HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 04, 2021
87th Legislature, Number 48
The House convenes at 10 a.m.
Part Two

One joint resolution is on the Constitutional Amendments Calendar and 45 bills are on the General State Calendar for second reading consideration today. The joint resolutions and 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: Judiciary and Civil Jurisprudence; Homeland Security and Public Safety; Corrections; Public Health; Pensions, Investments and Financial Services; and Licensing and Administrative Procedures.

Analyses of 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

Tuesday, May 04, 2021

87th Legislature, Number 48

Part 2

SUBJECT: Revising radioactive waste disposal regulation; reducing surcharge, fee

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Landgraf, Dominguez, Dean, Kacal, Kuempel, Reynolds

2 nays — Goodwin, Morales Shaw

1 absent — Morrison

WITNESSES: For — Edward Selig, Advocates for Responsible Disposal in Texas; Morse Haynes, Andrews Economic Development Corporation; (*Registered, but did not testify*: Roland Leal, CPS Energy; Russell Mullins, Exelon; Eric Blackwell, NRG; Brent Chaney, Vistra Corporation)

Against — Robert Singleton, Citizens Organized to Defend Austin; Tommy Taylor, Fasken Oil and Ranch Ltd; Susybelle Gosslee, League of Women Voters Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Adrian Shelley, Public Citizen; Karen Hadden, SEED Coalition; Lon Burnam, Tarrant Coalition for Environmental Awareness; and eight individuals; (*Registered, but did not testify*: Jimmy Carlile, Fasken Oil and Ranch Ltd; Ben Shepperd, Permian Basin Petroleum Association; Robin Schneider, Texas Campaign for the Environment; Vanessa MacDougal; Robert Norris)

On — (*Registered, but did not testify*: Ashley Forbes, TCEQ; David Carlson, Waste Control Specialists)

BACKGROUND: Health and Safety Code ch. 403 governs an interstate compact for the management and disposal of low-level radioactive waste. The compact provides the framework for a cooperative effort between party states to limit the number of facilities needed to manage low-level radioactive waste and to encourage the reduction of its generation, among other goals.

"Party state" means any state that has become party to the compact, which currently includes Texas, Maine, and Vermont.

Ch. 401, the Texas Radiation Control Act, establishes a framework for state agencies that regulate the use, possession, and disposal of radioactive materials. Sec. 401.202 allows the Texas Commission on Environmental Quality (TCEQ) to grant licenses to facilities for the disposal of compact waste.

"Compact waste" means low-level radioactive waste that is originally generated onsite in Texas or in a party state or is not generated in Texas or a party state but has been approved for importation to the state by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Under sec. 401.207, a license holder may not accept low-level radioactive waste generated in another state for disposal except under certain circumstances. A license holder is allowed to accept certain nonparty compact waste, and TCEQ must assess a surcharge for its disposal. The surcharge is 20 percent of the total contracted rate negotiated between the compact waste disposal facility license holder and the nonparty compact waste generator and is assessed in addition to the total contracted rate.

Sec. 401.208 requires TCEQ to study at least once every four years the available volume and curie capacity of the compact facility for the disposal of party state and nonparty compact waste. "Curie capacity" means the amount of radioactivity of the waste that may be accepted by the compact facility as determined by TCEQ.

Concerns have been raised that the compact waste disposal facility in Andrews County could be used for the interim storage of high-level radioactive waste. Others have noted that the facility has become less economically viable since its creation due to changing market dynamics.

DIGEST:

CSHB 2692 would prohibit the disposal or storage of high-level nuclear waste in Texas except under certain circumstances. The bill also would revise the framework for the disposal of compact waste and for compact waste disposal facility license holders, including by reducing the surcharge for the disposal of nonparty compact waste, limiting nonparty compact waste, and eliminating part of a related state fee.

Disposing, storing high-level nuclear waste in Texas. The bill would prohibit a person, including the compact waste disposal facility license holder, from disposing of or storing high-level radioactive waste or spent nuclear fuel in Texas. The bill would except storage at the site of currently or formerly operating nuclear power reactors or nuclear research and test reactors located on university campuses.

The bill would define "high-level radioactive waste" to mean:

- the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contained fission products in sufficient concentrations; and
- other highly radioactive material that the U.S. Nuclear Regulatory Commission, consistent with existing law, determined by rule required permanent isolation.

Reserved capacity for party state waste. The bill would reserve for the exclusive use of party state compact waste disposal in the compact waste disposal facility the greater of three million total cubic feet or the required volume identified by the Texas Commission of Environmental Quality (TCEQ) in studying the compact facility and the greater of two million total curies or the required curie capacity identified by TCEQ in studying the facility.

Of the reserved volume and curie capacity, 80 percent would have to be reserved for compact waste generated in Texas, and 20 percent would have to be reserved for compact waste generated in nonhost party states.

TCEQ would have to correct for radioactive decay in determining licensed disposal curie capacity in a compact facility.

Surcharge for disposal of nonparty compact waste. The bill would reduce the surcharge assessed by TCEQ for the disposal of nonparty compact waste at the compact facility from 20 percent to 5 percent of the total contracted rate negotiated between the compact waste disposal facility license holder and the nonparty compact waste generator.

Limitation on nonparty compact waste. The compact waste disposal facility license holder could accept nonparty compact waste at the facility only if:

- the waste was authorized by the Texas Low-Level Radioactive Waste Disposal Compact Commission; and
- the facility had not less than three years' worth of constructed capacity based on the average amount of party state compact waste disposed in the facility in the preceding five years.

If the facility did not have sufficient constructed capacity, to be permitted to accept nonparty compact waste the compact waste disposal facility license holder would have to add constructed capacity to meet the requirements or file and have approved by TCEQ an acceptable bond conditioned on the construction of additional, sufficient capacity.

If a utility operating a nuclear electric generation facility in a party state had notified the U.S. Nuclear Regulatory Commission that the facility would be decommissioned, and the time-phased decommissioning schedule and the post-shutdown decommissioning activities report indicated that low-level radioactive waste was to be disposed of at the compact facility, the compact waste disposal facility license holder would have to have constructed adequate disposal capacity at the time of the disposal of waste from the decommissioning.

The compact waste disposal facility license holder would have to obtain an amendment to the facility operating license to increase the allowable curie capacity by two million curies when the facility had reached 80 percent of the total curies for which it was licensed.

Contracts for nonparty compact waste disposal. The bill would require rates and contract terms negotiated between the compact waste disposal facility license holder and nonparty compact waste generators to be reviewed periodically by TCEQ to ensure that the rates and terms did not have long-term, adverse effects on the cumulative surcharges paid to Texas or the county in which the disposal facility was located.

State fee. Under the bill, the compact waste disposal facility license holder no longer would have to transfer quarterly to general revenue 5 percent of the gross receipts from compact waste received at the facility.

Waste disposal fee comparison. The compact waste disposal facility license holder would have to conduct an annual comparison of party state and nonparty state compact waste disposal fees that compared the average party state disposal fee with the average nonparty state disposal fee.

If the average party state disposal fee exceeded the average nonparty state disposal fee, the compact waste disposal facility license holder would have to issue a rebate for the preceding year's fees to the party state generators in an amount sufficient to reduce the average party state disposal fee after the rebate to $1 less than the average nonparty state disposal fee.

The compact waste disposal facility license holder would have to allocate the rebate according to the fractional amount of the total compact waste disposal fees paid by each generator based on the preceding year's records.

No more than once per year, on written request of a utility operating a nuclear electric generation facility in a party state, the compact waste disposal facility license holder would have to:

- retain an independent auditor to evaluate the computation of the average compact waste disposal fee and rebate; and
- within 30 days of receiving the final report, make a copy available to the requesting utility, the governor, the lieutenant governor, the House speaker, and legislative committees with appropriate jurisdiction.

