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

HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, May 06, 2021
87th Legislature, Number 50
The House convenes at 10 a.m.
Part One

Two bills are on the Major State Calendar and 44 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: Higher Education; State Affairs; Land and Resource Management; Public Education; Insurance; Natural Resources; Juvenile Justice and Family Issues; and Corrections.

Alma Allen
Chairman
87(R) - 50

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Thursday, May 06, 2021
87th Legislature, Number 50
Part 1

HB 6 by Cain	Revising election laws	1
HB 1900 by Goldman	Providing for disannexation, limiting revenues in cities that defund police	15
HB 3270 by Dutton, Jr.	Specifying state authority to take over failing school districts	21
HB 359 by Geren	Removing a legal judgment as a prerequisite for certain insurance claims	29
HB 3175 by Morrison	Providing funding for comprehensive regional universities	31
HB 416 by Walle	Requiring plot plans for concrete batch plant permit applications	34
HB 2728 by Martinez Fischer	Designating January 27 as International Holocaust Remembrance Day	36
HB 3416 by Darby	Notifying parties of indemnity obligations in triparty well agreements	37
HB 757 by Dutton, Jr.	Defining licensing consequences of deferred adjudication	39
HB 2149 by Clardy	Amending requirements for temporary polling places in certain counties	41
HB 3774 by Leach	Creating new courts, modifying court procedures, judicial administration	44
HB 2485 by Herrero	Exempting certain firefighters and police officers from jury service	49
HB 2525 by Huberty	Creating the Lake Houston Dredging and Maintenance District	50
HB 2331 by Cortez	Requiring TDCJ to develop an emergency response plan for disasters	53
HB 3963 by King	Allowing contracts for electric vehicle charging on state property	56
HB 775 by Walle	Allowing regulation of noise in Harris County; creating an offense	57
HB 1237 by White	Analyzing adverse disproportionalities of children in CPS system	60
HB 913 by Dutton, Jr.	Awarding costs and attorney's fees and imposing sanctions in certain suits	63
HB 1069 by Harris	Allowing certain first responders to carry, store a handgun while on duty	66

SUBJECT: Revising election laws

COMMITTEE: Elections — committee substitute recommended

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

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

WITNESSES: *April 1 public hearing:*
For — Chuck DeVore and Chad Ennis, Texas Public Policy Foundation; Susan Fountain, Republican Party of Texas; Juan-Manuel Gonzales, Latinos for America First; Robert L. Green, Travis Co. Republican Party Election Integrity Committee; Demesio Guerrero, Latinos for America First; Heather Hawthorne, County and District Clerks Association of Texas; Matt Long and Angela Smith, Fredericksburg Tea Party; Weston Martinez, Voter Fraud Bureau of Investigation; Richard Mouser, COS Action; Laura Pressley, True Texas Elections; Rolando Rodriguez, Latinos for America First; Marcia Strickler, Wilco We Thee People; Alan Vera, Harris County Republican Party Ballot Security Committee; Gerald Welty, Convention of States; Darcie Wilbanks, Greenwood Forest Republicans of Harris County; and 33 individuals; (*Registered, but did not testify*: Alicia Bell, Barbara Borton, Tom Borton, Tamara Colbert, Paul Hodson, and Wesley Whisenhunt, Grassroots Gold; Fran Rhodes, Rebecca Rodgers, Karen Brooks, Justin Ead, Shelia Franklin, Terry Lynch, Candelario Torres, True Texas Project; Jordan Clements, Young Conservatives of Texas-UT; Michael Conner and Brent Dunklau, Convention of States; Jim Lennon and Robin Lennon, Kingwood TEA Party; David Covey, Texas Republican County Chairman Association; Jonathan Covey, Texas Values Action; Christina Drewry, Texas Nationalist Movement; Donald Garner, Texas Faith & Freedom Coalition; Tom Glass, Texas Election Integrity; Jill Glover, Republican Party of Texas; Sheila Hemphill, TexasRight To Know; Robert Jacoby, Texans for Election Integrity; Becky Lay, Bandera County Election Integrity Committee; Stacy McMahan, East Texans for Liberty; Carol Meyer and Marty Rhymes, Republican Club of Gregg County; Karen Renick, VoteRescue; Jonathan Saenz, Texas Values; Carrie Simmons, Opportunity Solutions Project; Barb Stauffer, Heritage Action; Manfred

Wendt, Young Conservatives of Texas; and 86 individuals)

Against — Gary Bledsoe, Texas NAACP; Dennis Borel, Coalition of Texans with Disabilities; Cassandra Carter, Delta Sigma Theta Sorority Inc.; Ashley Cheng, Asian Pacific Islander Public Affairs; Jeffrey Clemmons, Austin College Student Commission, Huston-Tillotson NAACP, Texas Rising; Rosemarie Clouston, Texas Democratic Party; Mary Dyuty, MCDP; Rocio Fierro-Perez, Texas Freedom Network; Anthony Gutierrez, Common Cause Texas; Joshua Houston, Texas Impact; Savannah Kumar, ACLU of Texas; Linda Jann Lewis, Texas NAACP; Isabel Longoria, Harris County Elections Administrator; Glen Maxey and Jen Ramos, Texas Democratic Party; Cameron Mayfield, Texas Rising; Vanessa Mcafee; Texas Democratic Women of Galveston County; Jeff Miller, Disability Rights Texas; Amber Mills, MOVE Texas Action Fund; Denisce Palacios, Texas Rising Action; Nina Perales, MALDEF; James Slattery, Texas Civil Rights Project; Maggie Stern, Children's Defense Fund-Texas; David Stout, El Paso County; Lauren Sullivan, Young County Elections Administrator; Patricia Zavala, Jolt; and 25 individuals; (*Registered, but did not testify*: Leonard Aguilar, Texas AFL-CIO; Heather Allison, Avow and Jane’s Due Process; Joey Bennett, Secure Democracy; David Billings, Stand Up Republic Texas; Lon Burnam, Public Citizen; Darcy Caballero, Texas Democratic Party; Katherine Carmichael, Salesforce; Alycia Castillo, Texas Criminal Justice Coalition; Steve Chamberlain, Bastrop County Democratic Party; Daniel Collins, El Paso County; Jonathan Copeland, Cannabis Reform of Houston; Gabrielle Cruz, Jolt Action; Emily Eby, Texas Civil Rights Project; Richard Evans, Emgage Action; Vanessa Fuentes, City of Austin; Danny Diaz, Jesus Montalvo, and Joaquin Garcia, La Union del Pueblo Entero; Stephanie Gharakhanian Workers Defense Action Fund; Joey Gidseg, Texas Democrats with Disabilities Caucus; Diana Gomez, Progress Texas; Eugene Howard, Texas NAACP; Bill Kelly, Mayor's Office, City of Houston; Gloria Leal, League of United Latin American Citizens; Rebecca Marques, Human Rights Campaign; Ricardo Martinez, Equality Texas; Ginger Mayeaux, The Arc of Texas; Melanie Miles, Black Women Of Greater Houston PAC and Texas Alliance Of Black PACs; Rene Perez and Elizabeth Miller, Libertarian Party of Texas; Elysia Perkins, Jolt Action; Marlene Plua, Jolt Initiative; Patty Quinzi, American Federation of Teachers; Cyrus Reed, Lone Star Chapter Sierra

Club; Ender Reed, Harris County Commissioners Court; Elyse Rosenberg, National Council of Jewish Women; Kathryn Sadasivan, NAACP Legal Defense and Educational Fund, Inc.; Keyli Sandoval, Jolt; Susan Schultz, League of Women Voters of Texas; Rhea Shahane, Texas Law Democrats; Melissa Shannon, Bexar County Commissioners Court; Matt Simpson, ACLU of Texas; Jasmine Tolhurst, TDW-GC; David Weinberg, Brennan Center for Justice; Julie Wheeler, Travis County Commissioners Court; LaTonya Whittington, Cannabis Reform of Houston; Christine Wright, City of San Antonio; and 93 individuals)

On — Chris Davis, Texas Association of Elections Administrators; Keith Ingram, Texas Secretary of State; Jonathan White, Office of the Attorney General; (*Registered, but did not testify*: Thomas Parkinson)

Full witness list for March 25 public hearing available here:
https://capitol.texas.gov/tlodocs/87R/witlistbill/html/HB00006H.htm

DIGEST:

CSHB 6 would modify statutes pertaining to poll watchers, persons eligible to be present in certain election-related locations, voter assistance, fraud, election procedures, death abstracts provided to the secretary of state, and enforcement of election laws. The bill would modify existing election-related offenses and create new offenses.

Legislative intent. The bill would establish the intent of the Legislature that the application of the Election Code and the conduct of elections be uniform and consistent throughout the state to reduce the likelihood of fraud in elections. A public official would have to construe the provisions of the Election Code strictly to effect the intent of the Legislature.

"Public official" would mean any person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of the state, a government agency, a political subdivision, or any other public body established by state law.

Election watchers. The bill would specify that the purpose of Election Code ch. 33 is to preserve the integrity of the ballot box in accordance with Tex. Const. Art. 4, sec. 4 by providing for the appointment of watchers. A watcher would have to observe the conduct of an election and

call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.

Removal of watcher. A presiding judge could remove a watcher from a polling place only if the watcher engaged in activity that would constitute an offense related to the conduct of the election. A presiding judge otherwise could not have an appointed election watcher removed from a polling place or require a watcher to leave a polling place.

Watcher observation. A watcher appointed to serve at a polling place in an election could observe the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed that was used by the voting system equipment.

A poll watcher would be entitled to observe the delivery of marked ballots in person to the early voting clerk's office. The poll watcher would have to be able to determine how the ballots were being delivered and how election officials were making decisions about the delivery of ballots, if applicable. A poll watcher could not disrupt the process of delivering ballots.

The bill would specify that a watcher entitled to "observe" an activity or procedure would be entitled to sit or stand near enough to see and hear the activity or procedure.

Offenses. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) for an election officer to intentionally or knowingly refuse to accept a watcher for service when acceptance of the watcher was required by statute.

A person serving in an official capacity at a location at which watchers were authorized would commit a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if the person knowingly prevented a watcher from observing a procedure a watcher was entitled to observe, including by taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure in a manner that would make observation not reasonably effective.

Persons present in certain election-related locations. The bill would specify certain time periods in which only certain individuals could be present in a polling place, a meeting place of an early voting ballot board, or a central counting station.

