Legislature for grants in a fiscal year could be used for prevention projects and strategies to mitigate the incidence of detrimental health impacts on the brain.

Grant recipients. Any public or private institution of higher education in the state would be eligible for a grant. A grant recipient could use the money for purposes of this bill and in a collaborative partnership with certain other entities in the state, including nonprofit or for-profit organizations or government entities, or for projects in the state.

Grant award process. The institute would have to use a peer review process to evaluate and recommend all grants awarded by the oversight committee. Procedures for awarding grants would have to require the peer review committee to score applications and make recommendations using a prioritized list that ranked applications in the order they should be funded.

The program integration committee would submit to the oversight committee a list of recommended applications, including documentation of the factors considered and substantially based on the prioritized list submitted by the peer review committee. To the extent possible, the recommendations would have to give priority to proposals that aligned with the research plan and state priorities, enhanced the research superiority at institutions of higher education, benefited residents of the state, and were interdisciplinary or interinstitutional.

A peer review committee member could not use the member's official position to influence a decision to approve or award a grant or contract to the member's employer. A grant could not be awarded to an applicant who made a gift or grant over $50 to the institute or a committee member or

employee on or after January 1, 2022, though the oversight committee could waive this exclusion under its adopted rules.

The institute's CEO would have to submit an affidavit for each grant application recommendation containing the peer review process and the application's peer review score.

Two-thirds of the oversight committee members would have to vote to approve each funding recommendation. If the committee did not approve a recommendation, a statement explaining the reasons would have to be included in the minutes.

The oversight committee could not award more than $300 million in grants in a fiscal year. The bill would detail the awards process for multiyear projects.

Contract terms. Before awarding a grant, the institute would have to enter into a contract with the recipient. The contract could specify the state's interest in a capital improvement built with grant money, that the recipient would have to repay the state any amounts not used for approved purposes, and that the institute could terminate the contract if the recipient failed to meet the terms and conditions.

Patent royalties and license revenues. The oversight committee would have to establish standards requiring grant awards to be subject to intellectual property agreements that allowed the state to collect royalties, income, and other benefits realized as a result of projects undertaken with awarded money. The bill would allow the oversight committee to transfer its management and disposition authority over the state's interests to the Texas Treasury Safekeeping Trust Company.

Texas suppliers, HUBs. The bill would require the oversight committee to establish standards to ensure that grant recipients purchased goods and services from Texas suppliers and historically underutilized businesses to the extent reasonably possible.

Grant compliance and progress. The oversight committee would have to require as a condition of an awarded grant that the recipient submit to

regular reviews of the project by institute staff to ensure compliance with the terms of the grant and ensure ongoing progress. The institute would establish and implement a grant compliance and progress review process. The CEO could terminate grants that did not meet contractual obligations.

The CEO would have to report at least annually to the oversight committee on the progress and continued merit of the projects awarded grants, and the institute would have to implement a system to monitor the status of reports.

Oversight committee. CSHB 15 would create the oversight committee as the governing body of the Brain Institute of Texas. The committee would be composed of nine members appointed by the governor, lieutenant governor, and House speaker to serve staggered six-year terms.

A person could not be a member of the committee if the person or the person's spouse:

- was employed by, participated in the management of, or owned or controlled an interest in an entity or partner receiving money from the institute; or
- used or received a substantial amount of tangible goods, services, or money from the institute, other than reimbursement for committee expenses.

The bill would detail the grounds for removal of a member and the process to notify and act on potential grounds for removal.

The oversight committee would have to elect a presiding officer and assistant presiding officer from among its members every two years. The officers could not serve consecutive terms. The committee would have to distinguish the responsibilities of the committee and its officers from the responsibilities of the CEO and institute employees.

Committee members would not be entitled to compensation but could be reimbursed for expenses.

The committee would annually set priorities as prescribed by the Legislature for each grant project, and consider the priorities in awarding grants.

The bill would require the committee to adopt a code of conduct applicable to each member of the oversight committee, the program integration committee, and the peer review committee and each institute employee. Each member of the oversight committee would have to file a verified financial statement with the chief compliance officer.

The committee could adopt rules to administer the provisions of the bill.

Chief officers. The bill would require the oversight committee to hire a CEO, who would have to have a demonstrated ability to lead and develop academic, commercial, and governmental partnerships and coalitions.

The institute also would have to employ a chief compliance officer to report incidents of noncompliance to the oversight committee. The chief compliance officer would have to ensure that all grant proposals complied with this bill and adopted rules before they were submitted for consideration. The officer would attend and observe peer review committee meetings.

Program integration committee. The institute would have to establish a program integration committee composed of the CEO of the institute, three senior-level employees, and the executive commissioner of the Health and Human Services Commission or their designee. The institute's CEO would serve as the presiding officer of the committee.

Peer review committee. The oversight committee would have to establish a peer review committee and the CEO would appoint as members of the peer review committee experts in fields related to the brain. The oversight committee would adopt a policy on in-state or out-of-state residency requirements for peer review committee members. The members could not serve on the governing board of an entity receiving a grant. The CEO would adopt policies governing honoraria and the term length of members.

Higher education advisory committee. The higher education advisory committee would be composed of 15 members appointed by the presidents of various institutions of higher education in the state. The higher education advisory committee would advise the other committees on issues, opportunities, and the role of higher education, and other subjects involving brain research.

Ad hoc advisory committee. The oversight committee could create additional ad hoc advisory committees of experts to advise on issues relating to brain research, health, or other issues.

Conflict of interest. The bill would require the oversight committee to adopt conflict-of-interest rules, based on standards adopted by the National Institutes of Health, to govern the committee, the program integration committee, the peer review committee, and institute employees. The bill would detail the process by which committee members or employees had to recuse themselves for having a professional or financial interest in an entity receiving or applying for money from the institute.

A committee member or employee who intentionally violated conflict-of-interest requirements would be subject to removal from further participation in the institute's grant review process.

Waiver. The bill would allow a committee member or employee with a conflict of interest to seek a waiver. The oversight committee would have to adopt rules governing a waiver of the conflict-of-interest requirements under exceptional circumstances. The rules would have to authorize the CEO or committee member to propose granting a waiver, require a proposed waiver to be publicly reported, require a majority vote to grant a waiver, and require any waiver granted to be reported to entities with jurisdiction over the institute. The rules also would have to require the institute to retain documentation of each waiver granted.

Investigation. On becoming aware that a potential conflict of interest existed that had not been reported, a committee member or employee would have to immediately notify the CEO, who would notify the presiding officer of the oversight committee and general counsel.

A grant applicant seeking an investigation regarding an unreported conflict of interest would have to file a written request with the institute's CEO. The applicant would have to submit such a request within 30 days after the final funding recommendations were made.

On notification of an alleged conflict of interest, the general counsel would have to investigate the matter and provide an opinion, including a statement of the facts, a determination, and any recommendations for appropriate course of action.

The CEO or presiding officer would make a final determination of an unreported conflict of interest that would include any actions to address the impropriety, such as reconsideration of an application or referral of the application to another peer review committee.

Public information. The bill would make the following information public information that could be disclosed: the grant applicant's name and address, the amount requested, the type of brain research to be addressed by the proposal, and any other information designed by the institute with the consent of the applicant.

The following information would be confidential and not subject to disclosure:

- all information not listed above regarding a product, device, or process and all technological and scientific information that had potential for being sold, regardless of whether patentable or capable of being registered under copyright or trademark laws; and
- the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility.

The institute would have to post on its website records that pertained specifically to a gift, grant, or consideration provided to the institute, an employee, or a member of the oversight committee in their official capacity.

Compliance program. The institute would have to establish a compliance program to assess and ensure compliance by the committee members and employees with applicable laws, rules, and policies, including ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

Certain information regarding compliance program investigations would be confidential and not subject to public disclosure; however, the information could be made available to a law enforcement agency or prosecutor, government agency, or committee member or institute employee responsible for an investigation.

The oversight committee could conduct a closed meeting to discuss an ongoing compliance investigation into issues related to fraud, waste, or abuse of state resources.

Annual report. By January 31 of each year, the institute would have to prepare and submit a report to the governor, lieutenant governor, House speaker, and relevant legislative committees and post the report on the institute's website. The report would outline certain items, including a list of grant recipients, research accomplishments, financial records, and other items listed in the bill.

Audit. The institute would have to annually commission an independent financial audit of its activities from a certified public accounting firm and provide the audit to the comptroller. The comptroller would review and evaluate the audit and issue a public report of the review each year. The oversight committee would have to review the audit, evaluation, and report and review the financial practices of the institute.

Grant records. The bill would require the institute to maintain complete records of the review of each grant application regardless of whether the grant was funded, each recipient's financial reports and progress reports, and the institute's review of the reports. Such records would have to be kept for at least 15 years.

Appropriation contingency. The institute would be required to implement the provisions of the bill only if the Legislature appropriated

money specifically for that purpose. If money was not appropriated, the institute could, but would not be required to, implement provisions using other available money.

By December 1, 2022, the members of the oversight committee would have to be appointed. The committee could not take action until a majority of the members had taken office.

The bill would take effect January 1, 2022, but only if the constitutional amendment authorizing general obligation bonds to fund brain research was approved by voters. If not approved, the bill would have no effect.

SUPPORTERS SAY:

CSHB 15 would create the Brain Institute of Texas to make the state a global leader in brain research and lead to more cures for some of the most devastating health issues. Even though neurological diseases and disorders affect more than 100 million Americans, the human brain is complicated and scientific discovery has not identified enough effective cures or treatments to notably impact people's lives. The Brain Institute of Texas would make grants to institutions of higher education across the state to expedite research, innovation, and breakthroughs in brain sciences. The legislation is vital to researching both existing issues, such as military veterans with traumatic brain injuries, and emerging challenges like the negative effects of the COVID-19 pandemic.

The bill, along with HJR 5, would finance the grant program by authorizing $300 million in general obligation bonds to be issued each year for 10 years. This would amount to less than 1 percent of the economic cost of neurological disorders and diseases in the state, which by some estimates could be as much as $135 billion annually. As Texas continues to grow, both these economic costs and significant human costs will increase. Because discovery science for these disorders is not mature enough to attract private sector investment, such a program is vital to advance science. The bill and resolution appropriately would fund brain research, including disease prevention, treatment, and cures, to save lives and reduce costs.

Texas has some of the most respected institutions of higher education, and leveraging the institutions and their partners, including nonprofits,

hospitals, and private companies, would put the state at the forefront of brain research. The institute also would attract talent to the state to increase workforce development. The organization of the Brain Institute of Texas would be based on the Cancer Prevention and Research Institute of Texas, a similar organization that has led to breakthroughs in cancer, to ensure good government practices in awarding grants and returns on state investments.