Other provisions. The bill would repeal provisions related to volume reduction requirements of nonparty compact waste, containerization of Class A low-level radioactive waste, and waste disposal fees in contracts and for disposal of nonparty compact waste.

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 Legislative Budget Board, the bill would result in a negative impact of $798,000 to general revenue related funds and a loss of about $2.3 million to the Environmental Radiation and Perpetual Care account through fiscal 2022-23.

SUBJECT: Making certain costs ineligible for the historic preservation tax credit

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Meyer, Thierry, Button, Cole, Guerra, Murphy, Noble, Rodriguez, Sanford, Shine

1 nay — Martinez Fischer

WITNESSES: For — (*Registered, but did not testify*: Wayne Hamilton, Stonehenge Capital)

Against — Erika Ragsdale, City of San Antonio and Alameda Theater Conservancy; Patrick Kennedy, Texas Research and Technology Foundation; William Sutherland; (*Registered, but did not testify*: Dorothy Ann Compton)

On — Vaughn Aldredge, Texas Historical Commission; (*Registered, but did not testify*: Shannon Brandt and Tetyana Melnyk, Comptroller of Public Accounts)

BACKGROUND: Tax Code ch. 171, subch. S governs the franchise tax credit for eligible costs and expenses incurred in the rehabilitation of certified historic structures.

Under sec. 171.901, "eligible costs and expenses" include qualified rehabilitation expenditures, as defined by the Internal Revenue Code, and expenses incurred by a nonprofit corporation exempt from federal income tax and state franchise tax or by an institution of higher education or university system.

DIGEST: CSHB 3777 would make ineligible for the franchise tax credit for the rehabilitation of certified historic structures the expenditures made by a nonprofit corporation, institution of higher education, or university system to rehabilitate a structure leased to a tax-exempt entity in a disqualified lease, as such term is defined by the Internal Revenue Code.

The bill would take effect January 1, 2022, and apply only to costs and expenses incurred on or after that date.

SUPPORTERS SAY:

CSHB 3777 would close a loophole that allows broad use of the historic preservation tax credit by excluding certain expenses from the credit. The credit was initially created by the Legislature for the private sector, but was later expanded to include use by certain nonprofit organizations. This has led to inappropriate use of the franchise tax credit by taxing entities such as school districts and local governments. In order to protect this important tool, there needs to be clear separation between the private and public sectors.

CRITICS SAY:

CSHB 3777 would limit the ability of tax-exempt entities, including nonprofits and school districts, from using the historic preservation tax credit to rehabilitate historic buildings. Without being able to use the credit for certain expenses, a rehabilitation project could become cost prohibitive and tax-exempt entities would not be able to preserve the history and culture of Texas communities.

NOTES:

According to the fiscal note, the bill would increase general revenue related funds by about $7.6 million and the Property Tax Relief Fund by $4.9 million in fiscal 2022-23. A gain to the Property Tax Relief Fund would result in an equal amount of savings to general revenue for funding the Foundation School Program.

SUBJECT: Establishing TWC reimbursement rates for certain child-care providers

COMMITTEE: International Relations and Economic Development — committee substitute recommended

VOTE: 6 ayes — Button, C. Morales, Beckley, C. Bell, Metcalf, Ordaz Perez

0 nays

3 absent — Canales, Hunter, Larson

WITNESSES: For — Charles Cohn, Angels Care & Learning Center; Melanie Rubin, North Texas Early Education Alliance; Sarah Baray, Pre-K 4 SA; (*Registered, but did not testify*: Lyn Lucas, Camp Fire First Texas; Marnie Glaser, Child Care Associates; Mandi Kimball, Children At Risk; Christine Wright, City of San Antonio; Tom Hedrick, Dillon Joyce Ltd; Libby McCabe, Early Matters and The Commit Partnership; Sandy Dochen, Early Matters Greater Austin; David Feigen, Texans Care for Children; Kimberly Kofron, Texas Association for the Education of Young Children; Stephanie Retherford, Texas Licensed Child Care Association; Jennifer Lucy, TexProtects; Dana Harris, The Greater Austin Chamber of Commerce; Ashley Harris, United Ways of Texas; Brooke Freeland)

Against — None

On — Reagan Miller, Texas Workforce Commission

BACKGROUND: Government Code sec. 2308.315 requires local workforce development boards to establish graduated reimbursement rates for child care based on the Texas Workforce Commission's Rising Star Program. Some have suggested that more child-care providers might participate in the subsidization program if reimbursement rates were adjusted for factors such as the age groupings of children and child-to-caregiver ratios.

DIGEST: CSHB 1695 would require each local workforce development board to establish and implement graduated reimbursement rates for child-care

providers participating in the Texas Workforce Commission's (TWC) subsidized child-care program that aligned TWC's age groupings with the child-to-caregiver ratios and group sizes adopted by the Health and Human Services Commission.

The graduated rates would have to provide the highest reimbursement rate to child-care providers that provided care to children in the age group with the lowest child-to-caregiver ratio. TWC would have to supply any demographic data needed by a local board to establish the rates.

The bill would require TWC to examine and implement strategies to address the increased costs a Texas Rising Star Program provider with a four-star or three-star rating would incur to provide care to infants and toddlers due to low child-to-caregiver ratios for children in those age groups.

Each local workforce development board would have to establish the child-care reimbursement rates required by the bill not later than December 1, 2023.

The bill would take effect September 1, 2021.

SUBJECT: Granting a 99-year lease to subsurface rights of certain state property

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Deshotel, Leman, Biedermann, Burrows, Romero, Rosenthal, Spiller, Thierry

1 nay — Craddick

WITNESSES: For — Wade Cooper, Capital Metropolitan Transportation Authority; (*Registered, but did not testify*: Dewitt Peart, Downtown Austin Alliance; Ray Sullivan, HNTB; Geoffrey Tahuahua, Real Estate Council of Austin; Dana Harris, The Greater Austin Chamber of Commerce; Susana Carranza; Idona Griffith; Linda Guy; Vanessa MacDougal; Gregg Vunderink)

Against — None

On — (*Registered, but did not testify*: Peter Mullan, Capital Metro; Brian Buchanan, HDR, Inc)

BACKGROUND: In 1913, the Texas Legislature granted the City of Austin a 99-year lease on several properties, which was extended for another 99 years beginning in 2016.

It has been noted that the lease does not explicitly grant subsurface rights to these properties, which would be critical to ensuring proper ventilation and access to an underground station planned for the light rail program under the Capital Metropolitan Transportation Authority recently authorized by Austin voters.

DIGEST: CSHB 3893 would cede and grant to the Capital Metropolitan Transportation Authority (Cap Metro) for a period of 99 years a lease of all the subsurface strata below the surface of certain property, including Republic and Brush squares, and the streets abutting such property to the center of the streets. Cap Metro could use the subsurface of such property for public transportation, a subway or underground railway station, tunnel,

terminal, and other transportation facilities, including for commercial and public amenity purposes. The bill would authorize Cap Metro to build, operate, and maintain transportation facilities for the specified purposes in any location and at any depth below the surface of the property.

The bill also would grant to Cap Metro specified easements for 99 years on the surface of the property related to the construction of transportation facilities and surface public amenities, light and noise regulations, and the installation and maintenance of utility infrastructure. Non-use of an easement or other right would not constitute abandonment or surrender and would not preclude the use of the easement or right by Cap Metro at any time.

Cap Metro would be the sole and exclusive owner of, and the state would waive any lien rights to, all facilities and amenities built or installed under the bill's provisions. Cap Metro would have the right at any time or at various times to assign, encumber, hypothecate, mortgage, or pledge any right, title, or interest granted to it under the bill, and would be able to grant subleases, easements and licenses related to the property related to the development, operation, and maintenance of the relevant facilities or surface amenities.

