HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 25, 2021
87th Legislature, Number 66
The House convenes at 10 a.m.
Part One

Nine bills are on the Major State Calendar and 59 bills are on the General State Calendar for second reading consideration today. The bills analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Today is the last day for the House to consider Senate bills and joint resolutions on second reading, other than local and consent, on a daily or supplemental 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
87(R) - 66

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 25, 2021
87th Legislature, Number 66
Part 1

SUBJECT: Preempting local regulation of certain employment policies

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Paddie, Harless, Hunter, P. King, Metcalf, Shaheen, Slawson, Smithee

2 nays — Hernandez, Deshotel

2 absent — Lucio, Raymond

1 present not voting — Howard

SENATE VOTE: On final passage, April 13 — 19-12 (Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini)

WITNESSES: *May 6 public hearing:*
For — Don Miller, County Line BBQ; Annie Spilman, NFIB; Martin Gutierrez, San Antonio Hispanic Chamber of Commerce; Scott Norman, Texas Association of Builders; Shelby Sterling, Texas Public Policy Foundation; Kelsey Erikson Streufert, Texas Restaurant Association; Lisa Fullerton; (*Registered, but did not testify*: Wade Long, AGC - Building Branch; Carrie Simmons, Associated Builders and Contractors of Texas and Texas Hotel and Lodging Association; Steven Albright, Associated General Contractors of Texas - Highway Heavy Utility and Industrial Branch; LaTonya Whittington, Cannabis Reform of Houston; Wendy Lambert, Central Texas Subcontractors Association; Ellis Winstanley, El Arroyo; Rose Butigian, Island Thyme Grill LLC; Chris Lambert, L&O Electric; Duane Moeller, Mission Restaurant Supply; John McCord, NFIB; Tara Snowden, North San Antonio Chamber of Commerce and Zachry Corporation; Alina Carnahan, Real Estate Council of Austin; Martha Mangum, Real Estate Council of San Antonio; Geoffrey Tahuahua, Real Estate Councils of Texas; Leticia Van de Putte, San Antonio Chamber of Commerce; Martin Gutierrrez, San Antonio Hispanic Chamber of Commerce; Galt Graydon, Southwest Airlines Co.; Kyle Jackson, Texas Apartment Association; J.D. Hale and Ned Muñoz, Texas

Association of Builders; Megan Herring, Texas Association of Business; Cathy DeWitt, Texas Association of Staffing and Jobs for Texas; Robert Braziel, Texas Automobile Dealers Association; Michael Geary, Texas Conservative Coalition; Jocelyn Dabeau and Jennifer Fagan, Texas Construction Association; Matt Burgin, Texas Food and Fuel Association; Rob Hughes, Texas Forestry Association; Ryan Skrobarczyk, Texas Nursery and Landscape Association; Lance Lively, Texas Package Stores Association; Dallas Miller, Texas Restaurant Association; George Kelemen, Texas Retailers Association; Ron Hinkle and Logan Spence, Texas Travel Alliance; Jack Baxley, TEXO The Construction Company; Dana Harris, The Greater Austin Chamber of Commerce; Austin Holder, Theatre Owners of Mid-America; Auburne Gallagher, TTP; Justin Keener, U.S. Hispanic Contractors Association; Jay Brown, Valero Energy Corporation; Tom Spilman, Wholesale Beer Distributors of Texas; and 14 individuals)

Against — Joe Hamill, AFSCME San Antonio Local 2021, Harris County Local 1550, HOPE Local 123, Austin/Travis County Local 1624, and El Paso Local 59; Robert Livar, CDI Technology Services; Carol Johnson, City of Austin; Omar Narvaez, City of Dallas; KB Brookins, Embrace Austin; Caitlin Boehne, Equal Justice Center; Jonathan Lewis, Every Texan; Neal Sarkar, Harris County Attorney's Office; Maggie Luna, Statewide Leadership Council; Rene Lara, Texas AFL-CIO; Hannah Alexander and Stephanie Gharakhanian, Workers Defense Action Fund; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Kevin Stewart, American Association of University Women of Texas; Ben Miller, Battleground Texas; Gary Warren, Central South Carpenters Regional Council; TJ Patterson, City of Fort Worth; Charles Reed, Dallas County Commissioners Court; Tammy Narvaez, Harris County Commissioners Court; Kara Sheehan, Local Progress; Fatima Menendez, Mexican American Legal Defense and Educational Fund; Matthew Lovitt, National Alliance on Mental Illness Texas; Louis Appel, People's Community Clinic; Rick Levy, Texas AFL-CIO; Marti Bier, Carisa Lopez, and Ivy Major-McDowall, Texas Freedom Network; Joshua Houston, Texas Impact; Lonzo Kerr, Texas NAACP; Julie Wheeler, Travis County Commissioners Court; Charon Medina and Oscar Torres, Workers Defense Action Fund; and 22 individuals)

On — (*Registered, but did not testify*: Angela Hale, Texas Competes)

May 7 public hearing:
For — (*Registered, but did not testify:* Carrie Simmons, Associated Builders and Contractors of Texas and Texas Hotel and Lodging Association; Eric Woomer, Precast Concrete Manufacturers of Texas and Texas Crane Owners Association; Alan Burrows, Texas Construction Association; Linda Durnin)

Against — Jorge Renaud, Latinojustice; (*Registered, but did not testify:* Cyrus Reed, Lone Star Chapter Sierra Club)

DIGEST:

SB 14 would prohibit a municipality or county from adopting or enforcing an ordinance, order, rule, regulation, or policy requiring any terms of employment that exceeded or conflicted with federal or state law relating to any form of employment leave, hiring practices, employment benefits, scheduling practices, or other terms of employment.

Under the bill, an "employer" would include a person who employed one or more employees. An "employee" would be an individual employed by an employer for compensation. An "employment benefit" would mean anything of value that an employee received from an employer beyond regular salary or wages.

Any provision of an ordinance, order, rule, regulation, or policy that violated this bill would be void and unenforceable.

The bill would not affect:

- the Texas Minimum Wage Act;
- the authority of a political subdivision to negotiate the terms of employment with its employees;
- a policy relating to terms of employment in contracts or agreements entered into between a private entity, including an organization representing city or county employees, and a governmental entity, regardless of when the policy was adopted; or

- a contract or agreement relating to terms of employment voluntarily entered into between a private employer or entity and a governmental entity.

The bill would take effect September 1, 2021, and would apply to an ordinance, order, rule, regulation, or policy adopted before, on, or after that date.

SUPPORTERS SAY:

SB 14 would provide more certainty and consistency for Texas businesses, including those still recovering from the COVID-19 pandemic, by preempting certain burdensome local regulations on private employers.

Local governments should not dictate how businesses provide employment leave, establish hiring or scheduling practices, or offer employment benefits. Such regulations interfere with the freedom of private businesses to establish their own practices and benefits, and they amount to government overreach. Some ordinances may even affect a business's ability to retain staff or make benefit agreements and can lead to reductions in employee hours, ultimately harming employees. Employers want their businesses to remain operational and competitive, so attracting and retaining the best employees is in their best interest. Local government regulations are unnecessary and may even harm an employer's ability to provide benefits to employees.

Cities and counties have imposed several ordinances on private employers in recent years to mandate certain terms of employment, creating a patchwork of regulations across the state. This has created burdensome compliance costs for businesses that operate across city or county lines. For example, a business operating in a single county may have dozens of differing city regulations for which to account. SB 14 would provide statewide consistency and fairness by removing the patchwork regulations on how businesses may operate with respect to employee benefits, scheduling requests, and leave policies. As businesses struggle to recover following the COVID-19 pandemic, it is increasingly important to provide certainty in the state's business environment to ensure Texas remains competitive and rebuild a thriving economy.

Concerns that the bill would negatively impact certain workers are misguided. Protections already exist in state and federal laws, rules, and regulations for the health and safety of workers, nondiscrimination, and other worker rights. Additionally, issues regarding paid sick leave or LGBTQ+ rights already have been addressed by the courts. SB 14 would not affect employment contracts entered into with a governmental entity or collective bargaining agreements. The bill is specific that only a provision in an ordinance that violated the bill would be made void, leaving the rest of the ordinance intact and preventing any unintended consequences.

