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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 29, 2021
87th Legislature, Number 45
The House convenes at 10 a.m.
Part One

Five bills are on the Major State Calendar and 49 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

The following House committees were scheduled to meet today: Insurance; Agriculture and Livestock; Higher Education; State Affairs; Elections; Appropriations; Juvenile Justice and Family Issues; Natural Resources; Criminal Jurisprudence; County Affairs; and Homeland Security and Public Safety.

Analyses for postponed bills and all bills on second reading can be found online on TLIS and at https://hro.house.texas.gov/BillAnalysis.aspx.



Alma Allen
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Thursday, April 29, 2021
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Part 1

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SUBJECT: Continuing TDLR and TCLR, modifying and eliminating certain licenses

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — S. Thompson, Darby, Ellzey, Fierro, Geren, Goldman, Guillen, Huberty

0 nays

3 absent — Kuempel, Hernandez, Pacheco

WITNESSES: For — (*Registered, but did not testify*: Will McAdams, Associated Builders and Contractors of Texas; CJ Tredway, IEC of Texas, Texas Automotive Recyclers Association, and Texas Towing and Storage Association; Rod Bordelon, Texas Public Policy Foundation; Joey Bennett, Texas Sign Association)

Against — Patricia Harris, A+ Academy Driving School, LLC.; Blake Garrett, Aceable Inc; Darla Bedenbaugh, Cosmetology Instructors In Public Schools; Joseph McCarthy, Fenian Polygraph Services; Samuel Shotts, Lone Star Driver Safety Foundation; Jackie Shillingburg, Texas Auctioneers Association; James Swigert, Texas Auctioneers Association and Swico Auctions; Stephen Howsley, Texas Home School Coalition; Debbie Callahan, Texas Professional Drivers Education Association; Greg Peters, Vista Ridge Driving School, Inc.; (*Registered, but did not testify*: Mary Gregory and Dorothy DeWalt, Texas Professional Drivers Education Association; Cecilia Jackson, Texas Professional Drivers Education Association and The Driving School Association of the Americas)

On — Brian Francis, Texas Department of Licensing and Regulation; (*Registered, but did not testify*: Emily Johnson, Texas Sunset Advisory Commission)

BACKGROUND: The Texas Department of Licensing and Regulation (TDLR) was created by the Legislature in 1909 and originally known as the Texas Bureau of

Labor Statistics. The department's mission was broadened over time to include labor-related regulatory functions, and in 1989 TDLR became an umbrella agency for occupational licensing and regulatory programs.

TDLR is undergoing a limited scope review in the 87th regular session of the Legislature. Under Occupations Code sec. 51.002(b), programs transferred to TDLR on or after September 1, 2016, are not included in this Sunset review.

Functions. TDLR performs the following activities:

- licenses, certifies, permits, and registers qualified applicants;
- oversees requirements for pre-licensure education, licensing examinations, and continuing education for regulated occupations;
- inspects facilities, equipment, and buildings for safety and accessibility;
- investigates complaints and enforces the agency's statutes and rules by taking disciplinary action against violators; and
- responds to customer service inquiries.

Governing structure. TDLR is governed by the Texas Commission of Licensing and Regulation (TCLR), which consists of seven members of the general public appointed by the governor who serve staggered six-year terms. TCLR receives advice and recommendations from 31 statutorily created advisory boards whose members mostly are industry participants and nominated by the commission chair to serve staggered six-year terms.

Funding. In fiscal 2019, TDLR took in $53 million in revenue, $39 million of which was from licensing and renewal fees. TDLR also collects revenues from a gross receipts tax on combative sports events regulated by the agency. The department spent about $45 million and transferred about $8 million to the general revenue fund in fiscal 2019.

Staffing. The department was allocated 460 full time staff in fiscal 2019, about 400 of whom are located at the agency's headquarters in Austin. The remainder of staff report to field offices in Fort Worth and Houston.

TCLR and TDLR would be discontinued September 1, 2021, unless continued in statute.

DIGEST:

CSHB 1560 would continue the Texas Commission of Licensing and Regulation (TCLR) and the Texas Department of Licensing and Regulation (TDLR) in statute until September 1, 2033. The bill also would modify and eliminate certain licenses, consolidate the licensure of barbering and cosmetology, transfer certain licenses from the Texas Real Estate Commission to TDLR, and incorporate recommendations from the Sunset Advisory Commission, among other provisions.

Subjective license eligibility criteria. The bill would eliminate the authority of TCLR to determine a person's ineligibility for a license based on information indicating that the person lacked the honesty, trustworthiness, and integrity to hold a TDLR-issued license.

Risk-based inspections. The bill would require TDLR to conduct risk-based inspections that prioritized inspections based on key risk factors identified by the department, including whether a license holder previously violated certain TDLR or TCLR laws, rules, or orders and the number of violations committed by a license holder.

TDLR could use alternative inspection methods, including the use of videoconference technology or other methods instead of conducting an in-person inspection, in circumstances the department considered appropriate.

Complaints. CSHB 1560 would make several changes to the TDLR complaint process regarding investigations, a complaint response system, notification requirements, dismissal, and complaint analysis and reporting.

Risk-based investigations. TDLR would have to assign priorities and investigate complaints based on risk to the public of the conduct alleged in a complaint.

Complaint response system. TDLR would have to maintain a system to promptly and efficiently act on complaints filed with the department. TDLR would have to maintain information about parties to the complaint,

the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. TDLR would have to make information available describing its procedures for complaint investigation and resolution.

Notification of complaint parties. The bill would specify that TDLR had to notify complaint parties of the status of the complaint until final disposition, with certain exceptions, periodically rather than at least quarterly.

Dismissal. TDLR would have to dismiss a complaint if the department determined at any time that an allegation made or formal complaint submitted by a person was inappropriate or without merit.

Complaint analysis and reporting. TDLR would have to make available on its website a statistical analysis of complaints received by the department, including aggregate information on the number, source, type, and disposition of complaints received during the preceding fiscal year.

The analysis would have to include, for each program regulated by TDLR, the number of license holders, number of complaints and the status of and other information regarding these complaints, the average time required to resolve a complaint, the average amount of administrative penalties assessed, and the number and amount of refunds ordered by TCLR or the executive director or obtained through an informal resolution.

Refunds. TCLR or the executive director could order a license holder to pay a refund to a customer as provided in an agreed settlement, default order, or commission order instead of or in addition to imposing an administrative penalty or sanction. The amount of a refund ordered could not exceed the amount the consumer paid to the license holder for a service regulated by TDLR. TCLR or the executive director could not require payment of other damages or estimate harm in a refund order.

Continuing education. The bill would specify that TDLR, rather than TCLR, would have to recognize, prepare, or administer continuing education programs for license holders. TCLR by rule could establish a minimum number of hours of continuing education required for license

renewal. In adopting rules for a program regulated by TDLR, TCLR would have to consult, if applicable, with the advisory board established for the program.

Barbering and cosmetology. CSHB 1560 would consolidate the definitions of, existing regulations on, and certain licenses for barbering and cosmetology in the Occupations Code and establish the Barbering and Cosmetology Advisory Board.

Class A barber licenses and cosmetology operator licenses would be retained, and certain unified specialty licenses would be established. The bill also would unify establishment and specialty establishment licenses.

Barbering and Cosmetology Advisory Board. The bill would create a single advisory board for barbering and cosmetology that would consist of nine members appointed by the presiding officer of TCLR, with the commission's approval, as follows:

- four members who each held an individual practitioner license, including at least one holder of a Class A barber license and at least one holder of a cosmetology operator license;
- two members who each held an establishment license;
- two members who each held a school license; and
- one member who represented the public.

The bill would transfer to the Barbering and Cosmetology Advisory Board the duties and vacancy requirements of the Advisory Board on Barbering and the Advisory Board on Cosmetology, respectively. The Advisory Board on Barbering and Advisory Board on Cosmetology would be abolished December 1, 2021, and the presiding officer of TCLR would have to appoint members to the new consolidated board. The bill would provide for staggered terms for board members.

The presiding officer of TCLR would have to appoint one of the advisory board members to serve as the presiding officer of the advisory board for a term of two years.

TCLR by rule would have to establish requirements for the issuance of a barbering and cosmetology license for an individual practitioner, instructor, establishment, or school and a student permit.

Barbering and cosmetology schools. The holder of a public secondary school license, public postsecondary school license, or private postsecondary school license could provide instruction in the barbering and cosmetology services for which the license holder had been approved by the department.

A license holder could only employ to provide instruction a person who held an instructor license to teach the acts of barbering and cosmetology for which the person would provide instruction. TDLR could take any disciplinary or other enforcement action against a person who violated these requirements.

The bill would require a barbering and cosmetology school to instruct students in the theory and practice of subjects necessary and beneficial to the practice of barbering and cosmetology. TCLR by rule would have to establish the subjects in which students would receive instruction. A school could not increase, decrease, or withhold for any reason the number of hours earned by a student.

TCLR by rule could adjust any tuition reimbursement limit established by the bill relating to private postsecondary schools and adopt procedures regarding the collection of fees from these schools.

To ensure that licensed schools offering instruction in barbering and cosmetology maintained accreditation and that students of those schools continued to qualify for federal aid, TCLR would have to adopt any rules necessary for the implementation of changes made by the bill as soon as practicable after the bill's effective date.

Exams. The bill would remove certain early examination requirements and permit TCLR by rule to allow for the early written examination of a student.

License renewal. TCLR by rule could establish requirements for the renewal of a barbering and cosmetology license, including continuing education requirements. Before establishing these requirements, the commission would have to consider the potential impact of continuing education with respect to identifying and assisting trafficked persons and providing license holders with opportunities to acquire new skills.

Implementation and applicability. By September 1, 2023, TCLR would have to adopt any rules necessary to implement the changes in law made by CSHB 1560 and TDLR would have to begin issuing and renewing licenses and permits as added by the bill.

Until September 1, 2023, TDLR still could issue a certificate, license, or permit under the barbering and cosmetology chapters of the Occupations Code. A certificate, license, or permit issued under the barbering and cosmetology statutes would continue to be valid until expiration.

A person who on the bill's effective date held such a certificate, license, or permit could perform certain services as specified in the bill. Such a person would be entitled on the expiration of a certificate, license, or permit to issuance of a comparable license or permit created by the bill, if the person otherwise met the requirements for the license or permit.

Until TCLR adopted rules regarding written and practical examination requirements for the issuance of barbering and cosmetology licenses, TDLR would have to continue operating under existing examination requirements.

As soon as practicable after the bill's effective date, the comptroller of public accounts would have to transfer to the unified barbering and cosmetology school tuition protection account the unexpended and unencumbered balances of the barber school tuition protection account and the cosmetology school tuition protection account.

The bill would not affect the validity of a disciplinary action or other proceeding initiated before the bill's effective date and pending on that date. Such an action would be governed under existing law. The repeal of

a law by the bill would not entitle a person to a refund of a certificate, license, or permit fee paid before the bill's effective date.

Home warranties. The bill would transfer the licensing and regulation of entities selling residential service contracts, commonly known as home warranties, from the Texas Real Estate Commission (TREC) to TDLR. The bill also would create new requirements for certain employees to give notice of their compensation by employers on residential service contracts and new insurance requirements for providers.

On the bill's effective date, a license issued by TREC would be continued in effect as a license of TDLR. All rules, fees, policies, procedures, decisions, and forms of TREC related to a program or activity transferred to TDLR by the bill would be continued in effect until changed by the department or TCLR. A complaint, investigation, contested case, or other proceeding related to a program that was transferred under the bill and was pending on the bill's effective date would be transferred without change in status to TDLR or TCLR, as appropriate.

By June 1, 2022, TCLR would have to adopt rules necessary to implement these changes. A licensed residential service company that on May 1, 2021, maintained security in accordance with current law would have to continue maintaining security in at least that amount until September 1, 2026. A residential service company operating as a licensed residential service contract provider would not have to comply with the security requirements for providers until September 1, 2026.