CRITICS SAY:

CSHB 15, in combination with HJR 5, unnecessarily would expand the size of government while creating an obligation for future state funds. Funding brain research is not an essential function of state government and can be financed instead by the private sector. Also, by authorizing the issuance of $3 billion in taxpayer-backed general obligation bonds over the next 10 years, the legislation would tie up state funds for debt service when the money could be better spent on other needs.

NOTES:

CSHB 15 is the enabling legislation for HJR 5, which would amend the Texas Constitution to authorize the issuance of up to $3 billion in general obligation bonds to fund brain research. HJR 5 is on the Constitutional Amendments Calendar today.

According to the Legislative Budget Board, the bill would cost about $5 million in general revenue related funds through fiscal 2023 if the maximum amount of general obligation bonds were issued beginning in fiscal 2023. This cost reflects the debt service that would be paid from the general revenue fund and administrative expenses. These costs would grow to $110.6 million by fiscal 2026.

SUBJECT: Increasing penalty for obstructing a hospital, emergency care services

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — K. Bell, Cason, Cook, Murr, Vasut

4 nays — Collier, Crockett, Hinojosa, A. Johnson

WITNESSES: For — (*Registered, but did not testify*: Robert McClinton, Bell County Sheriffs Department; Frederick Frazier, Dallas Police Association/State FOP; Ray Hunt, HPOU; James Smith, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; John Wilkerson, Texas Municipal Police Association; Cynthia Simons, Texas Women's Justice Coalition)

Against — Minister Dominique Alexander, Next Generation Action Network; Dominique Walker, The Afiya Center; Melissa Perry; Lelani Russell; Ruth Torres; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Angelica Cogliano, Austin Lawyers Guild; Scott Henson, Just Liberty; Emily Gerrick, Texas Fair Defense Project; Susana Carranza; Idona Griffith; Suzanne Mitchell)

On — Josh Reno, Office of the Attorney General; (*Registered, but did not testify*: Jason Griffin, Texas Department of Public Safety; Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Penal Code sec. 42.03 makes it a crime to obstruct a highway or other passageway. It is an offense to, without legal privilege or authority, intentionally, knowingly, or recklessly:

- obstruct a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances; or
- disobey a reasonable request or order to move issued by a person the individual knows to be or is informed is a peace officer, fireman, or person with authority to control the premises if the

order is to prevent obstruction of a highway or other area covered by the provision or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

Offenses are class B misdemeanors (up to 180 days in jail and/or a maximum fine of $2,000).

Transportation Code sec. 541.201 lists several categories of "authorized emergency vehicle," including a fire department or police vehicle, a licensed public or private ambulance, and an emergency medical services vehicle.

DIGEST:

CSHB 9 would raise the penalty for some offenses of obstructing a highway or other passageway. It would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) to knowingly:

- prevent the passage of an authorized emergency vehicle that was operating the vehicle's emergency audible or visual signals; or
- obstruct access to a hospital or certain other health care facility that provided emergency medical care.

If a court granted community supervision to someone convicted of a state jail felony for obstructing a highway or other passageway, the court would have to require that the defendant spend at least 10 days confined in a county jail.

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

SUPPORTERS SAY:

CSHB 9 would help protect those in need of emergency care by increasing the criminal penalty for blocking access to a hospital or emergency care facility or preventing passage of an authorized emergency vehicle. Timing can be critical when someone is being rushed to the hospital or in another emergency, and only a few minutes can mean the difference between life and death. While this bill would address situations similar to a reported incident in which law enforcement officers were shot and access to a hospital was blocked, it also would help anyone needing emergency

medical care. The seriousness of these emergency situations and access to hospitals warrants an increased penalty when compared to other situations in which highways or passageways are blocked. CSHB 9 would deter individuals from actively standing in the way of those needing emergency care and appropriately punish those who did.

CSHB 9 is narrowly drawn to apply only to emergency situations in which an individual knowingly blocked access of an emergency vehicle or to a medical facility. The act would have to be done knowingly, and vehicles would have to be an authorized emergency vehicle using lights or a siren. The bill would not infringe on the rights of individuals, and those engaged in peaceful protests in the community who did not threaten another's emergency medical care or block an emergency vehicle would not fall under its provisions.

CRITICS SAY:

CSHB 9 is unnecessary, could be used to criminalize peaceful protests, and could have a chilling effect on the rights to speech and assembly. Incidents described by the bill are not occurring in Texas, and current law would adequately punish anyone who blocked access to a hospital or obstructed a highway, street, or other area covered by current statute.

Current law appropriately makes obstructing a highway or other passageway a class B misdemeanor, which carries a potential punishment of up to 180 days in jail. Raising the penalty to a felony with mandatory jail time if given probation would be too harsh and out of proportion to the offense. Requiring a minimum jail sentence for someone given community supervision for the offense would reduce judicial discretion in handling such cases.

SUBJECT: Modifying bail setting process and eligibility

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Collier, K. Bell, Cason, Cook, Murr, Vasut

3 nays — Crockett, Hinojosa, A. Johnson

WITNESSES: For — Greg Glod, Americans For Prosperity; Andy Kahan, Crime Stoppers of Houston; Richard Jankovsky, DPS Officers Association; Nicholas Chu and Rick Hill, Justices of the Peace and Constables Association of Texas; Kaden Norton, Prison Fellowship Ministries; Derek Cohen, Texas Public Policy Foundation; Jason Vaughn, Texas Young Republican Federation; Kasey Allen; Doug Deason; Rebecca Reaves; (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; Jennifer Tharp, Comal County Criminal District Attorney; Timothy Head, Faith and Freedom Coalition; David Sinclair, Game Warden Peace Officers Association; Bradford Shields, Harris County Commissioner, Pct. 3, Cactus Jack Cagle; Tom Ramsey, Harris County Precinct Three; Justin Keener, Libre Initiative; Luis LaRotta, Republican Liberty Caucus of Texas; John Baucum, Republicans Against Marijuana Prohibition and Texas Young Republican Federation; Jimmy Rodriguez, San Antonio Police Officers Association; Drew Lawson, Texans for Lawsuit Reform; Megan Herring, Texas Association of Business; Mia McCord, Texas Conservative Coalition; Donald Garner, Texas Faith and Freedom Coalition; John Wilkerson, Texas Municipal Police Association; Linda Nuno, Travis Dem Party District Chair #268 and Dem Party; Julie Renken, Washington County District Attorney's Office; Chance Hardwick; Kim Hardwick; David Kohler; Tony LaMarr; Jeanine Rains)

Against — Nick Hudson, American Civil Liberties Union of Texas; Tiara Cooper and Akilah Wallace, Faith in Texas; Jim Bethke, Harris County Justice Administration Department; Krishnaveni Gundu, Jail Project of Texas dba Texas Jail Project; Chad Seay, Lubbock County Commissioner; Roger Moore, PBT; John A. Convery, David Gonzalez, and Michael Gross, Texas Criminal Defense Lawyers Association; Amelia Casas, Texas Fair Defense Project; Ken Good, The Professional Bondsmen of

Texas; Lauren Rosales, The Bail Project; Amanda Marzullo, Vera Institute of Justice; Donna Broom; Desira Brown; Mario Gonzalez; (*Registered, but did not testify*: John T Floyd, Alliance for a New Justice System; Chas Moore, Austin Justice Coalition; John Zavala, Bail Bondsmen; Melissa Shannon, Bexar County Commissioners Court; Jennifer Toon, Coalition of Texans with Disabilities; Jeff Miller, Disability Rights Texas; Daniel Collins, El Paso County; Scott Miller, Financial Casualty and Surety; Thamara Narvaez, Harris County Commissioners Court; Kathy Mitchell, Just Liberty; Greg Hansch and Matthew Lovitt, National Alliance on Mental Illness Texas; Alison Mohr Boleware, National Association of Social Workers - Texas Chapter; Debbie Byrd, Mike Byrd, Rene Farias, Gage Gandy, Cindy Hammons, Ronnie Long, John Mccluskey, Glenn Meeker, Charlie Pickens, Paul Schuder, and Kathleen Woods, PBT; Maggie Luna, Statewide Leadership Council; Betty Blackwell and Shea Place, Texas Criminal Defense Lawyers Association; Emily Gerrick, Texas Fair Defense Project; Diana Claitor, Texas Jail Project; Gary Bledsoe, Texas NAACP; Koretta Brown, Texas Organizing Project; Linda Nuno, Texas Travis Co Dem Party; Mary Sue Molnar, Texas Voices for Reason and Justice; Alex Cogan, The Arc of Texas; Bella Sanford, The Save Jeff Wood Campaign; Julie Wheeler, Travis County Commissioners Court; 19 individuals)

On —David Slayton, Texas Judicial Council; Michael Fields; Jean Skinner; (*Registered, but did not testify*: Tom Maddox, Sheriffs Association of Texas; Nathan Hecht, Texas Judicial Council)

BACKGROUND: Texas Constitution Art. 1, sec. 11 and Code of Criminal Procedure (CCP) art. 1.07 state that all prisoners shall be bailable unless accused of a capital offense when proof is evident. Texas Constitution Art. 1, sec. 11 established circumstances under which bail can be denied. Under these provisions, bail may be denied in cases with repeat offenders accused of certain felonies and in cases of individuals accused of certain offenses involving family violence and protective orders.

Code of Criminal Procedure art. 17.15 establishes rules for setting bail amounts, specifying that the amount of bail is to be governed by the Constitution and by the following rules:

- it must be sufficiently high to give reasonable assurance that the undertaking will be complied with;
- the power to require bail is not to be so used as to make it an instrument of oppression;
- the nature of the offense and the circumstances under which it was committed are to be considered;
- the ability to make bail is to be regarded, and proof may be taken upon this point; and
- the future safety of a victim of the alleged offense and the community shall be considered.

DIGEST:

CSHB 20 would require the development and use of a public safety assessment to be used when setting bail, require those making bail decisions to receive training, and restrict to magistrates with specified qualifications the authority to release certain defendants on bail. The bill also would require those setting bail to take certain actions, prohibit the release on personal bond for some offenses, modify the statutory rules governing the bail setting process, and require notice of bond conditions to be sent to local law enforcement authorities. Contingent on approval of a constitutional amendment, the bill would expand the circumstances under which bail could be denied and would require bail to be denied for some offenses.

