HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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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 Two

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 Two 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

87th Legislature, Number 45

Part 2

SUBJECT: Prohibiting retaliation for required evidence disclosure in criminal cases

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

0 nays

1 absent — A. Johnson

WITNESSES: For — Ed Heimlich, Informed Citizens; Mike Ware, Innocence Project of Texas; Robert Schmidt, Texas Employment Lawyers Association; Eric Hillman; Charlie Malouff; Michael Morton; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Angelica Cogliano, Austin Lawyers Guild; Shea Place, Texas Criminal Defense Lawyers Association; Maggie Luna, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Cynthia Simons, Texas Women's Justice Coalition; Rebecca Bernhardt, The Innocence Project; Idona Griffith)

Against — Thomas Wilson, Smith County Criminal District Attorney's Office

BACKGROUND: Under Code of Criminal Procedure art. 39.14(h), the state is required to disclose to a criminal defendant any exculpatory, impeachment, or mitigating document, item, or information in the state's possession that tends to negate the guilt of the defendant or would tend to reduce the punishment for the alleged offense.

Under art. 39.14(k), if at any time before, during, or after trial the state discovers any additional document, item, or information required to be disclosed under this provision, the state is required to promptly disclose the existence of the document, item, or information to the defendant or the court.

DIGEST: CSHB 1717 would amend the Code of Criminal Procedure provisions on the duty of the state to disclose exculpatory, impeachment, or mitigating

evidence to specify that the duty of the state to disclose the evidence would apply regardless of the date the criminal offense was committed.

The bill also would prohibit prosecuting attorneys from taking certain actions against assistant prosecuting attorneys and allow legal action to be taken against prosecutors who violated those protections.

Prohibition on personnel actions. The bill would prohibit prosecuting attorneys from suspending, terminating, or taking other adverse personnel actions against an assistant prosecutor based on the assistant prosecutor:

- disclosing to the defendant evidence the state was required to disclose that was favorable to the defendant; or
- refusing to withhold the evidence or presenting evidence to the court after the prosecutor or another supervising assistant prosecutor directed the assistant prosecutor to withhold evidence from the defendant in violation of the law.

Action against prosecuting attorney. An assistant prosecutor whose employment was suspended or terminated or who was subjected to an adverse personnel action in violation of the bill could bring an action against the prosecuting attorney for:

- injunctive relief, including reinstatement to the assistant prosecutor's former position or an equivalent position;
- compensatory damages, including for wages lost while suspended or terminated;
- court costs; and
- reasonable attorney fees.

The bill would limit the amount of compensatory damages that an assistant prosecutor could recover for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. The limit would range from $50,000 to $250,000 depending on the number of employees of the county or counties where the prosecuting attorney had jurisdiction

CSHB 1717 would waive and abolish sovereign and governmental immunity to suit and liability relating to the extent liability was created under the bill.

Assistant prosecutors would have the burden of proof for actions brought under the bill. The bill would create an affirmative defense to prosecution that the prosecuting attorney would have taken the adverse personnel action based solely on something unrelated to the assistant prosecutor disclosing evidence favorable to the defendant. Assistant prosecutors would have to bring an action within 90 days of the day the adverse personnel action was taken.

Court decision on required disclosure. Assistant prosecutors who were directed by the prosecuting attorney or another supervising assistant prosecutor to withhold evidence from the defendant in violation of laws requiring the disclosure of evidence favorable to the defendant, could present the evidence to the trial court for the underlying criminal case to obtain a decision on whether disclosure was required under the law. Trial courts would have to promptly issue a written decision on whether the evidence must be disclosed.

Restrictions on bringing actions. The bill would establish restrictions on when assistant prosecutors could bring an action. An action could not be brought unless the assistant prosecutor presented the evidence to the trial court for a decision on whether it must be disclosed and gave the prosecuting attorney the court's decision.

These requirements would not apply if the assistant prosecutor established:

- that there was not a reasonable opportunity to present the evidence to the court or the decision to the prosecuting attorney as required before the adverse personnel action was taken; or
- good cause for failing to present the evidence to the court or provide the decision.

Other provisions. Civil Practice and Remedies Code ch. 102, governing tort claims paid by local governments would not apply to an action brought under the bill.

The bill would take effect September 1, 2021, and would apply only to acts that occurred on or after that date. As an exception to this, actions could be brought by assistant prosecutors for retaliation that occurred before the bill's effective date if certain conditions were met.

SUPPORTERS SAY:

CSHB 1717 would improve transparency and integrity in Texas' criminal justice system by making it clear that discovery requirements apply to all cases and by establishing protections for assistant prosecutors from retaliation for complying with the requirements.

The bill would clear up confusion over whether the state's discovery laws that became effective January 2014 require prosecutors to make disclosures on cases that began before the bill became effective. CSHB 1717 would make it clear that all exculpatory, mitigating, and impeaching evidence in these cases should be promptly disclosed.

The bill would establish protections for assistant prosecutors who refuse to violate the state's rules on open discovery. The issue was highlighted in a lawsuit filed by an assistant prosecutor alleging he was wrongfully terminated for refusing to violate the state's law on open discovery, and he ultimately could not recover monetary damages due to governmental immunity. CSHB 1717 would close this loophole with a fair process by which an assistant prosecutor could bring a legal action if retaliation occurred related to the discovery statute. This new process is warranted because there is no adequate remedy for such retaliation under current law.

Assistant prosecutors would be given protections and a pathway to address retaliation if it occurred. Several provisions would ensure the process was fair. For example, it would allow assistant prosecutors to recover damages but limit them to a reasonable amount. The assistant prosecutor alleging retaliation would have the burden of proof and there would be an affirmative defense for prosecutors if the action was unrelated to the open discovery laws. Prosecutors would be protected

from frivolous lawsuits and individuals making unfounded claims by requiring the assistant to present the evidence to the court. The bill would not inhibit robust discussions in prosecutors' offices but rather encourage them when trying to make proper decisions.

CRITICS SAY:

CSHB 1717 could chill open and frank discussions about evidence in prosecutors' offices. In some instances, discussions that could benefit from the input of an assistant prosecutor about whether evidence should be disclosed might not occur if it seemed that a decision not to disclose the evidence could lead to an action under the bill.

The process that would be established by the bill could be used by a disgruntled or low-performing employee to pull a prosecutor's office into litigation after a workplace disciplinary action, with any monetary punishment ultimately being borne by local taxpayers. The process could place criminal court judges in an inappropriate position in the middle of employment matters from an independently elected official's office. Other, more appropriate avenues could be used to hold a district attorney accountable for violating discovery requirements.

SUBJECT: Allowing parents to recover certain damages for employee death

COMMITTEE: Business and Industry — favorable, without amendment

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

0 nays

2 absent — Shine, S. Thompson

WITNESSES: For —Laura Tamez, Texas Trial Lawyers Association; Tamara Fitzgerald; Robert Hand; (*Registered, but did not testify*: Rene Lara, Texas AFL-CIO; Stephanie Gharakhanian, Workers Defense Action Fund; Amy Bresnen; Steve Bresnen)

Against — None

BACKGROUND: Labor Code sec. 408.001 makes recovery of workers' compensation benefits the exclusive remedy of an employee covered by workers' compensation insurance or a legal beneficiary against the employer for the death of, or a work-related injury sustained by, the employee. This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of a deceased employee whose death was caused by an intentional act or omission of the employer or the employer's gross negligence.

Concerns have been raised that the parents of an employee who dies under such circumstances cannot recover exemplary damages, even if the employee has no surviving spouse or heirs.

DIGEST: HB 3158 would specify that an employee's parent would not be prohibited from recovering exemplary damages for a deceased employee whose death was caused by an intentional act or omission of the employer or the employer's gross negligence. The surviving spouse, parents, and heirs of the deceased could bring the action or one or more of those individuals could bring the action for the benefit of all.

"Parent" would include an adoptive parent or stepparent, but not a parent whose parental rights were terminated.

The bill would take effect September 1, 2021, and apply only to a claim for worker's compensation based on an injury that occurred on or after that date.

SUBJECT: Certification of live music venues by the Texas Music Office

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

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

0 nays

WITNESSES: For — Edwin Cabaniss; Rebecca Reynolds, Music Venue Alliance; (*Registered, but did not testify*: Justin Bragiel, Texas Hotel & Lodging Association)

Against — None

On — (*Registered, but did not testify*: Andrew Bianchi, Live Nation Entertainment)

BACKGROUND: Government Code ch. 485 relates to music, film, television, and multimedia industries, and establishes the Texas Music Office within the Office of the Governor.