On the bill's effective date, all money, contracts, leases, property, software source code and documentation, records, and obligations of TREC related to a program or activity transfer to TDLR by the bill would be transferred to the department, along with the unexpended and unobligated balance of any money appropriated by the Legislature relating to that program or activity.

As soon as practicable after the bill's effective date, TREC would have to transfer to TCLR or TDLR, as appropriate, any bond, reimbursement insurance policy, or other security held for a residential service company related to a program or activity transferred by the bill. TREC would have

to provide TDLR with access to any systems, facilities, or information necessary to implement the bill's provisions.

Eliminated licenses and regulations. The bill would eliminate the barber instructor and cosmetology instructor licenses, wig license, barber pole regulation, and dual shop license.

The bill also would eliminate the polygraph examiner license and certain combative sports licenses, along with the Polygraph Advisory Committee. These licenses would expire on the bill's effective date. On this date, a pending regulatory action, including a complaint investigation, disciplinary action, or administrative penalty proceeding, of TDLR with respect to a polygraph examiner license or abolished combative sport license would be terminated.

The bill would repeal certain prescriptive advisory board meeting requirements, inspection schedules, continuing education requirements, and refund authority related to certain licenses. It also would repeal certain other statutes related to barbering and cosmetology.

Required studies of certain occupations. The bill would require TDLR by January 1, 2023, in consultation with the Auctioneer Advisory Board and the Driver Training and Traffic Safety Advisory Committee, to study the regulation of auctioneering and driver training. The department would have to prepare a report with any findings and recommendations to improve public safety and the department's processes and to eliminate inefficiencies, including any necessary legislative changes.

In conducting the study, TDLR could consult with any interested organizations, associations, and stakeholders. The department would have to submit the report to the standing legislative committee with jurisdiction over TDLR.

Financial disclosure statement. TCLR by rule could require a person, other than an individual, applying for a TDLR-issued license to submit with the license application a financial disclosure statement. Commission rules could require the disclosure of certain information based on the type of license for which the application was submitted.

TDLR could deny an application for the issuance or renewal of a license or suspend or revoke a license on the grounds that an applicant or license holder failed to disclose a relationship required by TCLR rules or disclosed such a relationship with a person who failed to comply with an order of the commission or executive director.

Advisory board meetings. The bill would specify that an advisory board would meet at the call of the executive director or the presiding officer of TCLR. The board could meet by telephone conference, videoconference, or other similar method, provided that each meeting required to be open to the public be audible and, if applicable, visible to the public.

Interdisciplinary advisory boards. The executive director or the presiding officer of TCLR could appoint interdisciplinary advisory boards consisting of members from various businesses, industries, general trades, or occupations to provide expertise related to a program regulated by TDLR.

Training program. The bill would revise certain information required to be included in the training program for TCLR members. The executive director of TDLR would have to create a training manual including this required information and distribute a copy of the manual annually to each commission member. Each commission member would have to sign and submit to the executive director a statement acknowledging that the member had received and reviewed the manual.

Changes made by the bill to the training program for TCLR members would apply to a member of TCLR appointed before, on, or after the bill's effective date. A member of the commission who, before the bill's effective date, completed the requiring training program would only have to complete additional training on subjects added to the program by the bill. Such a member could not vote, deliberate, or be counted as a member in attendance at a commission meeting held on or after December 1, 2021, until the member completed the additional training.

Other provisions. The bill would lower the required education for an audiology license from a doctoral degree to a master’s degree in audiology

or a related hearing science from an accredited program. This change would apply only to a license application submitted on or after the bill's effective date.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 1560 would improve the efficiency and operations of the Texas Department of Licensing and Regulation (TDLR) by consolidating the licensure of barbering and cosmetology, eliminating certain duplicative licenses and regulations, streamlining the administrative functions of the department, and continuing TDLR and the Texas Commission of Licensing and Regulation for 12 years, among other provisions.

As the umbrella agency for regulatory issues in Texas, TDLR is tasked with overseeing a multitude of occupational licenses. As the Legislature transfers more licenses under the department's purview each session, the need for efficiency in TDLR operations increases. CSHB 1560 would incorporate the recommendations of the Sunset Advisory Commission to ensure TDLR functions as efficiently as possible while serving license holders and upholding public health and safety.

Consolidation of barbering and cosmetology licensure. Barbers and cosmetologists, while often providing substantially similar services, are licensed separately by TDLR. Separately administering these two similar professions leads to a waste of state resources, disparate regulations on barbering and cosmetology license holders, and inconsistent public health and safety protections for the public. The bill remedies these problems by consolidating barbering and cosmetology licenses into one licensure scheme and eliminating some unnecessary and burdensome regulations.

Transfer, elimination, and modification of licenses. CSHB 1560 would eliminate subjective license eligibility requirements, which create unnecessary barriers for many license applicants. The bill also would eliminate certain licenses unnecessary for public health and safety, such as the polygraph examiner's license and combative sports event coordinator license, and appropriately transfers the licensure of home warranty providers from the Texas Real Estate Commission to TDLR.

Implementing these best practices would allow the department to better serve license applicants and the public.

The bill appropriately would maintain regulation of used automotive parts recyclers (UAPRs) under TDLR, as the department has successfully regulated UAPRs in the past. Also, UAPRs form an industry separate from the salvage industry and thus should be regulated separately.

Inspections. The bill would enable TDLR to better protect public health and safety by requiring the department to create a risk-based approach to conducting inspections and investigating complaints. The department's current procedures for handling complaints are too rigid, resulting in inefficient and un-prioritized investigations. The bill solves this issue by requiring the prioritization of complaints based on risk to public health and safety and infraction history of the license holder in question, and by requiring TDLR to provide a statistical analysis of complaints received.

Administrative functions. Currently, TDLR is subject to statutory requirements governing its advisory board that hamper its ability to efficiently conduct board meetings. By standardizing TDLR's advisory board meeting requirements, the bill would streamline the department's administrative functions. The bill also would give TDLR the flexibility to create interdisciplinary advisory boards composed of members from similar professions, which would increase the coordination of regulating these industries and improve TDLR's overall administrative efficiency.

Driver training programs. The bill would address concerns regarding certain regulations on driver training programs by requiring TDLR to create a study in consultation with the Driver Training and Traffic Safety Advisory Committee and to make recommendations to the Legislature for consideration in a future session.

CRITICS SAY:

CSHB 1560 would fail to incorporate some important recommendations from the Sunset Advisory Commission to improve the efficiency of the Texas Department of Licensing and Regulation (TDLR), allowing several inefficient and unfair regulations to continue in statute. The bill also would inappropriately eliminate certain licenses that provide a benefit to the public and revenue to the state.

Transfer, elimination, and modification of licenses. The bill should retain the polygraph examiner license and transfer regulation of automotive parts recyclers from TDLR to the Texas Department of Motor Vehicles (TxDMV). Polygraph examiners provide important services that are used by law enforcement, and should not be deregulated by TDLR. These licenses generate revenue for the state that would be lost if the license was eliminated.

TDLR should not regulate used automotive parts recyclers (UAPRs), as it does not possess the relevant authority or expertise to enforce UAPR compliance with TxDMV. The bill should follow the Sunset Advisory Commission's recommendation to transfer UAPR oversight to TxDMV, which would remove an administrative burden on TDLR and allow the proper agency to regulate the salvage vehicle industry.

Inspections. Requiring TDLR to adopt a risk-based approach to inspections would be unnecessary, as existing scheduled inspections are sufficient to ensure compliance.

Administrative functions. The bill should not remove prescriptive requirements for advisory board meetings, as having regular meetings helps the public and industry participants stay abreast of regulatory issues.

Driver training programs. The Sunset Advisory Commission recommended that certain excessive and burdensome requirements placed on driving training programs be removed in order to level the playing field with parent-taught driver education course providers. By keeping these regulations in place, the bill would not take full advantage of Sunset's recommendations and continue unfair regulations that put certain driver training programs at a disadvantage.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of about $18,000 to general revenue through fiscal 2023 and a positive impact of about $53,000 to all funds through fiscal 2026.

SUBJECT: Continuing the Texas Commission on Jail Standards

COMMITTEE: County Affairs — committee substitute recommended

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: Matthew Lovitt, National Alliance on Mental Illness Texas; Brian Hawthorne, Sheriffs Association of Texas)

Against — (*Registered, but did not testify*: Susana Carranza; Julie Gilberg; Idona Griffith; Georgia Keysor; Vanessa MacDougal; Gregg Vunderink)

On — Rachel Gandy, Sunset Advisory Commission; Brandon Wood, Texas Commission on Jail Standards

BACKGROUND: The Texas Commission on Jail Standards (TCJS) establishes minimum standards for jails, including standards on the custody, care, and treatment of inmates, as well as jail construction, maintenance, and operations. It monitors compliance with those standards through inspections and investigates complaints, takes enforcement actions, and gives technical assistance to jailers, administrators, and sheriffs. The agency also reviews inmate deaths and escapes; approves jail construction, renovation, and operations; and reports on inmate population, incarceration rates, and more.

The agency has authority over jail systems operated by counties and over jails operated by private vendors for counties and cities. It currently oversees 239 jail systems with a total bed capacity of about 95,000.

A nine-member commission oversees the agency, and commissioners serve staggered six-year terms. The governor appoints the commission with the advice and consent of the Senate and appoints the chair of the commission. The commission's membership must include two county

sheriffs, a county judge, a county commissioner, a licensed medical practitioner, and four members of the public.

In fiscal 2019, TCJS received about $1.4 million, 98 percent of which came from general revenue and the rest from collected fees. The agency had 22 full-time employees in fiscal 2019 and generally has four employees conducting routine jail inspections. Government Code sec. 511.009(a)(13) requires the commission to determine annually whether each jail is in compliance with commission rules and procedures.

The Texas Jail Standards Commission will be abolished September 1, 2021, unless continued by the Legislature.

DIGEST:

CSHB 1545 would continue the Texas Commission on Jail Standards until September 1, 2033.

The bill would make several changes to the statutes governing the agency. The changes would:

- revise the commission's process for developing jail standards and require it to adopt minimum standards that take into consideration facilities' different needs and risks;
- require the commission to use a risk-based inspection process for facilities and revise the process for re-inspections;
- revise the process for collecting and analyzing complaint information;
- require the adoption of graduated sanctions for facilities that remain in noncompliance with agency standards;
- authorize the commission to establish advisory committees; and
- institute procedures for investigating deaths in custody when agencies being asked to investigate the death claim a potential conflict of interest.

Jail standards. CSHB 1545 would require the commission to ensure that its minimum standards for jails take into consideration facilities' different needs and risks. The commission would have to review and revise standards on an ongoing basis.

When revising standards, the commission would have to consider factors listed in the bill, including establishing tiered or separate standards that depend on the size, resources, or type of jail. The commission could not lower any standard in effect on September 1, 2021, as a result of such reviews.

The commission would be required regularly to review its rules and procedures. The commission's compliance with the statutory requirements for its duties, particularly those about adopting rules and procedures, would not be contingent on any additional legislation.

Risk-based inspections. The bill would require the commission to adopt a policy prioritizing jail inspections based on risk level and would eliminate the requirement that the commission determine at least annually whether each county jail is in compliance with the commission's rules.

The commission's currently required plan used to identify the overall risk level of each jail would have to be used to schedule announced and unannounced jail inspections and determine the frequency and intensity of its risk-based inspections. The inspection policy could authorize the commission to use alternative inspection methods for jails determined to be low-risk, including abbreviated inspections or other methods, rather than conducting in-person inspections. The bill would allow the risk factors currently used to assess the overall risk level of a jail to include the number of months since the commission's last inspection.

The commission would be required to adopt rules and procedures to re-inspect a jail following a determination that it was not in compliance with minimum standards. The rules would require the commission to:

- re-inspect jails not in compliance;
- establish a percentage of re-inspections in which the commission assessed the jail’s compliance with all minimum standards and not just with previously violated standards; and
- randomly select the jails subject to re-inspection of all standards.

The commission would be required to analyze data collected during inspections or reported to the commission to identify trends in noncompliance, inspection outcomes, serious incidents, and any other related area of jail operations.