Polling places. From the time a presiding judge arrived at a polling place on election day to make preliminary arrangements until precinct returns had been certified and election records had been assembled for distribution, only certain persons could be lawfully present in a polling place, including:

- an election judge or clerk;
- a watcher;
- the secretary of state;
- a staff member of the Elections Division of the Secretary of State's Office performing an official duty;
- an election official, a sheriff, or a staff member of an election official or sheriff delivering election supplies;
- a state inspector;
- a person admitted to vote;
- a child under 18 years old who was accompanying a parent who had been admitted to vote;
- a person providing authorized assistance to a voter;
- a person accompanying a voter with a disability;
- a special peace officer appointed by the presiding judge;
- the county chair of a political party conducting a primary election;
- a voting system technician;
- the county election officers, as necessary to perform tasks related to the administration of the election; or
- a person whose presence had been authorized by the presiding judge in accordance with the Election Code.

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

- a presiding judge or member of the board;

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

Central counting stations. While ballots were being counted, only certain persons could be present in a central counting station, including:

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

Voter assistance. The bill would revise certain statutes related to voter assistance and introduce and revise offenses related to voter assistance and unlawful compensation. The bill would provide for penalty enhancements for certain offenses.

Required form. A person other than an election officer who assisted a voter would have to complete a form stating the name and address of the person assisting the voter, the manner in which the person assisted the voter, the reason the assistance was necessary, and the relationship of the assistant to the voter.

The secretary of state would have to prescribe the required form. A form would have to be incorporated into the official carrier envelope if the voter was voting an early voting ballot by mail and received assistance, or would have to be submitted to an election officer at the time the voter cast a ballot if the voter was voting at a polling place or at the polling place entrance or curb in certain cases.

Oath. The bill would require a person selected to provide assistance to a voter to take the existing required oath under penalty of perjury, and would add to the oath the phrase, "I did not pressure, encourage, coerce, or intimidate the voter into choosing me to provide assistance."

Carrier envelope. In addition to the person's signature, printed name, and residence address, a person assisting a voter to prepare a ballot to be voted by mail would have to enter on the official carrier envelope of the voter:

- the manner of any assistance provided to the voter by the person;
- the relationship of the person providing assistance to the voter; and
- whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance.

Spaces would have to appear on the reverse side of the official carrier envelope for indicating the manner of any assistance provided by a person assisting the voter, and the relationship of that person to the voter.

Offenses. The bill would specify that the current state-jail felony offense (180 days to two years in a state jail and an optional fine of up to $10,000) of knowingly failing to comply with the carrier envelope marking requirements would not apply if a person was related to the voter within the second degree by affinity or the third degree by consanguinity. This offense would not apply if a person was physically living in the same dwelling as the voter at the time of the event.

The bill would remove the penalty enhancement for an offense for a violation of provisions regarding the entering of certain information on the official carrier envelope of a voter. An offense for a violation of these provisions would be a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if it was shown on trial that the person committed the offense of providing unlawful assistance to the same voter in connection with the same ballot.

The bill would make the offense of unlawful compensation for assisting voters uniformly a state-jail felony, regardless of the number of previous convictions. The bill would remove certain statutory language related to

the offense of unlawful compensation for assisting voters and specify that unlawfully compensating or offering to compensate another person for assisting voters or soliciting, receiving, or accepting compensation for assisting voters would constitute the offense. The definition of "compensation" would be expanded to include political favors and beneficial or favorable discretionary official acts.

The bill would repeal the misdemeanor penalty for prohibited compensation for a carrier envelope action and retain the offense as a state-jail felony if a defendant previously had been convicted two or more times of the offense.

Election fraud offenses. The bill would introduce new offenses and modify existing offenses related to election fraud with respect to provisional voting, prohibited votes, ballot alteration, inappropriate vote counting, fraud, voter registration, false information provided to voters, paid vote harvesting, distributing mail voting applications and early voting ballots, and perjury.

Provisional voting. The bill would make it a state-jail felony for an election judge to knowingly provide a voter with a form or affidavit required to accept a voter if the form contained false information that was entered on the form by the judge.

Prohibited voting. It would be an offense for a person to knowingly vote or attempt to vote in an election in Texas after voting in another state in an election in which a federal office appeared on the ballot and the election day for both states was the same day. If conduct related to prohibited voting constituted an offense under another law, a person could be prosecuted under these provisions, the other law, or both. The offense would be a second-degree felony unless the person was convicted of an attempt, in which case the offense would be a state-jail felony.

Ballot alteration, vote counting. The bill would make it a state-jail felony for a person to knowingly or intentionally make any effort to:

- influence the independent exercise of the vote of another in the presence of the ballot or during the voting process, including by

altering the ballot of another or by otherwise causing a ballot to not reflect the intent of the voter;
- count invalid votes or alter a report to include invalid votes; or
- fail to count valid votes or alter a report to exclude valid votes.

Fraudulent votes, registrations, information. The bill would increase from a class A misdemeanor to a state-jail felony the offense of knowingly or intentionally making any effort to:

- cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; or
- cause any intentionally misleading statement, representation, or information to be provided to an election official or on an application for ballot by mail, carrier envelope, or any other official election-related form or document.

Paid vote harvesting. The bill would make it a third-degree felony for a person to, directly or through a third party, knowingly provide or offer to provide vote harvesting services in exchange for compensation or other benefit, or provide or offer to provide compensation to a person in exchange for vote harvesting services. The bill would create an offense making it a third-degree felony for a person to knowingly collect or possess a ballot voted by mail or official carrier envelope from a voter in connection with vote harvesting services.

The bill would codify definitions of "benefit" and "vote harvesting services" and specify that compensation or other benefit in exchange for vote harvesting services would be inferred if a person who performed the vote harvesting services for a candidate or campaign solicited, received, or was offered compensation from the candidate or campaign, directly or through a third party, for services other than the vote harvesting services provided.

The offense of paid vote harvesting would not apply to political speech or other acts merely promoting a candidate or measure that did not involve direct interaction with an application for ballot by mail, in the presence of the voter, or a voter's official ballot, ballot voted by mail, or carrier envelope.

If this offense constituted an offense under any other law, the actor could be prosecuted under these provisions, the other law, or both.

Distributing mail voting application, early voting ballots. It would be a state-jail felony for a public official to knowingly, while acting in an official capacity:

- solicit the submission of an application to vote by mail from a person who did not request an application;
- distribute an application to vote by mail to a person who did not request the application unless the distribution was expressly authorized by another provision of Election Code, unless the official was providing access to an application to vote by mail from a publicly accessible internet website;
- authorize or approve the expenditure of public funds to facilitate third-party distribution of an application to vote by mail to a person who did not request the application; or
- complete any portion of an application to vote by mail and distribute the application to an applicant, unless the official was lawfully assisting an applicant.

It would be a state-jail felony for an early voting clerk or other election official to knowingly mail or otherwise provide an early voting ballot by mail or other early voting by mail ballot materials to a person who did not submit an application for a ballot to be voted by mail.

Perjury. It would be a state-jail felony for a person to make a false statement or swear to the truth of a false statement previously made while making the required oath before assisting a voter.

Alteration of election procedures. A public official could not alter, waive, or suspend an election standard, practice, or procedure mandated by law or rule unless the alteration, waiver, or suspension was expressly authorized in the Election Code.

Enforcement. The bill would require the prioritization of certain proceedings related to violations of the Election Code and specify requirements for courts in handling these cases.

The Texas Supreme Court, a court of appeals, or a trial court would have to prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief under Election Code ch. 273 based on alleged conduct constituting an offense under ch. 276 pending or filed in the court on or after the 60th day before a general or special election.

The court with jurisdiction over such a proceeding, on request of any party, would have to grant the party the opportunity to present an oral argument and begin hearing the argument as soon as practicable but no later than 24 hours after the last brief was due to the court. Oral arguments could be given in person or through electronic means.

The bill would specify that a court proceeding entitled to priority that was filed in a court of appeals would be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated assignment system. It would be a state-jail felony for a person, including a public official, to communicate with a court clerk with the intention of influencing or attempting to influence the composition of a three-justice panel assigned a specific proceeding under these provisions.

On written request of any party to a prioritized case, a trial court would have to hold a hearing on a prioritized proceeding as soon as practicable but no later than 24 hours after the court received a hearing request. A hearing could be held in person or through electronic means.

The clerk of a district court, county court, or statutory county court in which a prioritized proceeding was filed would have to docket the proceeding and, if more than one court in the county had jurisdiction over the proceeding, randomly assign the proceeding to a court using an automated assignment system.

It would be a state-jail felony for a person, including a public official, to communicate with a county or district clerk with the intention of

influencing or attempting to influence the court or judge assigned to a prioritized proceeding.

Death abstracts. The bill would require abstracts prepared by local registrars of death and clerks of courts with probate jurisdiction to be filed with voter registrars and the secretary of state as soon as possible, and no later than seven days after an abstract was prepared.

Spoiled ballots. The bill would specify that a register of spoiled ballots at a polling place maintained by an election officer would include spoiled ballots from a direct recording electronic voting unit.

Severability. If any provision of the bill or its application to any person or circumstance was held invalid, the invalidity would not affect other provisions or applications of the bill that could be given effect without the invalid provision or application, and to this end the provisions of CSHB 6 would be declared to be severable.

The bill would take effect September 1, 2021, and changes in law made by the bill would apply only to an offense committed on or after that date.

SUPPORTERS SAY:

CSHB 6 would help to restore voter confidence in the integrity and security of elections in Texas. It would empower poll watchers to oversee election conduct without fear of being removed, add safeguards for the lawful assistance of a voter, and strengthen the consequences for violations of election law.

Election watchers. The bill would empower poll watchers to perform their roles as observers by prohibiting election judges from removing them for arbitrary reasons or improperly refusing to accept them. If a poll watcher did disrupt a polling place in violation of the Penal Code, that person could be removed by a police officer.

Voter assistance. The bill would provide greater protections from exploitation for individuals who may require voting assistance. This includes individuals over 65 years old casting a ballot by mail and those with disabilities, the visually impaired, and those who could not read the

language in which a ballot was printed. By modifying the required oath to include acknowledgement that assistance was not provided under coercion and requiring new information to be written on carrier envelopes, the bill would help deter attempts to take advantage of the voter needing assistance. The bill would not seek to deter individuals from assisting voters or make it harder for individuals who need help, but it would increase safeguards to protect such voters from exploitation by bad actors.