Some have called for certain live music venues to be defined in statute and receive certification from the Texas Music Office in order to better facilitate the venues' ability to receive support from certain federal assistance programs.

DIGEST: HB 3373 would require the Texas Music Office to:

- administer and oversee federal programs in Texas supporting independent live music venues, operators, producers, or promoters;
- issue certifications to such venues and persons for the purpose of administering and overseeing federal programs; and
- ensure each certification holder maintains compliance with the requirements for certification.

The office would be required to issue a certification as an independent live music venue, operator, producer, or promoter, for purposes of any federal program requiring such certification to an individual or entity that:

- organized, promotes, sells tickets, produces, manages, or hosts live concerts;
- generated at least 60 percent of the individual's or entity's revenue from certain sources relating to tickets and production reimbursements as well as the sale of food, beverages, and merchandise;
- had operated its primary business in this state for at least one year preceding certification;
- paid artists fairly as provided by the bill; and
- met at least five of certain listed criteria related to event hours and marketing, employees, and venue characteristics.

The office would be prohibited from issuing a certification to an individual or entity that:

- presented live performances of a prurient sexual nature, as determined by the office; or
- derived directly or indirectly a more than de minimis gross revenue through the sale or presentation of sexual products, services, or depictions, as determined by the office.

The office would be prohibited from issuing a certification to an individual or entity unless the individual or entity:

- employed 50 or more full-time employees or contractors;
- derived at least 1 percent of gross revenue from federal funding; or
- was majority-owned, controlled, or operated by such individuals or entities.

The bill would take effect September 1, 2021.

SUBJECT: Disclosing certain criminal history records to defendant in original format

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

1 nay — Cook

WITNESSES: For — DeVaughn Aubrey, Cannabis Reform Of Houston; (*Registered, but did not testify*: M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Susybelle Gosslee, League of Women Voters Texas; Lindy Borchardt, Tarrant County Criminal District Attorney; Shea Place, Texas Criminal Defense Lawyers Association)

Against — None

On — Shane Attaway, Office of the Attorney General

BACKGROUND: Code of Criminal Procedure art. 39.14 establishes procedures for discovery in criminal cases and requires the state to produce and allow the inspection and duplication of certain materials that contain evidence relating to a case. The statute includes requirements on handling documents and other information.

DIGEST: HB 842 would revise the notice requirements in a criminal case that relate to the state's intention to introduce evidence of other crimes, wrongs, or acts committed by the defendant or evidence of the prior criminal record of a potential witness.

Notice requirements related to the state's intention to introduce such evidence would be considered satisfied if a prosecutor timely disclosed to the defendant or the defendant's attorney criminal history record information in the original format in which it was retrieved from a Department of Public Safety (DPS) or Federal Bureau of Investigation (FBI) database and the disclosure was made in accordance with Code of Criminal Procedure art. 39.14. This provision would not apply to criminal

history record information that the prosecutor intended to introduce to enhance a punishment.

A prosecutor could disclose to the defendant criminal history record information that related to the defendant or a potential witness in the case and that was obtained from DPS or the FBI. With the disclosure, prosecutors would be required to provide a copy of the statute that provides criminal penalties for the unauthorized obtaining, use, or disclosure of criminal history record information.

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

SUPPORTERS SAY:

HB 842 would make a common sense update to laws governing the form in which certain information can be shared by the state with a defendant in a criminal case. The bill would allow certain criminal history records of the defendant or potential witnesses to be shared in the form they are received from a Department of Public Safety or Federal Bureau of Investigation database, rather than retyping or reproducing the records in another document. This sharing would suffice for all circumstances in which a prosecutor is required to provide notice to a defendant, except for circumstances related to enhancing punishments. The bill would ensure information was handled properly by having the prosecutor provide a copy of the law on criminal penalties for the unauthorized use of the criminal history record information.

CRITICS SAY:

HB 842 includes unnecessary provisions requiring prosecutors to disclose to defendants the penalties for unauthorized use of criminal history record information since defendants should already be aware of such sanctions.

SUBJECT: Allowing Lubbock to receive certain sales, mixed beverage tax revenue

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

WITNESSES: For — Justin Bragiel, Texas Hotel and Lodging Association; (*Registered, but did not testify*: Austin Holder, City of Lubbock; Ron Hinkle, Texas Travel Alliance)

Against — None

On — (*Registered, but did not testify*: Lara Abi Habib, Comptroller of Public Accounts)

BACKGROUND: Under Tax Code sec. 351.157, a municipality is entitled to receive the sales and use tax and mixed beverage tax revenue from a qualified establishment located in the municipality. The section applies only to specific municipalities and qualified establishments and does not apply unless the municipality commences a qualified project before September 1, 2023.

DIGEST: HB 4103 would allow a municipality with a population between 200,000 and 300,000 that contained a component institution of the Texas Tech System (Lubbock) to receive sales and use tax and mixed beverage tax revenue from restaurants, bars, retail establishments, and swimming pools and facilities owned or operated by a hotel.

The bill would expand the applicability of Tax Code sec. 351.157 to include qualified projects commenced by a municipality before September 1, 2027.

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.

NOTES:

According to the fiscal note, the bill would have no impact in fiscal 2022-23 but would cost $2.3 million in general revenue beginning in fiscal 2026.

SUBJECT: Transferring certain duties to the Office for Health Equity

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Klick, Allison, Campos, Coleman, Collier, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

1 absent — Guerra

WITNESSES: For — (*Registered, but did not testify*: Andrew Cates, AARP Texas; Drucilla Tigner, ACLU of Texas; James Gray, American Cancer Society Cancer Action Network; Joel Romo, American Diabetes Association, American Heart Association, Partnership For A Healthy Texas, and Texas Public Health Coalition; Marisa Finley, Baylor Scott & White Health; Kyle Mauro, Central Health; Dennis Borel, Coalition of Texans with Disabilities; Tim Schauer, Community Health Choice; Stacey Pogue, Every Texan; Rosann Mariappuram, Jane's Due Process; Lindsay Lanagan, Legacy Community Health; Amanda Williams, Lilith Fund; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Matthew Lovitt, National Alliance on Mental Illness Texas; Alison Mohr Boleware, National Association of Social Workers - Texas Chapter; Bruce Scott, Pfizer; Kate Murphy, Texans Care for Children; Charles Miller, Texas 2036; Tom Banning, Texas Academy of Family Physicians; Shelby Tracy, Texas Association of Community Health Centers; Lee Johnson, Texas Council of Community Centers; Seetha Kulandaisamy, Texas Council on Family Violence; Dan Finch, Texas Medical Association; Eric Woomer, Texas Pediatric Society; Ashley Harris, United Ways of Texas; Danielle Lail; Sarah Murphy; Ally Nabbouh)

Against — (*Registered, but did not testify*: Molly White, Conservative Republicans of Texas; Tom Mclaughlin; Sharon Walther)

On — Octavio Martinez, Hogg Foundation for Mental Health; Kevin Cokley, Institute for Urban Policy Research and Analysis; (*Registered, but did not testify*: Michelle Alletto and Victoria Ford, HHSC)

BACKGROUND:

Health and Safety Code sec. 107A.001 requires the executive commissioner of the Health and Human Services Commission (HHSC) to maintain a center for elimination of disproportionality and disparities in the commission to work or contract with certain entities to develop initiatives to decrease or eliminate certain health and health access disparities. Sec. 107A.003 permits HHSC to distribute to the center unobligated and unexpended appropriations to be used to carry out its powers.

Sec. 107A.002 allows the center to take certain actions, including:

- serve as the primary state resource in coordinating and advocating access to health care services to eliminate health disparities in the state;
- pursue and administer grant funds for innovative projects for communities, groups, and individuals;
- publicize information regarding health disparities and minority health issues through media;
- network with existing minority organizations, community-based health groups, and statewide health coalitions; and
- contract with public and private entities in the performance of its responsibilities.

Interested parties have suggested that efforts to eliminate health disparities could be better addressed by a stronger and more integrated office maintained by the Health and Human Services Commission, particularly as the COVID-19 pandemic has exposed certain health disparities in need of evaluation.