Complaints data, investigation process. The bill would revise the process for handling complaints. It would require the analysis of trends in complaints and require distribution of information about complaint procedures. It also would update language to reflect standard Sunset across-the-board recommendations on information about complaints.

The bill would require the commission to expand its current procedures for tracking and analyzing complaints. In addition to criteria that must already be tracked and analyzed, the commission's criteria would have to include categorization and documentation of each alleged violation and documentation on why a complaint was closed if no action was taken on it. The commission also would be required to develop procedures for responding to appeals of complaints.

The bill would require the commission to analyze complaints to identify trends and determine jails requiring additional inspections.

The commission also would be required to make available to the public the report on complaints that it currently distributes to commission members. The commission would be required to adopt rules mandating that jail administrators include information about complaint investigation and resolution in inmate handbooks and display the information prominently in their jails.

Enforcement. The bill would require the commission to establish a system of graduated, escalating enforcement actions it could take against jails that have not made timely progress correcting noncompliance issues or have failed multiple inspections within a certain number of years. The commission must establish time frames for taking the enforcement actions against jails and would have to have a schedule of actions to guide the enforcement actions. The schedule would have to be made available on any publicly accessible commission website. The schedule would have to recommend enforcement actions based on the severity of the

noncompliance and include consideration of mitigating factors and aggravating factors, including repeat violations and failing consecutive inspections.

Advisory committees. CSHB 1545 would authorize the commission to establish advisory committees to make recommendations to the commission on programs, rules, and policies. The commission would have to adopt rules about the operations and purpose of an advisory committee and various other rules including ones on qualification for membership and appointment procedures.

Investigation of deaths in custody. The bill would revise the statute that authorizes the commission to appoint a law enforcement agency other than the one operating a county jail to investigate a death in the jail. The bill would require law enforcement agencies to conduct investigations if appointed by the commission and allow agencies to present evidence to the commission of a conflict of interest in doing the investigation. If the commission determined that a conflict of interest could not be mitigated, the commission would be required to appoint another law enforcement agency to investigate the death.

Other provisions. CSHB 1545 would make additional changes to statutes governing the Texas Commission on Jail Standards, including adding standard Sunset across-the-board language about commission member training and eliminating a requirement for jail officials to report to the commission annually on those under 17 years old held in the jail.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 1545 would continue the Texas Commission on Jail Standards for another 12 years because the state has an ongoing need for minimum standards for jails and to monitor compliance with those standards. The standards help counties run safe jails, both for those held in the facilities and those working there. The commission also increases transparency and accountability for taxpayers. These functions should continue, and there would be no substantial benefit from transferring these duties to another agency or merging the commission with another state agency.

Jail standards. CSHB 1545 would ensure that the minimum standards promulgated by the agency were effective by requiring those standards to take into account the risk levels and needs of Texas jails. The current standards do not take into account the variations among jail sizes and types, which can range from a three-bed lockup to a 10,500-bed facility. One-size-fits-all standards are not as effective as tailored standards could be at keeping inmates and staff safe and mitigating risk for the counties. Overly broad standards can allow facilities to do less than might be allowed under clear, specific standards.

While the commission would be required to consider tiered or separate standards that vary based on differences in jails, all jails would be subject to at least the minimum standards currently in place because the bill would prohibit the agency from lowering any standard in effect on September 1, 2021. This would ensure that all jails were providing a level of care that meets constitutional requirements.

The bill would help ensure the standards are regularly updated by clarifying that the agency can revise, amend, and change rules without legislative action or approval.

Risk-based inspections. Using risk-based inspections would give the agency the flexibility to better use its resources to be more effective. Currently, the agency must inspect facilities annually, which means inspectors spend more time at some facilities than needed, while other facilities may need more of inspectors' time than they receive.

With authority to develop an inspection schedule based on data and risk, the agency could target its limited resources to those with higher risks and needs. Under this system, no facility would fall through the cracks because the agency would have authority to include the number of months since the last visit as a risk factor. Inspections could occur as soon as a facility went a specified number of months without an inspection.

Other safeguards could ensure facilities were flagged and inspected even if it were on an inspection schedule for low-risk facilities. For example, complaints could be used to trigger an inspection, and data such as overcrowding or particularly high turnover, could be monitored to

determine if an inspection was needed. Jails that need technical assistance could ask for and receive it as needed and would not have to wait for an inspection.

Requiring the agency to assess all standards during some re-inspections would encourage jails to continually work to comply with all standards, rather than focus only on ones being re-inspected.

Complaints data, investigations process. CSHB 1545 would ensure that the agency had a clear process for tracking, prioritizing, investigating, and analyzing complaints, something it lacks now. Analyzing complaints and identifying trends would help the agency identify violations and get a full regulatory picture of what is happening in the state's jails. This type of analysis could ensure complaints were handled uniformly and let the agency target its resources to address systemic issues and help those facilities needing assistance.

The bill would ensure that inmates and the public received complete, uniform information about complaints by requiring jail administrators to post information about the process and put it in the inmate handbook. Providing this information could help reduce complaints that are not in the agency's jurisdiction and allow the agency to focus on complaints within its purview.

Enforcement. Requiring the agency to adopt a system of graduated actions to take against jails not in compliance with agency standards would help the agency handle violations in a fair, predictable way. This would address issues with current enforcement, which can be inconsistent and confusing. Consistent enforcement through graduated actions would help incentivize compliance and allow the commission to hold facilities accountable for noncompliance which in turn would benefit the facilities.

Investigation of deaths in custody. CSHB 1545 would clear up questions about what should occur if the commission appoints an outside law enforcement agency to investigate a death occurring in a specific jail and an agency refuses or declines to investigate. The bill would resolve any confusion by establishing that agencies must conduct the investigation and would create procedures in cases with potential conflicts of interest.

Advisory committees. Requiring the agency to use advisory committees to make recommendations on programs, rules, and policies, instead of informal work groups, would improve the transparency, inclusivity, and effectiveness of the agency's work. Rules regarding the purpose of advisory committees would ensure the committees were focused. Transparency would be improved because advisory committee meetings are open to the public and their actions are public record, while informal work groups generally are not. Having formal rules, including rules on member qualification and appointment, could help ensure more diverse representation than has been achieved using work groups and would help the agency engage in more strategic planning.

CRITICS SAY:

CSHB 1545 could result in jail standards that were not broad enough and a risk inspection process that strained resources and should include more guidance on what is considered a death in custody.

Jail standards. The uniform minimum standards currently required for all facilities in Texas work well. The broad standards allow inspectors, jailers, those incarcerated, and the public to know what standards should be met in any facility, while allowing facilities the flexibility to meet those standards.

Requiring the agency to consider different needs and risks based on jail type and sizes could lead to an appearance that the standards condone different levels of care. Jails could jockey to be in different tiers and those incarcerated might try to use varying standards as the basis of complaints.

Risk-based inspections. The current system of annual inspections should not be replaced by a risk-based inspection system that could result in some sites not being visited annually. On-site visits help inspectors understand how a facility is operating by looking at whether life-safety and security systems are operable, determining if a facility is maintained properly, and interacting with inmates and staff. On-site inspectors can identify things that would not be noticed if they were not there in person and can look deeper into issues as they come across them. Inspections that are not done on site, possibly through desk audits, could miss such issues. While risk-

based inspections may work for other agencies, jails are a unique environment that benefit from annual, on-site inspections.

Current inspections are unannounced and consider risk, while ensuring every jail receives an on-site inspection within 14 months. These inspection, combined with the re-inspection process, work well to make sure all risks are considered and addressed.

Risk-based inspections could result in a disproportionate amount of the commission's resources going to some jails that chronically are at risk. Other jails, while at low risk, could miss the benefits they gain from personal interactions with commission staff.

Requiring that some re-inspections be full inspections could strain the resources of the commission and jails. Re-inspections should continue to focus on the issue needing re-inspection, so that the commission could focus on other facilities or in giving technical assistance to jails.

Investigation of deaths in custody. The bill should give more guidance on what constitutes a death in custody that triggers a full investigation so that uniform information would be reported statewide. Since January 2018 jails have been required under Government Code sec. 511.020 to report to the commission monthly on certain incidents, including suicides, attempted suicides, and deaths in custody. There have been reports of jails not notifying the commission of deaths because the jail claims the inmate was no longer in its custody after having been released with a serious medical condition and passing away quickly or having been released abruptly on a personal bond or immediately transported to a hospital.

While some of these instances may have been done with the intent to avoid reporting a death in custody, others may not have been and the release from custody and death could have been based on medical reasons with no malfeasance intended. Jails, investigators, and the public could benefit from a clear or more nuanced definition of deaths in custody so that releases that might involve an effort to avoid reporting a death in custody could be distinguished from ones based on medical or other reasons. A clear definition for when a death is considered to be in custody would ensure the intent of the Legislature was met in these situations.

SUBJECT: Establishing a framework for civil actions involving commercial truckers

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

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

4 nays — Davis, Dutton, Julie Johnson, Moody

WITNESSES: For — Sarah Sagredo-Hammond, Atlas Electrical Air Conditioning Refrigeration and Plumbing; Pamela Grooms, Atlas Sand Company, LLC; Jonathan Kennemer, CKJ Transport; Adam Blanchard, Double Diamond Transport, Inc.; Johnny Walker, JH Walker Inc.; Robert Bondurant, Martin Transport, Inc; David Bishop, Refrigerated Transport, Inc; Ernesto Gaytan, Super Transport International, Ltd; Todd Wright, TETCO/Mission Petroleum Carriers, Inc.; Lee Parsley, Texans for Lawsuit Reform; Mitchell Smith, Texas Association of Defense Counsel; Glenn Hamer, Texas Association of Business; George Christian, Texas Civil Justice League; Rob Hughes, Texas Forestry Association; Josh McAdams, Texas Propane Gas Association and Midstream Transportation Co; Gary Babbitt, John Esparza, and Dana Moore, Texas Trucking Association; Aaron Rolen; Emily Stroup; (Registered, but did not testify: Jay Thompson, AFACT; Wade Long, AGC-Building Branch; Michael Stewart, Aggregate Transporters Association of Texas; Scott Stewart, American Council of Engineering Companies of Texas; Joe Woods, American Property and Casualty Insurance Association; Peter Salatich, Anheuser-Busch; Will McAdams, Associated Builders and Contractors of Texas; Steven Albright, Associated General Contractors of Texas - Highway, Heavy, Utilities and Industrial Branch; Jason Ryan, CenterPoint Energy; Mike Meroney, Chubb INA Holdings Inc.; Samantha Omey, ExxonMobil; Chris Hosek, Halliburton; Stephen Scurlock, Independent Bankers Association of Texas; CJ Tredway, Independent Electrical Contractors of Texas and Texas Towing and Storage Association; Jill Douglas and Lee Loftis, Independent Insurance Agents of Texas; Ruben Garibay, Laredo Motor Carriers; Mireya Zapata, Lumbermen's Association of Texas; Chris Bioth, Martin Transport, Inc.; Jon Schnautz, National Association of Mutual Insurance Companies; Adam Burklund, National Waste and Recycling Association and Sentry Insurance; Annie