Election fraud offenses. The bill would deter various forms of election fraud by creating new criminal penalties and enhancing existing ones, sending a strong message about Texas' commitment to election integrity. Election fraud is a serious offense that undermines a core civic duty and should be treated as such under the law. The bill would not deter lawful voting, but rather would deter bad actors seeking to fraudulently cast votes or illicitly modify or exclude the votes of others. The bill would not punish individuals for making simple clerical errors or other mistakes because an action prohibited under the bill would have to be carried out knowingly or intentionally to qualify as an offense.

Enforcement. By requiring courts to prioritize and expedite certain cases, the bill would provide for the quick disposition of time-sensitive election matters. The bill would not jeopardize other time-sensitive legal proceedings but simply ensure that election complaints within 60 days of an election were handled expeditiously. This would enable legitimate legal complaints about the election process to be addressed before election day and for injunctive relief to be provided.

CRITICS SAY:

CSHB 6 could exacerbate an already needlessly restrictive elections system by creating overly harsh penalties and making voting even more cumbersome. Texas already has some of the harshest voting restrictions in the country and low voter turnout rates. Instead of complicating the process of voting, the Legislature should make it easier for Texans to access the ballot box.

Election watchers. The bill would remove the ability of election judges to remove poll watchers who were harassing voters or engaging in otherwise disruptive behaviors. Poll watchers are partisan agents appointed by

candidates and political parties. The bill could enable harassment of voters by disruptive watchers and remove the remedy for this harassment.

Voter assistance. The bill would create a chilling effect on individuals wishing to provide lawful assistance to voters with disabilities or elderly voters voting by mail by creating overly burdensome requirements and harsh criminal penalties. Its overly broad language could cause individuals to be prosecuted for election offenses due to simple mistakes in the required form.

Election fraud offenses. By implementing a variety of overly punitive election offenses, the bill could discourage voters and potential poll workers, further depressing Texas' already low voter turnout. Some offenses under the bill would be second-degree felonies, placing election crimes on the same level as certain high-value property theft and other serious crimes. The bill also would limit the information provided to voters by criminalizing routine get-out-the-vote activities related to applications for a ballot by mail or the collection of ballots. Election fraud is rare in Texas and existing law is more than sufficient to deter individuals from fraudulently casting a ballot, changing votes, or otherwise illicitly influencing an election.

Enforcement. The bill would require the prioritization of certain election cases over potentially more pressing judicial matters. The special treatment of election fraud cases under the bill, regardless of merit, could bog down the court system and jeopardize certain time-sensitive legal proceedings, such as cases involving protective orders.

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

COMMITTEE: State Affairs — committee substitute recommended

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

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

Gharakhanian, Workers Defense Action Fund; and 16 individuals)

On — Sally Bakko, City of Galveston; Adam Haynes, Conference of Urban Counties; Charles Reed, Dallas County Commissioners Court; Steven C. McCraw, Texas Department of Public Safety; Dora Smith; (*Registered, but did not testify*: Karey Barton and Korry Castillo, Comptroller of Public Accounts; Jim Allison, County Judges and Commissioners Association of Texas; Andrew Friedrichs, Office of the Governor, Criminal Justice Division; Monty Wynn, Texas Municipal League)

DIGEST:

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

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

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

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

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

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

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

Disannexation from defunding municipalities. CSHB 1900 would require a defunding municipality to hold a separate election in each area annexed in the preceding 30 years on the question of disannexing the area on the next uniform election date after the Criminal Justice Division determination was made. If favored by the majority of the votes, the defunding municipality would have to immediately disannex the area.

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

A defunding municipality could not annex an area, including an area previously disannexed from the municipality, beginning on the date the Criminal Justice Division determined the municipality was a defunding municipality and ending 10 years after the division determined that the municipality had reversed the reduction.

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

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

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

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

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

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

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

Provisions on initial determinations would expire September 1, 2023.

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

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

SUPPORTERS SAY:

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

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

its police department has problems, it would make sense to invest more funds, not less, to fix those issues.

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

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

CRITICS SAY:

CSHB 1900 would incorrectly label certain cities as "defunding municipalities" and create punitive measures to remove local discretion in budgeting for public safety. It is based on a premise that cities have "defunded" their police departments, when what some have done is restructure budgets based on community needs. For example, a city may redirect some funding from police to a program that sends emergency calls about mental health to a mental health crisis counselor, rather than police. Services would be maintained and may be delivered more effectively by trained professionals. This would also free law enforcement resources for the dangerous public safety situations that only police are equipped to handle.

CSHB 1900 would penalize a city's discretion in making budget decisions for its community. Cities labeled as defunding municipalities would be subject to reduced property tax rates and further limits on raising rates, withheld sales and use tax revenues, and disannexation, which could lower the tax base and require costly elections. These onerous measures

could result in fewer city services, including public safety, which would go against the intent of the bill. Local communities know their own needs, and the state should not penalize cities by removing this local control.

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

NOTES:

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

SUBJECT: Specifying state authority to take over failing school districts

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Dutton, Lozano, K. Bell, Buckley, Huberty, K. King, VanDeaver

6 nays — Allen, Allison, Bernal, M. González, Meza, Talarico

WITNESSES: For — Bob Harvey, Greater Houston Partnership; (*Registered, but did not testify*: Madison Yandell, Texas 2036)

Against — Ann Williams, Alief ISD and Texas Caucus of Black School Boards; David Thompson, Texas Urban Council; Texas School Alliance and Texas Association of School Administrators; (*Registered, but did not testify*: David Anderson, Arlington ISD Board of Trustees; Andrea Chevalier, Association of Texas Professional Educators; Julia Grizzard, Bexar County Education Coalition; Charles Luke, Coalition for Education Funding; Joyce Foreman, Dallas ISD; Jodi Duron, Elgin ISD; Grover Campbell, TASB; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Ana Ramon, Texas Legislative Education Equity Coalition; Carrie Griffith, Texas State Teachers Association)

On — Von Byer, Texas Education Agency; Jonathan Feinstein, The Education Trust in Texas; Ruth Torres; (*Registered, but did not testify*: Chloe Latham Sikes, Intercultural Development Research Association; Jeff Cottrill, Eric Marin, and Christopher Jones, Texas Education Agency)

BACKGROUND: Education Code sec. 39.102 requires the commissioner of education to undertake certain interventions and sanctions involving a school district that does not satisfy accreditation criteria, academic performance standards, or any financial accountability standard. Actions can include appointment of a conservator to oversee operations of the district, appointment of a board of managers to exercise the powers and duties of the board of trustees, or closure of the district and annexation to one or more adjoining districts.

DIGEST:

CSHB 3270 would revise provisions relating to public school accountability and associated interventions and sanctions. It includes temporary provisions requiring state intervention for certain districts or campuses. The bill would make certain decisions by the commissioner of education concerning school districts final and unappealable.

Intervention for certain districts or campuses. CSHB 3270 would add temporary provisions for intervention by the commissioner of education for certain districts or campuses.

As soon as practicable after the effective date of the bill, the commissioner would have to determine the number of consecutive school years of unacceptable performance ratings for each school district, open-enrollment charter school, and district or school campus since the most recent acceptable rating had been assigned. The commissioner would have to order the appointment of a board of managers for each campus that was determined to have been assigned an unacceptable performance rating for more than five school years.

Statutory exemptions related to a district campus operated under a contract with certain partner charter holders, a designated math innovation zone, or an accelerated campus excellence turnaround plan would apply to the requirement for appointment of a board of managers.

The requirement for a board of managers could not be construed to:

- provide a school district or charter school additional remedies or appellate or other review for previous interventions, sanctions, or performance ratings ordered or assigned; or
- prohibit the commissioner from taking any action or ordering any intervention or sanction otherwise authorized by law.

The bill's requirements for intervention for certain districts or campuses would expire September 1, 2027.

Commissioner's authority. The bill would establish that the commissioner's power to delegate ministerial and executive functions to Texas Education Agency (TEA) staff and to employ division heads and

any other employees and clerks to perform TEA duties are valid delegations of authority, notwithstanding any other law.

Special investigations. CSHB 3270 would replace Education Code references to special accreditation investigations with revised provisions for special investigations. The education commissioner could conduct special investigations to determine if an academic program offered by a school district was providing students the quality education to which they are entitled under federal Title 1 and state law, including:

- the proportion of students in each demographic group participating in the program;
- whether an excessive number of students were participating in a particular program or were being exempted from state requirements; or
- whether all students had equitable access to the program, including advanced learning options.

The bill would revise certain statutory provisions related to investigations that would be allowed regarding a district's accounting practices and fiscal management, certain educational programs for particular student populations, and whether an improper use of public funds had occurred.

The bill would expand the commissioner's authority for special investigations on certain previously established grounds as follows:

- for an investigation in response to an allegation of inaccurate reported data, by removing the condition that the investigation must be in response to a complaint to TEA and by authorizing an investigation of allegedly inaccurate data reported to TEA in any manner, including a material misrepresentation made in the course of a special investigation; and
- for an investigation in response to a district's failure to produce applicable evidence or an applicable investigation report at the request of TEA, by extending the qualifying requested material from evidence or a report relating to an educator under

investigation by the State Board for Educator Certification to evidence or a report on any subject.

The bill would remove certain statistical patterns or anomalies relating to standardized testing and student outcomes from the specified grounds for a special investigation.

Confidential witnesses. During a special investigation, TEA would be authorized to classify the identity of a witness as confidential if TEA determined it was necessary to protect the welfare of the witness.

Board policies. The bill would specify that if TEA found in a special investigation involving an alleged conflict between district board members or between a board and district administration that the board had observed a lawfully adopted policy, TEA would be prohibited from substituting its judgment for that of the board only if the adopted policy did not otherwise violate a law or rule.

Deferred actions. At any time before issuing a report with TEA's final findings, the commissioner could defer taking an action until:

- a person who is a third party, selected by the commissioner, had reviewed programs or other subjects of a special investigation and submitted a report identifying problems and proposing solutions;
- a district completed a corrective action plan developed by the commissioner; or
- the completion of both the third-party review and corrective action plan.

The commissioner could decline to take the deferred action.

Informal review. An informal review under the bill's special investigation provisions would not be a contested case and a determination or decision made by TEA would be final and unappealable.