DIGEST:

HB 4139 would remove the requirement that the executive commissioner of the Health and Human Services Commission (HHSC) maintain a center for the elimination of disproportionality and disparities and instead require the commissioner to maintain the Office for Health Equity. The center's purposes, powers, and duties would be transferred to the office, which would assume a leadership role in working with certain entities to develop and implement health initiatives to create health equity by decreasing or eliminating health and health access disparities among certain

populations. The office also would have to seek out certain entities in order to coordinate and maximize the use of resources.

Authority of office. Among other powers, the Office for Health Equity would be authorized to:

- investigate and report on issues related to health and health access disparities among multicultural, ethnic disadvantaged, gender, age, language, and regional populations;
- coordinate and work with local health authorities to collect and report data related to those disparities;
- make the de-identified collected data readily available to the public;
- monitor HHSC's progress and the providers it contracts with in promoting health equity and eliminating disparities;
- advise the commission on the implementation of any targeted programs or authorized funding to address disparities; and
- examine the role that certain social determinants of health have on health access and outcomes.

Under the bill, the office could work with other Texas agencies to advise and assist in implementation of programs and strategies aimed at eliminating social determinants that cause health and health access disparities among multicultural, disadvantage, ethnic, gender, age, language, and regional populations.

Provider contracts. HHSC would have to work with the Office for Health Equity during all contract procurement to ensure that providers promoted health equity and eliminated health and health access disparities among certain populations. The office also would be required to assist HHSC-contracted providers in implementing programs and strategies that promoted health equity and eliminated health and health access disparities for those populations.

Funding. HHSC could distribute to the office legislative appropriations as well as certain gifts and grants, including federal grants.

Study. The bill would require a study to be conducted on the disproportionate effect the COVID-19 pandemic had on racial, multicultural, ethnic, disadvantaged, gender, age, language, and regional populations. The study would have to:

- determine whether certain populations were disproportionately affected by the pandemic;
- if it was determined a particular population was disproportionately affected, identify the underlying causes of the effect; and
- recommend policies and procedures for promoting health equity during a future natural disaster, pandemic, or other public health emergency.

By December 1, 2022, a written report containing the results of the study and any legislative recommendations would have to be submitted to the governor, lieutenant governor, House speaker, and members of the Legislature.

These provisions would expire August 31, 2023.

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

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $5.5 million in general revenue related funds through fiscal 2023.

SUBJECT: Revising certification requirements for certain transmission projects

COMMITTEE: State Affairs — committee substitute recommended

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

0 nays

1 absent — Lucio

WITNESSES: For — Jean Ryall, Advanced Power Alliance; Dan Boezio, AEP Texas; Jason Ryan, CenterPoint Energy; (*Registered, but did not testify*: Leslie Pardue, Clearway Energy; Carrie Simmons, Conservative Texans for Energy Innovation; Royce Poinsett, Duke Energy Renewables; Eric Wright, EDP Renewables; Michael Jewell and Mike Meroney, Enel North America; Catherine Fraser, Environment Texas; Shannon Ratliff, Invenergy, LLC; Mark Stover, McGuireWoods Consulting; Mindy Carr, Oncor; Michael Jewell, Pattern Energy and Solar Energy Industries Association; Lisa Hughes, RWE Renewables; Lara Keel, Savion, LLC; Jim Grace, Scout Clean Energy, Onward Energy, and Copenhagen Infrastructure Services Co.; Cyrus Reed, Sierra Club Lone Star Chapter; Carl Richie, Texas Advanced Energy Business Alliance; Jason Modglin, Texas Alliance of Energy Producers; John Pitts, Texas Solar Power Association; and six individuals)

Against — Katie Coleman, Texas Association of Manufacturers; Michele Richmond, Texas Competitive Power Advocates; (*Registered, but did not testify*: Dorothy Ann Compton; Idona Griffith)

On — Stephen Robertson, Permian Basin Petroleum Association; Carrie Bivens, Potomac Economics; Connie Corona, Public Utility Commission of Texas

BACKGROUND: Utilities Code sec. 37.051 prohibits an electric utility from providing service to the public under a franchise or permit unless the utility first obtains a certificate stating that the public convenience and necessity

requires or will require the installation, operation, or extension of the service. Under sec. 37.056, the Public Utility Commission (PUC) must make certain considerations before granting a certificate.

Sec. 39.904 requires PUC to designate competitive renewable energy zones (CREZ) throughout the state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity.

DIGEST:

CSHB 1607 would require the ERCOT organization to identify critical designation transmission infrastructure projects, revise certain requirements for applications for certificates of public convenience and necessity, and repeal certain statutes regarding CREZs.

Critical designation transmission infrastructure projects. The bill would require the ERCOT organization, by December 30, 2021, to identify and submit to the Public Utility Commission (PUC) critical designation transmission infrastructure projects and the electric utilities or transmission and distribution utilities that would construct and operate the projects.

The projects would have to facilitate a timely and targeted expansion of the ERCOT grid for the purposes of:

- resolving existing interzonal and intrazonal transmission constraints, congestion, or curtailments, including generic transmission constraints; and
- ensuring the future reliability of the ERCOT grid.

The bill would specify that to the extent possible, projects should be cost-effective and designed to transmit high volumes of electricity efficiently, minimize the need for the acquisition of new rights-of-way, and be designed to accommodate new solutions and reduce present or future constraints and congestion.

The ERCOT organization would have to identify a project addressing an interzonal constraint or intrazonal congestion in an area as a critical designation transmission infrastructure project if the constraint or

congestion had been present for at least three years and the area experienced related constraint or congestion costs of at least $100 million per year.

The ERCOT organization could consult with its market participant segments and other stakeholders to identify projects that could facilitate the growth of the state economy or oil and gas, commercial, and industrial development that could provide substantial tax revenue, landowner income, or jobs.

No later than 450 days after the date the ERCOT organization submitted the description of a project to PUC, the utility that would construct and operate the project would have to submit to PUC an application for a certificate of public convenience and necessity. In considering the application, PUC would not have to consider the adequacy of existing funding and the need for additional service.

This section would expire September 1, 2030.

Certificate of convenience and necessity. CSHB 1607 would require an application for a certificate for a transmission project serving the ERCOT region to include a comparison of the levelized estimated cost and cost savings of the project and the economic benefits that could result. PUC would have to include with its decision to grant or deny the certificate its findings on the comparison. The comparison would have to account for:

- the probable improvement of service and reduction of costs for consumers;
- an estimated value of the reduction in constraint, congestion, and curtailment costs;
- an estimation of reduced transmission losses;
- whether the project would provide improved access to ERCOT for new generation facilities and the related benefits;
- an estimation of the reduced future transmission investment costs;
- an estimation of the costs of certain projects that could be avoided; and

- an estimation of direct economic benefits that could be realized from the project.

PUC could not grant a certificate if the application did not include the comparison unless PUC found that the project was needed to support a reliable and adequate transmission network, facilitate wholesale competition, or minimize curtailments due to constraints and congestion. At least once per year, the ERCOT organization would have to identify transmission projects meeting such findings.

CREZ requirements repealed. CSHB 1607 would repeal the requirements for PUC to designate competition renewable energy zones (CREZs) throughout Texas and to develop a plan to construct transmission capacity necessary to delivery electricity to customers in these zones.

Applicability, effective date. The recovery of a transmission facility investment made by an electric utility to serve a CREZ would be governed by the law in effect on the date the facility was placed in service.

The bill would take effect September 1, 2021, and would apply only to a proceeding affecting a certificate of public convenience and necessity commenced on or after that date.

SUPPORTERS SAY:

CSHB 1607 would improve the overall transmission system in the ERCOT grid by revising the criteria the ERCOT organization and the Public Utility Commission (PUC) use to plan and approve transmission projects, helping ensure that Texas has the electric generation capacity it will need to prosper in the future. Currently, the lack of transmission capacity prevents the delivery of power to homes and businesses, and growing congestion and curtailment issues further constrain services. The bill would create a more holistic review process and promote projects that would increase transmission capacity and decrease congestion by revising the criteria ERCOT and PUC use in transmission planning and approval processes. By expediting these projects, the bill would improve service, reduce costs for customers and market participants, and promote reliability and efficiency. Reliable transmission has become vitally important, as revealed by the effects of the widespread power outages in

February during Winter Storm Uri, and this bill would help ensure that Texans were able to access generated power and keep the lights on.

CRITICS SAY:

CSHB 1607 would allow for the expansion of ratepayer-backed transmission projects that may not meet established standards for reliability or economic justification or state policy goals. If ERCOT and PUC found such projects necessary, they already would have been approved through the existing system. The bill would lower standards for the approval of transmission projects that would relieve congestion for generators, requiring customers to subsidize the costs of generators who built facilities in risky locations and wanted to extend transmission to connect to the market. Such risks and costs should be borne by the generator, not the customer.