Spilman, NFIB; William Stevens, Panhandle Producers and Royalty Owners Association; Kody Bessent, Plains Cotton Growers, Inc.; Martin Hubert, Sysco Corporation and Texas Poultry Federation; Jim Grace, Texans for Lawsuit Reform; Tommy Engelke, Texas Agricultural Cooperative Council; Jason Modglin, Texas Alliance of Energy Producers; Peyton Schumann, Texas and Southwestern Cattle Raisers Association; David Mintz, Texas Apartment Association; J.D. Hale, Texas Association of Builders; Fred Shannon, Texas Association of Manufacturers; Robert Flores, Texas Association of Mexican-American Chambers of Commerce; Darren Whitehurst, Texas Automobile Dealers Association; Josh Winegarner, Texas Cattle Feeders Association; Chris Noonan, Texas Chemical Council; Mia McCord, Texas Conservative Coalition; Jennifer Fagan, Texas Construction Association; Kenneth Hodges, Texas Corn Producers; Shayne Woodard, Texas Cotton Ginners' Association and Tyson Foods, Inc; Joy Davis, Texas Farm Bureau; Jarrett Hill, Texas Farm Bureau Insurance Companies; Billy Phenix, Texas Food and Fuel Association; Tara Artho, Texas Grain and Feed Association; Ryan Paylor, Texas Independent Producers and Royalty Owners Association; Ryan Skrobarczyk, Texas Nursery and Landscape Association; Tulsi Oberbeck, Texas Oil and Gas Association; Lance Lively, Texas Package Stores Association; Eric Woomer, Texas Precast Concrete Manufacturers Association and Texas Crane Owners Association; Mark Borskey, Texas Recreational Vehicle Association; Tricia Davis, Texas Royalty Council; Keith Strama, Texas Surplus Lines Association; Ron Hinkle, Texas Travel Alliance; Laird Doran, The Friedkin Group, on behalf of US AutoLogistics; Brent Hagenbuch, Titus Transport; Taylor Sims, United Parcel Service; Cary Roberts, US Chamber Institute for Legal Reform; Kate Goodrich, Vulcan Materials; Doug Davis and Tom Spilman, Wholesale Beer Distributors of Texas; Tara Snowden, Zachry Corporation)

Against — Brian Hawthorne, Chambers County Sheriff's Office; Price Johnson, Parks Lease and Vacuum Service; Adrian Shelley, Public Citizen; Steve Bresnen, Craig Eiland, and Jim Perdue, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; and 35 individuals; (Registered, but did not testify: Luis Figueroa, Every Texan; Cyrus Reed, Lone Star Chapter Sierra Club; Guy Herman, Statutory Probate Judges of

Texas; Rene Lara, Texas AFL-CIO; Michael Bristow; Nina McCart; Stan Putman)

On — Jay Crossley, Farm and City

BACKGROUND:

Civil Practice and Remedies Code sec. 41.001 defines "compensatory damages" as economic and noneconomic damages. Economic damages are intended to compensate a claimant for actual economic or pecuniary loss, and noneconomic damages compensate a claimant for physical pain and suffering, mental or emotional pain or anguish, physical impairment, loss of companionship and society, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

"Exemplary damages" means any damages awarded as a penalty or by way of punishment.

DIGEST:

CSHB 19 would provide a framework for trial procedures, the use of evidence, and the determination of liability in certain civil actions involving commercial motor vehicles.

The bill would define "civil action" as an action in which:

- a claimant sought recovery of damages for bodily injury or death caused in an accident; and
- a defendant operated a commercial motor vehicle involved in the accident or owned, leased, or otherwise held or exercised legal control over a commercial motor vehicle or an operator of a commercial motor vehicle involved in an accident.

Bifurcated trial. In a civil action under the bill, the court would be required to provide for a bifurcated trial on motion by any defendant. The motion would have to be made by the 120th day after the date the defendant bringing the motion filed the defendant's original answer.

In the first phase of the bifurcated trial, the trier of fact would be required to determine liability for compensatory damages, including the amount of such damages. In the second phase, the trier of fact would be required to determine liability for exemplary damages and the corresponding amount.

A finding in the first phase of the trial that an employee defendant was negligent in operating an employer defendant's commercial motor vehicle could serve as a basis for the claimant to proceed in the second part of the trial on a claim against the employer defendant. Such a claim would require a finding of employee negligence in the first phase as a prerequisite to a finding in the second phase that the employer defendant was negligent in relation to the employee defendant's operation of the vehicle.

Liability for employee negligence. *Respondeat superior.* If the defendant stipulated to liability for respondeat superior, meaning that, at the time of the accident, the person operating the vehicle was the defendant's employee and acting within the scope of that employment, the employer defendant's liability for compensatory damages would be based only on the stipulated respondeat superior liability.

If the defendant stipulated to such liability and the trial was bifurcated, a claimant could not present evidence in the first phase of the trial on an ordinary negligence claim against the employer defendant that required a finding of employee negligence as a prerequisite to the employer defendant being found negligent in relation to the employee defendant's operation of the vehicle.

Permissible actions. A claimant still could pursue an ordinary negligence claim against an employer defendant for negligent maintenance of the vehicle involved in the accident or for another claim that did not require a finding of negligence by an employee as a prerequisite to an employer defendant being found negligent in relation to the employee's conduct or omission. A claimant could present evidence on such claims in the first phase of a bifurcated trial.

A claimant also could pursue a claim for exemplary damages arising from an employer defendant's conduct or omissions in relation to the accident that were the subject of the civil action. Evidence could be presented on such a claim in the second phase of a trial.

Evidence of violations of regulations and standards. A regulation or standard would include a statute, regulation, rule, or order regulating equipment or conduct adopted or promulgated by the federal government, a state government, a local government, or a governmental agency or authority.

In the first phase of a bifurcated trial, evidence of a defendant's failure to comply with a regulation or standard would be admissible only if:

- the evidence tended to prove that failure to comply with the regulation or standard was a proximate cause of the bodily injury or death for which damages were sought; and
- the regulation or standard was specific and governed or was an element of a duty of care applicable to the defendant, defendant's employee, or the defendant's property or equipment when those were at issue in the action.

In the second phase of the trial, a claimant still could pursue and present evidence on a claim for exemplary damages related to the defendant's failure to comply with other applicable standards or regulations.

Visual depictions of accident. A photograph or video of a vehicle or object involved in an accident would be presumed admissible, even if the photograph or video tended to support or refute an assertion regarding the severity of damages or injury to an object or person involved in the accident. A court could not require expert testimony for admission into evidence of a photograph or video of a vehicle or object involved in an accident.

Other provisions. The bills provisions would not apply to a commercial motor vehicle used at the time of the accident primarily for personal, family, or household purposes.

Passengers who, in a commercial transaction, paid to ride in a commercial motor vehicle and passengers in a motor vehicle transporting children to or from a school or school-sponsored event would be exempt from the provisions of the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021, and would apply only to an action commenced on or after that date.

SUPPORTERS SAY:

CSHB 19 would clarify and modify existing statute to streamline and create a fair framework for commercial vehicle litigation. The bill would protect commercial vehicle operators from frivolous and unjust lawsuits while ensuring that all victims of collisions still had the ability to have their day in court and be made whole.

It has been shown that over the past decade, motor vehicle accidents have increased substantially while the number of collisions involving a fatality, severe injury, or any other injury increased by significantly smaller amounts or even declined. Despite these trends that seem to warrant a reduction in litigation, excessive and unjust motor vehicle litigation remains a concern for businesses of all sizes, their employees, and drivers across Texas. It is often the case that the person or entity being sued in such cases is not at fault in the collision, yet must spend increasing amounts of money on court costs and on purchasing insurance coverage.

In order to avoid the risk of a large judgment, insurers often settle commercial vehicle cases without regard to merit, possibly encouraging plaintiff attorneys to file more lawsuits. As a result, some insurers are pulling out of Texas, and the companies that remain are increasing deductibles and premiums and reducing coverage for commercial vehicles regardless of claims history. It is necessary to level the playing field in commercial vehicle litigation, and the bill's framework would provide the balance necessary for awarding fair compensation to Texans injured in accidents, while ensuring that commercial trucking companies and operators can adequately protect themselves from unfair lawsuits.

Modified framework. The bifurcated trial provisions would ensure that the evidence introduced in a civil action matched the type of damages to be awarded. The presumption of admissibility for properly authenticated visual depictions of the accident would prevent trial courts from excluding photographs that show the actual damage to a plaintiff's vehicle, which

would be useful for the consideration by courts of whether the damage done to the vehicle aligned with the damages the plaintiff was claiming.

The bill's framework simply would clarify and modify the litigation process for civil actions involving commercial motor vehicles. It is necessary that the ability of Texans to access justice for true injuries in commercial vehicle accidents not be compromised, but it is equally important to ensure that an essential industry to the state of Texas is protected in instances where blame is not warranted.

CRITICS SAY:

CSHB 19 would remake the civil justice system for the benefit of one particular industry, commercial trucking, to the exclusion of other industries in Texas at a time when more oversight in the industry is needed. Texas has some of the highest rates in the nation of preventable injuries and deaths on highways caused by large commercial trucks. The bill's modified framework for civil actions involving commercial motor vehicles could restrict pursuit of full compensation for Texans injured in accidents and could encourage commercial trucking companies to operate their businesses with more freedom and less regard for the safety of Texans sharing the road. At a time when Texas should be focused on making the state's roads safer, attempts to further protect the commercial trucking industry in civil actions are misguided and could leave injured Texans with less recourse to access justice.

SUBJECT: Providing for disannexation, limiting revenues in cities that defund police

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Paddie, Harless, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

3 nays — Hernandez, Deshotel, Howard

WITNESSES: For — Chris Jones, CLEAT; Joell McNew, Safe Horns; (*Registered, but did not testify*: Michelle Davis, Convention of States; Frederick Frazier, Dallas Police Association/State FOP; Jimmy Rodriguez, San Antonio Police Officers Association; Brian Hawthorne and Tom Maddox, Sheriffs Association of Texas; Mia McCord, Texas Conservative Coalition (TCC); Johnathan Dallas Reed, Texas Municipal Police Association (TMPA); and 13 individuals)

Against — Joe Chacon, Austin Police Department; Lee Kleinman, City of Dallas; Ed Heimlich, Informed Citizens; Danielle Reichman, Little Petal Alliance; Emily Gerrick, Texas Fair Defense Project; Austin Graham; Karen Munoz; Bryan Register; David Stout; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Joe Hamill, AFSCME Harris County Local 1550, HOPE Local 123, Austin/Travis County Local 1624, San Antonio Local 2021, El Paso Local 59; Chas Moore, Austin Justice Coalition; Melissa Shannon, Bexar County Commissioners Court; Jon Weist, City of Irving; Ricardo Ramirez, City of Sugar Land; Jim Allison, County Judges and Commissioners Association of Texas; Jonathan Lewis, Every Texan; Thamara Narvaez, Harris County Commissioners Court; Patricia Zavala, Jolt Action; Jorge Renaud, LatinoJustice; Karen Munoz, LatinoJustice PRLDEF; Maggie Luna, Statewide Leadership Council; Carisa Lopez and Suseth Munoz, Texas Freedom Network; Cate Graziani, Texas Harm Reduction Alliance; Abigail Avila and Cerena Haefs, Texas Rising; Julie Wheeler, Travis County Commissioners Court; Stephanie Gharakhanian, Workers Defense Action Fund; and 16 individuals)

On — Sally Bakko, City of Galveston; Adam Haynes, Conference of Urban Counties; Charles Reed, Dallas County Commissioners Court;

Steven C. McCraw, Texas Department of Public Safety; Dora Smith; (*Registered, but did not testify*: Karey Barton and Korry Castillo, Comptroller of Public Accounts; Jim Allison, County Judges and Commissioners Association of Texas; Andrew Friedrichs, Office of the Governor-Criminal Justice Division; Monty Wynn, Texas Municipal League)

DIGEST:

CSHB 1900 would provide for the disannexation from and limit certain tax revenues of municipalities that defunded their police departments.

Determination of defunding municipality. A defunding municipality would be a municipality that adopted a budget for a fiscal year that, in comparison to the preceding year, reduced the appropriation to the police department and for which the Office of the Governor's Criminal Justice Division issued a written determination.

The bill would apply only to a municipality with a population over 250,000.

Exceptions. A municipality would not be considered a defunding municipality if the percentage of reduction to the police department did not exceed the percentage of reduction to the total budget.

A municipality would not be a defunding municipality if it applied for and was granted approval from the division for a reduction for capital expenditures related to law enforcement during the preceding fiscal year, the municipality's response to a declared state of disaster, or another reason approved by the division.

The division would have to adopt rules establishing the criteria used to approve reductions.

Termination of determination. A defunding determination would continue until the division issued a written determination finding that the municipality had reversed the reduction, adjusted for inflation.

