HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 05, 2021
87th Legislature, Number 49
The House convenes at 10 a.m.
Part One

Five bills are on the Major State Calendar and 41 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

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.

The following House committees were scheduled to meet today: Judiciary and Civil Jurisprudence; Land and Resource Management; Corrections; Public Health; Homeland Security and Public Safety; Pensions, Investments and Financial Services; and Licensing and Administrative Procedures.

Alma Allen
Chairman
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HOUSE RESEARCH ORGANIZATION
Daily Floor Report
Wednesday, May 05, 2021
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Part 1

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SUBJECT: Prohibiting an abortion after fetal heartbeat of unborn child is detected

COMMITTEE: Public Health — favorable, without amendment

VOTE: 6 ayes — Klick, Allison, Jetton, Oliverson, Price, Smith

4 nays — Campos, Coleman, Collier, Zwiener

1 absent — Guerra

SENATE VOTE: On final passage, March 30 — 19-12 (Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini)

WITNESSES: *On House companion bill, HB 1515:*
For — Shawn Hall Lecuona, Burning for Quote, Lecuona Law, PLLC, and Lecuona Life Ministries; Mary Smith, Concerned Women for America; Molly White, Conservative Republicans of Texas; Alexandra Rafferty and Chelsey Youman, Human Coalition Action; Mary Castle, Jonathan Covey, Gregory McCarthy, and Jonathan Saenz, Texas Values Action; Pat Fry; Paul Hale; Jill Oliver; Denise Seibert; (*Registered, but did not testify*: Abby Johnson, And Then There Were None; Nona Ellington, Operation Outcry; Jana Pinson, Pregnancy Center of the Coastal Bend; Jill Glover, Republican Party of Texas; Jon Ker, State Republican Executive Committee; Victoria Avelar, Melanie Salazar, and Sarah Zarr, Students For Life Action; Ruth York, Tea Party Patriots of Eastland County and Texas Family Defense Committee; Shannon Jaquette, Texas Catholic Conference of Bishops; Cindi Castilla, Texas Eagle Forum; Donald Garner, Texas Faith and Freedom Coalition; Ashley Leenerts, Jackson Milton, Katherine Pitcher, and John Seago, Texas Right to Life; Jason Vaughn, Texas Young Republicans; Manfred Wendt, Young Conservatives of Texas; and 33 individuals)

Against — Drucilla Tigner, ACLU of Texas; Blake Rocap, Avow; Rhea Shahane, Deeds Not Words and Texas Law Democrats; Kamyon Conner, Texas Equal Access Fund; and 9 individuals; (*Registered, but did not testify*: Jeff Haas and Bradley Pierce, Abolish Abortion Texas; Carl Dunn,

American College of Obstetricians and Gynecologists; Caroline Duble, Avow; Andrea Reyes, Deeds Not Words; Rosann Mariappuram, Jane's Due Process; Karen Munoz and Jorge Renaud, LatinoJustice; Amanda Williams, Lilith Fund; Alison Mohr Boleware, National Association of Social Workers - Texas Chapter; Christina Haarhoff, Not a Victim; Alejandro Garcia, Planned Parenthood Texas Votes; Diana Gomez, Progress Texas; CR Cali, Sermon in the Park; Sarah Moseley, Texas Cannabis Collective; Carisa Lopez and Jules Mandel, Texas Freedom Network; Michelle Anderson, The Afiya Center; Paul Brown, Watermark Community Church; and 78 individuals)

On — Peter Allison; Joseph Reynolds; (*Registered, but did not testify:* Phillip George, Grace Life Church of Dallas; Bruce Kendrick, Watermark Community Church; Sarah Allison; Vivian Koerner)

BACKGROUND: Health and Safety Code ch. 171 establishes certain regulations for abortions in Texas.

Health and Safety Code sec. 245.002 defines "abortion" as the act of using or prescribing an instrument, drug, medicine, or any other substance, device, or means with the intent to cause an unborn child's death. The term excludes birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

- save the life or preserve the health of an unborn child;
- remove a dead, unborn child whose death was caused by spontaneous abortion; or
- remove an ectopic pregnancy.

Sec. 171.002 defines "medical emergency" as a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

DIGEST: SB 8 would establish the Texas Heartbeat Act, which would prohibit a physician from performing an abortion on a woman who was pregnant with an unborn child who had a detectable fetal heartbeat. The bill would

require a physician, before an abortion was performed, to conduct a test to determine whether a fetal heartbeat was detected. The bill also would allow any person, other than a state or local government employee, to file a civil action against a physician or other person who performed, induced, and/or aided and abetted in performing or inducing an abortion.

Enforcement. The bill would transfer enforcement of Health and Safety Code ch. 171 from the Department of State Health Services to the Health and Human Services Commission. The bill would require the commission to enforce ch. 171, except for provisions relating to the detection of a fetal heartbeat, which would be enforced exclusively through private civil actions.

Definitions. Under the bill, "fetal heartbeat" would mean cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

"Unborn child" would mean a human fetus or embryo in any gestation stage from fertilization until birth.

Detection of fetal heartbeat. The bill would prohibit a physician from knowingly performing or inducing an abortion on a pregnant woman unless the physician had determined whether the woman's unborn child had a detectable fetal heartbeat. To determine whether there was a fetal heartbeat, the physician would have to conduct a test that was consistent with the physician's good faith and reasonable understanding of standard medical practice and appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

For the purpose of determining the presence of a fetal heartbeat, "standard medical practice" would include employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the woman's condition and her pregnancy.

In determining whether the woman's unborn child had a detectable fetal heartbeat, the physician would be required to record in the woman's medical record the unborn child's estimated gestational age, the method

used to estimate the gestational age, and the test used for detecting a fetal heartbeat, including the date, time, and results of the test.

Prohibited actions by physician. Under the bill, a physician could not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child or failed to perform a test to detect a fetal heartbeat. A physician would not violate this provision if the physician did not detect a fetal heartbeat while performing the required test.

Exceptions; records. The prohibited actions by a physician would not apply if a physician believed a medical emergency existed. A physician who performed or induced an abortion under a medical emergency would be required to make written notations in the pregnant woman's medical record of the physician's belief that a medical emergency necessitated the abortion and the medical condition that prevented compliance. A copy of the notations would have to be maintained in the physician's practice records.

Construction of detection of fetal heartbeat. Provisions relating to the detection of a fetal heartbeat would not create or recognize a right to abortion before a fetal heartbeat was detected. The bill could not be construed to:

- authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion was performed, induced, or attempted to be performed or induced in violation of the bill;
- wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including certain pre-*Roe v. Wade* regulations;
- restrict a political subdivision from regulating or prohibiting abortion in a manner at least as stringent as the laws of the state.

Limitations on public enforcement. No enforcement of provisions relating to the detection of a fetal heartbeat or of certain Penal Code provisions in response to violations of the bill could be taken or threatened by the state, a political subdivision, a district or county attorney, or an

executive or administrative officer or employee of the state or a political subdivision against any person, except as provided in the bill.

Civil action for certain violations. The bill would authorize any person, other than an officer or employee of a state or local governmental entity in the state, to bring a civil action against any person who:

- performed or induced an abortion in violation of the bill's provisions;
- knowingly engaged in conduct that aided or abetted the performance or inducement of an abortion, including paying for or reimbursing the abortion costs through insurance or otherwise, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation; or
- intended to engage in the conduct described above.

The bill would allow a person to bring a civil action until the sixth anniversary of the date the cause of action accrued.

The state, a state official, or a district or county attorney could not intervene in a civil action. The bill would not prohibit a person from filing an amicus curiae brief in the action.

Affirmative defense. The bill would create an affirmative defense for persons alleged to have aided or abetted a violation of the bill's provisions. The affirmative defense would apply if the defendant reasonably believed the physician had complied or would comply with the bill. The defendant would have the burden of proving an affirmative defense by a preponderance of the evidence.

Defense to action. Under the bill, the following would not be defenses to a civil action:

- ignorance or mistake of law;
- a defendant's belief that requirements under Health and Safety Code ch. 171 were unconstitutional;

- a defendant's reliance on any court decision that had been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in prohibited conduct;
- a defendant's reliance on any state or federal court decision that was not binding on the court in which the action was brought;
- non-mutual issue preclusion or non-mutual claim preclusion;
- the consent of the unborn child's mother to the abortion; or
- any claim that the enforcement of ch. 171 or the imposition of civil liability against the defendant would violate the constitutional rights of certain third parties, except as provided by the bill.

Court. If a claimant prevailed in a civil action brought under the bill, the court would have to award:

- injunctive relief sufficient to prevent the defendant from violating or engaging in acts that aided or abetted violations of the bill;
- statutory damages of at least $10,000 for each abortion that the defendant performed or induced in violation and for each abortion performed or induced in violation that the defendant aided or abetted; and
- costs and attorney's fees.

A court could not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court to a defendant in a civil action.

Undue burden defense limitations. A defendant in a civil action would not have standing to assert the rights of women seeking an abortion as a defense to liability unless:

- the U.S. Supreme Court held that the state's courts were required to confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

- the defendant had standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the U.S. Supreme Court.

Affirmative defense. A defendant in a civil action could assert an affirmative defense to liability if the defendant had standing to assert the third-party rights of a woman or group of women seeking an abortion and the defendant demonstrated that the relief sought by the claimant would impose an undue burden on that woman or group of women.

The affirmative defense would not be available if the U.S. Supreme Court overruled *Roe v. Wade* or *Planned Parenthood v. Casey*, regardless of whether the conduct on which the cause of action was based occurred before the Supreme Court overruled either of those decisions.

Court findings. A court could not find an undue burden unless the defendant introduced evidence providing that an award of relief would prevent a woman or group of women from obtaining an abortion or an award of relief would place a substantial obstacle in the path of a woman or a group of women who were seeking an abortion.

Prohibitions. The bill would prohibit a defendant from establishing an undue burden by:

- merely demonstrating that an award of relief would prevent women from obtaining certain assistance from others in their effort to obtain an abortion; or
- arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants would impose an undue burden on women seeking an abortion.

Constitutional rights. The bill would not in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under a civil action. A court could not award relief under a civil action if the conduct for which the defendant had been sued was an exercise of state or federal constitutional rights that personally belonged to the defendant.

Venue. A civil action that was brought under the bill would have to be brought in specified counties. The action could not be transferred to a different venue without the written consent of all parties.

Immunity. SB 8 would prevail over any conflicting law. The state would have sovereign immunity, a political subdivision would have governmental immunity, and each officer and employee of the state or a political subdivision would have official immunity in any action, claim, or counterclaim or other type of legal action that challenged the validity of Health and Safety Code ch. 171 or its application.