Final order. If an order, decision, or determination was described as final and unappealable, no interlocutory or intermediate order, decision, or

determination made or reached before the final order, decision, or determination could be appealed.

Accountability interventions and sanctions. CSHB 3270 would change the period of consecutive unacceptable campus performance ratings after which the commissioner must intervene by closing the campus or appointing a board of managers to the district from three consecutive school years after the campus was ordered to submit a campus turnaround plan to five consecutive school years.

Based on the results of a special investigation, the commissioner would be authorized to take any action under state accountability interventions and sanctions regardless of any requirements applicable to the action provided by state law.

The commissioner could authorize the modification of an approved campus turnaround plan if the commissioner determined that, due to a change in circumstances that occurred after the commissioner approved the plan, a modification was necessary to achieve the plan's objectives.

Conservator or management team. A conservator or management team could exercise the statutory powers and duties defined by the commissioner regardless of whether the conservator or management team was appointed to oversee the operations of a school district in its entirety or the operations of a certain campus within the district.

CSHB 3270 would require a conservator appointed by the commissioner for certain district-level oversight purposes involving the implementation of an updated targeted improvement plan to be appointed to that role unless and until either of the following conditions were met:

- each campus in the district for which a campus turnaround plan had been ordered received an acceptable performance rating for the school year; or
- the commissioner determined a conservator was not necessary.

Campus and district performance ratings. CSHB 3270 would authorize the commissioner, in the context of a regular performance evaluation for

accountability purposes, to assign a district or campus an overall performance rating of "Not Rated" if the commissioner determined that a rating of A, B, C, D, or F would be inappropriate for any of the following reasons:

- the district or campus was located in a declared disaster area, and due to the disaster its performance indicators were difficult to measure or evaluate and would not accurately reflect its quality of learning and achievement;
- the district or campus had experienced breaches or other failures in data integrity to the extent that accurate analysis of data regarding performance indicators was not possible;
- the number of students enrolled in the district or campus was insufficient to accurately evaluate its performance; or
- for other reasons outside the control of the district or campus, the performance indicators would not accurately reflect its quality of learning and achievement.

An overall performance rating of "Not Rated" would not be included in calculating consecutive school years or considered a break in consecutive school years for purposes of accountability interventions and sanctions.

Unacceptable ratings. The bill would require the number of consecutive school years of unacceptable performance ratings for each district and campus, if applicable, be made publicly available not later than August 15 of each year in addition to the annual performance rates. A district or charter school could challenge a TEA determination of consecutive school years of unacceptable ratings.

Fiscal management. The bill would prohibit the use of state funds not designated for a specific purpose or local school funds to initiate or maintain any action or proceeding against the state or against an agency or officer of the state arising out of a decision that was final and unappealable. It would prohibit the use of a district's Tier 2 entitlement under the Foundation School Program for such a purpose or for another purpose prohibited by the Education Code.

The bill would expand the conduct that constituted the class C misdemeanor offense of failure to comply with school budget requirements to include a district trustee's vote to approve any expenditure of school funds in violation of a provision of the Education Code for a purpose for which those funds may not be spent.

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 3270 would clarify existing statutes to allow the education commissioner to address the problem of chronically failing schools. It is unacceptable that certain campuses have not provided their students with an adequate education that prepares them for success in life. State intervention is needed to remedy this situation, and CSHB 3270 would clarify the tools the commissioner and Texas Education Agency (TEA) have to take action. It would address legislative intent for such state interventions by specifically requiring the commissioner to order the appointment of a board of managers to oversee a school that had been academically unacceptable for more than five years.

While some criticize CSHB 3270 for allowing anonymous testimony during a special investigation, it is important to protect teachers and other school employees who might come forward during an investigation. Concern about making commissioner decisions final and not appealable could be addressed in further discussions on the bill.

The "Not Rated" designation for schools has been necessary for several years due to disruptions caused by natural disasters but should not be used to delay improvements to the system for state intervention in failing schools.

CRITICS SAY:

CSHB 3270 would increase state control of locally governed school districts and give the education commissioner significant new authority to override local voters by taking over an elected school board. In one case, the state proposed taking over a B-rated school district because of the underperformance of one high school. The state should have oversight of failing schools but CSHB 3270 would not provide an appropriate balance

between local communities and an appointed state official in Austin. The bill states that the commissioner's power is "final and unappealable," meaning school districts would have no recourse to challenge the legality of the commissioner's decision to take over an elected school board. Other changes to TEA's investigatory process, including a provision to allow anonymous testimony, could deprive school districts of meaningful due process.

The bill appears to address a particular situation involving one low-performing school in a B-rated district. During several years in which the state did not rate some schools due to a hurricane and all schools due to the COVID-19 pandemic, campuses that had been previously identified as needing improvement lost opportunities to improve their ratings. It would be better to wait until the accountability system has stabilized before enacting major changes.

SUBJECT: Removing a legal judgment as a prerequisite for certain insurance claims

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Romero, Sanford

0 nays

WITNESSES: For — Will Adams, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; Lani Burgar; Jim Clements; Rebekah Rogers; (*Registered, but did not testify*: Susana Carranza; Dorothy Ann Compton; Linda Guy; Jacob Smith; Gregg Vunderink)

Against — Jay Thompson, AFACT; Joe Woods, American Property and Casualty Insurance Association; Jon Schnautz, National Association of Mutual Insurance Companies; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Daniel Hodge, Al Boenker Insurance; John Marlow, Chubb; Frank Galitski, Farmers Insurance; Jarrett Hill, Texas Farm Bureau Insurance)

On — (*Registered, but did not testify*: Kimberly Donovan, Office of Public Insurance Counsel; Leah Gillum, Texas Department of Insurance)

BACKGROUND: Insurance Code sec. 541.151 allows a person who sustains actual damages to bring an action against another person for those damages caused by the other person engaging in an act or practice defined as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

DIGEST: HB 359 would establish that a judgment or other legal determination establishing the other motorist's liability or the extent of the insured's damages would not be a prerequisite to recovery in an action seeking damages for a violation of an unfair claim settlement. For statutory provisions related to unfair settlement practice, the insured could provide notice of a claim for uninsured or underinsured motorist coverage by

providing a written notification to the insurer that reasonably informed the insurer of the facts of the claim.

In regard to such a claim, the only extra-contractual cause of action available to an insured to recover damages for a violation related to unfair settlement practice would be provisions authorizing private action for damages under the Insurance Code.

The bill would apply only to a cause of action that accrued on or after the its effective date. It would not affect the enforceability of any provision in an insurance policy delivered or renewed before January 1, 2022.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 359 would reduce litigation and enable policyholders to receive the insurance benefits for which they already paid. The Texas Supreme Court in *Brainard v. Trinity Universal Ins. Co.* held in 2006 that an uninsured or underinsured motorist insurer is under no contractual duty to pay benefits until the insured obtained a judgment establishing the liability and underinsured status of the other motorist. This has caused delay, expense, and hardship for policyholders. By removing the judgment prerequisite, HB 359 would eliminate the need for litigation to receive a legal determination and discourage insurance companies from delaying or denying policyholders the benefits that are rightfully theirs. The bill would not prevent insurers from challenging claims when liability is unclear.

CRITICS SAY:

HB 359 would place an undue burden on insurers by eliminating a mechanism that helps establish liability in certain claims cases. The current requirement of a legal judgment is needed for the small percentage of cases in which the liability or insurance status of the party being sued is unclear. Current law adequately balances the interests of all parties involved. The bill could lead to litigation over what constitutes notice that reasonably informs an insurer of the facts of a claim.

SUBJECT: Providing funding for comprehensive regional universities

COMMITTEE: Higher Education — committee substitute recommended

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

0 nays

1 absent — Frullo

WITNESSES: For — Justin Yancy, Texas Business Leadership Council; (*Registered, but did not testify*: Dana Harris, Austin Chamber of Commerce; Libby McCabe, Commit Partnership; Molly Weiner, United Ways of Texas)

Against — None

On — Cynthia Matson, Texas A&M University San Antonio; Carine Feyten, Texas Woman's University; Jesse Pisors, University of Houston Victoria

BACKGROUND: Interested parties have called for increasing funding to support comprehensive regional universities in Texas. These universities serve a growing population of at-risk students who often require additional academic support.

DIGEST: CSHB 3175 would provide funding for certain eligible institutions to support such institutions in serving at-risk students, helping to meet the state's workforce needs and enhancing the institution's regional economy.

The bill would define "eligible institution" to mean an institution of higher education designated as a comprehensive university, doctoral university, or master's university under the Texas Higher Education Coordinating Board's (THECB) accountability system.

"At-risk student" would mean an undergraduate student of an eligible institution:

- whose score on the SAT or ACT assessment test was less than the national mean score of students' scores on those tests; or
- who had previously received a grant under the federal Pell Grant program.

Funding. For each state fiscal biennium, an eligible institution would be entitled to receive an amount equal to the sum of:

- a base amount of $500,000 or a greater base amount provided by appropriation; and
- the product of $1,000 or a greater amount provided by appropriation and the average number of at-risk students awarded a degree by the institution each year during the three state fiscal years preceding the biennium.

An alternative method of allocating funding could be provided by appropriation.

Study and report. THECB, in consultation with a representative group of eligible institutions, would be required to conduct a study on the bill's proposed method of funding to determine its effectiveness in allocating state funds fairly and equitably and promoting student success at eligible institutions.

By September 1, 2022, the THECB would be required to submit to the governor and the Legislative Budget Board a report on the results of the study and any recommendations for legislative or other action.

The bill's provisions relating to the study and report would expire September 1, 2023.

An eligible institution would be entitled to receive funding under the funding model proposed in this bill beginning with the first state fiscal biennium for which money was appropriated for that purpose.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of about $43 million to general revenue related funds through fiscal 2022-2023, with a similar impact in subsequent biennia. The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

SUBJECT: Requiring plot plans for concrete batch plant permit applications

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 7 ayes — Landgraf, Goodwin, Kacal, Kuempel, Morales Shaw, Morrison, Reynolds

0 nays

2 absent — Dominguez, Dean

WITNESSES: For — Ender Reed, Harris County Commissioners Court; Adrian Shelley, Public Citizen; (*Registered, but did not testify*: TJ Patterson, City of Fort Worth; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Jim Allison, County Judges and Commissioners Association of Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Russell Schaffner, Tarrant County; Michael Grimes, Texas Aggregate and Concrete Association; Robin Schneider, Texas Campaign for the Environment; Susana Carranza; Melynda Nuss; Jose Skinner)

Against — None

On — (*Registered, but did not testify*: Beryl Thatcher, TCEQ

BACKGROUND: Health and Safety Code sec. 382.05195 authorizes the Texas Commission on Environmental Quality (TCEQ) to issue a standard air permit for certain new or existing facilities if specified requirements are met.