CRITICS SAY:

SB 14 would roll back important workplace protections by preempting local ordinances on employment leave, hiring and scheduling practices, benefits, and other worker protections.

The bill would make it more difficult for employees to receive basic working rights, including mandated water breaks for construction workers in the summer heat, paid sick leave, ordinances protecting LGBTQ+ individuals and other vulnerable groups from discrimination, and policies eliminating biases from the hiring process. Current state and federal laws and regulations do not go far enough, and local communities should be able to adopt policies to fill the gaps. With the impacts of the COVID-19 pandemic on employees, especially low-wage employees, it is especially important to ensure proper worker protections are in place.

The bill also would remove local control from cities and counties, contrary to the idea that the government closest to the people best serves the people. Local government officials were elected to represent the community's best interests, including worker protections, and policies are crafted with input from local businesses. SB 14 also could increase costs for local governments, which could have to increase expenditures to ensure a policy was not construed as exceeding or conflicting with a federal or state law. Local governments could be left open to costly litigation if a person felt that a policy violated the bill.

OTHER CRITICS SAY:

The language of SB 14 should be clarified to prevent any unintended consequences, such as removing nondiscrimination ordinances or impacting local governments' ability to set rules, rather than contracts,

regarding terms of employment. The bill should specifically exempt such provisions or ordinances from the prohibition.

SUBJECT: Requiring lobbyists to take sexual harassment prevention, ethics training

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

SENATE VOTE: On final passage, May 5 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Government Code ch. 305 requires certain persons who lobby members of the Legislature or executive branch of state government to register with the Texas Ethics Commission.

DIGEST: SB 2233 would require individuals who are required to register as a lobbyist with the Texas Ethics Commission (TEC) to attend a sexual harassment prevention training and an ethics training course every two years. The courses would have to be approved by the commission. The lobbyist would have to submit to the commission a certificate of completion of the course.

TEC would have to adopt rules to implement the bill's provisions by December 1, 2021.

Lobbyists would have to include with their registration form a certificate showing they completed the sexual harassment prevention training course and the ethics training course in the previous two years.

The bill would take effect September 1, 2021, and would apply only to a lobbyist registration required to be filed after January 1, 2022.

SUPPORTERS SAY: SB 2233 would help address the issue of sexual harassment in Texas government workplaces by requiring registered lobbyists to take courses in sexual harassment prevention and ethics. The bill would be one step in

addressing and preventing the issue of a culture of harassment at the Capitol. Making the registration of a lobbyist contingent on taking courses in sexual harassment prevention and ethics would help contribute to a safer work environment. While more needs to be done to combat sexual harassment and to study the best way to do so at the Capitol, SB 2233 would set the stage to continue the work of the Legislature in this area.

The requirement in SB 2233 would be in line with similar requirements in many professions. The Texas Ethics Commission would be able to identify appropriate courses or develop its own, and the commission could integrate the certificates into its registration system. Those who did not submit a completion certificate would not be able to complete their registration.

CRITICS SAY:

SB 2233 would not go far enough in addressing problems related to sexual harassment in Texas government. Sexual harassment should be defined and explicitly prohibited to ensure that everyone working at the Capitol understood that such conduct would not be tolerated. An avenue in which victims felt safe making complaints to an entity outside of their immediate workplace should be established, and accountability should be increased by having a neutral body review and possibly take action on complaints. Training and accountability should be extended beyond registered lobbyists to others.

OTHER CRITICS SAY:

SB 2233 would go too far by adding an occupational requirement for registered lobbyists, as the state should not impose requirements that make it more difficult to work in an occupation.

SUBJECT: Limiting growth of state appropriations of consolidated general revenue

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 14 ayes — Bonnen, Ashby, C. Bell, Capriglione, Gates, Holland, Morrison, Raney, Schaefer, Stucky, E. Thompson, Toth, VanDeaver, Wilson

12 nays — M. González, Dominguez, Howard, A. Johnson, Jarvis Johnson, Julie Johnson, Minjarez, Rose, Sherman, Walle, Wu, Zwiener

1 absent — Dean

SENATE VOTE: On final passage, April 13 — 19-12 (Alvarado, Blanco, Eckhardt, Gutierrez, Johnson, Lucio, Menéndez, Miles, Powell, West, Whitmire, Zaffirini)

WITNESSES: For — Vance Ginn, Texas Public Policy Foundation; (*Registered, but did not testify*: Samuel Sheetz, Americans for Prosperity)

Against — Luis Figueroa, Every Texan; (*Registered, but did not testify*: Matthew Lovitt, National Alliance on Mental Illness Texas; Grover Campbell, TASB; Joshua Houston, Texas Impact; Laura Atlas Kravitz, Texas State Teachers Association; Robert Norris)

On — Kevin Kavanaugh, Legislative Budget Board

BACKGROUND: The Texas Constitution, in Art. 8, sec. 22, caps spending of state tax revenue that is not dedicated by the Constitution to a particular purpose. State spending not constitutionally dedicated to particular purposes may not increase from one biennium to the next beyond the rate of growth in statewide personal income adopted by the LBB unless the cap is waived by a majority vote of both chambers of the Legislature. Examples of revenue subject to the spending cap include funds resulting from sales, motor vehicle sales, franchise, and cigarette and tobacco taxes.

DIGEST:

SB 1336 would create a new spending limit for state appropriations that would be for the spending of consolidated general revenue. Consolidated general revenue appropriations would be defined as appropriations from:

- the general revenue fund in the state treasury;
- a dedicated account in the general revenue fund in the state treasury; or
- a general revenue-related fund in the state treasury.

Spending limit. Under the bill, the rate of growth of consolidated general revenue appropriations in a state fiscal biennium could not exceed the estimated average biennial rate of growth of the state's population during the preceding fiscal biennium and during the fiscal biennium for which appropriations were being made, adjusted by the estimated average biennial rate of monetary inflation in this state during the same period.

The bill would require that some appropriations be excluded from the computation determining whether appropriations exceed the new spending limit. The excluded appropriations would include:

- an appropriation for a purpose that provided tax relief; or
- an appropriation to pay costs associated with recovery from a disaster declared by the governor.

Duties of the LBB. The Legislative Budget Board (LBB) would be required to determine rates used to determine the new limit using the most recent information available from sources the board considered reliable, including the U.S. Bureau of Labor Statistics Consumer Price Index and the Texas Demographic Center.

Before the LBB transmitted the budget for the next fiscal biennium it would have to establish the new limit. The LBB would have to determine the limit on the rate of growth of consolidated general revenue appropriations for that state fiscal biennium, as compared to the previous state fiscal biennium. The rate would be based on the estimated average biennial rate of growth of this state's population during that time and the estimated average biennial rate of monetary inflation during that time.

If the rate of growth of consolidated general revenue appropriations was negative, the amount of consolidated general revenue appropriations for the next fiscal biennium could not exceed the amount in the current biennium.

Limit on LBB budget recommendations. The LBB's budget recommendations relating to proposed consolidated general revenue appropriations could not exceed the new limit unless authorized by a majority of the members of the LBB from each legislative house. The LBB would be required to include the new limit in its budget recommendations.

If the LBB did not adopt a limit established by the bill:

- the estimated average biennial rates of growth of the state's population and of monetary inflation would be treated as if they were zero; and
- the amount of consolidated general revenue appropriations that could be appropriated within the limit would be the same as the amount of those appropriations for the current fiscal biennium.

Effect of limit. The proposed limit on consolidated general revenue appropriations would be binding on the Legislature with respect to all appropriations for the next state fiscal biennium unless the Legislature adopted a resolution raising the proposed limit that was approved by a record vote of three-fifths of the members of each house of the Legislature. The resolution would have to find that an emergency existed, identify the nature of the emergency, and specify the amount authorized. The excess amount authorized could not exceed the amount specified in the resolution.

The bill would take effect September 1, 2021, and would apply to appropriations beginning with fiscal year 2024.

SUPPORTERS SAY:

SB 1336 would establish an additional limit on appropriations that would more accurately reflect state spending and help ensure the budget did not grow beyond the state's and taxpayers' means.

