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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Tuesday, May 18, 2021  
87th Legislature, Number 59  
The House convenes at 10 a.m.

Three bills are on the Major State Calendar, one joint resolution is on the Constitutional Amendments Calendar, and 10 bills are on the General State Calendar for second reading consideration today. The bills and joint resolutions analyzed in today's *Daily Floor Report* are listed on the following page.

The House will consider a Local, Consent, and Resolutions Calendar.

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



Alma Allen  
Chairman  
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## HOUSE RESEARCH ORGANIZATION

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Tuesday, May 18, 2021

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SUBJECT: Continuing the Prepaid Higher Education Tuition Board

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 9 ayes — Murphy, Pacheco, Cortez, Frullo, Ortega, Parker, Raney, C. Turner, J. Turner

0 nays

2 absent — P. King, Muñoz

SENATE VOTE: On final passage, April 6 — 31-0

WITNESSES: No public hearing.

BACKGROUND: The Texas Prepaid Higher Education Tuition Board, established in the Office of the Comptroller of Public Accounts in 1995, administers five tax-advantaged education savings programs for the purpose of allowing families and individuals to save for educational and disability-related expenses. Two are prepaid tuition plans, two are college savings plans, and the other is a savings program for individuals with disabilities.

**Functions.** The board meets at least quarterly to carry out business related to the administration of the programs, including, but not limited to, the following key activities:

- adopting rules, investment policies, and asset allocations for the plans;
- administering and managing the Texas Guaranteed Tuition Plan (formerly known as the Texas Tomorrow Fund) that is closed to enrollment to maintain actuarial soundness of the program;
- contracting with a plan manager for the day-to-day management and administration of the four open plans: Texas Tuition Promise Fund, Texas College Savings Plan, Lonestar 529 Plan, and Texas Achieving a Better Life Experience Program (Texas ABLE); and

- collaborating with the plan manager and a local advertising firm to market the four open plans through digital and traditional advertising channels, such as billboards, transit ads, and radio ads.

**Governance.** The seven-member board is led by the comptroller, who serves as the presiding officer and executive director. Two members are appointed by the governor with the advice and consent of the Senate, and four members are appointed by the lieutenant governor, two of whom must be appointed from a list of persons recommended by the House speaker. The appointed members serve staggered terms of six years and must possess knowledge, skill, and experience in higher education, business, or finance.

**Staffing.** The board has no staff of its own and reimburses the comptroller's office for 18 staff who support the programs' day-to-day operations, including a director designated by the comptroller to lead the agency. In addition, the board contracts for plan managers, actuarial and audit services, and tax and investment consultants.

**Funding.** The board is not funded by appropriations but instead collects revenue from fees and investments to cover the cost of administering the programs. Distributions to account holders are paid from account holder contributions, prepaid tuition contract payments, and investment income. In fiscal 2019, the board collected \$379 million in revenue and managed more than \$2 billion in combined assets. The board distributed about \$290 million to account holders and \$171 million to universities and colleges. In addition, the board spent \$8 million on program administration. Combined expenditures exceeded revenue by \$95 million.

The board's last Sunset review was in 2007 during the 80th regular session, when it was continued in operation until 2019. SB 652, enacted by the 82nd Legislature in 2011, extended the Sunset date to 2021. The board will be discontinued on September 1, 2021, if not continued in statute.

DIGEST: SB 702 would continue the Prepaid Higher Education Tuition Board until September 1, 2033.

The bill would make certain changes to the statutes governing the board. Certain programs administered by the board that currently are subject to termination upon the board's abolition would be allowed to continue even if the board was not continued under the Texas Sunset Act.

The bill also would allow the board to establish by rule advisory committees to make recommendations to the board on programs, rules, and policies. In establishing an advisory committee, the board would have to adopt rules, including rules regarding:

- the purpose, role, responsibility, goals, and duration of the committee;
- the size of and quorum requirement for the committee;
- qualifications for committee membership;
- appointment procedures for members;
- terms of service for members;
- training requirements for members;
- policies to avoid conflicts of interest by members;
- a periodic review process to evaluate the continuing need for the committee; and
- policies to ensure the committee did not violate any applicable provision of the Open Meetings Act.

These advisory committees would not be subject to certain statutory provisions related to state agency advisory committees

SB 702 would add standard across-the-board recommendations related to board member training and complaint notification procedures. The bill would require the executive director of the board to create and distribute a training manual to board members annually and require a written acknowledgement from board members indicating their receipt of the manual. The bill would provide for the transition to the new training requirements for board members appointed before the bill's effective date. The board would not be required to periodically notify relevant parties of the status of a complaint if doing so would jeopardize the complaint investigation.

The bill would take effect September 1, 2021, and would apply to a board member appointed before, on, or after that date.

**SUPPORTERS  
SAY:**

SB 702 would continue the Prepaid Higher Education Tuition Board for another 12 years because it continues to meet the needs of Texas families to save for higher education and supports the state's goal of developing a skilled workforce. The comptroller's office continues to be the most appropriate agency to house the board due to its cost-effectiveness.

The five plans managed by the board provide a significant benefit for account holders. Beneficiaries of these tax-advantaged savings programs are able to obtain their educational goals with substantially less student debt, or none at all, at a time when tuition and other educational costs continue to rise. Additionally, under the board's supervision, the Achieving a Better Life Experience (ABLE) program helps Texans with disabilities achieve greater financial independence, which in turn can maintain and improve their overall quality of life. While the Sunset Advisory Commission found that the board effectively manages and administers these plans, SB 702 would ensure that the programs could continue even if the board was discontinued in the future.

Providing the board with general advisory committee authority would enable the board to benefit from additional assistance and valuable expertise in the improvement and promotion of its programs. The board relied heavily on a since-expired statutory advisory committee in the creation and development of the ABLE program. Allowing such committees to be established by board rule rather than statute would grant the board the flexibility to adapt to current needs. The bill also would provide clear guidance on the structure, purposes, and oversight of advisory committees.

**CRITICS  
SAY:**

No concerns identified.

**NOTES:**

The House companion bill, HB 1850 by Paddie, was considered by the House Higher Education Committee in a public hearing on March 25 and left pending.

**SUBJECT:** Continuing the Credit Union Department and Credit Union Commission

**COMMITTEE:** Pensions, Investments and Financial Services — favorable, without amendment

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

0 nays

**SENATE VOTE:** On final passage, April 19 — 31-0, on Local and Uncontested Calendar

**WITNESSES:** No public hearing.

**BACKGROUND:** The Credit Union Department (CUD) was created by the Legislature in 1969 and is responsible for regulating credit unions in the state. In 2009, the Legislature gave the department self-directed semi-independent (SDSI) status, which authorizes state agencies to set their own fees, budgets, and performance measures outside of the legislative appropriations process. This Sunset review of the department is the first since CUD gained SDSI status.