Disannexation from defunding municipalities. CSHB 1900 would require a defunding municipality to hold a separate election in each area

annexed in the preceding 30 years on the question of disannexing the area on the next uniform election date after the Criminal Justice Division determination was made. If favored by the majority of the votes, the defunding municipality would have to immediately disannex the area.

A defunding municipality holding an election on disannexation could not use public funds on informational campaigns relating to the election.

Prohibition on annexation. The bill would prohibit a defunding municipality from annexing an area beginning on the date the Criminal Justice Division determined the municipality was a defunding municipality and ending 10 years after the division determined that the municipality had reversed the reduction.

Inclusion of disannexed area. If an area was disannexed from a defunding municipality as a result of an election, the area would be released from its extraterritorial jurisdiction (ETJ) and would not be included in any other municipality's ETJ. A resident could file with an eligible municipality a petition for the area to its ETJ. The petition would have to satisfy certain requirements listed by the bill.

A municipality could by ordinance include the area in its ETJ on receipt of a valid petition, except that if the municipality was a defunding municipality that disannexed the area, it could include the area only if approved by a majority of votes in an election in the area.

If the area was not included in an ETJ on or after the second anniversary of being disannexed, an eligible municipality could include the area without consent.

Property tax limitations. The bill would decrease the no-new-revenue maintenance and operations rate for a defunding municipality to account for the municipal public safety expenditure adjustment, which would be the amount of money appropriated for public safety in the preceding budget less the money spent on public safety. A defunding municipality would have to provide notice of the decrease.

A defunding municipality could not adopt a tax rate that exceeded the no-new-revenue rate or the voter-approval rate, whichever was less.

For the purposes of determining the unused increment rate, the difference between the defunding municipality's actual tax rate and voter-approval tax rate would be zero.

Sales tax deductions. Before sending a defunding municipality its share of sales and use taxes, the comptroller would have to deduct the amount of money the state spent in that fiscal year to provide law enforcement services in that municipality. That amount would be credited to the general revenue fund and could be appropriated only to the Department of Public Safety.

Municipally owned utility rates and fees. A municipally owned utility located in a defunding municipality could not charge a customer rates or fees higher than the customer was or would have been charged on January 1 of the year the municipality was determined to be a defunding municipality.

Initial determinations. In making a determination of whether a municipality was a defunding municipality for the fiscal year beginning on or after September 1, 2021, the division would have to compare the year's budget to the budget of the preceding or second preceding fiscal year, whichever was greater.

A municipality determined to be a defunding municipality by a budget adopted for the first fiscal year on or after September 1, 2021, could not adopt a tax rate exceeding the no-new-revenue rate or voter-approval rate for that tax year, the preceding year, or the second preceding year, whichever was least.

These provisions would expire September 1, 2023.

Provisions of the bill regarding property tax rates would apply beginning with the 2021 tax year.

The bill would take effect September 1, 2021, and apply to a budget, the distribution of sales tax revenue, and rates established after that date.

SUPPORTERS SAY:

CSHB 1900 would address the recent trend of cities defunding their police departments by incentivizing those cities to appropriately fund law enforcement.

In 2020, some cities across the country, including in Texas, took steps to defund their police departments. While intended to address local policing issues, the outcome has been that crime rates have increased and public safety has been compromised. It is common sense that when department funding is cut and fewer officers are on patrol, crime increases. Civilians cannot perform the necessary public safety services of police, so shifting funds to civilian agencies does not solve the problem. If a city determines its police department has problems, it would make sense to invest more funds, not less, to fix those issues.

The bill would create a process by which the Criminal Justice Division in the Office of the Governor could make a determination that a city had engaged in a practice that amounted to defunding its local law enforcement. A city that had to adopt across-the-board budget cuts or respond to a disaster would not be affected. The bill also would apply only to larger cities to prevent small cities with tighter budget restrictions from being impacted.

CSHB 1900 would create four corrective solutions to incentivize cities to appropriately fund police. The bill would allow residents of a recently annexed area to vote to disannex themselves, prevent cities from raising property taxes, allow the state to deduct state trooper costs in those cities from sales tax collections, and prohibit cities from recovering funds through electric utilities. These measures would give residents a chance to vote their interests on whether to remain annexed to such cities and would ensure that the city could not simultaneously raise its revenues while risking the public safety of its residents.

CRITICS SAY:

CSHB 1900 would incorrectly label certain cities as "defunding municipalities" and create punitive measures to remove local discretion in budgeting for public safety. It is based on a premise that cities have

"defunded" their police departments, when what some have done is restructure budgets based on community needs. For example, a city may redirect some funding from police to a program that sends emergency calls about mental health to a mental health crisis counselor, rather than police. Services would be maintained and may be delivered more effectively by trained professionals. This would also free law enforcement resources for the dangerous public safety situations that only police are equipped to handle.

CSHB 1900 would penalize a city's discretion in making budget decisions for its community. Cities labeled as defunding municipalities would be subject to reduced property tax rates and further limits on raising rates, withheld sales and use tax revenues, and disannexation, which could lower the tax base and require costly elections. These onerous measures could result in fewer city services, including public safety, which would go against the intent of the bill. Local communities know their own needs, and the state should not penalize cities by removing this local control.

CSHB 1900 would prohibit a municipally owned electric utility in a defunding municipality from recovering the cost of pass-through fees from ERCOT, which manages the state electric grid, or wholesale market prices for power. The effect would be that utilities could not use these fees for securitization to weatherize their facilities. Also, these utilities could not raise rates, which could affect bond indebtedness and credit ratings, making it more expensive to build necessary facilities.

NOTES:

According to the fiscal note, the bill could create an indeterminate increase to general revenue if a municipality was determined to be a defunding municipality and the comptroller deducted its sales and use tax revenues. The bill's restrictions to property tax rates and utility fees could create a cost to or reduce revenues available to those municipalities.

SUBJECT: Creating the Second Amendment Sanctuary State Act

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Paddie, Deshotel, Harless, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

2 nays — Hernandez, Howard

WITNESSES: For — Felisha Bull, Gun Owners of America; Rick Briscoe, Open Carry Texas; Andi Turner and Darryl Valdes, Texas State Rifle Association; and eight individuals; (*Registered, but did not testify*: Angela Smith, Fredericksburg Tea Party; Manfred Wendt, Young Conservatives of Texas; Jordan Clements, Young Conservatives of Texas-UT; and 27 individuals)

Against — (*Registered, but did not testify*: Bill Kelly, Mayor's Office, City of Houston; Gyl Switzer, Texas Gun Sense; and 12 individuals)

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

DIGEST: CSHB 2622 would create the Second Amendment Sanctuary State Act, which would prohibit a state entity from assisting in the enforcement of certain new federal firearms laws or regulations, withhold state funds from an entity in violation of the bill, and establish a complaint process.

Enforcing federal firearms laws, regulations. The bill would prohibit a state agency, political subdivision, or a law enforcement officer from contracting with or providing assistance in any way to a federal agency or official for the enforcement of a federal statute, order, rule, or regulation that imposed a prohibition, restriction, or other regulation that did not exist under state law and that related to:

- a registry requirement for a firearm, a firearm accessory, or ammunition;
- a requirement that a person be licensed to own, possess, or carry a firearm, a firearm accessory, or ammunition;

- a requirement that a background check be conducted for the private sale or transfer of a firearm, a firearm accessory, or ammunition;
- a program for confiscating a firearm, a firearm accessory, or ammunition from a person who was not otherwise prohibited by state law from possessing the items; or
- a program that required an owner to sell a firearm, a firearm accessory, or ammunition.

The prohibition would not apply to a contract or agreement to provide assistance in the enforcement of a federal statute, order, rule, or regulation in effect on January 19, 2021.

State funds. A political subdivision could not receive state funds if it entered into a contract or adopted a rule, order, ordinance, or policy under which the subdivision required or assisted with the enforcement of any federal firearms laws or regulations described in the bill. The subdivision also could not receive state funds if it, by consistent actions, required or assisted with the enforcement of such federal firearms laws or regulations.

State funds would be denied for the fiscal year following the year in which a final judicial determination in an action brought under the bill was made that the political subdivision was in violation of the bill.

Under the bill, "state funds" would mean money appropriated by the Legislature or money under the control or direction of a state agency.

Complaint process. Any individual living in the jurisdiction of a political subdivision could file a complaint with the attorney general if the individual offered evidence to support an allegation that the political subdivision had required or assisted with the enforcement of any federal firearms laws or regulations described in the bill.

If the attorney general determined that a complaint was valid and to compel the political subdivision to comply with the bill, the attorney general could file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county where the principal office of the political subdivision was located.

The attorney general could recover reasonable expenses incurred in obtaining relief, including court costs, attorney's fees, investigative costs, witness fees, and deposition costs.

An appeal of a suit brought under the bill would be governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure, and the appellate court would have to render its final order or judgment with the least possible delay.

Suit against state agency. The attorney general would have to defend any state agency in a suit brought against it by the federal government for an action or omission consistent with the requirements of 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:

CSHB 2622 would enact the Second Amendment Sanctuary State Act and protect Texans' Second Amendment rights by prohibiting public resources from being used in the enforcement of certain exclusively federal firearms laws and regulations in the state.

Current impending federal legislation and potentially forthcoming federal executive action are threatening to erode the constitutional rights of Texans, namely the right to self-defense and to keep and bear arms. Such regulations could include magazine capacity or size limitations, registration requirements, and expanded background checks. The bill would take a proactive step and ensure that any new federal gun control laws did not infringe on the rights of Texans and their abilities to protect themselves, their families, and their properties.

The bill would not preclude federal authorities from enforcing federal firearms laws in Texas but simply would codify the spirit of a 2019 court opinion that said states could not be compelled to use state resources to enforce federal law. The Texas Constitution delegates the power to regulate the right to keep and bear arms to the state, so the bill appropriately would return control to the state to ensure Texans had a say in what gun control measures were enacted and enforced.

Currently, Texas has a patchwork of local policies and regulations so the bill would ease confusion and ensure consistent application of state firearms laws across the state.

The bill would not affect contracts or agreements in place by January 19, 2021, so many current state-federal law enforcement operations would not be impacted. In other states that have passed similar legislation, none have seen a reduction in federal funding as a result.

CRITICS SAY:

CSHB 2622 would violate the basic concept of federal law supremacy. While efforts to nullify federal law with state law likely would not stand up under scrutiny and would be largely symbolic, the bill still could negatively impact gun safety in the state. It would limit enforcement of common-sense federal firearms laws, including background checks, and preempt new federal firearms law or regulations, regardless of their merit or necessity.

The bill would impact local control and remove the discretion of political subdivisions and local law enforcement agencies to adopt policies and enforce laws and regulations best suited for their communities. By restricting state funds, the bill could prevent cities and counties from providing essential services and could result in the loss of much-needed federal funds. Also, by allowing any individual to file a complaint, the bill would invite litigation, which would be costly for local taxpayers.

The bill also could impact state-federal coordinated law enforcement operations. It is unclear how it would affect cross-credentialed peace officers and whether their participation on a task force that enforced federal firearms laws would violate the bill and impact needed state or federal funding to their agency or city.

NOTES:

According to the Legislative Budget Board, the bill could result in a loss of certain federal funds, including those associated with state-federal coordinated law enforcement activities. The impact to federal funds could not be determined because the response by federal agencies was unknown.

SUBJECT: Progressive disciplinary matrix for police misconduct in certain cities

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 7 ayes — Cortez, Holland, Bernal, Campos, Jarvis Johnson, Minjarez, Morales Shaw

2 nays — Gates, Slaton

WITNESSES: For — Warren Burkley, Christel Erickson-Collins, and Chas Moore, Austin Justice Coalition; Kathy Mitchell, Just Liberty; Eugene Howard, NAACP; Dr. Candice Matthews, Texas Coalition Of Black Democrats; Koretta Brown, The Alliance For A New Justice System; (*Registered, but did not testify*: Jason Guidangen, Equality Texas; Minister Dominique Alexander, NGAN; Frances Schenkkan, Texas Gun Sense; Joshua Houston, Texas Impact; Michael Spates, The Alliance For A New Justice System; Madeline Kennedy; Karen Munoz)

Against — (*Registered, but did not testify*: Jon Weist, City of Irving; Jennifer Szimanski, CLEAT; James Parnell, Dallas Police Association; Ray Hunt, HPOU; Jimmy Rodriguez, San Antonio Police Officers Association; Kevin Lawrence, Texas Municipal Police Association; Collin Craig, Texas Police Chiefs Association; Frederick Frazier, Texas State Fraternal Order of Police and Dallas Police Association)

On — (*Registered, but did not testify*: Ben Yisrael, Center for Justice Research; Thomas Parkinson)

BACKGROUND: Local Government Code ch. 143 establishes municipal civil service law for fire fighters and police officers. The law applies only to a city that has a population of at least 10,000, has paid fire and police departments, and has voted to adopt the law. Each city establishes a Fire Fighters' and Police Officers' Civil Service Commission to administer the law.