The state's current lease of the property to the City of Austin would be explicitly limited by the bill to the property's surface, and would be subject and subordinate to the rights and interests granted to Cap Metro by the bill provided that such rights and interests were exercised so as to reasonably accommodate the public uses authorized by the lease to the city. The bill also would specify that the state would not part with any title, color of title, or interest which it currently owns, except as granted by the bill.

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

SUBJECT: Requiring live streaming of voted ballots, posting of a peace officer

COMMITTEE: Elections — committee substitute recommended

VOTE: 7 ayes — Cain, Bucy, Clardy, Fierro, Jetton, Schofield, Swanson

1 nay — J. González

1 absent — Beckley

WITNESSES: For — Gerald Welty, Convention of States; Brandon Moore, SREC Election Integrity Committee; Cindi Castilla, Texas Eagle Forum; Robert L. Green, Travis Co. Republican Party Election Integrity Committee; Laura Pressley, True Texas Elections LLC; Marcia Strickler, Wilco We Thee People; David Carter; Andrew Eller; Bill Sargent; (*Registered, but did not testify*: Molly White, Conservative Republicans of Texas; Alan Vera, Harris County Republican Party Ballot Security Committee; Ruth York, Tea Party Patriots of Eastland County and Texas Family Defense Committee; Scott O'Grady, Texans for Election Integrity; Beth Biesel and Deana Johnston, Texas Eagle Forum; Tom Glass, Texas Election Integrity; Donald Garner, Texas Faith and Freedom Coalition; Chad Ennis, Texas Public Policy Foundation; and 27 individuals)

Against — Rene Perez, Libertarian Party of Texas; (*Registered, but did not testify*: Joanne Richards, Common Ground for Texans; Heather Hawthorne, County and District Clerks Association of Texas; Daniel Collins, El Paso County; Leonard Aguilar, Texas AFL-CIO; Jen Ramos, Texas Democratic Party; Stephanie Gharakhanian, Workers Defense Action Fund; David Albert; Charlie Bonner; John Gatej; Sarah Murphy; David Nielsen)

On — Jennifer Anderson, Texas Association of Elections Administrators; Christina Adkins, Texas Secretary of State; (*Registered, but did not testify*: Susan Schultz, League of Women Voters of Texas)

DIGEST: CSHB 3276 would require a general custodian of election records to implement a video surveillance system that retained a record of all areas

containing ballots voted from the time the polls closed or the time the last voter had voted, whichever was later, until the canvass of precinct election returns. The video recorded would be a precinct election record.

The general custodian of election records would have to provide a live video stream of any election activity recorded on the internet website of the authority administering the election. If ballots were moved from one location to another, the live video stream of the original location would have to continue until the transfer was completed.

The secretary of state would have to adopt rules to implement the provisions related to the video recording of counting locations.

The bill also would require the general custodian of election records to post a licensed peace officer to ensure the security of ballot boxes containing voted ballots throughout the recorded period described by the bill, rather than the period of tabulation at the central counting station.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 3276 would increase the transparency of elections in Texas and increase voter confidence by requiring a live video stream of ballots from the time of voting to tabulation. This also would help resolve factual disputes regarding the handling of ballots should legal disputes arise.

While the bill could impose minor technology costs on small counties, these counties could seek the assistance of the secretary of state's office or use funds appropriated under the Help America Vote Act to implement the bill's provisions. In addition, many smaller counties may already possess live streaming and recording capabilities due to challenges brought on by the COVID-19 pandemic.

CRITICS SAY:

CSHB 3276 would impose an unfunded mandate that could create significant challenges for smaller counties. By requiring extensive hours of continuous live video streaming and recording, the bill would force counties to acquire expensive technology and IT support. The bill also could strain local budgets and police departments by requiring the posting of a peace officer by ballot boxes for an extended period.

SUBJECT: Changing frequency of state agency reports submitted to the Legislature

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

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

Against — None

BACKGROUND: Government Code sec. 2052.0021 establishes that state agency reports required by law may be made available to members of the Legislature.

Concerns have been raised that indefinite reporting requirements are unreasonable and impose an administrative burden on state agencies.

DIGEST: CSHB 1488 would exempt a state agency with a requirement to submit a report to the Legislature for an indefinite period from having to submit such a report after the 10th anniversary of the date the agency first submitted the report. The agency would be required to include the last required reporting date for the agency in each report to the Legislature.

The bill would take effect September 1, 2021.

SUBJECT: Establishing requirements for certain residential mortgage loans

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 8 ayes — Anchia, Parker, Capriglione, Muñoz, Perez, Rogers, Stephenson, Vo

1 nay — Slawson

WITNESSES: For —Trish McAllister, Texas Access to Justice Commission; John Fleming, Texas Mortgage Bankers Association; Veronica Carbajal, Texas RioGrande Legal Aid, Inc.; Humberto Hernandez; (*Registered, but did not testify*: Ernest Garcia, Department of Savings and Mortgage Lending; Stephen Scurlock, Independent Bankers Association of Texas; Celeste Embrey, Texas Bankers Association; Laura Matz, Texas Community Associate Advocates)

Against — None

BACKGROUND: Finance Code sec. 156.202 governs exemptions from residential mortgage loan company licenses and registration requirements. The following entities are exempt from certain requirements:

- a nonprofit organization;
- a mortgage banker registered under the Mortgage Bankers and Residential Mortgage Loan Originator License Act;
- any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and
- an entity that is a depository institution or a subsidiary of a depository institution that is owned and controlled by the depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.

Concerns have been raised about lack of regulatory scrutiny over wrap mortgages, which are legal mortgage products that often are used by sellers to finance the sale of a property already subject to an existing mortgage lien. Some have called for wrap mortgages to be regulated similar to other mortgage loan products.

DIGEST:

CSHB 216 would prohibit the origination of a wrap mortgage loan on residential property by a person who was not licensed or registered to make residential mortgage loans or was exempt from licensing or registration as provided in the bill. The bill would establish licensing and registration requirements for wrap mortgage lenders, loan financing provisions and fiduciary duties owed to wrap borrowers, and authorize the Savings and Mortgage Lending Commissioner to enforce and investigate violations and impose a penalty.

Wrap mortgage loan. Under the bill, a wrap mortgage loan would mean a residential mortgage loan made to finance the purchase of residential real estate that would continue to be subject to an unreleased lien that was attached to the residential real estate before the loan was made and secured a debt incurred by a person other than the wrap borrower that was not paid off at the time the loan was made. The wrap borrower would be obligated to the wrap lender for payment of a debt the principal amount of which included the outstanding balance of the debt and any remaining amount of the purchase price financed by the wrap lender.

License or registration requirements. A person would be prohibited from originating or making a wrap mortgage loan unless the person was licensed or registered to originate or make residential mortgage loans under the Residential Mortgage Loan Company Licensing and Registration Act, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, or statutory provisions regulating consumer loans, or the person was exempt from licensing or registration as provided under those laws.

Transaction requirements, remedies. On or before the seventh day before the wrap mortgage loan was entered into, a wrap lender would be required to provide the wrap borrower a written disclosure statement that:

- contained the information required for a written disclosure statement for the conveyance of residential property encumbered by a lien; and
- included a statement that encouraged the buyer to consider purchasing property insurance to protect their interests because insurance maintained by the seller, lender, or other person who was not the buyer may not provide coverage to the buyer in the event of loss or liability.

The bill would require the disclosure statement to be dated and signed by the wrap borrower on receipt. The Finance Commission of Texas by rule would have to adopt a model disclosure statement. If the negotiations that preceded the execution of the wrap mortgage loan agreement were conducted primarily in a language other than English, the lender would have to provide the borrower with the disclosure statement in that language.