SUBJECT: Allowing school employees to use personal leave during school holidays

COMMITTEE: Public Education — favorable, without amendment

VOTE: 13 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, M. González, Huberty, K. King, Meza, Talarico, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Dena Donaldson, Texas AFT; Paige Williams, Texas Classroom Teachers Association; Laura Atlas Kravitz and Carrie Griffith, Texas State Teachers Association)

Against — (*Registered, but did not testify*: Jodi Duron, Elgin ISD; Grover Campbell, TASB; Barry Haenisch, Texas Association of Community Schools; Amanda Brownson, Texas Association of School Business Officials)

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

BACKGROUND: Education Code sec. 22.003 provides school district employees with a state minimum personal leave program consisting of five days per year. There is no limit on accumulation of the leave and it is transferable among districts.

DIGEST: HB 1068 would allow a school district employee with available personal leave to use the leave for compensation for a day designated as a school holiday for which the employee would otherwise not receive compensation.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: HB 1068 would let school district employees put a day of paid time off toward a day that was a school holiday for which the employee would otherwise not be paid. This would be especially important for non-salaried

positions such as bus drivers, custodians, cafeteria workers, and paraprofessionals who often receive lower paychecks during longer holiday breaks in the school year.

CRITICS SAY:

HB 1068 could impact school district planning, including maintenance and custodial work during school holiday breaks, by allowing non-salaried employees to take accumulated personal time off during school holidays.

SUBJECT: Expanding services provided by a colonia self-help center

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 8 ayes — Cortez, Holland, Bernal, Campos, Gates, Jarvis Johnson, Minjarez, Slaton

0 nays

1 absent — Morales Shaw

WITNESSES: For — (*Registered, but did not testify*: Dan Finch, Texas Medical Association)

Against — None

On — (*Registered, but did not testify*: Homero Cabello, Texas Department of Housing and Community Affairs)

BACKGROUND: Government Code sec. 2306.586 establishes that the purpose of a colonia self-help center is to assist individuals and families of low and very low income to finance, refinance, construct, improve, or maintain a safe, suitable home in the colonias' designated service area or another area the Texas Department of Housing and Community Affairs deems suitable.

Concerns have been raised that while colonia self-help centers have been helpful in assisting colonia residents with home and property issues, these residents lack adequate resources and education to develop professional skills and achieve financial literacy.

DIGEST: HB 1301 would expand the purposes of a colonia self-help center to include improvement of living conditions in the relevant area(s). The bill also would specify that a colonia self-help center could pursue this purpose by helping low-income individuals to develop professional skills and achieve financial literacy.

The bill would take effect September 1, 2021

SUBJECT: Establishing guidelines for foster care placements in certain facilities

COMMITTEE: Human Services — favorable, without amendment

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

0 nays

1 absent — Klick

WITNESSES: For — (*Registered, but did not testify*: Lee Spiller, Citizens Commission on Human Rights; Judy Powell, Parent Guidance Center; Julie Wheeler, Travis County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Liz Kromrei, Department of Family and Protective Services; Jean Shaw, Texas Health and Human Services Commission)

BACKGROUND: Family Code sec. 264.501 defines "preventable death" as a death that may have been prevented by reasonable medical, social, legal, psychological, or educational intervention. The term includes the death of a child from:

- intentional or unintentional injuries;
- medical neglect;
- lack of access to medical care;
- neglect and reckless conduct, including failure to supervise and failure to seek medical care; and
- premature birth associated with any of the above factors.

Concerns have been raised about the safety of some facilities in which the Department of Family and Protective Services places children. Concerned parties say that facilities in which a preventable death of a child has occurred often close and then reopen under a new name, which allows the facilities to continue to operate in the same manner as before they closed.

DIGEST:

HB 542 would require the Department of Family and Protective Services (DFPS) by rule to establish guidelines for the placement of a child in a residential child-care facility at which a preventable death of a child in the managing conservatorship of the department had occurred.

The Health and Human Services Commission would be required to deny an application for a license to operate a child-care facility if:

- the applicant operated a residential child-care facility at which a preventable death of a child in the managing conservatorship of DFPS had occurred; and
- the commission terminated a contract with the residential child-care facility as the result of a preventable death.

The bill would take effect September 1, 2021, and would apply only to an application or a license submitted to the Health and Human Services Commission on or after the effective date.

SUBJECT: Requiring sheriffs to provide certain services for inmates who are veterans

COMMITTEE: Defense and Veterans' Affairs — favorable, without amendment

VOTE: 9 ayes — Raymond, Buckley, Biedermann, Cyrier, Gervin-Hawkins, Lambert, Lopez, E. Morales, Tinderholt

0 nays

WITNESSES: For — Virginia Simonson, North DFW Chapter of the Military Officers Association; Krishnaveni Gundu, Texas Jail Project; (*Registered, but did not testify*: Greg Hansch, National Alliance on Mental Illness-Texas; Molly Weiner, United Ways of Texas; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: LaJohn McDonald Jr., MVPN Veteran Services Tarrant County; April Zamora, Texas Department of Criminal Justice; Blake Harris, Texas Veterans Commission)

BACKGROUND: Concerned parties have noted that while county sheriffs currently are required to verify the veteran status of inmates and assist them in applying for federal veteran benefits, these checks are made inconsistently and many justice-involved veterans cannot afford the cost of postage to mail veteran benefits requests.

DIGEST: HB 1092 would require the Texas Department of Criminal Justice to mail any related paperwork, application, or other correspondence on behalf of and at no charge to an inmate applying for federal benefits or compensation under a program administered by the U.S. Department of Veterans Affairs for which the inmate may be eligible.

The Commission on Jail Standards would have to require the sheriff of each county to investigate and verify the veteran status of each prisoner during the intake process and to:

- on verification of a prisoner's veteran status, provide the prisoner with a prepaid postcard supplied by the Texas Veterans Commission (TVC) for purposes of requesting assistance in applying for veterans benefits;
- submit a daily report identifying each prisoner whose veteran status was verified during the previous day to TVC and, as applicable, the veterans county service officer for the county and each court in which charges against a prisoner identified in the report were pending; and
- allow for a prisoner whose veteran status was verified to have in-person or video visitation with the veterans county service officer for the county or a peer support coordinator at no cost to the prisoner.

The bill would take effect September 1, 2021.

SUBJECT: Allowing low-income individuals access to certain job-training programs

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

VOTE: 9 ayes — Button, C. Morales, Beckley, C. Bell, Canales, Hunter, Larson, Metcalf, Ordaz Perez

0 nays

WITNESSES: For — (*Registered, but did not testify*: Jason Sabo, Children at Risk; Annie Spilman, NFIB; Mike Meroney, Texas Association of Manufacturers; Jennifer Fagan, Texas Construction Association; Dana Harris, The Greater Austin Chamber of Commerce; Jennifer Allmon, The Texas Catholic Conference of Bishops)

Against — None

On — Courtney Arbour, Texas Workforce Commission

BACKGROUND: Labor Code sec. 309.002(a) establishes the Self-Sufficiency Fund in the general revenue fund for use by public community and technical colleges, community-based organizations, and state extension agencies to develop customized job-training programs for certain recipients of Temporary Assistance for Needy Families (TANF) benefits.

Some have raised concerns that requiring individuals to be recipients of TANF benefits in order to participate in job-training programs financed by the Self-Sufficiency Fund unnecessarily limits access to such programs, thereby denying low-income Texans valuable workforce training opportunities.

DIGEST: HB 1791 would specify that individuals identified by the Texas Workforce Commission (TWC) as being low-income or at risk of becoming dependent on public assistance were eligible for job training programs financed by the self-sufficiency fund.

The bill also would specify that an entity receiving money from the self-sufficiency fund would have to work in conjunction with employers to ensure that participants who successfully completed a job-training program would earn wages sufficient to avoid becoming dependent on:

- Temporary Assistance for Needy Families benefits; and
- Supplemental Nutrition Assistance Program benefits, if applicable.

TWC would have to adopt rules to identify individuals who were low-income or at risk of becoming dependent on public assistance benefits. The commission also would have to determine which of these individuals were eligible to participate in job training programs developed with money from the self-sufficiency fund.