DIGEST: HB 829 would require a Fire Fighters' and Police Officers' Civil Service Commission to implement a disciplinary matrix for infractions committed by police officers that consisted of a range of progressive disciplinary

actions applied in a standardized way based on the nature of the infraction and the officer's prior conduct record. Disciplinary actions would include:

- removal;
- suspension;
- change of duty or assignment;
- demotion;
- deduction of points from a promotional exam grade;
- retraining; or
- a written warning or reprimand.

The disciplinary matrix would have to include:

- standards for disciplinary actions relating to the use of force against another person, including the failure to de-escalate force incidents in accordance with departmental policy;
- standards for evaluating the level of discipline appropriate for uncommon infractions; and
- presumptive actions to be taken for each type of infraction and any adjustment to be made based on a police officer's previous disciplinary record.

Under the bill, a Fire Fighters' or Police Officers' Civil Service Commission would have to adopt rules that prescribed the disciplinary actions that could be taken against a police officer under a progressive disciplinary matrix, rather than adopting rules that prescribe cause for removal or suspension of an officer.

The bill would require certain public employers to implement a progressive disciplinary matrix as described in the bill for municipal police officers if the municipalities had not adopted the fire fighters' and police officers' civil service law.

The bill would require certain agreements on police officer employment matters in certain municipalities to implement the disciplinary matrix. Such agreements could not conflict with or supersede a statute, ordinance,

order, civil service provision, or rule concerning the disciplinary actions that could be imposed on a police officer under the matrix.

If a police officer appealed certain actions to a hearing examiner, the examiner would have to presume a disciplinary action applied to an officer under a progressive disciplinary matrix was reasonable, unless the facts indicated that the department inappropriately applied a category of offense to the particular violation.

HB 829 would require the Bill Blackwood Law Enforcement Management Institute of Texas (LEMIT) to consult with law enforcement agencies of all sizes, law enforcement associations, training experts, and others to develop a model progressive disciplinary matrix and associated training materials on the application of the matrix.

LEMIT would have to adopt and disseminate the model matrix and training materials to all law enforcement agencies and civil service commissions by January 1, 2022. LEMIT would have to provide for a public comment period before adopting the model and training materials.

The bill would take effect September 1, 2021, and would apply only to a disciplinary action for conduct that occurred or an agreement entered into or renewed on or after March 1, 2022.

SUPPORTERS SAY:

HB 829 would ensure greater uniformity in the discipline of police officer misconduct across the state, helping to restore public confidence and trust in law enforcement.

Studies have shown that many disciplinary actions issued by police chiefs and taken against officers are overturned on appeal based on fairness. An officer could appeal because the officer received different disciplinary action than another officer in similar circumstances. By providing for the creation of a model progressive disciplinary matrix, the bill would establish a fair, standard, and consistent approach to governing police officer misconduct. The use of the matrix not only would help guide decision makers in dispensing fair and uniform disciplinary actions but also would give police officers, departments, and the public greater

certainty about the range of disciplinary actions and which punishments were reasonable for various forms of misconduct.

The bill would retain arbitration in civil-service cities and simply provide arbitrators more guidance in making decisions. The bill would not change the meet and confer negotiations in any city because police chiefs would still maintain power to determine discipline. Furthermore, if discipline is fair and consistent, it is less likely to be overturned.

CRITICS SAY:

Decisions relating to disciplinary action for police officer misconduct should be left to local negotiations rather than made through the use of a statewide model disciplinary matrix as required under HB 829. Current disciplinary processes are negotiated on the local level through meet and confer agreements, which gives cities the discretion to adopt a process that best fits their local departments and communities. Eliminating this discretion also could negatively impact due process.

SUBJECT: Establishing a grant program for law enforcement agencies

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

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

0 nays

WITNESSES: For — Gene Ellis, Texas Police Chiefs Association; Derek Cohen, Texas Public Policy Foundation; Troye Dunlap; Scott Rubin; Steve Stanford; (*Registered, but did not testify*: Guadalupe Cuellar, City of El Paso; TJ Patterson, City of Fort Worth; Frederick Frazier, Dallas Police Association, State FOP; AJ Louderback, Sheriffs Association of Texas; Louis Wichers, Texas Gun Sense; and six individuals)

Against — None

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

BACKGROUND: Interested parties have noted that participation by law enforcement in accreditation programs benefits law enforcement agencies, municipalities, and the public. It has been suggested that additional incentives and assistance could be provided to law enforcement agencies for participation in such programs.

DIGEST: HB 323 would require the Criminal Justice Division in the Office of the Governor to establish and administer a grant program to provide financial assistance to a law enforcement agency in Texas for the purposes of:

- obtaining or maintaining recognition through the Texas Police Chiefs Association Law Enforcement Best Practices Recognition Program;
- becoming accredited or maintaining accreditation by the Commission on Accreditation for Law Enforcement Agencies, Inc.; or

- becoming accredited or maintaining accreditation by an association or organization designated by the division.

The amount of a grant under the program could not exceed $50,000, and the division would have to establish certain criteria and procedures relating to grant applications and monitoring the use of grants awarded. The division would be authorized to use any revenue available for the grant program.

By December 1 of each year, the division would have to submit a report to the Legislative Budget Board providing the name of each law enforcement agency that applied for a grant and the amount of money distributed to each agency that received a grant during the preceding state fiscal year.

The division, with the assistance of the Texas Commission on Law Enforcement (TCOLE), would have to periodically review associations and organizations that established standards of practice for law enforcement agencies and that offered accreditation to agencies that met those standards. On a determination by the division that the accreditation of law enforcement agencies by an association or organization would benefit public safety, TCOLE could designate an association or organization as an accrediting agency for purposes of the grant program.

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

NOTES:

The Legislative Budget Board estimates that the bill would have a negative impact of about $273.3 million through fiscal 2022-23, assuming that all law enforcement agencies pursued a grant under the program established by the bill and received the maximum amount. The cost would be dependent on the level of funding provided by the Legislature for the bill's purpose. A contingency rider for $50 million was included for consideration in Art. 11 of SB 1 by Nelson (Bonnen), to provide funding for HB 323.

SUBJECT: Creating model policy, limiting arrests for certain fine-only misdemeanors

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — White, Bowers, Goodwin, E. Morales, Patterson, Schaefer, Tinderholt

2 nays — Harless, Hefner

WITNESSES: For — Faith Bussey and Scott Henson, Just Liberty; Rick Briscoe, Open Carry Texas; Jeff LeBlanc, Republican Liberty Caucus of Texas; Amelia Casas, Texas Fair Defense Project; Derek Cohen, Texas Public Policy Foundation; and 11 individuals; (*Registered, but did not testify*: Jesse Taylor, 2020 Congressional District 33 Perminate Legislator Member; Lauren Johnson, ACLU of Texas; Samuel Sheetz, Americans for Prosperity; Chas Moore, Austin Justice Coalition; Stephanie Niesing and Jason Niesing, Church Outside The Box; Councilmember Rudy Metayer, City of Pflugerville; Justin Keener, for Doug Deason; Richard Evans, Engage Action; Earl Gilbert, Equality Texas; Dr. Rodney Hargrove, Global Harvest Ministry; Traci Berry, Goodwill Central Texas; Patricia Zavala, Jolt Action; Elizabeth Miller and Rene Perez, Libertarian Party of Texas; Bertha Rendon Delgado, Lulac Austin; Angel Carroll, MEASURE; Thomas Moore, No Sleep Until Justice; Clayton Tucker, Our Revolution Texas; Maggie Luna, Statewide Leadership Council; Alycia Castillo and Douglas Smith, Texas Criminal Justice Coalition; Carisa Lopez and Suseth Munoz, Texas Freedom Network; Louis Wichers, Texas Gun Sense; Frederick Haynes, Texas Impact; Devin Branch, Texas Organizing Project; Abigail Avila and Cerena Haefs, Texas Rising; Jason Vaughn, Texas Young Republicans; Nyeka Arnold, The Healing Project; Rebecca Bernhardt, The Innocence Project of Texas; Justin Moore, The Liberation Fund; Jorge Martinez, The LIBRE Initiative; and 46 individuals)

Against — Jennifer Szimanski, CLEAT; (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association and State FOP; James Parnell, Dallas Police Association; Ray Hunt, HPOU; Laura Nodolf, Midland County District Attorney's Office; James Smith, San Antonio

Police Department; AJ Louderback, Sheriffs Association of Texas; Dee Chambless, Smith County Republican Women; Kevin Lawrence, Texas Municipal Police Association and Texas Fraternal of Police; Stan Standridge, Texas Police Chiefs Association; Justin Berry; Michael Fossum; Russell Parish; Zoila Vega-marchena)

DIGEST:

CSHB 830 would require Texas Southern University (TSU) to publish a written model policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that were punishable by fine only. TSU would have to publish the model policy by January 1, 2022.

The policy would have to provide a procedure for a peace officer to verify a person's identity and issue a citation. The policy also would have to comply with certain Penal Code and Transportation Code provisions as listed in the bill.

TSU would have to consult with law enforcement agencies, associations, and training experts and community organizations in the development of the model policy.

Each law enforcement agency would have to adopt a written cite-and-release policy for fine-only misdemeanors, including traffic offenses, that met the requirements for the model policy by March 1, 2022. A law enforcement agency also could adopt the model policy.

Under the bill, a peace officer could not arrest without warrant a person found only committing one or more fine-only misdemeanor traffic offenses. An officer would have to issue a written notice to appear for all fine-only misdemeanor traffic violations, rather than only for speeding, electronic messaging while operating a motor vehicle, or violating the open container law.

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

SUPPORTERS SAY:

CSHB 830 would address concerns that many people across the state have been arrested for misdemeanor traffic offenses, such as seat belt violations or failure to use a turn signal, that are not punishable by jail time but only

a fine, unnecessarily expending resources while not significantly contributing to public safety.

Being arrested for certain fine-only misdemeanor traffic offenses constitutes a more severe punishment than anything intended under the law and can have a lasting impact on a person's life. Being arrested subjects a person to jail time, additional costs, and potential trauma, which could result in negative consequences. By limiting the authority of police officers to arrest for such offenses and instead simply citing, releasing, and requiring a fine to be paid upon conviction, the bill would make the penalty for these offenses proportional to the crime.

Arrests for fine-only misdemeanor traffic offenses strain the criminal justice system and cost taxpayers money. Local jurisdictions pay hundreds of dollars for each person arrested. These costs include booking, jail intake processing, and housing individuals until their release, which can take hours or days. Requiring law enforcement agencies to adopt local cite-and-release policies would reduce the frequency of fine-only misdemeanor arrests and reduce the number of people in jails, which would save resources and money.

Eliminating arrests for these minor traffic offenses could reduce the possibility of incidents, making traffic stops safer for all. Taking people into custody can be risky or escalate a situation, resulting in potential harm to an officer or the person arrested. Texas law already prohibits an officer from arresting a person for speeding, and the bill simply would make that practice uniform for other minor traffic violations.

The bill would not take a tool away from law enforcement. Officers would retain the ability to make arrests for more serious offenses and could have the discretion to make an arrest if the officer had probable cause to believe that doing so would be in the best interest of the public. Further, the Fourth Amendment provides law enforcement with the adequate framework to protect public safety and interdict crime.