Right of rescission. The bill would establish provisions relating to a wrap borrower's option to rescind the wrap mortgage loan agreement and any related purchase agreement or other agreement related to the loan transaction, with different procedures depending on whether the wrap lender provided the required disclosure statement before closing or failed to do so. If a wrap lender failed to timely provide the required disclosure statement, the limitations period applicable to certain causes of action of the wrap borrower against the wrap lender in connection with the loan transaction would be tolled until the 120th day after the date the required disclosure statement was provided.

By the 30th day after the date the wrap borrower provided notice of rescission, the wrap lender would be required to return to the wrap borrower:

- all principal and interest payments made by the wrap borrower on the wrap mortgage loan;
- any money or property given as earnest money, a down payment, or otherwise in connection with the wrap mortgage loan or related purchase transactions; and

- any escrow amounts for the wrap mortgage loan or related purchase transaction.

On the date on which all of the returned money or property given as earnest money was received by the wrap borrower, the borrower would be required to convey to the wrap lender or the lender's designee the residential real estate. The wrap borrower would have to surrender possession of the residential real estate by the 30th day after the date of their receipt of the money or property returned.

The wrap lender could avoid rescission if by the 30th day after the date of receipt of notice of rescission the wrap lender:

- paid the outstanding balance due on any debt incurred by a person other than the wrap borrower that was not paid off at the time the loan was made;
- paid any due and unpaid taxes or other government assessment on the residential real estate made to finance the purchase of residential real estate that was subject to an unreleased lien;
- paid to the wrap borrower as damages for noncompliance $1,000 and any reasonable attorney's fees incurred by the wrap borrower; and
- provided to the wrap borrower evidence of compliance.

A lien that secured a wrap mortgage loan would be voided unless the wrap mortgage loan and the conveyance of the residential real estate that secured the loan were closed by an attorney or a title company. The bill would authorize a wrap borrower to bring an action to:

- obtain declaratory or injunctive relief to enforce the bill's wrap mortgage loan transaction requirements;
- recover any actual damages suffered by the wrap borrower as a result of a violation of those requirements; or
- obtain other remedies available under the bill's provisions related to transaction requirements and remedies or in an action under the Deceptive Trade Practices-Consumer Protection Act as otherwise authorized by the bill's provisions.

A wrap borrower who prevailed in such an action could recover court costs and reasonable attorney's fees.

The bill would authorize the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with the bill's provisions related to transaction requirements and remedies.

Duties owed a wrap borrower. A person who collected or received a payment from a wrap borrower under the terms of a wrap mortgage loan would hold the money in trust for the benefit of the borrower and owe a fiduciary duty to the borrower to use the payment to satisfy the following:

- the obligee's obligations under each debt incurred by a person other than the wrap borrower that was not paid off at the time the loan was made; and
- the payment of taxes and insurance for which the wrap lender had received any payments from the wrap borrower.

Borrower's right to deduct. The wrap borrower, without taking any judicial action, could deduct from any amount owed to the wrap lender under the terms of the wrap mortgage loan for the purchase of residential real estate to be used as the wrap borrower's residence:

- the amount of any payment made by the wrap borrower to an obligee of a debt incurred by a person other than the wrap borrower that had not been paid off at the time the loan was made, if that payment was made to cure a default by the wrap lender caused by the lender's failure to make payments for which the lender was responsible under the terms of the wrap mortgage loan; or
- any other amount for which the wrap lender was liable to the wrap borrower under the terms of the wrap mortgage loan.

Enforcement of requirements. The bill would authorize the savings and mortgage lending commissioner to conduct an inspection of a wrap lender registered under the Residential Mortgage Loan Servicer Registration Act as the commissioner decided was necessary to determine whether the wrap lender had complied with that act and applicable rules. The

commissioner could share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

At any time, the commissioner could, for reasonable cause, investigate a wrap lender to determine compliance. An undercover or covert investigation could be conducted only if the commissioner determined that the investigation was necessary to prevent immediate harm and to carry out the purposes of the Residential Mortgage Loan Servicer Registration Act.

The bill would require the finance commissioner by rule to provide guidelines to govern an inspection or investigation including rules to determine the information and records of the wrap lender to which the commissioner could demand access during an inspection or investigation and to establish what constituted reasonable cause for an investigation.

Information obtained by the commissioner during an inspection or investigation would be confidential unless disclosure of the information was permitted or required by other law. The commissioner could share such information with a state or federal agency, but only if the commissioner determined there was a valid reason to do so.

The bill would provide for reimbursement expenses for each examiner for an on-site examination or inspection under specified circumstances and require the finance commission by rule to set the maximum amount for reimbursement.

During an investigation, the commissioner could issue a subpoena addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. Persons who disobeyed a subpoena or refused to testify in connection with an investigation could, on petitioning by the commissioner, be ordered by a district court in Travis County to obey the subpoena, testify, or product documents related to the matter.

Cease and desist orders. If the commissioner had reasonable cause to believe that a wrap lender or wrap mortgage loan originator had violated or was about to commit a violation of the bill's provisions, the

commissioner could issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance.

The cease and desist order would have to contain a reasonably detailed statement of the facts on which the order was made. If the person against whom the order was made requested a hearing, the commissioner would be required to set and give notice of a hearing before the commissioner or a hearings officer under the Administrative Procedure Act. The commissioner by order could find a violation had occurred or not occurred based on the hearing officer's findings of fact, conclusions of law, and recommendations. If a hearing was not requested on or before the 30th day after the date on which an order was made, the order would be considered final and not appealable.

After giving notice and an opportunity for a hearing, the commissioner could impose against a person who violated a cease and desist order an administrative penalty of not more than $1,000 for each day of the violation. The bill would authorize the commissioner, in addition to any other remedy provided by law, to institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond would not be required of the commissioner with respect to injunctive relief granted under the bill's provisions.

Exemptions. The bill would not apply to a wrap mortgage loan made by or on behalf of an owner of residential real estate on which a dwelling had not been constructed under certain conditions and would not apply to a wrap mortgage loan for a sale of residential real property that was the wrap lender's homestead. Under the bill, the following would be exempt:

- a federally insured bank, savings bank, savings and loan association, Farm Credit System institution, or credit union or a subsidiary of such an entity;
- the state, an instrumentality of the state, or an employee of such an entity who was acting within the scope of the person's employment; and
- an owner of residential real estate who did not in any 12-consecutive-month period make, or contract with another person to

make, more than five wrap mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage was secured.

For the purposes of granting certain exemptions to mortgage regulations as specified in the bill, two or more owners of residential real estate or a dwelling, as applicable, would be considered a single owner for the purpose of computing the number of mortgage loans made within any 12-consecutive-month period if the owners were affiliated or if any of the owners had substantially common ownership, as determined by the savings and mortgage lending commissioner.

The bill would take effect January 1, 2022.

SUBJECT: Prohibiting construction of assisted living facilities in certain floodplains

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Frank, Hinojosa, Hull, Klick, Meza, Neave, Noble

0 nays

2 absent — Rose, Shaheen

WITNESSES: For — (*Registered, but did not testify*: Alexie Swirsky; Tim Morstad, AARP; Adam Haynes, Conference of Urban Counties; Ender Reed, Harris County Commissioners Court; James Lee, Legacy Community Health; Joshua Houston, Texas Impact; Julie Wheeler, Travis County Commissioners Court)

Against — Carmen Tilton, Texas Assisted Living Association

On — Diana Conces, Health and Human Services Commission

BACKGROUND: In recent years, flood events in some parts of Texas have necessitated the evacuation or rescue of a number of assisted living facility residents, risking the safety of Texas' vulnerable seniors and of the first responders tasked with the rescue efforts. Some have called for a prohibition on construction of assisted living facilities in certain areas prone to flooding.

DIGEST: CSHB 1681 would require the Health and Human Services Commission (HHSC) executive commissioner to by rule prohibit the construction of an assisted living facility within a 500-year floodplain if the facility was located in a county with a population of 3.3 million or more (Harris County), was owned or operated by a commercial entity, and had two or more residents.