The bill would be called the Damon Allen Act.

Denial of bail for some offenses. CSHB 2 would authorize magistrates and judges to deny bail in certain circumstances and would require bail to be denied for some offenses.

Bail could be denied under the bill if an individual was accused of committing a violent or sexual offense as defined by Texas Constitution Art. 1, sec. 11a. For bail to be denied in these cases, judges or magistrates would have to determine that requiring bail and conditions of release were insufficient to reasonably ensure the person's appearance in court or the safety of the community, law enforcement, or the victim of the alleged offense.

Bail would have to be denied to individuals accused of committing capital murder and those accused of committing sex offenses, as defined by Texas Constitution, art 1, sec. 11a, with a victim younger than 17 unless a judge or magistrate made a specific determination. To give bail in such a case, the judge or magistrate would have to determine by clear and convincing evidence that, based on the existence of extraordinary circumstances, they were able to set bail and conditions of release sufficient to reasonably ensure the person's appearance in court and the safety of the community, law enforcement, and the victim of the alleged offense.

Judges and magistrates who denied bail under these circumstances would have to prepare a written order that included findings of fact and a statement explaining the reason for the denial.

Development, use of public safety assessment. CSHB 20 would require the development and use of a public safety assessment for decisions about release on bond.

Development of public safety assessment. The Office of Court Administration (OCA) of the Texas Judicial System would be required to develop and maintain a validated pretrial public safety assessment that was standardized for statewide use and available for use when setting bail.

The assessment would have to:

- be objective, validated for its intended use, and standardized;
- be based on an analysis of empirical data and risk factors relevant to the risk of a defendant intentionally failing to appear in court as required and the safety of the community, law enforcement, and the victim of the alleged offense;
- not consider factors that disproportionately affected persons who were members of racial or ethnic minority groups or who were socioeconomically disadvantaged;
- have been demonstrated to produce results that were unbiased with respect to the race or ethnicity of defendants and did not produce a disproportionate outcome; and

- be designed to function in a transparent manner with respect to the public and defendants to whom it was applied.

OCA would have to provide access to the assessment to county officials at no cost and would be required to collect data relating to the use and efficiency of the assessment. OCA would have to create and provide access to the assessment by December 1, 2021. A sample result from the assessment would have to be placed on the OCA's website along with an explanation of the data used by the assessment.

OCA would be required to change or update the assessment by November 1 of each even-numbered year to ensure it complied with requirements of the bill. OCA also would have to report by December 1 of even-numbered years to the governor and legislative leaders on the data collected and changes or updates made to the assessment.

Use of public safety assessment. Magistrates considering the release on bail of a defendant charged with a class B misdemeanor or higher category of offense would have to order the county's personal bond office or another trained person to use the pretrial public safety assessment developed under the bill to assess the defendant. The results of the assessment would have to be given to the magistrate within 48 hours of the defendant's arrest. Magistrates would be required to consider the results of the assessment before making a bail decision.

Magistrates could conduct the assessment themselves but they could not, without the consent of the sheriff, order a sheriff or sheriff's department personnel to conduct the assessment.

Training, qualifications to make bail decisions. OCA would be required to develop or approve training courses on a magistrate's duties established by the bill and duties related to setting bail in criminal cases. The courses would have to include a four-hour training course for a magistrate who was licensed to practice law in Texas, a 16-hour training course for a magistrate who was not licensed to practice law in Texas, and a four-hour continuing education course for all magistrates. The bill would establish deadlines for magistrates to complete required courses. OCA would have to make the training courses available by December 1, 2021.

Only magistrates who met certain qualifications established in the bill could release on bail defendants charged with felonies or misdemeanors that carried potential terms of confinement. Such magistrates would have to be Texas residents, reside in one of the counties they served, and be in compliance with training requirements

Actions on bail decision. The bill would require magistrates to take certain actions regarding bail within 48 hours of an individual's arrest. Within this time frame, a magistrate would be required to order, after considering all circumstances and the results of the pretrial public safety assessment, that a defendant be:

- released on personal bond with or without conditions;
- released on monetary bond with or without conditions; or
- denied bail in accordance with the Texas Constitution and other law.

In making bail decisions, magistrates would be required to impose the least restrictive conditions and minimum amount of bail, whether personal bond or monetary bond, necessary to reasonably ensure the defendant's appearance in court and the safety of the community, law enforcement, and the victim. Unless specifically provided by another law, there would be a rebuttable presumption that bail, conditions of release, or both bail and conditions of release were sufficient to reasonably ensure the defendant's court appearance and the community, law enforcement, and victim safety.

The bill would establish requirements for bail schedules. Judges would be prohibited from adopting a bail schedule or entering a standing order related to bail that was inconsistent with the bill or authorized a magistrate to make a bail decision for a defendant without considering the results of the defendant's pretrial public safety assessment.

The bill would not prohibit a sheriff, other peace officer, or a licensed jailer from accepting bail under current provisions that allow these actions before a pretrial public safety assessment had been conducted or before a bail decision had been made by a magistrate under the bill.

Prohibited release on personal bond. CSHB 20 would prohibit the release of certain defendants on personal bond, under which courts establish a bail amount but defendants do not give the court money or other security and agree to return to court and to other conditions. Release on personal bond would be prohibited for those charged with the following offenses: murder, capital murder, human trafficking, continuous human trafficking, continuous sexual abuse of a young child or children, indecency with a child, aggravated sexual assault, aggravated promotion of prostitution, compelling prostitution, or sexual performance by a child.

Statutory rules for setting bail. The bill would revise the provisions in Code of Criminal Procedure 17.15 that establish the rules for setting bail. In addition to the current requirement that the nature of the offense and circumstances under which it was committed must be considered, the bill would require that the defendant's criminal history, including acts of family violence, also be considered. The bill would establish an exception to this for misdemeanors or offenses under the Texas Controlled Substance Act that occurred more than 10 years before the current offense. Such offenses could not be considered unless the previous offense involved the manufacture or delivery of a controlled substance, caused bodily injury to another, or good cause otherwise existed for considering the offense.

In addition to current requirements that the future safety of victims and the community be considered, the bill would require that the future safety of law enforcement be considered. New requirements also would be established requiring consideration of results of any pretrial public safety assessment conducted using the validated assessment developed under the bill and authorizing the consideration of any other relevant facts or circumstances.

Notice of bond conditions to local officials. The bill would require courts to notify certain law enforcement officials after a magistrate imposed a condition of release on bond or modified or removed a previous condition. By the next business day after the date a magistrate imposed, modified, or removed a condition of release on bond, the court clerk would have to send a copy of the order to the prosecutor and either the

chief of police in the city where the defendant resided or the sheriff of the county where the defendant resided, if the defendant did not reside in a city. If the order prohibited a defendant from going to or near a child care facility or school, the clerk also would have to send a copy of the order to the child care facility or school.

Clerks could delay sending a copy of the order only if they lacked information necessary to ensure service and enforcement. The copy of the order and any related information could be sent electronically or in another manner that could be accessed by the recipient.

Magistrates would have to give defendants written notice of the conditions of release on bond and the penalties for violating a condition of release.

A police chief or sheriff receiving a copy of an order would be required, within 10 days of receiving the order, to enter or modify information about the condition of release into the DPS database.

Effective date, contingency. The bill would take effect December 1, 2021, and would apply only to those arrested on or after that date.

Provisions relating to prohibiting bail for certain offenses would take effect only if voters approved the constitutional amendment proposed by the 87th Legislature to authorize the denial of bail to an accused person if necessary to ensure the person's appearance in court and the safety of the community, law enforcement, and the victim of the alleged offense, and requiring the denial of bail to a person accused of capital murder or a sexual offense involving children absent extraordinary circumstances.

SUPPORTERS SAY:

CSHB 20 would reform the bail-setting process in Texas to better protect the public and ensure a more fair and just system for those accused of crimes by placing appropriate parameters on bail, giving more information to those making bail decisions, requiring training of those making such decisions, and ensuring that safety and appearance in court, not wealth, would drive bail decisions.

The current system often results in bail amounts that do not reflect the threat that those accused of crimes pose to the public or the likelihood that

they will appear in court. The results of these decisions have harmed public safety, been unfair to some defendants without financial means, and been costly for jails that house those awaiting trial.

Decisions under the current system also have resulted in high-risk and dangerous defendants with financial means out on the streets. This has resulted in tragedies such as the 2017 killing of Department of Public Safety trooper Damon Allen, for whom the bill would be named. Trooper Allen was shot during a traffic stop by someone who had been released on bail despite being a repeat offender with a violent past.

Denial of bail for some offenses. The situations under which judges have discretion to deny bail should be revised to include a narrow, carefully selected list of serious violent and sexual crimes. CSHB 20, in conjunction with changes to the Texas Constitution, would allow bail denials in these reasonable, justifiable circumstances while also requiring judges and magistrates to consider bail and conditions of release in the context of the safety of the public, victim, and law enforcement and the defendant's appearance in court. The bill would impose a safeguard and ensure transparency in situations in which judges and magistrates would be required to deny bail by requiring written findings of fact about why bail was denied.

Development, use of public safety assessment. CSHB 20 would improve bail decisions by giving magistrates more information about those accused of crimes. Currently, decisions can be made by magistrates who do not know a defendant's full criminal history or other vital information, such as their history of appearing in court.

CSHB 20 would address this issue by giving magistrates a public safety assessment tool developed by the Office of Court Administration to help make accurate decisions about these factors. The bill would ensure the assessment tool was fair by establishing requirements for it, including that it be objective, validated, and standardized. Other requirements to make sure the tool was fair would include prohibiting it from considering factors that disproportionately affected persons who were members of racial or ethnic minority groups or who were socioeconomically disadvantaged, while requiring it to produce results that were unbiased.

The tool would be studied and changed if needed, and transparency with the public would be created through access to a sample assessment on OCA's website.

The use of a public safety assessment would not reduce judicial discretion but simply give those making decisions more information as quickly as possible. Judges and magistrates would continue to be able to make individual decisions in every case. The tool would be free to counties and should be quick and efficient to use so it should not slow down bail decisions, which would have to be made within 48 hours of an arrest.

Training, qualification. Required training and demonstrated competency by those making bail decisions would ensure that qualified individuals were acting in this complex and important area. Since these decisions affect public safety and the liberty of those accused of crimes, it is especially important that everyone making them understands their duties.

