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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 Three

The bills analyzed or digested in Part Three of today's *Daily Floor Report* are listed on the following page.

Analyses of postponed bills and all bills on second reading can be found online 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 3

SUBJECT: Standardizing data collection and reporting during a public health disaster

COMMITTEE: Public Health — favorable, without amendment

VOTE: 7 ayes — Klick, Guerra, Allison, Jetton, Oliverson, Price, Smith

0 nays

4 absent — Campos, Coleman, Collier, Zwiener

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

WITNESSES: For — Dana Wiltz-Beckham, Harris County Public Health; (*Registered, but did not testify*: Amanda Fredriksen, AARP; Jamaal Smith, City of Houston, Office of the Mayor; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Charles Miller, Texas 2036; Craig Holzheauser, Texas Association of City and County Officials; Nora Belcher, Texas e-Health Alliance; Dan Finch, Texas Medical Association; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Monica Gamez and David Gruber, Department of State Health Services)

BACKGROUND: Health and Safety Code ch. 81 establishes the duty of the state to protect the public health and includes provisions governing the prevention and control of communicable diseases and reporting procedures for public health systems.

As the COVID-19 pandemic progressed in Texas, some noted issues with accessibility of critical public health data collected and disseminated by the Department of State Health Services and have called for improving the accessibility and integrity of such data during a public health disaster.

DIGEST: SB 969 would require the Department of State Health Services (DSHS) to make certain public health data accessible to the public during a public

health disaster. The bill also would establish reporting procedures for data related to a public health disaster and provide for an administrative penalty for certain facilities that failed to comply with reporting requirements, among other provisions.

Availability of data regarding public health disaster. SB 969 would require the Department of State Health Services (DSHS) to make available to the public on its website and in an easy-to-read format all available de-identified public health data during a public health disaster. DSHS would have to confidentially present data related to individuals as summary statistics consistent with confidentiality provisions under current law.

The bill also would require DSHS to collaborate with local health authorities, hospitals, laboratories, and other entities that submitted information to the department during a public health disaster or in response to outbreaks of communicable disease to plan and implement a standardized and streamlined method for sharing necessary information during the disaster or response. DSHS could require a person submitting information to the department to use the developed method.

Information sharing. A hospital would be required to report to DSHS and to the applicable trauma service area regional advisory council all required information related to a reportable disease for which a public health disaster was declared. DSHS and each regional advisory council would be required to make publicly available in a timely manner the information a hospital was required to report. DSHS and each regional advisory council would have to ensure that information released under the bill did not contain any personally identifiable information.

DSHS also would have to collaborate and coordinate with local health departments to ensure that all information covering a reporting period and related to a reportable disease for which a public health disaster was declared was released to the public in a timely manner.

The bill would require DSHS to develop and publish on its website monthly compliance reports for laboratories and hospitals reporting during

a public health disaster. The minimum requirements for the reports would be provided by the bill.

DSHS also would be required to implement quality assurance procedures to ensure that data collected and reported for a public health disaster was systematically reviewed for errors and completeness. DSHS would have to implement procedures to timely resolve any deficiencies in data collection and reporting.

Implementation plans, reports to Legislature. Under the bill, DSHS would have to evaluate the planning and response capabilities of the state health care system to respond to public health threats. The department would be required to coordinate its evaluation with certain entities and submit to the Legislature an implementation plan based on its findings.

DSHS would have to evaluate the current scope, size, function, and public health response capabilities of public health regions and regional offices as specified by the bill and identify ways to improve support for local health departments and areas in which DSHS served as the primary public health provider. A report based on the evaluation would have to be provided to the Legislature.

DSHS also would be required to improve standardized data collection and reporting by the department and certain other entities during a declared public health disaster and collaborate on best practices to ensure that data collection and reporting were consistent across state, regional, and local levels. DSHS would have to implement the best practices and report its findings to the Legislature.

The reports and implementation plan required by the bill would have to be provided to the Legislature by December 1, 2021.

Civil penalty, other provisions. DSHS could impose a civil penalty of not more than $1,000 on a health care facility for each failure to submit a required report, and the attorney general could bring an action to recover the civil penalty.

The bill would remove from the methods the executive commissioner of the Health and Human Services Commission could prescribe for a report made under Health and Safety Code ch. 81 a provision allowing reporting in writing or by telephone. This would apply only to a report submitted on or after January 1, 2023.

SB 969 would require the HHSC executive commissioner to adopt rules necessary to implement the provisions of the bill as soon as practicable after the bill's effective date.

DSHS would be required to implement the bill's provisions only if the Legislature appropriated funds specifically for that purpose. If the Legislature did not appropriate money specifically for that purpose, DSHS could implement the bill using other available appropriations. The department would be required to use any available federal funds to implement the bill.

The bill would take effect September 1, 2021.

SUBJECT: Collecting certain data for public health disasters, emergencies

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Klick, Guerra, Allison, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

3 absent — Campos, Coleman, Collier

SENATE VOTE: On final passage, April 29 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Amanda Fredriksen, AARP; Jamaal Smith, City of Houston, Office of the Mayor; Dan Finch, Texas Medical Association; Julie Wheeler, Travis County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: David Gruber, Texas Department of State Health Services)

BACKGROUND: Health and Safety Code ch. 81 specifies that it is the duty of the state to protect the public health, including through the prevention and control of communicable disease. Subch. J creates the Task Force on Infectious Disease Preparedness and Response and outlines its purpose, duties, membership, and reporting requirements.