Sec. 382.05198 requires the TCEQ to issue a standard air permit for a permanent concrete batch plant that meets certain requirements.

Concerns have been raised that some applications for standard permits for concrete batch plants are submitted to TCEQ and approved without including detailed plot plans that display required information, such as emission points and whether distance limitations are met. It has been suggested that requiring these applications to include such plot plans

would help prevent environmental harms and ensure permit requirements were met.

DIGEST:

HB 416 would require an application for the issuance of a standard air permit for certain concrete plants to include a plot plan that clearly showed:

- a distance scale;
- a north arrow;
- all property lines, emission points, buildings, tanks, and process vessels and other process equipment in the area in which the facility would be located;
- at least two benchmark locations in the area; and
- if the permit required a distance, setback, or buffer from other property or structures, whether the required distance or setback would be met.

The bill would apply to applications for concrete plants that performed wet batching, dry batching, or central mixing, including a permanent, temporary, or specialty concrete batch plant.

An application for the issuance of a standard permit for a permanent concrete batch plant under Health and Safety Code sec. 382.01598 also would have to include a plot plan that met the bill's requirements.

The bill would take effect September 1, 2021, and would apply only to an application for a standard permit that was filed with TCEQ on or after that date.

SUBJECT: Designating January 27 as International Holocaust Remembrance Day

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

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: Anna Alkire; Beth Maynard; Ruth York)

Against — None

BACKGROUND: Government Code ch. 662, subch. C establishes days of recognition for the state.

Suggestions have been made to update current law by including International Holocaust Remembrance Day in its list of recognition days.

DIGEST: HB 2728 would designate January 27 as International Holocaust Remembrance Day to commemorate the anniversary of the liberation of Auschwitz-Birkenau and to honor the millions of victims of the Holocaust.

Under the bill, International Holocaust Remembrance Day could be regularly observed by appropriate ceremonies and activities.

The bill would take effect September 1, 2021.

SUBJECT: Notifying parties of indemnity obligations in triparty well agreements

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 9 ayes — Goldman, Anchia, Craddick, Darby, Geren, T. King, Leman, Longoria, Reynolds

0 nays

2 absent — Herrero, Ellzey

WITNESSES: For — (*Registered, but did not testify*: Steve Bruington)

Against — None

On — (*Registered, but did not testify*: William Stevens, Panhandle Producers and Royalty Owners Association)

BACKGROUND: Some have called for increased transparency in triparty relationship agreements among operators, contractors, and subcontractors in the drilling and production segment of the oil and gas industry to protect subcontractors. Contractors support subcontractors, in part, by purchasing and providing liability insurance to protect the subcontractor and the operator. Operators require high levels of liability insurance coverage, which is often unaffordable to individual subcontractors. Some have suggested that before entering into or renewing an agreement, a contractor should notify the subcontractor of indemnification obligations and notify the operator about the subcontractor's liability insurance coverage or qualified self-insurance for the obligations.

DIGEST: CSHB 3416 would require a contractor, before entering into or renewing a triparty relationship agreement with a subcontractor or third party, to provide written notice to the subcontractor and third party.

A "triparty relationship agreement" would mean any agreement pertaining to a well for oil, gas, or water or to a mine for a mineral that provided:

- that a subcontractor could or would provide any part of a contractor's services required under a separate agreement with a third party; and
- for a mutual or unilateral indemnity obligation between the contractor and third party.

The written notice to the subcontractor would have to:

- describe the subcontractor's indemnification obligations to the contractor and to the third party with respect to the services the subcontractor would provide under any related agreement between the contractor and subcontractor;
- be provided as a separate document from the agreements with the subcontractor and third party; and
- be written in plain English in a manner that was designed to enable the subcontractor to understand the subcontractor's contractual indemnity obligations in connection with any services performed by the subcontractor pursuant to the triparty relationship agreement.

The written notice provided to the third party would have to state whether the subcontractor possessed liability insurance coverage or qualified self-insurance as required by law for the subcontractor's indemnity obligations in connection with any services performed by the subcontractor pursuant to the triparty relationship agreement. The notice also would provide any dollar limits of the subcontractor's insurance policy or qualified self-insurance, if any.

A contractor could satisfy the third party written notice by providing a certificate of insurance.

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

SUBJECT: Defining licensing consequences of deferred adjudication

COMMITTEE: Corrections — committee substitute recommended

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

0 nays

3 absent — Burrows, Martinez Fischer, White

WITNESSES: For — (*Registered, but did not testify*: Justin Keener, for Doug Deason, Americans for Prosperity, and Libre Initiative; Traci Berry, Goodwill Central Texas; Ender Reed, Harris County Commissioners Court; Jorge Renaud, LatinoJustice; Lori Henning, Texas Association of Goodwills; Jennifer Allmon, The Texas Catholic Conference of Bishops; Julie Wheeler, Travis County Commissioners Court; Sarah Reyes)

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

On — (*Registered, but did not testify*: Christina Kaiser, Texas Department of Licensing and Regulation)

BACKGROUND: Code of Criminal Procedure art. 42A.101 defines deferred adjudication as a form of probation under which a judge, after receiving a plea of guilty or no contest, postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of that probation.

Concerns have been raised that individuals have been denied professional or occupational licenses after successfully completing deferred adjudication and having their cases dismissed and that this could present an obstacle to successfully integrating into the community and finding employment.

DIGEST: CSHB 757 would prohibit deferred adjudications which resulted in a deferral and dismissal, subject to certain conditions, from being used to deny, suspend, or revoke professional or occupational licenses or

certificates of an individual otherwise entitled to or qualified for the license or certificate.

Licensing agencies would be authorized to consider the fact that the defendant previously had received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license or certificate if the profession for which the license or certificate was sought involved direct contact with children in the normal course its duties or if the offense:

- was on the list of offenses in Code of Criminal Procedure art. 42A.054 for which judges cannot order community supervision;
- was listed as a reportable conviction or sexually violent offense under the state's sex offender registry;
- involved certain other sex offenses or public indecency; or
- was related to the activity or conduct for which the person sought or held the license.

The bill would take effect September 1, 2021, and would apply only to defendants placed on deferred adjudication for offenses committed on or after that date.

SUBJECT: Amending requirements for temporary polling places in certain counties

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Cain, Bucy, Clardy, Jetton, Schofield, Swanson

0 nays

3 absent — J. González, Beckley, Fierro

WITNESSES: For — Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: Cindy Ji, Children's Defense Fund - Texas; Anthony Gutierrez, Common Cause Texas; Gerald Welty, Convention of States; Heather Hawthorne, County and District Clerks Association of Texas; Daniel Collins, El Paso County; Cinde Weatherby, League of Women Voters of Texas; Chris Davis, Texas Association of Elections Administrators; Richard Bohnert)

Against — Ed Johnson; Bill Sargent; (*Registered, but did not testify*: Susan Gezana; Russell Hayter)

On — Alan Vera, Harris County Republican Party Ballot Security Committee; (*Registered, but did not testify*: Christina Adkins, Texas Secretary of State; Keith Ingram, Texas Secretary of State; Henry Bohnert)

BACKGROUND: Election Code sec. 85.064 governs the days and hours for in-person voting at a temporary branch polling place. Early voting at each temporary branch polling place must be conducted on days that voting is conducted at the main early voting polling place, and branch polling places must remain open for at least eight hours each day, except that if the city or county clerk does not serve as the early voting clerk for the territory holding the election and the territory has fewer than 1,000 registered voters, the branch polling place must stay open for three hours each day.

DIGEST: HB 2149 would allow in-person early voting to be conducted at a temporary branch polling place on any one or more days and during any

hours of the early voting period in elections in which the territory served by the early voting clerk was located in a county or counties with a population or combined population, respectively, of less than 100,000. The voting schedules for such elections would not have to be uniform among the temporary branch polling places.

The appropriate authority could order early voting to be conducted on a Saturday or Sunday at any or all temporary branch polling places. Notice of dates and hours for weekend voting would have to be posted by the early voting clerk if the clerk was also a county clerk or city secretary.

The bill would limit Election Code sec. 85.064 to apply only to elections in which the territory served by the early voting clerk was situated in a county or counties with a population or combined population, as applicable, of 100,000 or more.

The bill would take effect September 1, 2021

SUPPORTERS SAY:

HB 2149 would give certain rural counties the flexibility they need to feasibly conduct early voting in a way that maximizes voter opportunity. Current law requires temporary branch polling locations to remain open on the same days as the main early voting location for at least eight hours per day. This requirement is burdensome for many rural counties, since the cost is too great to justify running temporary polling places for the entire early voting period, especially in areas were voter turnout is low. The unintended consequence of fewer early voting locations makes it more difficult for certain groups of citizens, including the elderly and the disabled, to exercise their right to vote. Concerns about the need for temporary polling places to remain in a certain location for a set time could be addressed in a floor amendment by the author.

CRITICS SAY:

While the need for more flexibility for rural counties is understandable, by removing current requirements on temporary polling places HB 2149 could open the door to targeted 'vote harvesting' intended to produce a certain election outcome through the frequent moving of polling places to particular locations. The bill would be improved by provisions aimed at

preventing such abuse, such as by requiring a temporary polling place to remain at a particular location for a set time before being moved.

NOTES:

The author plans to offer a floor amendment to HB 2149 that would require voting at a temporary branch polling place in a territory served by an early voting clerk that was located in a county or counties with a population or combined population, respectively, of less than 100,000 to be conducted on at least two consecutive business days and for at least eight consecutive hours on each of those days.

SUBJECT: Creating new courts, modifying court procedures, judicial administration

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

WITNESSES: For — (*Registered, but did not testify*: M. Paige Williams for Dallas Criminal District Attorney John Creuzot; Steve Bresnen, Texas Court Reporters Association; Amy Bresnen, Texas Family Law Foundation)

Against — None

On — (*Registered, but did not testify*: David Slayton, Office of Court Administration)

BACKGROUND: Each session the Legislature traditionally considers a bill creating new courts, changing court jurisdiction, and making other changes related to judicial administration.