If a state agency determined that a waiver or authorization from a federal agency was necessary to implement a provision of the bill, the affected agency would have to request the waiver or authorization and could delay implementing that provision until the waiver or authorization was granted.

The bill would take effect September 1, 2021.

SUBJECT: Extending statute of limitations for certain sexual harassment complaints

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

VOTE: 9 ayes — Button, C. Morales, Beckley, C. Bell, Canales, Hunter, Larson, Metcalf, Ordaz Perez

0 nays

WITNESSES: For — Shana Khader, Equal Justice Center and Texas Employment Lawyers Association; Katherine Strandberg, Texas Association Against Sexual Assault; Javier Perez: (*Registered, but did not testify*: Rene Lara, Texas AFL-CIO; Thomas Parkinson)

Against — None

On — Bryan Snoddy, Texas Workforce Commission

BACKGROUND: Labor Code sec. 21.201 permits a person claiming to be aggrieved by an unlawful employment practice to file a complaint with the Texas Workforce Commission. Sec. 21.202 establishes the statute of limitations for a complaint as not later than the 180th day after the date the alleged unlawful practice occurred.

Interested parties note that extending the deadline for filing a complaint for sexual harassment would allow persons who were unaware of the 180-day statute of limitations additional time to file a complaint.

DIGEST: HB 21 would extend the statute of limitations for filing a complaint with the Texas Workforce Commission alleging sexual harassment to not later than the 300th day after the date the alleged sexual harassment occurred.

The bill would take effect September 1, 2021, and would apply only to a sexual harassment complaint based on conduct occurring on or after that date.

SUBJECT: Providing information regarding certain college tuition rates

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Murphy, Pacheco, P. King, Ortega, Parker, Raney, C. Turner, J. Turner

0 nays

3 absent — Cortez, Frullo, Muñoz

WITNESSES: For — (*Registered, but did not testify*: Dana Harris, Austin Chamber of Commerce; Thomas Lindsay, TPPF)

Against — None

BACKGROUND: Education Code secs. 54.016 and 54.017 contain provisions for fixed tuition rate plans at general academic teaching institutions.

Interested parties note that students and their families should be made aware of the fixed-rate and flat-rate tuition options to help them compare costs and plan their college careers.

DIGEST: CSHB 4383 would require a general academic teaching institution, other than a public state college, with a fixed tuition price plan for entering undergraduate students and a general academic teaching institution that offered a fixed tuition rate program for certain transferring undergraduate students to provide information about the rate programs.

The information would include the effect of the program on the calculation of a student's cost per credit hour, including the institution's current fixed tuition rate, and clearly describing the amount of tuition a student would pay for varying course loads covered by the program. It would have to be provided to each entering or transferring undergraduate student and in correspondence provided each time the student registered for a semester, on the institution's website, and in student financial aid information.

The bill also would require a public institution of higher education that offered a flat-rate tuition plan under which the institution charged a student for a specified number of credit hours regardless of the number in which the student enrolled to provide information, including the current flat rate and the amount of tuition a student would pay for varying course loads covered by the plan. The information would have to be provided to each entering undergraduate student and in correspondence provided each time the student registered for a semester, on the institution's website, and in student financial aid information.

The bill would take effect September 1, 2021.

SUBJECT: Creating a mental health jail diversion pilot program in Bexar County

COMMITTEE: Corrections — committee substitute recommended

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

0 nays

3 absent — Burrows, Martinez Fischer, White

WITNESSES: For — David Pan, CHCS; Brittany Lash, Southwest General Hospital; Sarah Hogan, Southwest Texas Regional Advisory Council; (*Registered, but did not testify*: Christine Bryan, Clarity Child Guidance Center; Adam Haynes, Conference of Urban Counties; Myra Leo, Methodist Healthcare Ministries; Greg Hansch, National Alliance on Mental Illness-Texas; Maggie Luna, Statewide Leadership Council; Crystal Brown, Steward Health Care; Devin Driver, Texas Criminal Justice Coalition; Dan Finch, Texas Medical Association; Allison Greer Francis, The Center for Health Care Services; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Courtney Harvey and Trina Ita, Health and Human Services Commission; April Zamora, Texas Department of Criminal Justice)

BACKGROUND: Interested parties have noted that ensuring recovery success for individuals struggling with mental and substance use disorders could require longer patient stays than are currently typical and that a pilot program in Bexar County could test and measure the impact of longer-term treatment on recidivism rates among persons with mental illness.

DIGEST: CSHB 3621 would require the Health and Human Services Commission (HHSC), in cooperation with the local mental health authority serving Bexar County, to establish a pilot program in the county for the purpose of reducing recidivism and the frequency of arrests, incarceration, and emergency detentions among persons with mental illness.

Criminal justice mental health service model. The local mental health authority serving Bexar County would have to design and test through the pilot program a criminal justice mental health service model oriented towards facilitating treatment for persons with mental illness and substance use disorders to reduce recidivism and the frequency of arrests, incarceration, and emergency detention among persons with mental illness in the county. The model would have to include evidence-based practices, including:

- psychiatric services;
- substance use disorder treatments;
- treatment for co-occurring mental health and substance use disorders;
- integrated primary care, mental health, and chemical dependency services;
- motivational interviews to reduce recidivism;
- methods to maintain sobriety;
- medical detoxification services;
- intensive case management to address social determinants of health;
- local mental health authority hospital transitional services, including case management;
- medication-assisted treatment; and
- treatment of medical issues, including through inpatient hospitalization if necessary.

Local services coordination. The local mental authority serving Bexar County would have to coordinate with the University of the Incarnate Word and Southwest General Hospital in designing the criminal justice mental health service model. In providing services under the pilot program, the mental health authority would have to use personnel enrolled in established post-graduate residency training programs through the Texas Institute of Graduate Medical Education and Research.

The local mental health authority also would have to collaborate with the South Texas Crisis Collaborative to collect and analyze information

regarding rates of recidivism and the frequency of arrests, incarceration, and emergency detentions among persons served through the pilot program and provide this information to HHSC.

Program capacity. In implementing the pilot program, HHSC would have to ensure the program had the resources to provide mental health and substance use disorder treatment for incarceration diversion services for not fewer than 10 inpatient beds and for stays of a period of 60 to 90 days.

Before implementing the pilot program, HHSC and the local mental health authority serving Bexar County would have to jointly establish clear criteria for identifying a target population to be served by the program. The criteria would have to prioritize serving a target population composed of members at high risk of recidivism and with severe mental illness, substance use disorders, or co-occurring mental illness and substance use disorders.

Finance. HHSC would have to, in consultation with the local mental health authority of Bexar County, pay a case rate at the rate at which services were funded for the pilot program. The creation of the program would be contingent on funding from HHSC for persons with mental illness or substance use disorders provided by the state for the program. Bexar County's local mental health authority could seek and receive gifts and grants from federal sources, foundations, individuals, and other sources for the benefit of the pilot program.

The bill would establish the Legislature's intent that appropriations made to fund the pilot program would be made in addition to and would not reduce the amount of appropriations otherwise made to the local mental health authority serving Bexar County.

Inspections. HHSC could make inspections of the operation of, and provision of mental health and substance use treatment for incarceration diversion services through, the pilot program on behalf of the state to ensure state funds were used effectively.

Required report. By December 1, 2022, the executive commissioner of HHSC would have to evaluate and submit a report concerning the

effectiveness of the pilot program in reducing recidivism and the frequency of arrests, incarceration, and emergency detentions among persons with mental illness and substance use disorders in Bexar County.

In conducting the required evaluation, the executive commissioner of HHSC would have to, using information provided by the local mental health authority, compare the rates of recidivism among persons in the target population before the pilot program was implemented to the rate of recidivism among those persons one year later. The executive commissioner could include in the evaluation measures of the effectiveness of the program related to the well-being of persons served under the program.

The report would have to include a description of the features of the criminal justice mental health service model designed and tested under the pilot program and the executive commissioner's recommendation whether to expand the use of the model statewide.

The report would be submitted to the governor, lieutenant governor, House speaker, and the presiding officers of the standing committees of the Senate and House of Representatives with primary jurisdiction over health and human services issues and over criminal justice issues.

Expiration. The pilot program established by the bill would conclude September 1, 2023.

The bill would take effect September 1, 2021.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of about $7.1 million to general revenue through fiscal 2023.