Concerns have been raised that the state lacked guidance and participation from the Task Force on Infectious Disease Preparedness during the COVID-19 pandemic and response and that certain needed demographic data was not being reported, leaving trauma service areas unprepared for surges in patients. Interested parties have called for changes to the task force to ensure Texas is better prepared to respond to future public health disasters and for improvements to be made in the collection and reporting of certain demographic data.

DIGEST:

CSSB 984 would require a trauma service area regional advisory council to collect certain de-identified health care data from hospitals in its service area and provide that data to the Department for State Health Services (DSHS). The bill also would make certain changes to the composition of the Task Force on Infectious Disease Preparedness and Response.

Data collection and reporting. The bill would require each trauma service area regional advisory council to collect from each hospital located in the council's trauma service area the de-identified health care data, including demographic data, necessary for the state and the area to effectively plan for and respond to public health disasters and communicable or infectious disease emergencies. The executive commissioner of the Health and Human Services Commission would have to prescribe the data each council would be required to collect.

A trauma service regional advisory council would have to provide the data collected to DSHS and make the data publicly available by posting the data on the council's website or, if the council did not maintain a website, providing the data in writing on request. Information collected or maintained under the bill's provisions that identified a patient would be confidential and exempt from disclosure.

Task force. The bill would expand the membership of the Task Force on Infectious Disease Preparedness and Response to include at least one member who was an epidemiologist. The governor would have to appoint such a member by January 1, 2022.

CSSB 984 also would require the task force to meet at least once each year at a location determined by the task force director and would continue a requirement for it to meet at other times as the director determined.

Other provisions. DSHS or a trauma service area regional advisory council would be required to implement the bill's provisions only if the Legislature appropriated funds specifically for that purpose. If the Legislature did not appropriate such funds, the department or council could, but would not be required to, implement the bill using other available appropriations.

The bill would take effect September 1, 2021.

SUBJECT: Requiring elected officials to extend certain public health orders

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Klick, Guerra, Allison, Jetton, Oliverson, Price, Smith

0 nays

4 absent — Campos, Coleman, Collier, Zwiener

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

WITNESSES: For — (*Registered, but did not testify*: Dee Chambless; Larue Decker; Glenda Hink; Calvin Tillman; Al Zito)

Against — (*Registered, but did not testify*: Julie Wheeler, Travis County Commissioners Court)

On — Daniel Collins, El Paso County; (*Registered, but did not testify*: Barbara Klein, Department of State Health Services; Ender Reed, Harris County Commissioners Court; Dan Finch, Texas Medical Association)

BACKGROUND: Health and Safety Code ch. 121, subch. B establishes that a health authority is a physician appointed to administer state and local laws relating to public health within the appointing body's jurisdiction. The duties of a health authority include establishing, maintaining, and enforcing quarantine in the health authority's jurisdiction as well as reporting the presence of contagious, infectious, and dangerous epidemic diseases in the health authority's jurisdiction to the Department of State Health Services in the manner and at the times prescribed by the department, among other responsibilities.

Interested parties have noted that while it is important for a local health department to have discretion in the initial imposition of an order to protect public health, public engagement with and confidence in the measure could be improved by requiring that local elected officials vote to approve an extension of the initial order.

DIGEST:

CSSB 967 would establish that a public health order issued by a health authority would expire on the eighth day following the date the order was issued unless extended by certain local elected officials.

In order to extend the order for a longer period, the extension would have to be approved before the eighth day by a majority vote of:

- the governing body of a municipality or the commissioners court of a county that appointed the health authority; or
- if the health authority was jointly appointed by a municipality and county, the commissioner's court of the county.

The bill's requirements would apply only to a public health order imposed on more than one individual, animal, place, or object.

The bill would take effect September 1, 2021, and would apply only to a health order issued on or after that date.

SUBJECT: Revising the process for determining Medicaid eligibility of certain youth

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Frank, Hinojosa, Hull, Klick, Meza, Neave, Noble, Shaheen

0 nays

1 absent — Rose

SENATE VOTE: On final passage, May 13 — 30-0

WITNESSES: No public hearing.

BACKGROUND: Human Resources Code sec. 32.0247 requires the Health and Human Services Commission (HHSC) to provide medical assistance, in accordance with commission rules, to an independent foster care adolescent who:

- is not otherwise eligible for medical assistance; and
- is not covered by a health benefits plan offering adequate benefits, as determined by the commission.

Under this section, the Department of Family and Protective Services (DFPS) must certify the income, assets, or resources of each individual on the date the individual exits foster care. An individual qualifying for medical assistance shall remain eligible for 12 calendar months after certification and after each recertification. The recertification process for individuals who are eligible for medical assistance includes the option of recertifying by mail or phone.

Concerns have been raised about the difficulty some former foster care youth have recertifying their Medicaid eligibility annually due to the complexity of the renewal process and the difficulty many youth have in maintaining a correct address on file with the state. Failure to submit recertification documents annually can lead to a lapse in or loss of medical coverage. Interested parties have suggested that the process for

determining Medicaid eligibility for former foster care youth should be streamlined.

DIGEST:

SB 1059 would require the Health and Human Services Commission (HHSC), in consultation with the Department of Family and Protective Services (DFPS), to design and implement a streamlined process for determining a former foster care youth's eligibility for Medicaid.

The streamlined process would have to:

- provide for the automatic enrollment and recertification of a former foster care youth in the STAR Health program, the STAR Medicaid managed care program, or another Medicaid program, as appropriate; and
- be designed to prevent any unnecessary interruption of the youth's Medicaid benefits, including any interruption related to having to recertify the youth for benefits.