Severability. If any application of any provision under Health and Safety Code ch. 171 to any person, group of persons, or circumstances was found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances would have to be severed and could not be affected. Those provisions would remain in force.

Other attorney's fees. Any person, including an entity, attorney, or law firm, who sought declaratory or injunctive relief to prevent this state from enforcing certain laws that regulate or restrict abortion would be jointly and severally liable to pay the costs and attorney's fees of the prevailing party, as defined in the bill.

Other provisions. The bill would make certain conforming changes under current law, including requiring physicians to provide documentation when an abortion was performed due to a medical emergency.

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

SUPPORTERS SAY:

SB 8 would establish the Texas Heartbeat Act, which is necessary to protect more lives of unborn children. By prohibiting an abortion after a fetal heartbeat is detected, the bill would help to ensure that an unborn child was carried to the full term of a woman's pregnancy.

Some contemporary medical research indicates that a fetal heartbeat is a key medical predictor that an unborn child will reach live birth. To make

an informed decision on whether to continue her pregnancy, a pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity, which is a strong indicator that a life is present. An unborn child's life is worthy of protection, which the bill would offer.

Currently, state law generally bans abortions after 20 weeks of pregnancy, but a fetal heartbeat can be detected as early as six weeks. The bill would reduce the number of abortions performed in Texas by prohibiting abortions once a fetal heartbeat was detected.

Enforcing the Texas Heartbeat Act only through civil enforcement by private citizens, not the state, would strengthen citizens' ability to hold violators accountable for a practice that many Texans find morally objectionable. Allowing any private citizen, other than an employee of state or local government, to file suit against a physician or anyone who aided and abetted the performance of an abortion would be similar to certain legal proceedings involving Medicaid fraud.

Texas never repealed, either expressly or by implication, state statutes enacted before the ruling in *Roe v. Wade* that prohibit and criminalize abortion unless the mother's life is in danger. By establishing that Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child, the Texas Heartbeat Act could withstand constitutional challenges, which would mitigate any increased legal costs.

The bill would provide an exception for a woman experiencing a valid medical emergency, as determined and documented by the physician.

Concerns about improving access to services for women, including maternal health care and assistance in finding stable housing and employment, could be better addressed in other legislation.

CRITICS SAY:

SB 8 would reduce a woman's access to reproductive health care by prohibiting an abortion after a fetal heartbeat was detected. The bill would unnecessarily interfere with the doctor-patient relationship and could

endanger a woman's life by further restricting her constitutionally protected right to choose abortion.

By prohibiting an abortion after a fetal heartbeat was detected, the bill would substantially reduce the timeframe in which a woman could decide whether to proceed with or terminate her pregnancy. Some fetal heartbeats can be detected as early as six weeks, but many women do not find out they are pregnant until after the six-week mark. This would restrict a woman's ability to make an informed choice about her pregnancy.

Allowing any private citizen, including someone who was not personally connected to the woman, to bring a civil action against a physician who performed and a person who aided or abetted in the performance of an abortion could unnecessarily open the door to numerous, frivolous lawsuits. The aiding and abetting provisions under SB 8 are too broad and could subject healthcare providers to expensive and burdensome lawsuits.

The bill also could significantly increase costs for defendants and increase case backlogs in the court system. Limiting the defenses to civil actions and prohibiting a wrongly sued defendant from recovering any attorney's fees would inhibit defendants' ability to sufficiently defend themselves. The minimum $10,000 fine also could prevent persons from being able to afford a defense.

SB 8 could subject the state to even more lawsuits by further limiting abortions, which could supersede what is constitutionally authorized under *Roe v. Wade.* This could increase legal costs for the state.

In addition to providing an exception to an abortion when a woman has a medical emergency, the bill should include an exception for cases of rape and incest. Excluding such exceptions could impose additional pain and trauma on survivors of sexual assault.

Instead of interfering with a woman's reproductive health care choices, the Legislature should identify and establish programs that improve access to maternal health care, housing and employment assistance, and other financial resources.

OTHER CRITICS SAY:

Instead of enacting more restrictions, the Legislature should prohibit abortion outright. Such a bold move could help lead the way to ending a practice that many Texans believe is morally unjustifiable.

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

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

3 nays — Crockett, Hinojosa, A. Johnson

WITNESSES: *March 29 public hearing:*
For — (*Registered, but did not testify*: Robert McClinton, Bell County Sheriffs Department; Frederick Frazier, Dallas Police Association/State FOP; Ray Hunt, HPOU; James Smith, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; John Wilkerson, Texas Municipal Police Association; Cynthia Simons, Texas Women's Justice Coalition)

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

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

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

- obstruct a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances; or

- disobey a reasonable request or order to move issued by a person the individual knows to be or is informed is a peace officer, fireman, or person with authority to control the premises if the order is to prevent obstruction of a highway or other area covered by the provision or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

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

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

DIGEST:

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

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

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

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

SUPPORTERS SAY:

CSHB 9 would help protect those in need of emergency care by increasing the criminal penalty for blocking access to a hospital or emergency care facility or preventing passage of an authorized emergency vehicle. Timing can be critical when someone is being rushed to the hospital or in another emergency, and only a few minutes can mean the difference between life

and death. CSHB 9 would deter individuals from actively standing in the way of those needing emergency care and appropriately punish those who did.

This bill would address situations similar to a reported incident in which law enforcement officers were shot and access to a hospital was blocked, but it also would help anyone needing emergency medical care. There are numerous types of situations, such as street racing or other gatherings, in which it is necessary to ensure emergency vehicles can move as needed. The seriousness of these emergency situations and the need to access hospitals warrants an increased penalty when compared to other situations in which highways or passageways are blocked. The penalty would be analogous to one for other offenses with potentially fatal outcomes. Emergency vehicles should not have to look for alternative routes in emergency situations or weigh the seriousness of someone's injury when determining their route.

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

CRITICS SAY:

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

The bill would too broadly define where an offense could occur. Hospitals could have multiple entrances and the bill would include blocking even those that may be used by staff or for non-emergency reasons as potential felony offenses.

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

OTHER CRITICS SAY:

A felony offense with potential incarceration in a state facility would be too harsh for conduct that does not include bodily harm. The bill should include defenses for situations in which a felony punishment would be inappropriate. For example, individuals with certain impairments, such as visual or hearing, as well as those who might not be able to control their movements, such as if someone else prevented an individual from moving, should not be subject to increased punishments. In other cases, if an alternative, non-delaying route around an obstruction was available, an increased penalty also would be inappropriate. In these situations, individuals could still be held accountable under current law, just not subject to increased penalties.

SUBJECT: Prohibiting camping in a public place, creating a criminal offense

COMMITTEE: State Affairs — favorable, without amendment

VOTE: *After recommitted:*
9 ayes — Paddie, Harless, Hunter, P. King, Metcalf, Raymond, Shaheen, Slawson, Smithee

3 nays — Hernandez, Deshotel, Howard

1 absent — Lucio

WITNESSES: *March 25 public hearing:*
For — Judge Glock, Cicero Action; Bill Brice, Downtown Austin Alliance; Kenny Wilson, Haven for Hope; Joell McNew, Safe Horns; Matt Mackowiak, Save Austin Now; Michele Steebe, Texas Public Policy Foundation; Scott Blalock, White Lodging Services/JW Marriott; and eight individuals; (*Registered, but did not testify*: Lee Kleinman, City of Dallas; Michelle Davis, Convention of States; Frederick Frazier, Dallas Police Association/State FOP; James Parnell, Dallas Police Association; Mindy Ellmer, Haven For Hope; Ray Hunt, Houston Police Officers' Union; Brian Hawthorne, Sheriffs Association of Texas; Tom Maddox, Sheriffs Association of Texas; Mia McCord, Texas Conservative Coalition; Mark Terry, Texas Elementary Principals and Supervisors Association; Donald Garner, Texas Faith & Freedom Coalition; Justin Bragiel, Texas Hotel & Lodging Association; Johnathan Dallas Reed, Texas Municipal Police Association; Lance Lively, Texas Package Stores Association; Kelsey Streufert, Texas Restaurant Association; Jason Vaughn, Texas Young Republicans; Shelia Franklin and Fran Rhodes, True Texas Project; Doug Davis and Tom Spilman, Wholesale Beer Distributors of Texas; Chad Wilbanks, Wilbanks Group, Inc.; and 42 individuals)

Against — Gregorio Casar, City Council Member; Dianna Grey, City of Austin; Karen Munoz, LatinoJustice PRLDEF; Danielle Reichman, Little Petal Alliance; Emily Gerrick, Texas Fair Defense Project; Sarah Reyes, The Texas Criminal Justice Coalition; and nine individuals; (*Registered,*

but did not testify: Lauren Johnson and Matt Simpson, ACLU of Texas; Chas Moore, Austin Justice Coalition; Angelica Cogliano, Austin Lawyers Guild; Clifford Sparks, City of Dallas; Jonathan Lewis, Every Texan; Selena Steward, First Baptist Church Austin; Willy Hyatt, Housethehomeless.org; Patricia Zavala, Jolt Action; Jorge Renaud, LatinoJustice; Britt Ellis, Little Petal Alliance; Bill Kelly, Mayor's Office, City of Houston; Matthew Lovitt, National Alliance on Mental Illness (NAMI) Texas; Maggie Luna, Statewide Leadership Council; Carisa Lopez and Suseth Munoz, Texas Freedom Network; Cate Graziani, Texas Harm Reduction Alliance; Eric Samuels, Texas Homeless Network; Abigail Avila and Cerena Haefs, Texas Rising; Stephanie Gharakhanian, Workers Defense Action Fund; and 22 individuals)

DIGEST: HB 1925 would make it a criminal offense for a person to intentionally or knowingly camp in a public place. The bill would prohibit a local entity from prohibiting or discouraging the enforcement of any public camping ban.

Criminal conduct. HB 1925 would make it a class C misdemeanor (maximum fine of $500) for a person to intentionally or knowingly camp in a public place without the consent of the officer or agency with legal duty or authority to manage the place. The bill would define "camp" as residing temporarily in a place, with shelter. The bill would define "shelter" to include a tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of shelter, other than clothing, designed to protect a person from weather conditions that threatened personal health and safety.

An actor's intent or knowledge could be established through evidence of activities conducted in a public place that were associated with sustaining a living accommodation, including cooking, making a fire, storing personal belongings for an extended period, digging, or sleeping.