The new spending limit would provide a more accurate picture of the growth in the state. While the current spending limit is based on personal income growth, the bill would use population and inflation, which is a better measure of taxpayers' ability to pay for government. The current spending limit uses only projections, but the new limit would improve on this by taking into account population growth and monetary inflation in the preceding biennium and the biennium for which the new appropriations would be made. While reining in growth, the bill would make exceptions for tax relief and expenses for disaster recovery so that spending in these areas could be done when appropriate and so that increased disaster expenditures would not inflate the base used to calculate the new limit.

The new limit would give a more transparent and accurate picture of state budgeting by expanding the types of revenue that fall under a limit in the growth of spending. The current constitutional limit on spending growth applies to state tax revenue not dedicated by the Constitution covers only a portion of the budget and can provide an incentive to constitutionally dedicate funds so they are not under the limit. Another limit, the pay-as-you-go limit, also leaves a portion of the budget not subject to a cap. By instituting a limit based on general revenue and general revenue dedicated funds, a larger share of the budget would fall under a limit. Federal funds would not be brought under the proposed limit because they are given to the state for a specific purpose.

The new limit would not restrict spending in emergency situations because it would allow the Legislature to authorize appropriations that exceeded the limit by adopting a resolution. The resolution would have find that an emergency existed, identify the nature of the emergency, and specify the amount authorized in excess of the limit, and the amount could exceed the amount in the resolution.

While the Legislature could impose additional spending limits without legislation and the current budget would fall within the new limit, placing the cap in statute would protect Texans by ensuring that future legislatures adhered to it.

CRITICS SAY:

It is unnecessary for the Legislature to enact additional restrictions on state spending, as SB 1336 would do. Current limits work well to keep a check on state spending, and an additional limit would unnecessarily complicate budgeting. Texas has a history of passing conservative budgets that are within the state's means, and there is no compelling reason to add to the state's spending restrictions. In addition, there is no need to place another spending limit in statute when the Legislature can impose such limits without a statutory restriction.

Establishing additional spending limits would reduce flexibility in budgeting. Reduced flexibility could make the state less able to respond to growth and changing conditions, meet the need for a service, recover from an economic recession, or make large investments in one area of the budget. By focusing on general revenue, SB 1336 would place a limit on education and health care spending, but exclude the state highway fund. Budget writers should be able to respond to all needs without having their hands tied. An additional spending limit also could provide an incentive to push spending to local governments.

While the current constitutional limit is restricted to tax revenue not dedicated by the Constitution, SB 1336 would place under a new limit other types of revenue, such as general revenue dedicated fees. By pulling such revenue that might be intended for a specific purpose under a spending cap, the bill could unfairly limit the spending of funds that were collected for a specific purpose and the need for which might not be related to economic indicators.

OTHER CRITICS SAY:

To ensure full budget transparency, the Legislature should apply limits to all spending, including federal funds.

SUBJECT: Creating the legislative public health oversight board; revising definitions

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

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

WITNESSES: For — None

Against — None

On — John Carlo, Texas Medical Association and Texas Public Health Coalition; (*Registered, but did not testify*: Barbara Klein and Jennifer Sims, Department of State Health Services)

BACKGROUND: Health and Safety Code sec. 81.003 defines "public health disaster" as:

- a state of disaster declared by the governor; and
- a determination by the commissioner of the Department of State Health Services (DSHS) that there is an immediate threat from a communicable disease that poses a high risk of death or serious long-term disability and creates a substantial risk of public exposure.

Under sec. 81.082, a declaration of a public health disaster may continue for a maximum of 30 days. A public health disaster may be renewed one time by the commissioner of DSHS for an additional 30 days.

DIGEST: SB 966 would revise and add definitions under Health and Safety Code ch. 81 and would establish the legislative public health oversight board.

The bill would revise the definition of "public health disaster" under current law to mean:

- a state of disaster declared by the governor; and
- a determination by the commissioner of the Department of State Health Services (DSHS) that there was an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that posed a high risk of death or serious harm to the public and created a substantial risk of harmful public exposure.

"Public health emergency" would be defined as a determination by the DSHS commissioner, evidenced in a commissioner-issued emergency order, that there was an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that:

- potentially posed a risk of death or severe illness or harm to the public; and
- potentially created a substantial risk of harmful exposure to the public.

Public health disaster or emergency. The bill would specify that a declaration of a public health disaster or an order of public health emergency under Health and Safety Code sec. 81.082 could continue for a maximum of 30 days after the date the disaster or emergency was declared or ordered by the commissioner of DSHS.

Renewal. A public health disaster or public health emergency could be renewed by the Legislature or the legislative public health oversight board, rather than the DSHS commissioner, for an additional 30 days. A disaster declaration or order of emergency could be renewed more than one time, and each renewal period could not exceed 30 days.

If the Legislature or the legislative public health oversight board was unable to meet to consider renewing a declaration of a public health disaster or an order of a public health emergency, the declaration or order would continue until the Legislature or the board met unless the DSHS commissioner or governor terminated the declaration or order.

By the seventh day after the date the commissioner of DSHS issued an initial declaration of a public health disaster or an order of a public health emergency, the commissioner would have to consult with the chairs of the standing committees of the Senate and House with primary jurisdiction over public health regarding the disaster or emergency.

Legislative public health oversight board. SB 966 would establish the legislative public health oversight board to provide oversight for declarations of public health disasters and orders of public health emergencies issued by the commissioner of DSHS and perform other specified duties.

Membership. The board would consist of:

- the lieutenant governor and House speaker, who would be joint chairs of the board;
- the chair of the Senate committee and the chair of the House committee with primary jurisdiction over public health;
- a member of the Senate appointed by the lieutenant governor; and
- a member of the House appointed by the speaker.

As soon as practicable after the bill's effective date, the lieutenant governor and House speaker would have to appoint the legislative members to the legislative public health oversight board.

Meetings. Under the bill, the board would have to meet in Austin, with certain exceptions, and would have to meet as often as necessary to perform the board's duties. Board meetings could be held at any time at the request of either chair or on written petition of a majority of the board members from each house of the Legislature.

As an exception to state open meetings laws and other law, for a meeting in Austin at which both joint chairs of the board were physically present, any number of the other board members could attend the meeting by telephone conference call, video conference call, or other similar telecommunication device.

A board meeting held by use of telephone conference call, video conference call, or other similar telecommunication device:

- would be subject to the notice requirements applicable to other meetings;
- would have to specify in the notice of the meeting the location in Austin in which the joint chairs would be physically present;
- would have to be open to the public and audible to the public at the location specified in the required notice; and
- would have to provide two-way audio communication between all board members in attendance during the entire meeting.

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

SUPPORTERS SAY:

SB 966 would address calls to include the Legislature in decision-making during future public health disasters and emergencies by establishing the legislative public health oversight board. After the Department of State Health Services (DSHS) declared a public health disaster for Texas on March 12, 2020, in relation to the COVID-19 pandemic, concerns were raised that legislative oversight was bypassed despite many Texans seeking clarification on or modification to the declaration. The creation under the bill of the legislative oversight board would ensure the voices of the Legislature were not sidelined during future public health disasters and emergencies and that elected representatives were involved in the decision-making process. Creating the board also would provide a better balance of powers and improve accountability for DSHS.

CRITICS SAY:

By establishing a legislative public health oversight board, SB 966 could hinder the state from responding efficiently to mitigate the spread of a communicable disease during a public health disaster or emergency. Additionally, the bill should include members with medical expertise on the legislative oversight board to ensure qualified persons were consulted on public health measures.