Actions on bail decision. CSHB 20 would address concerns that the current system unfairly keeps some non-dangerous defendants with limited financial means in jail pretrial. It would specifically direct judges and magistrates to impose the least restrictive conditions and the minimum amount of bail, either personal or money, to ensure court appearance and protect public safety. These directives would ensure defendants were properly assessed and received fair conditions on any bond. The bill would not eliminate cash bail but make sure that if it were used, it was used appropriately.

The bill would not prohibit bail schedules, only require that they be consistent with state law and that their use take into account the public safety assessment.

Prohibited release on personal bond. CSHB 20 would better protect the public by limiting the use of personal bonds for those accused of certain serious offenses, including human trafficking and aggravated sexual assault. The prohibition on personal bonds would apply to a narrow, select group of serious offenses, making it appropriate if someone was going to be released pretrial to require money bail and more than the promise on a personal bond to appear in court.

Statutory rules for setting bail. Under the bill, decisions about bail would be more reasoned and public safety would be improved because magistrates and judges would have information from the assessment tool as well as revised rules that required the consideration of criminal history, family violence, and safety to law enforcement. The bill would treat those accused of crimes fairly by establishing a narrow, limited exception to considering information on some misdemeanors or drug offenses so that minor brushes with the law that were over a decade old would not have an outsized influence on a current bail decision.

Notice of bond conditions to local officials. The bill would help protect the public and law enforcement authorities by making sure information about bond conditions was sent to the community where a defendant lived.

CRITICS SAY:

CSHB 20 would expand too far when bail could be denied, require the use of a pretrial public safety assessment that could have negative effects, reduce local discretion in setting bail, and could interfere with procedures some counties have adopted in response to litigation.

Denial of bail for some offenses. CSHB 20 would be too broad an expansion of when bail can be denied and would erode the tenant that bail should not be denied except in the most limited cases. Preventative detention should be a rare exception, not something available for multiple offenses or mandated for specific offenses. The mandates for no bail in the bill could result in many defendants being locked up before trial, when they are presumed innocent, regardless of the evidence or their threat or flight risk.

Pretrial public safety assessment. A statewide requirement to use a pretrial public safety assessment could unfairly delay pretrial release for some defendants and could result in the detention of some who otherwise would be released. Some counties' current practices allow certain low-level, nonviolent, and low-risk defendants to be released quickly, perhaps on a personal bond that does not require cash. Having to conduct a public safety assessment in all cases would slow down such processing, keeping defendants in jail and possibly crowding jails.

Assessment tools have been criticized for being unreliable and biased, and perpetuating or introducing unfair disparities into the bail-setting process, including racial disparities. There are no assurances that the assessment mandated by the bill would not exacerbate problems with these issues, even with the bill's requirements that the tool demonstrate unbiased results. An assessment tool would likely lean heavily on information in a DPS database, which could be inaccurate.

Actions on bail decisions. Current law guiding bail decisions works well, and the statutory requirement in the bill to impose the least restrictive conditions and minimum amount of bail could be used to avoid the commercial bond industry, which contributes to public safety and saves taxpayer dollars by monitoring those released and ensuring they appear in court.

Prohibited release on personal bond. CSHB 20 would reduce judicial discretion and local control by prohibiting certain defendants from being released on a personal bond. Eliminating this option for categories of offenses would not contribute to public safety since there is no consideration of risk. Individuals excluded from personal bonds under the bill could be given money bonds, allowing those with money to buy their pretrial release from jail while keeping those without resources locked up.

OTHER CRITICS SAY:

Denial of bail for some offenses. Provisions of CSHB 20 that would allow some individuals to be held without bail are contingent on a constitutional amendment that is not before legislators. Passing CSHB 20 without an accompanying amendment to the Constitution could allow parts of the bill to be enacted without this important component.

NOTES:

According to the Legislative Budget Board, CSHB 20 would result in a negative impact of $1.1 million in fiscal 2022-23 to the general revenue dedicated statewide electronic filing system account.

SUBJECT: Authorizing $3 billion in general obligation bonds to fund brain research

COMMITTEE: Higher Education — committee substitute recommended

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

0 nays

1 absent — Frullo

WITNESSES: For — (*Registered, but did not testify*: Anthony Haley, Baylor Scott & White Health; Jason Sabo, Children at Risk; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Nathan Cook, Rice University; Dan Finch, Texas Medical Association; and 13 individuals)

Against — None

On — (*Registered, but did not testify*: Michael Apperley, Texas Comptroller of Public Accounts)

DIGEST: CSHJR 5 would allow the Legislature by general law to authorize the Texas Public Finance Authority to provide for, issue, and sell up to $3 billion in general obligation bonds of the state on behalf of the Brain Institute of Texas and to enter into related credit agreements. The authority could not issue more than $300 million in bonds in a year.

Proceeds from the sale of the bonds would have to be deposited in separate funds or accounts within the state treasury to be used by the Brain Institute of Texas to fund:

- grants to institutions of higher education in the state for brain research;
- brain disease and disorder prevention health care;
- recruitment and development of brain researchers;
- activities identified in the Texas Brain Research Plan;

- research facilities in the state that conduct brain research;
- the purchase of research facilities, subject to approval; and
- the operations of the institute.

While any of the bonds or interest was outstanding and unpaid, an amount from the first money deposited to the state treasury and not otherwise appropriated by the Texas Constitution would be appropriated to pay the principal and interest, less the amount in the sinking fund at the close of the previous fiscal year.

The bonds would be incontestable and would be general obligations of the state after approval by the attorney general, registration by the comptroller, and delivery to purchasers.

The Texas Public Finance Authority would have to consider using a business whose principal place of business was located in the state to issue the bonds and include using a historically underutilized business.

The bonds would be executed in the form, on the terms, in the dominations, bear interest, and be issued in installments as prescribed by the authority. Bond proceeds could be used to pay issuance costs and administrative expenses.

The ballot proposal would be presented to voters at an election on November 2, 2021, and would read: "The constitutional amendment authorizing the issuance of not more than $3 billion in general obligation bonds and the dedication of bond proceeds to the Brain Institute of Texas established to fund brain research in this state."

SUPPORTERS SAY:

CSHJR 5 would provide for the issuance of general obligation bonds to fund the Brain Institute of Texas, which would be created by HB 15, to make the state a global leader in brain research and lead to more cures for some of the most devastating health issues. Even though neurological diseases and disorders affect more than 100 million Americans, the human brain is complicated and scientific discovery has not identified enough effective cures or treatments to notably impact people's lives. The Brain Institute of Texas would make grants to institutions of higher education across the state to expedite research, innovation, and breakthroughs in

brain sciences. The legislation is vital to researching both existing issues, such as military veterans with traumatic brain injuries, and emerging challenges like the negative effects of the COVID-19 pandemic.

The resolution, along with HB 15, would finance the grant program by authorizing $300 million in general obligation bonds to be issued each year for 10 years. This would amount to less than 1 percent of the economic cost of neurological disorders and diseases in the state, which by some estimates could be as much as $135 billion annually. As Texas continues to grow, both these economic costs and significant human costs will increase. Because discovery science for these disorders is not mature enough to attract private sector investment, such a program is vital to advance science. The bill and resolution appropriately would fund brain research, including disease prevention, treatment, and cures, to save lives and reduce costs.

Texas has some of the most respected institutions of higher education, and leveraging the institutions and their partners, including nonprofits, hospitals, and private companies, would put the state at the forefront of brain research. The institute also would attract talent to the state to increase workforce development. The organization of the Brain Institute of Texas would be based on the Cancer Prevention and Research Institute of Texas, a similar organization that has led to breakthroughs in cancer, to ensure good government practices in awarding grants and returns on state investments.

CRITICS SAY:

CSHJR 5, in combination with HB 15, unnecessarily would expand the size of government while creating an obligation for future state funds. Funding brain research is not an essential function of state government and can be financed instead by the private sector. Also, by authorizing the issuance of $3 billion in taxpayer-backed general obligation bonds over the next 10 years, the legislation would tie up state funds for debt service when the money could be better spent on other needs.

NOTES:

HB 15 by S. Thompson, the enabling legislation for CSHJR 5, is set for second reading consideration today.

According to the Legislative Budget Board, any fiscal implication to the state would be attributable to the corresponding enabling legislation. The cost for publication of the resolution would be $178,333.

SUBJECT: Allowing disannexation of areas not receiving full municipal services

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 7 ayes — Deshotel, Leman, Biedermann, Burrows, Craddick, Spiller, Thierry

1 nay — Romero

1 absent — Rosenthal

WITNESSES: For — Terry Irion, HFFTS; Shawn Breedlove, Homeowners for Fair Taxes and Services; Carrie Ann Finch; Ann Root; (*Registered, but did not testify*: Christopher Johns and Dean McWilliams, Homeowners for Fair Taxes and Services; James Welch, Orleans Harbor HOA; Eric Opiela, South Texans' Property Rights Association; Daniel Gonzalez and Julia Parenteau, Texas Realtors; and 67 individuals)

Against — Chris Herrington, Jonathan Kringen, and Lee Simmons, City of Austin; Rob Vires, City of Austin-Fire Department; (*Registered, but did not testify*: Mary Elliott, City of Fort Worth; Christine Wright, City of San Antonio; Julie Wheeler, Travis County Commissioners Court)

DIGEST: HB 1653 would allow the disannexation of certain areas not receiving full municipal services.

Applicable areas. The bill would apply only to an area that:

- did not receive full municipal services and had been exempt from municipal taxation for more than 20 years under an ordinance that made taxation dependent upon the provision of full municipal services; or
- was annexed for limited purposes before the enactment of Local Government Code subch. F and had not received full municipal services at any time.

Petition. A person owning real property wholly or partly located in such an area would be able to file a petition requesting that the municipality disannex the portion of property located in the municipality. If the property was located in a subdivision, the petition would have to request the disannexation of all real property in the subdivision located in the municipality and include the signatures of the owners of at least 51 percent of such property.

The municipality would be required to disannex the property for which a petition had been received no later than 30 days after receiving the petition. The filing of the petition would create an irrebuttable presumption that the property was not part of the municipality, and the presumption would not be contestable for any cause after the petition was received by the municipality.

Liability. The person filing the petition would be able to bring legal action to compel disannexation against a municipality that failed to disannex the property as required by the bill. If the person prevailed, the person would able to recover attorney's fees and court costs related to the action. Government immunity to suit and from liability of the municipality would be waived to the extent of liability created by the bill.

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 1653 would strengthen and protect the property rights of certain Lake Austin landowners by allowing them to disannex from the City of Austin due to the city's failure to provide adequate municipal services while taxing these areas.