If recertification was required under federal law, the bill would specify the use of a simple application and recertification process that:

- to the extent permitted by federal law, did not require that a youth verify that the youth was a resident of Texas unless the HHSC determined that the youth was receiving Medicaid benefits outside of this state; or
- if federal law required that a youth verify that the youth was a resident of Texas, allowed the youth to attest to that fact without providing additional documentation or evidence that proved the youth was a Texas resident.

The bill also would change the period of continuous Medicaid eligibility for a former foster care youth from 12 calendar months after certification and after each recertification to the maximum period permitted under federal law before any recertification was required.

The recertification process for a former foster care youth would have to comply with the streamlined process designed and implemented by HHSC and include the option to recertify online.

DFPS and HHSC would be required to implement the bill only if the Legislature appropriated money specifically for that purpose. If no legislative appropriation was made, the department and commission could, but would not be required to, implement the bill's provisions using other appropriations available for that purpose.

The bill would take effect September 1, 2021, and would apply only to an initial determination or recertification of eligibility of a person for medical assistance made on or after that date.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $717,281 to general revenue related funds through fiscal year 2023. The negative impact to general revenue related funds would increase to $3.7 million in the subsequent biennium.

SUBJECT: Allowing broadband-only providers to use state highway rights-of-way

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Paddie, Deshotel, Harless, Howard, P. King, Lucio, Metcalf, Shaheen, Slawson, Smithee

0 nays

3 absent — Hernandez, Hunter, Raymond

SENATE VOTE: On final passage, March 31 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Luis Acuna, Texas 2036; Charlie Leal, Texas Farm Bureau; Matt Burgin, Texas Food & Fuel Association; Ryan Skrobarczyk, Texas Nursery & Landscape Association; Dana Harris, The Greater Austin Chamber of Commerce)

Against — None

BACKGROUND: Interested parties suggest there are barriers to the deployment of broadband service because companies providing broadband-only services cannot access Texas Department of Transportation rights-of-way without entering into and paying for a lease. Some suggest providing for an accommodation process to allow broadband-only providers to use state highway rights-of-way for certain purposes.

DIGEST: SB 507 would require the Texas Transportation Commission by rule to establish an accommodation process that authorized broadband-only providers to use state highway rights-of-way, subject to highway purposes, for:

- new broadband facility installations;
- additions to or maintenance of existing installations;
- adjustments or relocations of broadband facilities; and
- existing facilities within the rights-of-way.

The process would have to be established on a competitively and technologically neutral and nondiscriminatory basis with respect to other providers of broadband service.

The bill also would require the Texas Transportation Commission to prescribe minimum requirements for the accommodation, method, materials, and location for the installation, adjustment, and maintenance of broadband facilities under the accommodation process.

The commission would have to adopt the rules no later than the first anniversary of the bill's effective date.

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

SUBJECT: Establishing a peace officer's duty to intervene to stop excessive force

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 22 — 31-0

WITNESSES: For — Chris Jones, Combined Law Enforcement Associations of Texas; Rebecca Bernhardt, Innocence Project of Texas; Mike Miller, Warriors For Ranchers; (*Registered, but did not testify*: Juan Salinas, AT&T; Chas Moore, Austin Justice Coalition; TJ Patterson, City of Forth Worth; James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Tammy Narvaez, Harris County Commissioners Court; Collin Craig, Houston Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Tom Maddox, Sheriffs Association of Texas; Maggie Luna, Statewide Leadership Council; Alycia Castillo, Texas Criminal Justice Coalition; Gyl Switzer, Texas Gun Sense; Joshua Houston, Texas Impact; Austin Holder, Texas Instruments; Mitch Landry, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Julie Wheeler, Travis County Commissioners Court; Susana Carranza; Vanessa MacDougal; Thomas Parkinson)

Against — None

On — Koretta Brown, Alliance For A New Justice System; Warren Burkley, Austin Justice Coalition; Kathy Mitchell, Just Liberty; Carmen Ivonne, Texas Organizing Project; (*Registered, but did not testify*: Brian Baxter, Texas Department of Public Safety)

BACKGROUND: Concerns have been raised about use of excessive force by peace officers, and some have suggested that establishing a duty to intervene policy would benefit both law enforcement and the communities they serve.

DIGEST:

CSSB 68 would establish that a peace officer would have a duty to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense.

An officer would have a duty to intervene if the amount of force exceeded that which was reasonable under the circumstances and the officer knew or should know that the other officer's use of force:

- violated state or federal law;
- put a person at risk of bodily injury and was not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and
- was not required to apprehend the person suspected of committing the offense.

A peace officer who witnessed the use of excessive force by another peace officer promptly would have to make a detailed report of the incident and deliver the report to the officer's supervisor.

The bill would take effect September 1, 2021.

SUBJECT: Requiring risk-limiting audits of election results, paper audit trails

COMMITTEE: Elections — favorable, without amendment

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

0 nays

SENATE VOTE: On final passage, April 12 — 31-0

WITNESSES: For — Laura Pressley, True Texas Elections, LLC; Marcia Strickler, Wilco We Thee People; (*Registered, but did not testify*: Steph Gomez, Common Cause Texas; Joanne Richards, Common Ground for Texans; Gerald Welty, Convention of States; Cary Roberts, County and District Clerks' Association of Texas; Angela Smith, Fredericksburg Tea Party; Alan Vera, Harris County Republican Party Ballot Security Committee; Rene Perez, Libertarian Party of Texas; Jill Glover, Republican Party of Texas; Anne Mazuca, Secure Democracy; Chris Davis, Texas Association of Elections Administrators; Darcy Caballero and Glen Maxey, Texas Democratic Party; Joshua Houston, Texas Impact; Chad Ennis, Texas Public Policy Foundation; and 17 individuals)

Against — (*Registered, but did not testify*: Lorri Haden)

On — Keith Ingram, Texas Secretary of State; Robert L. Green, Travis County Republican Party Election Integrity Committee; Bill Sargent; (*Registered, but did not testify*: Christina Adkins, Texas Secretary of State; Henry Bohnert)

BACKGROUND: Interested parties have suggested that Texas should require risk-limiting audits of election results and paper audit trails to reduce the threat of electronic interference with elections in the state.