SUBJECT: Requiring payments to amortize ERS' liabilities, creating new benefit plan

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 14 ayes — Bonnen, Ashby, C. Bell, Capriglione, Dean, Gates, Holland, Morrison, Schaefer, Stucky, E. Thompson, Toth, VanDeaver, Wilson

12 nays — M. González, Dominguez, Howard, A. Johnson, Jarvis Johnson, Julie Johnson, Minjarez, Rose, Sherman, Walle, Wu, Zwiener

1 absent — Raney

SENATE VOTE: On final passage, April 28 — 20-11 (Alvarado, Blanco, Eckhardt, Gutierrez, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini)

WITNESSES: For — Luther Elmore, AFSCME Texas Retirees; Bill Hamilton, Retired State Employees Association; John Hryhorchuk, Texas 2036; Ann Bishop, Texas Public Employees Association; (*Registered, but did not testify*: Marshall Kenderdine and Maura Powers, AFSCME Texas Retirees; Ky Ash, Department of Public Safety Officers Association; David Sinclair, Game Warden Peace Officers Association; Ray Hymel, Texas Public Employees Association; Scott McCown)

Against — Jeff Ormsby, AFSCME; Tanisha Woods, AFSCME Texas Corrections; Rene Lara, Texas AFL-CIO; Joe Montemayor, Tyler Sheldon, and Sarah Swallow, Texas State Employees Union; and 16 individuals; (*Registered, but did not testify*: Jason Lopez, Austin Area AFL-CIO Labor Council; Harrison Hiner, Communications Workers of America; Sara Walling, Communications Workers of America District 6; James Smith, San Antonio Fire and Police Pension Fund; Phil Bunker, Teamsters JC 58; Dena Donaldson, Texas American Federation of Teachers; Laura Atlas Kravitz, Texas State Teachers Association; Brian Wheat, TSEU member; and 17 individuals)

On — Porter Wilson, Employees Retirement System of Texas; Joseph Newton, GRS Consulting; Anumeha Kumar, Pension Review Board; Rod

Bordelon, Texas Public Policy Foundation; (*Registered, but did not testify*: Steven Gassenberger, Reason Foundation)

DIGEST:

SB 321 would specify the state contribution to the Employees Retirement System of Texas (ERS), require the state to amortize ERS' unfunded actuarial liabilities by a certain date, and create a new cash balance benefit retirement plan for certain future state employees.

State contribution to ERS. The bill would specify that the state contribution to ERS was an amount equal to 9.5 percent of the total compensation of all members for that fiscal year.

Legacy payment. In addition to the current state contribution required by law, each fiscal year the state would have to make an actuarially sound determined payment in the amount necessary to amortize ERS' unfunded actuarial liabilities by no later than the end of fiscal 2054.

Before each regular legislative session, ERS would have to provide the Legislative Budget Board (LBB) with the amount necessary to make the actuarially determined payment. The LBB director would include that payment in the general appropriations bill.

The bill's provisions relating to the legacy payment would expire September 1, 2055.

Cash balance benefit. The bill would create a new cash balance benefit retirement plan for ERS members and establishes the plan's structure.

Applicability. The cash balance benefit would apply only to a member of the employee or elected class of ERS membership who was hired or took office on or after September 1, 2022, and was not a member on the date the member was hired or took office.

Application. A member could apply for a cash balance annuity by filing an application for retirement with the ERS board of trustees. An application could not be made after the date the member wished to retire or more than 90 days before the member wished to retire.

Eligibility. A member who had service credit in the employee class of membership would be eligible to retire and receive a cash balance annuity if the member:

- was at least 65 years old and has five years of service credit in that class; or
- had at least five years of service credit in that class and the sum of the member's age and amount of service credit, including months of age and credit, equaled or exceeded the number 80.

A member who had service credit in the elected class of membership would be eligible to retire and receive a cash balance annuity if the member:

- was at least 60 years old and had eight years of service credit in that class; or
- was at least 50 years old and had 12 years of service credit in that class.

A member who had as least 20 years of service credit as a law enforcement or custodial officer would be eligible to retire regardless of age and receive a cash balance annuity in an amount computed and funded as provided by the bill. A member who was at least 55 years old and had at least 10 years of service credit as a law enforcement or custodial officer would be eligible to retire and receive a cash balance annuity provided that the member was only entitled to the enhanced benefit if the member had at least 20 years of service as a law enforcement or custodial officer.

Collection of member contributions. Each payroll period, each department or agency would have to deduct a contribution of 6 percent of the compensation of a member subject to the bill.

In addition, each department or agency that employed a law enforcement or custodial officer who was a member subject to the bill would have to deduct an additional 2 percent contribution from the member's compensation to be deposited in the law enforcement and custodial officer supplemental retirement fund.

Benefits for members. The state match for the cash balance benefit for service credited to:

- the employee class of membership would be an amount computed by multiplying the member's accumulated account balance by 150 percent;
- the employee class of membership of eligible law enforcement or custodial officers would be an amount computed by multiplying the member's accumulated account balance by 150 percent and, for the portion of the account balance based on the additional two percent contribution attributable to service as an eligible officer, 300 percent paid from the law enforcement and custodial officer supplemental retirement fund; and
- the elected class of membership would be an amount computed by multiplying the member's accumulated account balance by 150 percent.

ERS would have to compute a member's cash balance annuity by taking the sum of the member's accumulated account balance and the computed state match and annuitizing that amount over the life expectancy of the member as of the effective date of the member's retirement using mortality and other tables adopted by the board for that purpose.

A member of the elected class of membership that was a member of the Legislature would have the member's accumulated account balance computed as if the contributions to the account were based on the state base salary, excluding longevity pay payable under the Judicial Retirement of System of Texas, being paid a district judge as set by the General Appropriations Act in accordance with applicable law.

Death, disability benefits. A member subject to the bill, a retiree receiving a cash balance annuity, or the beneficiary of a member or retiree who qualified for a death or survivor benefit annuity or a disability retirement annuity under laws governing ERS benefits would be entitled to a cash balance annuity instead of the annuity provided under those laws. The ERS board of trustees could enter into contracts to provide additional death and disability benefits under the bill.

Annual interest adjustment. Each fiscal year, ERS would have to deposit an amount equal to 4 percent of a member's accumulated account balance deposited into the member's individual account in the employees saving account.

Gain sharing interest adjustment. Each fiscal year, ERS would have to compute the gain sharing interest rate applicable to the subsequent fiscal year by:

- determining the average return on the investment of the system's cash and securities during the preceding five fiscal years, expressed as a percentage rate;
- subtracting 4 percentage points from the above percentage rate; and
- multiplying the sum by 50 percent.

For a retiree receiving a cash balance annuity, in addition to the amount of the annual interest adjustment deposited, each fiscal year, the retirement system would have to:

- deposit into each member's individual account in the employees saving account an amount equal to the gain sharing interest rate for the fiscal year multiplied by the member's accumulated account balance; and
- recalculate the annuity of a retiree or annuitant under the bill by multiplying the annuity by an amount equal to the gain sharing interest rate.

The gain sharing interest rate applied could not be less than zero or more than 3 percent.

Conflict of law. To the extent of a conflict between the bill's provisions relating to the cash balance benefit, including a rule adopted by ERS under the bill's authority, and any other law, the bill would prevail.

Other provisions. A member of ERS subject to the cash balance benefit plan would be eligible to participate in the proportionate retirement program. A member eligible to receive cash balance benefits who had at

least 10 years of eligible service credit would be able to participate as an annuitant in the group benefits program.

State law governing credit transfer between ERS and the Teacher Retirement System would not apply to an ERS member subject to the bill.

Under the bill, certain provisions of laws governing creditable service related to ERS and service retirement benefits would not apply to a cash balance group member. The bill would apply provisions related to certain deductions from annuity to members under the bill.

Implementation. ERS would be required to implement a provision of the bill only if the Legislature appropriated money specifically for that purpose. If money was not appropriated, ERS could, but would not be required to, implement the bill using other available appropriations.

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 321 would improve the solvency of the Employees Retirement System (ERS) retirement program by requiring the state to make annual amortization payments to ERS to pay down the existing unfunded liability and establishing a new cash balance benefit retirement plan for certain future state employees. The bill would propose a long-term solution, not just a temporary fix.

A 2020 actuarial valuation of ERS reported that, at current contribution rates, the pension plan will not have enough money to pay all current and promised benefits, and the main ERS fund has a depletion date of 2061. To be considered actuarially sound under state law, the pension fund requires total contributions sufficient to fund the normal cost of the plan and to pay off the unfunded liability — the difference between the market value of the assets and the present value of future payment obligations — in no more than 31 years. The valuation assessed the unfunded actuarial accrued liability at about $14.7 billion.