Requiring supervisor approval for an arrest on a minor traffic offense would not be feasible and could not uniformly be applied across the state as law enforcement agencies of various sizes could face logistical hurdles.

Current law related to speeding and some other fine-only offenses does not include an identification requirement. However, adding an identification requirement to any traffic stop could create a loophole for law enforcement to continue arresting people on the lowest level offenses, like speeding, which currently is handled with a written promise to appear.

Texas Southern University (TSU) would be an appropriate entity to publish the model cite-and-release policy. TSU already is conducting related research and, as a historically black university, could provide an important perspective. Additionally, the bill would require TSU to work with other stakeholders to develop the policy.

CRITICS SAY:

CSHB 830 would take away an important tool from law enforcement and impede police officers' duties to enforce the law and protect the public. Currently, an officer has the discretion to make an arrest on most fine-only misdemeanor traffic offenses, and these arrests often lead to breaks in investigating more serious offenses and are sometimes used to get an offender momentarily off the street while not imposing a more serious charge. This discretion is used with intent and purpose, not malice.

To retain use of this tool, the bill should provide a process where an individual officer only could arrest on a fine-only misdemeanor traffic offense if approved by a supervisor or put through a review process. The bill also should provide that an officer would retain the ability to arrest a person for such minor offenses if the person either was unable or refused to positively identify himself or herself.

OTHER CRITICS SAY:

Other institutions, including other universities with a more robust focus on criminal justice and law enforcement policy, would be more suitable than Texas Southern University to develop the model cite-and-release policy.

SUBJECT: Establishing model training, hiring policies for peace officers

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: Jennifer Szimanski, Combined Law Enforcement Associations of Texas; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; George Craig, Houston Police Department; Brian Hawthorne, Sheriffs' Association of Texas; John Chancellor, Texas Police Chiefs Association; Julie Campbell; Dee Chambless; Detrese Harkey; Thomas Parkinson)

Against — (*Registered, but did not testify*: Sarah Murphy)

On — Kim Vickers, Texas Commission on Law Enforcement; (*Registered, but did not testify*: Mitch Landry, Texas Municipal Police Association)

BACKGROUND: Occupations Code sec. 1701.251 requires the Texas Commission on Law Enforcement (TCOLE) to establish and maintain training programs for peace officers, county jailers, and telecommunicators. Sec. 1701.253 establishes the minimum curriculum requirements.

Sec. 1701.351 requires each peace officer to complete at least 40 hours of continuing education programs once every 24 months.

Some have suggested that effective and more uniform statewide training for peace officers and the development of best practices for the peace officer hiring process would strengthen public confidence in law enforcement and make certain that officers were supported and prepared to perform their duties effectively.

DIGEST:

CSHB 3712 would establish content requirements for the basic peace officer training program and provide for the development of model training curriculum and policies and model preemployment investigations for peace officers and law enforcement agencies.

Basic training course. The basic peace officer training course required as part of a peace officer training program would have to be at least 720 hours. The basic training course would have to include training on:

- the prohibition against the intentional use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer in searching or arresting a person, unless the officer reasonably believed the restraint was necessary to prevent serious bodily injury to or the death of the peace officer or another person;
- the duty of a peace officer acting in an official capacity to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if the scene was secure and the amount of force exceeded what the officer reasonably believed was necessary under the circumstances; and
- the duty of a peace officer acting in an official capacity to render aid to a person who had suffered serious bodily injury from the use of force, unless the officer reasonably believed the provision of aid was likely to cause serious bodily injury to or the death of the peace officer or another person.

Training program and policies. The Texas Commission on Law Enforcement (TCOLE) would have to consult with the Bill Blackwood Law Enforcement Management Institute of Texas (LEMIT) to develop and maintain a model training curriculum and model policies for law enforcement agencies and peace officers.

The model training would have to include curriculum and policies:

- for field training programs;
- for banning the use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer except in certain circumstances;
- on the duty of a peace officer to intervene;

- on the duty of a peace officer to render aid; and
- on the use of deadly force.

Policies for law enforcement agencies. The bill would require each law enforcement agency in the state to adopt a policy on the topics described by the bill within 180 days after TCOLE provided the model policies. An agency could adopt the model policies.

Continuing education. TCOLE would have to specify the mandated topics to be covered in up to 16 of the 40 hours of required continuing education programs that peace officers have to complete every 24 months.

Preemployment investigation. TCOLE, in consultation with LEMIT, would have to develop and make available to all law enforcement agencies a model policy for the preemployment investigation of a licensed peace officer. The model policy would have to incorporate:

- the duties and responsibilities of a hiring law enforcement agency or governmental entity;
- the request, analysis, and use of any employment termination report or criminal background check information; and
- any other information considered necessary to conduct a preemployment investigation.

Implementation, dates. TCOLE would be required to implement a provision of the bill only if the Legislature appropriated money specifically for that purpose. If money was not appropriated, TCOLE could but would not be required to implement the bill using other funds.

TCOLE would have to modify the curriculum of the basic peace officer training course to comply with the bill by January 1, 2022. The minimum hour and content requirements under the bill would apply only to a person who began the course on or after July 1, 2022.

TCOLE would have to develop and make available the model curriculum and policies by January 1, 2022.

The bill's provision related to continuing education would apply only to a training unit that began on or after the bill's effective date.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact to general revenue of $334,273 through fiscal 2023.

SUBJECT: Revising setting, modifying, reviewing community supervision terms

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Murr, Allen, Bailes, Rodriguez, Sherman, Slaton

0 nays

3 absent — Burrows, Martinez Fischer, White

WITNESSES: For — Terra Tucker, Alliance for Safety and Justice; Mollee Westfall (*Registered, but did not testify*: Daniel Hodge, Alliance for Safety & Justice; Nick Hudson, American Civil Liberties Union of Texas; Amber Beam, Crime Survivors for Safety and Justice; Justin Keener, Doug Deason; Americans for Prosperity; Libre Initiative; Traci Berry, Goodwill Central Texas; Kathy Mitchell, Just Liberty; Penny Rayfield, OnShore Assembly; Megan Herring, Texas Association of Business; Lori Henning, Texas Association of Goodwills; Amelia Casas, Texas Fair Defense Project; Nikki Pressley, Texas Public Policy Foundation; Jennifer Allmon, The Texas Catholic Conference of Bishops; Staley Heatly; Lauren Johnson; Sarah Reyes)

Against — (*Registered, but did not testify*: Julie Wheeler, Travis County Commissioners Court)

On — Leighton Iles, Tarrant County Community Supervision and Corrections Department; (*Registered, but did not testify*: Andrea Bode, Kerr, Bandera and Gillespie County CSCD; Carey Green, Texas Department of Criminal Justice--Community Justice Assistance Division; Eric Knustrom, Texas Probation Association)

BACKGROUND: Under Code of Criminal Procedure art. 42A.701(a), after a defendant has completed one-third of a period of probation or two years, whichever is less, judges may reduce or terminate the probation. Under art. 42A.701(b), after completion of one-half of a probation term or two years, whichever is more, judges must review the defendant's record and consider whether to reduce or terminate the probation unless the defendant was delinquent

in paying costs, fines, fees, or restitution that the defendant has the ability to pay or the defendant has not completed counseling or treatment.

Some have suggested that the Texas community supervision system would be improved by revising the process for judicial review of probation terms, considering individual assessments when determining some conditions of probation, and revising the review of probationers ability to pay fees.

DIGEST:

CSHB 385 would revise the statutes governing the modifying and setting of the conditions of community supervision; the consideration of reductions and early terminations of probation; the ways courts consider a probationers financial situation; and guidelines related to time credits for probationers.

Modifying probation. The bill would expand the current purposes for which probation officers could modify probation requirements, if authorized by a judge. Under the bill, the conditions could be modified to prioritize the court-ordered conditions according to the defendant's needs as determined by a risk and needs assessment and the defendants' progress.

Probation conditions. The bill would eliminate a current authorization for probation conditions to include requiring the individual on probation to avoid persons or places of disreputable or harmful character, including anyone, other than a family member, who is an active member of a criminal street gang.

The bill would make the current authorization for judges to order probationers to attend counseling or treatment related to substance abuse conditioned on:

- the results of an evaluation designed to determine appropriate type and level of treatment to address the defendant's alcohol or drug dependency indicated that counseling or treatment was necessary to protect or restore the community or the victim or to rehabilitate the defendant; or

- the defendant's offense being related to a controlled substance or alcohol.

Ability to pay. CSHB 385 would revise the current requirement that courts consider a defendant's ability to pay before ordering payments related to probation.

Courts would be required to consider whether defendants had sufficient resources or income to make payments. Courts would have to make this consideration:

- before or immediately after placing the defendant on community supervision, and
- during the period of community supervision, before or immediately after the court orders or requires the defendant to make any payments under this chapter.

These requirement would not apply to consideration of a defendant's ability to pay restitution.

Courts would have to reconsider whether the defendant had sufficient resources or income to make the payment at certain hearing held after a probation violation. The bill would establish a process for defendants to request reconsideration of their ability to make payments and request that the payments be satisfied by an alternative methods. The alternative methods could include paying at a later date or with payment plans, waiving the amounts completely or partially, or discharging the amounts through community service.

The Office of Court Administration (OCA) would be required to adopt a form defendants could use to make these requests. CSHB 385 includes a statement that would have to be on the form that includes language informing probationers that they have the right to request that the court review their payments and consider changing or waiving the payments. Courts could reconsider the waiver of payment on their motion or one from the prosecutor and, after allowing the defendant to present relevant information, could order the defendant to pay all or part of the amount.

Reduction in probation term. Probation officers would have to notify courts if probationers who at the time of a review of their probation were delinquent in paying restitution or had not completed counseling or treatment had later completed either task. After getting the notice, courts would have to review the defendant's record and consider whether to reduce or terminate probation.

After certain reviews of a defendant's probation, judges could reduce or terminate the community supervision or decide not to reduce or terminate the period of community supervision. In making the determination, the judge could consider any relevant factor, including whether the defendant was delinquent in paying court-ordered costs, fines, or fees that the defendant has the ability to pay them. Judges who did not reduce or terminate would have to advise the defendant's supervision officer of the reasons and the supervision officer would have to notify the defendant in writing of the reasons.

Time credits toward probation terms. The bill would revise the conditions under which certain probationers were entitled to time credits toward the completion of their probation terms. The bill would remove a prohibition on credits for those who are delinquent in paying costs, fines, and fees. The bill would expand the list of programs for which defendants are entitled to receive time credits to include 30 days credit for successfully completing faith-based, volunteer, or community-based programs ordered or approved by the court. This would apply only to defendants placed on probation on or after the bill's effective date.

Other provisions. The bill would allow local probation departments to develop the continuum of care treatment plan currently required when a judge sentences a probationer to a term in a substance abuse felony punishment facility.

The bill would take effect September 1, 2021, and would apply to individuals on community supervision on or after that date.

SUBJECT: Requiring corroboration of peace officer testimony in drug cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

2 nays — K. Bell, Murr

WITNESSES: For — Koretta Brown, Alliance For A New Justice System; Warren Burkley and Chas Moore, Austin Justice Coalition; LaTonya Whittington, Cannabis Reform of Houston; Scott Henson, Just Liberty; Rene Perez, Libertarian Party of Texas; Jeff Blackburn, Panhandle Justice Project; Linda Nuno, Pl; Rebecca Bernhardt, The Innocence Project of Texas; Alan Bean; Michael Fields; Frederick Haynes; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; John T Floyd, Alliance for a New Justice System; Greg Glod, Americans For Prosperity; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Dustin Cox, GRAV; Kathy Mitchell, Just Liberty; Tom Maddox, Sheriffs Association of Texas; Amanda List, Texas Appleseed; Dr. Candice Matthews, Texas Coalition Of Black Democrats; Shea Place, Texas Criminal Defense Lawyers Association; Sarah Reyes, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Louis Wichers, Texas Gun Sense; John Chancellor, Texas Police Chiefs Association; Michael Spates, The Alliance For A New Justice System; Thomas Parkinson; Zoe Russell)

Against — (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; Aldo Caldo; Deana Johnston; David Kohler; Tony LaMarr)

BACKGROUND: Health and Safety Code ch. 481 is the Texas Controlled Substances Act. It includes criminal penalties for the manufacture, delivery, and possession of controlled substances.