The bill would define "500-year floodplain" as an area that was subject to inundation by a 500-year flood, meaning a flood with a 0.2 percent or greater chance of occurring in any given year, as determined from maps or other data from certain agencies.

The bill would take effect September 1, 2021.

SUBJECT: Taxing e-cigarettes and alternative nicotine products; reducing other taxes

COMMITTEE: Ways and Means — committee substitute recommended

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

0 nays

WITNESSES: For — Jay Maguire, Texas Vapor Coalition; (*Registered, but did not testify*: Matt Burgin, Texas Food and Fuel Association)

Against —Charlotte Owen, American Vaper Manufacturers Association; James Hubbard, SFATA; Suzi Kennon, Texas PTA; Micah Sanchez; (*Registered, but did not testify*: Joel Romo, American Heart Association; Troy Alexander, Texas Medical Association; Betty Hubbard; Kellen Kruk)

On — Tom Currah, Comptroller of Public Accounts; Maria Monge, Texas Medical Association, Texas Pediatric Society, and Texas Public Health Coalition; Dale Craymer, Texas Taxpayers and Research Association; Steve Kelder, University of Texas Health Science Center at Houston, School of Public Health; (*Registered, but did not testify*: Shannon Brandt and Tetyana Melnyk, Comptroller of Public Accounts; Mia McCord, Texas Conservative Coalition)

DIGEST: CSHB 211 would impose additional sales and use taxes on e-cigarette vapor products and alternative nicotine products and would reduce by half the taxes imposed on modified risk tobacco products.

E-cigarette vapor product tax. The bill would impose sales and use taxes of 7 cents for each milliliter of a vapor product sold or used in the state.

"Vapor product" would mean a consumable nicotine liquid solution or other material containing nicotine suitable for use in an e-cigarette.

Alternative nicotine product tax. The bill would impose sales and use taxes of $1.22 for each ounce of an alternative nicotine produce sold or used in the state. The computation of such taxes would be based on the net weight of the product as listed by the manufacturer.

"Alternative nicotine product" would mean a noncombustible product containing nicotine, but not containing tobacco leaf, that was intended for human consumption, whether chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. The term would not include an e-cigarette, vapor product, drug or device regulated by the U.S. Food and Drug Administration, or tobacco product.

Administration of taxes. The taxes imposed by this bill would be in addition to the state sales and use taxes and would be administered, imposed, collected, and enforced in the same manner as those existing taxes.

The comptroller would deposit the proceeds of the taxes in the general revenue fund.

Reports. A person required to collect or pay a tax imposed by the bill would have to file with the comptroller a report stating the amount of products sold or used, the amount acquired by a purchaser who did not pay use tax to a retailer, the amount of taxes due, and any other information required by the comptroller. The report would be due on the same date the tax payment for that period was due.

Records. The person required to collect or pay a tax and file a tax report would have to keep a complete record of the amount of products sold or used in the state, the amount of products purchased, taxes collected, and any other information required by the comptroller.

Modified risk tobacco product tax reduction. The bill would reduce by one-half the rates of taxes imposed on a federally approved modified risk tobacco product, including cigarette, cigar, and tobacco product taxes and taxes under this bill.

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

SUPPORTERS SAY:

CSHB 211 would impose additional sales and use taxes on e-cigarette vapor products to disincentivize customers, especially young Texans, from buying harmful products. The popularity of e-cigarettes among the youth has skyrocketed in recent years, leading to higher rates of nicotine addiction and harming brain development. The e-cigarette industry has not been taxed or regulated like the traditional cigarette industry, even though e-cigarettes may contain even higher levels of nicotine and are often marketed to youth. The bill would impose a fair tax on e-cigarette products based on their associated risks that would be in line with rates recently imposed by other states.

CSHB 211 also would clarify the tax rate on alternative nicotine products that contain nicotine but do not contain tobacco leaf. The tax rate on those products would follow the rates on similarly packaged tobacco products. By reducing taxes imposed on modified risk tobacco products, the bill would encourage cigarette users to transition to less harmful products and incentivize the market to produce more of them. The products receive designation by the federal government by proving that they significantly reduce harm and risk of tobacco-related disease and benefit the health of the population.

While some may be concerned that the tax rates on e-cigarettes under the bill would be too high or not high enough, CSHB 211 would establish effective and fair rates in the middle ground.

CRITICS SAY:

CSHB 211 would impose burdensome excise taxes on e-cigarette vapor products. Many people use e-cigarettes, vape pens, or similar products to transition away from traditional cigarettes by gradually reducing their nicotine intake. E-cigarette taxes would increase costs for customers and eliminate cost or health savings they receive for choosing less harmful products over smoking traditional tobacco products like cigarettes. This would be burdensome to Texas businesses and punish adults trying to overcome a nicotine addiction.

OTHER CRITICS SAY:

CSHB 211 would not go far enough to tax harmful e-cigarette vapor products. The tax rate should be higher and more on par with taxes on traditional cigarettes to properly discourage use by young Texans. Further,

the bill would impose taxes per milliliter of product but would not take into account products that contain small amounts of liquid but high concentration of nicotine. The tax should be imposed by nicotine concentration or on the price, rather than amount or weight, to discourage the most harmful products and protect youths.

NOTES:

According to the fiscal note, the bill would cost about $41.7 million in general revenue related funds and about $5.6 million from the Property Tax Relief Fund in fiscal 2022-23, due primarily to the reduction in modified risk tobacco product tax rates. The loss to the Property Tax Relief Fund would have to be made up with an equal amount of general revenue to fund the Foundation School Program.

SUBJECT: Revising marine vessel project eligibility for TCEQ grant program

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Landgraf, Dominguez, Dean, Goodwin, Kacal, Kuempel, Morales Shaw, Morrison

0 nays

1 absent — Reynolds

WITNESSES: For — Jerry Young, Mustang Marine; (*Registered, but did not testify*: Bakeyah Nelson, Air Alliance Houston; Mike Meroney, BASF Corporation; Greg Macksood, Devon Energy; Cyrus Reed, Lone Star Chapter Sierra Club; William Stevens, Panhandle Producers and Royalty Owners Association; Adrian Shelley, Public Citizen; Mark Vickery, Texas Association of Manufacturers; Mark Vane, Texas Caterpillar Dealers Legislative Council; Sam Gammage, Texas Chemical Council; Shana Joyce, Texas Oil and Gas Association; Susana Carranza; Suzanne Mitchell)

Against — None

On — (*Registered, but did not testify*: Mike Wilson, TCEQ)

BACKGROUND: Health and Safety Code sec. 386.104 establishes eligibility requirements for the diesel emissions reduction incentive program, which is administered by the Texas Commission on Environmental Quality (TCEQ) and provides grants to eligible projects that reduce emissions from diesel sources in areas of the state that do not meet federal air quality standards.

Sec. 386.104(c-1) requires that for a proposed project involving a marine vessel or engine to be eligible for a grant, the vessel or engine must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county for a sufficient amount of time over the lifetime of

the project, as determined by TCEQ, to meet certain cost-effectiveness requirements.

TCEQ guidelines specify that at least 75 percent of a vessel or engine's annual use must occur in the bays adjacent to an eligible county or in the Texas Intracoastal Waterway for the vessel or engine to be eligible for the incentive program.

Concerns have been raised that the current TCEQ guideline for program eligibility is too restrictive. Interested parties have suggested that greater participation in the program could be achieved by establishing less restrictive parameters for obtaining grants for marine vessels or engines on marine vessels.

DIGEST:

CSHB 2136 would amend Health and Safety Code sec. 386.104 to require that in order to be eligible for a diesel emissions reduction incentive program grant, a marine vessel or engine had to be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county for a sufficient percentage of time, rather than a sufficient amount of time, as determined by the Texas Commission on Environmental Quality. The percentage determined by the commission could not be less than 55 percent.