In 1891, certain areas along the Colorado River (now Lake Austin) were brought under the limited use jurisdiction of the City of Austin for the purposes of shoreline maintenance. Since these areas would not be receiving regular municipal services, they were not required to pay city taxes. This special status was confirmed by city ordinance in 1986, but in 2019 the Austin City Council decided to impose property taxes on these areas, effectively transitioning them from a limited- to a full-purpose

jurisdiction without following the legal process for annexation required by the Local Government Code, which also prohibits a city from taxing its limited jurisdiction areas.

Landowners in this area were given no say in the city's decision to begin taxing them, which overturned an agreement that had been upheld for nearly 130 years. Since taxation began, the city has never provided full municipal services to these landowners, who have to provide their own water systems at great expense due to a lack of city water and sewer services in the area. Some residents also have reported slow response times from police, fire, and EMS services.

Unfair taxation without sufficient services could make it impossible for some residents to remain in their homes. Legislative action is needed because these residents are unlikely to get a fair hearing or timely relief through local courts. HB 1653 would restore the intent of the original 1891 agreement and allow landowners to escape the burden of taxation for which they do not receive adequate city services.

Other agencies and political entities, such as the Texas Commission on Environmental Quality and Travis County, would be able to adequately fill any regulatory gaps related to shore maintenance that might be created by the disannexation of these areas. Austin's infrastructure and revenue needs should not be met at the expense of landowners who receive unequal treatment in the distribution of city services.

CRITICS SAY:

HB 1653 could undermine local control, compromise municipal environmental and safety regulations, and unfairly burden taxpayers.

The City of Austin has had full-purpose jurisdiction over these areas since the 1891 agreement. It is unclear why they were not taxed for so long. The city did exempt them from ad valorem taxation by ordinance in 1986, while at the same time confirming full-purpose jurisdiction over them. The city does provide full services to the degree feasible. Police, fire, and emergency services are comparable to other areas on the outskirts of the city. While these areas are eligible for full water and sewer services, due to topographical constraints, residents would have to bear the cost of installing adequate infrastructure to receive such services, which would be

prohibitively expensive. Also, water and sewer are fee-based services not funded by property taxes. There is ongoing litigation to determine whether city services to these areas are adequate, which is appropriate for settling such questions.

Eliminating Austin's regulatory oversight would degrade property values, increase shoreline erosion, make navigation less safe, and inhibit the city's ability to ensure water supply and quality for over one million Texans. Since the entire community pays for infrastructure improvements across a city, loss of property tax income due to disannexation of these areas could impose an inequitable burden on the rest of the city's residents, who would likely be faced with either higher taxes or diminished services. If passed, HB 1653 could encourage other owners of expensive properties to use state legislative action to avoid property taxes.

SUBJECT: Requiring a unique letter on the ballot for propositions in certain elections

COMMITTEE: Elections — favorable, without amendment

VOTE: 9 ayes — Cain, J. González, Beckley, Bucy, Clardy, Fierro, Jetton, Schofield, Swanson

0 nays

WITNESSES: For — Robert Golding, Rodeo Austin; (*Registered, but did not testify*: Michelle Davis, Convention of States; Heather Hawthorne, County and District Clerks Association of Texas; Alan Vera, Harris County Republican Party Ballot Security Committee; Susan Schultz, League of Women Voters of Texas; Joey Bennett, Secure Democracy; Dee Chambless, Smith County Republican Women; Glen Maxey, Texas Democratic Party; Tray Bates, Texas Realtors; Shelia Franklin, True Texas Project; and 16 individuals)

Against — Laura Pressley, True Texas Elections; (*Registered, but did not testify*: Joanna Cattanach, Dallas County Democratic Party; Maggie Luna, Statewide Leadership Council)

On — (*Registered, but did not testify*: Keith Ingram, Texas Secretary of State; Lori Gallagher)

DIGEST: HB 2318 would require the authority ordering an election in which more than one measure was to be voted on to assign a unique letter of the alphabet to each proposition on a ballot, if more than one political subdivision's proposition appeared on the ballot.

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 2318 would provide clarity to voters by ensuring that each proposition on a ballot was identified by a unique letter. Currently, multiple propositions assigned the same letter that are from different political

subdivisions can appear the same ballot, which can confuse voters in making a selection. For example, a county proposition and a separate city proposition could appear on the same ballot with the same identifying letter. The bill would remedy this problem by requiring propositions to be clearly differentiated on the ballot.

CRITICS SAY:

HB 2318 should require the propositions on a ballot to be even more specific by requiring each measure to be identified by the name of the relevant political jurisdiction and a unique number. Only requiring a unique letter for each proposition could still lead to voter confusion when propositions from multiple political subdivisions appeared on a ballot.

SUBJECT: Updating the powers of the Lubbock Reese Redevelopment Authority

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 9 ayes — Coleman, Stucky, Anderson, Cason, Longoria, Lopez, Spiller, Stephenson, J. Turner

0 nays

WITNESSES: None

BACKGROUND: Special District Local Laws Code ch. 3501 establishes the purposes and powers of the Lubbock Reese Redevelopment Authority. The authority was established by the Texas Legislature to receive property of the former Reese Air Force Base from the federal government.

It has been suggested that statutory changes and additions are needed in order to align the authority's powers with other defense base development authorities.

DIGEST: HB 4579 would include encouraging development of new industry by private businesses and the financing of redevelopment projects among the purposes of the Lubbock Reese Redevelopment Authority.

Powers. The bill would add to the authority's current specified powers the ability to:

- lend money for a purpose authorized by the relevant provisions of the Texas Constitution;
- authorize by resolution the incorporation of a nonprofit airport financing corporation as governed by the Transportation Code;
- exercise the powers granted to a local government for the financing of facilities located on airport property;
- lease, own, and operate an airport and exercise the relevant powers granted to local government by state law;
- lease, own, and operate port facilities for air, truck, and rail transportation;

- provide security for port functions, facilities, and operations;
- cooperate with and participate in programs and security efforts of the state and U.S. Department of Homeland Security; and
- participate as a member or partner of an entity organized to finance public purpose projects that relate to the development of the base property and surrounding areas or other development of property directly related to the purposes of the authority.

The bill also would give the authority's board, rather than the governing body of the city of Lubbock, the power to determine the maximum amount of money that the authority could borrow to acquire, improve, or operate a facility on base property.

The authority would be allowed to charge a fee for any service provided in relation to the authority's projects to fulfill an authority purpose, including consulting, real estate development services, venture capital support, joint venture assistance, and promotion of employee opportunities.

Bonds. The bill would allow the authority to issue bonds if authorized by board resolution. A bond issued by the authority would have to:

- be payable solely from authority revenue;
- mature no later than 40 years after issuance; and
- state that it was not an obligation of the state or a municipality.

The authority would be able to exercise the statutory powers granted to the governing body of an issuer with regard to the issuance of obligations and the execution of credit agreement.

Other operations. The bill would allow the authority to establish and operate an inland port and related facilities to engage in world trade. The authority also could implement a transportation project on the base property or outside the property to provide access to it. The authority could enter agreements to plan, finance, construct, or maintain a transportation project and construct facilities as part of such a project.

Meetings by telecommunication. The bill would allow members of the authority's board or a board committee to attend meetings remotely through telecommunications if the president, vice president, chairperson, or vice chairperson, respectively, were physically present at the meeting. The meeting would have to be open to the public, and proper notice would be required, including specifying the location of the meeting. Upon any failure of two-way audio communication between members, the meeting would have to be stopped until the link was reestablished.

Regulatory and tax exemptions. The bill would exempt certain real estate construction projects under the authority from Government Code provisions related to public and private infrastructure and contracting and delivery procedures for construction projects.

The operations of the authority would be exempt from taxes imposed by the state or its political subdivisions. The bill also would specify that a leasehold or other possessory interest in real property granted by the authority for a redevelopment project under the bill's provisions would be exempt from certain property tax listing requirements. Commercial aircraft under construction in the authority and related tangible property would be exempt from property taxes.

The bill would take effect September 1, 2021.

SUBJECT: Revising penalties for possession of THC and related substances

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

2 nays — K. Bell, Murr

WITNESSES: For — Liza Deanda-Garcia, Bayou City Wellness Solutions; Jonathan Copeland and LaTonya Whittington, Cannabis Reform of Houston; Karen Reeves, CenTex Community Outreach; Elizabeth Miller, Libertarian Party of Texas SD10; Alycia Castillo, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Greg Glod, Americans For Prosperity; Warren Burkley and Chas Moore, Austin Justice Coalition; M. Paige Williams for Dallas County Criminal District Attorney John Creuzot; Eric Espinoza, DFW NORML; Dustin Cox, GRAV; Scott Henson and Kathy Mitchell, Just Liberty; Nathan Moxley and Rene Perez, Libertarian Party of Texas; John Baucum, Republicans Against Marijuana Prohibition and Texas Young Republican Federation; Maggie Luna, Statewide Leadership Council; Heather Fazio, Texans for Responsible Marijuana Policy; Rene Lara, Texas AFL-CIO; Amanda List, Texas Appleseed; Sarah Moseley, Texas Cannabis Collective; Sarah Reyes, Texas Criminal Justice Coalition; Amelia Casas and Emily Gerrick, Texas Fair Defense Project; Jaclyn Finkel, Texas NORML and Foundation for an Informed Texas; and 12 individuals)

Against — (*Registered, but did not testify*: Ronnie Morris, Grand Prairie Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Lindy Borchardt, for Sharen Wilson, Tarrant County Criminal District Attorney; Cindi Castilla, Texas Eagle Forum; Aldo Caldo; Deana Johnston)

On — (*Registered, but did not testify*: Brady Mills, Texas DPS Crime Lab)

BACKGROUND: Health and Safety Code ch. 481 is the Texas Controlled Substances Act.

It categorizes illegal substances into penalty groups and provides penalties for the manufacture, delivery, and possession of controlled substances.

Sec. 481.121 covers the possession of marijuana with penalties increasing with the amount that is possessed. Possession of two ounces or less is punished as a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000). The maximum penalty is life in prison or a term of five to 99 years and a fine up to $50,000, if the amount of marijuana possessed is more than 2,000 pounds.

Tetrahydrocannabinols (THC), other than marijuana, and synthetic equivalents of the substance in the plant and related substances are placed in Penalty Group 2. Health and Safety Code sec. 481.116 establishes the penalty for possession of substances in Penalty Group 2, which start at a state jail felony for less than 1 gram and increase to life in prison or a term of five to 99 years and a fine up to $50,000 for 400 grams or more.