SUBJECT: Designating certain premises as critical load premises for electric service

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 8 ayes — Goldman, Herrero, Craddick, Ellzey, T. King, Leman, Longoria, Reynolds

0 nays

3 absent — Anchia, Darby, Geren

WITNESSES: For — (*Registered, but did not testify*: Martha Landwehr, BASF Corporation; Daniel Womack, Dow, Inc.; Cyrus Reed, Lone Star Chapter Sierra Club; Jessica Oney, NRG; Shera Eichler, Oncor Cities Steering Committee; William Stevens, Panhandle Producers and Royalty Owners Association; Jason Modglin, Texas Alliance of Energy Producers; Katie Coleman, Texas Association of Manufacturers; Sam Gammage, Texas Chemical Council; Ryan Paylor, Texas Independent Producers & Royalty Owners Association (TIPRO); Tulsi Oberbeck, Texas Oil and Gas Association; Thure Cannon, Texas Pipeline Association; Tricia Davis, Texas Royalty Council)

Against — None

On — Joel Yu, Enchanted Rock; (*Registered, but did not testify*: Thomas Gleeson, Public Utility Commission)

DIGEST: CSHB 3915 would require the Public Utilities Commission of Texas (PUC) by rule to establish a process for a transmission and distribution utility to designate and prioritize the designation of certain premises as critical load premises and adopt criteria for determining eligibility for the designation and priority. PUC would be required to coordinate with other agencies that have primary jurisdiction over entities that own or operate premises that could be designated as critical load premises.

The eligibility criteria would have to allow for premises used for the following activities to be eligible for designation as critical load premises:

- upstream natural gas production;
- midstream natural gas transportation;
- fuel production;
- nitrogen, hydrogen, and water supply; and
- telecommunications.

The bill would require PUC to submit an annual report to the Legislature regarding critical load premises designations, including analysis of the implementation and results of the designation. PUC would be required to submit the first report by January 1, 2022.

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. If the bill took effect immediately, PUC would be required to adopt the required rules by September 1, 2021. If the bill took effect September 1, 2021, PUC would be required to adopt the required rules by November 1, 2021.

SUPPORTERS SAY:

CSHB 3915 would address issues that became apparent during Winter Storm Uri regarding the natural gas supply chain and related communications issues by making certain facilities related to natural gas and telecommunications eligible for designation as critical load premises.

During the storm, private and governmental entities across the state failed to effectively communicate and consider the effect of shutting off power to natural gas facilities. This failure resulted in the shutdown of natural gas facilities that help provide essential services to the state. By making these facilities eligible for designation as critical load premises, the bill would help to ensure that critical infrastructure in Texas remains operational during disasters or other emergencies.

The expansion of facilities designated as critical load premises could result in the diversion of electricity resources to these facilities, but the essential services provided by facilities listed in the bill justifies this designation. Natural gas and telecommunications facilities provide essential support to critical public health and safety operations across the

state. The potential for harm to the public created by the shutdown of these facilities justifies the diversion of electricity resources.

CRITICS SAY:

CSHB 3915 would increase the number of facilities that are eligible for designation as critical load premises, which could harm the ability of utilities to effectively manage load sharing and could result in the burden of power outages being shifted to residential communities to an unreasonable degree.

SUBJECT: Expanding services and care to sexual assault victims

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 — Justin Wood, Children's Advocacy Centers of Texas; Elizabeth Boyce, Texas Association Against Sexual Assault; (*Registered, but did not testify*: Warren Burkley, Austin Justice Coalition; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Jenny Black, Safe Alliance; Lindy Borchardt, for Tarrant County Criminal District Attorney Sharen Wilson; and 14 individuals)

Against — (*Registered, but did not testify*: Julie Campbell)

On — Kaye Hotz, Office of the Attorney General

BACKGROUND: Health and Safety Code sec. 323.0015 requires the Department of State Health Services to designate a health care facility as a sexual assault forensic exam-ready facility, or SAFE-ready facility, if the facility notifies the department that it employs or contracts with a sexual assault forensic examiner or uses a telemedicine system to provide consultation to a licensed nurse or physician when conducting a sexual assault forensic medical exam.

Some have called for continued efforts to address and improve services available to survivors of sexual assault in Texas. The Legislature recently established the Sexual Assault Survivors' Task Force to examine solutions, and the task force's first report was released in November 2020 and included several policy recommendations for lawmakers to consider.

DIGEST:

CSHB 2706 would revise processes related to the reporting, preserving, and analyzing evidence of sexual assault and other sex offenses and operations related to emergency services and care provided to victims.

Sexual Assault Forensic Exam (SAFE) programs. The bill would expand SAFE-ready facilities by requiring the Health and Human Services Commission (HHSC) to designate a SAFE program as a SAFE-ready facility if it met the criteria for such a facility under Health and Safety Code sec. 323.0015. A person could operate a SAFE program only if the program met certain minimum standards and provided forensic medical exams to sexual assault survivors.

Minimum standards. The bill would establish the minimum standards for SAFE programs, including that a program would have to:

- operate under the active oversight of a medical director who was a licensed physician;
- employ or contract with a sexual assault examiner and provided access to a sexual assault program advocate;
- ensure a survivor has access to a private treatment room;
- provide certain treatment and care indicated by a survivor's history, including access to treatment for HIV, sexually transmitted infections, and pregnancy;
- provide information on crime victims compensation;
- provide a trauma-informed approach in forensic medical care; and
- provide other items listed in the bill.

Forensic medical exam. A SAFE program would have to provide a sexual assault survivor under the program's care a forensic medical exam in accordance with requirements under state law.

Only a sexual assault examiner or a sexual assault nurse examiner could perform a forensic medical exam under a SAFE program.

A survivor who received an exam under a SAFE program would not have to participate in the investigation or prosecution of an offense as a

prerequisite to receiving the exam or medical treatment or pay for the costs of the forensic portion of the exam or for the evidence collection kit.

Other provisions. The bill would revise processes relating to the request for a forensic medical exam by a law enforcement agency if a sexual assault was not reported to the agency within 120 hours. If the victim was a minor, a law enforcement agency would have to request an exam for use in the investigation or prosecution of the offense.

If the victim was not a minor, a law enforcement agency could request an exam if the agency believed it would further investigation or prosecution or if after an evaluation by a medical provider the agency was notified that an exam should be conducted.

A law enforcement agency would have to document whether a forensic medical exam was requested and provide certain information specified in the bill.

Payment of costs of exam. A health care provider that provided an exam to a survivor would be entitled to reimbursement in an amount set by the attorney general for the reasonable costs of the forensic portion of the exam and the evidence collection kit. The provider would not be eligible unless the exam was conducted by a sexual assault examiner or a sexual assault nurse examiner.

An application for reimbursement would have to include certain information, including an itemized bill of the costs of the forensic portion of the exam.

The health care provider would have to accept reimbursement from the attorney general unless the provider provided documentation to support a request for additional reimbursement and the attorney general determined there was justification for the additional amount.

The bill would expand the list of providers eligible for reimbursement from the attorney general to include a SAFE program.

Statewide electronic tracking system. The bill would require the statewide electronic tracking system for evidence of sexual assault or another sex offense to include the evidence collected in relation to a sexual assault or other sex offense, regardless of whether the evidence was collected in relation to an individual who was alive or deceased.

An entity that performed a forensic medical exam and received written consent to release the evidence would have to enter the identification number of the evidence collection kit into the statewide electronic tracking system within 24 hours after the exam was performed.

The Department of Public Safety (DPS) would have to report to the governor by October 1 of each year on the number of evidence collection kits that had not yet been submitted for lab analysis or for which the analysis had not yet been completed. The report would be titled the "Statewide Electronic Tracking System Report," and would be posted on DPS' website.

The bill would take effect September 1, 2021, and would apply only to evidence of a sexual assault or other sex offense collected on or after that date.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $12.5 million to the Compensation to Victims of Crime Account through fiscal 2023.

SUBJECT: Regulating the sale and labeling of kratom products; creating penalties

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Allison, Campos, Coleman, Collier, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

1 absent — Guerra

WITNESSES: For — Peter Candland, American Kratom Association; Curt Bramble; Murray Holcomb; (*Registered, but did not testify*: Vanessa MacDougal; Dan Finch, Texas Medical Association; Idona Griffith)

Against — (*Registered, but did not testify*: James Parnell, Dallas Police Association; Frederick Frazier, Texas State Fraternal Order of Police)

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

DIGEST: CSHB 1097 would establish the Texas Kratom Consumer Health and Safety Protection Act, which would provide labeling requirements for kratom products, prohibit the sale or distribution of kratom to minors, and create civil and criminal penalties.