DIGEST: SB 598 would require risk-limiting audits of certain election results, require the secretary of state to conduct a pilot program, and require paper audit trails, among other provisions.

Risk-limiting audits. A general custodian of election records would have to conduct a risk-limiting audit for a selected statewide race or measure within 24 hours after all ballots in the election had been counted. The general custodian would have to post a notice of the date, hour, and place of the audit in the custodian's office and on the county website, if applicable.

Provisions of the bill relating to the risk-limiting audit program would apply to an election that occurred after August 31, 2026, that contained a race or measure that was voted on statewide, and in which an auditable voting system was used.

The secretary of state would have to select the precincts to be counted and the office or proposition to be counted. The secretary could appoint personnel to assist with the audit, including applicable voting system technicians or representatives and persons who had assisted with the design and implementation of the audit. The results of a risk-limiting audit would have to be published on the secretary's internet website within three days after the completion of the audit.

The secretary of state would have to adopt rules prescribing procedures necessary to implement the risk-limiting audit program, including a rule, using widely accepted statistical methods, that provided for the number or percentage of paper records that would have to be counted in an audit.

A watcher could be present for the audit if appointed by a candidate in the election. A watcher would have to deliver a certificate of appointment that met certain specifications listed in the bill to the general custodian at the time the watcher reported for service.

Audit pilot program. The secretary of state would have to conduct a pilot program of the risk-limiting audit program established by the bill beginning with the election taking place November 8, 2022. The secretary would have to select at least five counties to participate in the pilot program, at least one of which had a population of at least 500,000.

After each election conducted under the pilot program, the secretary would have to send a detailed report to each member of the Legislature evaluating the success of the program and making a recommendation as to whether the Legislature should act to delay the statewide implementation of the program.

Provisions relating to the pilot program would expire August 31, 2026.

Paper audit trail. A voting system that consisted of direct recording electronic voting machines could not be used in an election unless the system was an auditable voting system. The bill would define "auditable voting system" as a voting system that used, created, or displayed a paper record that could be read by a voter and was not capable of being connected to the internet or any other computer network or electronic device.

The electronic vote would be the official record of the vote cast if a risk-limiting audit produced strong evidence that the reported outcome of the election matched the results that a full counting of the paper records would reveal. The paper record would be the official record:

- for a recount, including a recount of ballots cast on a system involving direct recording electronic voting machines;
- for certain election contests; or
- if a risk-limiting audit failed to produce strong evidence that the reported outcome of the election matched the results that a full counting of the paper records would reveal.

The above provisions pertaining to a paper audit trail would not apply to an election held before September 1, 2026.

An authority that purchased a voting system other than an auditable voting system between September 1, 2014, and September 1, 2021, could use available federal funding and, if such funds were not available, available state funding to convert the purchased system into an auditable system. If the voting system was converted by the November 8, 2022, election, the authority would be eligible to have 100 percent of the conversion cost reimbursed. If the authority was not eligible for a 100 percent

reimbursement and the voting system was converted by the November 3, 2026, election, the authority would be eligible to have half of the conversion cost reimbursed.

The secretary of state could use any available funds to assist an authority with the purchase of an auditable voting system if the funds had been appropriated for that purpose.

A paper record generated by an auditable voting system could be used only for its specified purposes and could not be retained by the voter.

A voter unable to enter a polling place could use a direct recording electronic voting machine regardless of whether the direct recording electronic voting machine was part of an auditable voting system.

Network connections. Beginning September 1, 2026, a voting system could not be capable of being connected to any external or internal communications network, including the internet, or have the capability of permitting wireless communication.

Waivers prohibited. The secretary of state could not waive any requirements relating to risk-limiting audits, paper audit trails, or the network connection and wireless technology of voting systems.

Implementation. The secretary of state would have to implement a provision of the bill only if the Legislature appropriated money for that purpose. If the Legislature did not appropriate money, the secretary of state could, but would not be required to, implement a provision of the bill using other appropriations available for that purpose.

The bill would take effect September 1, 2021.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of $38.7 million to general revenue through fiscal 2023.

SUBJECT: Regulating certain direct sales of food to consumers; limiting permit fees

COMMITTEE: Public Health — favorable, without amendment

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

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, April 29 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Health and Safety Code sec. 437.020 defines "farmers' market" as a designated location used primarily for the distribution and sale directly to consumers of food by farmers or other producers.

Health and Safety Code sec. 437.0065 governs permits for certain farmers and food producers and establishes that applicable permits must be valid for a term of not less than one year, may impose an annual issuance or renewal fee of up to $100, and must cover sales at all locations within the jurisdiction of the permitting authority.

The statute applies only to a permit issued to:

- a farmer for the sale of food directly to consumers at a farmers' market, a farm stand, or the farmer's farm; and
- an individual who prepares food for sale at a farmers' market.

Interested parties have noted that while local health departments can charge a farmers' market vendor $100 per year for a permit, there have been reports of some local jurisdictions charging other individuals who sell food at farmers' markets a larger amount due to an unclear reference to "food producer" in statute. Some have called for providing statutory

clarification and providing an avenue for the recovery by vendors of permit fees that exceeded the $100 cap.