Consent to camp. The bill would establish that consent given by an officer or agency of a political subdivision would not be effective for purposes of the prohibited conduct. A designation made by a state officer or agency that an area owned or controlled by a political subdivision could be used for camping could constitute consent to camping on that property. The bill would authorize a state officer or agency to make such a designation only

if that designation was proposed to the officer or agency by the applicable political subdivision.

The bill would not preempt an ordinance, order, rule, or other regulation adopted by a state agency or political subdivision relating to prohibiting camping in a public place or affect the authority of a state agency or political subdivision to adopt or enforce such an ordinance that was compatible with and equal to or more stringent than the offense prescribed by the bill or related to an issue not specifically addressed by the bill.

Enforcement. HB 1925 would prohibit a local entity from adopting or enforcing a policy that prohibited or discouraged the enforcement of any public camping ban. A local entity could not prohibit or discourage a peace officer or prosecuting attorney who was employed by or under the direction or control of the entity from enforcing a public camping ban. The bill would define "local entity" as:

- the governing body of a municipality or county;
- an officer or employee of or a division, department, or other body that was part of a municipality or county, including a sheriff, municipal police department, municipal attorney, or county attorney; and
- a district attorney or criminal district attorney.

The bill would define "policy" to include a formal, written rule, ordinance, order, or policy and an informal, unwritten policy. It would define "public camping ban" to mean a law, rule, ordinance, order, or other regulation that prohibited camping in a public place.

Injunctive relief. The attorney general could bring an action in a district court in Travis County or another applicable county to enjoin a violation of the bill's prohibitions on local policies and enforcement of a public camping ban. The attorney general could recover reasonable expenses incurred in obtaining relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

Denial of state grants. The bill would prohibit a local entity that violated bill's prohibitions on policies and enforcement of a public camping ban

from receiving state grant funds and require that state grant funds be denied for the state fiscal year following the year in which a final judicial determination was made in an action for injunctive relief brought by the attorney general. State grant funds could not be denied to a local entity that had not violated the bill's prohibitions, regardless of whether the entity was a part of another entity that was in violation.

The comptroller would have to adopt rules to implement the prohibition on state grant funds uniformly among state agencies that distributed state grants funds to a municipality or county.

The bill would take effect September 1, 2021

SUPPORTERS SAY:

HB 1925 would address the growing problem of homeless campsites being located along public rights-of-way and under highways and in public parks and greenbelts, where the camps present a safety and health hazard to those living there as well as to the surrounding community. The bill would make camping on public land without permission from the appropriate state agency a class C misdemeanor as a necessary limitation on local jurisdictions that have refused to ensure the safety of their residents.

Certain local policies allowing public camping likely have incentivized individuals from other parts of Texas and even other states to relocate to cities that do not enforce a public camping ban. The proliferation of these tent sites has been especially detrimental in downtown areas, where they often are accompanied by an increase in crime, open drug use, and health and sanitation hazards. The bill would help individuals and business owners who are unduly subjected to violent or hazardous activity linked to the rise in public camping.

It is not humane to allow people to remain in a tent, especially during extreme weather. During the severe winter storm in February doctors at a downtown Austin hospital treated dozens of people with frostbite, including some who required amputations.

While some say a ban on public camping would do nothing more than force people experiencing homelessness into less visible areas, the bill

could spur local governments to do more to help people connect with shelter and services to help them integrate back into society.

CRITICS SAY:

HB 1925 would criminalize homelessness by perpetuating a cycle where people are given tickets and possibly arrested for camping in a public place. Individuals could be assessed fines that they cannot afford to pay and accumulate criminal records that make it more difficult for them to get housing and employment.

The rising cost of living in urban areas and economic disruptions caused by the pandemic have perpetuated the cycle of homelessness. Costs associated with enforcing a camping ban would be better spent on interventions to help people find shelter and an income.

The bill would preempt the decisions of local elected officials who are tackling the complex issue of helping individuals experiencing homelessness finding transitional housing and other services, including mental health services. Instead of giving cities more time to address the issue, the bill would force people experiencing homelessness back into remote areas where it is more difficult to connect them with services.

SUBJECT: Limiting who can issue arrest, search warrants with no-knock entry

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

2 nays — Cason, Cook

WITNESSES: For — Scott Henson, Just Liberty; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Angelica Cogliano, Austin Lawyers Guild; Felisha Bull, Gun Owners of America; Amanda List, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Maggie Luna, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Joshua Houston, Texas Impact; Susana Carranza; Idona Griffith; Suzanne Mitchell)

Against — John Wilkerson, Texas Municipal Police Association; (*Registered, but did not testify*: Thomas Villarreal, Austin Police Association; Robert McClinton, Bell County Sheriffs Department; Chris Jones, Combined Law Enforcement Associations of Texas; Greg Shipley, Corpus Christi Police Officers Association; Frederick Frazier, Dallas Police Association/State FOP; Ray Hunt, HPOU; Jimmy Rodriguez, San Antonio Police Officers Association; Stefan Fitting)

On — Minister Dominique Alexander, Next Generation Action Network; Brian Redburn, Texas Police Chiefs Association; (*Registered, but did not testify*: Tom Maddox, Sheriffs Association of Texas; Scotty Shiver, Texas Department of Public Safety)

DIGEST: CSHB 492 would limit who could issue arrest and search warrants authorizing no-knock entries. "No-knock entry" would be defined by the bill to mean a peace officer's entry, for the purpose of executing a warrant, into a building or other place without giving notice of the officer's authority or purpose before entering.

The bill would prohibit magistrates from issuing an arrest warrant or search warrants authorizing a no-knock entry.

District judges would be able to issue arrest warrants and search warrants authorizing no-knock entry if the request was submitted with a statement approving the use of the warrant that was signed by the chief administrator of the law enforcement agency seeking the warrant.

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

SUPPORTERS SAY:

CSHB 492 would better protect the community and law enforcement officers by limiting who could issue "no-knock" warrants and by requiring their approval at the highest level of a law enforcement agency.

With these warrants, peace officers enter a home, building, or other place without giving notice of their authority or purpose. There is a dangerous conflict set up by these warrants and the state's Castle Doctrine policy, which allows individuals to stand their ground in their homes and use deadly force to protect their property. When law enforcement officers enter under a no-knock warrant, individuals may think they are in danger due to a home intruder and respond with gunfire or other force, and in turn law enforcement officers may respond to them with similar actions.

The use of this tool by law enforcement officers should be approved at the highest level of a law enforcement agency and only issued by a judge with training and experience. At least one large city in Texas has been operating successfully under a policy similar to the bill, and the bill is needed to ensure parity across the state among courts and law enforcement policies. The bill would ensure the warrants could be used in appropriate circumstances, such as when there was a time-sensitive need to arrest a violent suspect, but also would ensure there would be accountability and the highest level of scrutiny of such requests. The warrants would not be banned, but rather scrutinized on a case-by-cases basis to ensure situations were serious enough to merit their use.

CRITICS SAY:

CSHB 492 should give more flexibility to law enforcement agencies seeking these warrants by allowing more than one type of judge to issue them. In some situations, especially in rural areas, it might be difficult to locate a district judge when a warrant was needed.

Similarly, there should be an option for approval within a law enforcement agency in cases where the chief administrator of an agency was unavailable. The warrants are sometimes needed quickly to respond to a dangerous situation and expanding who could sign and approve them would meet this need.

OTHER CRITICS SAY:

The state should be cautious about changes that could be viewed as a step toward too many restrictions on no-knock warrants. Abuses of the warrants could be addressed in various ways. The warrants are an important tool for law enforcement and any changes should continue to allow them to be evaluated on a case-by-case basis.

NOTES:

The author plans to offer a floor amendment to also allow statutory county court judges to issue the warrants and to allow a designee of the law enforcement agency's chief to approve a request for a warrant. Under the amendment, a designee of the chief administrator would have to be a peace officer reporting directly to the chief administrator.

SUBJECT: Prohibiting abortion if U.S. Supreme Court were to issue judgment

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Klick, Allison, Jetton, Oliverson, Price, Smith

4 nays — Campos, Coleman, Collier, Zwiener

1 absent — Guerra

WITNESSES: For — Molly White, Conservative Republicans of Texas; Nona Ellington, Operation Outcry; Threesa Sadler, Raffa Clinic; Jon Ker, State Republican Executive Committee; Rachel Schroder, Students for Life Action; Kyleen Wright, Texans for Life Committee; Paul Linton and Joe Pojman, Texas Alliance for Life; Shannon Jaquette, Texas Catholic Conference of Bishops; Lisa Kamerer; Joseph Murphy; Jeri Lynn Scott; Denise Seibert; Terry Williams; (*Registered, but did not testify*: Abby Johnson, And Then There Were None; Jana Pinson, Pregnancy Center of the Coastal Bend; Tom Nobis, Republican Party of Texas; Victoria Avelar, Melanie Salazar and Sarah Zarr, Students For Life Action; Jenny Andrews and Amy O'Donnell, Texas Alliance for Life; Cindi Castilla, Texas Eagle Forum; Donald Garner, Texas Faith & Freedom Coalition; John Seago, Texas Right to Life; Jonathan Saenz, Jonathan Covey and Gregory McCarthy, Texas Values Action; Jason Vaughn, Texas Young Republicans; and 17 individuals)

Against — Caroline Duble, Avow; Amanda Williams, Lilith Fund; Paul Brown, Watermark Community Church; and nine individuals; (*Registered, but did not testify*: Jeff Haas and Bradley Pierce, Abolish Abortion Texas; Drucilla Tigner, ACLU of Texas; Carl Dunn, American College of Obstetricians and Gynecologists; Blake Rocap, Avow; Andrea Reyes and Tatum Zeko, Deeds Not Words; Rhea Shahane, Deeds Not Words and Texas Law Democrats; Rosann Mariappuram, Jane's Due Process; Karen Munoz and Jorge Renaud, LatinoJustice; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Christina Haarhoff, Not a Victim; Alejandro Garcia, Planned Parenthood Texas Votes; Diana Gomez, Progress Texas; CR Cali, Sermon in the Park;

Sarah Moseley, Texas Cannabis Collective; Kamyon Conner, Texas Equal Access Fund; Carisa Lopez and Jules Mandel, Texas Freedom Network; Ebony Johnson, The Afiya Center and Avow; and 68 individuals)

On — (*Registered, but did not testify*: Bruce Kendrick, Watermark Community Church)

BACKGROUND: Health and Safety Code sec. 245.002 defines "abortion" as the act of using or prescribing an instrument, drug, medicine, or any other substance, device, or means with the intent to cause an unborn child's death. The term excludes birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to save the life or preserve the health of an unborn child; remove a dead, unborn child whose death was caused by spontaneous abortion; or remove an ectopic pregnancy.