**Functions.** CUD is responsible for overseeing the safety and soundness of state-chartered credit unions in Texas, and the department is charged with safeguarding the public interest, protecting the financial interests of credit union members, and promoting public confidence in the credit union industry. To achieve its mission the department approves new charters, charter conversions, mergers, and other structural or operational changes for state-chartered credit unions; examines state-chartered credit unions on a regular basis; takes certain enforcement actions when necessary; and assists the public by helping to resolve complaints against credit unions, among other activities.

**Governing structure.** CUD is governed by the nine-member Credit Union Commission (CUC). Commission members are appointed by the governor with the advice and consent of the Senate and serve six-year staggered terms. Five members are public members appointed on the basis

of their recognized business ability, and four are credit union industry members who must have five or more years of experience as a director, officer, or committee member of a credit union with a principal office in Texas.

**Funding.** As an SDSI agency, CUD does not receive a legislative appropriation. Instead, the department funds itself through fees on Texas-chartered credit unions, which are charged annually and calculated based on the total assets of each credit union. CUD collected about \$4.1 million in revenue in fiscal 2019, almost entirely from operating fees, and spent about \$3.9 million.

**Staffing.** In fiscal year 2019, the department employed 29 full-time staff, including 10 administrative staff in Austin and 19 field examiners who work from home and travel across Texas to examine Texas-chartered credit unions.

The Credit Union Department would be discontinued on September 1, 2021, if not continued in statute.

DIGEST:

SB 707 would continue the Credit Union Department (CUD) and the Credit Union Commission (CUC) until September 1, 2033, and adopt certain Sunset Advisory Commission recommendations, including requiring the department to track more comprehensive complaint and enforcement data.

**Guidance on federal laws.** The bill would require CUD to promptly notify and issue guidance to all credit unions chartered in Texas on the adoption of a federal law or regulation that:

- affected a power or authority conferred to credit unions;
- took effect immediately; and
- conflicted with state law.

**Complaint and enforcement processes.** The bill would provide for a complaint tracking process to help identify and address regulatory issues and constraints. CUD would be required to track all phases of the complaint and enforcement processes, including the receipt, investigation,

and disposition of complaints. The department would have to maintain the following information for each complaint:

- the basis for the complaint;
- the origin of the complaint, including whether the complaint came from another regulatory agency, a credit union member or employee, a member of the public, or a public or private entity;
- the number of days it took to resolve the complaint from the date the complaint was received; and
- the disposition of the complaint, including whether disciplinary action was taken, the reason for the lack of action or the type of disciplinary action taken, as applicable, and the amount of any administrative penalty or late fee.

If the complaint was dismissed or referred to another agency, the department would have to provide details regarding the dismissal or referral. If the complaint was ongoing, CUD would be required to track its current status.

The bill also would require CUD to annually compile a statistical analysis of the department's complaint and enforcement processes for the preceding fiscal year. The analysis would have to include:

- the total number of complaints filed with CUD against credit unions;
- the number of open investigations at the end of the fiscal year;
- the number of complaints that were resolved, disaggregated by the source of the complaint, the type of alleged violation, jurisdictional and nonjurisdictional complaints, regulatory and nonregulatory complaints, and the disposition and action taken, including any administrative penalty or late fee assessed; and
- the average number of days it took to resolve a complaint, including complaints that were resolved through an examination of a credit union.

The department would be required to periodically notify the complaint parties of the status of a complaint until its final disposition unless the notice would jeopardize an investigation.

**Training.** The bill would require the commissioner to create a training manual and distribute it annually to each CUC member. Each member would have to sign and submit to the commissioner a statement acknowledging the member received and reviewed the training manual.

The training program established by the commissioner would have to provide the trainee with information on the law governing department operations, the scope of and limitations on the rulemaking authority of the commission, laws related to disclosing conflicts of interest, and other laws applicable to members of a state policy-making body in performing their duties.

The bill would provide for the transition to the new training requirements for commission members appointed before the bill's effective date.

**Other provisions.** The bill would repeal Finance Code, sec. 122.001(d), a provision requiring articles of incorporation of a credit union to be signed and sworn to.

Articles of incorporation filed before the bill's effective date would be governed by the law in effect on the date the articles were filed.

The bill would take effect September 1, 2021.

SUPPORTERS  
SAY:

SB 707 would continue the Credit Union Department (CUD) and Credit Union Commission so that the department could continue its essential functions of regulating state-chartered credit unions and protecting credit union members. Texas has almost 200 chartered credit unions, with hundreds of locations and more than \$40 billion in total assets, and ensuring these credit unions operate in accordance with regulation is crucial for the state and its citizens. State regulation of Texas-chartered credit unions pays for itself and generates tax revenue. In addition, many Texas credit unions operate in rural or economically disadvantaged communities with limited options for financial services. Credit unions

help fill this gap and offer many benefits to members, including providing smaller personal loans at more favorable rates than for-profit lenders.

SB 707 would improve complaint tracking and processing at CUD, ensuring that complaints were handled appropriately and referred to the appropriate agency when necessary. Improving complaint data collection and analysis at the department would ensure that CUD's performance was accurately understood and would strengthen the department's regulatory efforts. The bill also would provide for clearer communication from the department regarding complaint processing.

CRITICS  
SAY:

No concerns identified.

NOTES:

The House companion bill, HB 1840 by Lambert, was considered by the House Pensions, Investments and Financial Services Committee in a public hearing and reported favorably on March 31 and considered in the Calendars Committee on May 5.

SUBJECT: Continuing the Texas Commission on Fire Protection

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 8 ayes — Cortez, Holland, Bernal, Campos, Gates, Minjarez, Morales  
Shaw, Slaton

0 nays

1 absent — Jarvis Johnson

SENATE VOTE: On final passage, April 9 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: The Texas Commission on Fire Protection (TCFP) was established in 1961 as the Commission on Fire Protection and Personnel Standards. TCFP's mission is to aid in the protection of lives and property of Texas citizens through the development and enforcement of recognized professional standards for individuals and the fire service. The fire service includes paid firefighters and other fire service personnel, fire training facilities, and fire departments.

**Functions.** The commission certifies fire service personnel in 44 levels of certification within 15 disciplines including structure firefighting, fire inspection, and arson investigations for which the commission develops and maintains certification curricula and exams based on national standards. TCFP also regulates training providers and approves training courses for certifications, and it provides fire education and research materials and gathers fire service personnel injury data. The commission inspects fire departments and other regulated facilities for compliance with state law and agency rules.

**Governing structure.** TCFP consists of 13 members appointed by the governor with the advice and consent of the Senate. The 13 members are appointed to staggered six-year terms and include:

- one fire protection instructor from a higher education institution;
- one fire protection inspector or arson investigator;
- one fire protection engineer;
- two paid firefighters with a rank of battalion chief or below, one from a political subdivision with a population under 100,000;
- two fire chiefs, one who is the head of his or her department, and one from a political subdivision with a population under 100,000;
- two volunteer firefighters; and
- four public members.

The governor appoints the fire chief, paid firefighter, and volunteer members from a list of names submitted by three fire service associations.