DIGEST:

HB 2593 would remove tetrahydrocannabinols and related substances from Penalty Group 2 and place them in a new category, Penalty Group 2-B, under the Texas Controlled Substances Act.

Penalties for possession of substances from the new Penalty Group 2-B would be the same as those in Penalty Group 2-A, which range from a class B misdemeanor if the substance is two ounces or less, to life in prison or a term of five to 99 years and a fine up to $50,000 if the amount of substance possessed is more than 2,000 pounds.

Penalties for the manufacture or delivery of substances in the new Penalty Group 2-B would be the same as those for manufacture or delivery of substances in Penalty Group 2 or Penalty Group 2-A, which range from a state jail felony to a life in prison or a term of five to 99 years and a fine of up to $100,000 if the weight is 400 grams or more.

Penalties for delivering a substance in Penalty Group 2-B to a child would be the same as those for delivering marijuana to a child, which is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000)

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

SUPPORTERS SAY:

HB 2593 would treat possession of illegal substances with THC, an active ingredient in marijuana, more fairly, consistently, and appropriately by placing these possession offenses in a new penalty group and applying the same criminal penalties for possession as those applied to marijuana. Currently, while penalties for possessing marijuana begin with a misdemeanor for small amounts, penalties for possessing THC in other forms begin at a felony level, determined by the weight of the item. This has resulted in the possession of certain products with THC, such as the wax for e-cigarettes or an edible gummy, being punished harshly and out of proportion with the way marijuana is punished.

There is no rational basis for such disparities, and it results in disproportionate punishments for possession of similar substances. Texans should not be subject to drastically harsher penalties for possessing THC in a gummy or e-cigarette than they would be for marijuana. Felony arrests and punishments have serious consequences and can carry lifelong negative repercussions on employment, housing, schooling, and more.

The bill would address this by punishing the two types of possession of illegal substances in the same way. It would apply a rational, fair approach by instituting a penalty ladder for possession offenses that increased with amount, mirroring what is currently applied to marijuana. Penalties for manufacturing or delivering THC and related substances would remain as under current law. HB 2593 would not decriminalize marijuana and would not encourage drug use, as possession in any form would remain a crime.

CRITICS SAY:

Texas should not seek to lower penalties for drug possession, as this could encourage illegal drug use and could make it more difficult to enforce drug laws. In addition, increased drug use brings with it a host of potential problems, including addiction and other health issues.

SUBJECT: Requiring public report of landlord and tenant disputes by justice courts

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 — Jeff Reichman, January Advisors; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Jamaal Smith, City of Houston Office of the Mayor; Jeff Miller, Disability Rights Texas; Trish McAllister, Texas Access to Justice Commission)

Against — None

On — David Slayton, Office of Court Administration

BACKGROUND: Some have noted that although the Texas Judicial Council is tasked with reporting judicial statistics, specific eviction data often goes unreported, especially for small cities and counties in the state.

DIGEST: HB 1930 would require an official monthly report from a justice court to the Texas Judicial Council (TJC) to report by category each case filed in the court involving certain disputes between a landlord and a tenant, including:

- eviction suits,
- suits involving the disconnection of utilities;
- repair and remedy suits;
- suits involving security deposits;
- suits involving unlawful lockouts;
- suits involving the provision of security and safety devices; and
- any other category of suit involving a landlord or tenant designated by the Office of Court Administration (OCA).

TJC could adopt rules as necessary to implement these provisions. The council would have to prescribe the categories of landlord and tenant suits that a justice court would be required to report as soon as practicable after the effective date of the bill. A justice court would not be required to report landlord and tenant dispute information until after TJC established the categories and procedures for reporting.

As soon as practicable after the effective date of the bill, OCA would have to publish on the public information internet website maintained by the office information on cases filed in justice courts related to landlord and tenant disputes. The information would have to include for each case:

- the justice court in which the case was filed, including the precinct, municipality, and county in which the court was located;
- any legal counsel or agent representing the defendant;
- any legal counsel or agent representing the plaintiff; and
- the disposition of the case.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $300,000 to general revenue through fiscal 2023.

SUBJECT: Limiting contractor liability for certain design defects

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Leach, Dutton, Krause, Middleton, Moody, Schofield, Smith

2 nays — Davis, Julie Johnson

WITNESSES: For — Rita Conner, 360 Electrical; Clayton Utkov, Associated Builders and Contractors; Jeffrey Brannen, Balfour Beatty Construction, LLC; Jason Martin, JE Dunn Construction Company; Chris Lambert, L&O Electric, Inc., Central Texas Subcontractors Association, and Texas Construction Association; Dale Payne, Prism Electric; Fred Wilshusen, Texas Construction Association; (*Registered, but did not testify*: Corbin Van Arsdale, AGC-Texas Building Branch; Will McAdams, Associated Builders and Contractors of Texas; Jeff Bauknight, Associated Builders and Contractors of Texas and Secretary of the ABC State Board; CJ Tredway, Independent Electrical Contractors of Texas; Eric Woomer, Precast Concrete Manufacturers Association of Texas, Texas Crane Owners Association; Jennifer Fagan, Texas Construction Association; Tracey Borders, The Associated General Contractors of Texas-Highway, Heavy, Utilities and Industrial Branch; Leticia Van de Putte, Zachry)

Against — Peyton McKnight, American Council of Engineering Companies of Texas; Scott Oliver, San Antonio Water System (SAWS); Richard A. (Tony) Bennett, Texas Association of Manufacturers; Hector Rivero, Texas Chemical Council; Shannon Ratliff, Texas Oil & Gas Association; Todd Staples, Texas Oil & Gas Association; Will Allensworth, Texas Society of Architects; Dan Hart, Texas Society of Architects; Sherena Shawrieh, Valero; Cathy Altman; (*Registered, but did not testify*: Joey Bennett, Armko Industries, Inc.; Jennifer Smith, Benbrook Water Authority; Melissa Shannon, Bexar County Commissioners Court; TJ Patterson, City of Fort Worth; Jamaal Smith, City of Houston and Office of the Mayor Sylvester Turner; Daniel Womack, Dow Chemical; Samantha Omey, ExxonMobil; Thamara Narvaez, Harris County Commissioners Court; Colby Nichols, Texas Association of Community Schools and Texas Association of School

Administrators; Becky Walker, Texas Society of Architects; Julie Wheeler, Travis County Commissioners Court)

BACKGROUND:

Government Code sec. 423.0045 defines "critical infrastructure facility" by listing specific types of facilities that are completely enclosed by a fence or other barrier designed to exclude intruders or clearly marked with a posted sign indicating that entry is forbidden, including certain refining, electrical, chemical, water, natural resources, telecommunications, processing, feeding, and infrastructure facilities.

DIGEST:

CSHB 1418 would limit the liability of contractors for consequences of defects in certain design documents provided to the contractor by certain parties under a contract for the construction or repair of an improvement to real property. The provisions of the bill could not be waived by a contractor, subcontractor, or owner, and a purported waiver in violation of the provisions would be void.

Liability. A contractor would not be responsible for the consequences of defects in, and could not warranty the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design or bid documents provided to the contractor by:

- the person with whom the contractor entered into the contract; or
- another person on behalf of the person with whom the contractor entered the contract.

A contractor would be required to disclose in writing the existence of any known defect in the plans, specifications, or other design or bid documents that were discovered by the contractor before or during construction. The disclosure would have to be made to the person with whom the contractor entered into a contract within a reasonable time of learning of the defect, and a contractor's failure to disclose could result in liability for the consequences of defects that resulted.

Exceptions. CSHB 1418 would not apply to a contract entered into by a person for the construction or repair of a critical infrastructure facility or other facilities necessary to the operation of and directly related to the critical infrastructure facility owned or operated by the person.

The bill would use a modified version of the Government Code sec. 423.0045 definition of critical infrastructure facility, which would include pipelines and their related facilities, facilities to transmit or distribute electricity, and utility-scale water storage facilities. The absence of fencing or signage described in the Government Code definition would not disqualify an item from being classified or treated as a critical infrastructure facility under the bill.

The bill also would not apply to the construction, repair, alteration, or remodeling of an improvement to real property if those services were provided under a design-build contract, and the part of the design documents for which the contractor was responsible under the contract was the part alleged to be defective. Design-build contract would be defined as a contract in which a single contractor agreed to:

- construct, repair, alter, or remodel an improvement to real property; and
- be responsible for the development of plans, specifications, or other design or bid documents used by the contractor for the improvement.

Standard of care. Design services provided under a design-build contract would be subject to the same standard of care that would be required of architects or engineers performing design services under a construction contract. The standard of care would require that the services be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. A provision in a contract that established a different standard of care would be void and unenforceable, and the standard of care provided in the bill would apply to the performance of the architectural or engineering services.

The bill would take effect September 1, 2021, and would apply only to a contract entered into on or after that date. An original contract would be governed by the law in effect when the original contract was entered into, even if a subcontract or purchase order for providing labor or materials associated with the original contract was subsequently entered into.

SUPPORTERS SAY:

CSHB 1418 would provide needed protection for construction teams that often assume liability for defects in design plans and specifications that they had no hand in creating by clarifying contractor liability in statute and prohibiting the waiver of liability protections for certain contractors. The bill would promote fairness and personal responsibility for both the design professionals and the contractors by ensuring that the party responsible for the plans and specifications is the party liable for any defects in those plans and specifications.

Texas is one of two states where a contractor can bear the liability for defects in construction that are based on construction documents prepared or procured by the owner, owner's agent, or design professional. Every other state follows the doctrine laid out in the 1918 U.S. Supreme Court case, *United States v. Spearin*, which ruled that in a building project involving owners and contractors, the owner assumes the risk for owner-provided plans and specifications, allowing the contractor to rely on the accuracy and sufficiency of the plans provided.

Contractors on construction projects often are provided with incomplete design documents open to interpretation that the contractor is obligated to follow under the contract, even if the contractor finds a defect in the documents. To stay competitive, contractors in Texas often assume liability for those defects in the provided documents and are subsequently contractually required to attempt compliance with the incomplete design documents. The liability protections for contractors provided by the bill would remedy this by simply ensuring that parties are responsible for their own work product. A contractor would be required to disclose defects within a reasonable time and would be subject to liability for failure to do so. The bill would not prohibit a lawsuit against a contractor or shield a contractor from liability for the contractor's own actions.

The bill's prohibition on waiving the contractor liability protections is necessary to ensure fairness in negotiations on construction contracts and is critical to the bill's successful implementation. Currently, leverage often is minimal by the time a contractor enters the process and begins negotiations, and the waiver would provide more opportunity to negotiate fair allocation of risk. If the bill were implemented without the non-wavier

provision, owners would likely require contractors to waive all of the bill's provisions to receive a contract.