Sec. 171.002 defines "medical emergency" as a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

DIGEST: CSHB 1280 would prohibit a person from knowingly performing, inducing, or attempting an abortion and would create a felony criminal offense for violating the prohibition.

The offense created by the bill would take effect, to the extent permitted, on the 30th day after any of the following occurred:

- the issuance of a U.S. Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*, thereby allowing the states to prohibit abortion;
- the issuance of any other U.S. Supreme Court judgment in a decision that recognized, wholly or partly, the authority of the states to prohibit abortion; or
- adoption of an amendment to the U.S. Constitution that, wholly or partly, restored to the states the authority to prohibit abortion.

Offense. CSHB 1280 would create a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) for a person who knowingly performed, induced, or attempted an abortion. The bill would enhance the penalty to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) if the unborn child died as a result of the offense.

The bill also would subject a person who engaged in the prohibited conduct to a civil penalty of not less than $100,000 for each violation. The attorney general would have to file an action to recover a civil penalty and could recover attorney's fees and costs incurred in bringing the action.

Exceptions. The prohibition would not apply if:

- the person performing, inducing, or attempting the abortion was a licensed physician;
- in the exercise of reasonable medical judgment, the pregnant female had a life-threatening physical condition aggravated by or arising from the pregnancy that placed her at risk of death or serious risk of substantial impairment of a major bodily function unless the abortion was performed; and
- the person performed or attempted the abortion in a manner that, in the exercise of reasonable medical judgment, provided the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create a greater risk of the pregnant female's death or a serious risk of substantial impairment of a major bodily function.

CSHB 1280 would prohibit a physician from taking an action that constituted an exception if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

Medical treatment provided to a pregnant female by a licensed physician that resulted in the accidental or unintentional injury or death of the unborn child would not constitute a violation.

The bill could not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion was performed, induced, or attempted.

Other provisions. The fact that the conduct prohibited by the bill would be subject to a civil or criminal penalty would not abolish or impair any remedy for the conduct that was available in a civil suit.

In addition to any other penalty that could be imposed by the bill, the appropriate licensing authority would be required to revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performed, induced, or attempted an abortion in violation of the bill.

CSHB 1280 would declare its provisions to be severable. If any provision of the bill or the application of such provision to any person or circumstance was declared invalid for any reason, such declaration would not affect the validity of the remaining portions of the bill.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 1280 would protect the lives of unborn children by enacting a prohibition on abortion that would go into effect if the U.S. Supreme Court were wholly or partly to reverse its precedent preventing states from banning abortion. If the Supreme Court were to allow states to protect unborn children before viability, Texas would need a law to ensure it could return to its roots of protecting life from conception. At least 10 other states have passed similar legislation.

The bill would clear up confusion about whether the state's pre-*Roe* statutes are still valid. Although the Legislature never explicitly repealed those laws, a non-binding 5th Circuit Court of Appeals opinion suggests that the Legislature's enactment of laws such as those governing abortion on minors and regulating abortion facilities effectively repealed the pre-*Roe* laws. The Legislature regularly enacts legislation that is contingent on future state or federal actions.

While some criticize the bill for lacking an exception for pregnancy resulting from rape or incest, ending the life of an unborn child because of a terrible crime against the mother would not bring justice. A number of adult women have come forward who were conceived as a result of rape and have expressed gratitude for their lives. While some also have criticized the bill for lacking an exception for instances of severe fetal abnormality, such diagnoses can be in error and should not automatically provide a reason for ending the life of the unborn child.

Many options are available to help women with childbirth and adoption, and the state provides social services such as Medicaid and the Children's Health Insurance Program that can help low-income Texans with the costs of raising a child. The lives and mental health of pregnant women must be protected, but the sanctity of life demands protection of unborn children who have no ability to protect themselves without the involvement of the state. Many Texans believe that abortion is not in fact health care but that it amounts to violence against both the woman and the unborn child.

An immediate ban on abortion, which some have called for, has been passed by other states and been blocked by federal or state courts. CSHB 1280 would strengthen the commitment of Texas to the U.S. Constitution by requiring the state to wait to prohibit abortion until one month following a Supreme Court decision that recognized the authority of states to stop the procedure.

CRITICS SAY:

CSHB 1280 is extreme legislation that would make virtually all abortions illegal in Texas if federal law were to allow states to prohibit abortion. The bill would be an unconstitutional intrusion into a deeply personal medical decision that should be made by women in consultation with their families and doctors, not dictated by politicians. It would send women back to a time half a century ago when illegal abortions were responsible for nearly one in five pregnancy-related deaths in the country.

The bill could force a woman to continue her pregnancy even when it resulted from rape or incest. It also has no exception for the tragic cases of

severe fetal abnormality and could force a woman to continue a pregnancy of an unborn child who was not expected to live after birth.

The bill would stigmatize abortion providers by adding criminal penalties for first- or second-degree felonies. Major medical organizations have stated that timely, compassionate reproductive health care is essential to a woman's health. The consequences of being unable to obtain an abortion can profoundly impact a woman's life, health, and well-being.

OTHER CRITICS SAY:

By waiting until the U.S. Supreme Court declares that states could once again prohibit abortions, CSHB 1280 would continue the failed strategy of the past 48 years since the court's *Roe w. Wade* ruling. The Legislature should take action now ensure the sanctity of life by passing legislation to protect the lives of unborn children from the moment of fertilization.

SUBJECT: Requiring a mailing address on a certificate of formation of a filing entity

COMMITTEE: Business and Industry — favorable, without amendment

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

0 nays

2 absent — Cain, Shine

WITNESSES: For — (*Registered, but did not testify*: Susana Carranza; Idona Griffith; Georgia Keysor; Vanessa MacDougal)

Against — None

On — (*Registered, but did not testify*: Traci Cotton, Secretary of State; Michael Elwell, Texas Comptroller of Public Accounts)

BACKGROUND: Business Organizations Code sec. 3.005(a), which governs certificates of formation, requires the certificate of formation to state the street address of the initial registered office of the filing entity and the name of the initial registered agent of the filing entity at the office.

Some have suggested that important tax information and other correspondence sent by the comptroller of public accounts is often not received by the taxpayer for whom it is intended, resulting in negative consequences for the taxpayer.

DIGEST: HB 3131 would require the certificate of formation of a domestic corporation, limited partnership, limited liability company, professional association, cooperative, or real estate investment trust to state the preferred mailing address of the filing entity.

The bill would take effect September 1, 2021, and would apply only to a certificate of formation filed on or after the effective date.

SUBJECT: Amending the deadline to pay motor vehicle sales and use taxes

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 — None

Against — None

On — (*Registered, but did not testify*: Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Under Tax Code sec. 152.041, motor vehicle sales and use taxes are due 20 working days after the motor vehicle is delivered to the purchaser, brought into the state, or equipped with equipment that makes it eligible to be registered in the state.

Some have suggested amending the due date of motor vehicle sales and use taxes to clear up confusion among different county policies and align the date with the deadline to register the vehicle.

DIGEST: HB 2628 would amend the deadline to pay motor vehicle sales and use taxes so that payment was due 30 days, rather than 20 working days, after the vehicle was delivered to the purchaser, brought into the state, or equipped with equipment that made it eligible for registration.

An appraisal by a tax assessor-collector to determine the taxable value of a motor vehicle would have to be obtained by the purchaser of the vehicle by 30 days, rather than 20 working days, after the vehicle was delivered to the purchaser or brought into the state.

The bill would take effect September 1, 2021.

SUBJECT: Transferring certain functions from the state auditor to the comptroller

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

2 absent — Hernandez, Smithee

WITNESSES: For — None

Against — None

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

BACKGROUND: Government Code sec. 661.151 requires the state auditor to provide a uniform interpretation of state employee leave policies and to report to the governor and the Legislature any state agency or institution of higher education that practices an exception to these policies. Sec. 661.9041(c) requires the state auditor to adopt guidelines to assist state agencies in determining the amount of emergency leave to grant an employee as differential pay.

Sec. 661.202(j) specifies that state agencies must provide a written statement covering the policies and procedures for an extension of leave, and that a copy of this statement must be made available to the state auditor on request. Sec. 661.923(c) requires state agencies to submit, by the last day of each quarter of a state fiscal year, a report to the state auditor's office and the Legislative Budget Board including certain information on employee leave.

Some have suggested that the oversight of state employee leave should be conducted by the same agency that administers the central accounting and payroll system because these functions are linked. Currently, the state

auditor oversees state employee leave and the comptroller of public accounts administers payroll.

DIGEST: HB 3997 would transfer the duties and rights of the state auditor's office in Government Code secs. 661.151, 661.202(j), 661.9041(c), and 661.923(c) to the comptroller.

By September 10, 2021, the powers and duties of the state auditor relating to state employee leave under Government Code ch. 661 would have to be transferred to the comptroller. All property and records in the custody of the state auditor related to a power or duty transferred under the bill and all funds appropriated by the Legislature for that power or duty also would have to be transferred to the comptroller by this date.

A rule, form, policy, procedure, or decision of the state auditor related to a power or duty transferred to the comptroller would continue in effect until superseded by an act of the comptroller. A reference in law or administrative rule to the state auditor relating to a power or duty transferred under the bill would mean the comptroller.

As soon as practicable after the bill's effective date, but no later than September 10, 2021, the state auditor and comptroller of public accounts would have to enter into a memorandum of understanding that:

- identified in detail the applicable powers and duties transferred by the bill; and
- established a plan for the identification and transfer of the records, property, and unspent appropriations of the state auditor that are used for purposes of the state auditor's powers and duties transferred by the bill.

The bill would take effect September 1, 2021.

SUBJECT: Allowing cigarette and tobacco permit fees to be paid by credit card

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 — (*Registered, but did not testify*: Matt Burgin, Texas Food and Fuel Association)

Against — None

On — (*Registered, but did not testify*: Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Tax Code secs. 154.1135 and 155.050 require applicants for a cigarette or tobacco product permit, respectively, to pay the required application fee in cash, by money order, or by check.

Some have suggested allowing this payment to be made by credit card to provide for faster, more efficient payment processing.

DIGEST: HB 3578 would allow a cigarette or tobacco product permit application fee to be paid by credit card.

The bill would take effect September 1, 2021.

SUBJECT: Establishing salary guidelines for internal state employee transfers

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

1 absent — Lucio

WITNESSES: For — None

Against — None

On — Rob Coleman, Texas Comptroller of Public Accounts

BACKGROUND: Concerns have been raised that current statute does not provide adequate flexibility to set salaries in cases in which qualified employees transfer to a new position within the same agency and in the same salary group.