TCFP must seek input from the Fire Fighter Advisory Committee before adopting or amending a rule. The committee is established by statute and consists of nine fire service personnel. TFPF also uses seven other committees to help in carrying out its functions, including development of certification curricula, giving input on exams, and informing policy development.

**Funding.** TCFP is required to cover the cost of its operations and collect an additional \$1.5 million in revenue across the biennium, as required by a budget rider. In fiscal 2019, TCFP received about \$4.9 million in revenue, mostly from fees generated by testing and from issuing and renewing certifications, and the commission spent about \$2.1 million of that revenue on its operating costs, sending about \$2.8 million to the General Revenue Fund. Overall, TCFP spends about 56 percent of its funds on the certification and regulation of fire services personnel and fire departments.

**Staffing.** TCFP employed 31 staff in fiscal 2019, most of whom are based at the main TCFP office in Austin. TCFP employs seven staff for its largest program, compliance, and those staff include the compliance manager in Austin and one field inspector working in each of six regions across the state.

TCFP will be discontinued on September 1, 2021, if not continued in statute.

**DIGEST:** CSSB 709 would continue the Texas Commission on Fire Protection (TCFP) until September 1, 2033, and adopt certain Sunset Advisory Commission recommendations, including limiting advisory committee member terms of service and aligning TCFP's licensing and rulemaking processes with regulatory best practices.

**Advisory committees.** The bill would specify that members appointed to an advisory committee to assist the TCFP in the performance of its duties would be limited to staggered, six-year terms and could not be appointed to more than two consecutive terms.

The bill also would remove references throughout applicable statute to the Fire Fighter Advisory Committee.

**Biennial renewal.** The bill also would authorize TCFP to provide biennial renewal for certifications as opposed to the current requirement of annual renewal for certifications. The frequency of renewal would be determined by TCFP rule.

**Reciprocity.** The bill would allow for certification through reciprocity by authorizing TCFP to waive any prerequisites to obtaining a certificate for an applicant who held a license or certificate issued by another jurisdiction:

- that had licensing or certification requirements substantially equivalent to those of Texas; or
- with which Texas had a reciprocity agreement.

TCFP would be authorized to make an agreement with another state to allow for certification by reciprocity.

**Reporting requirement.** The bill would remove a provision requiring TCFP to report on the commission's activities to the governor and to the Legislature by January 1 of each odd-numbered year.

**Other provisions.** The bill would adopt certain across-the-board Sunset recommendations on commission member training and maintaining a

complaints system. The bill would provide for transition to the new training requirements for commission members appointed before the bill's effective date. The bill also would revise how certain individuals were described in statute. Statutory language on an unused account in the general revenue fund dedicated for use by TCFP would be removed.

The bill would take effect September 1, 2021, and would apply to a member of TCFP appointed before, on, or after that date.

**SUPPORTERS  
SAY:**

CSSB 709 would continue the Texas Commission on Fire Protection (TCFP) so it could continue providing an important benefit to Texas by inspecting fire departments to help ensure they had proper equipment and met state and national standards to effectively protect communities across the state. The bill also would adopt Sunset recommendations aimed to improve the effectiveness and transparency of TCFP's advisory committees and to improve governance through across-the-board standards.

**Advisory committees.** Currently, TCFP does not have clear guidance for some of its advisory committees. The Fire Fighter Advisory Committee is duplicative of the commission, and even though it has effectively been abolished, it has continued to operate, essentially duplicating the policymaking function of TCFP instead of acting as an advisory body.

The Fire Fighter Advisory Committee and TCFP's seven other advisory committees have never had term limits for members, resulting in TCFP hearing from the same voices for many years. By implementing staggered, six-year terms with consecutive term limitations, the bill would ensure that TCFP had the opportunity to hear new and differing expertise.

**Biennial renewal and reciprocity.** The bill would require TCFP to improve certain agency procedures that do not reflect regulatory best practices, specifically in relation to certification renewals and the reciprocity process. By authorizing TCFP to renew certifications every two years rather than annually, the bill could help the agency develop more efficient internal processes and ease the regulatory burden on certified individuals and fire departments.

Statute currently authorizes TCFP to waive most certification requirements for an applicant with a certification from another state with substantially equivalent requirements but does not authorize the commission to enter into formal reciprocity agreements with another state. By allowing for certification by reciprocity for certificate holders from another state and by authorizing TCFP to enter into reciprocity agreements, the bill would reduce the administrative burden on the commission and ensure that in-state and out-of-state applicants are treated equally.

**Reporting requirement.** TCFP currently is required to report to the governor and Legislature every two years on the agency's activities, but statute does not specify what the report should include and review found the commission had inconsistently complied with this reporting requirement since it was added several decades ago. The governor's office and Legislature have other opportunities for oversight of the commission, so removing the reporting requirement would simply eliminate a report that is no longer needed.

**Restructuring governing board.** While some have called for changing the composition of TCFP's board to address concerns about the underrepresentation of firefighters from large cities who are regulated by the commission and overrepresentation of volunteer firefighters who are not, the current board structure does not prevent firefighters from large cities from being appointed as commission members, and some volunteer firefighters voluntarily choose to hold TCFP certifications or work for a fire department regulated by the commission.

CRITICS  
SAY:

CSSB 709 would not implement needed restructuring to the governing board to ensure appropriate stakeholder representation. TCFP is charged with adoption and enforcement of standards for career fire departments of all sizes but is dominated by the influence of smaller and volunteer departments, which are not governed by those regulations. It is unreasonable for such individuals to have such significant representation on the board of a commission charged with regulating only the career fire service. Restructuring the governing board of TCFP to better represent the larger fire departments in Texas would help ensure that the commission's

decisions and actions took into account the needs and constraints of such larger departments.

NOTES: The House companion bill, HB 1845 by Canales, was considered by the House Urban Affairs Committee in a public hearing on April 7 and was left pending.

- SUBJECT:** Changing eligibility requirements for appellate and district judges
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Leach, Julie Johnson, Krause, Middleton, Schofield, Smith  
0 nays  
3 absent — Davis, Dutton, Moody
- SENATE VOTE:** On final passage, April 27 — 30-1 (Gutierrez)
- WITNESSES:** For — Ed Heimlich, Informed Citizens; Joanne Richards, Texas Fair Courts Network; (*Registered, but did not testify*: Guy Herman, Statutory Probate Courts of Texas; Lee Parsley, Texans for Lawsuit Reform; Thomas Parkinson)  
Against — None
- BACKGROUND:** Texas Constitution Art. 5, sec. 2(b) establishes eligibility requirements to serve as chief justice or justice of the Texas Supreme Court. The eligibility qualifications require that a person:
- be licensed to practice law in Texas;
  - be a citizen of the United States and Texas at the time of the election;
  - be at least 35 years old; and
  - have been a practicing lawyer or a lawyer and judge of a court of record together for at least 10 years.
- Sec. 4(a) applies the same qualifications to the Court of Criminal Appeals and sec. 6(a) applies the same qualifications to courts of appeals.
- Art. 5, sec. 7 establishes requirements for a candidate for election as a state district judge. The eligibility qualifications require that a person be licensed to practice law in Texas; be a citizen of the United States and Texas; have been a practicing lawyer or a judge of a court in Texas, or

both combined, for four years; have resided in the district in which the person was elected for two years; and reside in the district during the person's term in office.