CRITICS SAY:

CSHB 1418's prohibition on waiving the contractor liability protections would undermine the ability of the parties involved in a construction contract to leverage and negotiate for risk allocation in the complex building process. Construction projects are imbued with risk and oftentimes are incredibly complex, requiring the collaboration of all parties involved. Through this collaborative process, the parties are able to allocate risk appropriately, and by undermining the ability to negotiate risk and reward, the bill could change a collaborative process into a contentious one.

OTHER CRITICS SAY:

CSHB 1418's exemption for critical infrastructure facilities would exclude other industries in Texas that also could benefit from exemption, bifurcating Texas industries regarding construction law.

SUBJECT: Syringe exchange and disease control pilot programs for certain counties

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 9 ayes — Coleman, Stucky, Anderson, Cason, Longoria, Lopez, Spiller, Stephenson, J. Turner

0 nays

WITNESSES: For — Richard Bradshaw, Central Texas Harm Reduction; Cate Graziani, Texas Harm Reduction Alliance; Neel Lane; David Stout; Claire Zagorski; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Jim Allison, County Judges and Commissioners Association of Texas; Elisa Tamayo, Emergence Health Network; Thamara Narvaez, Harris County Commissioners Court; Dan Finch, Texas Medical Association; John Pitts, Vivent Health; Thomas Parkinson)

Against — None

On — Lucas Hill; Jennifer Potter

BACKGROUND: The 80th Legislature in 2007 authorized a disease control pilot program, which could include the anonymous exchange of used hypodermic needles and syringes, in Bexar County under SB 10 by Nelson (Government Code sec. 531.0972). The program was not implemented after an opinion issued in May 2008 by the Texas attorney general stating that Government Code sec. 531.0972 could subject participants of the pilot program to prosecution under state drug paraphernalia laws.

Health and Safety Code sec. 481.125 prohibits the possession of drug paraphernalia, including syringes, for illegal use of a controlled substance or the distribution of such paraphernalia with the knowledge that the person receiving it will use it for illegal purposes. Persons who violate sec. 481.125 may be charged with certain misdemeanors for possessing drug paraphernalia.

DIGEST:

HB 3233 would authorize certain entities to establish disease control pilot programs that could provide for the anonymous exchange of syringes, offer education on disease prevention, and refer program participants to certain health care services. The bill also would create exceptions to prosecution for people working and participating in such programs.

Disease control pilot program. The bill would allow disease control pilot programs in Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb counties and their hospital districts. A county or hospital district could establish a disease control pilot program to prevent the spread of infectious and communicable diseases, including HIV, hepatitis B, and hepatitis C. The pilot program could include disease control outreach programs that:

- provided for the anonymous exchange of used syringes for an equal number of new syringes;
- offered education on the transmission and prevention of communicable diseases; and
- assisted program participants in obtaining health care and other physical and mental health-related services, including substance-abuse treatment and blood-borne disease testing.

The statutory authorization for the disease control programs would expire September 1, 2031.

Under the bill, a county or hospital district could register an organization to operate the disease control pilot program and distribute needles and syringes to control the spread of certain infectious and blood-borne communicable diseases. The county or hospital district could charge the organization a registration fee to cover registration costs.

A registered organization could charge a program participant a certain fee for each needle or syringe used in the program. The fee could not exceed 150 percent of the actual cost of the needle or syringe.

The bill also would authorize a registered organization operating a disease control pilot program to solicit or accept gifts, grants, or donations to fund the program.

The bill would require a registered organization to annually provide to the Department of State Health Services and the county or hospital district that registered the organization information on:

- the effectiveness of the disease control pilot program;
- the program's impact on reducing the spread of infectious and communicable diseases, including HIV, hepatitis B, and hepatitis C; and
- the program's effect on injected drug use by individuals residing with the county or hospital district.

Distribution and handling of needles and syringes. A licensed wholesale drug distributor or device distributor could distribute needles and syringes to an authorized disease control pilot program.

A registered organization would be required to store and dispose of used needles and syringes as authorized under the bill and in accordance with applicable state laws and administrative rules. Under the bill, a registered organization could provide needles and syringes in packaged safe kits for program participants and could only allow an authorized program employee or volunteer to provide needles, syringes, and safe kits.

Exceptions to prosecution. The bill would create exceptions to prosecutions for offenses related to possession or delivery of drug paraphernalia under Health and Safety Code sec. 481.125 for a person who:

- possessed or delivered a needle or syringe for a medical purpose, including the exchange of hypodermic needles under a disease control pilot program;
- possessed or manufactured syringes to be used by a disease control pilot program; or
- used, possessed, or delivered a syringe as a participant in, or a volunteer or employee of, a disease control pilot program.

These provisions would expire September 1, 2031.

Other provisions. The bill would make relevant conforming changes under Government Code sec. 531.0972.

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

SUPPORTERS SAY:

HB 3233 would allow seven large counties and their hospital districts to create disease control programs that would help reduce the transmission of HIV, hepatitis C, and other diseases, while providing referrals to appropriate health and social services for individuals struggling with drug addiction.

Reducing the spread of blood-borne diseases with one-for-one needle exchanges would benefit public health and safety in many communities. Drug users can infect themselves with contaminated needles and spread diseases to family members, including their sexual partners and children. Law enforcement officers and health care workers also can be infected by contaminated needles hidden by drug users who fear prosecution. Needle exchanges limit the instances in which people are exposed to dirty needles, which is key to reducing the transmission of HIV and other communicable diseases.

Needle exchanges do not encourage the use of illegal drugs but instead extend the reach of treatment programs and may provide important counseling opportunities for drug users. The Centers for Disease Control and Prevention reports that new drug users who participate in syringe exchange programs are five times more likely to enter drug treatment and three times more likely to stop using drugs than those who do not participate in these programs. A pilot program's outreach is critical in addressing the difficult reality that a user grappling with addiction will not abstain from injecting illicit drugs simply because a sterile needle is not available. The programs authorized under the bill would offer compassion to drug users without sanctioning their illegal activities or soft-selling to the public the harmful effects of addiction. Such programs also would not tacitly condone or promote drug use among children, as some critics may contend.

No county or hospital district authorized under the bill would be required to establish a disease control pilot. The bill simply would allow the seven counties and their hospital districts to establish harm-reduction programs to address the needs of community members. Because the programs would work with local governments, communities would be properly involved and informed about how and where the exchanges would operate.

Finally, HB 3233 would provide program workers, volunteers, and participants much-needed exceptions to prosecution under the state's drug paraphernalia laws, which would be key in helping the needle exchange, disease prevention, and outreach efforts to succeed. The pilot programs would be staffed by paid employees and volunteers from faith-based organizations and nonprofits who want to help improve their communities. People who choose to improve public safety while helping their neighbors who are battling drug addiction should not have to worry about being pursued by law enforcement. Providing these exceptions to prosecution would be vital to the success of the new pilot programs.

CRITICS SAY:

Needle exchange programs are ineffective in stopping the spread of disease, do not address the root issue of drug addiction, send a dangerous signal to adolescents that using illegal drugs is acceptable, and siphon public money away from more effective public health and drug rehabilitation programs.

Although HB 3233 has an admirable goal, the state should not in any way support or encourage illegal behavior, let alone contribute to the supply of equipment required for substance abuse, including needles and syringes. Instead, the state should focus its efforts on supporting programs that help people abstain from drugs altogether.

Neighborhoods in which exchanges would operate under the bill could experience an increase in the number of dirty, discarded needles on their streets. This could pose a problem for residents, especially for children playing in public spaces. In addition, the ready supply of needles in locations near exchanges could attract local drug dealers to those areas and increase rates of crime. It would be unfair to impose this added risk

upon some neighborhoods in which an exchange was located, only to host a program that is not proven to work.

SUBJECT: Restricting vendor use of personally identifiable student information

COMMITTEE: Public Education — committee substitute recommended

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

0 nays

1 absent — M. González

WITNESSES: For — Jennifer Bergland, Texas Computer Education Association; Laurie Vondersaar; (*Registered, but did not testify*: Steven Aleman, Disability Rights Texas; Charles Gaines, Raise Your Hand Texas; Grover Campbell, TASB; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators; Pamela McPeters, Texas Classroom Teachers Association; Kristin McGuire, Texas Council of Administrators of Special Education; Mark Terry, Texas Elementary Principals and Supervisors Association; Suzi Kennon, Texas PTA; Dee Carney, Texas School Alliance; Laura Atlas Kravitz, Texas State Teachers Association)

Against — None

On — Servando Esparza, TechNet; (*Registered, but did not testify*: Eric Marin, and Melody Parrish, Texas Education Agency; Charlotte Hopper)

BACKGROUND: Education Code sec. 32.155 requires an operator to maintain reasonable security procedures designed to protect any covered student information from unauthorized access, deletion, use, modification, or disclosure. Sec. 32.151(3) defines "operator" to include the operator of a website, online service, online application, or mobile application who has actual knowledge that the website, online service, online application, or mobile application is used primarily for a school purpose and was designed and marketed for a school purpose.

DIGEST:

CSHB 363 would require an operator that had been approved or had a product approved by the Texas Education Agency (TEA) that possessed any covered information to use the unique identifier established by the Texas Student Data System or a successor system to mask all personally identifiable student information. The operator would have to adhere to a state-required student data sharing agreement that included an established unique identifier standard for all operators as prescribed by TEA.

In addition to including the unique identifier in releasing information, an operator could include any other data field identified by TEA or a school district, charter school, regional education service center, or other local education agency as necessary for the information being released to be useful. Any of the school entities could require an operator that contracted directly with the entity to adhere to a state-required student data sharing agreement that included the use of an established unique identifier standard for all operators as prescribed by TEA.

A national assessment provider who received covered information from a student or from a school district or campus on behalf of a student would not be required to comply with the bill's unique identifier requirement or the student data sharing agreement if the provider received the information solely to provide access to:

- employment, educational scholarships, financial aid, or postsecondary educational opportunities; or
- educational resources for middle school, junior high school, or high school students.

The commissioner of education could adopt rules to administer the bill.

The bill would take effect September 1, 2023.

SUPPORTERS SAY:

CSHB 363 would protect student data that vendors receive by requiring them to use a state-issued unique identifier to mask the data. The bill would place control of student data back into the hands of school districts and prohibit vendors who lacked capacity to mask the data from getting access to it.