DIGEST: HB 2743 would allow a state employee's salary rate to be set at any rate in the appropriate salary group if the employee:

- transferred within a state agency between two classified positions that were allocated to the same salary group and had the same title as listed in the general appropriations act;
- transferred to a position for which the employment opening was publicly listed with the Texas Workforce Commission;
- voluntarily applied for the position to which the employee transferred; and
- agreed to accept the position to which the employee transferred at the publicly listed salary.

The bill would take effect September 1, 2021, and would apply only to a transfer of position that took effect on or after that date.

SUBJECT: Imposing backup tax on individuals unlawfully acquiring gasoline, diesel

COMMITTEE: Ways and Means — committee substitute recommended

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

0 nays

1 absent — Martinez Fischer

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Tax Code secs. 162.101 and 162.201 impose gasoline and diesel fuel taxes, respectively, so that in each subsequent sale of the fuel on which the tax has been paid, the tax must be added to the selling price so that the tax is paid ultimately by the person using or consuming the fuel.

Under secs. 162.103 and 162.203, a backup tax is imposed on certain individuals who did not pay the gasoline or diesel fuel taxes according to statutes.

Some have suggested clarifying current law on motor fuel taxes to ensure individuals could not unlawfully or fraudulently acquire motor fuels and to assist the comptroller in investigating fraud.

DIGEST: CSHB 3474 would impose a backup tax on the following individuals:

- a person who acquired gasoline or diesel fuel on which tax had not been paid in an original or subsequent sale; and
- a person who acquired gasoline or diesel fuel by any unlawful means, including by purchase through the unauthorized use of a

credit card, debit card, or other money, regardless of whether tax had been previously paid on the fuel or was added to the selling price.

The bill also would revise statutes on motor fuel taxes to specify that taxes imposed on gasoline or diesel fuel would be paid by each person receiving the fuel in a subsequent sale until the tax was ultimately paid by the person using or consuming the fuel. Certain definitions under those statutes also would be amended by the bill.

The bill would take effect September 1, 2021.

SUBJECT: Allowing the comptroller to serve certain notices electronically

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 — (*Registered, but did not testify*: Susana Carranza; Idona Griffith)

Against — None

On — (*Registered, but did not testify*: Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Tax Code sec. 111.0047 entitles a person whose permit or license the comptroller proposes to revoke or suspend to 20 days' written notice of the time and place of the hearing on the revocation or suspension. The comptroller may serve this notice to the holder of the license or permit personally or by mail.

It has been suggested that authorizing the comptroller to serve these required notices by electronic means would increase efficiency and reduce mailing expenses.

DIGEST: CSHB 3134 would allow the comptroller to serve notice to the holder of a permit or license as required under Tax Code sec. 111.0047 by electronic means. A notice served by electronic means would have to be addressed to the person's email address as it appeared in the comptroller's records, and such service would be complete when the comptroller transmitted the notice to that email address.

The bill would take effect September 1, 2021.

SUBJECT: Providing TEA authority to collect certain data for mental health report

COMMITTEE: Public Education — committee substitute recommended

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

0 nays

1 absent — M. González

WITNESSES: For — Jamie Freeny and Annalee Gulley, Mental Health America of Greater Houston; Amanda Afifi, Texas Association of School Psychologists; Michael Webb, Tomball ISD; (*Registered, but did not testify*: Jason Sabo, Children at Risk; Steven Aleman, Disability Rights Texas; Chloe Latham Sikes, Intercultural Development Research Association; Meaghan Read, Mental Health America of Greater Dallas; Rebecca Fowler, Mental Health America of Greater Houston; Myra Leo, Methodist Healthcare Ministries; Greg Hansch and Ana O'Quin, National Alliance on Mental Illness-Texas; Alison Mohr Boleware, National Association of Social Workers Texas Chapter; Grover Campbell, TASB; Josette Saxton, Texans Care for Children; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators; Kristin McGuire, Texas Council of Administrators of Special Education; Jan Friese, Texas Counseling Association; Alycia Castillo, Texas Criminal Justice Coalition; Mark Terry, Texas Elementary Principals and Supervisors Association; Suzi Kennon, Texas PTA; Michelle Wittenburg, Texas Public Charter Schools Association; Carrie Griffith, Texas State Teachers Association; Molly Weiner, United Ways of Texas; Linda De Sosa)

Against — None

On — Lee Spiller, Citizens Commission on Human Rights; (*Registered, but did not testify*: Melody Parrish, Texas Education Agency)

BACKGROUND: Education Code sec. 38.302 establishes the Collaborative Task Force on Public School Mental Health Services to study and evaluate mental health services funded by the state and provided at a school district or open-enrollment charter school, mental health services training for educators, and the impact of mental health services on violence and suicide in schools, among other responsibilities.

Some have suggested that the Texas Education Agency lacks the statutory authority to collect certain data required by reports to the Collaborative Task Force on Public School Mental Health Services.

DIGEST: CSHB 2287 would allow the Collaborative Task Force on Public School Mental Health Services, or the Texas Education Agency (TEA) on behalf of the task force, to request data from or consult with:

- school districts;
- open-enrollment charter schools;
- regional education service centers;
- local mental health authorities; and
- other entities that possess information relevant to the task force's duties.

In requesting data or consulting with permitted entities, the task force and agency could not disclose a student's medical or educational information and would have to ensure any request or consultation complied with required privacy and confidentiality of student information.

Compliance. By the 60th business day after the date on which an entity received a request for data from the task force or TEA, the entity would have to provide the requested data. An entity providing data:

- could not include personally identifying information of an individual receiving a mental health service, including the individual's name or birthday; and
- could provide the data without seeking the prior authorization of the individual included in the data or of the individual's parent or guardian, if the individual was a minor.

Liability. A person that disclosed data to the task force or TEA would be immune from civil or criminal liability for, and could not be subject to an administrative penalty in connection with, that disclosure.

Data. The task force would have to gather data on:

- the race, ethnicity, gender, special education status, educationally disadvantaged status, and geographic location of certain individuals;
- mental health services and training provided annually by school districts, at both the campus and district level, and open-enrollment charter schools;
- the number of individuals who were placed in a disciplinary alternative education program or out-of-school suspension or expelled;
- the number of threat assessments conducted; and
- other relevant topics as determined by the task force.

The task force could consult with relevant experts and stakeholders, including classroom teachers, school counselors, school resource officers, school administrators, school nurses, licensed specialists in school psychology, licensed professional counselors, licensed clinical social workers, and non-physician mental health professionals.

In consulting with relevant experts and stakeholders, the task force could not disclose a student’s medical or educational information. The task force could enter into agreements with institutions of higher education or other relevant entities as needed to execute its duties.

Reports to the task force. By January 31 of each calendar year, the Health and Human Services Commission would have to submit the required report on outcomes for school districts and students resulting from services provided by non-physician mental health professionals to the Collaborative Task Force on Public School Mental Health Services. This provision would expire December 1, 2025.

By March 1 of each even-numbered year, each regional education service center would have to provide to the task force an electronic copy of the report submitted to TEA on mental health resources. This provision would expire December 1, 2025.

TEA would have to provide an electronic copy of the required list of statewide mental health resources to the task force as soon as practicable after the list was developed or revised. This provision would expire December 1, 2025.

To the extent of any conflict, this bill would prevail over another act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions and corrections in enacted codes.

The bill would take effect September 1, 2021.

SUBJECT: Creating a suicide prevention program for public elementary schools

COMMITTEE: Public Education — committee substitute recommended

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

0 nays

1 absent — M. González

WITNESSES: For — Annalee Gulley, Mental Health America of Greater Houston; Denise Campagnolo, Through a Parent's Tears; Amanda Afifi, Texas Association of School Psychologists; Michael Webb, Tomball ISD; Linda De Sosa; (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Jason Sabo, Children at Risk; Steven Aleman, Disability Rights Texas; Jason Guidangen and Ricardo Martinez, Equality Texas; Meaghan Read, Mental Health America of Greater Dallas; Rebecca Fowler and Jamie Freeny, Mental Health America of Greater Houston; Myra Leo, Methodist Healthcare Ministries; Greg Hansch and Ana O'Quin, National Alliance on Mental Illness Texas; Alison Mohr Boleware, National Association of Social Workers - Texas Chapter; Grover Campbell, TASB; Josette Saxton, Texans Care for Children; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators; Pamela McPeters, Texas Classroom Teachers Association; Kristin McGuire, Texas Council of Administrators of Special Education; Jan Friese, Texas Counseling Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Dan Finch, Texas Medical Association; Suzi Kennon, Texas PTA; Michelle Wittenburg, Texas Public Charter Schools Association; Carrie Griffith, Texas State Teachers Association; William Larew, Through a Parent's Tears; Molly Weiner, United Ways of Texas; Vanessa MacDougal; Thomas Parkinson)

Against — Lee Spiller, Citizens Commission on Human Rights; (*Registered, but did not testify*: Monica Ayres, Citizens Commission on Human Rights Texas; Jean LeFebvre)

BACKGROUND: Education Code sec. 38.351 requires the Texas Education Agency, in coordination with the Health and Human Services Commission and regional education centers, to provide and annually update a list of certain recommended best practice-based programs and research-based practices for implementation in public schools within the general education setting. This list must include programs and practices in areas specified in statute, including suicide prevention, intervention, and postvention.

DIGEST: CSHB 2954 would require the Texas Education Agency (TEA), in coordination with the Health and Human Services Commission (HHSC), to establish a suicide prevention, intervention, and postvention program for optional implementation at an elementary school campus of a school district or open-enrollment charter school.

Program participation. A school district or open-enrollment charter school would be eligible to participate in the program established under the bill if the district or charter school or a campus of the district or charter school had experienced suicide loss among elementary school students enrolled in the district or school in the 2016-2017 school year or a subsequent school year.

A district or charter school also would be eligible if there was a reasonable concern regarding the risk of suicide among elementary school students enrolled in the district or school based on:

- students' exposure to traumatic events or experiences, including the loss of an educator or another student in the district; or
- increased rates of traumatic stress symptoms, including self-harm or incidents of bullying on a district or school campus.

The TEA could prioritize for funding purposes school districts or open-enrollment charter schools that had experienced suicide loss among elementary school students in or since the 2016-2017 school year. School districts or charter schools that implemented the program could prioritize campuses for participation based on the direct impact of student suicides on the campuses.