DIGEST:

SJR 47 would amend the Texas Constitution to change the eligibility requirements to serve on the Texas Supreme Court, the Court of Criminal Appeals, and courts of appeals and for election as a district judge.

**Appellate judges.** The joint resolution would revise the requirement relating to the 10 years before a person became a justice or judge on certain courts. A practicing lawyer would have to have been licensed in Texas for at least 10 years or have judicial experience from specific Texas courts for a combined total of at least 10 years in order to be eligible.

Under the revisions, to serve as the chief justice or a justice on the Texas Supreme Court or a court of appeals or as a presiding judge or judge on the Court of Criminal Appeals, a person would have to be:

- licensed to practice law in Texas;
- a citizen of the United States and a resident of Texas at the time of the election;
- at least 35 years old; and
- a practicing lawyer licensed in Texas for at least 10 years or a practicing lawyer licensed in Texas and a judge of a state court or county court established by the Legislature by statute for a combined total of at least 10 years.

In addition to these qualifications, the bill would require that during the 10 years the person was licensed and practicing, the person could not have had the person's license to practice law revoked, suspended, or subject to a probated suspension.

**District judges.** The joint resolution would increase from four to eight the number of years preceding a district judge's election that the judge would have to have been a practicing lawyer, a judge of a Texas court, or both combined. The resolution would add a new requirement that during that time, the judge's license to practice law could not have been revoked, suspended, or subject to a probated suspension.

**Effective dates.** A temporary provision in the joint resolution would specify that the resolution's revisions of eligibility requirements for certain justices would take effect January 1, 2022, and would apply only to a chief justice or other justice of the Texas Supreme Court, a presiding judge or other judge of the Court of Criminal Appeals, or a chief justice or other justice of a court of appeals who was first elected for a term that began on or after January 1, 2025, or who was appointed on or after that date.

The amendment relating to district judges would take effect January 1, 2022, and would apply only to a district judge first elected for a term that began on or after January 1, 2025, or who was appointed on or after that date.

The temporary provision would expire January 1, 2026.

**Ballot proposal.** The ballot proposal would be presented to voters at an election to be held November 2, 2021. The proposal would read: "The constitutional amendment changing the eligibility requirements for a justice of the supreme court, a judge of the court of criminal appeals, a justice of a court of appeals, and a district judge."

**SUPPORTERS  
SAY:**

SJR 47 would ensure a higher quality judiciary in Texas by adding to existing eligibility requirements for appellate and district court judges. There have long been bipartisan calls to revise qualifications for judges, an issue separate from the method of judicial selection. Strengthening judicial qualifications would benefit all Texans.

Requiring appellate court justices to have practiced law and been licensed in Texas for at least 10 consecutive years would ensure these judges had the necessary experience in Texas law and avoid a situation in which a lawyer could move to Texas and within a few years win election to one of the state's highest courts.

Increasing the length of time from four to eight years that a district judge candidate must have practiced law in Texas would ensure that judges had sufficient legal experience to preside over important trials.

The proposed constitutional amendment also would ensure that judicial candidates had not been subject to disciplinary action for violating standards of ethical conduct for practicing law in Texas.

SJR 47 would impact only judicial candidates for appellate courts and district courts where the experience and qualifications are crucial. Only a very small number of current judges, fewer than five, would not meet the qualifications in the resolution, and the resolution would not apply to them because it would apply only to those who would be first elected for a term after January 2025. SJR 47 would not prevent anyone from a judicial appointment or election once the minimum experience level had been reached.

CRITICS  
SAY:

It is unnecessary to revise qualifications for the judiciary because current constitutional provisions are working to ensure voters can make choices among qualified judicial candidates. More legal experience does not necessarily equate to a better judge, and requiring more experience could reduce voter choice and exclude groups of younger, more diverse lawyers from judicial appointments or races.

NOTES:

According to the Legislative Budget Board, the cost for publishing the resolution would be \$178,333.

- SUBJECT:** Expanding oversight over political subdivisions' contingent fee contracts
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 11 ayes — Paddie, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson
- 0 nays
- 2 absent — Hernandez, Smithee
- SENATE VOTE:** On final passage, April 19 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** No public hearing.
- BACKGROUND:** Government Code ch. 2254, subch. C governs contingent fee contracts for legal services. Sec. 2254.101(2) defines a "contingent fee contract" as a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. Sec. 2254.1038 requires a political subdivision to receive attorney general approval of a contingent fee contract.
- DIGEST:** SB 1821 would expand the Government Code definition of "contingent fee contract" to include an amendment to a contract for legal services if the amendment:
- changed the scope of representation; or
  - could result in the filing of an action or the amending of a petition in an existing action.

The bill would apply only to a contract or contract amendment entered into on or after the effective date of the bill.

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

- SUPPORTERS SAY:** SB 1821 would promote public transparency and accountability by closing a loophole in the approval process for political subdivisions seeking to enter into contingent fee contracts for legal services. The bill would address instances of political subdivisions, including school districts, amending an existing contingent fee contract rather than entering into a new contract in an apparent effort to circumvent the requirement enacted by the 86th Legislature that contingent fee contracts be reviewed and approved by the attorney general.
- CRITICS SAY:** SB 1821 would add an administrative burden on cities and other political subdivisions by requiring attorney general review of any change in the scope of existing representation under a contingent fee contract. Adding a second administrative procedure in order for a city to select new counsel during the course of ongoing representation could prevent the city from using outside counsel effectively, and possibly compromise attorney-client privileged communications, attorney work product, and attorney strategy.
- NOTES:** The House companion bill, HB 1974 by Canales, was considered by the House State Affairs Committee in a public hearing on April 20 and was left pending.

**SUBJECT:** Regulating third-party food delivery services, agreements with restaurants

**COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment

**VOTE:** 8 ayes — S. Thompson, Kuempel, Darby, Fierro, Geren, Goldman, Hernandez, Pacheco

0 nays

3 absent — Ellzey, Guillen, Huberty

**SENATE VOTE:** On final passage, April 9 — 31-0, on Local and Uncontested Calendar

**WITNESSES:** No public hearing.

**DIGEST:** SB 911 would impose regulations on third-party food delivery services relating to agreements with restaurants, consumer complaints, fees, and the use of a restaurant’s mark or trade name, among other provisions.

**Restaurants.** The bill would define a “restaurant” as a business that operated its own permanent food service facility with commercial cooking equipment on its premises and prepared and offered to sell multiple entrees for consumption on or off the premises.

The Texas Alcoholic Beverage Commission could issue a food and beverage certificate to restaurants that held a wine and malt beverage retailer’s permit, mixed beverage permit, private club registration permit, or retail dealer’s on-premise license.