Under Code of Criminal Procedure art. 38.141, individuals may not be convicted of an offense under the Texas Controlled Substances Act on the testimony of someone who is not a peace officer or a special investigator but who is acting covertly on behalf of a law enforcement agency or under

the color of law enforcement unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed.

DIGEST:

HB 834 would require corroborating evidence for Texas Controlled Substance Act convictions made on the testimony of peace officers acting covertly on behalf of a law enforcement agency. A defendant could not be convicted of an offense under the act on the testimony of an undercover peace officer or a person working undercover on behalf of a law enforcement agency unless the testimony were corroborated by other evidence that tended to connect the defendant with the offense.

The bill would take effect September 1, 2021, and would apply to cases in which a judgment was entered on or after that date.

SUPPORTERS SAY:

HB 834 would provide a check against police misconduct and ensure the accuracy of drug convictions by requiring corroborating evidence in drug cases where the conviction was based on testimony of an undercover peace officer. Currently, corroborating evidence is required in drug cases involving testimony from a person acting covertly unless the testimony comes from undercover peace officers. This exception has allowed unreliable officer testimony to taint prosecutions in drug cases and resulted in harm to innocent Texans.

HB 834 would address this by applying the same requirement to peace officers as to others who act covertly and give testimony and ensure there is corroborating evidence in all such drug cases. The bill would rectify the inherent problems in relying solely on word of one person in these cases and help ensure public confidence in the criminal justice system.

The bill would not burden law enforcement agencies or make their work more difficult because it would allow any type of other evidence to support the testimony of the undercover officer. Getting the facts right in a drug case is important enough to enact this requirement.

CRITICS SAY:

HB 834 could hamstring narcotics investigations and prosecutions by making it more difficult to use information from an undercover peace officer. The bill could delay cases that are otherwise ready for prosecution and that rely on solid testimony from an undercover peace officer.

SUBJECT: Creating class C misdemeanor for marijuana possession up to one ounce

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

1 nay — K. Bell

1 absent — Murr

WITNESSES: For —Jaclyn Finkel, Texas NORML and Foundation for an Informed Texas; Derek Cohen, Texas Public Policy Foundation; Elizabeth Grow; Patrick Pope; Shaun Salvaje (Hostutler); (*Registered, but did not testify*: Greg Glod, Americans For Prosperity; Warren Burkley and Chas Moore, Austin Justice Coalition; Jonathan Copeland, Cannabis Reform of Houston; Karen Reeves, CenTex Community Outreach; Dustin Cox, GRAV; Kathy Mitchell, Just Liberty; Nathan Moxley and Rene Perez, Libertarian Party of Texas; Elizabeth Miller, Libertarian Party of Texas, SD10; John Baucum, Republicans Against Marijuana Prohibition and Texas Young Republican Federation; Heather Fazio, Texans for Responsible Marijuana Policy; Rene Lara, Texas AFL-CIO; Sarah Moseley, Texas Cannabis Collective; Jason Vaughn, Texas Young Republicans; Ebony Johnson, The Afiya Center; and 16 individuals)

Against — (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; Frederick Frazier, Dallas Police Association/FOP716 State FOP; James Smith, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Tom Maddox, Sheriffs Association of Texas; Cindi Castilla, Texas Eagle Forum, President; John Wilkerson, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Aldo Caldo; Deana Johnston; David Kohler)

On — (*Registered, but did not testify*: Amelia Casas and Emily Gerrick, Texas Fair Defense Project)

BACKGROUND: Health and Safety Code sec. 481.121 makes possession of marijuana a crime. It is a class B misdemeanor (up to 180 days in jail and/or a

maximum fine of $2,000) to knowingly or intentionally possess up to two ounces of marijuana and class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) to possess between two ounces and four ounces. Penalties continue to increase as the amount of marijuana increases.

DIGEST:

CSHB 441 would lower the penalty for possession of less than one ounce of marijuana and require peace officers to issue citations in such cases. The bill also would prohibit arrests, authorize the expunction of records, and eliminate automatic drivers license suspensions in such cases.

Penalties. The bill would make it a class C misdemeanor (maximum fine of $500) to possess one ounce or less of marijuana. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) penalty to possess more than one ounce and up to two ounces.

Citation. Peace officers would be prohibited from making an arrest if charging someone with possessing an ounce or less of marijuana or with a class C misdemeanor offense for possession of drug paraphernalia.

When charging a person with such an offense, a peace officer would be required to issue the person a citation that included information currently required on certain other class C misdemeanor citations, including the time and place the person would have to appear before a magistrate, the offense charged, and information about alternatives to the full payment of any fine or costs.

Deferrals in certain cases. The bill would require, under certain circumstances, judges to defer proceedings in cases of possession of an ounce or less of marijuana or possession of drug paraphernalia and to put individuals pleading guilty or no contest on probation. Judges would not be required to take these actions if the individual had previously received a deferral of disposition for the same offenses for conduct committed within 12 months before the current offense.

Courts dismissing a complaint under the bill for possession of an ounce or less of marijuana or possession of drug paraphernalia would have to notify individuals in writing of the person's expunction rights and give them a

copy of the expunction provisions. The dismissed complaint would not be a conviction and could not be used against the person for any purpose.

Expunction. The bill would authorize the expunction of records for a person charged with possessing an ounce or less of marijuana or a class C misdemeanor offense for possession of drug paraphernalia if:

- the person was acquitted of the offense; or
- the complaint was dismissed under current provisions for suspending and dismissing charges in justice or municipal court or other law and it was at least 180 days from the date of the dismissal or at least one year from the date of the citation.

Courts would be required to order all complaints, verdicts, sentences, and prosecutorial and law enforcement records and any other documents relating to the offense expunged if the court found that the person met those requirements.

Expunction requests would have to be written and made under oath, they would be subject to a $30 fee.

The expunction procedures in the bill would be separate and distinct from those in Code of Criminal Procedure ch. 55.

Drivers license suspension. A fine-only offense would not be considered a drug offense that can trigger an automatic drivers license suspension based on a final drug offense conviction.

This provision would take effect 91 days after the attorney general published in the Texas Register a finding that the Texas Legislature had adopted a resolution concerning federal highway funds and requirements to suspend, revoke, or deny drivers licenses of those convicted of certain drug offenses and other related findings.

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

SUPPORTERS SAY:

HB 441 would revise penalties and procedures associated with possession of the very smallest amounts of marijuana to better reflect the seriousness of the offense, mitigate the harsh consequences that can come with a criminal record, and allow state and local governments to use criminal justice resources more efficiently and effectively. The bill would not legalize, decriminalize, or promote marijuana but would allow a reasonable enforcement mechanism to hold those possessing small amounts of marijuana accountable through a class C misdemeanor.

Current laws establishing a class B misdemeanor for possessing up to two ounces of marijuana over-criminalize a non-violent behavior that does not pose a public safety risk, and this criminalization can result in negative consequences that are out of proportion to the offense. Drug charges or convictions can be barriers to employment, housing, education, military service, and more, and can lead to the revocation of driver's licenses. In low-level marijuana cases, these consequences often fall on young Texans and follow them for a lifetime. By limiting arrests, requiring probation in some cases, and allowing records to be expunged, the bill would keep individuals employable and in school and allow them to move on from a minor offense.

The bill would help address significant and unnecessary costs to local governments to enforce current laws on possession, freeing resources to address more serious incidents. A statewide law is needed so there would be consistent treatment for individuals instead of a patchwork of local policies. This could help address geographic and racial disparities in the enforcement of drug laws. The bill would not remove the discretion of local governments to adopt other programs such as diversion or treatment and would not harm other law enforcement efforts.

CSHB 441 would not reduce public safety or encourage drug use. Current punishments would remain for possession of larger amounts of marijuana and selling marijuana.

CRITICS SAY:

CSHB 441 would inappropriately lower the penalty for possessing an ounce or less of marijuana. Marijuana is a potentially harmful drug and possessing even small amounts should continue to be treated as such under law. Current law making possession of up to two ounces a class B

misdemeanor provides a range of punishments and options for handling low-level possession cases, including probation, pre-trial diversion, and deferred adjudication, and some jurisdictions use current law to issue a citation and a summons to appear in court. These options allow communities to handle cases appropriately and to address any cost concerns. By prohibiting arrests, the bill would reduce law enforcement officers' discretion, something that should be retained in handling these cases.

Marijuana continues to be a public health and safety concern, and lowering penalties could send the wrong message about drug use. Any expanded drug use could exacerbate public health problems, such as drug abuse and addiction. These problems can be especially harmful to youth who are developing cognitively.

OTHER CRITICS SAY:

It could be difficult for a court considering a case of possession of less than an ounce of marijuana or drug paraphernalia to know if an individual had a previous offense as in general these offenses are not reported to a statewide database.

SUBJECT: Creating an offense for certain endangerment of police officers

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

VOTE: 8 ayes — White, Bowers, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

1 nay — Goodwin

WITNESSES: For — Justin Berry, Austin Police Department (*Registered, but did not testify*: Jon Weist, City of Irving; Jennifer Szimanski and Charley Wilkison, Combined Law Enforcement Associations of Texas; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; David Sinclair, Game Warden Peace Officers Association; Ray Hunt, HPOU; James Smith, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Brian Hawthorne, Sheriffs' Association of Texas; Mitch Landry, Texas Municipal Police Association; Thomas Parkinson)

Against — (*Registered, but did not testify*: Chas Moore, Austin Justice Coalition)

BACKGROUND: Penal Code sec. 42.13 establishes that knowingly directing a laser pointer at a uniformed safety officer, including a peace officer, security guard, firefighter, emergency medical service worker, or other uniformed municipal, state, or federal officer, is a class C misdemeanor.

DIGEST: HB 2366 would establish that a person commits a criminal offense if the person explodes or ignites fireworks with the intent to interfere with the lawful performance of an official duty by a law enforcement officer or to flee from a person the actor knows is a law enforcement officer attempting to lawfully arrest or detain the actor. Such an offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

The penalty would be increased to a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if the offense

involved a firework other than a consumer firework as defined by federal regulations. The offense would be increased to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) if the action caused serious bodily injury to a person the actor knew was a law enforcement officer while the officer was lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a law enforcement officer. A person who committed an offense under these provisions that also constituted an offense under other law could be prosecuted for either or both offenses.

The bill also would increase the penalty for unlawful use of a laser pointer directed at a uniformed safety officer to a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if it caused bodily injury to the officer and to a first-degree felony if it caused serious bodily injury to the officer. A person who committed an offense under these provisions that also constituted an offense under other law could be prosecuted for either offense, but not both.

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

SUPPORTERS SAY:

HB 2366 would discourage the use of fireworks and laser pointers to attempt to obstruct and injure law enforcement officers by increasing the penalty for knowingly directing a laser pointer at an officer and by creating a criminal offense for the unlawful use of fireworks against law enforcement. Some bad actors have tried to exploit recent protests to incite violence and riotous behavior, including the use of everyday items including laser pointers and fireworks as weapons against law enforcement. The unlawful use of these items has led to the injury of many Texas peace officers.

HB 2366 would apply only to intentional attacks on police and safety officers, which deserve serious consequences. Officers have a duty to enforce the law in order to maintain a safe and peaceful society, and protecting them ultimately makes all citizens safer. The bill would provide the stronger penalties needed to deter any deliberate use of fireworks and

laser pointers to injure peace officers in the line of duty. The bill would enhance and facilitate peaceful protest by deterring disruptive activities that could keep some potential protesters from participating due to fear of violence.

CRITICS SAY:

HB 2366 would impose overly punitive penalties that could have a chilling effect on legitimate protest. By placing relatively minor offenses involving laser pointers and fireworks on the same level as more destructive and harmful acts, the bill could actually incentivize such acts, since a protester or rioter would be risking the same level of punishment for either type of offense.