Definitions. The bill would define "kratom" as any part of the leaf of the plant Mitragyna speciosa.

"Kratom product" would mean a food, including an extract, capsule, or pill, containing any form of kratom.

"Kratom processor" would be defined as a person who:

- manufactured, prepared, distributed, or maintained kratom products for sale;

- advertised, represented, or held oneself out as a seller, preparer, or manufacturer of kratom products;
- was responsible for ensuring the purity and proper labeling of kratom products; or
- packaged or labeled kratom products.

"Kratom retailer" would mean a kratom processor who engaged in selling kratom products to consumers or who advertised, represented, or held oneself out as a person who sells kratom products to consumers.

Labeling requirements. Under the bill, a kratom retailer could not sell a kratom product that did not meet certain labeling requirements.

The bill would require a kratom processor to label each kratom product with directions necessary to ensure safe and effective use of the product by a consumer, including the product's recommended serving size.

Prohibited kratom products. The bill would prohibit a kratom processor or retailer from preparing, distributing, selling, or offering to sell a kratom product that:

- was adulterated with a dangerous non-kratom substance affecting the product's quality or strength to a degree that rendered the product injurious to a consumer;
- was contaminated with a poisonous or otherwise deleterious non-kratom substance, including any controlled substance under the Texas Controlled Substances Act;
- had a level of 7-hydroxmitragynine in the alkaloid fraction that was greater than two percent of the overall alkaloid composition of the product; or
- contained any synthetic alkaloids, including synthetic 7-hydroxymitragynine and synthetically derived compounds from a kratom plant.

Criminal penalty. Under the bill, a person would commit a class C misdemeanor (maximum fine of $500) if the person distributed, sold, or

exposed for sale a kratom product to someone younger than 18 years of age.

Civil penalty. A person who violated the bill's provisions would be subject to a civil penalty of:

- $250 for the first violation;
- $500 for the second violation; and
- $1,000 for each subsequent violation.

Each day a violation continued or occurred would be a separate violation for imposing a penalty.

Exemptions. A kratom retailer would not be liable for a civil penalty under the bill if the retailer proves by a preponderance of evidence that the violation was unintentional and due to the kratom retailer's good faith reliance on the representation of another kratom processor.

Enforcement. The bill would authorize the attorney general and applicable district, county, or municipal attorney to bring an action to recover a civil penalty.

Other provisions. Penalties prescribed by the bill would be in addition to any other penalties prescribed by law, including under the Texas Food, Drug, and Cosmetic Act and Texas Controlled Substances Act.

The bill would allow the executive commissioner of the Health and Human Services Commission to adopt rules to ensure the safe consumption and distribution of kratom and kratom products.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 1097 would strengthen protections for consumers of kratom by prohibiting the sale of adulterated kratom products and establishing certain labeling requirements while also prohibiting the sale of kratom to minors and creating civil and criminal penalties for violations of the bill's provisions.

Kratom is a tree in the coffee family that grows in Southeast Asia, a region where people traditionally chew its leaves or make them into a tea that is used to combat fatigue and improve work productivity. Many people also consume kratom as an alternative to prescription pain relievers, including opioids, to manage acute and chronic pain. However, some distributors of kratom adulterate and/or otherwise fail to disclose kratom products that have been laced with controlled substances, such as fentanyl, tramadol, and benzodiazepines.

By requiring kratom products to be properly labeled, the bill would provide consumers with transparent product information. While kratom is not approved by the Food and Drug Administrative as a safe and effective alternative to opioids, the federal Food, Drug, and Cosmetic Act properly classifies kratom as a food.

CRITICS SAY:

CSHB 1097 would not address the risks that kratom products could create for consumers. Kratom has a wide range of potential side effects, depending on the dosage. Along with nausea, vomiting, chills, sweating, itching, and loss of appetite, more serious problems can occur, such as hallucinations or delusions. While kratom can be consumed at safe, low doses and produce good results, high doses pose a substantial risk to consumers. Many people may have difficulty adhering to the recommended serving size on the required label, especially if they currently struggle with opioid addiction.

The bill also should consider enacting a ban on kratom products until the Food and Drug Administration (FDA) approves its safe and effective use. Additional research is needed to help regulatory agencies identify whether the causes of consumers' hospitalizations, intubations, and deaths are due to pure kratom or adulterated kratom products. Consumers of kratom should wait for it to be fully tested and approved by the FDA as a safe or effective treatment option for opioid addiction.

SUBJECT: Requiring an initial insurance payment for property repair or replacement

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Oliverson, Vo, J. González, Israel, Middleton, Romero, Sanford

2 nays — Hull, Paul

WITNESSES: For — Lee Loftis, Independent Insurance Agents of Texas; Ware Wendell, Texas Watch; (*Registered, but did not testify*: Jennifer Fagan, Texas Construction Association; Mona Muro, Texas Council on Family Violence; Julia Parenteau, Texas Realtors; Carl Isett, Texas Roofing Contractors Association)

Against — Jay Thompson, Afact; Joe Woods, American Property and Casualty Insurance Association; Jon Schnautz, National Association of Mutual Insurance Companies; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Anne O'Ryan, Auto Club Indemnity; Bruce Scott, State Farm; Jarrett Hill, Texas Farm Bureau Insurance Companies)

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

DIGEST: CSHB 1100 would require any homeowner's, renter's, or condominium owner's insurance policy that included replacement cost coverage to provide that, in a valid claim for damage to insured property, the insurer must make an initial payment of at least 80 percent of the estimated cost to repair or replace the damaged dwelling or personal property minus the applicable deductible.

The insurer would be required to make the remaining payment upon the policy holder's payment of the applicable deductible and the completion of documentation that the repair or replacement was completed. An insurer would not be required to pay more than the total cost to replace lost or damaged personal property with equivalent property.

The bill would apply to each insurer authorized to engage in residential property insurance in the state, and only to an insurance policy delivered, issued for delivery, or renewed on or after February 13, 2021.

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 1110 would help Texas homeowners, especially those of lower and middle income, who have experienced property damage to more easily obtain repair or replacement of property by requiring an upfront insurance payment of at least 80 percent of the relevant costs. Currently, homeowners receive only the actual cash value of property depreciation due to damage, and must pay any additional upfront costs of home repairs and personal property replacement and wait to be reimbursed by their insurers until after repairs are completed. This policy disadvantages many homeowners who cannot afford these upfront costs. The combination of the COVID-19 pandemic and Winter Storm Uri, along with the ongoing effects of other natural disasters in recent years, has exacerbated the struggle of homeowners to afford repairs.

CSHB 1110 would ensure that homeowners have the funds to begin timely repairs on their homes and property. The actual cash value payment for depreciated value is not sufficient to guarantee that lower and middle income homeowners can find a reputable contractor to begin repairs. At the same time, the bill would safeguard the interests of insurers by allowing them to hold back up to 20 percent of costs until repair or replacement was completed, which also would deter any fraudulent use of the upfront payment. The bill would not increase the cost of claims, only the timing of payments.

Allowing multiple options for insurance payment structure would make a process that already is confusing and intimidating for many homeowners even more so. CSHB 1110 would streamline the process and enable lower and middle income homeowners to more easily receive the benefits that they have paid for.

CRITICS SAY:

CSHB 1110 is unnecessary because there are no systemic difficulties in getting contractors to start repair projects using the actual cash value payment for depreciated value that homeowners currently receive. Requiring a larger upfront payment could make it more difficult for insurance companies to do business in the state.

The bill could facilitate fraud by dishonest contractors, who might take upfront payment from homeowners and then flee with the money or make inadequate repairs. Homeowners may also be tempted to take the initial insurance payment without using it for repairs.

OTHER CRITICS SAY:

CSHB 1110 would mandate a one-size-fits-all approach to insurance payments for property damage. The bill would be improved if it allowed other payment structure choices for consumers.

SUBJECT: Allowing parents to elect for a student to repeat a grade or course

COMMITTEE: Public Education — favorable, without amendment

VOTE: 13 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, M. González, Huberty, K. King, Meza, Talarico, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: Grover Campbell, TASB; Michael Lee, Texas Association Rural Schools; Linda Litzinger, Texas Parent to Parent; Ashley Ford, The Arc of Texas)

Against — (*Registered, but did not testify*: Starlee Coleman, Texas Public Charter Schools Association)

On — (*Registered, but did not testify*: Eric Marin, Von Byer, Leonardo Lopez, and Monica Martinez, Texas Education Agency; Thomas Parkinson)

BACKGROUND: The COVID-19 pandemic has created learning hardships for many public school students during the current academic year, including declines in student enrollment, particularly in the earliest grades. Interested parties note that parents should have the right to determine how best to meet the future educational needs of their children, including determining whether they should repeat a grade or course.