**Third-party food delivery services.** The bill would define a “third-party food delivery service” as a website, mobile application, or other service that acted as an intermediary between consumers and multiple restaurants not owned or operated by the service to arrange for the delivery or pickup of food or beverages from those restaurants.

*Agreements with restaurants.* An agreement between a third-party food delivery service and a restaurant would have to be in writing, expressly authorize the service to arrange for the delivery or pickup of food or beverages from that restaurant, and clearly state each fee that the restaurant would have to pay to the service or absorb in connection with an order arranged through the service.

An agreement could not include any provision that required the restaurant to indemnify the third-party food delivery service, including an employee or independent contractor of the service, for claims or liabilities resulting from acts or omissions of the service or of an employee or independent contractor of the service. An agreement violating these provisions would be void and unenforceable.

These provisions would apply only to an agreement entered into or renewed on or after the bill's effective date.

*Requirements.* A third-party food delivery service would have to provide a consumer a clearly identified mechanism to express concerns or complaints directly to the service regarding an order arranged through the service. A third-party service also would have to remove a restaurant from the service by 10 days after receiving a request for the removal if the service did not have a valid agreement with the restaurant.

*Prohibitions.* A third-party food delivery service could not:

- arrange for the delivery or pickup of food or beverages from a restaurant in Texas unless the service had filed a certificate of formation or registration with the secretary of state;
- use a restaurant's mark or trade name in connection with the service in a misleading way that suggested the restaurant sponsored or endorsed the service;
- add a restaurant removed from the service to the service unless written consent from the restaurant was received; or
- charge a restaurant a fee or require the restaurant to absorb a fee in connection with the service's arrangement of an order from that restaurant unless the restaurant had agreed to pay or absorb the fee under a valid agreement with the service.

*Private cause of action.* If a third-party food delivery service violated the bill's provisions, a restaurant aggrieved by the violation could bring an action against the service for injunctive relief and damages equaling the restaurant's actual damages or the service's profits arising from the violation. If a court found that the defendant committed the violation knowingly or in bad faith, the court could award the plaintiff:

- exemplary damages in an amount up to three times the sum of the plaintiff's actual damages and the defendant's profits arising from the violation; and
- the plaintiff's reasonable attorney's fees.

**Local ordinances, regulations.** A municipality or county could not adopt or enforce an ordinance or regulation to the extent that the ordinance or regulation affected the terms of valid agreements between third-party delivery services and restaurants.

The bill would take effect January 1, 2022.

**SUPPORTERS  
SAY:**

SB 911 would aid in the recovery of restaurants affected by the COVID-19 pandemic by creating clear requirements for third-party services that facilitated deliveries from restaurants. The popularity of food delivery through third-party platforms grew substantially in the wake of restaurant dine-in shut downs and capacity limitations due to the pandemic. However, some delivery services have improperly implied a sponsorship or connection between restaurants and the delivery service by using a restaurant's mark or trade name, thereby misleading consumers and precluding the ability of restaurants to resolve customer complaints.

The bill would remedy this problem and others arising from the misleading business practices of some delivery services by prohibiting the unauthorized use of a restaurant's mark or trade name and requiring the removal of restaurants from a service within 10 days of a request. The bill also would create clear guidelines for restaurant-delivery service agreements, avenues for injunctive relief and recovery of damages, and complaint processes to protect consumers.

Because the bill would create several additional avenues through which an entity could acquire a food and beverage permit, it would not negatively impact bars or food trucks or remove any ability these entities have to conduct business under current law. The bill is not intended to limit competition, but rather to regulate third-party food delivery services.

CRITICS  
SAY:

SB 911 could limit competition in the food delivery space by precluding bars and food trucks from taking advantage of the bill's provisions. The bill would do this by narrowly defining a restaurant to mean a permanent food service facility with commercial cooking equipment. The pandemic waiver issued by the Texas Alcoholic Beverage Commission that allowed bars to more easily qualify for a food and beverage certificate helped keep these businesses afloat and Texans employed. Excluding bars and food trucks from the bill's provisions would provide an unfair advantage to certain participants in the food industry at the expense of healthy market competition and consumer choice.

NOTES:

The House companion bill, HB 2119 by Burrows, was considered by the House Committee on Licensing and Administrative Procedures in a public hearing on March 24, reported favorably on March 29, and sent to the Calendars Committee.

- SUBJECT:** Removing holster specification in Penal Code for openly carried handguns
- COMMITTEE:** Homeland Security and Public Safety — favorable, without amendment
- VOTE:** 9 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt
- 0 nays
- SENATE VOTE:** On final passage, April 15 — 29-1 (Whitmire)
- WITNESSES:** For — Donald Dahl; Billy Muston; Dylan Price; Gary Zimmerman; (*Registered, but did not testify:* Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; James Parnell, Dallas Police Association; Robin Hayes, Eastland County Republicans; David Sinclair, Game Warden Peace Officers Association; Aaron Rickel, Grizzly Arms; Felisha Bull and Rachel Malone, Gun Owners of America; John Bolgiano, Llano County Patriots; Tara Mica, National Rifle Association; Brian Hawthorne, Sheriffs Association of Texas; Ruth York, Tea Party Patriots of Eastland County and Texas Family Defense Committee; Mitch Landry, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Jason Vaughn, Texas Young Republicans; and 26 individuals)
- Against — (*Registered, but did not testify:* Christina Puentes, Mary Lynn Rice-Lively, Frances Schenckan, and Gyl Switzer, Texas Gun Sense; Beverly Biehl)
- On — (*Registered, but did not testify:* Thomas Parkinson)
- BACKGROUND:** Several offenses in the Penal Code relating to an openly carried handgun by a licensed handgun owner specify the manner of open carry as requiring a handgun to be in a shoulder or belt holster.
- DIGEST:** SB 550 would revise offenses in the Penal Code relating to an openly carried handgun by a licensed handgun owner and remove the specification that the holster be a shoulder or belt holster.

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

**SUPPORTERS  
SAY:**

SB 550 would allow law-abiding gun owners to make choices about the best way to protect themselves by simplifying a requirement for openly carried handguns that causes confusion and undermines self-defense.

Currently, a licensed handgun owner who openly carries is limited to carrying either in a shoulder or a belt holster. Neither type of holster is defined by statute nor are there commonly accepted definitions, which causes confusion. For example, it is unclear whether a licensed gun owner could openly carry in a holster that was worn in the correct location but was not capable of attaching at the shoulder area or to a belt.

Requiring shoulder or belt holsters for open carry can undermine self-defense by disparately impacting persons with disabilities and making motor vehicle accessibility difficult. Persons confined to wheelchairs have difficulties wearing shoulder or belt holsters, and other types of holsters would allow them better access to self-defense. Current law would not allow specific vehicle holsters, which allow a safer transport of a handgun and easier access if the driver was in a dangerous situation.

All types of holsters serve the same purpose for gun safety: they contain the handgun; eliminate the capability of being fired by making the trigger inaccessible; and require the wearer to remove the handgun before it can be used. Therefore, broadening the types of lawful holsters would not diminish gun safety. Texans should be allowed to make their own choices about the best way to carry their handgun and protect themselves.