Program requirements. For each elementary school campus at which the program was implemented, the school district or charter school would be required to:

- conduct a needs-based assessment to identify individual needs of each campus in the program;
- coordinate with HHSC and a district or school that had implemented a comprehensive Suicide Safer Early Intervention and Prevention system, a program through Project AWARE (Advancing Wellness and Resiliency in Education), or another similar primary prevention, intervention, and postvention program to provide school-based suicide prevention best practices for each campus in the program;
- provide recommendations for research-based best practices for suicide prevention, intervention, and postvention policies;
- ensure that informational materials distributed by the district or school were age-appropriate and evidence-based; and
- provide suicide prevention, intervention, and postvention support to each campus in the program as specified in the bill.

Notification requirements, practices and procedures. Each school district or open-enrollment charter school that implemented the program would be required to provide written notice to a parent or guardian of each student enrolled at a campus in the program. The written notice would have to include:

- current statewide information on suicide rates;
- evidence-based informational materials identifying strategies to recognize the signs and symptoms of possible suicidal ideation that were age-appropriate for children 4 years of age or older;
- information about suicide prevention strategies involving reducing access to lethal means of suicide; and
- a list of available school and community resources to support students or community members who might be at risk of suicide.

In addition to practices and procedures developed by a school district or charter school under current statute, the bill would require a participating

district or school to develop practices and procedures related to suicide prevention, intervention, and postvention that:

- included a procedure for providing notice to a student's parent or guardian regarding a recommendation for early mental health intervention for the student within a reasonable amount of time after the identification of early warning signs of risk for suicide;
- included a procedure for providing notice of a student identified as at risk of attempting suicide to the student's parent or guardian within a reasonable amount of time after the identification of early warning signs;
- designated at least one person to act as a liaison officer in the district or school for the purpose of identifying students in need of suicide prevention, intervention, and postvention;
- provide information concerning available counseling alternatives to parents and guardians of students to consider when a student was identified as possibly in need of suicide prevention, intervention, and postvention; and
- include procedures to support the return of a student to regular school attendance following hospitalization or residential treatment for a mental health condition or substance abuse.

The practices and procedures developed under the bill would have to be included in the annual student handbook and the district improvement plan required under current law.

Nothing in the bill would be intended to interfere with the rights of parents or guardians and the decision-making regarding the best interest of a child. Practices and procedures developed under the bill would be intended to notify a parent or guardian of a need for suicide prevention, intervention, or postvention so that a parent or guardian could take appropriate action. Nothing in the bill would authorize a school district or charter school employee to recommend prescription medication for a student or to interfere with medical decisions made by a student's parent or guardian.

Other provisions. A district or charter school that implemented the program would be authorized to contract with a regional education service center for services and to request the assistance of public and private community-based mental health resources.

TEA would be required to implement the bill's provisions only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money specifically for that purpose, the TEA could implement a provision of the bill using other appropriations available for that purpose but would not be required to do so. TEA could accept donations for the purposes of the bill from sources without a conflict of interest, except that the agency could not accept donations for the bill's purposes from an anonymous source.

The commissioner of education would be required to adopt rules to administer the bill's provisions.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021. The bill's provisions would expire September 1, 2025.

SUPPORTERS SAY:

CSHB 2954 would help to keep elementary school students safe from self-harm and suicide by providing resources to assist Texas schools impacted by suicide. Suicide is the second leading cause of death in children 10 years of age and older, the age range of many fourth- and fifth-grade students, and an increase in suicides and suicide attempts in young children has led experts to believe that prevention programs should begin in elementary school. In addition, the COVID-19 pandemic has caused disruption to children's lives and schooling and has increased anxiety and isolation among elementary school children, suggesting the potential for elevated risk of youth suicide and mental health problems and a greater need for prevention, intervention, and postvention programs.

Participation in the suicide prevention program by school districts and charter schools would be strictly voluntary, and parents would have to be notified of an implemented program.

CRITICS SAY:

CSHB 2954 would expose elementary school children to a new and untested program with as yet unknown consequences. Suicide is rare among elementary school age children, so the types of prevention programs established under the bill may be unnecessary or inadvertently harmful. Further study of suicide prevention programs, especially programs targeted at younger children, is needed to ensure there are no unintended or adverse effects on children. Also, participation in the suicide prevention program proposed in CSHB 2954 should be at the discretion of school districts and an elementary school student's parents or guardians.

SUBJECT: Restricting ages for working at or entering sexually oriented businesses

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — S. Thompson, Kuempel, Darby, Fierro, Geren, Goldman, Hernandez

0 nays

4 absent — Ellzey, Guillen, Huberty, Pacheco

WITNESSES: For — Joe Madison, Demand Disruption; Minta Moore, New Life Refuge; Lisa Michelle, No Strings Attached; John Clark, Operation Texas Shield; Barry Wood; (*Registered, but did not testify*: Chara McMichael, BCFS Health and Human Services Human Trafficking Interdiction Division; Jason Sabo, Children at Risk; Carrie Mcfarland, City Life Church; Frederick Frazier, Dallas Police Association; Jennifer Hohman, Fight For Us and The Houston 20; Rhonda Kuykendall, Fort Bend County DA Human Trafficking Team; Patricia Shipton, Nueces County; Christopher Leschber, Romans 12two Men's Ministry; Brian Hawthorne, Sheriffs Association of Texas; Breanna Fetkavich and Taylor Woodruff, Street Grace; Sarah Crockett, Texas CASA; Shannon Jaquette, Texas Catholic Conference of Bishops; Dallas Reed, Texas Municipal Police Association; and 18 individuals)

Against — (*Registered, but did not testify*: Nicole Kralj, AAA News and LSMT Inc.)

On — (*Registered, but did not testify*: Cara Pierce, Texas Attorney General's Office)

DIGEST: HB 3520 would prohibit an individual younger than 18 years of age to be on the premises of an establishment that held an alcoholic beverage license or permit if a sexually oriented business operated on the premises.

The bill would prohibit a license or permit holder from knowingly or recklessly allowing an individual younger than 18 years of age to be on the premises. If a licensee or permittee violated this provision, the Texas Alcoholic Beverage Commission would have to:

- suspend the permit or license for 30 days for the first violation;
- suspend the permit or license for 60 days for the second violation; and
- cancel the permit or license for the third violation.

The bill would prohibit a sexually oriented business from allowing an individual younger than 18 years of age to enter the premises. The business would commit a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) and the attorney general could bring an action for an injunction or other process against a business or person who violated or threatened to violate this prohibition.

CSHB 3520 would raise from 18 to 21 years of age the minimum age to be employed by or enter into a contract for the performance of work or the provision of a service with a sexually oriented business. A violation would be a class A misdemeanor.

The bill would revise the statutory definition of "child" to mean a person younger than 21 years of age, rather than 18 years, as it related to the felony offense of employment harmful to children.

Under the bill, a person would maintain a common nuisance if the person maintained a place or knowingly tolerated:

- the employing or entering into a contract for the performance of work or the provision of a service with an individual younger than 21 years of age for work or services performed at a sexually oriented business; or
- permitting an individual younger than 18 years of age to enter the premises of a sexually oriented business.

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. The bill would apply only to an offense committed on or after the effective date.

SUPPORTERS SAY:

HB 3520 would address concerns that sexually oriented businesses can be grounds for human trafficking recruitment and sexual exploitation by creating specific and enforceable barriers for deterring individuals younger than 18 from being on the premises of and individuals younger than 21 from being employed by these businesses. The bill would protect youth and younger adults, who often are the target of human traffickers and recruiters. The bill appropriately would increase the minimum age for employment at these businesses, as the current minimum of 18 leaves the door open to the exploitation of vulnerable young people who are not cognitively ready to make healthy decisions in such an environment.

CRITICS SAY:

HB 3520 could impact the livelihoods of some young Texans by raising the minimum age for employment at a sexually oriented business from 18 to 21. The businesses are protected under the First Amendment, and the bill, while aimed at entertainers, also could affect staff employed in traditional food industry roles, such as waitresses, cooks, bussers, and hosts.

SUBJECT: Requiring cities to treat charter schools as ISD schools for zoning, permits

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Deshotel, Leman, Biedermann, Burrows, Spiller, Thierry

1 nay — Rosenthal

2 absent — Craddick, Romero

WITNESSES: For — Starlee Coleman, Texas Public Charter Schools Association; Randy Shaffer, Trinity Basin Preparatory; Sarah Landsman, YES Prep Public Schools; Lee Whitaker; (*Registered, but did not testify*: Julie Frank, American Federation for Children; Justin Keener, Doug Deason, Americans for Prosperity, and Libre Initiative; Harvey Hilderbran, International Leadership of Texas and Schulman Lopez Hoffer & Adelstein LLP; Addie Gomez, KIPP Texas Public Schools; Shea Mackin, National Parents Union; Frank Corte Jr., Schulman, Lopez, Hoffer, Adelstein; Madison Yandell, Texas 2036; Emily Sass, Texas Public Policy Foundation; Craig Chick, Yes. Every Kid.)

Against — Keith Martin, San Antonio Water System (SAWS); Mark Terry, Texas Elementary Principals and Supervisors Association; (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; TJ Patterson, City of Fort Worth; Christine Wright, City of San Antonio; Chloe Latham Sikes, Intercultural Development Research Association; Grover Campbell, TASB; Rene Lara, Texas AFL-CIO; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators; Paige Williams, Texas Classroom Teachers Association; Dee Carney, Texas School Alliance; Tyler Sheldon, Texas State Employees Union; Portia Bosse, Texas State Teachers Association; Louann Martinez, Texas Urban Council; Clifford Sparks, City of Dallas)

BACKGROUND: Education Code sec. 12.103(a) subjects an open-enrollment charter school to federal and state laws and rules governing public schools and to municipal zoning ordinances. Sec. 12.103(c) states that a campus of a charter school located in whole or in part in a municipality with a population of 20,000 or less is not subject to a municipal zoning ordinance governing public schools.

DIGEST: CSHB 1348 would require a political subdivision to consider an open-enrollment charter school a public school district for purposes of zoning, project permitting, platting and replatting processes, business licensing, franchises, utility services, eminent domain, signage, subdivision regulation, property development projects, the requirements for posting bonds or securities, contract requirements, school district land development standards, tree and vegetation regulations, regulations of architectural features of a structure, construction of fences, landscaping, garbage disposal, noise levels, fees or other assessments, and construction or site development work.

A political subdivision could not take any action that prohibited a charter school from operating a public school campus, educational support facility, athletic facility, or administrative office that it could not take against a school district. A political subdivision would have to grant approval in the same manner and follow the same timelines as if the charter school were a school district located in that political subdivision's jurisdiction.