DIGEST: CSHB 3774 would make revisions to district courts, statutory county courts, justice and municipal courts, certain magistrate courts, and juvenile justice and family courts. The bill also would revise the duties of the capital and forensic writs committee, standardize the court case transfer process, and make other changes, including revisions to the Forensic Science Commission, specialty court programs, and the protective order registry.

District courts. CSHB 3774 would amend the Government Code to create six new district courts as follows:

- 478th District Court composed of Bell County;
- 480th District Court composed of Williamson County (effective October 1, 2022);
- 481st District Court composed of Denton County;

- 482nd District Court composed of Harris County;
- 484th District Court, composed of Cameron County (preference to juvenile matters); and
- 474th District Court, composed of McLennan County.

The bill would create the Criminal Judicial District No. 5 composed of Tarrant County and would make provisions relating to the Tarrant County Criminal District Court No. 1 applicable to the new court.

Statutory county courts. The bill would create the following statutory county courts:

- County Court at Law No. 3 of McLennan County;
- County Court at Law No. 6 of Montgomery County;
- County Court at Law No. 2 of San Patricio;
- County Criminal Court No. 6 of Tarrant County; and
- County Court at Law No. 5 of Williamson County.

The bill would revise the jurisdiction of the statutory county court in Reeves County as it relates to family law cases and the jurisdiction of a statutory county court in San Patricio County as it relates to certain concurrent jurisdiction with the district court and to certain felony and civil matters. The bill also would remove provisions setting the minimum salary of a county courts at law judge in San Patricio County and would establish provisions relating to the clerks and other personal needed to operate the county courts at law in San Patricio County. The bill would include a board composed of the district judges and the county court at law judges for San Patricio County among those who would design a plan for the courts if necessary.

The bill would create Probate Court Number 2 of Denton County and revise the jurisdiction of the County Court at Law No. 2 of Denton County.

The bill would revise how the state annually compensates counties that collect certain fees in statutory probate courts. The amount would change from $40,000 for each statutory probate court judge to be 60 percent of

the annual base salary paid to a state district judge for each statutory probate court judge.

CSHB 3774 also would revise provisions relating to the appointment of certain deputy clerks in Bexar County.

Justice and municipal courts. The bill would prohibit a justice or judge in a justice or municipal court from accepting a guilty or no contest plea in a criminal proceeding unless it appeared that the defendant was mentally competent and the plea was free and voluntary.

Juvenile justice and family courts. The bill would define a "dual status child" and establish provisions about transferring cases involving a dual status child.

The bill would include requirements for appointed attorney ad litems to meet with a child before court hearings to appointments for child welfare proceedings and would revise provisions relating to attorney ad litems filing certain statements with the court about meeting with a child.

Magistrates and magistrate courts. CSHB 3774 would give jurisdiction in criminal actions to magistrates appointed by the Collin County Commissioners Court and by the Brazoria County Commissioners Court or the local administrative judge for Brazoria County.

The bill would create the Brazoria County Criminal Law Magistrate Court and would authorize the county commissioners court to appoint one or more full-time or part-time judges to preside over the court for a term determined by the commissioners and requires the local administrative judge to appoint one or more full or part-time judges to preside over the court if the commissioners court is prohibited by law from appointing a judge. The bill establishes several provisions relating to the court, including provisions on its jurisdiction, powers, duties, and operations.

Capital and forensic writs committee. The bill would revise the duties of the capital and forensic writ committee to include providing oversight and strategic guidance to the Office of Capital and Forensic Writs, including setting policy for the office and developing a budget proposal

for it. The composition of the committee and requirements for its members would be revised.

Transfer of cases. CSHB 3774 would require the Office of Court Administration to adopt rules relating to the transfer of certain documents and cases between courts and would revise provisions governing court clerks handling and sending such documents.

Habeas corpus. The bill would allow applicants for writs of habeas corpus the option of using secure electronic mail to serve a copy of the application on the state's attorney. This would apply only to writs filed on or after the bill's effective date.

Publication of citation for receivership. Citations for a receivership for certain missing persons would have to be posted on the Office of Court Administration's website.

Evidence. The bill would make several revisions to the statutes governing the Forensic Science Commission. The commission would be required to adopt a code of professional responsibility to regulate the conduct of persons, labs, facilities, and other entities and to adopt rules establishing sanctions for code violations. The commission would be required to update the code of professional responsibility to reflect changes in science, technology, or other factors.

The bill would make other changes to the statutes governing the commission, including revising its duty to investigate certain allegations and authorizing it to delegate certain duties.

Jury service. The bill would expand the places where jurors may donate their daily reimbursement to include veterans county service offices, and would remove a cap on the meal reimbursement that can be given to jurors in certain courts and replace it with a stipulation that judges can spend a reasonable amount for meal reimbursement.

Specialty courts. CSHB 3774 would allow a judge or magistrate of a district court or statutory county court who is authorized to hear criminal

cases to be appointed to preside over a certain regional specialty court program if:

- the local administrative district and statutory county court judges of each county participating in the program approved the appointment; and
- the presiding judges of each of the administrative judicial regions in which the participating counties were located granted the appointment.

The bill also would establish authority of judges or magistrates in such courts to hear cases properly transferred to the court.

CSHB 3774 would establish an option for certain defendants to participate in veterans treatment courts in counties adjacent to the county where they worked or resided.

Protective orders. The bill would expand the protective order registry maintained by the Office of Court Administration to include certain protective orders relating to sexual assault or abuse, stalking, trafficking. It also would revise which information on the registry relating to protective orders that were vacated was publicly accessible.

Effective date. The bill generally would take effect September 1, 2021. State agencies would be required to implement provisions of the bill only if appropriated funds specifically for its purpose. If the Legislature did not appropriate money specifically for a purpose, the state agency may, but is not required to, implement a provision of the bill using other appropriations available for that purpose.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of about $3.7 million to general revenue through fiscal 2023.

SUBJECT: Exempting certain firefighters and police officers from jury service

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

WITNESSES: For — Greg Shipley and Scott Leeton, Corpus Christi Police Officers Association; (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; James Parnell, Dallas Police Association; Dallas Reed, Texas Municipal Police Association; Frederick Frazier, Texas State FOP; Thomas Hollingsworth)

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

BACKGROUND: Government Code sec. 62.106(a) establishes grounds for certain exemptions from jury service. Some have suggested that time spent by firefighters and police officers in the jury selection process takes them away from protecting the community and that they should have an exemption from jury service on the basis of their occupation

DIGEST: HB 2585 would allow the following firefighters and police officers to be exempt from jury service:

- a firefighter, including a fire chief, who was a permanent paid employee of the fire department of a municipality or county or of a special district or authority that provides firefighting services; or
- a police officer, including a police chief, who was a permanent, paid member of the police department of a municipality or county.

The bill would take effect September 1, 2021, and would apply only to a person summoned to appear for jury service who was required to appear on or after that date.

SUBJECT: Creating the Lake Houston Dredging and Maintenance District

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — T. King, Bowers, Larson, Lucio, Paul, Price, Ramos, Walle, Wilson

0 nays

2 absent — Harris, Kacal

WITNESSES: For — Stephen Costello and David Martin, City of Houston; (*Registered, but did not testify*: June Deadrick, CenterPoint Energy; Bill Kelly, Mayor's Office, City of Houston; Trent Townsend, Sullivan Interests)

Against — Steve Bresnen, North Harris County Regional Water Authority

On — (*Registered, but did not testify*: CJ Tredway, Central Harris County Regional Water Authority; Trey Lary, West Harris County Regional Water Authority and North Fort Bend Water Authority)

BACKGROUND: Concerns have been raised that there is a need for a long-term plan and ongoing maintenance program to remove the accumulation of sedimentation and siltation on Lake Houston to increase capacity and water quality.

DIGEST: CSHB 2525 would create the Lake Houston Dredging and Maintenance District as a conservation and reclamation district. The bill would provide the board's governing structure, powers and duties, and financing authority.

Governance. The district would be governed by a board of directors appointed as follows:

- three directors appointed by the Harris County Commissioners Court;
- three directors appointed by the city council of Houston; and

- a presiding officer appointed jointly by the county judge of Harris County and the mayor of Houston.

Directors would serve staggered four-year terms.

Powers and duties. The district would have the powers and duties applicable to a conservation and reclamation district, except as otherwise provided by the bill.

Dredging and maintenance. The bill would allow the district to form voluntary interlocal agreements with political subdivisions, corporate entities, or other persons to perform dredging and maintenance operations in areas on Lake Houston and its tributaries.

"Dredging and maintenance operations" would include the removal of sediment and debris that accumulated under and above the water and floating debris.

The district could require payment for operations performed under an interlocal agreement and could seek from any source a grant of money or another resource to assist the district's dredging and maintenance operations.

The dredging and maintenance operations could not negatively affect the quality of water in the lake or degrade the quality of water to be treated by the city's Northeast Water Purification Plant.

The district would have to obtain approval before performing dredging and maintenance operations from the City of Houston Public Works—Engineering Department.

Removing sediments. The bill would allow the district to take sand, gravel, marl, shell, and mudshell from Lake Houston and its tributaries to restore, maintain, or expand the capacity of the lake and its tributaries to convey storm flows. For such purposes, the district would not be required to obtain a permit or pay a fee to remove the sediments or to purchase the sediments.

The district could deposit the sediments on private land and sell the sediments.

Limitation on powers. The district could not:

- finance, develop, or maintain a recreational facility;
- exercise the power of eminent domain; or
- perform the same function as another conservation and reclamation district whose territory overlapped the district's, except to perform dredging operations.

The district could not impose a property tax or charge a fee, except as otherwise provided by the bill.

Financing. The bill would allow the district to issue bonds payable from and secured by district revenue. The bonds would have to be authorized by a board resolution.

The district would have to study methods of financing its services and improvements and make the results of the study available to the public.

Dates. The initial members of the board would have to be appointed by January 1, 2022.