**CRITICS  
SAY:**

SB 550 could result in more guns being openly carried, which would not make Texans safer. The current open carry requirement that the handgun be in a shoulder or belt holster ensures that handguns are secured responsibly, and broadening the requirement by not specifying the type of holster could decrease public safety.

SUBJECT: Prohibiting the use of hypnotically induced statements in a criminal trial

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

SENATE VOTE: On final passage, April 20 — 31-0

WITNESSES: None

DIGEST: SB 281 would establish that a statement made during a hypnotic session by a person who had undergone investigative hypnosis would be inadmissible against a defendant in the guilt or innocence phase or the punishment phase of a criminal trial.

"Investigative hypnosis" would be defined as a technique that used hypnosis to explore the memory of a witness to enhance the witness's recall of a legally relevant event, including descriptions of people, conversations, and the environment.

The bill would apply to all statements made during a hypnotic session by a person who had undergone investigative hypnosis for the purpose of enhancing the person's recollection of an event at issue in a criminal investigation or case, including courtroom testimony regarding those statements and statements identifying an accused that were made pursuant to pretrial identification procedures. The bill would not affect the admissibility of evidence derived from such a statement that corroborated a crime.

The bill would take effect September 1, 2021, and would apply to the admissibility of a statement in a criminal proceeding that commenced on or after that date.

SUPPORTERS  
SAY:

SB 281 would help ensure the rights of defendants and prevent wrongful convictions based on unreliable evidence by making statements obtained through the use of investigative hypnosis inadmissible in criminal trials. Studies have found that hypnosis can produce unreliable eyewitness identification because hypnotized subjects are highly suggestible. Hypnosis can lead to confabulation, the creation of false memories that the subject believes to be true, in order to fill gaps in memory or respond to leading questions by the hypnotist. Hypnosis also can give an unwarranted sense of confidence to a subject's testimony that may sway a jury's verdict.

The current training curriculum for investigative hypnosis certification is based on scientifically outdated concepts about the nature of memory, and the certifying agency, the Texas Commission on Law Enforcement, has no immediate plans to update or otherwise improve the program. The Texas Department of Public Safety recently suspended its long-running investigative hypnosis program due to scientific criticism of the practice.

Dozens of people have been convicted in Texas in cases based at least partially on hypnosis, with some convictions overturned due to DNA exoneration and some convicted persons currently on death row. SB 281 would prevent the untrustworthy method of hypnosis from being a determining factor in deciding a person's guilt in a situation where lives are at stake.

Concerns about the continuing admissibility of corroborating evidence derived from hypnotically induced statements could be addressed by a floor amendment.

CRITICS  
SAY:

SB 281 would allow corroborating evidence derived from a hypnotically induced statement to remain admissible, which would undermine the fundamental purpose of the bill since forensic hypnosis has almost always been used as or in combination with corroborating evidence.

NOTES

The House sponsor plans to offer a floor amendment that would:

- specify that statements by a person who had undergone investigative hypnosis would be inadmissible in a criminal proceeding whether the statements were made during or after the hypnotic session; and
- remove language allowing corroborating evidence derived from hypnotically induced statements to remain admissible.

The House companion bill, HB 1002 by Lucio, was considered by the House Criminal Jurisprudence Committee in a public hearing on March 29 and passed by the House on April 30.

- SUBJECT:** Requiring off-highway vehicle distributors to report sales from out of state
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Sanford, Shine  
0 nays
- SENATE VOTE:** On final passage, April 20 — 29-2 (Hall, Hughes)
- WITNESSES:** No public hearing.
- BACKGROUND:** Under Tax Code sec. 151.482, the comptroller must require each motor vehicle manufacturer to file an annual report listing each warranty issued for a new off-highway vehicle that was sold to a resident of the state by a retailer located out of the state. If a manufacturer fails to file the report as required, secs. 151.485 and 151.486 allow the comptroller to impose certain civil penalties and notify the Texas Department of Motor Vehicles so that the department may take administrative action. Manufacturers that fail to file the report also must pay the state a civil penalty or \$25 to \$2,000 each day the violation continues.
- DIGEST:** SB 586 would require each licensed off-highway motor vehicle distributor, in addition to each manufacturer, to report each warranty issued for a new off-highway vehicle that was sold to a resident of the state by a retailer located outside the state. A distributor that failed to file the report would face the same civil penalties and administrative action as is established for manufacturers under current law.  
Distributors would have to submit their first report by March 1, 2022.  
  
The bill would take effect September 1, 2021.
- SUPPORTERS SAY:** SB 586 would expand certain reporting requirements to ensure that off-highway vehicles purchased outside of the state were taxed appropriately. Last session, the Legislature enacted HB 1543 by Springer to combat tax-avoidance practices by creating certain enforcement mechanisms to ensure

that off-highway vehicles purchased by Texans from other states were taxed before being titled in this state. That bill established a requirement for off-highway vehicle manufacturers to annually report information about sales made to Texas buyers, allowing the comptroller to verify that taxes were paid on each vehicle sold, and provided appropriate enforcement mechanisms if they were not.

However, it was discovered that it is often the vehicle distributors, rather than the manufacturers, that have the customer sales information the comptroller needs. For example, some companies may distribute vehicles to franchise dealers in the state but are not licensed manufacturers and therefore would not have to provide the required information to the comptroller. SB 586 would clean up current law by requiring distributors to file sales reports to the comptroller in the same manner as manufacturers. The bill would not create new penalties but simply would add distributors to existing enforcement mechanisms to ensure that out-of-state off-highway vehicle dealers were competing fairly with Texas dealers.

CRITICS  
SAY:

SB 586 would impose a penalty that is too punitive on off-highway motor vehicle distributors that failed to file a report as required. Neither manufacturers nor distributors should face up to \$2,000 a day in an administrative penalty.

NOTES:

The House companion bill, HB 4010 by Spiller, was considered by the House Ways and Means Committee in a public hearing on April 12 and left pending.

According to the Legislative Budget Board, the bill would have a positive impact of \$300,000 to general revenue through fiscal 2023.

- SUBJECT:** Appealing wholesale water or sewer service rates before rate proceedings
- COMMITTEE:** Natural Resources — favorable, without amendment
- VOTE:** 10 ayes — T. King, Harris, Bowers, Kacal, Lucio, Paul, Price, Ramos, Walle, Wilson
- 0 nays
- 1 absent — Larson
- SENATE VOTE:** On final passage, April 27 — 31-0
- WITNESSES:** None
- BACKGROUND:** Water Code sec. 12.013 requires the Public Utility Commission (PUC) to fix reasonable rates for the furnishing of raw or treated water. PUC's jurisdiction is limited to water furnished by a city, town, or village to another political subdivision on a wholesale basis.
- DIGEST:** SB 997 would prohibit the Public Utility Commission (PUC), in a proceeding to review water or sewer rates charged under a written contract or an appeal of the amount paid, from holding a hearing on or otherwise prescribing just and reasonable amounts to be charged under the contract unless it determined that the rate harmed the public interest. A determination would be final for purposes of appeal in the manner provided by current law.
- A party adversely affected by a determination could seek judicial review, which would have to be by trial de novo. PUC would have to abate proceedings on the contract in the event of an appeal until the entry of a final judicial determination that a rate charged under the contract harmed the public interest.
- Before holding a hearing or otherwise prescribing a just and reasonable rate to be charged under the contract, PUC would have to allow contracting parties to amend the rate until at least 60 days after the date:

- of a final judicial determination in an appeal that a rate harmed the public interest; or
- the determination became final if a motion for rehearing was not filed on time.