The bill would apply to charter school property that was owned or leased with state funds. The bill would not affect the authority granted by state law to a political subdivision to regulate a charter school regarding health and safety ordinances.

CSHB 1348 would amend the Local Government Code to make the following changes:

- extend the applicability of statutory provisions relating to a land development standards agreement between a school district and a municipality that had annexed territory for limited purposes to such an agreement between an applicable municipality and an open-

enrollment charter school, including a campus or campus program charter and a college, university, or junior college charter school;
- specify that the definition of land development standards that applied to these provisions included building heights, traffic impact analyses, parking requirements, and signage requirements;
- exempt a charter school from paying impact fees imposed by a municipality, applicable county, or certain other local governments for financing capital improvements required by new development, unless the governing body of the charter school consented by contract to such payment; and
- authorize the exemption of a charter school and applicable charter school property from the Municipal Drainage Utility Systems Act and associated regulations.

The bill would establish that an exemption from the Municipal Drainage Utility Systems Act granted to a school district before the bill's effective date automatically extends to all charter schools located in the municipality unless the municipality repealed the exemption before the bill's effective date.

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

SUPPORTERS SAY:

CSHB 1348 would prevent cities from putting up unnecessary hurdles that can increase facilities costs for charter schools and limit their ability to serve Texas schoolchildren. Charter schools are public schools and should not be forced to spend more time and money than is necessary attempting to open new campuses.

The bill would create a level playing field by requiring cities to consider a charter school a school district for purposes of zoning, permitting, code compliance, and development. The bill would not remove the authority of local officials to review proposed charter school locations, but would just require those officials to follow the same processes or procedures they use in reviewing new school district construction.

Concerns about the authority for charter schools to exercise the power of eminent domain could continue to be addressed.

CRITICS SAY:

CSHB 1348 would limit the authority of local officials to respond to community concerns and determine appropriate locations for proposed new charter schools. Current law appropriately treats charter schools differently from district schools, which have new school construction approved by elected school board members and often submit construction bond funding issues for voter approval. The private organizations that operate charter schools should not be given the power of eminent domain as the bill would authorize.

SUBJECT: Requiring disclosure of rates for chilled water programs offered by MOUs

COMMITTEE: State Affairs — committee substitute recommended

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

1 nay — Howard

WITNESSES: For — Chris Hughes, Husch Blackwell LLP; (*Registered, but did not testify*: Calvin Tillman)

Against — None

On — Pat Sweeney, Austin Energy

BACKGROUND: Government Code sec. 552.133 excepts from required public disclosure information or records related to a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The provision lists categories of information that do and do not satisfy as a competitive matter.

DIGEST: CSHB 3615 would add information related to a chilled water program to the categories of information that would not qualify as a competitive matter for which related information could be excepted from public disclosure by a public power utility.

"Chilled water program" would mean:

- a program to produce chilled water at a central plant and pipe that water to buildings for air conditioning, including a district cooling system or chilled water service; or
- any other program designed to use chilled water to provide air conditioning, reduce peak electric demand, or shift electric load.

Notwithstanding contrary provisions, information or records related to a competitive matter of a public power utility would be subject to public disclosure if related to:

- a municipally owned utility's rate review process;
- the method a municipality or municipally owned utility used to set rates for retail electric service; or
- the method a municipality or municipally owned utility used to set rates for a chilled water program.

The bill would expand the statutory definition of a municipally owned utility as it related to the Public Utility Regulatory Act to include any chilled water program operated by the utility.

The bill would take effect September 1, 2021, and would apply only to a request for public information made on or after that date.

SUPPORTERS SAY:

CSHB 3615 would increase government transparency by ensuring that information and records relating to a municipally owned utility's rate review process and the method for setting rates for retail electric service and a chilled water program were available to the public.

Some cities operate chilled water programs, including through a municipally owned utility, that are offered to large electric customers and promote energy efficiency by reducing peak electric demand and shifting electric load. Some have raised concerns that information related to the cost, revenue, and rates of chilled water programs is not publicly available. This information would help customers ensure rates were properly assessed and apply for a rate hearing if needed.

As governmental entities, municipally owned utilities are required to set electric rates in a public and transparent manner, and rates have to be just, reasonable, and nondiscriminatory. Likewise, rates paid for chilled water services provided by a municipally owned utility should be transparent and part of a formal ratemaking process to ensure that rates were reasonable and necessary and applied in a nondiscriminatory manner.

While some have raised concerns that requiring the public disclosure of rate information for chilled water programs operated by a municipally owned utility would put the utility at a competitive disadvantage, the concern is unfounded as the current market is not truly competitive. Municipally owned utilities control electric and water supplies, service territories, permitting processes, rights-of-way, and more, which creates an environment where it is economically infeasible to compete.

CRITICS SAY:

CSHB 3615 could result in the release of proprietary information which could put a municipally owned utility at a competitive disadvantage in the market for chilled water services. A municipally owned utility does not have the exclusive right to provide such services, so keeping contract information confidential is essential to maintaining a fair and competitive marketplace and to protect customers' cost-related information. The bill also could result in altering already negotiated contracts freely entered into by both parties.

SUBJECT: Establishing a bilingual special education certification for teachers

COMMITTEE: Public Education — favorable, without amendment

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

0 nays

1 absent — Lozano

WITNESSES: For — Chloe Latham Sikes, Intercultural Development Research Association; David Feigen, Texans Care for Children; (*Registered, but did not testify*: Andrea Chevalier, Association of Texas Professional Educators; Jason Sabo, Children at Risk; Jennifer Toon, Coalition of Texans with Disabilities; Steven Aleman, Disability Rights Texas; Chandra Villanueva, Every Texan; Vanessa Beltran and Sarah Miller-Fellows, Girls Empowerment Network; Fatima Menendez, MALDEF; Taylor Sims, Project Lead the Way; Hillary Lilly, San Antonio ISD; Grover Campbell, TASB; Kristin McGuire, TCASE; Dena Donaldson, Texas AFT; Kimberly Kofron, Texas Association for the Education of Young Children; Barry Haenisch, Texas Association of Community Schools; Mark Terry, Texas Elementary Principals and Supervisors Association; Linda Litzinger, Texas Parent to Parent; Carrie Griffith, Texas State Teachers Association; Ashley Ford, The Arc of Texas; Jonathan Feinstein, The Education Trust in Texas; Molly Weiner, United Ways of Texas; Annemarie Donnelly; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Eric Marin, Jessica McLoughlin and Matt Montano, Texas Education Agency)

BACKGROUND: Education Code sec. 21.031 requires the State Board for Educator Certification to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of all public school educators. In proposing rules, the board is required to ensure that all

candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

Some have noted that educators wanting to teach special education to students learning English must pursue two discrete certificates, a requirement that provides little or no benefit for educators or students.

DIGEST:

HB 2256 would require the State Board for Educator Certification (SBEC) to establish a bilingual special education certificate to ensure there were teachers with special training in providing instruction to students of limited English proficiency with disabilities.

To be eligible for a bilingual special education certificate, a person would have to:

- satisfactorily complete the coursework for that certificate in an educator preparation program, including a skills-based course of instruction on teaching students of limited English proficiency with disabilities;
- perform satisfactorily on a bilingual special education certificate examination prescribed by SBEC; and
- satisfy any other requirements prescribed by SBEC.

The bill would establish requirements for the skills-based course of instruction in providing instruction to students of limited English proficiency with disabilities, which would include:

- the foundations of bilingual, multicultural, and second language special education;
- providing culturally responsive individualized education programs for students of limited English proficiency with disabilities;
- providing assessment for equity and inclusion of students whose primary language was not English with and without disabilities;
- developing teaching methods to recognize the intellectual, developmental, and emotional needs of students in dual language and transitional bilingual education settings;

- teaching fundamental academic skills, including reading, writing, and mathematics, to students who had difficulty performing ordinary classwork in English; and
- creating dynamic and collaborative partnerships with families and school professionals.

SBEC would be required to propose rules establishing and prescribing an examination for a bilingual special education certificate and to put in place standards to govern the approval and renewal of approval of educator preparation programs for bilingual special education certification.

The bill would take effect September 1, 2021.

SUBJECT: Exempting certain petitioners for name changes from certain requirements

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Laura Nodolf, Midland County District Attorney's Office; Jo Cassandra Cuevas, Operation Texas Shield; Breall Baccus, Texas Council on Family Violence; Thomas Parkinson)

Against — None

BACKGROUND: Under Family Code sec. 45.102, a petition to change the name of an adult must be verified and include:

- the present name and place of residence of the petitioner;
- the full name requested for the petitioner;
- the reason the change in name is requested;
- whether the petitioner has been the subject of a final felony conviction;
- whether the petitioner is subject to sex offender registration program requirements; and
- a legible and complete set of the petitioner's fingerprints on a fingerprint card format acceptable to specified agencies.

Sec. 45.103 requires the court to order a change of name for an adult other than an adult with a final felony conviction or an adult subject to the sex offender registration requirements if the change is in the interest or to the benefit of the petitioner and in the interest of the public.

Code of Criminal Procedure art. 58.052 requires the attorney general to establish an address confidentiality program to assist victims of family

violence, sexual assault or abuse, trafficking of persons, or stalking. Through the program, the attorney general ensures the confidentiality of a participant's residential, business, or school addresses and designates a substitute post office box address for a participant to use in place of the real address.

Concerns have been raised that providing the required information for a name change in Texas can pose a risk to individuals enrolled in the address confidentiality program, many of whom may seek a name change to further protect themselves from an abuser.

DIGEST: HB 2301 would exempt an adult petitioner for a name change from the requirements that the petition provide the street address of the petitioner's place of residence and the petitioner's reason for the requested change of name if the petitioner provided a copy of an authorization card certifying that the person was a participant in the address confidentiality program administered by the attorney general.

If the petitioner provided a copy of such authorization, it would be presumed that a change of name was in the interest or to the benefit of the petitioner and in the interest of the public. A subsequent court order for a change of name would be confidential and could not be released by the court to any person, regardless of whether the petitioner continued to participate in the address confidentiality program following the change of name.

The bill would take effect September 1, 2021, and would apply only to a petition for a change of name submitted on or after that date.