The bill would take effect September 1, 2021.

SUBJECT: Transferring statute on filing fees and petitions in the Election Code

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Cain, Clardy, Jetton, Schofield, Swanson

1 nay — Bucy

3 absent — J. González, Beckley, Fierro

WITNESSES: For — (*Registered, but did not testify*: Joanne Richards, Common Ground for Texans; Gerald Welty, Convention of States; Alan Vera, Harris County Republican Party Ballot Security Committee; Glen Maxey, Texas Democratic Party; and six individuals)

Against —Rene Perez and Kate Prather, Libertarian Party of Texas; Joe Burnes; Eric Guerra; Billy Pierce; (*Registered, but did not testify*: seven individuals)

On — Keith Ingram, Texas Secretary of State; (*Registered, but did not testify*: Christina Adkins, Texas Secretary of State; Henry Bohnert)

BACKGROUND: Election Code sec. 141.041(a) specifies that in order to be eligible to be placed on the ballot for the general election for state and county offices, a candidate nominated by convention for a political party with or without a state organization must pay a filing fee, or submit a petition in lieu of a fee, to the secretary of state.

Ch. 181, subch. B contains the statutes governing the application for nomination for political parties with a state organization that nominate by convention.

Some have raised concerns that the placement of sec. 141.041 in the Election Code creates an inadvertent loophole that allows certain candidates to avoid paying filing fees.

DIGEST:

HB 1812 would transfer statutes related to filing fees and petitions for candidates nominated by convention from Election Code sec. 141.041 to ch. 181, subch. B and make certain conforming changes.

The bill would take effect September 1, 2021.

SUBJECT: Prohibiting the restriction of carrying firearms while using an easement

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 — Rick Briscoe, Open CarryTexas; Goong Chen; Jason Franks; Gary Zimmerman; (*Registered, but did not testify*: Tara Mica, National Rifle Association; Brian Hawthorne, Sheriffs Association of Texas; Marcia Strickler, Wilco We Thee People; and nine individuals)

Against — (*Registered, but did not testify*: Louis Wichers, Texas Gun Sense; Bergan Casey; Anne Hebert)

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

BACKGROUND: Concerns have been raised that some easement agreements have restricted the carrying of a firearm while using the easement, preventing landowners from transporting their firearms from their vehicles to their homes and affecting their ability to protect themselves, their property, and their loved ones.

DIGEST: CSHB 4346 would prohibit an instrument granting an access easement or appurtenant easement from restricting or prohibiting an easement holder or an easement holder's guest from possessing, carrying, or transporting a firearm or firearm parts, accessories, or ammunition while using the easement. The owner of a servient estate could not enforce a restrictive covenant in an instrument granting an easement on the estate that included such a restriction or prohibition.

The bill would take effect September 1, 2021, and would apply to an easement granted before, on, or after that date.

SUBJECT: Prohibiting certain convicted felons from serving as poll watchers

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Cain, Clardy, Jetton, Schofield, Swanson

4 nays — J. González, Beckley, Bucy, Fierro

WITNESSES: For — Alan Vera, Harris County Republican Party Ballot Security Committee; Ed Johnson; (*Registered, but did not testify*: Daniel Greer, Direct Action Texas; David Wylie, Republican Party of Texas; Shelia Franklin, True Texas Project; Russell Hayter; Frank Holman)

Against — Laura Pressley, Joshua Council and Texas Election Watcher Coalition; James Slattery, Texas Civil Rights Project; Lisa Nilsson; Marcia Strickler; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Robert L. Green, Travis County Republican Party Election Integrity Committee; Cyrus Reed, Lone Star Chapter Sierra Club; Glen Maxey, Texas Democratic Party; Stephanie Gharakhanian, Workers Defense Action Fund; Kathy Ford; Beth Maynard; Ruth York)

On — (*Registered, but did not testify*: Heather Hawthorne, County and District Clerks Association of Texas; Keith Ingram, Texas Secretary of State; Bradley Hodges; Michelle Mostert; Thomas Parkinson)

BACKGROUND: Elections Code sec. 33.035 makes a person convicted of an offense in connection with conduct directly attributable to an election ineligible to serve as a watcher in an election.

Sec. 33.006 requires certificates of appointment for election watchers to contain an affidavit executed by the appointee certifying that the appointee will meet certain requirements.

DIGEST: CSHB 463 would make a person finally convicted of a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) or a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) ineligible to serve as an election watcher.

The bill also would require that a verification that an appointee had not been finally convicted of a first-degree or second-degree felony or an offense in connection with conduct directly attributable to an election be included as part of the affidavit required of election watchers as part of a certificate of appointment.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 463 would strengthen election integrity and voter confidence in Texas by barring certain felons from acting as poll watchers. Because poll watchers perform a crucial public service, the public should be able to trust their character. The bill would not unfairly discriminate against a group of individuals but simply align requirements for poll watchers with those of other jobs requiring a high degree of public trust, such as police officers.

CRITICS SAY:

CSHB 463 would unfairly discriminate against a certain class of individuals and prevent them from working as poll watchers. Convicted felons who have served their time and meet other requirements regain their right to vote and should be able to serve as a poll watcher.

SUBJECT: Allowing legislators, prosecutors to omit home address from DLs

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

VOTE: 7 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Tinderholt

1 nay — Schaefer

1 absent — Patterson

WITNESSES: For — Gary McDonald, Dallas County District Attorney; (*Registered, but did not testify*: Philip Mack Furlow, 106th Judicial District Attorney; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Rick Briscoe, Open Carry Texas; Richard Bohnert; Thomas Parkinson)

Against — (*Registered, but did not testify*: Calvin Tillman; Al Zito)

BACKGROUND: Transportation Code sec. 521.1211 allows a peace officer to apply to the Department of Public Safety for the issuance of a driver's license that omits the officer's actual residence address and includes, as an alternative, an address that is in the city or county of the officer's residence or the county of the officer's place of employment.

If the status as a peace officer changes, the officer would have to apply for the issuance of a driver's license that includes the officer's actual residence address within 30 days of the status change.

DIGEST: HB 368 would allow a state legislator or a prosecutor to apply for a driver's license that omitted the legislator's or prosecutor's actual residence address and instead used certain alternative addresses. The Department of Public Safety would have to accept the address of an office as an alternative address for a state legislator or a prosecutor.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 368 would help state legislators and prosecutors keep themselves and their families safe from attacks and harassment occurring at their homes. Under current law, peace officers can apply for a driver's license using an alternative address that is not the address of the officer's home residence. Recent assaults and attempted assaults on public servants have demonstrated the need to take additional steps to protect the safety of state legislators and prosecutors. Given that these are visible members of their communities who are at increased risk of being harassed, or worse, by disgruntled members of the public, it would be appropriate to extend a privacy and security protection already afforded to peace officers to additional categories of public servants. Homes should be safe places for all Texans, regardless of occupation.

CRITICS SAY:

By extending the ability to omit home addresses from driver's licenses to state legislators and prosecutors, HB 368 would amount to being a perk offered to special classes of elected officials. This expansion would erode the spirit of current law, as its original intent was to assist law enforcement in protecting themselves and their families from harm. There also appears to be no limitation, as no penalty exists if an official fails to apply for a new license with the official's home address within 30 days of leaving office.

OTHER CRITICS SAY:

HB 368 could affect voting if the person's office address was in a different district than the person's home address, which is an issue some peace officers have reportedly faced. The bill should be changed to address such unintended consequences and ensure peace officers, prosecutors, and state legislators retained the ability to vote for elected officials representing the districts of their personal residences.