If the parties amended their contract, a party could challenge before PUC the rate paid under the amended contract only after the fifth anniversary of the date the contract was amended or during a period agreed to by the parties that was between five and 25 years after the contract was amended.

The bill would take effect September 1, 2021, and would apply only to a rate proceeding that began on or after that date.

**SUPPORTERS  
SAY:**

SB 997 would provide clarity in the process for setting wholesale water or sewer rates by establishing a process to appeal a Public Utility Commission (PUC) determination that the rates were adverse to the public interest. Currently, such a determination triggers PUC's jurisdiction to set just and reasonable rates, which is done through a hearing. Rate hearings can be expensive and time consuming for all parties and ultimately may be unproductive if it is found that PUC made an adverse public interest determination in error and the rates did not change. SB 997 would remedy this issue by providing a process for a wholesale water and sewer services provider to appeal a PUC determination by requesting a judicial review before the rate hearing.

The bill would provide the parties 60 days after a determination was made to reach an agreement to promote dispute resolution outside a hearing. If a new contracted rate was agreed to, the parties could not challenge the contract again for at least five years. SB 997 would be in the interest of both parties in a contract by allowing them to work out rates before the issue was decided at a hearing, saving them time and money while preserving their ability to have a remedy at PUC if and when a contract was not just. This also would make the process more efficient and ensure that important water projects were not held up by a contractual dispute.

CRITICS  
SAY:

No concerns identified.

NOTES:

The House companion bill, HB 3079 by Larson, was considered by the House Natural Resources Committee in a public hearing on April 6, reported favorably on April 8, and sent to the Calendars Committee.

SUBJECT: Requiring decommissioning provisions in solar power facility agreements

COMMITTEE: State Affairs — committee substitute recommended

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

0 nays

2 absent — Lucio, Raymond

SENATE VOTE: On final passage, April 14 — 31-0

WITNESSES: For — Charlie Hemmeline, Texas Solar Power Association; (*Registered, but did not testify*: Carrie Simmons, Conservative Texans for Energy Innovation; Cyrus Reed, Lone Star Chapter Sierra Club; Brent Bennett, Texas Public Policy Foundation; Kenneth Flippin, US Green Building Council Texas Chapter; Michael Belsick; Thomas Parkinson)

Against — None

DIGEST: CSSB 2845 would establish requirements for solar power facility agreements, including provisions related to decommissioning and financial assurance.

A solar power facility agreement would mean a lease agreement between a grantee and a landowner that authorized the grantee to operate a solar power facility on the leased property, where a grantee was a person, other than an electric utility, who operated a solar power facility on property leased from a landowner.

A solar power facility would include a solar energy device and a facility or equipment, other than that owned by an electric utility, used to support the operation of a solar energy device, including an underground or aboveground electrical transmission or communications line, an electric transformer, a battery storage facility, an energy storage facility,

telecommunications equipment, a road, a meteorological tower, or a maintenance yard.

**Applicability.** The bill would apply only to a solar power facility that was a generation asset.

**Required agreement provisions on facility removal.** The bill would require a solar power facility agreement to provide that the grantee was responsible for removing solar power facilities from the landowner's property. The agreement would have to provide that the grantee would safely clear, clean, and remove:

- each solar energy device, transformer, and substation and its foundation from the ground to a depth of at least three feet below the surface grade of the land on which it was installed;
- each installed overhead power or communications line; and
- each buried cable installed in the ground to a depth of at least three feet below the surface grade of the land in which it was installed.

The agreement would have to provide that, at the request of the landowner, the grantee would clear, clean, and remove each road constructed on the property. If reasonable, the agreement also would have to provide that the grantee, at the request of the landowner, would remove all rocks over 12 inches in diameter excavated during the decommissioning process, return the property to a tillable state using certain methods, and return the surface as near as possible to the same condition as before the grantee dug holes, including by reseeding pastureland with native grasses prescribed by an appropriate governmental agency.

The landowner would have to make a request within 180 days of the date the solar power facility was no longer capable of generating electricity in commercial quantities or the date the landowner received written notice of intent to decommission the facility from the grantee.

For the removal of a solar energy device, transformer, or substation foundation, buried cable, road, or excavated rocks, the agreement would have to ensure that each hole or cavity created by the removal was filled

with soil of the same type or a similar type as the predominant soil found on the property.

**Required agreement provisions on financial assurance.** A solar power facility agreement would have to provide that the grantee would obtain and deliver to the landowner evidence of financial assurance that conformed to certain requirements to secure the grantee's obligation to remove the solar power facilities. Acceptable forms of financial assurance would include a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency, a letter of credit, a bond, or another form of financial assurance reasonably acceptable to the landowner.

The amount of the financial assurance would have to be at least equal to the estimated amount by which the cost of removing the solar power facilities and restoring the property exceeded the salvage value of the facilities, less any portion of the value of the solar power facilities pledged to secure outstanding debt.

The agreement would have to provide that:

- the grantee was responsible for ensuring that the amount of the financial assurance remained sufficient to cover the amount required by and consistent with estimates under the bill;
- the estimated cost of removing the facilities and restoring the property and the estimated salvage value would be determined by an independent, third-party licensed professional engineer; and
- the grantee would deliver an updated estimate, prepared by an engineer, on or before the 10th anniversary of the commercial operations date of the facilities and at least once every five years after the commercial operations date of the facilities for the remainder of the term of the agreement.

The agreement also would have to provide that the grantee would deliver the financial assurance no later than the earlier of the date the facility agreement was terminated or the 20th anniversary of the commercial operations date of the facilities on the property. The commercial operations date would be the date when the solar power facilities were

approved for participation in market operations by a regional transmission organization and would not include the generation of electrical energy or other operations conducted before that date.

The grantee would be responsible for the costs of obtaining financial assurance and determining the estimated removal costs and salvage value.

The grantee could not cancel financial assurance before completing the obligation to remove the solar power facilities unless the grantee provided the landowner with replacement financial assurance at the time of or before the cancellation.

In the event of a transfer of power facility ownership, the financial security provided by the grantee would remain in place until evidence of financial security was provided to the landowner.

**Waiver void.** A provision of a solar power facility agreement that purported to waive a right or exempt a grantee from a liability or duty established by the bill would be void.

A person who was harmed by a violation of the bill would be entitled to appropriate injunctive relief to prevent further violation. Remedies provided under the bill would be in addition to any other procedures or remedies provided by other law.