SUBJECT: Expanding circumstances that constitute the offense of sexual assault

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

WITNESSES: For — Kimberly Davignon, Tarrant County Criminal District Attorney Office; Deepika Modali; Hanna Senko; Bethany Swerdloff; (*Registered, but did not testify*: Philip Mack Furlow, 106th Judicial District Attorney; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; James Parnell, Dallas Police Association; Brian Middleton, Fort Bend County District Attorney's Office; Jessica Anderson, Houston Police Department; Ray Hunt, Houston Police Officers Union; Laura Nodolf, Midland County District Attorney's Office; Juliana Gonzales, SAFE Alliance; Jimmy Rodriguez, San Antonio Police Officers Association; Lindy Borchardt, for Tarrant County Criminal District Attorney Sharen Wilson; Katherine Strandberg, Texas Association Against Sexual Assault; Breall Baccus, Texas Council on Family Violence; Julie Wheeler, Travis County Commissioners Court; Julie Renken, Washington County District Attorney; Staley Heatly; Thomas Parkinson)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Penal Code sec. 22.011 establishes the crime of sexual assault, which individuals commit if they intentionally or knowingly perform certain sexual acts on another person without the consent of that person. Sec. 22.011(b) lists the circumstances that constitute sexual assault without the consent of another person.

An offense generally is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

Concerns have been raised that the list of circumstances that constitute a lack of consent relating to the crime of sexual assault is incomplete, creating a gap in the criminal justice system that increases the difficulty for prosecutors to charge and obtain a conviction for incidents that clearly should qualify as sexual assault. This discourages victims from reporting their assaults, and some have suggested that by expanding the circumstances more victims would receive the justice they deserve.

DIGEST: HB 302 would expand the circumstances that constituted sexual assault without the consent of another person to include if the actor:

- knew the other person was intoxicated by any substance such that the other person was incapable of appraising the nature of the act;
- knew that the other person had withdrawn consent and the actor persisted after consent was withdrawn; or
- was a caregiver hired to assist the other person with daily activities and caused the other person to submit or participate by exploiting such dependency on the actor.

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

NOTES: According to the Legislative Budget Board, the fiscal impact of the bill could not be determined. However, expanding the circumstances for a criminal offense would be expected to result in additional demands on state and local correctional resources.

SUBJECT: Addressing continuity of care for certain residential care facility patients

COMMITTEE: Public Health — committee substitute recommended

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

0 nays

1 absent — Campos

WITNESSES: For — Dan Chandler; (*Registered, but did not testify*: Allison Greer, CHCS; Molly White, Conservative Republicans of Texas; Elisa Tamayo, Emergence Health Network; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Lee Johnson, Texas Council of Community Centers; Lacy Waller)

Against — (*Registered, but did not testify*: Lee Spiller, Citizens Commission on Human Rights; Aaryce Hayes, Disability Rights Texas)

On — (*Registered, but did not testify*: Tim Bray and Scott Schalclin, HHSC)

BACKGROUND: Health and Safety Code ch. 574, subch. G governs the administration of medication to a patient under court order for mental health services. Under sec. 574.106, a court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

- is under a court order to receive inpatient mental health services; or
- is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

Under sec. 574.103, a person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless certain circumstances exist, including if the patient is under an order issued under

Section 574.106 authorizing the administration of the medication regardless of the patient's refusal.

Under Health and Safety Code sec. 592.156, a court could issue an order authorizing the administration of one or more classes of psychoactive medication to a client who has been committed to a residential care facility.

Health and Safety Code sec. 594.032 allows the transfer of a court-committed resident of a residential care facility to a state mental hospital for mental health care under certain circumstances.

Health and Safety Code sec. 594.014 provides that a client cannot be transferred to another facility or discharged from intellectual disability services unless the client is given the opportunity to request and receive an administrative hearing to challenge the proposed transfer or discharge.

A small number of State Supported Living Center (SSLC) residents experience intensive behavioral or psychiatric needs beyond the supports available in typical SSLC settings, and concerns have been raised regarding the current procedural hurdles for temporary transfers of such residents to different settings and the separate mental health commitment order that state hospitals must obtain before they can compel medications for such residents if hospitalization is needed. There have been calls to provide a better continuity of care for this group of residents.

DIGEST: CSHB 1824 would include patients transferred from a residential care facility to an inpatient mental health facility in the provisions governing the administration of psychoactive medication to patients under court order for mental health services.

The bill also would allow the Health and Human Services Commission (HHSC) to establish a pilot program for the temporary transfers of residents from originating residential care facilities to alternate residential care facilities to provide behavioral health or psychiatric services for those residents.

Pilot Program. The pilot program would have to include one alternate residential care facility for psychiatric services and one or two alternate residential care facilities for intensive behavioral health services.

The HHSC executive commissioner, in consultation with a work group, would be required to specify by rule the types of information the commission would have to collect during the pilot program to:

- evaluate the outcome of the program;
- ensure the rights of individuals in the program were commensurate with the rights of individuals at the originating facility, as appropriate; and
- ensure services provided under the program met applicable requirements for staff member to resident ratios.

The HHSC executive commissioner also would be required to establish the work group to consult in adopting the rules. The group would be composed of:

- two intellectual disability advocates, one of whom was from Disability Rights Texas;
- one representative from a local intellectual and developmental disability authority;
- a board certified behavioral analyst with specified expertise;
- a psychiatrist with specified expertise;
- a psychologist with specified expertise;
- a current or former resident of a state supported living center (SSLC);
- a family member or guardian of a current or former resident of an SSLC; and
- any other individual the commissioner considered appropriate.

Alternate residential care facility for psychiatric services. Under the pilot program, the alternate residential care facility for psychiatric services would be required to:

- use an interdisciplinary treatment team to provide clinical treatment similar to the clinical treatment provided at a state hospital and directed toward lessening the signs and symptoms of mental illness;
- employ or contract for the services of at least one psychiatrist and employ a board certified behavioral analyst who both had expertise in diagnosing and treating individuals with intellectual disabilities;
- assign staff members to residents in the program at an average ratio not to exceed three residents to one direct support professional during the day and evening and six residents to one direct support professional over night;
- provide additional training to direct support professionals working on the alternate psychiatric care unit regarding the service delivery system for residents on that unit; and
- ensure that each psychiatric unit complied with certain certification requirements under Medicaid, as appropriate.

Before the temporary transfer of a resident to an alternate psychiatric residential care unit, a resident would have to be examined by a licensed psychiatrist who indicated that the resident was presenting with symptoms of mental illness to the extent that care, treatment, and rehabilitation could not be provided in the originating facility. HHSC could transfer such a resident for an initial period not to exceed 60 days for the purposes of receiving psychiatric services.

Alternate residential care facility for behavioral health services. Under the pilot program, an alternate residential care facility for behavioral health services would be required to:

- use an interdisciplinary treatment team specially trained to provide clinical treatment designed to serve the residents;
- employ board certified behavioral analysts with expertise in diagnosing and treating individuals with intellectual disabilities to provide a ratio of one analyst to each 12 beds full-time;
- employ a professional qualified to provide counseling consistent with evidence-based, trauma-informed treatment;
- assign staff members to residents at a specified ratio;

- provide additional training to direct support professional working at the alternate facility as specified by the bill; and
- ensure that the intensive behavioral health units complied with certain certifications under Medicaid.

Before the temporary transfer of a resident to an intensive behavioral health unit, an interdisciplinary team would have to determine whether the resident was an individual who remained likely to cause substantial bodily injury to others and required an intensive behavioral health environment to continue treatment and protect others, despite the team having on two or more occasions developed or revised an action plan in response to the occurrence of a significant event and provided appropriate treatment and implementation of the plan.

A significant event would include the rate of the resident's challenging behavior remaining consistently above baseline for at least four of six months after implementation of the action plan and either the intensity of the behavior having caused serious injury to others or the resident's physical aggression to others having resulted in more than three crisis restraints in the last 30 days.

In making its determination on a temporary transfer of a resident to an alternate behavioral facility, the interdisciplinary team would be required to document and collect evidence regarding the reason the resident required an intensive behavioral health environment to continue treatment and protect other residents or the general public. The team would have to provide its findings, including any documentation and evidence, to:

- the HHSC associate commissioner with responsibility for SSLCs;
- the director of the SSLC;
- the independent ombudsman;
- the resident or the resident's parent, if the resident was a minor; and
- the resident's legally authorized representative.

The HHSC associate commissioner with responsibility for SSLCs could make an exception to the admission criteria to require a resident to participate in the established program. The exception would have to be

based on a determination that the resident's behavior posed an imminent threat to others.

A resident transfer to an alternate residential care facility for behavioral health services could not exceed six months except under certain circumstances allowing an extension of a one-time period of three months if an interdisciplinary team determined:

- the resident met the standard for admission to the program;
- an extension would likely enable the resident to no longer meet the criteria for the program; and
- the extension was approved by the HHSC associate commissioner with responsibility for SSLCs.

At the end of the required time period for the transfer, the resident would have to be returned to the originating facility within 7 days after the expiration of that period. If the treatment team determined at any time during a resident's transfer that the resident no longer required an intensive behavioral health environment, the resident would have to be transferred back to the originating facility within 7 days after the determination was made.

If the HHSC associate commissioner responsible for SSLCs determined that there were extenuating circumstances preventing the transfer within the specified time periods, the commissioner could extend the period by additional three-day periods for as long as the extenuating circumstances prevented the transfer.

Hearing and appeal. A resident would be entitled to an expedited administrative hearing to challenge a determination made by the HHSC associate commissioner requiring temporary transfer to a behavioral health services facility despite admission criteria. The hearing would have to be held within seven days of the date of the determination by the HHSC associate commissioner.

A resident subject to a transfer decision based on the admission criteria for a temporary transfer to a behavioral health facility would be entitled to an administrative hearing. The hearing would be limited to determining

whether the transfer decision complied with the admission criteria established by the bill. A resident could waive the right to such a hearing, but if a hearing was requested, the transfer could not occur until after the hearing.

A resident would be entitled to a hearing to challenge an extension of their temporary transfer to a behavioral health facility.

An individual could appeal a decision made at a hearing by filing the appeal in a district court in Travis County by the 30th day after the date a final order was provided to the individual. The appeal would be by trial de novo.

Transfer, return, discharge. A voluntary resident could not be temporarily transferred to an alternate residential care facility under the pilot program without legally adequate consent to the transfer.

A temporary transfer under the program would not be considered a permanent transfer and would not be a discharge from the originating care facility. The originating facility would be required to maintain a vacancy for the resident while the resident was participating in the program, and a resident would have to be returned to the originating facility after participating.

A resident transferred to an alternate facility under the program who no longer required treatment at a residential care facility could be transferred to an alternative placement or discharged directly from the alternate facility without returning to the originating facility.

Other provisions. By November 1, 2022, HHSC would be required to consult with the work group established by the bill and adopt any necessary rules to implement the bill's pilot program.

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