Each biennium that ERS does not receive actuarially sound contributions, it will continue to accrue liabilities, with the current unfunded liability expected to grow by about $1 billion per biennium. Failing to address the problem now would make it more expensive for taxpayers to fix in the future and could impact the state's financial status and credit rating and benefit reductions to current employees could be required.

SB 321 would support a strong retirement system, which is crucial for recruiting and retaining the state workforce, by committing ERS to a path that would meet long-term obligations to retirees and put the retirement fund back on track to full funding. Under the bill, the state would make annual payments to amortize the unfunded liability and eliminate the fund's depletion date, addressing existing pension liabilities and stabilizing retirement benefits for state employees and retirees. These payments would not be indefinite, and once the unfunded liability was paid off, the payments would cease.

The bill also would stabilize the plan and benefits for future state employees by establishing a new tier within the existing ERS fund for new regular state employees and law enforcement and custodial officers starting on or after September 1, 2022. A cash benefit plan is not a defined contribution plan. Instead, it mirrors a defined benefit plan but shares investment risk between the employer and employee. The plan and its shared-risk strategy would minimize future unfunded liabilities. These types of plans are considered to be fiscally responsible and a prudent method to establish a stable retirement plan and are popular in both the public and private sectors.

Under the new plan, employee paychecks would be larger as only 6 percent would be removed for the ERS trust fund, compared to the 9.5 percent for current employees. This increase in take-home pay would allow new employees to increase their retirement benefits by using the additional earnings to contribute more to their retirement account. The plan also would guarantee participating employees a lifetime annuity.

CRITICS SAY:

SB 321 could adversely affect the future of the state workforce by hindering Texas' ability to recruit and retain employees for public service. The state workforce already has a high turnover rate, and some agencies

are challenged by chronic understaffing. Public employees often make far less in salaries than comparable positions in the private sector, and the promise of a secure retirement under a defined benefit plan is an effective recruiting and retention tool. Converting to a cash balance plan, which is similar to a defined contribution plan, could undermine the ability of state agencies to recruit and retain qualified staff.

The current defined benefit plan has continued to function as intended and there is no need to convert it to a cash balance plan, which is a less secure retirement that would leave retirees exposed to more risk and a less reliable annuity. Any movement away from the current plan could be the first step in an erosion of public employee pensions.

The Legislature should focus its efforts on fulfilling the promise to current state employees by only addressing the current unfunded liability. Fulfilling this obligation should not be contingent on any benefit restructuring.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact on several funds through fiscal 2023, including costs of:

- $678.3 million to general revenue funds;
- $52 million to general revenue dedicated funds;
- $171.4 million to federal funds;
- $14.3 million to other special state funds; and
- $104 million to the State Highway Fund.

The Senate Finance Committee substituted version of HB 2 by Bonnen (Nelson), the supplemental budget for fiscal 2020-21, would appropriate, contingent on the enactment of SB 321, to the Employees Retirement System (ERS) the amounts above for the purpose of amortizing the retirement program's unfunded actuarial liabilities by the end of fiscal 2054.

SUBJECT: Revising certain regulations for public health disasters and emergencies

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

SENATE VOTE: On final passage, April 21 — 31-0

WITNESSES: For — Regan De Marines and Jackie Schlegel, Texans for Vaccine Choice; Andrea Gauthier; (*Registered, but did not testify*: Nora Belcher, Texas e-Health Alliance; Kelley Masters)

Against — (*Registered, but did not testify*: Tony Bennett, Texas Association of Manufacturers)

On — Dawn Richardson, National Vaccine Information Center; John Carlo, Texas Medical Association and Texas Public Health Coalition; (*Registered, but did not testify*: Barbara Klein and Jennifer Sims, Department of State Health Services)

BACKGROUND: Health and Safety Code sec. 81.003 defines "public health disaster" as:

- a state of disaster declared by the governor; and
- a determination by the commissioner of the Department of State Health Services (DSHS) that there is an immediate threat from a communicable disease that poses a high risk of death or serious long-term disability and creates a substantial risk of public exposure.

Under sec. 81.081, DSHS must impose control measures to prevent the spread of disease to protect the public health.

Under sec. 81.082(d), a declaration of a public health disaster may continue for a maximum of 30 days. A public health disaster may be

renewed one time by the commissioner of DSHS for an additional 30 days. Sec. 81.082(e) specifies that the governor may terminate a declaration of a public health disaster at any time.

DIGEST:

SB 968 would revise regulations governing the Department of State Health Services, the Texas Medical Board, and the Texas Division of Emergency Management during a public health disaster or emergency. The bill would prohibit COVID-19 vaccine passports, establish the Office of Chief State Epidemiologist, and revise and add definitions under Health and Safety Code ch. 81.

The bill would revise the definition of "public health disaster" under current law to mean:

- a state of disaster declared by the governor; and
- a determination by the commissioner of the Department of State Health Services (DSHS) that there was an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that posed a high risk of death or serious harm to the public and created a substantial risk of harmful public exposure.

"Public health emergency" would be defined as a determination by the DSHS commissioner, evidenced in a commissioner-issued emergency order, that there was an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that:

- potentially posed a risk of death or severe illness or harm to the public; and
- potentially created a substantial risk of harmful exposure to the public.

Department of State Health Services. The bill would establish DSHS as the preemptive authority under Health and Safety Code ch. 81 and would revise the department's required duties to include:

- coordinating statewide or regional efforts to protect public health; and
- collaborating with local elected officials, including county and municipal officials, to prevent the spread of disease and protect the public health.

Authority. The bill would allow the commissioner of DSHS to declare a statewide or regional public health disaster or order a statewide or regional public health emergency if the commissioner determined an occurrence or threat to public health was imminent. The commissioner could declare a public health disaster only if the governor declared a state of disaster for the occurrence or threat.

Length of disaster or emergency. A public health disaster or emergency would continue until the governor or commissioner terminated the disaster or emergency on a finding that the threat or danger had passed or the disaster or emergency had been managed to the extent emergency conditions no longer existed.

The bill would specify that a declaration of a public health disaster or an order of public health emergency could continue for a maximum of 30 days after the date the disaster or emergency was declared or ordered by the commissioner of DSHS.

A public health disaster or public health emergency could only be renewed by the Legislature or a designated legislative oversight board, rather than the DSHS commissioner. The bill would prohibit each renewal period for a public health disaster declaration or public health emergency order from exceeding 30 days.

Content and publication of declaration or order. A declaration or order issued would have to include:

- a description of the disaster or emergency;
- a designation of the area threatened by the disaster or emergency;
- a description of the condition that created the disaster or emergency; and

- if applicable, the reason for renewing or terminating the disaster or emergency.

The bill would specify methods in which declarations or orders would have to be filed.

Expert panel. Immediately after declaring a public health disaster or issuing a public health emergency order, the DSHS commissioner would be required to appoint an expert panel composed of five physicians and four other health care providers with certain knowledge and experience. The commissioner also would have to appoint a presiding officer.

The expert panel would have to meet during the public health disaster or emergency to provide recommendations on the disaster or emergency to the appointed chief state epidemiologist. The expert panel would be abolished on the termination of the public health disaster or emergency.

COVID-19 vaccine passports. The bill would prohibit a governmental entity in the state from issuing a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care, including publishing or sharing any individual's COVID-19 immunization record or similar health information for a non-health care purpose.

The bill would prohibit a business in the state from requiring a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery to enter, access, or receive service from the business. A business that failed to comply would not be eligible to receive a grant or enter into a contract payable with state funds.

Each appropriate state agency would have to ensure that businesses in the state complied and could require compliance as a condition for a license, permit, or other state authorization necessary for conducting business in the state.

These provisions could not be construed to restrict a business from implementing COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health, or interfere

with an individual's right to access the individual's personal health information under federal law.

Office of Chief State Epidemiologist. The bill would require the commissioner of DSHS to establish an Office of Chief State Epidemiologist within the department to provide expertise in public health activities and policy in the state by evaluating epidemiologic, medical, and health care information and identifying pertinent research and evidence-based best practices. The commissioner would have to appoint a physician licensed to practice medicine in the state as the chief state epidemiologist to administer the new office.

The bill would require the chief state epidemiologist to report to TDEM's state operations center during a declared public health disaster to provide expertise and support the state's response to the disaster.