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

SUPPORTERS  
SAY:

CSSB 760 would extend existing decommissioning requirements to solar power facilities to maintain a predictable regulatory climate and protect the environment by ensuring waste was disposed of properly.

Current law requires oil, gas, coal, and wind energy companies to pay to decommission and properly dispose of equipment that will no longer be used when the parts have worn out or the project has been completed. Energy companies are required to pay for most of the environmental costs of producing energy, and the bill simply would ensure that solar power facilities were treated similarly.

The bill would reflect industry best practices by requiring solar power facility agreements to ensure that project owners cleared, cleaned, and removed all traces of the project upon decommissioning and returned the land to its pre-project state. CSSB 760 would ensure that solar power projects were properly decommissioned at the end of their useful lives at the owner's expense by requiring the agreement to include financial assurance securing an owner's obligations to remove the facilities. This requirement would give landowners, communities, and other entities further assurance that if these facilities were abandoned or the company went bankrupt, taxpayers would not carry the financial burden.

The bill also would protect the environment by putting protections in place prior to the decommissioning of any future solar power facilities. This is particularly important as most solar equipment cannot be recycled and can leach toxic chemicals into the environment if not disposed of properly. Since Texas is one of the top solar-producing states, a large portion of the waste burden resulting from decommissioned solar power facilities could fall on the state if not otherwise provided for.

CRITICS  
SAY:

No concerns identified.

**SUBJECT:** Exempting nonprofit animal welfare organizations from sales and use tax

**COMMITTEE:** Ways and Means — favorable, without amendment

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

0 nays

1 absent — Martinez Fischer

**SENATE VOTE:** On final passage, April 9 — 31-0, on Local and Uncontested Calendar

**WITNESSES:** No public hearing.

**BACKGROUND:** Tax Code sec. 151.343 exempts nonprofit animal shelters from sales and use taxes associated with the sale of an animal, including the acceptance of a fee for adoption.

Health and Safety Code sec. 823.001 defines an animal shelter as a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals. Sec. 821.021 defines a nonprofit animal welfare organization as a nonprofit organization that has as its purpose the prevention of cruelty to animals or the sheltering of, caring for, and providing homes for lost, stray, and abandoned animals.

**DIGEST:** SB 197 would exempt the sale of an animal by a nonprofit animal welfare organization from limited sales, excise, and use taxes.

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

**SUPPORTERS SAY:** SB 197 would clarify that all nonprofit animal adoption groups in Texas were exempt from sales and use taxes for the sale of an animal or the acceptance of an adoption fee by including nonprofit animal welfare organizations, including animal rescue and shelter organizations, in the statutory tax exemption. Currently, if a Texan adopts an animal from a

nonprofit animal shelter, no sales tax is associated with the transaction, but if the adoption occurs at an animal rescue then taxes are collected on the sale or adoption fee. This has caused confusion around who must collect a sales tax when offering an animal for adoption, which SB 197 would resolve.

Nonprofit animal shelters take in thousands of animals each year, and animal rescues end up housing many of these animals to alleviate some of the shelters' financial burdens and to ensure that the animals are placed in good homes. Animal rescues often pull animals with expensive medical cases from municipal and county shelters and cover the costs for any associated medical procedures, saving taxpayer money and the animals' lives. A sales and use tax exemption for animal rescue groups would ensure that they could recoup the costs of their work through tax-exempt adoption fees, better enabling them to continue to do the expensive work of supporting shelters and rescue animals.

CRITICS  
SAY:

No concerns identified.

NOTES:

The House companion bill, HB 2510 by Noble, was considered by the House Ways and Means Committee in a public hearing on March 22, passed by the House on April 9, and referred to the Senate Finance Committee.

**SUBJECT:** Increasing penalty for improper sexual activity with person in custody

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

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

0 nays

**SENATE VOTE:** On final passage, April 19 — 31-0, on Local and Uncontested Calendar

**WITNESSES:** None

**BACKGROUND:** Penal Code sec. 39.04(a)(2) makes it an offense to engage in improper sexual activity with a person in custody or under supervision. The offense can be committed by officials of correctional facilities or juvenile facilities, employees of these facilities, other persons who work at these facilities, volunteers at the facilities, or peace officers.

The offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) unless committed against an individual in the Texas Juvenile Justice Department or a juvenile in a correctional facility, in which case it is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

**DIGEST:** SB 312 would increase to a second-degree felony the penalty for improper sexual activity with a person in custody who is not in a juvenile facility or a juvenile in a correctional facility.

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

**SUPPORTERS SAY:** SB 312 would make the punishment for improper sexual activity with a person in custody better fit the crime by increasing the punishment to a second-degree felony. This is a serious crime that warrants a more serious felony punishment than that set under current law.

The bill would establish the same punishment for improper sexual activity with a person in custody as that for sexual assault and the punishment currently set in Penal Code sec. 21.12 for improper relationships between an educator and a student. Offenses involving those in custody and students both involve situations with an imbalance of power in which true consent cannot be given, and these offenses should carry the same punishment. SB 312 would be consistent with the state's duty to protect those in custody. The bill would both deter the crime and ensure that if the crime occurred, it would be appropriately punished.

CRITICS  
SAY:

SB 312 is unnecessary because the offense of improper sexual activity with a person in custody already is punished as a felony and circumstances involving rape would fall under the sexual assault statutes, which generally are second-degree felonies.

NOTES:

The House companion bill, HB 376 by Smith, was considered by the House Criminal Jurisprudence Committee in a public hearing on March 22 and has been referred to the Senate Committee on Jurisprudence.

**SUBJECT:** Relating to recovery of attorney's fees in certain civil cases

**COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment

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

0 nays

**SENATE VOTE:** On final passage, April 19 — 31-0

**WITNESSES:** None

**BACKGROUND:** Civil Practice and Remedies Code sec. 38.001 allows a person to recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, in the case of certain claims.

**DIGEST:** SB 808 would expand the entities from which reasonable attorney's fees could be recovered in certain civil cases by specifying that such fees could be recovered from "another person," rather than from "an individual or corporation."

The bill would take effect September 1, 2021, and would apply only to an award of attorney's fees in an action commenced on or after that date.

**SUPPORTERS SAY:** SB 808 would address challenges related to the recovery of attorney's fees from certain business entities by expanding the entities from which attorney's fees would be recoverable in certain civil cases. Under current statute, recovery of reasonable attorney's fees is limited to recovery from individuals and corporations, making recovery difficult from other types of organizations or entities, such as limited liability companies. Replacing the "individual or corporation" language in the current statute, which has been interpreted by courts as applying only to corporations as a specific business entity, with "another person" would make it easier and more accessible to recover reasonable attorney's fees from a more encompassing list of entities.

CRITICS  
SAY:

No concerns identified.

NOTES:

The House companion bill, HB 3377 by Krause, was considered by the House Judiciary and Civil Jurisprudence Committee in a public hearing on March 31, reported favorably on April 8, and sent to the Calendars Committee.