DIGEST:

SB 617 would revise statutory provisions for permits issued to certain farmers and food producers who sold food at a farmers' market, farm stand, or farm.

Under the bill, a permit issued to a farmer or food producer at a farmers' market would have to cover sales at all locations the permit holder was authorized to sell food within the jurisdiction of the permitting authority, including farmers' markets, farm stands, and farms.

Fees. A farmer or food producer who was charged an annual fee in an amount that exceeded $100 for issuance or renewal, or whose permit did not otherwise comply with the bill's provisions, would be authorized to bring an action against the governmental entity that charged the fee or issued the permit to recover:

- the amount the farmer or food producer was charged in excess of the $100 annual fee; and
- reasonable and necessary attorney's fees incurred in bringing the action.

The bill would change provisions for individuals other than farmers to make provisions applicable to a permit issued to a food producer for the sale of food directly to consumers at a farmers' market, and would define "food producer" as a person who grew, raised, processed, prepared, manufactured, or otherwise added value to the food product the person was selling. The term would not include a person who only packaged or repackaged a food product.

The bill also would redefine "farmers' market" as a designated location used for a recurring event at which a majority of the vendors were farmers or other food producers who sold food directly to consumers.

The bill would apply only to an original or renewal permit issued on or after the bill's effective date. A permit issued before the effective date

would be covered by the law in effect at the time of the permit's issuance, and the former law would be continued in effect for that purpose.

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, and would apply only to a cause of action that accrued on or after the effective date.

NOTES:

The House companion bill, HB 1652 by Wilson, was considered by the House Public Health Committee in a public hearing on April 28 and left pending.

SUBJECT: Increasing penalties for manufacture or delivery of fentanyl

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Collier, Cook, A. Johnson, Murr, Vasut

2 nays — Cason, Hinojosa

2 absent — K. Bell, Crockett

SENATE VOTE: On final passage, March 29 — 30-1 (Eckhardt)

WITNESSES: For — (*Registered, but did not testify*: Jennifer Tharp, Comal County Criminal District Attorney; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Jessica Anderson, Houston Police Department; Ray Hunt, HPOU; Erleigh Wiley, Kaufman County Criminal District Attorney; Tom Maddox, Sheriffs Association of Sheriffs; Price Ashley, Texas College of Emergency Physicians; Mitch Landry, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Bonnie Bruce, Texas Society of Anesthesiologists)

Against — (*Registered, but did not testify*: Cynthia Simons, Texas Criminal Justice Coalition)

BACKGROUND: Health and Safety Code ch. 481 is the Texas Controlled Substances Act. The act categorizes illegal substances into penalty groups and provides penalties for the manufacture, delivery, and possession of controlled substances.

Fentanyl, alpha-methylfentanyl, or any other derivative of fentanyl are placed in Penalty Group 1. Health and Safety Code sec. 481.112 establishes the penalty for the manufacture or delivery of a substance in Penalty Group 1, which start at a state-jail felony for an amount of less than 1 gram and increase to life in prison or a term of 15 to 99 years and a fine up to $250,000 for 400 grams or more.

It has been noted that fentanyl, a drug that is exponentially more potent than morphine, is responsible for a drastic increase in recent overdose deaths, given that the drug is often combined with cocaine and heroin without the knowledge of the user. There have been calls to ensure that the manufacture or delivery of fentanyl is adequately addressed in the Texas Controlled Substances Act by creating a more stringent punishment system that is appropriately weighted for the drug's lethality.

DIGEST:

SB 768 would remove fentanyl, alpha-methylfentanyl, or any other derivative of fentanyl from Penalty Group 1 and place them in a new category, Penalty Group 1-B, under the Texas Controlled Substances Act.

The bill also would create a new offense for the manufacture or delivery of such Penalty Group 1-B substances. The associated penalties would be:

- a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) for an amount of less than 1 gram;
- a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) for an amount of 1 gram or more, but less than 4 grams;
- life in prison or a term of 10 to 99 years and a fine up to $20,000 for an amount of 4 grams or more, but less than 200 grams;
- life in prison or a term of 15 to 99 years and a fine up to $200,000 for an amount of 200 grams or more, but less than 400 grams;
- life in prison or a term of 20 to 99 years and a fine up to $500,000 for 400 grams or more.

Penalties for possession of substances from the new Penalty Group 1-B would be the same as those in Penalty Group 1, which range from a state-jail felony for an amount of less than 1 gram to life in prison or a term of 10 to 99 years and a fine up to $100,000 for 400 grams or more.

The bill also would extend to the Penalty Group 1-B substances the applicability of other provisions under the Texas Controlled Substances Act governing delivery of a controlled substance or marijuana to a child and for the possession or transport of certain chemicals with intent to

manufacture a controlled substance. The new offense would be treated the same as the manufacture or delivery of a Penalty Group 1 substance as it related to penalty enhancements for offenses committed in certain drug free zones, involving the use of a child in the commission of the offense, or involving the manufacture or delivery of a controlled substances causing death or serious injury.

Eligibility for community supervision, mandatory supervision. A defendant convicted of the new offense for an amount that was 4 grams or greater would not be eligible for judge-ordered community supervision or jury-recommended community supervision, and a defendant charged with the new offense for such an amount would not be eligible for deferred adjudication community supervision. If a defendant was serving time for or previously convicted of the new offense for an amount that was 4 grams or greater, the defendant would not be eligible for mandatory supervision.

Other provisions. For Health and Safety Code provisions relating to mandatory reporting of controlled substance overdoses and for Penal Code provisions relating to the offense of abandoning or endangering a child, Penalty Group 1-B substances would be treated the same as Penalty Group 1 substances.