Certain information provided to the office that related to an epidemiologic or toxicologic investigation of human illness or conditions and of environmental exposure that were harmful or believed to be harmful to the public health would be confidential and not subject to disclosure under the Texas Public Information Act. This information could not be released or made public on subpoena or otherwise, except for statistical purposes if released in a manner that prevented identification of any person.

Texas Medical Board. The bill would prohibit the Texas Medical Board (TMB) from issuing an order or adopting a regulation that limited or prohibited a nonelective medical procedure. "Nonelective medical procedure" would mean a medical procedure that if not performed within a reasonable time could, as determined in good faith by a patient's physician, result in the patient's loss of life or a deterioration, complication, or progression of the patient's current or potential medical condition or disorder, including a physical condition or mental disorder. The term would include a surgery, a physical exam, a diagnostic test, a screening, the performance of a laboratory test, and the collection of a specimen to perform a laboratory test.

The bill would apply only to an order issued or regulation adopted on or after the bill's effective date.

Exception. The bill would allow TMB during a declared state of disaster to issue an order or adopt a regulation imposing a temporary limitation or prohibition on a medical procedure other than a nonelective medical procedure only if the limitation or prohibition was reasonably necessary to conserve resources for nonelective medical procedures or resources needed for disaster response. The order or regulation could not continue for more than 15 days unless renewed by the board.

Immunity. A person subject to an issued order or adopted regulation who in good faith acted or failed to act would not be civilly or criminally liable or subject to disciplinary action.

Texas Division of Emergency Management. The bill would require the Texas Division of Emergency Management (TDEM) to enter into a contract with a manufacturer of personal protective equipment (PPE) that guaranteed a set amount and stocked supply of PPE for use during a certain declared public health disaster.

Under a contract, TDEM could purchase PPE only if it determined the state's supply of PPE would be insufficient based on PPE in the state's reserve and supplied by or expected to be supplied by the federal government. TDEM would be required to pursue all available federal funding to cover the costs of PPE purchased under a contract with a PPE manufacturer.

Civil penalty. A health care facility that failed to submit a report required by DSHS under a public health disaster or emergency would be liable to the state for a maximum civil penalty of $1,000 for each failure. The attorney general at the request of DSHS could bring an action to collect an imposed civil penalty.

Study and report. Under the direction of the emergency management council established by the governor, the Preparedness Coordinating Council would have to conduct a study on the state's response to COVID-19, examining the roles of DSHS, the Health and Human Services Commission, and TDEM.

By December 1, 2022, the council would have to submit a written report containing the study's results and legislative recommendations to the governor, the lieutenant governor, the House speaker, and the members of the Legislature.

These provisions would expire September 1, 2023.

Other provisions. DSHS would have to use any available federal money to implement the bill. DSHS and the Preparedness Coordinating Council advisory committee would be required to implement the bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money specifically for that purpose, DSHS and the council could, but would not be required to, implement the bill using other appropriations available for that purpose.

The bill would repeal Health and Safety Code secs. 81.082(d) and 81.082(e), regarding the maximum length of a declared public health disaster and the governor's authority to terminate a declaration at any time.

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 968 would ensure that Texas was better prepared in responding to future public health emergencies and disasters by clarifying the responsibilities of the Department of State Health Services and other entities, establishing legislative oversight, and requiring contracts to stockpile personal protective equipment. The COVID-19 pandemic highlighted several challenges, including public access to information, coordination between state and local agencies, and shortages in testing and PPE. The bill is necessary to clarify the authority of DSHS, the Texas Medical Board, and the Texas Division of Emergency Management (TDEM) to ensure the state responds more efficiently and effectively in a public health disaster or emergency.

COVID-19 vaccine passports. By prohibiting COVID-19 vaccine passports, the bill would protect an individual from discrimination and preserve an individual's choice on whether to receive the COVID-19

vaccine. The COVID-19 vaccine is voluntary and should not be mandated by government or businesses as a condition to receive services or maintain employment.

Office of Chief State Epidemiologist. Requiring the chief state epidemiologist to report to TDEM would improve coordination among entities and help provide essential expertise and support to mitigate the spread of a communicable disease.

Civil penalty. The civil penalty in the bill would ensure health care facilities submitted certain required reports in a timely manner.

CRITICS SAY:

SB 968 would unnecessarily interfere with a business' choices to adopt its own health policies and could increase the administrative burden for health care facilities that failed to comply with certain reporting requirements.

COVID-19 vaccine passports. By prohibiting COVID-19 vaccine passports, the bill would unnecessarily interfere with a business' ability to adopt its own health policies to protect its employees from exposure to COVID-19 and other diseases.

Office of Chief State Epidemiologist. The bill could create confusion by requiring the chief state epidemiologist to report to the Texas Division of Emergency Management during public health disasters. It would be better for the chief state epidemiologist to remain within the purview of the Department of State Health Services at all times to ensure consistent leadership regarding infectious disease concerns.

Civil penalty. The maximum civil penalty for health care facilities that do not comply with reporting requirements is too punitive, especially for health care facilities that lack adequate resources to sort through large data sets.

SUBJECT: Creating Texas Permanent School Fund Corporation to manage PSF

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 19 ayes — Bonnen, Ashby, C. Bell, Capriglione, Gates, Holland, Howard, A. Johnson, Jarvis Johnson, Julie Johnson, Minjarez, Morrison, Schaefer, E. Thompson, Toth, VanDeaver, Walle, Wilson, Wu

0 nays

8 absent — M. González, Dean, Dominguez, Raney, Rose, Sherman, Stucky, Zwiener

SENATE VOTE: On final passage, May 6 — 30-0

WITNESSES: For — John Hryhorchuk, Texas 2036; (*Registered, but did not testify*: Leticia Van de Putte, San Antonio Chamber of Commerce; Gilbert Zavala, The Greater Austin Chamber of Commerce)

Against — (*Registered, but did not testify*: Dena Donaldson, Texas American Federation of Teachers; Laura Atlas Kravitz, Texas State Teachers Association; Dorothy Ann Compton)

On — Jeff Gordon, General Land Office; Keven Ellis and Tom Maynard, State Board of Education; Todd Williams, School Land Board; Mike Meyer and Holland Timmins, Texas Education Agency; (*Registered, but did not testify*: Chuck Campbell, State Board of Education/Permanent School Fund)

BACKGROUND: The Texas Constitution of 1876 established the Permanent School Fund (PSF) and transferred half of the public lands owned by the state to the PSF as an endowment to provide a perpetual source of funding for public education. The State Board of Education (SBOE) manages financial assets for the PSF and the School Land Board (SLB), an independent entity of the General Land Office, oversees the management, sale, and leasing of more than 13 million acres of PSF land.

The 86th Legislature in 2019 enacted HB 4388 by Murphy, which created the PSF Liquid Account in the state treasury to be used by the SLB and SBOE. The law authorizes the SBOE to invest the funds in liquid assets.

DIGEST:

SB 1232 would create the Texas Permanent School Fund Corporation to manage the Permanent School Fund (PSF) and the Charter District Bond Guarantee Reserve Fund. It would require the transfer of certain revenue from the School Land Board to the corporation, and repeal requirements for a PSF Liquid Account.

PSF Corporation. SB 1232 would authorize the State Board of Education (SBOE) to incorporate the Texas Permanent School Fund Corporation and delegate to the corporation the board's authority to manage and invest the PSF and the Charter District Bond Guarantee Reserve Fund. The SBOE would have to adopt the initial articles of incorporation for the corporation.

The corporation would be a special-purpose governmental corporation and instrumentality of the state with necessary and implied powers to accomplish its purpose. The corporation could engage in any activity necessary to manage PSF investments, including entering into any contract, to the extent the activity complied with applicable fiduciary duties. It also could delegate investment authority to one or more private professional investment managers.

Membership. The board of directors would be composed of the following nine members:

- five members of the SBOE, appointed by the board;
- the commissioner of the General Land Office (GLO);
- one member appointed by the GLO commissioner who had substantial background and expertise in investments and asset management; and
- two members appointed by the governor, with the advice and consent of the Senate, from a list of three individuals nominated by the SBOE and three individuals nominated by the School Land Board, each of whom would have to have substantial background

and expertise in investments and asset management and could not be members of either board.