Currently, vendors can access more personal student data than they need in order to provide their technology services. By limiting access, the bill would help keep student information safe from cyber threats.

The bill would have no cost to the state or school districts and would not burden districts with additional work to de-mask data. Without the bill, districts will continue to face difficulties defining and enforcing what student data is appropriate to share with vendors of educational applications.

The bill's effective date of September 1, 2023, would give school districts and vendors sufficient time to implement the changes. Concerns that certain vendors of off-the-shelf services such as cloud storage would have to take on an additional role of managing unique student identifiers could be addressed during the Texas Education Agency rulemaking process.

CRITICS SAY:

CSHB 363 would require vendors to adopt the Texas Student Data System unique identifier even for off-the-shelf services such as cloud storage or data storage. This would be an additional role for these vendors that would be better left to school districts to manage.

SUBJECT: Expanding THECB grants to apply to podiatry graduate medical programs

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 9 ayes — Murphy, Pacheco, Frullo, Muñoz, Ortega, Parker, Raney, C. Turner, J. Turner

0 nays

2 absent — Cortez, P. King

WITNESSES: For — Steve Brancheau, Texas Podiatric Medical Association; (*Registered, but did not testify*: William Yarnell, City of Harlingen; Jonathan Connors, DHRHealth; Logan Spence, Texas Podiatric Medical Association)

Against — None

On — Guy Bailey, University of Texas Rio Grande Valley; (*Registered, but did not testify*: Hemant Makan, Texas Department of Licensing and Regulation)

BACKGROUND: Education Code ch. 58A.024 requires the Texas Higher Education Coordinating Board to award grants to new or existing graduate medical education programs to increase the number of first-year residency positions. Sec. 58A.001(5) defines a "graduate medical education program" as a nationally accredited post-doctor of medicine or post-doctor of osteopathic medicine program that prepares physicians for the independent practice of medicine in a specific specialty area.

Interested parties note that grants under the graduate medical education expansion program are restricted to programs for training medical doctors and osteopathic doctors and that programs for training individuals in the critical field of podiatry could benefit from these grants as well.

DIGEST: HB 2509 would expand the definition of a graduate medical education program in Education Code ch. 58A to include a nationally accredited

post-doctor of podiatric medicine program that prepared podiatrists for independent practice in the specialty area of podiatry.

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.

SUBJECT: Allowing municipal annexation of certain rights-of-way

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Deshotel, Leman, Burrows, Craddick, Rosenthal, Spiller, Thierry

2 nays — Biedermann, Romero

WITNESSES: For — Brynn Myers, City of Temple; Bill Longley, Texas Municipal League; (*Registered, but did not testify*: Tammy Embrey, City of Corpus Christi; Guadalupe Cuellar, City of El Paso; Justin Till, City of Marfa; Angela Hale, City of McKinney; Julie Wheeler, Travis County Commissioners Court)

Against — None

DIGEST: CSHB 1241 would allow municipalities annexing an area upon the request of a property owner in the area to also annex the right-of-way of:

- a street, highway, alley, or other public way or of a railway line, spur, or roadbed, that was contiguous and parallel to the municipality's boundaries and that was contiguous to the area being annexed or a right-of-way of a public road or highway connecting such an area to the municipality by the most direct route; or
- a public road or highway connecting the area being annexed to the municipality by the most direct route.

A municipality could annex such a right-of-way only if:

- the municipality provided written notice of the annexation to the owner of the right-of-way no later 61 days before the proposed annexation; and
- the owner of the right of way did not submit a written objection to the municipality before proposed annexation.

Government entities owning rights-of-way to be annexed under the bill's provisions would be able to specify the location at which a municipality had to deliver written notice.

The bill would exempt the annexation of rights-of-way under its provisions from certain statutory width requirements.

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 1241 would facilitate municipal development by removing an obstacle in current law that prevents some landowners who wish to be annexed by a city from being annexed because their property is not separated from city limits by a right-of-way. This obstacle was the unintended result of the state's recent elimination of unilateral municipal annexation.

Property owners in a city's extra-territorial jurisdiction (ETJ) often want to be annexed in order to have access to municipal water, sewer, or other services. Currently, property must be contiguous to the city limits in order to be annexed, and CSHB 1241 would allow a municipality to create contiguity by annexing rights-of-way that connect property owners wishing to be annexed to the municipality.

Concerns that the bill would allow the expansion of municipal ETJs due to "lollipop" annexations could be addressed in a floor amendment.

CRITICS SAY:

CSHB 1241 would enable urban sprawl by allowing cities to expand their ETJ through "lollipop" annexations of areas that are significantly distant from city limits but are connected by a roadway. Such annexations could result in deficient municipal services if annexed areas were not near existing police and fire stations.

SUBJECT: Allowing county clerks to require photo ID for filing real property records

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 8 ayes — Coleman, Stucky, Anderson, Cason, Longoria, Lopez, Stephenson, J. Turner

1 nay — Spiller

WITNESSES: For — Phillip Clark, Dallas County District Attorney's Office; Russell Schaffner, Tarrant County; (*Registered, but did not testify*: Philip Mack Furlow, 106th Judicial District Attorney; Adam Haynes, Conference of Urban Counties; Jim Allison, County Judges and Commissioners Association of Texas; Charles Reed, Dallas County Commissioners Court; M. Paige Williams, Dallas County Criminal District Attorney John Creuzot; Daniel Collins, El Paso County; Thamara Narvaez, Harris County Commissioners Court; Rick Bailey, Johnson County; Julie Campbell)

Against — (*Registered, but did not testify*: Aaron Day, Texas Land Title Association)

BACKGROUND: Local Government Code sec. 191.010(b) allows a county clerk in a county with a population of 3.3 million or more to require a person presenting a document in person for filing in the real property records of the county to present a photo identification to the clerk. The clerk may copy the photo identification or record information from the photo ID but may not charge a person a fee to copy or record the ID information.

DIGEST: CSHB 2414 would allow any county clerk to require a person presenting a document in person for filing in the county's real property records to present a photo identification.

A county clerk that required the presentation of a photo ID would not be allowed to accept a document for filing in the county's real property records if the person presented the document in person and did not have or refused to provide a photo ID.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 2414 would help all counties in the state to more effectively prevent deed fraud and protect consumer rights by allowing county clerks to require photo ID for property record filing. Counties across the state have seen numerous instances of deed fraud, in which forged property titles are sold to unsuspecting buyers. Allowing county clerks to require photo ID for in-person deed change filings would provide them with both a deterrent and an investigative tool and improve the general integrity of county records. This could save property owners and buyers from expensive and time-consuming litigation against fraudulent deeds.

The bill is permissive and would allow counties to decide for themselves whether requiring photo ID would be a helpful practice. The bill also does not specify the type of ID that would be required, so a school, employment, or other ID could be used, not just a driver's license.

Limiting the bill's provisions to counties with electronic filing options would defeat the purpose of providing all counties in the state with a tool to combat deed fraud. Ultimately, any inconvenience for title agents that the bill might cause is outweighed by the need to enable all counties, including rural and small ones, to better protect themselves from property title fraud.

CRITICS SAY:

CSHB 2414 could impose a burden on rural title agents by allowing counties to create an unnecessary obstacle to the in-person deed filing process. In smaller counties that do not allow electronic property record filing, title agents may rely on runners who do not have a photo ID, such as high school-aged summer employees who have not yet acquired a driver's license. The bill could be improved if it limited the ability to require photo ID to counties that allow electronic filing.

SUBJECT: Waiving certain fees and licensing requirements for first responders

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

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

0 nays

1 absent — Israel

WITNESSES: For — Rene Ochoa, Bexar County Sheriffs Office; Kathryn Brown, Bexar County Constables; Jeremy Payne, Deputy Sheriffs' Association of Bexar County; (*Registered, but did not testify*: Selena Xie, Austin EMS Association; Philip Barquer and Craig Smith, Austin Travis County EMS; Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Carlos Lopez and Jama Pantel, Justices of the Peace and Constables Association of Texas; Jimmy Rodriguez, San Antonio Police Officers Association; Tom Maddox, Sheriffs' Association of Texas; Monty Wynn, Texas Municipal League; Dallas Reed, Texas Municipal Police Association (TMPA); Timothy Fuentes)

Against — (*Registered, but did not testify*: John Shepperd, Texas Foundation for Conservation)

On — Justin Halverson, Texas Parks and Wildlife Department

BACKGROUND: Parks and Wildlife Code secs. 13.015, 42.012, 46.004, and 50.002 establish the authority of the Parks and Wildlife Commission (TPWC) to charge and collect park user fees for park services and resident license fees for hunting, fishing, and combination licenses.

DIGEST: HB 409 would require the Parks and Wildlife Department (TPWD) and TPWC to waive the state park entrance fees and the fees or license requirements for hunting, fishing, and combination licenses for certain first responders.

The bill would waive the state park entrance fee for all qualifying first responders and the license fees for qualifying residents who were first responders.

The first responder would qualify for the waiver if the first responder:

- had completed at least 20 years of continuous service as a first responder; or
- had a disability connected to service as a first responder that consisted of the loss of the use of a lower extremity or a disability rating of 50 percent or more.

For the purposes of the bill, a first responder would include:

- a firefighter certified by the Texas Commission on Fire Protection or by the State Firefighters' and Fire Marshals' Association of Texas;
- an individual certified as emergency medical services personnel by the Department of State and Health Services;
- a municipal police officer;
- a sheriff, deputy sheriff, or reserve deputy sheriff; or
- a constable, deputy constable, or reserve deputy constable.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 409 would honor and give back to first responders by waiving state park entrance fees and the fees or requirements for obtaining hunting and fishing licenses for certain first responders who had completed 20 years of service or were disabled. Texas first responders work tirelessly, especially throughout the COVID-19 pandemic, and should be recognized for their service to the state with an opportunity to enjoy Texas' beautiful natural environment after they become eligible for the waiver through years of service to the state or due to a disability sustained in the line of duty.

The bill could provide an added incentive in recruitment efforts for law enforcement agencies by providing a benefit comparable to what the Texas State Guard currently offers to active duty guardsmen. The waiver

would reward veteran officers and encourage junior officers to commit until the retirement level, increasing retention rates in departments that may be facing staffing vacancies.

CRITICS SAY:

HB 409 could result in substantial revenue loss for the State Park and Game, Fish and Water Safety accounts. Although the spirit of the bill is commendable, the costs of the bill should be paid with general revenue funds.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $1.2 million to the Game, Fish, and Water Safety Account and about $109,000 to the State Parks Account through fiscal 2023.