SUBJECT: Expanding performance and payment bond requirements to certain entities

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

WITNESSES: For — Sewall Cutler, Independent Electrical Contractors of Texas, Texas Masonry Council, and Texas Construction Association; Jennifer Fagan, Texas Construction Association; (*Registered, but did not testify*: CJ Tredway, Independent Electrical Contractors; Bill Kelly, Mayor's Office, City of Houston; Randy Cubriel, Nucor; Eric Woomer, Precast Concrete Manufacturers Association of Texas and Texas Crane Owners Association)

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

BACKGROUND: Government Code ch. 2253 governs public works performance and payment bonds. Under sec. 2253.021, a governmental entity that makes a public work contract with a prime contractor must require the contractor, before beginning the work, to execute performance and payment bonds for certain contracts.

Interested parties have noted that more private entities are leasing public property and constructing improvements, but that such entities are not currently under state law governing performance and payment bond requirements. It has been suggested that expanding the applicability of those laws to private entities would protect the right to payment for subcontractors and suppliers whose labor and materials are used to build improvements on leased public lands.

DIGEST: HB 1477 would expand the applicability of Government Code ch. 2253, governing performance and payment bond requirements, to a public work contract for work performed on public property leased by a nongovernmental entity.

A government entity that authorized a nongovernmental entity leasing public property from the governmental entity to contract with a prime contractor would have to require the contractor to execute performance and payment bonds for certain contracts.

The bill would take effect September 1, 2021, and would apply only to a public work contract or construction project for which an entity first advertised or requested bids, proposals, offers, or qualifications on or after that date.

SUBJECT: Allowing certain persons to be present in certain election-related locations

COMMITTEE: Elections — committee substitute recommended

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

0 nays

WITNESSES: *March 11 public hearing:*
For — Heather Hawthorne, County and District Clerks Association of Texas; Alan Vera, Harris County Republican Party Ballot Security Committee; Ed Johnson; Lisa Nilsson; Eric Opiela; (*Registered, but did not testify*: Daniel Greer, Direct Action Texas; David Wylie, Republican Party of Texas; Joey Bennett, Secure Democracy; Shelia Franklin, True Texas Project; Russell Hayter; Frank Holman)

Against — Laura Pressley, Joshua Council and Texas Election Watcher Coalition; Marcia Strickler; (*Registered, but did not testify*: Kathy Ford; Beth Maynard; Ruth York)

On — Chris Davis, Texas Association of Elections Administrators; Glen Maxey, Texas Democratic Party; Keith Ingram, Texas Secretary of State; Robert L. Green, Travis County Republican Party Election Integrity Committee; Bradley Hodges; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Ender Reed, Harris County Commissioners Court; Michelle Mostert; Thomas Parkinson)

BACKGROUND: Election Code sec. 61.001 specifies that a person may not be in a polling place from the time the presiding judge arrives there on election day to make the preliminary arrangements until the precinct returns have been certified and the election records have been assembled for distribution following the election.

Sec. 87.026 specifies that a person may not be in the meeting place of an early voting ballot board during the time of the board's operation, except as otherwise permitted.

DIGEST:

CSHB 1128 would specify that certain persons could be lawfully present in a polling place, the meeting place of an early voting ballot board, or a central counting station during certain periods.

Polling places. During the time period described by Election Code sec. 61.001, certain persons could be lawfully present in a polling place, including:

- an election judge or clerk;
- a watcher;
- a state inspector;
- a person admitted to vote;
- a child under 18 years of age who was accompanying a parent who had been admitted to vote;
- a person providing authorized assistance to a voter;
- a special peace officer appointed by the presiding judge;
- the county chair of a political party conducting a primary election;
- a voting system technician;
- the county election officers, as necessary to perform tasks related to the administration of the election; or
- a person whose presence had been authorized by the presiding judge in accordance with the Election Code.

Early voting ballot board meeting places. Certain persons could be lawfully present in the meeting place of an early voting ballot board during the time of the board's operations, including:

- a presiding judge or member of the board;
- a watcher;
- a state inspector;
- a voting system technician;
- the county election officer, as necessary to perform tasks related to the administration of the election; or

- a person whose presence had been authorized by the presiding judge in accordance with the Election Code.

Central counting stations. A person could not be in a central counting station while ballots were being counting, unless the person was:

- a counting station manager, tabulation supervisor, assistant to the tabulation supervisor, presiding judge, or clerk;
- a watcher;
- a state inspector;
- a voting system technician;
- the county election officer, as necessary to perform tasks related to the administration of the election; or
- a person whose presence had been authorized by the counting station manager in accordance with the Election Code.

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 1128 would provide needed clarity to the Election Code regarding individuals permitted to be in a polling place, meeting place of an early voting ballot board, or central counting station during specified time periods. Currently, these permissions are spread across the Election Code, making it difficult to clearly ascertain who is allowed in a polling place, early voting ballot board meeting place, or central counting station. The bill would not duplicate these permissions, but simply consolidate them in statute for clarity.

CRITICS SAY:

CSHB 1128 would redundantly specify individuals permitted to be in certain election-related areas during certain time periods, as these individuals already are listed in the Election Code.

SUBJECT: Including military medical treatment facilities as Medicaid providers

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Frank, Hinojosa, Hull, Klick, Meza, Neave, Noble

0 nays

2 absent — Rose, Shaheen

WITNESSES: For — Juan Ayala and Clayton Perry, City of San Antonio; Jeff Fair, San Antonio Chamber of Commerce; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield of Texas; Allison Greer, CHCS; Christine Bryan, Clarity Child Guidance Center; James Lee, Legacy Community Health; Jordan Ghawi, Southwest Texas Regional Advisory Council; Laurie Vanhoose, Texas Association of Health Plans; Thomas Parkinson)

Against — None

On — Michelle Erwin, Health and Human Services Commission

BACKGROUND: Interested parties note that certain military medical treatment facilities and affiliated health care providers, such as Brooke Army Medical Center in San Antonio, are not considered Medicaid providers eligible for reimbursement for inpatient emergency services and certain related outpatient services.

DIGEST: HB 2365 would establish that a military medical treatment facility or a health care provider providing services at a military medical treatment facility would be considered a Medicaid provider eligible for reimbursement for inpatient emergency services and related outpatient services to the extent those services were not available from an enrolled Medicaid provider at the time the services were needed.

The bill would apply only to a military medical treatment facility located in the state that was verified as a Level 1 trauma center by the American College of Surgeons or an equivalent organization.

If a Medicaid recipient experienced an injury for which the recipient received inpatient emergency services from a military medical treatment facility that was a hospital, the Health and Human Services Commission could not impose a 30-day spell of illness limitation or other requirement that limited the period of time the recipient could receive those services.

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

The bill would take effect September 1, 2021.

SUBJECT: Allowing agreed orders for removal of a parent or caregiver from a home

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Neave, Swanson, Cook, Frank, Ramos, Talarico, Vasut, Wu

0 nays

1 absent — Leach

WITNESSES: For —Julia Hatcher, Texas Association of Family Defense Attorneys; William Morris, Texas Family Law Foundation; Travis Gates; (*Registered, but did not testify*: Judy Powell, Parent Guidance Center; Maggie Luna, Statewide Leadership Council; Amy Bresnen, Texas Family Law Foundation; Meagan Corser, Texas Home School Coalition; Andrew Brown, Texas Public Policy Foundation; Jason Vaughn, Texas Young Republicans; Kerrie Judice, TexProtects; Melissa Gates; Cynthia Gates; Raquel Gates; Ruth Grinestaff; Cassie Grinestaff; Thomas Parkinson)

Against — None

On — Marta Talbert, Department of Family and Protective Services

BACKGROUND: Sec. 262.1015 requires that if the Department of Family and Protective Services (DFPS) determines that child abuse has occurred and that the child would be protected in the child's home by the removal of the alleged perpetrator of the abuse, DFPS must file a petition for the removal of the alleged perpetrator rather than attempt to remove the child from the residence.