The SBOE by rule would establish the terms of the members it appointed. Members appointed by the GLO commissioner and the governor would serve staggered six-year terms, with the term of one member expiring on January 1 of each odd-numbered year.

The board would have to elect officers in accordance with the corporation's bylaws, and would have to meet at least three times per year. The board would have to develop written investment objectives for the PSF and employ a well-recognized performance measurement service to evaluate and analyze investment results.

Chief executive officer. The board would have to determine a hiring process to employ a chief executive officer, who would carry out duties as specified in the bill. The CEO could appoint an internal auditor, who would have to be approved by the board.

Immunity, insurance. The corporation, its officers and employees, and the board would be entitled to sovereign immunity to the same extent as any other state agency. The corporation could purchase or acquire liability insurance to protect board members and employees.

Conflicts of interest. The board would have to adopt an ethics policy that provided standards of conduct related to the management and investment of the PSF, including requirements for disclosure and other provisions specified in the bill. The board would have to define the types of relationships that could create a possible conflict of interest.

Open meetings. The board would be subject to state open meetings laws. It could conduct a closed meeting to deliberate or confer with one or more employees, consultants, or its legal counsel or with third parties relating to investment transactions, restricted securities, and procurement under certain conditions as specified in the bill.

Applicability of certain laws. The corporation would be exempted from:

- state laws classifying employee positions and regulating travel expenses, to the extent the board determined that an exemption would be necessary to perform the board's fiduciary duties;
- all state laws regulating or limiting purchasing by state agencies;
- the franchise tax; and
- any filing costs or other fees imposed by the state on a corporation.

School Land Board. The bill would require the School Land Board (SLB) to transfer all revenue derived from mineral or royalty interest, less any amounts specified by appropriation to be retained by the SLB, to the corporation for investment in the PSF. The bill would abolish the PSF Liquid Account.

Investment standards. The bill would remove existing regulations regarding the manner in which the SBOE may invest the PSF and subject the investment only to the prudent investor standard established in the Texas Constitution.

SB 1232 would require the Texas PSF Corporation to submit an annual audit report of corporation operations to the Legislative Budget Board (LBB) and an annual investment report on the allocation of assets and investment performance to the SBOE and GLO.

Distributions to ASF. Under SB 1232, the Texas PSF Corporation could make distributions from the PSF to the Available School Fund (ASF) in an amount not to exceed the constitutional limitation. In establishing an annual minimum distribution rate to the ASF, the corporation could consider the constitutional requirements, factors related to current and future public school students, and any other relevant factors.

Not later than November 1 of each even-numbered year, the corporation would have to submit to the Legislature, comptroller, SBOE, and LBB a report that detailed certain information about the transfer.

Bond guarantee program. The corporation, SBOE, and Texas Education Agency would have to coordinate to determine the corporation's role in the operation and management of the PSF in connection with the bond

guarantee program for charter districts to ensure the proper and efficient operation of the program.

SB 1232 would establish timelines for transfers of powers, duties, functions, programs, and activities of the SBOE and SLB relating to the management and investment of the PSF to the corporation.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

SB 1232 would boost funding for public education by improving the management of the $48 billion Permanent School Fund (PSF). The bill would provide unified management of the fund's assets by creating the Texas Permanent School Fund Corporation. While the fund is considered the largest of its kind in the United States, its return on investments has lagged behind similar endowments. The new corporation is designed to operate in a manner similar to the way UTIMCO manages the Permanent University Fund, which grew at 118 percent over 20 years compared to 76 percent for the PSF.

Part of the reason for the lower performance of the PSF is the split management of the fund between two entities. The State Board of Education (SBOE) manages about two-thirds of the fund and the School Land Board, an independent entity of the General Land Office (GLO), manages the other third. The SLB under current law has a more restricted pool of investment options. Splitting the investment process has caused the state to miss out on investment returns due to different collateral requirements and investment options.

The bill would maintain the constitutional requirements for the SBOE and GLO while combining PSF funds in the new government corporation. The bill would streamline PSF investment management into one jointly managed investment pool that would reduce state costs, protect against asset allocation risks, and allow for greater investment growth. By repealing a statutory requirement that certain assets be held in a liquid account, the bill would free up as much as $4 billion for longer-term investment. The bill is expected to result in more than $100 million added to the PSF each year.

While some say that appointed officials should not have a role in overseeing the PSF, the majority of the new corporation's governing board would be elected SBOE members, and the governor's appointees would have to come from a list of individuals recommended by the SBOE and School Land Board.

CRITICS SAY:

SB 1232 would unnecessarily change the historic control of the PSF from the SBOE to a new government corporation even as the endowed fund has performed well and grown to $48 billion. The purpose of the constitutionally dedicated PSF is not to grow exponentially but to provide a steady guarantee that future generations of Texans will have education funding. The bill would remove management of fund assets from the elected SBOE to a new entity that would be governed by a board that would include some gubernatorial appointees, creating the potential for private interests to gain involvement in managing this important public asset.

NOTES:

Because of uncertainty regarding future returns on investment and fund distributions, the Legislative Budget Board states that the fiscal implications of the bill cannot be determined.

SUBJECT: Prohibiting competition in UIL athletic events designated for opposite sex

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Dutton, Lozano, Allison, K. Bell, Buckley, Huberty, K. King, VanDeaver

5 nays — Allen, Bernal, M. González, Meza, Talarico

SENATE VOTE: On final passage, April 15 — 18-12 (Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini)

WITNESSES: None.

BACKGROUND: The University Interscholastic League Constitution and Contest Rules sec. 360 separate certain athletic programs by gender and specify that gender is determined based on a student's birth certificate, or other government document if a birth certificate is unavailable.

DIGEST: CSSB 29 would prohibit an interscholastic athletic team sponsored or authorized by a school district or open-enrollment charter school from allowing a student to compete in an interscholastic athletic competition sponsored or authorized by the district or school that was designated for the sex opposite to the student's sex as correctly stated on:

- the student's official birth certificate; or
- another government record, if the student's official birth certificate was unobtainable.

An interscholastic team could allow a female student to compete in an interscholastic athletic competition that was designated for male students if a corresponding competition designated for female students was not offered or available.

The University Interscholastic League (UIL) would have to conduct a study to determine if allowing a student to participate in an interscholastic

athletic competition sponsored or authorized by a school district or charter school designated for the sex opposite to the student's sex:

- caused disruptions among the student's interscholastic athletic team; or
- restricted opportunities for students of the sex for which the competition was designated.

By December 1, 2026, UIL would have to submit to the Legislature a report on the results of the study and any recommendations for legislative or other action.

UIL would have to adopt rules to implement the bill and the rules would have to be approved by the commissioner of education in accordance with existing law.

CSSB 29 would apply beginning with the 2021-2022 school year and would expire September 1, 2027.

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

SUPPORTERS SAY:

CSSB 29 would promote safety and fairness in school sports by specifying that a student only could compete in an interscholastic athletic event designated for the student's sex as assigned at birth. This would protect the ability of girls to excel in their chosen sport by ensuring they had ample opportunities for fair athletic competition.

Concerns have been raised that allowing students to participate in sports events contrary to their sex at birth puts other athletes at a competitive disadvantage due to physiological differences between males and females. The bill would remedy this problem by ensuring that students could only compete in interscholastic sports events sponsored or authorized by a school if that event was designated for the sex matching what was listed on a student's birth certificate.

The bill would not prevent anyone from participating in school sports, as long as they competed with others of the same sex.

CRITICS SAY:

CSSB 29 would negatively impact transgender children in Texas schools wishing to compete in interscholastic athletics by specifically prohibiting them from competing in events designated for the gender with which they identified. Sports can be critical to the physical, mental, and emotional well-being of children, and all children should have to right to participate in these activities. Rather than protecting Texas children, the bill could place them at risk of bullying by requiring transgender children who wanted to compete in sports to compete with other students who did not match their gender identity.

The bill also would open the state up to potential adverse economic and legal consequences. If passed, CSSB 29 likely would face significant legal challenges that would require state funds to litigate and could prompt the withdrawal of businesses and large planned events from Texas.