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

SUBJECT: Requiring TDCJ to develop an emergency response plan for disasters

COMMITTEE: Corrections — committee substitute recommended

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

1 nay — White

2 absent — Martinez Fischer, Rodriguez

WITNESSES: For — Jennifer Toon, Coalition of Texans with Disabilities; Karen Munoz, LatinoJustice PRLDEF; Kirsten Ricketts, Restorer Of City Streets; Savannah Eldrige, Statewide Leadership Council; Josh Kemp and Douglas Smith, Texas Criminal Justice Coalition; Maggie Luna; Charlie Malouff; Charles Roberts; Kristina Veit; (*Registered, but did not testify*: Jorge Renaud, LatinoJustice; Joshua Houston, Texas Impact)

Against — None

On — David Gutierrez, Texas Board of Pardons and Paroles; Bryan Collier, Texas Department of Criminal Justice; Michele Deitch; (*Registered, but did not testify*: Bobby Lumpkin, Texas Department of Criminal Justice)

BACKGROUND: It has been reported that the Texas Department of Criminal Justice prison system lacked authority to take certain steps during the COVID-19 pandemic to reduce the population in prisons and mitigate the spread of virus. Some have called for clear direction that would allow the state prison system to act decisively during and respond effectively to future emergencies, such as epidemics or natural disasters.

DIGEST: CSHB 2331 would require the Texas Department of Criminal Justice (TDCJ) to develop an emergency response plan to be implemented when responding to a disaster declared by the governor under the Texas Disaster Act or by the U.S. president, if any part of Texas was named in the federally declared disaster area.

The emergency response plan would have to specify the operating procedures that would be implemented by a correctional facility during a declared disaster, including evacuation procedures for individuals in custody and employees of the facility and guidelines for employees to ensure their safety and well-being. The plan also would have to:

- include provisions to prevent or minimize extended lockdowns or periods of segregation in a correctional facility;
- ensure that individuals in custody could continue to participate in any classes or programs that the Board of Pardons and Paroles had required them to complete before being released on parole;
- ensure that individuals in custody had regular commissary access;
- ensure that TDCJ and each correctional facility had sufficient quantities of personal protective equipment for employees and individuals in custody;
- ensure that individuals in custody were not denied access to medical care, medication, or personal hygiene items; and
- prohibit a correctional facility from suspending in-person visitation, provided that a facility could temporarily institute video visitation.

The bill would establish an advisory board to provide TDCJ with recommendations for the emergency response plan. Recommendations would have to be updated by March 1 annually, and the first set of recommendations would have to be developed and submitted to TDCJ by March 1, 2022. TDCJ would have to develop the emergency plan within 180 days after the advisory board submitted the recommendations.

If TDCJ's response to a declared disaster was inconsistent with the submitted recommendations, the advisory board could obtain any relevant data to identify any consequences of TDCJ's response.

The board would be composed of TDCJ's executive director, the commissioner of public health of the Department of State Health Services, and the following governor-appointed members:

- at least two members, each of whom was a correctional officer employed by TDCJ at the level of sergeant or lower and was a member of an employee organization that mostly consisted of TDCJ employees;
- at least two members who were previously incarcerated;
- two members who were family members of individuals in custody;
- one member who had a background in emergency planning and had previously created an emergency management program for accreditation purposes; and
- one member with a background in public health who was capable of ascertaining vulnerabilities to emerging diseases or infections that could affect TDCJ's operations.

The bill would take effect September 1, 2021.

SUBJECT: Allowing contracts for electric vehicle charging on state property

COMMITTEE: State Affairs — committee substitute recommended

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

1 nay — Shaheen

1 absent — Lucio

WITNESSES: For — Cyrus Reed, Lone Star Chapter Sierra Club; Tom Smitty Smith, Texas Electric Transportation Resources Alliance; (*Registered, but did not testify*: Mike Meroney, Enel North America; Jason Sabo, Environment Texas; Timothy Glassco, Francis Energy; Katherine Carmichael, Rivian Automotive; Joshua Houston, Texas Impact)

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

BACKGROUND: Concerns have been raised that there are currently not enough charging stations for hybrid or electric vehicles on state property, and it has been suggested that allowing such charging stations to be installed could lead to increased tourism in the state.

DIGEST: CSHB 3963 would allow a state agency in charge and control of state property, including a state park, to enter into an agreement with a charging provider to place and maintain electric vehicle charging equipment on the property.

Such an agreement would have to require the provider to use a metering device to determine the cost of electricity transferred to another person through electric vehicle charging equipment and could include any other reasonable requirements on the use of the property.

The bill would take effect September 1, 2021.

SUBJECT: Allowing regulation of noise in Harris County; creating an offense

COMMITTEE: County Affairs — committee substitute recommended

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: Adam Haynes, Conference of Urban Counties; Jim Allison, County Judges and Commissioners Association of Texas; Thamara Narvaez, Harris County Commissioners Court; Cyrus Reed, Lone Star Chapter Sierra Club; Susana Carranza; Julie Gilberg; Georgia Keysor; Vanessa MacDougal; Gregg Vunderink)

Against — Darrell Hale, Collin County Commissioner Precinct 3

BACKGROUND: Concerns have been raised that excessive noise levels in certain residential areas pose a threat to the public welfare. Some have called for allowing for the regulation of noise and sound levels in unincorporated parts of Harris County and the creation of a permitting system for events.

DIGEST: CSHB 775 would require the commissioners court of a county with a population of more than 3.3 million (Harris County) to prohibit by order the production of sound from a loudspeaker or amplifier that exceeded 85 decibels at a distance of 50 feet from the property line of the property on which the loudspeaker or amplifier was operated. The bill would apply only to the unincorporated areas in the county.

The commissioners court would be required to adopt procedures to measure noise and sound levels under the bill's provisions.

Exemptions. The bill would exempt the following entities from such noise restrictions:

- a chemical manufacturing facility;
- an electric utility;

- a gas utility;
- a telecommunications utility;
- a cable service provider;
- a video service provider; or
- an entity permitted for the management of solid waste under the Solid Waste Disposal Act.

The bill also would exempt from the restrictions an activity associated with the exploration, development, or production of oil, gas, geothermal resources, or any other substance or material regulated by the Railroad Commission under certain pollution prevention provisions, as well as the transporting, refining, processing, or other handling of oil, gas, or geothermal resources.

Permit. The bill would authorize the commissioners court to allow events to be held at which loudspeakers or amplifiers that produced sounds exceeding the specified levels would be used if the person holding the event obtained a permit. When considering the permit application, the commissioners court would be required to consider whether the sound is recurrent, intermittent, or constant.

A county could impose fees on an applicant for a permit. The fees would have to be based on the administrative costs of issuing the permit. A county that imposed a permit fee would have to establish procedures to reduce the fee amount if the applicant was unable to pay the full fee. Regulations adopted under the bill could provide for the denial, suspension, or revocation of a permit by the county, and district courts would have jurisdiction over suits arising from such situations. A county could sue in a district court for an injunction to prohibit the violation or threatened violation of a prohibition or other regulation adopted under the bill.

Criminal penalty. A person would commit a class C misdemeanor (maximum fine of $500) for violation of the bill's provisions.

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

SUBJECT: Analyzing adverse disproportionalities of children in CPS system

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Frank, Hinojosa, Meza, Neave, Noble, Rose, Shaheen

1 nay — Klick

1 absent — Hull

WITNESSES: For — Judy Powell, Parent Guidance Center; Julia Hatcher, Texas Association of Family Defense Attorneys; Ajshay James; (*Registered, but did not testify*: Stacy Wilson, Children's Hospital Association of Texas; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Adriana Kohler, Texans Care for Children; Jamie McCormick, Texas Alliance of Child and Family Services; Sarah Crockett, Texas CASA; Breall Baccus, Texas Council on Family Violence; Joshua Houston, Texas Impact; Dan Finch, Texas Medical Association; Eric Woomer, Texas Pediatric Society; Kerrie Judice, TexProtects; Molly Weiner, United Ways of Texas; Thomas Parkinson)

Against — None

On — Liz Kromrei, Department of Family and Protective Services

BACKGROUND: Concerns have been raised that African-American children face higher risks of being removed from their families and placed in foster care. Some have called for the Department of Family and Protective Services to build upon existing efforts in reducing or eliminating inequity among different demographic groups in the child protective services system.

DIGEST: CSHB 1237 would require the commissioner of the Department of Family and Protective Services (DFPS) to analyze the adverse disproportionate involvement of children in a demographic group in the child protective services (CPS) system, including at each stage of CPS investigations.

Team. On identifying an adverse disproportionality, the commissioner would be required to establish a team to address the disproportionality and communicate the disproportionality to the governor, lieutenant governor, House speaker, and the chairs of the standing committees of the Senate and House of Representatives with primary jurisdiction over DFPS.

Under the bill, the commissioner of DFPS would be required to appoint representatives to the established team with expertise in different subjects relevant to the disproportionality. The commissioner would have to direct the team to:

- research an evidence-based approach to address the adverse disproportionality;
- identify resources for addressing and eliminating or reducing the disproportionality; and
- assist the commissioner in obtaining those resources from and if necessary requesting those resources from the Legislature.

The commissioner would have to set a time to complete the elimination or reduction of the adverse disproportionality and measures for determining whether the disproportionality had been eliminated or reduced.

Reports. As soon as practicable, the commissioner would have to report to the governor, lieutenant governor, House speaker, and the chairs of the standing committees of the Senate and House of Representatives with primary jurisdiction over DFPS on:

- the evidence-based approach the department would use to eliminate or reduce the adverse disproportionality;
- the resources needed to eliminate or reduce the disproportionality;
- the time set to complete the elimination or reduction of the disproportionality; and
- the strategic plan and measures to eliminate or reduce the disproportionality.

At the conclusion of the time set by the commissioner to complete the elimination or reduction of the adverse disproportionality, the

commissioner would be required to report to the referenced persons above the results of the department's evidence-based approach to eliminating or reducing the disproportionality and whether the department's approach was successful or failed.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $856,000 to general revenue through fiscal 2023.

SUBJECT: Awarding costs and attorney's fees and imposing sanctions in certain suits

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 6 ayes — Neave, Cook, Frank, Ramos, Talarico, Wu

1 nay — Vasut

2 absent — Swanson, Leach

WITNESSES: For — Steve Bresnen, Texas Family Law Foundation; (*Registered, but did not testify*: Amy Bresnen, Texas Family Law Foundation; Carlos Flores; Robert L. Green; Cecilia Wood)

Against —Stuart McMullen, AFPE; Taran Champagne; Brandon Johnson; Jeffrey Morgan; (*Registered, but did not testify*: Rustin Wright, Americans for Parental Equality; and seven individuals)

BACKGROUND: Family Code sec. 6.708 governs costs, attorney's fees, and expenses in a suit for dissolution of marriage. It allows a court as it considers reasonable to award costs to a party. Family Code sec. 106.002 governs costs, attorney's fees, and expenses in a suit affecting the parent-child relationship. It allows a court to render judgment for reasonable attorney's fees and expenses and order the judgment and postjudgment interest to be paid directly to an attorney.