The conduct constituting the offense of directing the activities of a criminal street gang would be expanded to include knowingly financing, directing, or supervising the commission of, or a conspiracy to commit, as part of the identifiable leadership of a criminal street gang, the manufacture or delivery of a substance in Penalty Group 1-B in an amount that was 4 grams or greater.

The Texas Department of Criminal Justice would have 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, the department could, but would not be required to, implement the bill using other appropriations available for the purpose.

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

NOTES:

According to the Legislative Budget Board, increasing the minimum term of confinement is expected to result in additional demands on correctional resources. The fiscal impact of implementing the bill is indeterminate due to the lack of data to distinguish manufacture or delivery of fentanyl or fentanyl derivatives cases from all other manufacture or delivery of controlled substances in Penalty Group 1 cases. This information is necessary to determine the fiscal implications associated with implementing the proposed penalty changes and modifications to community supervision eligibility.

SUBJECT: Modifying certain requirements related to community land trusts

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, May 14 — 29-1 (Hughes)

WITNESSES: No public hearing.

BACKGROUND: Local Government Code ch. 373B authorizes the governing body of a municipality or county to create or designate one or more community land trusts (CLTs). CLTs must be 501(c)(3) nonprofit organizations created to acquire and hold land for the benefit of developing and preserving long-term affordable housing.

Concerns have been raised that current law creates confusion as to how appraisal districts should appraise homes and land leased and owned by CLTs for tax property assessment purposes and makes it difficult for nonprofit housing developers to estimate property taxes as needed to advance new projects. There have been calls to specify in statute the income method and capitalization rate that should be used to appraise CLT property.

DIGEST: SB 113 would extend eligibility for designation as a community land trust (CLT) to a nonprofit organization that was created to acquire and hold land for the benefit of developing and preserving long-term affordable housing and was:

- a limited partnership of which a 501(c)(3) nonprofit corporation controlled 100 percent of the general partner interest; or
- a limited liability company for which such a corporation was the only member.

The bill would require a chief appraiser, in appraising land or housing units leased by a CLT to a family meeting the applicable income-eligibility standards, to use the income method of appraisal specified by the Tax Code. The chief appraiser also would have to take into account the uses and limitations applicable to the property for purposes of computing and projecting rental income and use the same capitalization rate as for other rent-restricted properties.

If the sale of a housing unit that the owner or owner's predecessor had acquired from a CLT and that was located on land owned by the trust and leased by the housing unit owner was subject to an eligible land use restriction, the chief appraiser could not appraise the housing unit in a tax year for an amount that exceeded the price for which the housing unit could be sold under the land use restriction in that tax year.

For the purposes of the bill, "eligible land use restriction" would mean an agreement, deed restriction, or restrictive covenant applicable to the housing unit that:

- was recorded in the real property records;
- had a term of at least 40 years;
- restricted the price for which the housing unit could be sold to a price that was equal to or less than the market value of the unit; and
- restricted the sale of the housing unit to a family meeting the income-eligibility standards established by statute governing CLTs.

SB 113 would establish that the prorated property taxes that must be paid on property eligible for taxation for only part of a year because of an exemption would not apply to an exemption for land received by certain organizations that improved, constructed, or rehabilitated affordable housing that terminated during the year due to the sale of a housing unit located on the land if:

- the housing unit was sold to a family meeting the income-eligibility standards established by statute governing CLTs;
- the organization retained title to the land; and

- before the housing unit was sold, the organization was designated a CLT by the governing body of a municipality or county.

The bill would take effect September 1, 2021, and would apply only to property taxes imposed for a tax year that began on or after that date.

NOTES:

According to the Legislative Budget Board, SB 113 would increase the amount of property that could be eligible for a community land trust exemption. As a result, taxable property values could be reduced and related costs to the Foundation School Fund could be increased through the operation of the school finance formulas.

SUBJECT: Making it a crime to operate a drone over airports, military installations

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 29 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Leticia Van de Putte, City of Del Rio and San Antonio Chamber of Commerce; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Jake Posey, Dallas Fort Worth International Airport; James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Tammy Narvaez, Harris County Commissioners Court; Ray Hunt, HPOU; Juan Ayala, Texas Mayors of Military Communities)

Against — None

BACKGROUND: Under Government Code sec. 423.0045, it is a crime to intentionally or knowingly:

- operate an unmanned aircraft 400 feet or less above ground level over a correctional facility, detention facility, or critical infrastructure facility;
- allow an unmanned aircraft to make contact with such facilities, including any person or object on their premises; or
- allow an unmanned aircraft to come within a distance of those facilities that is close enough to cause a disturbance or interfere with operations.

An offense generally is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

Some have called for revising this offense to prohibit the operation of unmanned aircraft over or near airports and military installations to address the security risks posed by an increased accessibility to drones and to ensure the safety of facility personnel.

DIGEST:

SB 149 would expand the definition of critical infrastructure facility over which it is an offense to operate an unmanned aircraft under Government Code sec. 423.0045 to include:

- a public or private airport depicted in any current aeronautical chart published by the Federal Aviation Administration; or
- a military installation owned or operated by or for the federal government, the state, or another governmental entity.

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

SUBJECT: Requiring timely final orders in a suit affecting a child under DFPS care

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

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

0 nays

1 absent — Ramos

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

WITNESSES: No public hearing.

BACKGROUND: Concerns have been raised about the negative impact on children in the care of the Department of Family and Protective Services (DFPS) of trials that continue for months or years before they are completed. It has been suggested that requiring a court to render a final order in a suit affecting the parent-child relationship no more than 90 days after the trial commenced would reduce the uncertainty and potential instability faced by these children.