NOTES:

The House companion bill, HB 4042 by Hefner, was considered by the House Public Education Committee in a public hearing on April 20 and left pending.

SUBJECT: Revising state authority for school accountability interventions

COMMITTEE: Public Education — favorable, with amendment

VOTE: *After recommitted:*
10 ayes — Dutton, Allison, K. Bell, Bernal, Buckley, Huberty, K. King, Meza, Talarico, VanDeaver

1 nay — Allen

2 absent — Lozano, M. Gonzalez

SENATE VOTE: On final passage, May 5 — 20-11 (Alvarado, Blanco, Eckhardt, Gutierrez, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini)

WITNESSES: No public hearing.

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 adjoining districts.

DIGEST: SB 1365 would revise and add provisions relating to public school performance ratings and state interventions for districts with unacceptable performance ratings. The bill would specify the education commissioner's authority to appoint a board of managers for certain districts, charter schools, or district or charter schools campuses that had received consecutive years of unacceptable performance ratings.

Commissioner's authority. SB 1365 would establish that if an order, decision, or determination of the education commissioner was described in the Education Code as final and unappealable, an interlocutory or intermediate order, decision, or determination made or reached before the

final order, decision, or determination could be appealed only if specifically authorized by the code or a rule adopted under the code.

Review of action. A district or charter school that intended to challenge a decision by the commissioner for closure or appointment of a board of managers would have to appeal to the State Office of Administrative Hearings. The administrative law judge would have to uphold a decision by the commissioner unless the judge found the decision was arbitrary and capricious or clearly erroneous, and could not substitute the judge's judgment for that of the commissioner.

The bill would establish that the education 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 were valid delegations of authority, notwithstanding any other law.

Special investigations. SB 1365 would replace Education Code references to special accreditation investigations with revised provisions for special investigations. Based on the results of a special investigation, the commissioner could take any interventions and sanctions for school districts provided under Chapter 39A, regardless of any requirements applicable to the action that are provided by that chapter. The commissioner's action related to a special investigation would be subject to review by the State Office of Administrative Hearings.

At any time before issuing a report with the Texas Education Agency's final findings, the commissioner could defer taking an action until:

- 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
- both the third party report and corrective action plan had been completed.

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.

Campus and district performance ratings. SB 1365 would revise provisions under which a performance rating of D was considered an acceptable or unacceptable performance rating, and specify when the commissioner could assign a rating of "Not Rated."

Effect of D rating. The bill would stipulate that a reference in law to an acceptable performance rating for a school district, charter school, or district or charter school campus included an overall performance rating of D if, since previously receiving an overall performance rating of C or higher, the district, charter school, or district or charter school campus:

- had not previously received more than one overall performance rating of D; or
- had not received an overall performance rating of F.

Otherwise, a performance rating of D would be considered unacceptable in Education Code references.

SB 1365 would expand information that would have to be made publicly available by August 15 of each year to include, if applicable, the number of consecutive school years of unacceptable performance ratings for each district and campus. If the bill took effect later than August 15, 2021, the commissioner would have to publish the consecutive school years of unacceptable performance as soon as practicable after the effective date.

Not rated. The commissioner could assign a school district or campus an overall performance rating of "Not Rated" if the commissioner determined that the assignment of a performance rating of A, B, C, D, or F would be inappropriate because:

- the district or campus was located in an area subject to a declared disaster, and performance indicators would be difficult to measure or evaluate and would not accurately reflect quality of learning and achievement;

- the district or campus had experienced breaches or 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 the performance of the district or campus; or
- for other reasons outside the control of the district or campus, the performance indicators would not accurately reflect quality of learning and achievement.

An overall performance rating of "Not Rated" would not be included in calculating consecutive school years of unacceptable performance and would be not considered a break in consecutive school years of unacceptable performance.

Alternative evaluations. The commissioner would have to adopt rules to develop and implement alternative methods and standards for evaluating the performance for the 2020-2021 school year of a campus that:

- met the participation requirements for all students and all subject areas for the annual measurement of achievement under the federal Every Student Succeeds Act;
- was most recently rated D, F, or needs improvement; and
- was not subject to the appointment of a board of managers.

An acceptable performance rating assigned under the commissioner's alternative methods and standards would be considered a break in consecutive school years of unacceptable performance rating. The alternative evaluation would not apply to an intervention ordered on the basis of consecutive years of unacceptable performance ratings accrued before the bill became effective.

The requirement for alternative evaluations would expire September 1, 2027.

Interventions and sanctions. SB 1365 would make revisions and additions to state interventions and sanctions related to certain performance ratings.

Local improvement plan. A school district, charter school, or district or charter school campus that was assigned a rating of D that qualified as acceptable performance under the bill would have to develop and implement a local improvement plan. The plan would have to be presented to the district board of trustees or charter school governing board. The commissioner would have to adopt rules to establish requirements for a local improvement plan components and training but could not require a district or charter school to submit the plan to TEA.

Campus turnaround plan. The statutory requirement for a campus identified as unacceptable for two consecutive years to prepare and submit a campus turnaround plan to the commissioner would be expanded to require the commissioner to appoint a conservator to a school district unless and until:

- 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.

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.

Continued unacceptable performance. The bill would change the period of consecutive unacceptable campus performance ratings after which the commissioner had to intervene by closing the campus or appointing a board of managers to the district from three consecutive school years to five consecutive school years.

Intervention for certain districts or campuses. In temporary provisions that would expire September 1, 2027, the commissioner would have to:

- determine the number of school years of unacceptable performances ratings as defined in the bill occurring after the 2012-2013 school year for each school district, charter school, or district or charter school campus;
- use the number of school years of unacceptable performance ratings as the base number of consecutive years of unacceptable performance for which the performance rating in the 2021-2022 school year would be added; and
- order the appointment of a board of managers to the district or charter school for each campus that was determined to have been assigned an unacceptable performance rating for five or more school years.

This requirement could not be construed to:

- provide a 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.

Intervention pause. The bill would require a pause in certain interventions for a district, charter school, or district or charter school campus that received a first or second overall performance rating of D, since previously being rated C or higher, until another performance rating was issued.

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, except that funds could be used for an action or proceeding specifically authorized by a provision of the Education Code or a rule adopted under the code and that resulted in a final and unappealable decision, order, or determination.

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:

SB 1365 would allow the commissioner of education to address the problem of chronically failing schools by clarifying the state's authority to intervene when a campus receives a series of D performance ratings. The school accountability system plays a crucial role in ensuring that a quality education is available to all Texas students, especially when local school officials allow multiyear school failures to leave thousands of students behind.

By specifying that a D rating is considered unacceptable performance under the school accountability system, SB 1365 would allow the commissioner to use statutory sanctions and interventions, including the appointment of a conservator or board of managers to focus on campus improvement. This would ensure that state and local school officials understand the impact of D ratings going forward.

While local control of school districts and charter schools is important, state intervention becomes necessary when a school board is unwilling or unable to improve chronically failing schools. The bill would protect local school board authority by allowing the results of investigations by the Texas Education Agency (TEA) in a board of managers case to be appealed to the State Office of Administrative Hearings while limiting a district's ability to use litigation to thwart state intervention. Allowing TEA to consider confidential witness testimony would protect teachers and others who came forward with allegations of wrongdoing by a district or charter school.

CRITICS SAY:

SB 1365 would inappropriately allow more state control of locally governed school districts and give too much power to the appointed state

commissioner. The bill would allow the education commissioner to take over more school districts than allowed under current law by treating a D rating as an F rating signifying unacceptable academic performance. This would heighten the pressure on students taking STAAR exams by increasing the stakes attached to test results under the school rating system.

The bill states that the commissioner's power under certain circumstances is "final and unappealable," providing school districts limited recourse to challenge the legality of some decisions by the commissioner. A provision to allow the Texas Education Agency to consider anonymous testimony could deprive districts of meaningful due process.

NOTES:

The House sponsor plans to offer a floor amendment that would revise certain provisions in the bill related to school accountability ratings and state sanctions and interventions associated with those ratings.

The House companion bill, HB 3270 by Dutton, was considered by the House Public Education Committee in a public hearing on March 30, reported favorably as substituted on April 7, placed on the General State Calendar for May 6, then returned to committee.