DIGEST: HB 913 would authorize a court with jurisdiction of a suit for the dissolution of a marriage or a suit affecting the parent-child relationship to, on its own motion or on the motion of a party, award reasonable attorney's fees and costs of the suit to a party under certain conditions. It would authorize the awarding of fees and costs if a party had previously removed the suit to federal court and the court with jurisdiction found that the federal court had:

- remanded the proceedings to state court;
- assessed attorney's fees or other costs of suit against the removing party or the removing party's counsel; and

- determined that the removal was frivolous, filed to delay the state court suit or avoid an unfavorable decision by the state court, or filed to gain an advantage over or cause damage to another party in the state court suit.

The bill would authorize the court with jurisdiction to award to the party that did not remove the case to federal court:

- the reasonable attorney's fees and expenses incurred by the party due to the removal;
- other damages incurred by the party due to the removal; and
- postjudgment interest on any attorney's fees, costs, and damages awarded to the party.

The court also could impose monetary sanctions on the party who removed the case to federal court, the removing party's attorney, or both, and take any action as authorized by the Texas Rules of Civil Procedure or other law regarding a party that filed a frivolous pleading or was determined to be a vexatious litigant.

A judgment for attorney's fees and costs of the suit awarded under the provisions of the bill could be enforced in the name of the attorney for a party that did not remove the case to federal court by any means available for the enforcement of a judgment for debt.

The bill would take effect September 1, 2021, and the changes in law made by the bill would apply only to a suit for dissolution of a marriage or a suit affecting the parent-child relationship filed on or after the effective date of the bill.

SUPPORTERS SAY:

HB 913 would protect Texans embroiled in contentious divorce proceedings or child custody battles from financial harm and delay caused by the other party moving the case from the state court to federal court. By authorizing the state court to award attorney's fees and other costs or to impose monetary sanctions in cases where the court found the reason for the move to federal court to be frivolous, a delaying tactic, or done to avoid an unfavorable decision by the state court, the bill would help to deter such behavior on the part of some litigants.

CRITICS SAY:

HB 913 could intimidate and financially penalize individuals who believed they were being treated unfairly by a Texas court from seeking justice in a federal court.

SUBJECT: Allowing certain first responders to carry, store a handgun while on duty

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — White, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

2 nays — Bowers, Goodwin

WITNESSES: For — Heather Hill, Come and Take It Texas; Rick Briscoe, Open Carry Texas; Michelle Mostert; Linda Nuno; (*Registered, but did not testify*: John Edeen, Doctors for Responsible Gun Ownership; Angela Smith, Fredericksburg Tea Party; Tamara Colbert and Paul Hodson, Grassroots Gold; Felisha Bull and Rachel Malone, Gun Owners of America; Laura Nodolf, Midland County District Attorney's Office; Tara Mica, National Rifle Association; Dee Chambless, Smith County Republican Women; Ruth York, Tea Party Patriots of Eastland County; David Weakley and Melissa Weakley, Texas Liberty Defenders; Andi Turner, Texas State Rifle Association; Jason Vaughn, Texas Young Republicans; Wayne Howell, TITFF; Shelia Franklin, True Texas Project; Jack Anderson, Patrick Harris, Kaden Mattingly, Catherine Nolde, and Dayton Wright, Young Conservatives of Texas-Baylor Chapter; Jake Neidert, Young Conservatives of Texas-State Board; and 68 individuals)

Against — Dylan Price; Joshua Todd; (*Registered, but did not testify*: Michelle Wittenburg, Dallas Fire Fighters Association; Stephanie Arthur, Everytown for Gun Safety and Moms Demand Action; Molly Bursey, Mandy Gauld, Elizabeth Hanks, Paula Hansen, Laura Legett, and Kathryn Vargas, Moms Demand Action for Gun Sense in America; AJ Louderback, Sheriffs Association of Texas; Louis Wichers, Texas Gun Sense; and 12 individuals)

On — Butch Oberhoff, Texas EMS Alliance; Bradley Hodges

DIGEST: CSHB 1069 would allow a municipal or county department or private entity that employed or supervised first responders to adopt a policy

authorizing a first responder who held a license to carry a handgun, an unexpired certificate of completion of the training course established under the bill, and a required liability policy to:

- carry a concealed or holstered handgun while on duty; or
- store a handgun on the premises of or in a vehicle owned or leased by the applicable municipality or county or private entity if the handgun was secured with an approved device.

A first responder could discharge a handgun while on duty only in self-defense.

The bill would apply only to:

- a municipality with a population of 30,000 or less that had not adopted the Fire and Police Employee Relations Act; and
- a county with a population of 250,000 or less that had not adopted the Fire and Police Employee Relations Act.

A municipality or county to which the bill applied could not adopt or enforce an ordinance, order, or other measure that generally prohibited an eligible first responder from carrying a concealed or holstered handgun while on duty or storing a handgun as provided for by the bill.

The bill would not prohibit a municipality or county from adopting a measure that prohibited a first responder from carrying a handgun while on duty based on the conduct of the first responder or limited the carrying of a handgun only to the extent necessary to ensure it did not interfere with the first responder's duties.

Storage of handgun. The public safety director of the Department of Public Safety (DPS) would have to approve devices to enable a first responder to secure and store a handgun if the first responder, while on duty, was required to enter a location where carrying the handgun was prohibited by federal law or otherwise.

A first responder who entered such a location would have to use an approved device to secure and store the handgun. The first responder

would be responsible for procuring the device or for reimbursing the first responder's employer or supervisor for the use of a provided device.

Liability. A municipality or county would not be liable in a civil action arising from the discharge of a handgun by a first responder who was licensed to carry a handgun. The discharge of a handgun would be outside the course and scope of the first responder's duties.

The bill would not create a cause of action or liability and could not be construed to waive under law a municipality's or county's governmental immunity from suit or to liability.

Liability insurance. The bill would require a first responder to maintain liability insurance coverage in an amount of at least $1 million if the first responder carried a handgun while on duty and the handgun was not an essential part of the first responder's duties.

Complaints. A member of the public could submit a complaint to the municipality or county using existing complaint procedures. One or more complaints received with respect to a specific first responder would be grounds for prohibiting or limiting that first responder's carrying a handgun while on duty.

Training course. The public safety director would have to establish minimum standards for an initial training course that a first responder who was a license holder and employed or supervised by a county or municipality to which the bill applied could complete to receive a certification of completion. The training course would have to:

- be administered by a qualified handgun instructor;
- include no more than 40 hours of instruction;
- provide classroom training in certain subjects, including self-defense, de-escalation techniques, and consequences of improper use of a handgun;
- provide field instruction in the use of handguns;
- require physical demonstrations of proficiency in techniques learned in training; and

- provide procedures for securing and storing a handgun if the first responder entered a location where carrying a handgun was prohibited.

DPS would have to establish minimum standards for an annual continuing education course that included no more than 10 hours of instruction for a person who had completed the initial course.

DPS would issue a certificate of completion to a first responder who completed either the initial training course or the continuing education course. A certificate would expire one year after issuance.

The public safety director would have to adopt rules to implement these provisions by December 2, 2021. A qualified handgun instructor could not offer the training course before January 1, 2022.

Defense to prosecution. It would be a defense to prosecution for the offenses of trespass by a license holder with a concealed handgun and trespass by a license holder with an openly carried handgun under Penal Code secs. 30.06 and 30.07, respectively, that the license holder was a first responder who:

- held an unexpired certificate of completion under the bill;
- was engaged in the actual discharge of the first responder's duties; and
- was employed or supervised by a municipality or county to which the bill applied.

Applicability of weapons offenses. Under the bill, Penal Code offenses related to the unlawful carrying of weapons, places weapons are prohibited, and the unlawful carrying of a handgun by a license holder on certain premises would not apply to a first responder who:

- was carrying a handgun in a concealed manner or in a shoulder or belt holster;
- held an unexpired certificate of completion under the bill;

- was engaged in the actual discharge of the first responder's duties; and
- was employed or supervised by a municipality or county to which the bill applied.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 1069 would ensure first responders employed by smaller counties or cities were able to adequately defend themselves by allowing first responders who were licensed handgun owners to carry a handgun while on duty. Texas should provide those that put their lives on the line to help others with the ability to protect themselves in the danger they face daily.

First responders are often the first to arrive to the scene of an incident, and in rural areas, first responders can arrive well before law enforcement. In these situations, first responders are susceptible to violence, and in some instances have been assaulted. By bracketing the bill to departments in cities with a population of 30,000 or less and counties with a population of 250,000 or less, the bill would protect first responders that do not have adequate police protection when responding in rural areas.

The bill would afford first responders the ability to defend themselves while equipping them with similar training as required for peace officers, including in de-escalation techniques. First responders also would be required to maintain minimum continuing education. Such training, in addition to the ability to carry a handgun, would reduce the amount of violence to which first responders are victims. Further, the bill would ensure that a first responder's duty was paramount to their ability to carry a firearm.

CRITICS SAY:

CSHB 1069 could put first responders at increased risk without necessarily providing any benefit to public safety. First responders would not receive adequate training under the bill to carry a handgun while on duty. Without the amount and type of in-depth training and screening required of law enforcement, first responders could be more susceptible to making mistakes during an emergency response. In highly stressful, unpredictable situations, first responders should continue the current practice of staging to wait for law enforcement to properly handle

situations. The bill also could complicate the response to an emergency situation for peace officers as they may not know whether the first responder on the scene was authorized to carry a weapon.

CSHB 1069 could burden first responder departments and agencies, especially in rural areas. Agencies often provide service over jurisdictional lines where it is possible one jurisdiction would be eligible under the bill while another jurisdiction would not be. It is unclear how a tget would implement the bill and comply under these circumstances.

OTHER CRITICS SAY:

CSHB 1069 should provide every department that employed first responders across the state, rather than just certain ones the bill would apply to, the ability to decide if carrying a handgun was appropriate in their communities, and if so, regulate when and where personnel could carry. Several agencies currently allow first responders to carry a handgun while on duty, and the bill could inadvertently affect their ability.