DIGEST: HB 3557 would permit a parent or guardian to elect for a student to repeat a grade or a course from the 2021-2022 school year.

Pre-K, kindergarten. A parent could elect for a student to repeat prekindergarten or enroll in kindergarten if the student would have been eligible to enroll in prekindergarten during the previous school year and had not yet enrolled in kindergarten. A parent could elect for a student to repeat kindergarten or enroll in kindergarten if the student would have been eligible to enroll in kindergarten in the previous school year and had not yet enrolled in first grade.

Elementary, middle school. For grades 1 through 8, a parent could elect for a student to repeat the grade in which the student was enrolled during the previous school year.

High school. For courses taken for high school credit, a parent could elect for a student to repeat any course in which the student was enrolled during the previous school year. A parent could not elect for a student to repeat a high school course if the district or charter school determined the student had met all of the requirements for graduation.

The bill's provisions for repeating grades 4 through 8 and retaking high school courses would expire September 1, 2022.

Retention committee. A parent would have to make an election under provisions of HB 3557 in writing to a school district or charter school, as applicable.

If a district or charter school disagreed with a parent's election, it would have to convene a retention committee and meet with the parent to discuss retention. Such a meeting would have to be conducted in person unless an alternative means was agreeable to the parent. A retention committee would have to be composed of:

- the principal or designee;
- the student's parent or guardian;
- the teacher who taught the grade or course for which the parent wanted the student retained or repeated; and
- additional teachers at the discretion of the principal if the student would potentially repeat multiple courses.

The committee would have to discuss the merits of and concerns with advancement and retention and review the student's grades, test results, and other available academic information to determine the student's readiness for the next grade or a given course.
The bill would require the parent, after participating in a retention committee meeting, to decide whether the student should be retained or

retake a grade or course. The school would have to abide by the parent's decision.

Grades. A student who received a passing grade or who earned credit for a high school course would retain that assignment or award of credit when the student was retained under the bill, unless the school district or charter school adopted a different policy.

Other provisions. The rights of a parent or guardian under the bill would transfer to a student who was 18 years of age or older or who had the disabilities of a minor removed, unless the student was under a form of guardianship that continued after the student turned 18.

HB 3557 would require the Texas Education Agency to study whether students retained under bill's provisions should be considered at-risk.

A grade or course repeated under the bill's provisions would qualify for average daily attendance even if the student previously passed or earned credit for the grade or course, if the grade or course would otherwise be eligible.

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

SUBJECT: Authorizing a sexual assault victim services court program

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Leach, Julie Johnson, Krause, Schofield, Smith

1 nay — Middleton

3 absent — Davis, Dutton, Moody

WITNESSES: For — Charles Reed, Dallas County Commissioners Court; Amy Derrick, Dallas County Criminal District Attorney; Kristen Lenau, Texas Association Against Sexual Assault; Matthew Kita; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Jim Allison, County Judges and Commissioners Association of Texas; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Ken Shetter, One Safe Place; Jennifer Mudge, Texas Council on Family Violence; Thomas Parkinson)

Against — None

BACKGROUND: Penal Code Title 5 defines various criminal offenses against the person, including sexual offenses and assaultive offenses.

It has been shown that a relatively small number of cases of sexual assault of an adult are filed in comparison to the number of reported incidents of sexual assault in Texas, which raises concerns about the adequacy of the criminal justice system in addressing such cases. It has been suggested that the establishment of specialty courts for sexual assault survivors in Texas could be beneficial in addressing the unique needs of survivors and potentially enhance justice for this population.

DIGEST: HB 1706 would authorize the commissioners court of a county to establish a sexual assault victim services court program for participants who:

- were victims of an alleged sexual assault in which a person was arrested for or charged with a sexual or assaultive offense committed against the victim; and
- voluntarily agreed to participate in the program.

The local administrative district and statutory county court judges of the county could designate a court in the county for assignment of eligible cases. The judge of the designated court would be required to have experience hearing sexual assault cases under applicable Penal Code statute, and the prosecuting attorney for the court would have to have experience in prosecuting such cases.

The bill would define "sexual assault victim services court program" as having certain characteristics, including:

- integration of services provided by public agencies and community organizations for participating victims;
- early identification and prompt assignment of eligible cases to the designated court;
- access for participating victims to counseling and other related services provided by public agencies and community organizations;
- inclusion of a participant's family members who voluntarily agreed to be involved in the services provided to the participant;
- issuance of protective orders for victims on the victim's consent and as authorized by state law; and
- continued monitoring of sexual assault defendants through prosecution and adjudication and for the duration of convicted offenders' sentences.

An established court program would be required to ensure that a victim's participation in the program was voluntary and to allow a participant to withdraw from the program at any time. The program also would be required to make, establish, and publish local procedures to ensure maximum participation of eligible victims in the county.

A county could accept a gift, grant, donation, or bequest of money, services, equipment, goods, or other tangible or intangible property from any source for the sexual assault victim services court program.

The bill would take effect September 1, 2021.

SUBJECT: Requiring notification of a shelter animal's exposure to certain diseases

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Klick, Guerra, Allison, Campos, Jetton, Oliverson, Price, Smith

0 nays

3 absent — Coleman, Collier, Zwiener

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

Against — Tammy Embrey, City of Corpus Christi; (*Registered, but did not testify*: TJ Patterson, City of Fort Worth; Jon Weist, City of Irving; Rick Ramirez, City of Sugar Land; Daniel Collins, County of El Paso, Texas; Clifford Sparks, The City of Dallas)

DIGEST: CSHB 652 would require an animal shelter to provide written, electronic, or telephonic notice to a person who adopted an animal from the shelter if the adopted animal had been or could have been exposed to a bodily fluid of another animal in the shelter that was diagnosed with bordetella, distemper, kennel cough, leptospirosis, parvovirus, or rabies.

Notification would be required if the shelter learned of the exposure during the period beginning on the 15th day before the date the animal was adopted and ending on the 15th day after the adoption date.

An animal shelter that violated the bill's provisions would not be subject to a civil penalty for the violation.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: CSHB 652 would protect pet health and new pet owners by requiring a shelter where an animal was adopted to issue prompt notification about recent disease outbreaks at the shelter. Adopting a pet is a financial and emotional investment in the animal's wellbeing. However, Texans who adopt pets from shelters may not be made fully aware of recent disease

outbreaks at the shelter. CSHB 652 would protect the health of pets by notifying owners of any pre-existing conditions and holding the shelter responsible for notifying owners within 15 days prior to or after adoption of illness at the shelter.

CRITICS SAY:

CSHB 652 could discourage people from adopting pets from shelters by instilling fear in potential adopters about the health of shelter animals. The bill's requirement that public animal shelters issue notices for conditions, including treatable illnesses that are not a major health concern, would unfairly characterize animals from shelters as unhealthy and result in fewer adoptions. Adoptions are key to increasing live release rates for many public shelters.

The notification requirement would place a financial and administrative burden on staff and take time away from providing care to the animals. To comply with the bill's provisions, some shelters might have to hire additional staff to track exposure to disease and notify new owners.

SUBJECT: Removing property in the Hidalgo County Drainage District Number 1

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 7 ayes — T. King, Harris, Bowers, Kacal, Lucio, Paul, Price

0 nays

4 absent — Larson, Ramos, Walle, Wilson

WITNESSES: For — Raul Sesin, Hidalgo Co. Drainage District No 1; (*Registered, but did not testify*: Ellie Torres)

Against — None

BACKGROUND: Interested parties have expressed concerns that property interests encroaching on land within Hidalgo County Drainage District Number 1 hinder the ability of the district to perform its functions and the existing process to remove the property is too time consuming.

DIGEST: CSHB 2094 would authorize the Hidalgo County Drainage District Number 1 to remove real or personal property placed on land owned by the district or land subject to an easement held by the district, regardless of when the property was put in place and without the consent of its owner. The district would be required to send notice by certified mail to the owner as well as a second notice by certified mail at least 30 days after the date the first notice was sent. The district would be authorized to use existing civil lawsuit processes against the owner of the property to recover the cost of removing the property 30 days after the second notice was received.

The bill would take effect September 1, 2021.