DIGEST: CSSB 185 would require a court in a suit affecting the parent-child relationship for a child under the care of the Department of Family and Protective Services to render a final order no later than 90 days after the date the trail commenced. The 90-day period for rendering a final order would not be tolled for any recess during the trial.

The court would be authorized to extend the 90-day period for a term the court determined necessary if, after a hearing, it found good cause for the extension.

If an extension for good cause was granted by the court, the court would have to render a written order that specified:

- the grounds on which the extension was granted; and
- the length of the extension.

If the court failed to render a final order within the time required by this bill, a party to the suit could file a mandamus proceeding.

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

NOTES:

The House companion bill, HB 1319 by Noble, was heard by the House Juvenile Justice and Family Issues Committee in a public hearing on March 15 and left pending.

SUBJECT: Revising regulations for certain child-care facilities and family homes

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Frank, Hull, Klick, Noble, Rose, Shaheen

0 nays

3 absent — Hinojosa, Meza, Neave

SENATE VOTE: On final passage, May 3 — 30-0

WITNESSES: For — (*Registered, but did not testify*: Kevin Stewart, American Association of University Women of Texas; Katie Mitten, Texans Care for Children; Ashley Harris, United Ways of Texas; Knox Kimberly, Upbring; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Lana Estevilla, Health and Human Services Commission)

BACKGROUND: Under Human Resources Code ch. 42, the Department of Family and Protective Services (DFPS) establishes minimum standards for and licenses certain facilities, homes, and agencies that provide child-care services.

Under sec. 42.002, "group day-care home" means a child-care facility that provides care at the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years old for less than 24 hours a day but for at least two hours a day, at least three days a week.

"Family home" means a home that provides regular care in the caretaker's own residence for a maximum of six children under 14 years old.

Sec. 42.025 requires DFPS to maintain on its website a searchable database that includes the name, address, and any identification number, as applicable, of each registered or listed family home that previously had a registration or listing involuntarily suspended or revoked under ch. 42 with a permanent notation indicating the involuntary suspension or revocation and the year in which the suspension or revocation took effect or was final.

Under secs. 42.050(c) and 42.052(f-2), HHSC must evaluate the application for renewal of a license or facility certification or family home registration to determine if all requirements are met and whether the applicant has been cited for repeated violations or has established a pattern of violations during the preceding two years.

Concerns have been raised that if a child-care provider moves to a different address and receives a new license, any previous violations are unknown to the parent unless the provider chooses to provide all previous license or registration numbers. To address these concerns, some have suggested improving accuracy of caregiver information when parents seek child care services by permanently associating previous violations with the child-care provider.

DIGEST:

CSSB 225 would require the Health and Human Services Commission (HHSC), rather than the Department of Family and Protective Services, to permanently maintain on its website the searchable database under Human Resources Code sec. 42.025 that listed each group day-care home and family home, licensed, registered, or listed:

- that previously had a license, registration, or listing involuntarily suspended or revoked; or
- for which HHSC refused to renew a license, registration, or listing.

Database. The database would have to include for each group day care home and licensed or registered family home:

- the name of the facility;
- the address of the facility, including the county in which the facility was located;

- any identification number associated with the facility;
- the name of the sole proprietor or each partner who owned the child-care operation or, if the owner was a business entity, the name of each officer responsible for the management of the child-care operation as determined by the commissioner; and
- the year in which the involuntary suspension or revocation of the facility's license, registration, or listing took effect or was final, or the year in which HHSC refused to renew the facility's license, registration, or listing.

The bill would require HHSC to include the name of each individual as specified in the bill who was associated with the license, registration, or listing in any database entry.

The executive commissioner of HHSC could adopt rules to implement these provisions.

Names of certain persons. Under the bill, HHSC would require the applicant for a license, registration, or listing for a group day-care home or a family home to provide the applicant's name and certain other individuals' names on the application form.

Under the bill, HHSC would have to associate an applicant's name with a group day-care home license and the listing or registration of a family home.

Location changes. A licensed child-care facility that changed location would be required to inform HHSC regarding the new location before changing location.

Evaluations. The bill would increase the number of preceding years in which HHSC would be required to evaluate an applicant's pattern of violations from two to five years under Human Resources Code secs. 42.050(c) and 42.052(f-2).

Data collection. The bill would require HHSC to collection information regarding group day-care home and family home employees who have

had a license, registration, or other occupational authorization revoked by a licensing authority.

HHSC would have to collaborate with licensing authorities to determine the most efficient method for identifying group day-care home or family home employees who have had a license revoked by the licensing authority.

Supervision standards for infants. The bill would require the executive commissioner of HHSC by rule to establish supervision standards for an infant who was awake and on his or her stomach. Each group day-care home and listed and registered family home would have to comply with the supervision standards.

Other provisions. The HHSC executive commissioner 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, the executive commissioner could, but would not be required to, implement the bill using other appropriations available for that purpose.

The bill would make certain conforming changes under current law.

The bill would take effect September 1, 2021.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of about $998,600 to general revenue through fiscal 2023.

SUBJECT: Revising the disclosure of certain appraisal district records

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Meyer, Thierry, Button, Cole, Guerra, Murphy, Noble, Rodriguez, Shine

0 nays

2 absent — Martinez Fischer, Sanford

SENATE VOTE: On final passage, April 20 — 30-1 (Creighton)

WITNESSES: For — Marya Crigler, Texas Association of Appraisal Districts; (*Registered, but did not testify*: Kirk Broaddus; Susana Carranza; Dorothy Ann Compton; Richard DeOtte; Yvette DeOtte; Vanessa MacDougal; Robert Norris)

Against — None

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

BACKGROUND: Under Tax Code sec. 552.149(b), a property owner or agent may, on request, obtain from the chief appraiser of an appraisal district a copy of certain information before a protest hearing. In addition, the owner or agent may request comparable sales data from a reasonable number of sales that was relevant to any matter to be determined by the appraisal review board at the protest hearing. Information obtained under these provisions remains confidential in the possession of the owner or agent and may not be disclosed or used for any purpose except as evidence or argument at the hearing.