Family Code ch. 262, subch. B governs the procedures for suits by a governmental agency to remove children from their homes without prior notice and a hearing, requiring certain court findings before removal can be ordered. Subch. B also governs governmental agency suits filed after taking possession of a child in an emergency without a court order,

requiring that the court return a child at the initial hearing unless certain court findings are made.

Interested parties have suggested that even though current law allows for parent and caregiver removal by court order, a mechanism in family law is needed that would allow a parent or caregiver to voluntarily have themselves removed from a home in order to keep the child in the home, reducing the trauma often associated with the removal of a child.

DIGEST:

CSHB 2308 would allow an alleged perpetrator of child abuse or neglect to agree in writing to an order requiring the alleged perpetrator to leave the residence of the child. Such an agreement would be subject to the approval of the court and would be enforceable civilly or criminally, but not as a contract.

The agreed order could not be used against an alleged perpetrator as an admission of child abuse or neglect and would have to contain the following statement in boldface type and capital letters: "YOUR AGREEMENT TO THIS ORDER IS NOT AN ADMISSION OF CHILD ABUSE OR NEGLECT ON YOUR PART AND CANNOT BE USED AGAINST YOU AS AN ADMISSION OF CHILD ABUSE OR NEGLECT."

At any time, a person affected by an agreed order could request that the court terminate the order, and the court would be required to terminate the order if the court found the order was no longer needed.

Court findings. The bill would add to the findings a court would be required to make before ordering removal of a child without prior notice and a hearing or after taking possession of a child in an emergency without a court order the findings that:

- the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under the bill's provisions allowing an alleged perpetrator to agree to a removal order or under Family Code sec. 262.1015 or a protective order issued under applicable law; and
- placing the child with a caregiver under an authorized parental child safety placement agreement was offered but refused, was not

possible because there was no time to conduct the caregiver evaluation, or would pose an immediate danger to the physical health or safety of the child.

The bill would take effect September 1, 2021, and would apply only to a suit affecting the parent-child relationship filed on or after that date.

SUBJECT: Requiring state agencies to establish a state employee family leave pool

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 — Tyler Sheldon, Texas State Employees Union; Ray Hymel, Texas Public Employees Association; (*Registered, but did not testify*: Joe Hamill, AFSCME Texas Corrections; Kevin Stewart, American Association of University Women - Texas Chapter; Rene Lara, Texas AFL-CIO; Stephanie Gharakhanian, Workers Defense Action Fund)

Against — None

On — Rob Coleman, Texas Comptroller of Public Accounts

BACKGROUND: Government Code ch. 661, subch. A governs state employee sick leave pools.

Interested parties note that many state employees have family care needs that do not fall under the allowable uses for existing sick leave pools or the federal Family and Medical Leave Act of 1993.

DIGEST: CSHB 2063 would establish the state employee family leave program, allowing state employees to apply for leave time under a family leave pool.

Under the bill, the governing body of a state agency would have to, through the establishment of a program, allow an agency employee to voluntarily transfer sick or vacation leave earned by the employee to a family leave pool.

The executive of the state agency or another individual appointed by the governing body would administer the family leave pool. The governing body would have to adopt rules and prescribe procedures relating to the operation of the agency family leave pool.

Contribution. The bill would allow a state employee to contribute to the family leave pool one or more days of accrued sick or vacation leave. The pool administrator would have to credit the pool with the amount of time contributed by a state employee and deduct a corresponding amount of time from the employee's earned sick or vacation leave as if the employee had used the time for personal purposes.

The bill would specify procedures by which retiring state employees could designate accrued leave hours for donation to the pool.

Use of time. A state employee would be eligible to use time contributed to their state agency's family leave pool if the employee had exhausted the employee's eligible compensatory, discretionary, sick, and vacation leave because of:

- the birth of a child;
- the placement of a foster child or adoption of a child younger than 18 years of age;
- the placement of any person at least 18 years of age requiring guardianship;
- a serious illness to an immediate family member or the employee, including a pandemic-related illness;
- an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or
- a previous donation of time to the pool.

The bill would require state employees who applied to use time to care for certain persons to submit specified documentation.

Withdrawal. Under the bill, a state employee could request permission from the pool administrator to withdraw time from the family leave pool through specified procedures. If the administrator determined the state

employee was eligible, the administrator would have to approve the transfer of time from the pool to the employee and credit the time to the employee.

Limitation. A state employee could not withdraw time from the family leave pool in an amount that exceeded the lesser of:

- one-third of the total time in the pool; or
- 90 days.

The bill would require the pool administrator to determine the amount of time that an employee could withdraw from the pool.

Other provisions. A state employee absent while using time withdrawn from the family leave pool could use the time as earned sick leave. The employee would have to be treated for all purposes as if the employee was absent on earned sick leave.

The estate of a deceased state employee would not be entitled to payment for unused time withdrawn by the employee from the family leave pool.

The bill would take effect September 1, 2021.

SUBJECT: Commissioning a study of certain state retirement system reforms

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 9 ayes — Anchia, Parker, Capriglione, Muñoz, Perez, Rogers, Slawson, Stephenson, Vo

0 nays

WITNESSES: For — Rod Bordelon, Texas Public Policy Foundation; (*Registered, but did not testify*: Hope Osborn, Texas 2036)

Against — (*Registered, but did not testify*: Joe Hamill, AFSCME Texas Corrections and AFSCME Texas Retirees; Dena Donaldson, Texas AFT; Tyler Sheldon, Texas State Employees Union; Laura Atlas Kravitz, Texas State Teachers Association)

On — Ann Bishop, Texas Public Employees Association

BACKGROUND: Concerns have been raised about the roughly $15 billion unfunded liability in the Employees Retirement System of Texas. Some have called for a study to evaluate potential reforms designed to improve the financial health of the retirement system.

DIGEST: CSHB 4534 would require the Employees Retirement System of Texas (ERS) to conduct a study to evaluate potential reforms to improve the financial health of the retirement system.

The study would have to include the feasibility and anticipated financial impact of transitioning from providing retirement benefits to members of the system under a defined benefit plan to providing those benefits under:

- a defined contribution plan;
- a hybrid pension plan that combined elements of a defined contribution plan and a defined benefit plan;

- a cash balance pension plan that provided individual accounts for plan members; and
- another retirement plan commonly used by other states;

It also would have to consider adopting changes to the existing defined benefit plan that were designed to reduce the unfunded actuarial accrued liabilities of the system and achieve actuarial soundness, including:

- increasing the state contribution rate;
- changing the minimum age at which members were eligible to retire;
- changing the formula used to calculate annuities provided under the plan; and
- reducing the amount of benefits provided under the plan, including the potential of offering members the option to receive partial lump sum payments in lieu of a portion of the member's annuity in a manner that ensured the amount of the lump sum payment was less than the actuarial present value of the portion of the annuity forfeited by the member;

The study also would have to examine implementing a pension revenue enhancement plan under which a life insurance policy or other financial product or benefit was purchased under the plan for members and annuitants of ERS who were eligible for and elected to enroll in the plan.

Other states' plans. ERS would be required to review and evaluate the retirement plans and systems in other states for best practices and financial outcomes. The study would have to consider the overall performance of other states' plans based on the unfunded liability balances, if any, of those plans and the strengths and weaknesses of other states' plans in attracting and maintaining a competitive workforce.

Report. ERS could consult with anyone the system determined appropriate to conduct the study and prepare the required report, including outside experts and other state agencies, including the State Pension Review Board, the Legislative Budget Board, and the Texas Department of Insurance.

ERS would report the system's findings and recommendations to the governor, the lieutenant governor, the House speaker, and members of the Legislature by September 1, 2022. The bill's provisions would expire September 15, 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.