Sec. 552.149(e) provides that the section applies to information or data related to real property located in a county with a population of more than 50,000.

Interested parties have noted that while certain information may be received by a property owner for use during the protest process, similar language does not exist to allow property owners to receive this information in arbitrations. Some have called for authorizing this so that appraisal districts were not prohibited from releasing this private property information. Additionally, some suggest eliminating the bracket providing the privacy exceptions only for counties with populations of more than 50,000 to allow this information to be shared in smaller counties.

DIGEST:

SB 334 would allow a property owner or agent to obtain from the chief appraiser of an appraisal district, on request, comparable sales data that was relevant to any matter to be determined by the arbitrator at the hearing on the property owner's appeal of the appraisal review board's order determining the property owner's protest. The bill would extend the current exception from the prohibition against disclosure or use of certain information to the use of the information at the arbitration hearing.

The bill also would repeal the provision limiting the application of the section governing the public disclosure exception of certain records received from the comptroller or chief appraiser to records related to real property located in a county with a population of more than 50,000.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021. The bill would apply only to a request received by the chief appraiser on or after the effective date.

SUBJECT: Allowing TDUs provide energy from storage facilities in ERCOT region

COMMITTEE: State Affairs — favorable, without amendment

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

0 nays

1 absent — Lucio

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

WITNESSES: None

BACKGROUND: Interested parties note that new technologies have developed since the vertically integrated utilities in the electric market were unbundled into retail, generation, and transmission and distribution segments. They suggest providing the Public Utility Commission with legislative guidance regarding the ownership and deployment of utility-scale battery storage devices in the ERCOT power region.

DIGEST: SB 415 would make statutory provisions regarding electric energy storage applicable only to the ownership or operation of equipment and facilities in the ERCOT power region and expand those regulations to include the provision of reliable delivery of electric energy to distribution customers.

The bill would allow a transmission and distribution utility, with prior approval of the Public Utility Commission (PUC), to contract with a power generation company to provide electric energy from an electric energy storage facility to ensure reliable service to distribution customers. PUC could not authorize a transmission and distribution utility to own a storage facility.

SB 415 would prohibit the total amount of electric energy storage capacity reserved by contracts from exceeding 100 megawatts. PUC by rule would

have to establish the maximum amount of storage capacity allotted to each transmission and distribution utility.

Before entering into a contract, the utility would have to issue a request for proposals for use of a storage facility to meet its reliability needs. A utility could enter into a contract only if use of a storage facility was more cost-effective than construction or modification of traditional distribution facilities.

The bill would prohibit a transmission and distribution utility from entering into a contract that reserved an amount of capacity exceeding the amount of capacity required to ensure reliable service to customers.

A power generation company that owned or operated an electric energy storage facility subject to a contract could sell electric energy or ancillary services through use of the facility only to the extent that the company reserved capacity as required by the contract. A company that owned or operated a storage facility subject to a contract could not discharge the facility to satisfy the contract's requirements unless directed by the transmission and distribution utility.

A contract would have to require a power generation company to reimburse a transmission and distribution utility for the cost of an administrative penalty assessed against the utility for a violation caused by the facility's failure to meet the requirements of the agreement.

In establishing the rates of a transmission and distribution utility, a regulatory authority would have to review a contract between the utility and a power generation company. The utility would have the burden of proof to establish that the costs of the contract were reasonable and necessary.

The regulatory authority could authorize a transmission and distribution utility to include a reasonable return on the payments required under the contract only if the contract terms satisfied the relevant accounting standards for a capital lease or finance lease.

PUC would have to adopt rules as necessary to implement this bill and establish criteria for approving contracts.

The bill would take effect September 1, 2021, and PUC would have to adopt rules as soon as practicable after that date.

NOTES:

The House companion bill, HB 1672 by Holland, was considered by the House State Affairs Committee in a public hearing on March 18, reported favorably, and sent to the Calendars Committee.

SUBJECT: Creating the criminal offense of operating unpermitted boarding facility

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Frank, Hull, Klick, Noble, Rose, Shaheen

0 nays

3 absent — Hinojosa, Meza, Neave

SENATE VOTE: On final passage, April 29 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Mary McFaden, Harris County District Attorney's Office (*Registered, but did not testify*: Amanda Fredriksen, AARP; Guadalupe Cuellar, City of El Paso; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Dennis Borel, Coalition of Texans with Disabilities; Tammy Narvaez, Harris County Commissioners Court; Greg Hansch and Matthew Lovitt, National Alliance on Mental Illness Texas; Patricia Ducayet, Office of the State Long-Term Care Ombudsman; Julie Wheeler, Travis County Commissioners Court; Thomas Parkinson)

Against — None

BACKGROUND: Concerns have been raised that it is difficult to enforce local permitting requirements regarding boarding home facilities due to the reluctance of some judges to issue warrants for what is often deemed a low-level offense. There have been calls to establish a clear criminal offense in statute for the operation of an unpermitted boarding home facility.

DIGEST: SB 500 would establish that a person committed a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if the person operated a boarding home facility without a permit in a county or municipality that required such a permit.

The bill would take effect September 1, 2021.